OSSE
DC Office of the
State Superintendent
of Education

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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OSSE
STUDENT HEARING OFFICE
2009 NOV -9 AM 10: 12

Confidential

The Student Through their	)	**IMPARTIAL**
	)	**DUE PROCESS HEARING**
Parents,*	)	
Case No.: 2009-1169	)	
Petitioner,	)	**Hearing Officer Decision**
	)	
vs.	)	Due Process Compl. Filed: Aug. 11, 2009
	)	**Scheduled Hr'g Dates: Oct. 2 & 27, 2009**
The District of Columbia Public Schools,	)	Held at: Van Ness Elementary School
Home School: [redacted]	)	1150 5th Street, S.E., 1st Floor
Attending: [redacted]	)	Washington, D.C. 20003
	)	
Respondent.	)	**Pre-Hearing Conference Held By-Phone**
	)	**Monday, Sept. 14, 2009 at 3:00 p.m.**

Counsel for the Parent/Student: **Travis A. Murrell, Esq.**
Murrell & Associates, PLLC
Attorneys at Law
1455 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20004

District of Columbia Public Schools: **Daniel L. McCall, 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.

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 with the SHO on 09/24/09 that list six (6)-witnesses and attached seven exhibits sequentially labeled Parent-01 through Parent-07. Three witnesses were called to testify: (1) the parent; (2) a DCPS placement specialist; and (3) a DCPS project coordinator.

Respondent: Admitted, without objection, a disclosure letter filed on 09/24/09 that lists eight (8)-witnesses and attached four exhibits sequentially labeled DCPS-01 through DCPS-04. Two witnesses were called to testify: (1) a DCPS placement specialist; and (2) a DCPS project coordinator.

D. STATEMENT OF THE CASE

The student, born [redacted] is a student with a disability receiving special education and related services, according to his 02/12/09 IEP, as an Emotionally Disturbed ("ED") student who was attending The [redacted] until the parent unilaterally transferred him to [redacted] (R. at Parent-01; the parent's testimony.)

According to the parent's DPC, at the student's July 10, 2009 MDT Meeting the parent informed the other MDT team members that [redacted] was no longer an appropriate site location for the student. So for the 2009-10 school year the student had been accepted at and the parent sought placement for him at [redacted]. And at the time the parent filed their DPC, DCPS had not found the student a new placement. (R. at 08/11/09 DPC.)

Consequently, the parent filed the student's 08/11/09 DPC alleging that DCPS as the LEA violated the IDEA and denied the student a Free Appropriate Public Education

("FAPE") by failing to provide the student with an appropriate placement to implement his 02/12/09 IEP for the 2009-10 school year. (R. at 08/11/09 DPC.)

As relief, the parent wants "immediate placement at [redacted] for the 2009-10 school year." (R. at 08/11/09 DPC.)

The DCPS' 08/27/09 written Response, its 09/14/09 Amended Response, and its 09/16/09 Second Amended Response all state that (1) DCPS provided the parent an appropriate placement site location [at [redacted] (2) that DCPS offered the parent two additional private school site locations; and (3) that the parent refused the two offered site locations. (R. at the 08/27/08 Response, and the 09/14/09, 09/16/09 Amended Responses to the DPC.)

The OSSE Student Hearing Office ("SHO") scheduled the due process hearing for 9:30 a.m. on Friday, October 2, 2009 that convened as scheduled. But no testimony was taken because after a lengthy discussion about the case followed by a brief recess the parties informed the hearing officer that they had reached a tentative agreement. And based on that, the parties asked to continue the case until 9:30 a.m. October 27, 2009 to take testimony if they did not consummate their agreement. The hearings were held at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parent selected to have closed due process hearings that convened, as scheduled and continued.

Assistant Attorney General Daniel L. McCall appeared in-person representing DCPS. Attorney Travis A. Murrell appeared in-person representing the student who was not present; and the student's mother who was present.

II. Issue

Did DCPS, as the LEA, violate the IDEA and deny the student a FAPE during the 2009-10 school year by providing the student with an inappropriate placement at The [redacted] and if so, is [redacted] appropriate placement?

