

OSSE
STUDENT PETITIONS OFFICE
2009 NOV -9 AM 10:12

<p>STUDENT¹, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools ("DCPS")</p> <p>Respondent.</p> <p>Case # 2009-1173</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Date of Hearing: November 3, 2009</p> <p>Date of Complaint: August 13, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Joy Freeman Coulbary, Esq. 5885 Colorado Avenue, N.W. Suite 102 Washington, DC 20011</p> <p></p> <p>Copy to: Linda Smalls, Esq. Daniel Kim, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
---	--

¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act (I.D.E.A.)*, P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004 (I.D.E.I.A.)*, District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened November 3, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on August 13, 2009, alleging the issues outlined below.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by counsel which may have resulted in stipulation of fact if noted, the representations and/or testimony of the parties and/or witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-10) which were admitted into the record.

ISSUE(S):²

Did [REDACTED] deny the student a free and appropriate public education by failing to:

1. provide the student an appropriate placement?
2. develop and implement an appropriate IEP?
3. review prior evaluations, records and IEP(s), before exiting the student from special education and ensure continuation and/or continuity of services upon student's transfer from a DCPS placement to a private placement?
4. provide parent access to records, specifically, the student's special education records from the student's prior DCPS placement?
5. Update the student's IEP annually?

² The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn.

FINDINGS OF FACT ³:

1. The student is [REDACTED] years old, resides with his grandmother in the District of Columbia and attended School A where was in the [REDACTED] grade during the 2008-09 School Year ("SY"). (Petitioner's Exhibit's 1 & 5).
2. School A is a private school within the District of Columbia that provides educational instruction to students up to and including the [REDACTED] grade. The student was enrolled in School A by his grandparent (and legal guardian) and attended School A starting in the fourth grade. He attended continuously until he graduated from [REDACTED] grade at the end of SY 2008-09. (Representations of Student and Petitioner's Counsel, Petitioner's Exhibit 5)
3. The student now attends School B which is a District of Columbia Public Charter School housed in a District of Columbia Public School High School building. The student began attending School B at the start of SY 2009-10. (Representations of the Student and Grandparent)
4. The student's grandparent represented at the hearing that prior to attending School A the student attended School C, a DCPS Elementary School, where he had been evaluated and had been receiving special education and related services through an individualized educational program ("IEP"). (Representation of Grandparent)
5. On August 13, 2009, Petitioner's counsel filed a due process complaint solely against School A alleging the issues cited above. DCPS was not named as a respondent in the complaint and no public charter school was named as a respondent. ⁴ (Petitioner's Exhibit 4)
6. Prior to the due process hearing the Hearing Officer requested that Petitioner's counsel file a brief to show cause why the complaint should not be dismissed for failure to have filed against and/or included a necessary party. Petitioner's counsel filed that brief with the disclosures prior to the hearing. (Petitioner's Exhibit 10)

³ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. When citing an Exhibit that is the same for both parties but submitted separately, the Hearing Officer will cite only one party's Exhibit.

⁴ Petitioner's counsel and the principal of School A have acknowledged that School A is a private school and is not affiliated with DCPS or any DC public charter school. However, there is a DC public charter school with a similar name. Initially, there was some confusion by SHO as to whether the entity named as the respondent was the public charter school but that was definitively clarified prior to the hearing.

CONCLUSIONS OF LAW:

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief.⁵ In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Pursuant to 34 C.F.R. §300.500 "Each State Educational Agency must ensure that each **public agency** (emphasis added) establishes, maintains and implements procedural safeguards that meet the requirements of §§300.500 through 300.536. (Authority: 20 U.S.C. 1415(a))

The provision of a free and appropriate education and the procedural safeguards for parents and children under IDEA are the responsibility of the State Educational Agency ("SEA") or Local Educational Agency ("LEA").⁶ Consequently, a necessary party in a due process complaint pursuant to 34 C.F.R. §300.507, (or §300.153)⁷ must be a SEA or LEA. Petitioner's in this instance has admitted that School A is neither.

Although it was unclear to Petitioner's counsel at the time of the filing of the complaint whether School A was in fact its own LEA for special education purposes, as of the date of due process hearing that fact is undisputed.⁸ School A is a private school where the student had been placed by his parent and is not a LEA under the definition of IDEA and no state entity (SEA or LEA) has been named as a respondent in the complaint. Consequently, the Hearing Officer concludes the complaint shall be dismissed without prejudice because of the failure to name a necessary party as respondent.

⁵ 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 with FAPE.

