DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

---

and on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

Case No:
PUBLIC CHARTER SCHOOL,

Respondent.

HEARING OFFICER'S DETERMINATION/ CONSENT ORDER

BACKGROUND AND PROCEDURAL HISTORY

Student is a year-old female student, who currently attends a charter school that serves as its own local educational agency.

On June 14, 2011, Petitioner filed a Complaint against Respondent charter school, questioning whether Respondent failed to evaluate in all suspected areas of disability, failed to comply with the regulations to develop appropriate IEPs, failed to implement Student's IEPs, failed to provide an appropriate placement from SY 2004/5 through SY 2010/11, and whether Respondent charter school is an appropriate placement for SY 2011/12. Petitioner also sought the following relief from Respondent in the Complaint: funding of an independent assistive technology evaluation, an MDT meeting to review and incorporate into the IEP the findings of the evaluation, funding for a private school placement, and funding of Parent's compensatory education plan.

On June 24, 2011, Respondent filed its Answer, responding therein to each paragraph of the Complaint. In the nature of defenses, Respondent asserted that all claims related to occurrences prior to June 14, 2009 were barred by the statute of limitations, denied the sporadic provision of related services and the failure to follow evaluators' recommendations, denied that Parent was never provided a copy of the IEP, asserted that Student received more specialized instruction than the IEP called for in SY 2010/11, and denied the lack of progress by Student and asserted that there had been significant progress over the last two years.

The parties participated in a resolution session on July 7, 2011 but continued to attempt to resolve the matter after the resolution session. The 45-day timeline for this case started on June 15, 2011 and will end on August 28, 2011, which is the HOD due date.

On July 20, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the prehearing conference, Petitioner withdrew its claim for failure to adequately evaluate. The hearing officer issued the Prehearing Order on July 25, 2011.

By email dated August 9, 2011, Petitioner's counsel advised the hearing officer that the parties had resolved all outstanding issues except for the issue of placement, and that with respect to placement, the parties had agreed to stipulate that (1) Student requires a full-time out of general education placement, and (2) a specified full-time special education school is an appropriate placement. Counsel advised that the only relief Parent would be seeking is an HOD ordering placement at the specified school. By reply email on August 14, 2011, at the end of the hearing officer's vacation, the hearing officer advised counsel that she wished to receive testimony from a witness from the specified private school to confirm the appropriateness of the agreed-upon site prior to issuance of the requested Order.

By email dated August 15, 2011, Petitioner's counsel advised that the parties had agreed to shorten the disclosure period. Petitioner then disclosed nine documents (Petitioner's Exhibits 1 – 9) on August 15, 2011. Respondent declined to disclose any documents.

The hearing officer convened the due process hearing on August 17, 2011.[1] Petitioner's disclosures were admitted into the record without objection. Thereafter, Petitioner presented the testimony of a witness from the specified private school and testimony from Mother. The hearing officer then brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

The issue to be determined is as follows:

1. Is the specified private school an appropriate site location for Student in accordance with the parties' stipulation?

[1] Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

FINDINGS OF FACT

After considering all the evidence, as well as the stipulations of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student's current IEP is dated September 24, 2010. The IEP identifies Student's primary disability as specific learning disability ("SLD") and requires Student to receive 10 hours per week of specialized instruction, 90 minutes per week of occupational therapy, 60 minutes per week of speech-language pathology, and 30 minutes per week of behavioral support services, with all specialized instruction and related services to be provided in an outside general education setting.[2]

2. On June 6, 2011, Respondent administered the Woodcock-Johnson III Normative Update Tests of Achievement (Form B) to Student. At the time, Student was 13 years and 5 months old, and she was attending 7th grade. Student's performance on the assessment resulted in the following grade equivalencies ("GE"), among others: Broad Reading – 3.4 GE; Broad Math – 1.6 GE; Broad Written Language – 2.9 GE; Academic Skills – 2.9 GE; Academic Fluency – 2.4 GE; and Academic Apps – 2.4 GE.[3]

3. Student requires a full-time out of general education placement.[4]

4. The parties have stipulated that a specified private full-time special education school is an appropriate placement for Student.[5]

5. The specified private school is a full-time special education out of general education program for children with learning disabilities and related disabilities such as attention deficit disorder. The middle school, which is where Student would be placed, is a 3-year program which follows District of Columbia standards and will now begin following the National Common Core standards as well to better meet the needs of LD students.

   Student would be placed in a self-contained classroom with 6 other students who are either LD or LD/OHI. These students have a learning profile similar to Student's, in that they are all functioning 3 to 5 years below grade level, and their visual learning channels are significantly compromised, which impedes their ability to write, copy from the board and navigate the classroom. As a result, the student will be provided with technologies such as speech to text and text to speech. There will be one DC-certified full-time special education teacher and 1 full-time assistant teacher who has been at the private school for several years and works with students to provide hi-tech and other accommodations.

   Student's class will be provided with low-technology accommodations such as pencil grips, slant boards, rulers and graph paper. However, the class will also serve as a pilot program that receives high technology accommodations such as iPads and pulse

[2] Petitioner's Exhibit 6 at 1 and 9.
[3] Petitioner's Exhibit 8 at 1.
[4] Stipulation of the parties.
[5] Stipulation of the parties.

pens, and the assistant teacher, who is trained in these technologies, will help the students organize and will track their progress with the technology and their academic progress.

Student would stay in this self-contained for the majority of the school day, but she and her classmates would take art and music, physical education, and computer classes twice per week each with other teachers.

The private school can implement Student's IEP and will provide Student with the intensive programming she needs to succeed academically.

Annual tuition at the private school is approximately plus the cost of related services, which is billed at OSSE's established rates.[6]

6. Student spent two days visiting the private school over the summer and liked the students and the teachers. Student immediately felt comfortable at the school because she realized that she was with other students who were like her. In fact, Student did not want to come home and is eager to return to the school. She talks about going back all the time. Moreover, Mother wants Student receive the intensive intervention the school offers because she believes that is what Student requires at this time to advance and grow.[7]

7. The specified private school is an appropriate location of services for Student.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Placement

In the instant case, Petitioner and Respondent have stipulated that Student requires a full-time out of general education placement and that the specified private school is appropriate for Student, and Petitioner is requesting an Order requiring Respondent to place Student at the specified private school. Therefore, the hearing officer conducted only a limited inquiry to confirm the appropriateness of the specified private school for Student.

"Courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the school, the placement's cost, and the extent to which the placement represents the least restrictive environment." *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008) (quoting *Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005)* (citing *Board of Education of the Hendrick Hudson Central School District, Wetchester County, et al. v. Rowley*, 458 U.S. 176, 202 (1982). Applying this standard to the evidence presented at the due process hearing in this matter, and taking into account the parties' stipulations, the hearing officer concludes that the specified private school is an appropriate school for Student.

[6] Testimony of Associate Head of the private school.
[7] Testimony of Mother.

Therefore, the hearing officer will issue the requested Order requiring Respondent to place Student at the specified private school.

CONSENT ORDER

Based upon the above Findings of Fact and Conclusions of Law, as well as the parties' Stipulations, it is hereby ordered:

1. Respondent shall place Student at the specified private school for SY 2011/12 at no cost to Parent.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Date: 8/18/2011

/s/ *Kimm Massey*
Kimm Massey, Esq.
Hearing Officer