Brief Answer

(1) No. The parent presented no evidence to support her claim that The [redacted] School is an inappropriate placement; and the parent presented no evidence that Cedars Academy is an appropriate placement.

III. FINDINGS OF FACT

1. The student, born [redacted] is a student with a disability receiving special education and related services, according to his 02/12/09 IEP, as an Emotionally Disturbed ("ED") student who

was attending [redacted] until the parent unilaterally transferred [redacted] for the 2009-10 school year. (R. at Parent-01; parent's testimony.)

2. According to the student's 02/12/09 IEP developed by DCPS along with the parent, the student was to receive these special education services 100% outside of the general educational setting at The Frost School:

a. Specialized Instruction—28.75-hours/week;
b. Counseling—3.0-hours/week;
c. Family Counseling, 2.0-hours/week;
d. Occupational Therapy—.30-minutes/week; and
e. Speech-Language Therapy—.45-minutes/week.
(R at Parent-01.)

3. At the student's 08/25/09 MDT Meeting, that was convened to address the issues the parent raised in their 08/11/09 DPC, the Meeting Notes state in pertinent part that "[t]he parent was no longer pleased with the program at The [redacted] In response, The Frost School Director stated that they [The [redacted] can meet the needs of the student academically for the 2009-10 school year. … The student is still actively enrolled at The [redacted] with placement and funding from DCPS. And [redacted] is not a school placement for the student based upon the findings of DCPS. … DCPS is issuing a stay put at The [redacted] for the 2009-10 school year." (R. at DCPS-01.)

4. At the due process hearing the parent did not present any evidence whatsoever about why [redacted] was an inappropriate placement site location to implement the student's IEP. Nor did the parent present any evidence whatsoever about why Cedars Academy was an appropriate placement to implement the student's IEP.

5. Instead the parent presented evidence about DCPS making a referral to [redacted] as a possible placement site location; and based on that referral combined with the student being accepted a [redacted] Academy, the parent placed the student at [redacted] the 2009-10 school year. (R. at Parent-02, 03, 04; parent's testimony.)

6. DCPS did not, however, issue to the parent a Prior to Action Notice of Change in Placement ("PANCP") for the student to attend Accotink Academy for 2009-10 school year. And the parent testified that she had not received a PANCP from DCPS placing the student at Accotink Academy for the 2009-10 school year. (R. at parent's and DCPS project coordinator's testimony.)

7. Instead, on 09/16/09 DCPS issued a Prior to Action Notice of Change in Placement to [redacted] for the 2009-10 school year. Until that PANCP was issued, the student was to remain at [redacted] (R. at DCPS-01, 03.)

8. Moreover, in the parent's 08/11/09 DPC she did not request a change of placement to [redacted]; nor did the parties agree that the parent could amend their DPC to raise that issue; nor did the hearing officer grant the parent leave to amend their DPC to include that issue. So the parent's evidence about [redacted] was not raised as an issue for resolution by the hearing officer in the parent's 08/11/09 DPC. Therefore that evidence was not probative on the parent's raised issues of whether [redacted] was an inappropriate placement; and if so, whether [redacted] was an appropriate placement. (R. at 08/11/09 DPC.)

9. Consequently, the parent having presented no evidence whatsoever about The [redacted] being an inappropriate placement, and having presented no evidence whatsoever about [redacted] being an appropriate placement, there can be no finding that DCPS denied the student a FAPE.

10. Therefore, DCPS did not deny the student a FAPE.

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 them with special education and related services through an appropriate IEP and placement.

DCPS meet its legal obligation under the IDEA. 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. According to the IDEA at 34 C.F.R. § 300.306 (a)(1)-(b)(2), Determination of Eligibility, "Upon completion of the administration of assessments and other evaluation measures—(1) a group of qualified professional and the parent of the child determine whether the child is a child with a disability …

in accordance with paragraph (b) of this section and the educational needs of the child. ... (b) A child must not be determined to be a child with a disability if ... the child does not otherwise meet the eligibility criteria under § 300.8, [Child with a Disability]."

3. 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."

4. 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."

5. To ensure that each eligible student receives a FAPE, the IDEA requires 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).

