



Office of Review & Compliance

Student Hearing Office
 Van Ness Elementary School
 1150 5th Street, S.E., 1st Floor
 Washington, D.C. 20003
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Confidential

The Student Through their)	IMPARTIAL
)	DUE PROCESS HEARING
Parents,*)	
Case No.:)	
)	<u>DECISION AND ORDER</u>
Petitioner,)	
)	
vs.)	Due Process Compl. Filed: Apr. 15, 2009
)	Rescheduled Hr'g Date: May 18, 2009
The District of Columbia Public Schools,)	Held at: Van Ness Elementary School
Home School:)	1150 5th Street, S.E., 1st Floor
Attending:)	Washington, D.C. 20003
)	
Respondent.)	Pre-Hr'g Conference Held By-Phone on
)	Tuesday, May 12, 2009 at 4:30 p.m.

2009 MAY 22 6:01 AM
 STUDENT HEARING OFFICE
 OSSE

Counsel for the Parent/Student: Law Office of
 Joy Freeman-Coulbary, PLLC
 Attorney at Law
 5885 Colorado Ave., N.W., Suite 102
 Washington, D.C. 20011

District of Columbia Public Schools: Nia M. Fripp, Esq.
 Assistant Attorney General
 Office of the General Counsel, OSSE
 825 North Capitol Street, N.E., 9th Floor
 Washington, D.C. 20002

Independent Hearing Officer: Frederick E. Woods

- Party identification information is stated in Appendix A of this order and Appendix A shall be removed from this order before public dissemination.

I. Case Background and Procedural Information

A. JURISDICTION

This Decision and Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, codified at 20 U.S.C. §§ 1400 -1482, 118 Stat. 2647; and its implementing regulations codified at 34 C.F.R. §§ 300.01 – 300.818; 5 D.C.M.R. §§ 3000 - 3033; and Section 327 of the D.C. Appropriations Act.

B. DUE PROCESS RIGHTS

Before the hearing, the parent had been advised of their due process rights.

C. FIVE-DAY DISCLOSURES

Petitioner: Admitted, without objection, a disclosure letter filed on 05/07/09 that list twelve (12)-witnesses and attached twenty exhibits sequentially labeled and tabbed Parent-01 through Parent-20. Three (3)-witnesses were called to testify: (1) the student's mother; (2) the admission specialist; and (3) a private clinical psychologist.

Respondent: Admitted, without objection, a disclosure letter filed on 05/07/09 that list four (4)-witnesses and attached five exhibits sequentially labeled DCPS-01 through DCPS-05. No witnesses were present or called to testify.

D. STATEMENT OF THE CASE

The student, born age years 7-months, is a student with a disability receiving her special education and related services, according to her current 03/12/09 IEP, as an ungraded, 100% of the school day outside of a general education classroom as a Multiple Disabled ("MD")—Emotionally Disturbed ("ED") and Mentally Retarded ("MR") student attending located at phone number (R. at Parent-02.)

The student's 03/12/09 MDT Meeting Notes state that [the student's 03/12/09 IEP Team all] agreed that the student could benefit from a full time therapeutic placement with counseling, crisis intervention, and medication management." (R. at Parent-03.) To date DCPS has not provided the student the recommended placement.

Consequently parent's counsel filed the student's 04/15/09 Due Process Complaint ("DPC") alleging that DCPS as the LEA violated the IDEA and denied the student a Free Appropriate Public Education ("FAPE") during the 2008-09 school year by doing one thing: (1) failing to provide the student with an appropriate placement to implement her 03/12/09 IEP. (R at Parent-01.) As relief, the parent wants DCPS to place and fund the student's placement at public expense for the remainder of the 2008-09 school year at (R. at Parent-01.) The parent withdrew all other issues raised in their 04/15/09 DPC at the due process hearing on the hearing record.

DCPS' 04/24/09 Response to the DPC was that the student's placement at for the 2008-09 school year was appropriate. (R. at DCPS' 04/24/09 Response to the DPC.) DCPS counsel did, however, stipulate to the parent's facts at the due process hearing but contested the parent's requested relief.

The OSSE Student Hearing Office ("SHO") scheduled the due process hearing for 1:00 p.m. on Monday, May 18, 2009, at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parent selected to have a closed due process hearing that convened, as scheduled, 33-days after the 04/15/09 DPC was filed.

