DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
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STUDENT,[1] through Robin Bell,

Petitioner,

v

District of Columbia Public Schools,

Respondent.

Date Issued: September 22, 2010

Wanda I. Resto Torres, Hearing Officer

Case No:

Hearing Date: September 14, 2010 Room 4a

HEARING OFFICER DECISION

BACKGROUND

The Student is a -year-old boy, who attended a Vocational School located in the District of Columbia. The Student is currently eligible to receive special education and its related services as a result of his being mentally retarded and emotionally disturbed. The Student's IEP provides 27.5 hours of specialized instruction, 60 minutes of speech language pathology and 30 minutes of social work services weekly.

On July 26, 2010, the Petitioner filed a Due Process Complaint (Complaint) against the District of Columbia Public Schools (Respondent), pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), alleging the Respondent denied the Student a Free Appropriate Public Education (FAPE). The Petitioner requested the Respondent be deemed to have denied the Student a FAPE by failing to follow proper procedures when determining a student's placement and as a relief the hearing officer should order the Student be placed in a residential treatment facility to get the services.[2] The undersigned was appointed as the hearing officer in the present Complaint on July 27, 2010.

On August 6, 2010, the DCPS filed a Response to the Parent's Administrative Due Process Complaint; the Respondent argued that on July 23, 2010, there was a multidisciplinary team (MDT) meeting held for the Student. In the meeting, the team reviewed the Student's evaluations and discussed the Student's future location of services. After reviewing the psychiatric report, the parent stated that the

[1] Personal identification information is provided in Appendix A.
[2] 20 U.S.C. §1415(c)(2)(B)(i)(I)

Student was doing better on his new medication. The Respondent also asserted that at the meeting, the Student stated that he was hesitant to go to a residential facility. The Respondent alleged it determined that an appropriate location of services for the Student in accordance with the IDEIA[3] mandates and the least restrictive environment requirements would be

On August 18, 2010, the Hearing Officer held a pre-hearing conference call with both Counsels. During that conference call, the parties agreed that, the DCPS is the local education agency responsible for ensuring that the special education needs of the Student are met. The parties stipulated that the Respondent offered and as educational placement for the Student for the 2010-2011 school year. The parties also agreed a compensatory education plan was provided by the Respondent and agreed to by the Petitioner. The Petitioner reiterated the issues as plead and the Respondent reasserted its position. Both Counsels provided a synopsis of their witnesses' testimony.

On September 14, 2010, a closed hearing was held, representing the Petitioner was Domiento CR Hill; and the Respondent was represented by Harsharen Bhuller. The Petitioner presented a disclosure letter dated September 7, 2010, to which thirty-one documents were attached, labeled P-1 through 31 and which listed thirteen witnesses; no witness testified. The Respondent presented a disclosure letter dated September 7 2010, identifying three witnesses and to which five documents were attached, labeled DCPS 1 through 5; no witness testified. The Respondent submitted at the hearing a document identified as DCPS 6, Letter of Acceptance of the Student into a residential treatment facility dated September 2, 2010, and the Petitioner agreed to the admission of the document. The documents were admitted without objections except Petitioner's documents 8 through 10 excluded for lack of relevance to the Complaint.

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP. 4

ISSUES

The issues to be determined are as follows:

1. Did the Respondent fail to provide an appropriate placement/location of services for the Student?
2. Does the Student require a residential treatment facility for his educational placement?
3. Was the parent denied a meaningful participation in the educational placement decision for her minor child?
4. Was the Student denied a free and appropriate public education?

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[3] 34 C.F.R. §300.114 (a)(2)(i),(ii)

[4] IDEIA and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia;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").

FINDINGS OF FACT

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

1. An independent comprehensive psychological assessment of the Student was conducted on February 1, 2010, according to the evaluator; the Student suffers from Dysthymic Disorder, Cannabis Abuse, Dysgraphia, Mental Retardation, and Borderline Intellectual Functioning. The evaluator *inter alia* recommended that the Student receive, as a part of his educational programming, placement in a residential program, a behavior modification program, urinalysis screening, individual therapy, group therapy, information presented in a small amount, assistance with his reading and math, techniques to improve his spelling, the assistance of a reading specialist, and assistance with written expression. [5]

2. On June 17, 2010, a psychiatric evaluation was administered by the District of Columbia's Department of Mental Health according to the Psychiatrist, the Student requires placement in a residential treatment center where he can receive 24 hour supervision and structure, as well as intensive educational, mental health services and a program that separates him from the negative influences of his current surroundings. A copy of the Psychiatric evaluation was provided to DCPS on or about June 29, 2010.[6]

3. On July 23, 2010, the MDT discussed the Student's placement and the Petitioner requested a residential location of services for safety reasons. The MDT determined that was an appropriate location of services; and issued a prior to action notice for the Student to attend the school. At the meeting, a representative of the Respondent indicated that DCPS has a process in order to determine if a residential location of services is appropriate; and that the Student's "information would be forwarded to the least restrictive support team to determine if residential is an appropriate location of services". After review by the LRE team; the MDT can reconvene to review the Student's progress and determine if a residential placement is appropriate.[7]

4. On August 23, 2010, the Student was not admitted into the private school offered by the Respondent. The decision for non-admission was based on the Student's behavior history at former schools and on the June 2010 Psychiatric Evaluation recommendations that the Student be placed in a residential treatment center. As of the date of the hearing on September 14, 2010, the Respondent had not reconvened to determine another placement to meet the Student's education needs.[8]

5. On September 14, 2010, the Petitioner at the hearing requested a summary judgment; conversations ensued and as a result a number of stipulations on the key issues relevant to the Complaint were

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[5] P 17, February 25, 2010, Comprehensive Psychological evaluation Report.

