

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, N.E., 3rd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
December 05, 2018

PARENT, on behalf of STUDENT ¹)	
)	
Petitioner,)	
)	Hearing Officer: Peter Vaden
v.)	
)	Case No: 2018-0125
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	Date Issued: December 5, 2018
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the parent under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.).

Student, an AGE adult, is a resident of the District of Columbia. Petitioner’s Due Process Complaint, filed on May 9, 2018, named District of Columbia Public Schools (DCPS) as respondent. The undersigned hearing officer was appointed on May 10, 2018. The parties met for a resolution session on May 22, 2018, which did not result in an agreement. On May 16, 2018, I convened an initial prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

This case has had an atypical procedural history because of the evolution of Petitioner’s claim. In February 2017, Student had been placed by DCPS in a nonpublic

¹ Personal identification information is provided in Appendix A.

out-of-state residential treatment facility (VIRGINIA SCHOOL). In February 2018, Virginia School convened a meeting with the parent and her representatives to discuss transitioning Student to a less restrictive setting. Virginia School recommended beginning the process of stepping Student down to a less restrictive environment and recommended that Student be placed in a supervised group home setting from where Student could attend a nonpublic day school. Virginia School ultimately set the date of April 10, 2018 for Student's discharge from its facility. However, after Student's discharge and return to Washington, D.C., the concerned D.C. government authorities were not able to provide a group home residence for Student. On May 9 and 10, 2018, the parent filed her due process complaint and a motion for stay-put placement. By an order issued May 17, 2018, I directed DCPS to provide a residential placement as Student's stay-put educational placement during the pendency of this administrative proceeding. Student was not admitted to a new residential school (MASSACHUSETTS SCHOOL) until August 2018. A general guardian for Student was appointed by the D.C. Superior Court on September 27, 2018. Student's enrollment at Massachusetts School was further delayed until October 2018, pending judicial appointment of the guardian for Student.

The due process hearing in this case was initially scheduled for June 29, 2018. The hearing was continued to July 2018 and finally to November 2018. On July 18, 2018, the parties convened for the scheduled due process hearing. Petitioner's Counsel reported that Student had been accepted by a residential school in Georgia, but there was currently no space available. DCPS' Counsel confirmed that DCPS agreed that as of that date, a residential facility was Student's least restrictive environment. On motion of

the parent, I continued the hearing and the final decision due date to allow sufficient time for the parent and DCPS to secure Student's admission to a suitable residential facility.

In October, 2018, after Student enrolled in Massachusetts School, Petitioner narrowed her request for relief and now seeks a compensatory education award to compensate Student for DCPS' alleged delay in placing Student in the new residential facility, following Student's discharge from Virginia School in April 2018. GENERAL GUARDIAN has authorized the parent to pursue this proceeding on Student's behalf.

As the case evolved, I granted four continuances, resulting in the ultimate extension of the final decision due date to December 7, 2018. The due process hearing, continued from July 18, 2018, was convened before this impartial hearing officer on November 19 and 27, 2018 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The parent appeared by telephone and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by NONPUBLIC MONITOR and by DCPS' COUNSEL.

Prior to the July 2018 scheduled hearing date, the parties filed initial prehearing disclosures. Counsel for both parties disclosed additional sets of exhibits prior to the November 19, 2018 hearing date. At the due process hearing, Petitioner's Counsel offered only the exhibits she had disclosed in November. Petitioner's Exhibits P-1 through P-68 were admitted into evidence without objection. DCPS' counsel offered exhibits from DCPS' July 2018 disclosure, as well as the exhibits DCPS had disclosed in November. DCPS' Exhibits R-1A through R-32A (from the November disclosures), R-

33A and R-34A were admitted into evidence without objection. From DCPS' July disclosures, Exhibits R-41, R-43 and R-54 were admitted into evidence without objection. Exhibits R-39, R-40, R-44 (except page 372), R-69 (except pages 551 through 553), R-70, R-71, R-73, R-75, and R-76 were admitted into evidence over Petitioner's objections. Counsel for the respective parties made opening statements and closing arguments. There was no request to file post-hearing briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issue for determination was certified in the October 24, 2018

Supplemental Prehearing Order:

Whether DCPS denied Student a free appropriate public education (FAPE) by failing to provide the student with an appropriate placement and/or location of services following Student's April 10, 2018 discharge from Virginia School and whether said discharge was premature in light of Student's continued mental health issues and Student's need for continued residential placement to access education.