6. Pursuant to 34 C.F.R. § 300.321 (a)(5), IEP Team, "[t]he public agency must ensure that the IEP Team for each child with a disability includes—an individual who can interpret the instructional implications of evaluation results."

7. Pursuant 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."

8. Pursuant 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."

9. 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.

10. 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.

11. And the U.S. Supreme Court held that a state or district fulfills its obligation to provide a free appropriate public education ("FAPE") to a student with a disability "by providing personalized instruction with sufficient support

services to permit the child to benefit educationally from that instruction." Bd. of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982). "Implicit in the congressional purpose of providing access to a FAPE under the IDEA is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped student." Rowley, 458 U.S. at 200. Further, the Court held that "'the basic floor of opportunity' provided by the Act [IDEA] consists of access to a specialized instruction and related service which are individually designed to provide educational benefit to the handicapped child." Rowley, 458 U.S. at 201.

12. In this case, DCPS complied with those cited IDEA requirements and provided the student with the basic floor of opportunity designed to provide him educational benefit when the student's 02/12/09 MDT/IEP Team that included the parent as a team members did these things: (1) reviewed and interpreted the student's assessment reports; (2) based on that review they found the student was still eligible for special education services with an ED disability classification; (3) the team developed the student's 02/12/09 IEP which was not disputed by the parent; and (4) albeit the parent wanted another placement for her son for the 2009-10 school year, the team issued a stay put for him to remain at [redacted] (R. at Parent-01, 05; DCPS-01.)

13. So albeit on 08/25/09 the parent informed DCPS that she wanted another private school placement for her son, [redacted] not meet her son's needs, the parent presented no evidence whatsoever about what made [redacted] an inappropriate placement. Particularly when the DCPS representative at the meeting, and [redacted] recorded in the student's 08/25/09 MDT Meeting Notes. (R. at DCPS-01.)

14. And the parent presented no evidence whatsoever about why [redacted] was an appropriate placement.

15. So the parent abandoned the issues raised in her DPC at the due process hearing when she presented no evidence in support of her claims. And, the hearing officer is limited by the IDEA to resolving only those claims that were raised in the DPC absent an amended DPC being filed or an agreement of the parties to do otherwise. Here is why.

16. According to the IDEA regulation 34 C.F.R. § 300.500 (d), Subject matter of due process hearings, "[t]he party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508 (b), unless the other party agrees otherwise."

17. The parent's 08/11/09 DPC did not request a change of placement to [redacted] Before the due process hearing convened the parent did not request nor did the parties agree that the parent could amend their DPC to raise that issue; nor did the hearing officer grant the parent leave to amend their DPC to include that issue.

18. And, as required by the IDEA, at the due process hearing the parties did not agree that the parent could raise the issue about whether [redacted] was an appropriate change in placement for her son for the 2009-10 school year. Consequently, the parent's evidence about [redacted] was not raised as an issue for resolution by the hearing officer in the parent's 08/11/09 DPC. Therefore evidence about the parent's request for [redacted] was not probative on the parent's raised issues of whether [redacted] was an inappropriate placement; and if so, whether [redacted] was an appropriate placement. (R. at 08/11/09 DPC.)

19. So based on the hearing record, there does not exist evidence supporting the parent's claim that the student was denied a FAPE because no evidence was presented to prove the parent's alleged violations of the IDEA stated in her DPC.

20. 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)."

21. The parent, who filed the Due Process Complaint, had and did not meet their burden of proof in this case because the parent:

    a. Failed to prove that DCPS denied the student a FAPE because the parent presented no evidence that The Frost School was an inappropriate site location to implement the student's IEP; and

    b. Failed to prove that Cedars Academy was an appropriate site location to implement the student's IEP.

