DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

RECEIVED

Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

[STUDENT],[1]
through the Parent/Guardian,*

Petitioner,

v

DCPS,

Respondent.

Date Issued: 11/2/10

Hearing Officer: Seymour DuBow

Case No: 2010-1020

Hearing Date: 10/22/10 Room: 2005

HEARING OFFICER DETERMINATION

BACKGROUND

The student is a ·year old male who is in the grade at with the disability category of a specific learning disability. The student's IEP calls for a full-time special education program. The student is attending a full-time non-public special education day program in Springfield, Virginia. DCPS initially proposed a change in placement to Counsel for petitioner filed a due process complaint on August 18, 2010 challenging that change in placement. At a resolution meeting on September 21, 2010 DCPS proposed a change in placement to and non-public special education placements and the parent indicated she wanted to visit both proposed changes in placement. On September 22, 2010 a pre-hearing conference was held with this hearing officer and counsel for the parties. The pre-hearing Order of September 22nd stated that

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

at the resolution meeting DCPS offered the above two non-public special education placements and that the parent will visit in the two weeks from September 22nd both proposed placements and if acceptable will enter into a formal settlement agreement. Counsel for the parties agreed to a second pre-hearing conference on October 7, 2010 if the case has not been settled and also agreed to a due process hearing date of October 22, 2010 for an all day hearing. On October 6, 2010 a second resolution meeting was held at Accotink Academy to discuss and determine placement for the student. A Prior Notice of Placement was written changing the student's placement from to in Beltsville, Maryland. On October 7, 2010 a second pre-hearing conference was held with counsel for the parties. Counsel for the petitioner stated the parent did not agree with the change in placement from to A Pre-Hearing Order was issued on October 9th 2010 that stated the single issue to be decided is did DCPS deny a Free Appropriate Public Education (FAPE) to the student by proposing Counsel for DCPS responds that the student's current placement at is inappropriate and cannot meet the student's needs and that is an appropriate placement that can implement the student's IEP and meet the student's needs. The second issue in the due process complaint regarding performing psychiatric and vocational evaluations was resolved at the resolution meeting. On October 12, 2010 counsel for the petitioner filed a Motion for Continuance on the grounds that counsel for petitioner had another scheduled hearing and that her educational advocate was available in person for the hearing. Counsel for DCPS filed her opposition on October 14, 2010. This hearing officer denied the Motion for Continuance in an Interim Order dated October 14, 2010 because counsel for petitioner failed to show good cause since she agreed at both September 22nd and October 7th pre-hearing conferences that she was available for the due

process hearing on October 22nd and that the parent and student were available to testify about meetings attended as well as educational advocate. The forty-five day timeline started to run on October 7, 2010, the day after the final resolution meeting on October 6, 2010.

The due process hearing was held on October 22, 2010 in Room 2005 of the Student Hearing Office, 2nd Floor, 810 First Street, N.E., Washington, D.C. 20002. The hearing was closed. Joy Friedman-Coulbary represented the petitioner and Tanya Chor represented the respondent. The parent, the student, the educational advocate Samar Malik, Dr. Hemini Naik, school psychologist at and transition coordinator at . testified for the petitioner with the student and parent testifying in person and the others by telephone. Dr. Sonia Pilot, DCPS school psychologist and Ahley Lozano, DCPS OSE Compliance Manager testified in person and Director of School testified by telephone for the respondent. All witnesses were sworn under oath prior to testifying. Petitioner's Exhibits 1-20 were entered into the record and Respondent's Exhibits 1-30 were entered into the record.

The hearing convened on October 22, 2010 pursuant to jurisdiction under *Public Law 108-446, The Individuals with Disabilities Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300 and Title V of the District of Columbia Municipal Regulations.*

ISSUES

The issue to be determined is as follows:

1. Did DCPS deny a Free Appropriate Public Education (FAPE) by failing to provide an appropriate placement to the student by issuing a Prior Notice of Placement to

School in Beltsville, Maryland and changing the student's placement from

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. The student is a year old male who is in the grade at with the disability category of a specific learning disability. The student's IEP calls for a full-time special education program. The student has been attending a full-time non-public special education day program in Springfield, Virginia, since the 2007-2008 School Year. The student was placed at pursuant to a Hearing Officer's Determination on October 23, 2007. The student is on a diploma track. He failed English and would need to receive tutoring or night classes that are available at if he is to graduate on time or he may need another semester to finish English.
2. An independent comprehensive psychological evaluation was conducted on the student in April 2010. The evaluation report dated April 6, 2010 concluded: "Overall, [student]'s performance across the WCJ-III ACH suggests that he needs significant remediation in the areas of spelling, reading comprehension, math, and written expression. Such deficits make it extremely difficult for [student] to achieve success." (P-6 at p.12) The evaluators pointed out that those academic deficits make it difficult for him to complete tasks in the above academic areas and he therefore does not attempt to complete assignments which result in his continued academic failing.

The evaluation made the diagnosis on the student of Attention Deficit Hyperactivity Disorder and Cannabis Abuse.

3. There is a Behavior Crisis Center (BCC) at where students are sent for behavioral problems. In his second year at the student was sent to the BCC 49 times and in his last school year 75 times. (R-22) Most of the 75 BCC sends were in the beginning of the school year and decreased significantly in the last quarter of the last school year. At the end of last school year he was more respectful and engaged in class (Testimony of Dr. Naik) The student has been receiving individual therapy for the last three years at from their licensed clinical psychologist. The licensed clinical psychologist testified that the student struggles with mood and substance abuse and evidences severe depression and struggles with a trusting relationship which he now has with psychologist. The psychologist observed the student's attendance diminished after his visit to and but that in the last couple of weeks he has improved his grades. The clinical psychologist testified that the student verbalized to her that he would likely drop out if his placement were changed to The student testified he likes and does not think it is a good idea to transition to especially since the Director of the program told him he would be put back to grade.

