

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
August 17, 2015

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>)	
)	Case No: 2015-0196
v.)	
)	Date Issued: August 17, 2015
District of Columbia Public Schools,)	
<i>Respondent.</i>)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed on June 4, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On June 12, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) on June 17, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on July 5, 2015, and the Hearing Officer Determination (“HOD”) in this matter is due date on August 18, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on June 24, 2015, during which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by July 10, 2015 and that the DPH would be held on July 17, 2015. The PHC was

¹ Personal identification information is provided in Appendix A.

summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on June 25, 2015.

The DPH was held on July 17, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by Pamela Roth, Esq. and DCPS was represented by Steven Rubenstein, Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-18 were admitted without objection. Respondent’s exhibits R-1 through R-8 were admitted without objection.

Petitioner called the following witness at the DPH:

- (a) Petitioner/Parent

Respondent did not call witnesses, but rested on the evidence.

Petitioner and Respondent gave oral closing arguments.

ISSUE

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH.

- (a) Whether DCPS denied the student a FAPE by failing to identify and place her in a structured therapeutic school environment that will allow her to access her education and make appropriate academic and emotional progress.
- (b) Whether DCPS denied the student a FAPE by failing to identify and place her in Nonpublic School for the 2015-2016.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order that DCPS place and fund the student at Nonpublic School, for the 2015-2016 school year.

FINDINGS OF FACT

1. Student is [REDACTED] years old. During the 2014-2015 school year, she was a ninth grade student. Student resides with her mother (“Parent”/“Petitioner”) in Washington, D.C., and is eligible for special education and related services under the disability classification “Emotional Disturbance.”²

2. Student attended District High School in the 2013-2014 and the 2014-2015 school year. Student repeated ninth grade, and was in the ninth grade in both the 2013-2014 and 2014-2015 school years.³

²Testimony of Parent; P-3-1.

³Testimony of Parent.

3. Student had behavioral and disciplinary problems throughout the 2014-2015 school year, including theft and substance use, and Student received some suspensions.⁴

4. Student was at risk of being retained for a second time in a row as of February 18, 2015; however, ultimately Student passed the ninth grade and made some degree of IEP goal and socio-emotional progress during some points of the school year, though she also failed some classes during the year and “her overall academic progress has been marginal.”⁵

5. Student had a behavioral intervention plan (“BIP”) in place since at least September 29, 2014, which was revised at least twice during the 2014-2015 school year.⁶

6. Subsequent to the filing of the DPC, DCPS assigned Nonpublic School as Student’s location of services for the 2015-2016 school year.⁷ Nonpublic School is the appropriate placement for Student for the 2015-2016 school year.⁸

Motion to Dismiss

Prior to the DPH, Petitioner filed a motion for summary judgment, noting that the Respondent had placed Student to Nonpublic School for the upcoming school year as requested, but had done so just prior to the DPH, yet refused to enter into a settlement agreement. Petitioner requested an enforceable order stating that Nonpublic School was Student’s placement. Respondent countered with a motion to dismiss the DPC as moot, asserting that Respondent had already granted the only form of relief Petitioner is requesting. Neither written motion was decided on the merits, but both were denied as untimely filed, pursuant to the PHO. At the DPH, Respondent argued that Petitioner’s claim is moot, and that the Hearing Officer lacks subject matter jurisdiction to decide it. Petitioner argued that the claim is not moot, because without an enforceable order, Petitioner could not be assured that Student’s placement would remain at Nonpublic School throughout the 2015-2016 school year.

The DPC in this case requests only one form of relief – that DCPS place and fund Student at Nonpublic School, with transportation, for the remainder of the 2014-2015 school year and for the 2015-2016 school year. The 2014-2015 school year ended well prior to the DPH and, though it did so only days before the DPH, Respondent has placed Student at Nonpublic School for the 2015-2016 school year. The instant case differs from *Boose v. District of Columbia*, 786 F.3d 1054 (D.C. 2015) and *Lesesne v. District of Columbia*, 447 F.3d 828 (D.C. Cir. 2006), where each Petitioner had requested compensatory education in addition to a requested form of relief DCPS had provided prior to their respective hearings.

Additionally, the instant case does not fit within the “capable of repetition, yet evading review” exception to the mootness doctrine, which would necessitate that: “(1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2)

⁴ Testimony of Parent; P-11.

⁵ Testimony of Parent; P-3; P-3-7; P-13; P-15; R-5; R-6.

⁶ P-4 through P-8; R-2 through R-4.

⁷ R-7.

⁸ Stipulations of the parties.

there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.” *See Jenkins v. Squillacote*, 935 F.2d 303 (D.C. Cir. 1991). Here, a location of services letter has been issued assigning Student to Nonpublic School for the 2015-2016 school year. If for some reason the Respondent decided to try and pull Student from Nonpublic School prior to the conclusion of the 2015-2016 school year, Petitioner would be entitled to file a due process complaint, and could seek automatic “stay-put” protection to permit Student to remain in her current educational setting pending the resolution of the litigation.

Likewise, the Hearing Officer does not find on this record a basis for concluding that there is a reasonable expectation that Student would be subjected to the same action (not being assigned to Nonpublic School) during the 2015-2016 school year. While it is not impossible that DCPS could reassign her during the upcoming school year, the Hearing Officer does not find a basis for concluding that it is Respondent’s intent in this instance to remove Student from Nonpublic School during the upcoming school year, or that it is the likely course of events, especially given the location of services letter Respondent issued and Respondent’s stipulation on the record during the DPH that Nonpublic School is the appropriate placement for Student for the 2015-2016 school year.

The Hearing Officer is not unmindful of the effort and time Petitioner and her counsel had expended prior to Respondent assigning Student to Nonpublic School. However, as Petitioner has requested only one form of relief in this case and it has already been provided, the Hearing Officer finds that the due process complaint is moot. Respondent’s motion to dismiss for mootness is **GRANTED** and the due process complaint is **dismissed with prejudice**.

SO ORDERED.

Date: August 17, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

- Copies to:
Petitioner (by U.S. mail)
Petitioner’s Attorney: Pamela Roth, Esq. (electronically)
DCPS’ Attorney: Steven Rubenstein, Esq. (electronically)
Chief Hearing Officer Virginia Dietrich, Esq. (electronically)
OSSE-SPED (electronically)
ODR (electronically)

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).