Assistant Attorney General Nia M. Fripp appeared in-person for DCPS. Attorney Joy Freeman-Coulbary appeared in-person representing the student who was not present; and the student's mother who was present. The testimony was taken and completed, and the case was submitted for a final decision and order.

II. Issue

Did DCPS, as the LEA, violate the IDEA and deny the student a FAPE during the 2008-09 school year by not providing the student an appropriate placement to implement her 03/12/09 IEP when her MDT/IEP Team agreed that the student's current placement at could not meet her needs, and that she could benefit from a full time therapeutic placement with counseling, crisis intervention, and medication management—an educational placement she never received?

Brief Answer

Yes. The student requires a therapeutic special education program setting as called for in her 03/12/09 IEP and DCPS did not provide the student with that recommended program at nor proposed any other placement.

Preliminary Matter

Before taking any testimony the parties informed the hearing officer that they stipulated to these facts:

A. Stipulations

1. The student's 03/12/09 MDT/IEP Team all agreed that could not implement the student's 03/12/09 IEP.
2. The student's 03/12/09 MDT Meeting Notes state that [the student's 03/12/09 IEP Team all] agreed that the student could benefit from a full time therapeutic placement with counseling, crisis intervention, and medication management." (R. at Parent-03.)
3. The parent proposed two private special education school placements for the student at the 03/12/09 MDT/IEP Meeting: (1) School; and (2)
4. To date DCPS has not provided the student the IEP recommended placement nor agreed to either of the parent's proposed placements.
5. The student's needs an appropriate educational placement to implement her 03/12/09 IEP.
6. The only issue that remained for resolution at the due process hearing was whether could provide the student with educational benefit.
(R. at Parent-02, 03, 04, 05.)

III. FINDINGS OF FACT

1. The student, born age years 7-months, is a student with a disability receiving her special education and related services, according to her current 03/12/09 IEP, as an ungraded, 100% of the school day outside of a general education classroom as a Multiple Disabled ("MD")—Emotionally Disturbed ("ED") and Mentally Retarded ("MR") student attending located at phone number (R. at Parent-02.)
2. The student's 03/12/09 IEP signed by the parent evincing agreement with its content, called for these special education services as an MD—ED/MR student, 100% of the time out of a general education classroom:
 - a. Specialized Instruction, 26.5-hours per week.
(R. at Parent-02.)
3. As to the parent's claim that the student does not have an appropriate placement for the 2008-09 school year, DCPS stipulated to that fact.

4. The assistant attorney general representing DCPS in this matter stipulated to and thereby took out of dispute these facts:
 - i. The student's current placement for the 2008-09 school year, is an inappropriate placement; and
 - ii. The student needs a full time therapeutic placement.
5. In light of DCPS' admitted default of its IDEA obligation to provide the student with a FAPE; and in the absence of any other placement option being presented by DCPS that could meet the student's needs, the parent's proposed placement, can meet the student's needs.
6. According to 08/01/08 acceptance letter, can provide the required and appropriate services for the student." (R. at Parent-04.)
7. And, according to the credible testimony of admission specialists:
 - i. is a K-12, full time day therapeutic special education school for students with a primary disability code of ED, SLD, and/or MR. It has 220 students—93 of them in the high school program.
 - ii. can provide the student's IEP called for specialized instruction, behavior management; crisis intervention therapy; and medication management albeit the school did not have a copy of the student's 03/12/09 IEP but had a copy of her last IEP.
 - iii. It will provide the student a small structured environment; and provide her specialized instruction in a self-contained classroom to remediate the student's anxiety that results when she transitions from one classroom to another in school. The pupil/teacher ratio for the student's proposed classroom is 5/1.
 - iv. There is a registered nurse on staff to dispense the student's medication, licensed social workers to provide counseling services, and a crisis intervention therapy room on each floor of the school.
8. DCPS did not call any witnesses or provide any evidence whatsoever in support of its plead defense that was an appropriate

placement. Nor did DCPS call a witness to contest whether
could provide the student educational benefit.