So in consideration of the hearing record, there is no finding that the student was denied a FAPE because the parent did not meet their burden of proof under the IDEA by proving their alleged violations of the IDEA; and even if true, the parent did not prove that the alleged violations rose to the level to deny the student a FAPE. Ergo, based on the evidence and governing law the hearing officer issues this—

ORDER

1. The parent's 08/11/09, Due Process Complaint ("DPC") in Case No.: 2009-1169 is dismissed, with prejudice—meaning that the issues that were or could have been raised in the 08/11/09 DPC based on the same facts against the same parties or privies that arise from the same time period that formed the basis for the 08/11/09 DPC that is resolved herein by a final judgment on the merits cannot be relitigated. See Apotex, Inc. v. FDA, 393 F.3d 210, 217 (D.C. Cir. 2004).

2. There is no finding that the student was denied a FAPE.

3. The 45-day time limit, from filing the Due Process Hearing Request to its Disposition after the expiration of the 30-day period under § 300.510 (b) — receipt of the final Hearing Officer's Decision (HOD) pursuant to 34 C.F.R. § 300.515 (a) (1)—was extended by the parent for good cause; and the time for disposition was extended, in accord with this Order, to accommodate the parent's requested and jointly agreed to continuance.

   Furthermore, pursuant to SOP § 402 (B)(2) Continuances, states that "in general the parties' agreement to a continuance constitutes 'good cause' to reschedule the hearing to another date and to extend the deadline for issuance of a final determination."

4. This Order resolved all issues raised in the student's 08/11/09 Due Process Complaint in Case Number 2009-1169 that is dismissed with prejudice.

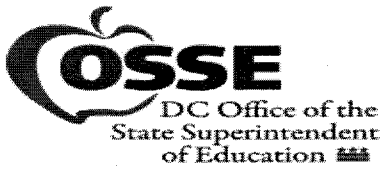
5. And the hearing officer made no additional findings.

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 E. Woods **November 6, 2009**

Frederick E. Woods **Date**

Hearing Officer



Office of Review & Compliance

The Student Through Their	)	
	)	
Parents	)	
Case No.: 2009-1169	)	
Petitioner,	)	**IMPARTIAL**
vs.	)	**HEARING OFFICER DECISION**
The District of Columbia Public Schools,	)	
[redacted]	)	
Respondent.	)	

Case Information:

Due Process Complaint Filed: August 11, 2009
Due Process Hr'g Dates: Oct. 7 & 27, 2009
Held at: Van Ness Elementary School
1150 5th Street, S.E., 1st Floor
Washington, D.C. 20003
I-Sight Case Number: 2009-1169
Student's Birth Date: January 26, 1992
Attending School: The Frost School
Managing School: Anacostia Senior High School

CERTIFICATION OF HEARING RECORD CASE FILE

I, Frederick E. Woods, Impartial Due Process Hearing Officer, certify that having rendered a Hearing Officer's Decision (HOD) in this case on November 6, 2009, I certify this evidentiary record presented to and made before me. It includes:

1. Seven (7)-Parents' Exhibits labeled Parent-01-07;
2. Four (4)-DCPS Exhibits labeled DCPS-01-04;
3. The student's 08/11/09 Due Process Complaint ("DPC");
4. The 08/27/09 DCPS Response to the DPC;
5. The 09/14/09 DCPS Amended Response to the DPC;
6. The 09/16/09 DCPS Second Amended Response to the DPC;
7. The 09/21/09 Pre-Hearing Order; and
8. The 10/27/09 & 10/02/09 Hearing Participants Attendance Sheets.

All papers returned in the student's SHO copy file are either the original or true copy of the original documents filed and presented to the hearing officer in this matter.

Executed this 6th day of November, 2009. /s/ Frederick E. Woods
Hearing Officer

APPENDIX A

INDEX OF NAMES

In the Matter of "Student" v. DCPS

Case No.: 2009-1169

Assistant Superintendent, Special Education (or Director)	
Special Education Coordinator	
School Psychologist	
Special Education Teacher	
Principal	
Speech/Language Therapist	
Occupational Therapist	
Physical Therapist	
Private Psychologist	
Child and Child's DCPS ID # or SSN [redacted]	[redacted]
[redacted]	[redacted]
Child/Parent's Representative	Travis Murrell, attorney
School System's Representative	Daniel L. McCall, asst. A.G.
Educational Advocate	
And any other Titles Applicable	
DCPS Placement Specialist	[redacted]
[redacted]	[redacted]

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