For relief in this case, Petitioner requests that Student be awarded compensatory education for DCPS' alleged denial of FAPE subsequent to Student's April 10, 2018 discharge from Virginia School.

FINDINGS OF FACT

After considering all of the evidence admitted at the due process hearing in this case, as well as the argument of counsel, this hearing officer's Findings of Fact are as follows:

1. Student is a young adult, who prior to enrollment at Massachusetts school,

resided with Mother in the District of Columbia. Testimony of Mother.

2. Student is eligible for special education and related services as a student with Multiple Disabilities, including Intellectual Disability (ID) and Other Health Impairment (OHI). Exhibit P-1.

3. For the 2015-2016 school year, Student was attending DCPS SCHOOL 1. In February 2016 Student was admitted to HOSPITAL due to aggressive behavior at school and, for allegedly making a subsequent threat to kill teachers and others at the school. In a February 17, 2016 Psychological Evaluation report, a Hospital psychologist reported that Student had a history of Major Depressive Disorder and Attention Deficit Hyperactivity Disorder (ADHD). This psychologist reported that her findings supported a primary diagnosis for Student of ADHD with moderate combined presentation, and secondary diagnoses of Disruptive Mood Dysregulation, Conduct Disorder - adolescent type, and Intellectual Disability Disorder - mild. Exhibit P-64.

4. In August 2016, due to behavioral difficulties, Student transferred to DCPS SCHOOL 2. In a September 13, 2016 Functional Behavioral Assessment (FBA) report, the school social worker reported that at DCPS School 2, Student had shown that Student could become easily upset and seemingly frustrated to benign situations; that student could become non-compliant, as evidenced by refusing to go to assigned locations and that historical records showed that Student's behavior escalated to include physical violence and homicidal threats. Exhibit P-66.

5. In a November 15, 2016 DCPS Psychological Update report, it was reported in recent developments, that Student had experienced six hospitalizations; that Student had been diagnosed with schizoaffective disorder with command

hallucinations; that Student has missed multiple days of school, making access unavailable for hearing officer ordered achievement evaluations; that Student had incidents at DCPS School 2 that had resulted in Student's removal from school and suspension; that Student presented in a manner that demonstrated a danger to self and others; that Student demonstrated behaviors indicating a fixation with intent to do harm to male Caucasian teaching staff and that various community agencies had become involved as a result of incidents at the home which had resulted in emergency hospitalizations. Exhibit P-65.

6. Student was placed by DCPS at Virginia School, a nonpublic residential therapeutic facility, where Student enrolled on February 6, 2017. Student made the transition to the residential placement successfully and made progress at the facility. In a March 6, 2017 psychiatric evaluation report, Virginia School's medical director reported that Student had a significant reduction in psychosis with no violence toward self or others, but that Student's prognosis was poor due to early onset psychosis and an infatuation with knives and guns. In a January 16, 2018 Virginia School Treatment Plan report, it was reported as anticipated that Student would develop the skills necessary to transition back to Student's mother's care on or before February 6, 2018. Step down to a lesser level of care, such as a group home, was offered as a potential alternative to the primary discharge plan. Exhibit P-49.

7. On February 13, 2018, Virginia School convened a Treatment Team meeting for Student. Petitioner's Counsel and Educational Advocate participated, but DCPS was, by error, not invited. Virginia School staff advised that Student had completed all aspects of the Virginia School program and was ready to step down to a

group home and a day treatment program near home, but that Student still had aggressive behaviors and was not safe to return to the family home. Exhibit P-2, Testimony of Educational Advocate, Testimony of Nonpublic Monitor.