9. So the hearing officer found three (3)-things: (1) that DCPS defaulted on its IDEA obligations by not providing the student an appropriate placement to implement her 03/12/09 IEP for the 2008-09 school year; (2) that failure resulted in DCPS denying the student a FAPE; and (3) the parent's proposed placement at _____ can provide the student educational benefit.
10. So that student is hereby placed and funded at _____ effective Friday, May 29, 2009 for the rest of the 2008-09 school year.

IV. DISCUSSION and CONCLUSIONS OF LAW:

I

DCPS is required to make a FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

The IDEA codified at 20 U.S.C. §§ 1400 - 1482. and 5 D.C.M.R. § 3000.1 requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement.

DCPS did not meet its IDEA obligations and its failure resulted in a denial of a FAPE to the student. Here is why.

1. If a child's initial evaluation suggests [s/he] is entitled to a FAPE, IDEA then requires the school district to create and implement an IEP, which is the 'primary vehicle' for implementing the Act." Hoing v. Doe, 485 U.S. 305; 311 (1988).
2. Pursuant to 5 D.C.M.R. § 3002.1, LEA Responsibility, "[t]he services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability."
3. To ensure that each eligible student receives a FAPE, the IDEA require that an IEP be developed to provide each disabled student with a plan for educational services tailored to that student's unique needs. See 20 U.S.C. § 1414 (d)(3).
4. Pursuant to 34 C.F.R. §§ 300.323(a), (c)(2), IEP Must be in Effect, each public agency must provide special education and related services to a child with a disability in accordance with the child's IEP.

5. Pursuant to the IDEA at 20 U.S.C. § 1414 (d) (A), (B); 34 C.F.R. § 300.323 (a) Requirement that Program be in Effect—
 1. At the beginning of each school year, each local educational agency ... shall have in effect for each child with a disability in the agency's jurisdiction an IEP.
6. According to 34 C.F.R. § 300.116 (a)(1), Placements, “[i]n determining the educational placement of a child with a disability, each public agency shall ensure the placement decision is made by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.”
7. According to 34 C.F.R. § 300.501(c), Parental Involvement in Placement Decisions, “[e]ach public agency shall ensure the parents of each child with a disability are members of any group that makes decisions on the education placement of their child.”
8. Pursuant to 5 D.C.M.R. § 3025, Procedural Safeguards—Prior Written Notice, DCPS shall provide written notice to the parent of a child with a disability before it proposes...an educational placement of the child.
9. Pursuant to 5 D.C.M.R. § 3013.1(e), Placement, “[t]he LEA shall ensure that the educational placement decision for a child with a disability is ...based on the child's IEP.”
10. DCPS stipulated that albeit the student has a current IEP for the 2008-09 school year the student does not have an appropriate placement to implement that IEP for the 2008-09 school year. (R. at Parent-02.)
11. To the credit of the DCPS assistant attorney general representing DCPS in this matter, she stipulated to and thereby took out of dispute these facts:
 - i. The student's current placement for the 2008-09 school year, is an inappropriate placement;
 - ii. The student needs a full time therapeutic placement; and
 - iii. To date, DCPS has not proposed a therapeutic placement for the student.
12. In light of DCPS' stipulation, it did not defend against the parent's claims. It called no witnesses nor submitted any documentary evidence to support a finding that the student has an appropriate placement to implement her IEP for the 2008-09 school year. And because the student is eligible for special

education services, according to the IDEA, the LEA must provide the student with both an appropriate IEP and placement to implement that IEP for the 2008-09 school year.