[6] P 15, June 25, 2010, Psychiatric evaluation Report, and DCPS 1.

[7] DCPS 3, July 23, 2010, Prior to Action Notice, and P 29, Multidisciplinary team meeting notes.

[8] P 3, August 23, 1010, Letter of non-admission from of Washington, DC.

produced. The parties identified various residential placements and the Petitioner agreed with Liberty Point Behavioral Health Systems, in Staunton, Virginia as an appropriate placement for the Student.

6. The Respondent submitted at the hearing a document identified as DCPS 6, Letter of Acceptance of the Student into Liberty Point Behavioral Health Systems, in Staunton, Virginia, dated September 2, 2010 and the Petitioner agreed to the placement as appropriate.

7. The Petitioner agreed to provide her medical insurance documents verifying that any medical conditions or needs are to be covered by a source, other than the Respondent.

CONCLUSIONS OF LAW

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

Placement

The IDEA requires that at the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320. [9]

According to 34 C.F.R. 300.323 (c) Each public agency must ensure that—
(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance Pursuant to 34 CFR 300.323(c)(2) (a) General.

The Respondent has pointed to no evidence in the record contradicting the Petitioner's claims that the Student's placement was not an appropriate special educational placement for the Student. The Petitioner established that the public school placement was non-existent.

Under IDEIA, an "appropriate" placement is that which enables a child to obtain "some benefit" from the public education he is receiving; not necessarily maximization of his potential. In addition to requiring that the child's placement be appropriate in the sense of providing some benefit, IDEIA mandates that to the fullest extent possible, disabled children be educated with nondisabled children in the least restrictive environment.[10]

The uncontroverted evidence from the evaluators was that the least restrictive environment for the Student for the school year 2010/2011 requires a placement in a residential treatment center where he can receive 24 hour supervision and structure, as well as intensive educational and mental health services.

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[9] 20 U.S.C. 1414(d)(2)(A)-(C)
[10] 20 U.S.C. 1412(a)(5); Rowley, 458 U.S. at 198-200, 202, 102 S. Ct. at 3047; Sherri A.D., 975 F.2d at 206.

A Student who is eligible for admission to DCPS and for whom no adequate special educational program is provided by DCPS shall be considered for placement in a private school. [11] If no public school can accommodate the Student's needs, the government is required to place the Student in an appropriate private school and pay the tuition. When the local education agency has not provided an appropriate educational placement in a public school the law obligates the Respondent to pay the cost of tuition for special education and related services for every Student placed in a private facility by the Public Schools.[12]

The Respondent has failed to provide the Student with an educational placement according to its IDEIA obligations. At the hearing the Respondent offered and Petitioner accepted a private special education residential program at Liberty Point Behavioral Health Systems, in Staunton, Virginia.

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the Student to receive educational benefits.[13] The Respondent failed its legal obligations under the IDEIA when it did not provide an appropriate placement and delayed the Student's access to education.

Burden of Proof

The burden of proof is 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.[14]

For the reasons set forth above, I find the Petitioner met the burden of proof and the Student requires a placement in a residential treatment center where he can receive 24 hour supervision and structure, as well as intensive educational and mental health services.

All other issues were settled by the parties at the hearing.

In consideration of an agreement between the parties, the hearing officer enters, the parties' **stipulation,** as follows:

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[11] *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11 (1993).

[12] 20 U.S.C. § 1412(a)(10)(B)(I); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985), and 5 DCMR Section 3015.2.

[13] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia*, 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

[14] 5 D.C.M.R. § 3030.3,

The Petitioner has agreed to the placement of the Student, at the residential program at Liberty Point Behavioral Health Systems, in Staunton, Virginia, as offered by the Respondent.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

ORDERED, the Respondent shall by October 1, 2010 issue a Prior Notice of Placement to Liberty Point Behavioral Health Systems, in Staunton, Virginia residential treatment facility, complete the Student's Interstate compact agreement, and complete the student's transportation arrangements, **it is further;**

ORDERED, the Respondent will cover the cost associated with the educational placement of the Student at the residential treatment facility, **it is further;**

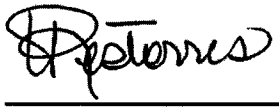
ORDERED, after thirty (30) calendar days of the Student's enrollment, the Respondent shall convene an IEP Meeting, to review the Student's progress and revise and update the Student's IEP as necessary, **it is further;**

ORDERED, the Petitioner agreed to provide her medical insurance documents verifying that any medical conditions or needs are to be covered by a source, other than the Respondent, **it is further;**

This order resolves all matters presented in the Petitioner's July 26, 2010, due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

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 from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).



Dated: September 22, 2010

Wanda I. Resto Torres- Hearing Officer