

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

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OSSE
STUDENT HEARING OFFICE
2009 MAY 11 AM 7:57

Confidential

STUDENT, through the legal guardian ¹)	Complaint Filed: March 5, 2009
)	
Petitioner,)	Prehearing Order: April 19, 2009
)	
v.)	Interim Order: April 19, 2009
)	
THE DISTRICT OF COLUMBIA)	Hearing Date: April 29, 2009
PUBLIC SCHOOLS)	
)	Docket No.
Respondent.)	
)	
Student Attending:)	
)	

HEARING OFFICER'S DECISION

Counsel for Petitioner: Carolyn W. Houck, Esquire
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¹ Personal identification information is provided in Attachment A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Background

Petitioner is a _____ year-old student attending

On March 5, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) provide an appropriate interim placement, (2) provide the parent with a meaningful opportunity to participate in the placement determination,² and (3) provide an appropriate permanent placement. The due process hearing was convened on April 29, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.³

Record

Due Process Complaint Notice dated March 5, 2009
District of Columbia Public School's Notice of Insufficiency, Response and Motion to Dismiss Parent's Due Process Complaint dated March 9, 2009
Petitioner's Response and Objection to Respondent's Notice of Insufficiency and Motion to Dismiss Petitioner's Due Process Complaint dated March 13, 2009
Prehearing Order dated April 19, 2009
Interim Order dated April 19, 2009
DCPS' Five-Day Disclosure dated April 21, 2009 (Exhibits 1-6)
Petitioner's Five-Day Disclosure dated April 22, 2009 (Exhibits 1-6, 8-12, 14-20)
Attendance Sheet dated April 29, 2009
CD-Rom of Hearing conducted on April 29, 2009

Witnesses for Petitioner

Dr. William D. Ling, Clinical Psychologist

Petitioner
Petitioner's Mother

² When a child with a disability reaches the age of eighteen, unless determined to be incompetent under District law, the rights accorded to parents under IDEIA transfer to the child. 5 D.C.M.R. §3023.1(b).

³ DCPS objected to the admission of Petitioner's Exhibit ("P.Exh.") Nos. 7, 8, and 13. The Hearing Officer sustained the objection as to P.Exh. Nos. 7 and 13 on grounds of relevancy, but overruled the objection to P.Exh. No. 8.

Witnesses for DCPS

Dr. Peggy Peagler, Senior Program Manager, DCPS

Findings of Fact

1. Petitioner is a _____ year-old student attending _____
2. Petitioner began the school year at _____ an LEA Charter School.⁵
3. _____ closed on or about February 27, 2009.⁶ On or about February 1, 2009, a meeting was held at _____ that included the Office of the State Superintendent of Education (“OSSE”) and the Office of the DCPS Chancellor to discuss the need to place _____ students in other educational facilities. A decision subsequently was made that DCPS would facilitate Multidisciplinary Team (“MDT”) meetings to determine placements for _____ students upon its closure.⁷
4. DCPS convened an MDT meeting for Petitioner on February 26, 2009. Petitioner was represented at the meeting by Ms. Houck. Petitioner’s mother participated in the meeting by telephone. Petitioner’s current disability classification was emotional disturbance (“ED”).⁸ His May 29, 2008 Individualized Education Program (“IEP”) prescribed 27.5 hours per week of specialized instruction and one hour per week of counseling services.⁹ DCPS proposed placing Petitioner at _____ has a full-time program for ED students.¹¹ Ms. Houck provided the MDT with a copy of a Report of Comprehensive Evaluation conducted by Dr. William Ling¹² and rejected the placement at _____ as inappropriate, stating that Petitioner “is not a typical ED student – he has social phobias and processing problems.” Ms. Houck informed the MDT that Petitioner was attending _____ as of February 23rd and requested that DCPS fund the placement. DCPS declined the request because “is not a school but a program that provides GED services.”¹³ The MDT agreed to fund

⁴ Testimony of Petitioner.

⁵ Testimony of Petitioner. As an LEA Charter, _____ was responsible for providing special education services to its disabled students. When an LEA Charter concludes that it cannot serve a child with a disability, it must request assistance from the Office of the State Superintendent of Education (“OSSE”) in its role as designee for the State Education Agency (“SEA”). 5 D.C.M.R. §3019.9.

⁶ DCPS Exh. No. 5 at 5.

⁷ Testimony of Dr. Peagler.

⁸ DCPS Exh. No. 1 at 3.

⁹ Petitioner’s Exhibit (“P.Exh.”) No. 5 at 2; DCPS Exh. No. 1 at 2.

¹⁰ P.Exh. No. 5 at 2.

¹¹ Testimony of Dr. Peagler.

¹² P.Exh. No. 5 at 2; Testimony of Dr. Peagler. Dr. Ling’s evaluation was completed on October 20, 2008. P.Exh. No. 4.

