

DC Office of the State Superintendent of Education
Office of Compliance and Review
Student Hearing Office

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Confidential

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STUDENT HEARING OFFICE
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<p>STUDENT¹, by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Date: March 24, 2009</p> <p><u>Hearing Officer: Wanda I. Resto, Esquire</u></p>
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On February 12, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to provide the Petitioner with meaningful participation in the placement process and by failing to determine an appropriate educational placement for the Student. The Petitioner requests the Respondent be deemed to have denied the Student a FAPE and ordered to immediately fund and place the Student at a full-time therapeutic school of the Petitioner's choosing, with transportation.

On February 26, 2009 the Respondent filed a Notice of Insufficiency and Response to the Parent's Administrative Due Process Complaint. The Respondent asserts the claim that placement is inappropriate is insufficient because it does not provide a "description of the nature of the problem. The Respondent further asserts the Complaint only states that the DCPS failed to "determine an appropriate placement" and there are no facts relating to how the placement is inappropriate. The Respondent alleges that it did not deny the parent a meaningful participation in the placement process. The Respondent further alleges the Petitioner was invited to the individualized education program ("IEP") meeting at which the Student's IEP was addressed and the location of services was determined. The Respondent asserts that after the parent failed to attend the scheduled meeting, the Respondent again scheduled a meeting to give the parent a chance to participate. The Respondent asserts that the fact that the parent disagrees with the team's decision does not amount to a denial of a meaningful participation.

The Hearing Officer held a pre-hearing conference call with Counsel for both parties on March 13, 2009 at 2:30 PM. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and reiterated the issues as plead. The Petitioner offered three witnesses; the Respondent offered two witnesses and both Counsels provided a synopsis of their witnesses' testimony.

The Hearing Officer determined on March 13, 2009, that the IDEA does not require a due process complaint to reach the level of specificity and detail of a complaint in a court of law. The purpose of the sufficiency requirement is to ensure that the other party will have an awareness and understanding of the issues forming the basis for the complaint.² The Complaint filed by the Petitioner in this matter, contains all the relevant information along with a description of the alleged failures. The Complaint also contains proposed resolutions. Making the Complaint sufficient, and in conformity with the IDEA. See 20 U.S.C. 1415(b)(7) and its regulations at 34 C.F.R. 300. § 508(b).

The Order required the parties to come prepared to prove the appropriateness of the proposed placements. The parties also were to discuss how the Student's IEP was/was not taken into account when determining the placement. The Respondent was ordered to provide information on how the parent participation in the decision making process was meaningful.

A hearing was held on March 17, 2009. The Petitioner presented disclosure letters dated March 10 and 13, 2009 to which seventeen documents were attached, labeled P-1 through 17 and which listed five witnesses. Two witnesses testified – the Father and the Director of the Private School. The Respondent presented a disclosure letter dated March 10, 2009 identifying five witnesses. One witness testified – the Special Education Coordinator. The documents were admitted without objections.

² 20 U.S.C. §1415(b) (7)(A)(ii)
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The hearing was conducted in accordance with the rights established under the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S.C. § 1400 et seq. and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

II. ISSUE(S)

1. Did the Respondent deny the Student FAPE by failing to provide the parent with meaningful participation in the placement process and by failing to determine an appropriate placement?

III. FINDINGS OF FACT

1. The Student is a student with disabilities under the IDEA. The Student's most recent IEP is dated December 10, 2008 and provides 31 hours of specialized instruction and 60 minutes of counseling services weekly. ("ED").³ The parties stipulated the Student's disability classification is emotional disturbance and that he was "exited" from speech/language services.
2. On December 10, 2008, an IEP/MDT meeting was held; the father, the special education coordinator, the special education advocate, school psychologists, social worker, special education teacher, speech and language pathologists, and a counselor participated. At the afore-mentioned meeting, the team determined the Student required a more restrictive environment with more therapy and a class with fewer students than the ED cluster. The SEC sent a packet of information including the IEP to the Site Review for a Respondent's placement options.⁴
3. On January 21, 2009, another meeting was held the education advocate participated via the phone on behalf of the parent, it was a short meeting and the _____ was offered and a prior notice of placement ("PNOP") from an ED Cluster Program to an ED Center _____ was faxed to the Education Advocate.⁵ While the MDT did not make the decision for placement the team did agree that the _____ was an appropriate placement because the program provides full time psychological services with specialized instruction and smaller setting. The _____ was recommended because it is more therapeutic all the services are in place as required by the Student's IEP and it has social workers and a psychologist available full time. There was a February 11, 2009 meeting to allow the parent an opportunity to visit the _____. The parent visited was not pleased and said it was chaotic.
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4. The parent visited the _____ he met a counselor and the special education teacher. He also met and talked with the principal; she explained the school setting and that there were approximately 9 students in the class. The principal also said that the psychological services were available but she was not sure until when. He observed students cursing in the halls and not being respectful. The father visited seven schools. At _____ he saw approximately from 6 to 7 students in the class, at the school

³ P# 8 IEP dated 12/10/09.

⁴ P# 8 IEP/MDT meeting notes dated 12/10/09.

⁵ P#7 Prior Notice dated 1/21/09

⁶ Testimony of the SEC at LBEC.