⁶ 20 U.S.C. 1401(19): "The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school district or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools..." 20 U.S.C. 1401(32): "The term 'state educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

⁷ Pursuant to 34 C.F.R. §153: "(a) An organization or individual may file a signed written complaint under the procedures described in §300.151 through 300.152. (b) The complaint must include (1) a statement that a **public agency** (emphasis added) has violated a requirement of Part B of the Act [IDEA] or of this part; (2) the facts on which the statement is based;(3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child (i) The name and address of the residence of the child; (ii) The name of the school the child is attending; ..."

⁸ DCPS counsel filed a motion to dismiss DCPS from the complaint based upon the mistaken belief the School A was the public charter school of a similar name that is its own LEA. However, DCPS was not named in the complaint and after conversations and correspondence between Petitioner's counsel and DCPS counsel clarifying that the complaint was not against DCPS and both informing the Hearing Officer of same the Hearing Officer determined the motion was moot.

ORDER:

The complaint in this matter is hereby dismissed without prejudice.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



Coles B. Ruff, Esq.

Hearing Officer

Date: November 6, 2009

Appendix A

In the MATTER of [REDACTED]

INDEX OF EXHIBITS*

EXHIBIT #	IDENTIFICATION	ADMITTED
		YES
PE-1	CFSA Guardianship Documentation	YES
PE-2	DCPS Resolution Meeting Notice	YES
PE-3	DCPS Motion to Dismiss	YES
PE-4	Due Process Complaint	YES
PE-5	Progress Reports	YES
PE-6	Individual Parent Report	YES
PE-7	Summer School Recommendation	YES
PE-8	Acceptance to the Village Academy	YES
PE-9	Standardized Test Scores	YES
PE-10	Legal Brief	YES

Appendix B

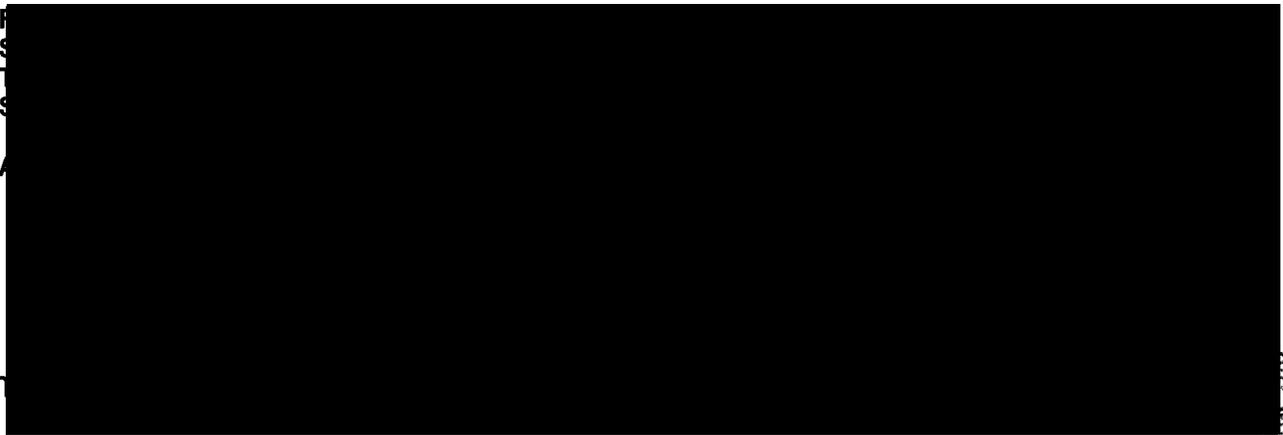
INDEX OF NAMES

In the MATTER OF [REDACTED], DCPS

D.O.B: [REDACTED]

Child and "Student"	[REDACTED] *
Child's Parent(s) (specific relationship)	[REDACTED] Designated as the grandmother and guardian in the HOD *
Child/Parent's Representative	[REDACTED] *
School System's Representative	
Special Education Coordinator,	
Student's School for SY 2008-09: [REDACTED] Identified in the HOD as "School A"	
Student's Current School: Hospitality Public Charter School Identified in the HOD as "School B"	
Student's previously attended school: Truesdell ES Identified in the HOD as "School C"	
	*Present at the Hearing

Brown, Pamela M. (OSSE)



** NOTE: Please do not modify subject line when replying **
** This email was sent by Coles Ruff <mailto: coles.ruff2@dc.gov> **

Attached is a revised HOD with minor corrections. It should be distributed rather than the one initially sent Thank you, C. Ruff

OSSE
STUDENT LEARNING OFFICE
2002 NOV -9 AM 10:12