13. That is because the IDEA was enacted to “ensure that children with disabilities have access to a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A). A free appropriate public education, or FAPE, is delivered through the implementation of an Individualized Education Program, or “IEP.” See Burlington v. Dep’t of Educ., 471 U.S. 359, 368 (1985) (*describing* the IEP as the “modus operandi” of special education).
14. The IEP is developed by a team of professionals, including the child’s parents, “as well as a representative of the local educational agency with knowledge about the school’s resources and curriculum.” Branham v. District of Columbia, 427 F.3d 7, 8 (D.C. Cir. 2005). An appropriate IEP, at a minimum, “must provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Board of Educ. v. Rowley, 458 U.S. 176, 204 (1982).
15. And the IEP can not be implemented without first identifying a placement because the provision of the IEP services, which must be based upon the child’s IEP pursuant to 34 C.F.R. § 300.116(b)(2), with consideration given to the quality of services that the child needs. 34 C.F.R. § 300.116(b)(2)(d).
16. In this matter DCPS met some but not all of its IDEA obligations to the student. It evaluated the student; determined based on that evaluation that the student is still eligible for special education services; revised her IEP; and determined the type of placement setting was required to implement that IEP. (R. at Parent-02.) But DCPS never provided the student with the placement it said she required. Consequently DCPS defaulted on that IDEA obligation.
17. Therefore next, according the United States Supreme Court, “[w]hen a public school system has defaulted on its obligation under the Act [the IDEA], a private school placement is ‘proper under the Act’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefit.’” Florence County School District Four v. Carter, 510 U.S. 7, 11 (1993); See also Massey v. District of Columbia, 400 F. Supp. 2d 66 (D.D.C. 2005).
18. The parent’s requested relief, placement and transportation, all at public expense, for their daughter to attend a private special education school, is granted. The student has been accepted to enroll in And the education provided by that private school is

reasonably calculated to provide the student educational benefit. (R. at Parent-04, testimony of admission specialist.) Here is why.

19. can provide all of the specialized instruction and related services that the student is to receive based on her current IEP. And the student has been interviewed and admitted by the school's admission staff for the 2008-09 school year. (R. at Parent-04.)
20. The student's 03/12/09 IEP signed by the parent evincing agreement with its content, called for these special education services as an MD—ED/MR student, 100% of the time out of a general education classroom:
 - b. Specialized Instruction, 26.5-hours per week. (R. at Parent-02.)
21. Those services can be met at because according to the school's admission specialists she said that:
 - i. is a K-12, full time day therapeutic special education school for students with a primary disability code of ED, SLD, and/or MR. It has 220 students—93 of them in the high school program.
 - ii. can provide the student's IEP called for specialized instruction, behavior management; crisis intervention therapy; and medication management albeit the school did not have a copy of the student's 03/12/09 IEP but had a copy of her last IEP.
 - iii. It will provide the student a small structured environment; and provide her specialized instruction in a self-contained classroom to remediate the student's anxiety that results when she transitions from one classroom to another in school. The pupil/teacher ratio for the student's proposed classroom is 5/1.
 - iv. There is a registered nurse on staff to dispense the student's medication, licensed social workers to provide counseling services, and a crisis intervention therapy room on each floor of the school.
22. So DCPS shall now fulfill its IDEA obligation to provide the student with an appropriate placement by placing and funding her at
23. Pursuant to 5 D.C.M.R. § 3030.3, "The burden of proof shall be the responsibility of the party seeking relief; either the parent/guardian of the child or the LEA. Based solely upon the evidence presented at the hearing, an

impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a Free Appropriate Public Education (FAPE).”

24. The parent, who filed the hearing request, had and met their burden of proof in this case because the parent:
 - a. Proved that DCPS failed to provide the student an appropriate placement for the 2008-09 school year.

So in consideration of the hearing record, the hearing officer finds that DCPS did not provide the student an appropriate placement to implement her 03/12/09 IEP for the 2008-09 school year; the student still needs a placement; and DCPS denied the student a FAPE. Therefore the hearing officer provides the parent’s requested relief through this:

ORDER

DCPS shall

1. Fund at public expense and issue, effective Friday, May 29, 2009, for the remainder of the 2008-09 school year, the student’s prior Written Notice of Interim Placement along with transportation for the student to attend located at phone number
2. The student may enroll at if the school permits, while awaiting DCPS’ Prior Written Notice of Interim Placement, funding, bus transportation or bus tokens based on the conditions established in this Order.
3. Continue the student’s placement at unless and until DCPS provides her another appropriate placement to implement her IEP.
4. This Order resolved all issues raised in the student’s 04/15/09 Due Process Complaint that is dismissed; and the hearing officer made no additional findings.

This is the final ADMINISTRATIVE DECISION. An appeal can be made to a court of competent jurisdiction within ninety (90)-days from the date of this Decision and Order pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B); 34 C.F.R. § 300.516 (b).

/s/ Frederick F. Woods
Frederick E. Woods
Hearing Officer

May 28, 2009
Date

Executed this 28th day of May, 2009.

/s/ Frederick F. Woods
Hearing Officer