

***DISTRICT OF COLUMBIA***  
Office of the State Superintendent of Education  
Office of Review & Compliance  
Student Hearing Office

1150 Fifth Street, SE  
Washington, D.C. 20003  
Telephone: (202) 698-3819  
Facsimile: (202) 698-3825

2009 JUN 20 PM 1:21  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
OFFICE OF REVIEW & COMPLIANCE

*Confidential*

<p>STUDENT<sup>1</sup>, by and through parents,  Petitioners,  vs.  District of Columbia Public Schools,  Respondent.</p>	<p><b><u>HEARING OFFICER'S DETERMINATION</u></b></p> <p>Counsel for Petitioners/Parents: Donovan W. Anderson, Esq.</p> <p>Asst. Attorney General for DCPS: Kendra Berner, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
---	---

<sup>1</sup> Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

## **BACKGROUND**

The student graduated from a DCPS special education day school at the end of the 2008-09 School Year and was assigned to start the 2009-10 School Year at the DCPS neighborhood high school. The parents considered the high school inappropriate.

On June 12, 2009, Counsel for the Parents filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) and the \_\_\_\_\_, a District of Columbia charter school, denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parents complained the DCPS proposed educational placement for the student for 2009-10 School Year was inappropriate and, for relief, requested a private placement at the \_\_\_\_\_.

A Pre-hearing Conference Order was issued in this matter on June 30, 2009. The Order determined the ISSUE as setout below.

A hearing in this matter was scheduled for 9:00 A.M., Wednesday, July 15, 2009, at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4A, Washington, D.C. 20003. The hearing convened as scheduled.

## **JURISDICTION**

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

**ISSUE: Did DCPS deny the student an appropriate educational placement for the 2009-10 School Year?**

## **FINDINGS of FACT**

By facsimile dated July 7, 2009, the parent disclosed 4 witnesses and 4 documents.

By facsimile dated July 8, 2009, DCPS disclosed 8 witnesses and 1 document.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The Student attended a DCPS 100% Outside General Education day

school for the 2008-09 School Year and was assigned to attend the DCPS neighborhood general education high school for the 2009-10 School Year.<sup>2</sup>

2. At the 100% Outside General Education day school on November 13, 2008, an IEP was completed that disability coded the student Specific Learning Disability with 27 hours of specialized instruction Outside General Education; the IEP did not indicate ESY Services.<sup>3</sup> The MDT reconvened on April 1, 2009 and agreed to reconvene later to decide the student's educational placement for the 2009-10 School Year;<sup>4</sup> the MDT did not reconvene. The appropriateness of the IEP was not challenged.

3. The mother visited the neighborhood high school and was informed by a special education teacher that school could not provide 27 hours of specialized instruction to the student Outside General Education; 18 hours maximum. The mother wanted the best for the student and thought the \_\_\_\_\_ would be the best educational placement for the student; she considered the neighborhood high school too large for the student. During the summer of 2009, the student was on summer recess.<sup>5</sup>

4. The student's Special Education Teacher at the day school testified via telephone that the student required specialized instruction and individual prompting in small classes but could have contact with non-disabled peers during recess, lunch and elective classes, i.e., art, physical education, etc; that the student did not have behavioral problems. The Teacher was not familiar with the program at the neighborhood high school.<sup>6</sup>

5. The Transition Coordinator at the day school testified via telephone that he was familiar with the student and the student's November 13, 2008 IEP, and that he contacted the then SEC at the neighborhood high school and was informed that the high school could not deliver 27 hours of specialized instruction Outside General Education.<sup>7</sup>