8. A second meeting was held on February 14, 2018, to which DCPS was invited. Nonpublic Monitor attended by telephone, as did Educational Advocate. It was agreed at that meeting that Student would be discharged from Virginia School and placed in a therapeutic group home in the D.C. area and that DCPS would be responsible for identifying a suitable nonpublic therapeutic day school for Student to attend. The D.C. Department of Behavioral Health (DBH) was to be responsible for finding a group home residential placement for Student. Virginia School agreed that Student could remain at its facility until March 2018 to allow time to work out Student's living arrangements and ongoing educational placement. Testimony of Educational Advocate, Testimony of Nonpublic Monitor.

9. Student's annual IEP meeting was held at Virginia School on April 28, 2017. The April 28, 2017 IEP stated that Student presented with multiple recent hospitalizations in response to complete mental health breakdown and that the Student had been placed in Residential; that Student continued to present as a danger to self and others and that Student required a residential facility to address both significant mental health issues as well as significant cognitive deficits. The IEP was last amended on February 14, 2018, only to correct, *ex post facto*, the time and frequency of related services hours for Speech and Language and Occupational Therapy. Exhibits P-1, P-6.

10. Immediately following the February 14, 2018 meeting for Student at Virginia School, Nonpublic Monitor made referrals for Student to a number of

nonpublic day schools on the list of schools approved by the D.C. Office of the State Superintendent of Education (OSSE). Testimony of Nonpublic Monitor.

11. Student was discharged from Virginia School on April 10, 2018. Student's discharge diagnoses were Unspecified Schizophrenia Spectrum, paranoid ideations; Cannabis Use Disorder, and mild to moderate Intellectual Disability. Student was reported to have significantly decreased acts of verbal and physical aggression, but at times was still prone to respond in a verbally or physically aggressive manner, most notably when experiencing a psychotic episode. Exhibit P-8.

12. When Student returned to the District after being discharged from Virginia School on April 10, 2018, a residential group home had not been identified for Student. Student returned to live at Mother's home. Testimony of Mother.

13. When Student returned to the District on or about April 10, 2018, a nonpublic day school had not been identified for Student to attend. Testimony of Educational Advocate. An interview with DAY SCHOOL 1 was scheduled for April 24, 2018. Exhibit P-14. On April 23, 2018, Student was admitted to Hospital for homicidal ideation, following an incident at home where Student became very agitated and destructive. Student remained at Hospital until May 11, 2018. Exhibits P-14, P-17.

14. In an April 25, 2018 email, a D.C. Department of Behavioral Health (DBH) representative advised Petitioner's Counsel that because Student was approaching the age of majority, the parent may have to file a petition to obtain legal guardianship over Student. Exhibit P-19.

15. At a meeting with DCPS on April 27, 2018, Educational Advocate informed DCPS that Mother did not feel safe with Student's returning to her home after discharge

from Hospital and gave notice that Student would require a residential educational placement. Exhibit P-17.

16. At a meeting on May 2, 2018, attended by DCPS, DBH and Educational Advocate, the team discussed the process for re-instituting a residential placement for Student. Exhibit P-20. In an email to Nonpublic Monitor that day, Educational Advocate formally requested that Student be placed back at a residential treatment facility as Student's least restrictive environment. Nonpublic Monitor responded by email that this request was inconsistent with the IEP team's decision at the time Student was discharged from Virginia School and that DCPS would not be sending placement packets for Student to residential schools. Exhibit P-22.

17. On May 9, 2018, Petitioner filed her due process complaint in this case, requesting, *inter alia*, that DCPS be ordered to maintain Student's placement in a residential facility. On May 10, 2018, Petitioner filed a "stay-put" motion, under 20 U.S.C. § 1415(j), seeking an order for DCPS to fund Student's residential educational placement, as provided in Student's most recent IEP, during the pendency of this administrative proceeding. Hearing Officer Notice.

18. Student was discharged from Hospital on May 11, 2018. On May 14, 2018, Educational Advocate wrote Nonpublic Monitor by email that Student was home after being discharged from Hospital and that Mother was concerned because Student was resistant to taking medications. Educational Advocate requested that an IEP team meeting be scheduled and that arrangements be made for Mother to "tour" possible nonpublic day schools for Student. Exhibit P-24. On May 15, 2018, Nonpublic Monitor provided dates for Mother to visit two nonpublic day schools that same week.