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there was no signs of outburst of behavior by the students. The staff explained the behavior modification process they use and discussed the point system for encouraging proper behavior.⁷

5. is a center for ED students there are approximately 95 students in the program. This is the first year of the academy; each class has a social worker in the classroom to provide direct intervention. The social worker can also intervene or pull the student out of the class to provide individual sessions. There is a resolution center for times when there are behavior problems. The proposed classroom for the Student consists of a class with 7 students, one special education teacher, one instructional aide, and a social worker. Most of the students are one and two grade levels behind. The students are divided into groups to do work based on goals on the IEP⁸
6. The Student was accepted at is a non public day school. There are 76 students in the program; counseling is offered by four full time social workers and two interns. The Student's IEP was reviewed, the Student would get counseling, speech/language therapy, and specialized instruction. The program would be provided through tutorial program in math and reading. The school also provides a variety of activities for learning individually with computers and in different settings. The classes consist of 9 students, 1 teacher and 1 teacher assistant. Part of the behavior modification programs includes time at the quiet room and conversations with the Student about how to avoid the behavior. There is also a reward system: that allows students to go to trips or get points for buying things and other incentives.⁹

IV. CONCLUSIONS OF LAW

FAPE Determination

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

The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)."

Burden of Proof

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that 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 FAPE.

The Respondent met its legal obligation under the IDEA. Here is why.

⁷ Testimony of the father.

⁸ Testimony of the SEC at

⁹ Testimony of the Director of
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The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the 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, designed to meet their unique needs and prepare them for further education, employment, and independent living. *See id.* § 1400(d)(1)(A).

Educational placement decision

The Petitioner alleged the Respondent did not allow the parent a meaningful participation in making the placement decision. The Complaint also alleged the parent disagrees with the proposed placement at HMC because it is unable to provide the small structured environment that the Student requires and because he was not offered other options.

The Respondent argues that the parent had an opportunity to participate in the placement decision making process, and that the parent is not entitled to choose a location.

Pursuant to 34 C.F.R. § 300.116 of the IDEA regulations when determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Additionally the IDEA requires that the determination of the educational placement of a child with a disability should be done annually and must be based on a child's IEP. 20 U.S.C. 1412(a)(5).

The IDEA regulations require that "the parents of a child with a disability be afforded an opportunity to participate in meetings with respect to ... [the] educational placement of the child." 34 C.F.R. § 300.501(b)(1); see also 20 U.S.C. § 1414(e)

The IDEA regulations also require the Respondent, as the local state education agency, to make certain that the educational placement, for the child with a disability within its jurisdiction, is able to implement the student's individualized educational program.¹⁰ 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." Additionally, according to 34 C.F.R. § 300.327, Educational Placements, "[e]ach public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the education placement of their child."

The evidence indicates that there was participation of the parent in the MDT/IEP meeting that crafted the IEP and in the placement decision. The father signed the IEP in agreement with the program, had an opportunity to hear about the new ED program and visited the school. The testimony from the Petitioner about his concerns was predominately based on the Student's failure at the prior program in the ED cluster and his other son experiences in the school a couple of years prior.

Furthermore, the Petitioner's request for a more therapeutic setting was considered and acted upon. The Student's proposed classroom in an ED program consists of a class with 7 students, one special education teacher, one instructional aide, and a social worker in the classroom to provide direct intervention. The students are divided into groups to do work based on goals on their IEP and there is a

¹⁰ 34 C.F.R. § 300.17
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full time Psychologist available. There was no evidence that the Student's IEP is inappropriate or that the Student requires services beyond those offered in the The only evidence is that the parent disagrees with the location of the program chosen by the MDT. The proposed program at is reasonably calculated to provide the Student an educational benefit.

To provide meaningful participation is not to say the parent get what he requests. The Petitioner agreed to the Student's IEP and was not able to provide evidence that he was denied participation in the placement decision making process or that the Student suffered an educational harm.

Although the IDEA guarantees a Free Appropriate Public Education, it does not, however, provide that this education will be designed according to the parent's desires. The primary responsibility for formulating the education to be accorded a [child with a disability] and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parent or guardian of the child. Thus proof alone that loving parents can draft a better program than a state offers does not, alone, entitle them to prevail under the Act." *Shaw v. The District of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002).

A school system has met this obligation as long as the program that it offers to a disabled student is "reasonably calculated" to deliver "educational benefits." *Hendrick Hudson Bd. of Educ. v. Rowley*, 458 U.S. 176, 207 (1982); see *Lt. T.B. v. Warwick Sch. Comm.*, 361 F.3d 80, 83 (1st Cir. 2004).

V. SUMMARY OF DECISION

The Petitioner agreed to the Student's IEP and was not able to provide evidence that he was denied participation in the placement decision making process or that the Student suffered an educational harm.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the Respondent has not denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, the Complaint is DISMISSED.

This order resolves all issues raised in the Petitioner's February 12, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. Final decisions of special education Hearing Officer may be appealed to a state or federal district court of competent jurisdiction. (20 U.S.C. §1415(i)(2) and 34 C.F.R. §300.516)

/s/WIRestorres electronically signed
Impartial Special Education Hearing Officer

SIGNED: March 24, 2009