6. The DCPS Special Education Specialist testified via telephone but

3 of 6 pages

---

<sup>2</sup> -testimony of the mother

<sup>3</sup> Parents Document No 2

<sup>4</sup> *ibid*, last pages

<sup>5</sup> *ibid*, 2, above

<sup>6</sup> -testimony of the Special Education Teacher

<sup>7</sup> -testimony of Transition Coordinator, DCPS day school

could not speak to the exact special education services capability of the neighborhood high school; that special education services at the high school were delivered in the inclusion model with pullout services. The Specialist noted that the MDT/Placement meeting mentioned in the April 1, 2009 MDT meeting notes had not convened and sent a Letter of Invitation to the parents; the meeting had not convened at the time of the hearing during the 2009 summer recess.<sup>8</sup>

7. The Special Education Coordinator (SEC) at the neighborhood high school testified via telephone that she was to start at the beginning of the 2009-10 School Year and that she could not speak to the exact special education services capabilities of the school; that the school did not have a program for full-time Learning Disabled students.<sup>9</sup>

8. The DCPS neighborhood high school could not implement the student's November 13, 2008 IEP.

9. The IEP Coordinator at the \_\_\_\_\_ testified that she had interviewed the student and his parents and that the school had accepted the student; that the school served student with language based learning disabilities in classes not larger than 10 students, a special education teacher and, depending on the subject, a teacher aide. The Coordinator testified that the student would be placed in a special reading program to address his reading disability. The student could receive educational benefit at \_\_\_\_\_

## CONCLUSIONS of LAW

**DCPS is required to make F<sup>11</sup>APE available to all children with disabilities within the jurisdiction of the District of Columbia.** *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

4 of 6 pages

---

<sup>8</sup> DCPS Doc. No 1; -testimony of the DCPS Special Education Specialist

<sup>9</sup> -testimony of the incoming SEC at the neighborhood high school

<sup>10</sup> -testimony of the \_\_\_\_\_ IEP Coordinator.

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioners/parents in this matter, and that burden was by preponderance.

At regulation 34 CFR 300.115, an LEA is required to ensure a continuum of alternative placements, placements that can deliver the special education services to a child with a disability as indicated on the child's IEP.

At regulation 34 CFR 300.116, the process for making placement decisions is set out. The process is to ensure that the placement decision for a child with a disability is based on the child's IEP, and that the parent(s) of the child is/are included in the placement-decision making process.

The November 13, 2008 IEP indicated 27 hours of all specialized instruction Outside General Education. Inclusion is General Education, with or without resource room or pullout services. As the DCPS neighborhood high school in question utilized the inclusion model for the delivery of special education services, it could not implement the student's November 13, 2008 IEP.

At regulation 34 CFR 300.513, a Denial of FAPE must be based on substantive grounds or, in the case of a procedural violation as was the herein matter, a finding that the LEA either impede a child's right to FAPE, significantly impede a parent's opportunity to participate in FAPE decision-making or cause a deprivation of education benefit; neither was present herein. First, the student was on summer recess at the time on the hearing, and second, DCPS attempted to convene the MDT with the parents to decide the student's placement for the 2009-10 School Year.

As to the requested private placement, the remedy is available only to correct an existing and ongoing denial of FAPE, to remove a student from a then existing denial of FAPE. If the November 13, 2008 IEP had indicated ESY Services for the student a different situation would have been presented.

## **SUMMARY of the DECISION**

In all likelihood, the November 13, 2008 IEP was completed to continue the student's placement at the 100% Outside General Education day school thru the 2008-09 School Year; the uncontradicted testimony was that the student could have contact with non-disabled peers, including classes in General Education. The April 1, 2009 MDT meeting notes mentioned clearly the need to reconvene the MDT to discuss and decide the student's educational placement for the 2009-10 School Year. On the date hereof there was time within which to convene that meeting and well within the realm of possibility for the MDT to revise the student's IEP to indicate a lesser-restricted environment.

The parents did not meet their burden in this matter.

In consideration of the foregoing, the hearing officer made the following

**ORDER**

WITH PREJUDICE, the herein  
Complaint is DISMISSED.

Dated this *20th* day of *July*, 2009

*/s/ H. St. Clair*

---

H. St. Clair, Esq., Hearing Officer

**This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.**