Petitioner's Counsel responded by email that Mother would visit the proposed day schools, but that Student should be returned to a residential facility as soon as possible.

Exhibit P-25.

19. On May 17, 2018, I entered a stay-put order requiring DCPS to provide a suitable residential facility, as Student's stay-put educational placement. Hearing Officer Notice. Nonpublic Monitor proceeded immediately to make referrals for Student to every residential school on OSSE's approved school list and also continued to follow up on identifying a nonpublic day school for Student. Testimony of Nonpublic Monitor. DCPS made referrals for Student to some 15 residential schools. Exhibit R-29A. On May 25, 2018, Nonpublic Monitor informed Petitioner's Counsel by email that Student had been accepted by a residential school in Georgia, but that the school would not have a "bed available" for 4-6 weeks. Exhibit R-29A.

20. At a multidisciplinary team (MDT) meeting on April 30, 2018, the DBH representative advised that DBH could not provide housing for Student due to Student's age. Exhibit P-18. Another DBH representative informed DCPS and Petitioner's Counsel by email on May 30, 2018, that DBH did not have an appropriate facility for an individual, like Student, with behavioral concerns warranting 24/7 supervision and provision of social skills development. Exhibit P-28.

21. On July 2, 2018, DCPS sent a location of services letter to Mother informing her that DAY SCHOOL 2 has been identified as Student's location of service. Exhibit R-30A. Student was to start attending Day School 2 on July 5, 2018, however that day, DCPS' transportation provider did not pick up Student. After communications between Nonpublic Monitor and Petitioner's Counsel, the transportation provider did

go to Student's home on July 6, 2018. However, Student was highly agitated and Mother was unable to get Student to leave the home. By email of July 6, 2018, Petitioner's Counsel informed Nonpublic Monitor that "We just don't see [Student's] being amenable to attending a day school in [Student's] current social emotional state." Counsel requested a more restrictive setting for Student. Exhibit P-34.

22. On August 23, 2018, Massachusetts School notified DCPS that it had determined that Student was appropriate for enrollment at its residential program. Exhibit P-40.

23. Massachusetts School informed Mother that due to Student's reaching the age of majority, Mother's legal guardianship over Student had to be put in place. Testimony of Mother. This was out of concern that as an adult, Student would otherwise be able to sign out of services and leave the facility. Testimony of Nonpublic Monitor.

24. Prior to September 12, 2018, Mother filed a petition in the Superior Court of the District of Columbia for appointment of a guardian over Student, who was alleged to be an incapacitated person. Following a hearing on September 27, 2018, the court appointed General Guardian, a Washington, D.C. attorney, to be general guardian of Student, with provision that the guardian should not be restricted from placing Student in an out-of-state facility. Exhibit P-61.

25. The paperwork was completed by DCPS and Student's representatives for Student to enroll in Massachusetts School. Student's first day of school at Massachusetts School was October 5, 2018. As of the due process hearing date, Student continued to be enrolled, at District expense, at Massachusetts School.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, my conclusions of law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Did DCPS deny Student a free appropriate public education (FAPE) by failing to provide an appropriate placement and/or location of services following Student's April 10, 2018 discharge from Virginia School and by permitting Student's premature discharge from Virginia School in light of Student's continued mental health issues and Student's need for continued residential placement to access education?

In February 2017, DCPS placed Student at Virginia School, an out-of-state residential treatment facility, out of concern for Student's history of aggressive and threatening behaviors. Prior to the residential placement, Student had been hospitalized multiple times for mental health issues. In November 2016, Student was diagnosed with schizoaffective disorder with command hallucinations. As of November 18, 2016, Student's IDEA disability classification was Multiple Disabilities, including

Intellectual Disability (ID) and Other Health Impairment (OHI).