4. has a five-level behavioral system where you gain privileges as you improve your behavior and go up to the fifth level. The student is currently at the fourth level. (Testimony of student)

5. The student currently participates in the barbering class at for his transitional/vocational area. He has made progress with intervention and is able to retain information. (Testimony of The student testified he likes barbering and enjoys cutting hair.

6. At a resolution meeting on September 21, 2010 DCPS proposed a change in placement to and non-public placements and the parent indicated she wanted to visit both proposed changes in placement.

7. On October 6, 2010 a second resolution meeting was held at to discuss and determine placement for the student. A Prior Notice of Placement was written changing the student's placement from to in Beltsville, Maryland.

8. The student has been accepted at the a full-time day special education program for grades The student would be placed in classes of no more than ten students taught by a special education teacher, a teacher's assistant and a dedicated aide. The student would be provided one hour a week of counseling with five licensed social workers on staff. A clinical psychologist is on call, but not on site. There is no barbering class at the school, but the school has an arrangement with a barbershop that allows students to assist in clean up and gain knowledge of cutting tools. The students are not allowed to cut hair.(Testimony of

9. The DCPS psychologist who recommended the student's placement be changed from did not interview the parent or student. She also did not talk directly to the clinical psychologist or the student's teachers about the

student. The DCPS psychologist reviewed the student's records and observed him in class for thirty minutes. The DCPS psychologist agreed that the student's motivation would be negatively impacted if he is put back to the grade at

10. In weighing the testimony of the clinical psychologist of versus the testimony of the DCPS psychologist, this hearing officer gives greater weight to the testimony of the clinical psychologist who has worked with the student for three years in individual and group therapy than the DCPS psychologist who made a recommendation to remove the student from based on a review of the student's records including test scores, grades and attendance and one thirty minute observation, but did not interview the student, parent, clinical psychologist or the student's teachers. *See Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S.*, 381 F. 3d 194, 199 (3d Cir. 2004)

CONCLUSIONS OF LAW

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

A guiding principle in determining whether a placement is appropriate is provided in the U.S. Department of Education interpretative guidelines of the 1999 regulations that: "educational placements under Part B must be individually determined in light of each child's unique abilities and needs, to reasonably promote the child's educational success." *Appendix A to 34 C.F.R. Part 300, Question 1.* A key factor in promoting the child's educational success is the student's motivation to learn in a particular placement. In this case, the student has been placed at

a non-public full-time special education day program in Springfield, Virginia for the last three years. He is now years old and will be eighteen in two months. He is in the grade on a diploma track. He can graduate on time if he receives extra tutoring or night classes available at to make up for a failing grade in English, or he would need to stay for an extra semester. The clinical psychologist who has worked with this student individually for three years and has developed a trusting relationship has found that the student improved his behavior significantly at the end of last school year and now. She testified that the frequent visits to the Behavior Crisis Center at the beginning of last school year significantly diminished at the end of last school year and he shows greater respect and engagement in his classes. The student has also advanced to the Level 4 on a five level behavioral system at The licensed clinical psychologist testified that the student struggles with mood and substance abuse and evidences severe depression and struggles with a trusting relationship which he now has with psychologist. The psychologist observed the student's attendance diminished after his visit to and but that in the last couple of weeks he has improved his grades. The clinical psychologist testified that the student verbalized to her that he would likely drop out if his placement was changed to

The student testified he likes and does not think it is a good idea to transition to especially since the Director of the program told him he would be put back to grade. Even the DCPS psychologist concedes that that the student's motivation would be negatively impacted if he is put back to the grade at

The change in placement would not "promote the child's educational success."

The student is also making progress in his transition/vocational program at He has shown an interest in their barbering class where he has an opportunity to learn this trade and cut hair. The two witnesses from who have worked directly with the student especially the clinical psychologist who has worked with the student for three years have indicated that the student is starting to make behavioral, vocational and academic progress at

DCPS's decision to change the student's placement to in Beltsville, Maryland at this time would be inappropriate especially now that it is near the middle of the school year and this soon to be eighteen year old student has made the above progress and is motivated to stay at after three years adjusting to their program. In a case similar to this one, United States District Judge Sporkin held in *Holmes v. District of Columbia, 680 F. Supp. 40, 41-42 (D.D.C. 1988):*

> I therefore find that the Buchanan School, under the circumstances of this case, would not be the appropriate school to send this student to at this time in his career. *It would be the most inappropriate thing to do*. The appropriate place for this youngster is to permit him to finish the remaining seven months of his high school education in the environment that he has been accustomed to over the past three years. *I conclude as a matter of law that it would be inappropriate to transfer this youngster at this time and that the Buchanan School is an appropriate place for him at this time.*

In *Block v. District of Columbia, 748 F. Supp. 891 (D.D.C. 1990),* the Court cited with approval the above decision and likewise held it was inappropriate to change the student's placement part-way through the school year. This hearing officer concludes that DCPS has denied a FAPE to the student in changing this student's placement from to

ORDER

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

DCPS shall continue to fund and place the student at for the 2010-2011 School Year including provision of transportation.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: _11/2/10_____ _____Seymour DuBow /s/_____
Hearing Officer