DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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

Petitioner,

v

The District of Columbia
Public Schools

Respondent.

Date Issued: September 30, 2010

Hearing Officer: Jane Dolkart

Case No:

Hearing Date: September 21, 2010
Room: 1

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STUDENT HEARING OFFICE

HEARING OFFICER DECISION

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

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old student who is eligible for special education under the classification Multiple Disabilities (MR), including Emotional Disturbance (ED) and Learning Disability (LD). The student has been diagnosed as mildly mentally retarded. The student spent the 2009-2010 school year at a full time DCPS out of general education special education program. The student has aged out of and requires a new location of services. The student was approved for ESY during the summer of 2009. An April 8, 2010, enrollment form for ESY states that the ESY services were to be provided at Petitioner states that the transition coordinator told the mother that the student was to attend ESY at his new placement and since no new placement was identified he could not attend ESY.

The student's most recent IEP, dated January 22, 2010, provides for 26 hours of specialized instruction, 1 hour of speech and language (S/L) therapy, and 30 minutes of counseling, per week. The student is to remain in a full time out of general education setting. In February 2010, Petitioner was informed of DCPS' intent to place the student at Roosevelt SHS for the 2010-2011 school year. The parent rejected Roosevelt and requested that the IEP meeting be reconvened to discuss placement and review an independent comprehensive psychological evaluation completed by Johns Hopkins University in October 2009.

An IEP meeting was held on May 21, 2010. At that meeting DCPS offered as the student's 2010-2011 location of services. Petitioner visited and believes it to be inappropriate for the student. Additionally, the Johns Hopkins evaluation recommended that the student be placed in a vocationally based educational program. Petitioner alleges that DCPS agreed to provide some vocationally based training in the student's IEP, but no changes to the IEP have been made.

At the resolution meeting, Petitioner agreed that the student would attend on an interim basis until the Hearing Officer has ruled in the present case. Petitioner alleges that transportation to has not been provided to the student.

A resolution session was held on August 16, 2010 and a Complaint Disposition Form was signed the same day. The IDEA required 45 day timeline was recalculated and the 45 day time period for issuance of an HOD ends on September 30, 2010.

The due process complaint was filed on July 29, 2010. A Response was filed on August 9, 2010.

A pre-hearing conference was held on August 26, 2010 and a pre-hearing order was issued on August 30, 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

1. Was the student denied recommended ESY services for the summer of 2009 because those services were to be provided at his 2010-2011 school placement and no such placement has been determined by DCPS?

2. Has the student been denied a FAPE because DCPS' proposed placement at is an inappropriate placement because the school is too large, the school is primarily a general education school with concerns about interaction with other students and violence, and the school cannot provide the vocational training needed by the student?

3. Has DCPS failed to amend the student's IEP to include vocational services and transportation to

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated September 13, 2010, containing a list of witnesses with attachments P 1-18. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, the student's educational advocate, a speech and language pathologist (S/L), and the Assistant Educational Director at

DCPS submitted a five day disclosure letter dated September 14, 2010, containing a list of witnesses with attachments R 1-6. The disclosure was admitted in its entirety. DCPS called as witnesses the student's special education teacher, and the SEC at

V. FINDINGS OF FACT

1. This is a year old student who is eligible for special education under the classification Multiple Disabilities (MR), including Emotional Disturbance (ED) and

Learning Disability (LD). The student has been diagnosed as mildly mentally retarded. Recently the terminology has been changed to intellectual disability (ID). The student spent the 2009-2010 school year at a full time DCPS out of general education special education program. The student has aged out of and requires a new location of services. (P 1, 4, testimony of educational advocate, mother)

2. The student was approved for ESY during the summer of 2009. An April 8, 2010, enrollment form for ESY was sent to the parent and states that the ESY services were to be provided at An ESY enrollment form was filled out and signed by the parent on April 8, 2010. The form lists the ESY site as The student was listed on the summer 2009 ESY Roster of Students for During a May 21 placement meeting at attended by the parent and the educational advocate it was stated that ESY would be provided at R 1, 2, 3, P 2, Testimony of educational advocate)

3. The parent testified that she spoke with the student's transition coordinator about ESY and he indicated that he thought it would be at Prospect but would get back to her. The parent was not contacted about transportation and transportation did not show up.

The parent was ill and in the hospital most of the month of July.

(Testimony of Parent)

4. The student had previously attended which is a self contained school for students with learning disabilities. DCPS first proposed to place the student at but the parent objected and DCPS placed the student at is a general education school with approximately 650 students of whom approximately 140 qualify for special education. The student is in a self contained class with between 8-11 students, 1 SET and 2 instructional aide. All the students in his class are classified at ID. The student transfers from class to class with his group. They take ROTC, Band, reading, writing, life skills, math and a transition class. The only time the students are in the general population is during lunch when they are escorted to the cafeteria by one of the aides and sit together at a table and when they similarly go to breakfast. The student's bus provides transportation only for special education students. There is an instructional aide waiting for the students when they arrive in the morning.

The student's SET credibly testified that the student is doing well, socializing within his group, does his homework and is not a behavioral problem. The students are placed in skill groups for reading and math. The student is in the lower group for both subjects.

The school is about to implement a vocational training program in conjunction with which has had the program for a number of years. The students will go to job sites for 1 or 2 part days/week. Some of the sites used in the past include the Native American Museum, the Washington Hospital Center and the Veterans Hospital. It is hoped the program will begin in October.

The student began receiving his counseling in early September. A S/L Pathologist works with the student within the classroom. The testimony was unclear as to whether the student is receiving individual S/L sessions.

