DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 1st Street, N.E., 2nd Floor
Washington, DC 20002

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Parent or Guardian, on behalf of
Student, [1]

Petitioner,

v

The District of Columbia
Public Schools

Respondent.

Date Issued: October 3, 2010

Hearing Officer: Jane Dolkart

Case No:

Hearing Date: September 13, 2010
Room: 4a

HEARING OFFICER DECISION

Counsel for Petitioner:

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[1] Personal identification information is provided in Appendix A.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

The student was living with his grandmother and attending school in Prince Georges (PG) County from at least the 2006-2007sy and through the 2009-2010sy . His most recent IEP, dated April 2009, was developed at in PG County. The IEP calls for 30 hours of specialized instruction with a disability classification of Learning Disabled (LD) and 2.5 hours in general education during lunch and during an elective, all per week.. The student began the 2009-2010 school year at in PG County and was expelled in January 1010 for fighting. The student then attended for the remainder of the 2009-2010sy, an alternative public school in PG County for students with behavioral and attendance problems.

On July 9, 2010, Petitioner appeared at and met with the SEC. the parent provided the SEC with a copy of the student's most recent IEP. The parent was told to go to the registrar's office to fill out registration papers for the student. The parent alleges she filled out all the paperwork provided to her. DCPS alleges that it never received any registration papers from the parent. Having not heard back from Petitioner filed this due process complaint on July 21, 2010 alleging that DCPS failed to provide an appropriate placement for the student and failed to implement his IEP or convene an IEP meeting to determine placement and revise the student's IEP.

The complaint was filed on July 21, 2010 and a response was filed on August 4, 2010.

A resolution session was held on August 17, 2010. No resolution was reached but a Complaint Disposition form was never signed and submitted to the Student Hearing Office. Therefore the 30 day resolution period ended on August 20, 2010, and the 45 day period for submission of the HOD is October 4, 2010.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.,* 34 CFR Part 300 *et seq.,* and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Issue # 1

Has DCPS denied the student FAPE by refusing to allow the student to attend SHS on the grounds that either he is not properly registered with the DCPS school system or he is not a proper resident of DC?

Issue # 2

Has DCPS denied the student FAPE by failing to implement his IEP?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated September 3, 2010, containing a list of witnesses with attachments P 1-9. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, and the Ass't Educational director at the School.

DCPS submitted a five day disclosure letter dated September 3, 2010, containing a list of witnesses with attachments R 1-2. The disclosure was admitted in its entirety. DCPS called as a witness the SEC at

V. FINDINGS OF FACT

1. The student was living with his grandmother and attending school in Prince Georges (PG) County from at least the 2006-2007sy through the 2009-2010sy . His most recent IEP, dated April 2009, was developed at in PG County. The IEP calls for 30 hours of specialized instruction with a disability classification of Learning Disabled (LD) and 2.5 hours in general education during lunch and during an elective, all per week.. The student began the 2009-2010 school year at in PG County and was expelled in January 1010 for fighting. The student then attended for the remainder of the 2009-2010sy, an alternative public school in PG County for students with behavioral and attendance problems. (P 7, 9, Testimony of mother, Website for

2. On July 9, 2010, Petitioner appeared at and met with the SEC. the parent provided the SEC with a copy of the student's most recent IEP. The parent was told to go to the registrar's office to fill out registration papers for the student. The parent alleges she filled out all the paperwork provided to her. DCPS alleges that it never received any registration papers from the parent. (Testimony of mother, SEC)

3. The Hearing Officer is unable to resolve the factual dispute as to whether the parent did in fact fill out all necessary registration papers and they were misplaced by DCPS, or whether the parent did not complete the registration papers and return them to DCPS.

4. AS of July 9, 2010, the SEC at had in hand a copy of the student's most recent IEP and knew from speaking with the mother that she wished to enroll the student in a DCPS public school for the 2010-11sy. (Testimony of SEC)

5. On August 17, 2010, a resolution meeting was held. No offer to hold an IEP meeting or to propose a placement for the student was discussed at the meeting. Petitioner was not

asked to sign any permission form so that DCPS could obtain further student records from PG County. (P 8)

6. Following a request from the Hearing Officer that DCPS further explain the deficiencies in Petitioner's attempt to register the student at DCPS counsel sent an August 19, 2010 e-mail indicating that it was the position of that the student was not a resident of DC and that the person within DC with whom Petitioner resided was not a parent. (P 3)

7. The student's mother resides in DC and has lived at the same address in DC for over 10 years. There is and never has been any basis for alleging that the parent and student were not residence of DC. During the years the student attended school in Maryland he was residing with his grandparents. However, there was no longer room from him at his grandparent's house. Testimony of mother, P 5)

8. Following the parent's July 9, 2010 visit with the SEC, the parent did not hear back from until September 7, 2010, although the SEC at was aware that a due process complaint had been filed on July 21, 2010. On September 7, 2010, over two weeks into the school year the SEC contacted the parent and offered to meet with her that week and escort her to the registrar to complete registration papers. The mother indicated she would come to but never showed up. (Testimony of SEC, mother)

9. At no time was the parent asked to sign a release so that could obtain the student's records from PG County. The student's report card from shows that the student failed every course except for a D in reading. All the comments noted that the student was cooperative but missed assignments, and had poor test/quiz grades. The student's end of year GPA was .02.