In January 2018, Virginia School staff anticipated that Student would be ready to transition back to Mother's care by February 2018. Mother's representatives participated in a February 13, 2018 Virginia School treatment team meeting, to which DCPS was, by error, not invited. Virginia School staff advised that Student had completed all aspects of its program and was ready to step down to a day treatment program near home. Virginia School staff also stated that Student still had aggressive behaviors and was not safe to return to live at the family home, but required a therapeutic group home. On February 14, 2018, a second treatment team meeting was convened so that DCPS could participate. At this meeting, the team agreed that in March 2018, Student would be discharged from Virginia School and housed in a therapeutic group home in the D.C. area and that DCPS would be responsible for identifying a suitable nonpublic therapeutic day school for Student to attend. Another District government agency, understood to be the D.C. Department of Behavioral Health (DBH), was expected to provide the group home residence for Student. DCPS immediately started the process of contacting nonpublic day schools for Student to attend in the D.C. area.

Student's discharge from Virginia School was deferred to April 10, 2018. The responsible D.C. government authorities did not find a group home residence for Student, so Student returned to Mother's home. DCPS arranged interviews for Student at nonpublic day schools in the D.C. region, but on April 23, 2018, before any school visits, Student was admitted to Hospital, a mental health facility in the District, following a breakdown at the family home.

On May 9, 2018, while Student was still in the hospital, Petitioner filed her due process complaint in this case. On May 11, 2018, Student was discharged from Hospital. On May 17, 2018, at the parent's request, because the D.C. authorities still had not identified a suitable group home where Student would reside, I issued a stay-put order requiring DCPS to provide a suitable residential facility, as Student's stay-put educational placement. Nonpublic Monitor immediately made referrals for Student to OSSE-approved residential schools. At an on-the-record hearing in this case on July 18, 2018, DCPS' Counsel acknowledged that Student required a residential educational placement. It took several more weeks before Student's admission to a residential facility, Massachusetts School, was secured. Student's enrollment at the residential placement was further delayed due to the need to obtain appointment of a legal guardian for Student by the D.C. Superior Court. Student finally enrolled in Massachusetts School on October 5, 2018.

There are two parts to the Issue for Determination in this case – that DCPS allegedly denied Student a FAPE (1) by permitting Student's premature discharge from Virginia School, and (2) by failing to provide an appropriate educational placement following Student's April 10, 2018 discharge from Virginia School. The first claim, that DCPS permitted Student's premature discharge from Virginia School, has no merit. The discharge decision, as well as the decision to house Student at a therapeutic group home, was made by Student's treatment team at Virginia School at a meeting which Mother and her representatives attended. The decision was based on the determination of Virginia School staff that Student had successfully completed its program and was ready for a step-down placement. DCPS was not in a position to veto Student's

discharge.

Nor was DCPS responsible for providing a therapeutic group home for Student after Student's discharge from Virginia School. Under the IDEA, the District may be required to pay for a residential placement when necessary for educational purposes. *See, e.g., McKenzie v. Smith*, 771 F.2d 1527, 1534 (D.C.Cir. 1985). However, in this case, Student's treatment team decided that Student's least restrictive educational placement was a therapeutic day school, not a residential placement. DCPS' duty was to identify a school capable of fulfilling this special day school requirement. *See, e.g., Lofton v. District of Columbia*, 7 F.Supp.3d 117, 123 (D.D.C. 2013). DCPS had no duty under the IDEA to find group home housing for Student.

Petitioner's claim that DCPS denied Student a FAPE by failing to provide an appropriate placement following Student's April 10, 2018 discharge is at base, a failure-to-implement claim – that is, that DCPS failed to timely identify a school capable of fulfilling Student's IEP after Student was discharged from Virginia School. At the due process hearing, Petitioner's Counsel argued that under Student's April 28, 2017 IEP, as amended on February 14, 2018, DCPS was required to provide Student another residential placement when Student was discharged from Virginia School. I disagree. It is undisputed that the parent, DCPS, Virginia School Staff and other treatment team participants agreed at the February 14, 2018 treatment team meeting that Student would be stepped down from the residential placement at Virginia School to a nonpublic therapeutic day school.

Under the IDEA regulations, the parent and the District may agree to make changes to a student's IEP without convening an IEP team meeting, as occurred at the

February 14, 2018 meeting, and, in such event, DCPS must develop a written document to amend or modify the current IEP. *See* 34 CFR § 300.324(a)(4). DCPS should have, but did not, develop a written document to modify Student's IEP placement.² This was a procedural violation of the IDEA.

Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

34 CFR § 300.513(a)(2). Here, there was no evidence that DCPS' failure to memorialize the agreement to place Student in a therapeutic day school, impeded Student's right to a FAPE, impeded Mother's opportunity to participate in decision-making or caused a deprivation of educational benefit. Nor has the parent alleged that DCPS' failure to develop such a written document resulted in denial of FAPE. Parent was represented throughout this period by legal counsel who was in constant communication with DCPS. The parent and her representatives agreed to the plan, based on the recommendation of Virginia School staff, to house Student in a therapeutic group home and for Student to attend a therapeutic day school. I find that DCPS' procedural violation of not producing a written document to record the agreement to change Student's educational placement did not result in denial of FAPE.

² Nonpublic Monitor testified that Student's IEP team would have amended Student's IEP at a 30-day review meeting following Student's enrollment in a nonpublic day school.

Turning to the substantive implementation issue in this case, the parent contends that after Student's April 10, 2018 discharge from Virginia School, DCPS failed to timely provide an appropriate new educational placement for Student. DCPS contends that it was diligent both in implementing the February 14, 2018 decision to place Student in a therapeutic day school following Student's discharge from Virginia School and in securing a residential placement for Student after I issued the May 17, 2018 stay-put order. Because this is a failure to implement issue, the parent must shoulder the burden of persuasion.

Student was discharged from Virginia School on April 10, 2018 and started attending Massachusetts School on October 5, 2018. The IDEA regulations provide that an IEP must be implemented "as soon as possible following development of the IEP." 34 C.F.R. § 300.323(b)(2); *See Spiegler v. District of Columbia*, 866 F.2d 461, 466 (D.C. Cir. 1989). As concerns DCPS' timeliness, the salient facts established at the hearing are the following: (1) In February 2018, Virginia School decided to discharge Student because Student has successfully completed its program and recommended that Student be stepped down to a therapeutic group home and a special education day school; (2) At a meeting with Virginia School on February 14, 2018, DCPS and the parent's representatives agreed that upon Student's discharge from Virginia School, Student would be placed in a nonpublic therapeutic day school in the D.C. area; (3) After the February 14, 2018 meeting, DCPS made a number of referrals for Student to OSSE-approved special education day schools; (4) Student was discharged from Virginia School on April 10, 2018. Soon after Student returned to the District, DCPS arranged interviews for the parent at proposed special education day schools. Several of these

schools agreed to interview Student; (5) Mother was scheduled to visit Day School 1 on April 24, 2018, less than two weeks after Student's return to the District, but the interview was cancelled because Student was hospitalized the day before, following a mental health crisis at home; (6) Student was hospitalized from April 23 2018 until May 11, 2018; (7) On May 30, 2018, DBH notified the parent and DCPS that it was unable to provide a suitable therapeutic group home residence for Student; (8) After I issued the May 17, 2018 stay-put order in this case, DCPS immediately made referrals for Student to numerous OSSE-approved residential facilities. None of the residential facilities had a place for Student immediately available; (9) In the interim, DCPS secured Student's admission to Day School 2 beginning July 5, 2018. However Mother was unable to get Student to attend after the transportation contractor failed to pick Student up on July 5, 2018; (9) On August 23, 2018, Student was offered a place at Massachusetts School, a residential school, contingent on, *inter alia*, the appointment of a guardian for Student and (10) Student was able to start at Massachusetts School on October 5, 2018, 8 days after the D.C. court appointed a legal guardian for Student.

On these facts, I find that DCPS acted diligently, first to meet its obligation to identify a therapeutic day school for Student to attend after Student's discharge from Virginia School and, ultimately, to place Student at a residential facility, after sister governmental agencies were unable to provide a therapeutic group home for Student. I conclude that Mother has not met her burden of persuasion that DCPS failed to implement Student's IEP by not providing an appropriate placement and/or location of services as soon as possible following Student's April 10, 2018 discharge from Virginia School.

ORDER

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

ORDERED:

All relief requested by the Petitioner herein is denied.

Date: December 5, 2018

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

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 U.S.C. § 1415(I).

cc: Counsel of Record
Office of Dispute Resolution
OSSE - SPED
DCPS Resolution Team