(Testimony of SET, SEC, educational advocate, mother)

5. The student's most recent IEP, dated January 22, 2010, provides for 26 hours of specialized instruction, 1 hour of speech and language (S/L) therapy, and 30 minutes of counseling, per week. The student is to remain in a full time out of general education setting. The parent approved of the IEP when it was developed. (P 4, testimony of parent)

6. The student received a psychological evaluation from Johns Hopkins Medical Center on October 20, 2009. The evaluation found that the student displays significant cognitive, language, and adaptive function deficits associated with a mild ID diagnosis. He also displays depressive disorder, anxiety disorder, and disruptive behavior disorder. Among other things, the report recommended social skills training and functional/vocational academics. The report suggested that the focus of the student's education should be on functional academics and vocational outcomes. Future academics should be designed with attention to functional outcomes (P 14)

7. The student received an independent speech and language evaluation and a report dated April 15, 2010. The overall results of the testing revealed communication abilities in the overall severe range (P 16)

8. The student's mother testified to the student's difficulties in communicating. It is hard for others to understand him and he often does not understand what is said to him. (Testimony of mother)

9. The student's mother is concerned that the student will not be able to adjust to being in a big school with many general education students and is worried about the violence that occurs in and around the school. She is also concerned that the student has two electives, band and ROTC in which she believes there are also general education students.

There was difficulty at the beginning of the school year with transportation because the agreement that the student would go to at least on an interim basis was not reached until August 16, 2010 and the student's IEP needed to be changed to reflect transportation. That issue was resolved but the student did not like taking the bus and the parent has arranged to drive him to school and have his father pick him up. (Testimony of mother)

10. The SEC at agrees that the student's IEP should be updated to include transition and vocational planning. (Testimony of SEC).

11. the Assistant Educational Director at . testified the after reviewing the student's file, meeting with the student and parent, and having the

student spend a day at the school, the student was accepted for admission. He would be in a self contained classroom with 3 other students and 2 teachers. He would learn life skills, vocational skills, and career preparation. The school provides counseling, behavioral management, and S/L services. The school has programs in small engine repair, clothing, health careers, barbering, and food services.

The 3 students presently in the ID class are in the 9th or 10th grade. was unable to provide their cognitive or academic levels.

The high school has 70 students of which 80% are ED. In the high school the only other students who are ID are the 3 presently in the class proposed for the student.

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).

A. Was the student denied recommended ESY services for the summer of 2009 because those services were to be provided at his 2010-2011 school placement and no such placement has been determined by DCPS?

The evidence clearly establishes that DCPS informed the parent on at least 4 occasions starting in April 2010 that the student's ESY services were to take place at
There is no evidence whatsoever suggesting that the parent believed or anyone had suggested that the services were to take place at a new school placement. It is unclear whether transportation was ever provided, but the burden is on the parent to prove that it was not provided. It is worth noting that the parent was, unfortunately, quite ill during the ESY time period and was in the hospital during most of July. This may account for the fact that the student never even showed up at to determine if this was his ESY placement.

There has been no violation of FAPE.

B. Has the student been denied a FAPE because DCPS' proposed placement at is an inappropriate placement because the school is too large, the school is primarily a general education school with concerns about interaction with other students and violence, and the school cannot provide the vocational training needed by the student?

Petitioner has failed to meet her burden of proof that is unable to implement the student's IEP. To the contrary, the evidence supports that fact that can implement the IEP. The student is in a self-contained class throughout the school day except when he is in the cafeteria. When in the cafeteria, his class is seated together and escorted by one or more of the instructional aides. There was no testimony suggesting there have been any problems in the cafeteria except for vague parent statements that the student is stared at.. The student receives instruction in functional math, reading and writing, and a class in functional life skills.

The parent's primary concern was that the student would not be getting any vocational skills training. Had this been last year she would have been correct. However, this year has a hands on vocational skills program specifically for ID students that is expected to begin next month. This program along with the functional academic and life skills training fit the recommendations made by the Johns Hopkins report.

The parent testified that she was satisfied with the student's IEP except for the need to add transition and vocational services. The student has only been at on a temporary basis for a little over one month. The SEC testified that she agrees that transition and vocational goals should be added to the IEP and will be so added. Once an IEP is developed, the school district must determine an appropriate placement for the child that is designed to meet the child's needs as set out in the IEP. Placement

decisions must be made in conformity with the child's IEP. 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Regs. Tit. 5 § 3013 (2006). Thus, it is the IEP which determines whether a placement is appropriate, not the other way around. *See, Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (DDC 2006).

If there is an appropriate public placement available that is "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement. This is true even though a private placement might better serve the child, *See Hendrick Hudson Dist. Bd. Of Educ. V. Rowley,* 458 U.S. 176, 207 (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). The education offered at is reasonably calculated to enable the child to receive educational benefit. Therefore, there is no need to consider the appropriateness of

However, a few words about are called for. is not an appropriate placement for the student. It is a school most of whose student population has serious emotional disturbances. The student would be in a peer group of 4 and would have even more reason to be fearful of mixing with the rest of the student population than he would at

C. Has DCPS failed to amend the student's IEP to include vocational services and transportation to

As previously stated, the student has attended on an interim basis and only for a little over a month. The SEC has agreed that the student's IEP needs to be amended to include transitional and vocational services. An IEP meeting should be held within the next 21 days to make the necessary additions to the student's IEP.

As to transportation, the IEP was amended to include transportation and the parent has decided to arrange her own transportation for the student.

There has been no violation of FAPE.

VII. SUMMARY OF RULING

Petitioner has failed to meet her burden of proof on any of the issues and this complaint shall be dismissed with prejudice.

VIII. ORDER

It is hereby **ORDERED** that the due process complaint be dismissed with prejudice in its entirety.

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: September 30, 2010