10. At know time was it explained to the parent that DCPS was obligated to implement the student's most recent IEP until such time as a new IEP was developed.

11. The student was accepted at some time during the last quarter of the 2009-10sy. Classes started at on September 7, 2010 for the 2010-11sy. is a full time private therapeutic special education day school. The school has a low student/teacher ratio and accepts students with various disabilities, including ED, LD, and OHI. The entire school uses a level point system behavioral management program and provides individual and group counseling, and individual and group S/L and OT therapy as well as group art therapy. The only information available about the student was his most recent IEP and his report card. In addition the parent and student were interviewed.

intends to conduct a 30 day review of he student at a meeting attended by the DCPS LEA for the student. Prior to the meeting there will be teacher observations, some testing, and class observations. The school will follow the student's most recent IEP until a new IEP is prepared. The school provides both HS Diploma and certificate options and

has a vocational component and offers a small engines class, and offers work programs in textiles and clothing, health, hospitality and culinary skills, and barbering.

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.,* guarantees "all children with disabilities" "a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

> Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency…, (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEAs guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a "basic floor of opportunity" for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16,* 331 IDELR 10 (3rd Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See,* 20 U.S.C. ¶ 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See,* 20 U.S.C. ¶ 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include "a statement of the child's present levels of educational performance, … a statement of measurable annual goals, [and] a statement of the special education and related services … to be provided to the child…." 20 U.S.C. ¶ 1414(d)(1)(A).

Pursuant to IDEA § 1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast,* 546 U.S. 49 (2005).

Has DCPS Met the Requirements of the Child Find Provisions of the IDEA?

The question of whether the student was or was not properly registered at is an interesting one for which the Hearing Officer has no answer. However, it is ultimately irrelevant to whether DCPS provided FAPE to the student.

The facts are uncontroverted that the student's mother has been a resident of the District of Columbia for many years and that her son is entitled to be schooled in a DCPS school. There was absolutely no basis for DCPS claiming that the student and his mother did not reside in DC. Likewise, the student is entitled to services pursuant to the IDEA whether or not his parent has successfully enrolled him in school. Thus, the central question is whether DCPS met its obligations to provide services to this disabled student.

Pursuant to 34 CFR §300.111, Child Find, a state must have in effect policies and procedures to ensure that "all children with disabilities residing in the state...and who are in need of special education and related services, are identified, located, and evaluated ....*Id.* at 300.111(a)(1). Each child with a disability is entitled to an IEP and an appropriate placement that can implement the IEP. DCPS was clearly aware that the student was in need of special education on July 9, 2010, when Petitioner met with the SEC at Ballou SHS, provided her with a copy of the student's IEP, and indicated that she wished to register the student to attend a DCPS school.

DCPS' argument that the parent did not successfully register the student at is unpersuasive. In a similar line of cases, DCPS has argued that it has no obligation to evaluate a student for special education unless the parent has first requested an evaluation. This argument was firmly rejected by the District of Columbia Circuit Court of Appeals.

> Under [IDEA}, states and territories, including the district of Columbia, that receive federal educational assistance must establish "policies and procedures to ensure," among other things, that "free appropriate public education," or FAPE, is available to disabled children. School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead, school systems must ensure that "[a]ll children with disabilities residing in the State...regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." *Reid v. District of Columbia,* 401 F.3d 516, 519 (D.C. Cir. 2005) (internal citations omitted); *Branham v. District of Columbia,* 427 F.3d 7, 8 (D.C. Cir. 2005).

Thus, DCPS" obligation to identify disabled students, develop IEPs and provide appropriate placements is not dependent on any action from parents, but is rather mandated by the IDEA. In this instance, DCPS was made aware that the student was intending to transfer from a Maryland school to a DCPS school. The SEC at was provided with the student's IEP. An examination of the IEP clearly showed that the student had been receiving 30 hours of specialized instruction in Maryland. The IEP also indicated that the student had last been evaluated in 2006 and was overdue for new evaluations. The SEC never reached out to the parent to obtain a waiver so that DCPS could obtain the student's records from Maryland and make a further determination as to whether the student had been recently evaluated, the last school he attended, his grades, etc. Instead the SEC put the student's IEP in a pile and provided no follow-up

whatsoever. Even when notified that a due process complaint had been filed, DCPS took no action to ensure that the student was provided a FAPE. Indeed, Petitioner attended a resolution meeting on August 17, 2010, and still no action was taken.