¹³ P.Exh. No. 5 at 3-4. _____ confirmed that _____ has not applied for a Certificate of Approval to become a certified non-public special education school in accordance with §38-2561.07.

independent evaluations recommended in Dr. Ling's evaluation and to reconvene to review Dr. Ling's evaluation and the independent evaluations.¹⁴

5. DCPS issued a Prior Notice on February 26, 2009 placing Petitioner at on an interim basis.¹⁵

6. DCPS reconvened an MDT meeting on March 16, 2009 to review independent evaluations, reconsider Petitioner's disability classification, and to discuss placement alternatives. The MDT reviewed Dr. Ling's evaluation and agreed to change Petitioner's disability classification from ED to learning disabled ("LD"). Petitioner's educational advocate requested that DCPS place Petitioner at [redacted] Petitioner had not yet been accepted at [redacted] DCPS expressed willingness to fund a private school placement for Petitioner conditioned on a 90% attendance record.¹⁶

7. Petitioner was accepted at [redacted] on March 27, 2009.¹⁷ DCPS issued a Notice of Placement to [redacted] the day it received the letter of acceptance.¹⁸

Conclusions of Law

Failure to Provide an Appropriate Placement

As an LEA Charter, [redacted] was responsible for providing special education services to its disabled students. When an LEA Charter concludes that it cannot serve a child with a disability, it must request assistance from OSSE in its role as the State Education Agency ("SEA").¹⁹ In this case, Petitioner did not join OSSE as a respondent and called no witness from [redacted]. Therefore, there is no documentation of the events leading up to the termination of [redacted] charter. According to Petitioner, he was not required to attend [redacted] after February 1st, but the school remained open. In the MDT meetings on February 26th and March 16th, DCPS reported that [redacted] charter was not rescinded until February 27, 2009.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("Rowley"),²⁰ the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that

¹⁴ P.Exh. No. 5 at 5.

¹⁵ DCPS Exh. No. 3.

¹⁶ DCPS Exh. Np. 5.

¹⁷ P.Exh. No. 17.

¹⁸ Testimony of Dr. Peagler.

¹⁹ 5 D.C.M.R. §3019.9.

²⁰ 458 U.S. 176 (1982).

Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to benefit from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.²¹

At the MDT meeting on February 26th, DCPS proposed placing Petitioner at _____ on an basis. Petitioner's current IEP from _____ classified him as ED and prescribed 27.5 hours of specialized instruction and one hour of counseling services. DCPS proposed _____ because it had a full-time program for ED students. Ms. Houck immediately rejected the placement because, in her view, Petitioner was not a typical ED student. She provided the MDT Dr. Ling's evaluation, but the MDT did not review it. It agreed to fund independent evaluations recommended by Dr. Ling, and agreed to reconvene to review Dr. Ling's evaluation and the new independent evaluations.

At the hearing, Petitioner offered testimony of Dr. Ling to prove the inappropriateness of _____ as a placement. However, the MDT was not provided Dr. Ling's evaluation until the day of the February 26th MDT meeting. At that time, Petitioner was classified as an ED student requiring a full-time ED placement. The purpose of the February 26th meeting was to determine an appropriate placement for Petitioner due to the sudden closing of _____ not to revisit his classification or to revise his IEP. Thus, the issue is whether it was reasonable for the MDT to rely on Petitioner's current IEP in developing a proposed placement. The Hearing Officer believes that the MDT acted reasonably and appropriately when it determined that Petitioner should be placed in a full-time ED program at _____

The Hearing Officer also concludes that DCPS did not unjustifiably delay the placement determination. The evidence in the record indicates that _____ did not close until February 27, 2009. DCPS effectuated its placement on February 26, 2009. Petitioner testified that he was told by _____ staff not to attend classes after February 1st. Petitioner also testified that he was aware that the school remained open throughout February. Although Petitioner did not attend classes after February 1st, it was not clear to the Hearing Officer that he was affirmatively barred from attending _____ throughout February. Even if he were barred, as the LEA, _____ remained responsible for Petitioner's educational services, not DCPS.

Petitioner alleges that he was not provided a meaningful opportunity to participate in the placement determination. Petitioner was represented at the February meeting by his attorney and his mother. DCPS proposed a full-time ED program for the student, who had a full-time, ED IEP at the time. Ms. Houck rejected the placement, but proposed no

²¹ Rowley, *supra*, at 200-01.

alternative full-time placement. Instead, she requested that DCPS fund a placement at is not a certified special education school, and the MDT was justified in declining Ms. Houck's request.

While DCPS proposed but one location for Petitioner, this alone did not deprive Petitioner of the opportunity to participate in the placement determination. Unless Petitioner's needs cannot be met there, DCPS is obligated to place Petitioner "as close as possible to the child's home," and "in the school that the child would attend if not disabled."²² In light of the information available to the MDT at the time the MDT was convened, the proposed placement to was appropriate. However, as a result of Ms. Houck's vigorous advocacy at the meeting, the MDT (1) agreed to make the placement interim, rather than permanent, (2) agreed to fund independent evaluations recommended by Dr. Ling, and (3) agreed to reconvene to review Dr. Ling's evaluation and the new independent evaluations. Not only did Petitioner's representative participate in the meeting, she had a significant impact on the meeting. As a result of the agreement to reconvene, Petitioner's classification was changed from ED to LD at the reconvened MDT meeting three weeks later, and Petitioner was placed at the same day DCPS received the acceptance letter. Thus, within a month of closing, Petitioner's classification had been radically modified, his IEP had been revised, and he was placed in a full-time LD program at

For the reasons discussed above, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that the interim placement at was inappropriate or that Petitioner was denied a meaningful opportunity to participate in the placement determination.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 9th day of May 2009, it is hereby

ORDERED, that the *Complaint* is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED, that this Order is effective immediately.

²² 5 D.C.M.R. Section 3013.1(f) and 3013.2.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision 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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

_____/s/_____
Terry Michael Banks
Hearing Officer

Date: May 9, 2009