DCPS had an obligation to obtain the student's Maryland school records, to call an IEP/Placement meeting, to undertake any testing that was required, and to provide at least an interim placement that implemented the student's present IEP while it obtained the necessary information to revise the IEP and provide a permanent placement for the student. DCPS did none of these things in the over two months from when Petitioner met with the SEC and the date of this hearing.

Thus DCPS has denied the student FAPE by failing to provide a placement for the student and failing to implement his IEP.

Actions of Petitioner

Petitioner has clearly intended since at least Spring 2010, to enable the student to attend a full-time private special education school. This is evident by the fact that Petitioner arranged for the student to be admitted to while the student was still attending school in PG County during the 2009-2010sy. It also explains Petitioner's unwillingness to meet with the SEC during the week of September 7, 2010. However, DCPS" own inaction ultimately made Petitioner's decision to send the student to an entirely appropriate decision. Over two weeks into the DCPS school year, DCPS had refused to take any action to provide a placement or an educational program for the student.

Is a Proper Placement for the Student?

When, as in this case, a public school system has failed to provide an appropriate education, reimbursement for a private school placement is "proper under the Act" if the education provided by the private school meets the Act's educational goals. *Carter v. Florence County*, 950 F.2d 156, 163 (4th Cir. 1991) *aff'd* 510 U.S. 7 (1993); *Burlington*, 471 U.S. at 370. "Where a public school system has defaulted on its obligations under the IDEA, a private school placement is 'proper under the Act' if the education by said school is 'reasonably calculated to enable the child to receive educational benefits." *Wirta v. District of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994); *Alfonso v. District of Columbia*, 422. F. Supp. 2d 1, 5 (D.D.C. 2006); *Board of Education of Murphysboro v. Illinois*, 41 F.3d 1162, 1168 (7th Cir. 1994)(holding that in the absence of an appropriate school system proposal the *only* question for the court to decide was whether the parent's choice of placement would confer educational benefits); *see also Diamond v. McKenzie*, 602 F. Supp. 632, 639 (D.D.C. 1985) (*"Moreover, this Court can see no valid reason why a hearing officer cannot consider a placement proposed by the parents as well as one proposed by DCPS*"). In *Branham v. District of Columbia*, the Circuit Court of Appeals listed a set of "relevant" factors that may be considered in determining whether a particular placement is appropriate for the student, including (1) the nature and severity of the disability; (2) the specialized needs of the student; (3) the link between those needs

and the services offered; (4) the placement's cost; (5) and the extent to which the placement is the least restrictive educational environment. *Branham v. D.C.*; 427 F.3d 7,12 (D.C. Cir. 2005).

Since the start of the 2010-11sy, the student has been attending a private therapeutic special education day school located in Virginia. The school has a low student/teacher ratio and accepts students with various disabilities, including ED, LD, and OHI. The entire school uses a level point system behavioral management program and provides individual and group counseling, and individual and group S/L and OT therapy as well as group art therapy.

intends to conduct a 30 day review of he student at a meeting attended by the DCPS LEA for the student. Prior to the meeting there will be teacher observations, some testing, and class observations. The school will follow the student's most recent IEP until a new IEP is prepared. During the one week of class that had concluded before the hearing in this case, the student was reported as settling in well. The school provides both HS Diploma and certificate options and has a vocational component and offers a small engines class, and offers work programs in textiles and clothing, health, hospitality and culinary skills, and barbering.

DCPS has failed to provide the student with an appropriate placement. . is a proper interim placement and the student is entitled to reimbursement for his placement at from the start of the 2010-11sy, until such time as DCPS develops an appropriate IEP and offers an appropriate placement for the student.

VII. SUMMARY OF RULING

DCPS has denied the student FAPE by failing to provide an appropriate IEP or placement for the student for the 201011sy.

is a proper interim placement and DCPS shall reimburse the parent for the student's placement at until such time as DCPS develops an appropriate IEP and proposed an alternative appropriate placement for the student.

VIII. ORDER

It is hereby **ORDERED** that

1. DCPS shall fund the student at including transportation, on an interim basis until such time as it offers the student an appropriate IEP and alternative placement that provide a FAPE to the student. DCPS shall reimburse the parent within a reasonable time for all funds she has paid to to date.

2. The parties shall hold an MDT/IEP meeting no later than 20 days from the date of this HOD. The meeting shall discuss any necessary updated student evaluations, revisions to the student's IEP, if warranted, and placement for the student. Failure of Petitioner to cooperate in scheduling and conducting a meeting within the allotted 20 days shall cut off all funding for the student at

3. Any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, shall extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: October 4, 2010