

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
July 1, 2023

PARENT, on behalf of STUDENT, ¹)	
)	
Petitioner,)	Date Issued: July 1, 2023
)	
v.)	Hearing Officer: Peter B. Vaden
)	
)	Case No: 2023-0057
)	
DISTRICT OF COLUMBIA)	Online Videoconference Hearing
PUBLIC SCHOOLS,)	
)	Hearing Dates: May 30, June 12
Respondent.)	and June 16, 2023
)	

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (Petitioner or MOTHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In this administrative due process proceeding, the parent seeks relief from Respondent District of Columbia Public Schools (DCPS) on the grounds that DCPS allegedly denied her child a free appropriate public education (FAPE) by failing to provide an appropriate educational placement and program upon the student’s discharge from a residential treatment facility in April 2023.

¹ Personal identification information is provided in Appendix A.

Petitioner's Due Process Complaint, with a motion for an expedited hearing, was filed on April 3, 2023. In her original complaint, Petitioner named DCPS and the D.C. Office of the State Superintendent of Education (OSSE) as respondents. The undersigned hearing officer was appointed on April 4, 2023. On April 11, 2023, OSSE, by counsel, filed a Notice of Insufficiency, which I sustained by an order issued April 12, 2023. Petitioner, by counsel, filed an amended complaint on April 21, 2023, naming only DCPS as respondent. In lieu of holding a resolution session meeting, the parties elected to undertake mediation through the Office of Dispute Resolution. The dispute was not resolved in mediation. On April 20, 2023, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. In my May 3, 2023 Prehearing Order, I denied Petitioner's request for an expedited hearing and set the first day of the due process hearing for May 30, 2023. My final decision in this case is due by July 5, 2023.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on May 30, June 12 and June 16, 2023. Mother appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by SCHOOL PSYCHOLOGIST and by DCPS' COUNSEL.

Petitioner's Counsel made an opening statement. Mother testified and called as additional witnesses EDUCATIONAL ADVOCATE and DIRECTOR OF EDUCATION.

DCPS called as witnesses PROGRESS MONITOR, School Psychologist, SPECIAL EDUCATION TEACHER, NEUROPSYCHOLOGIST, ASSISTANT PRINCIPAL and RESOLUTION SPECIALIST. Petitioner's Exhibits P-1 through P-21 were admitted into evidence, exclusive of Exhibit P-16 to which I sustained DCPS' objection. Exhibits P-11, P-12, P-14, P-18 and P-21 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-3, R-15, R-17, R-18, R-20, R-21, R-28 through R-31, R-39, R-51, R-52, R-54 through R-56, R-61 through R-65, R-67, R-69, R-71, R-72, R-74, R-75, R-77, R-80, R-85 and R-86 were admitted into evidence, including Exhibits R-17, R-18, R-21, R-29 through R-31, R-63 through R-65, R-67, R-72, and R-85 admitted over Petitioner's objections. After the taking of the evidence was concluded on June 16, 2023, counsel for the respective parties made oral closing arguments. There was no request to provide written closings.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-A, § 3049.1.

ISSUES AND RELIEF SOUGHT

The issues for determination in this case, as set out in the May 11, 2023 Revised Prehearing Order are:

A. Whether DCPS denied the student a FAPE by failing to hold a proper IEP discharge meeting to discuss Student's placement upon discharge in April 2023 from PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF);

B. Whether DCPS denied the student a FAPE by failing to provide an appropriate location of services at CITY SCHOOL 2, on his/her IEP, because Student's IEP provides for 27.5 hours of specialized instruction outside of general education;

C. Whether DCPS denied the student FAPE by failing to allow parent's participation in the IEP placement decision for her child upon discharge from PRTF;

D. Whether DCPS denied the student FAPE by failing to issue a prior written notice (PWN) for its denial of parent's June 1, 2022 request for a change in placement;

E. Whether DCPS denied the student FAPE by issuing an improper PWN on April 4, 2023 that does not mention parent's request for a non-public school placement and the reasons for its denial of her request.

For relief, Petitioner requests that the hearing officer order as follows:

- Order DCPS to fund the student's tuition and transportation at a nonpublic school of the parent's choosing consistent with the student's needs, to be presented at the Due Process Hearing and issue a PWN regarding this placement not later than 10 days following the issuance of the Hearing Officer Determination in this matter;

- If the hearing officer does not find that the student requires a full-time separate day school as requested by the parent, order DCPS to hold a properly constituted IEP meeting, within 15 school days of the final decision in this matter, to revise the student's IEP to align with the findings of fact made by the hearing officer regarding the student's IEP and placement needs and order any other changes to the IEP that the hearing officer believes are required after a fact-finding inquiry;

- Order DCPS to conduct a compensatory education study, or fund an independent compensatory education study and that DCPS fund the compensatory education recommended from the study; In the alternative, the parent requests that the Hearing Officer fashion his own compensatory education plan based on a fact-specific inquiry in this case, or that the Hearing Officer order a second hearing to determine an award of compensatory education.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this

case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides with the Mother in the District of Columbia. Testimony of Mother.

2. Student is eligible for special education as a student with an Emotional Disturbance (ED) Disability. Exhibit R-69. Student has average cognitive and academic abilities. Social, emotional and behavioral challenges are areas of concern for Student. Testimony of Neuropsychologist.

3. Student's December 21, 2021 CITY SCHOOL 1 IEP reported that Student's behaviors impeded his/her learning or that of other children. The identified impeding behaviors were failure to respect authority, disruptive behavior, disruptive language, failure to cooperate, fighting, not following school and classroom rules, not accepting responsibility for his/her actions and not following directions. The IEP team identified Mathematics, Reading, and Emotional, Social and Behavioral Development as areas of concern for Student. The IEP provided for Student to receive 90 minutes per week of Special Education Services, outside general education, and 240 minutes per month of Behavioral Support Services. Exhibit P-6.

4. From December 17, 2021 to the end of the 2020-2021 school year, Student had 75 unexcused absences. Student failed all of his/her courses for the year. Exhibits P-8, P-9, P-10.

5. In July 2022 a court-appointed psychiatrist (PSYCHIATRIST) conducted a psychiatric evaluation of Student. Psychiatrist reported, *inter alia*, that Student had a

long history of behavioral problems, and according to Mother, had always been restless, hyperactive, and easily distracted. In the past, Student had been diagnosed with Attention-Deficit/Hyperactivity Disorder, and in addition to receiving outpatient treatment, Student had been hospitalized two or three times, due to being suicidal, making homicidal threats against Mother and running away from the home.

Psychiatrist reported concerns about Student's involvement with a gang and being the victim of human trafficking. Student had a history of substance abuse, and told Psychiatrist that in addition to marijuana and alcohol, he/she had been taking Percocet pills. Student had a psychoeducational evaluation done before the psychiatric evaluation through the District of Columbia Courts' Child Guidance Clinic, and was given the following Diagnoses: Major Depressive Disorder, Recurrent Episode, with Anxious Distress, Mild; Cannabis Use Disorder, Mild; parent-Child Relational Problem; Personal History of Self-Harm; and Unspecified Problem Related to Social Environment. Student also had a psychological evaluation in Spanish completed in the Dominican Republic in April 2022. On an Inventory of Personality for Adolescents in that assessment, Student was found to have extreme elevations in Mania, Antisocial Traits, and Alcohol Consumption. Student also exhibited marked grandiosity, as well as narcissistic personality traits. In his July 15, 2022 Psychiatric Evaluation Report, Psychiatrist's impression was that Student met Diagnostic Criteria for Unspecified Bipolar and Related Disorder. Psychiatrist reported that complete diagnostic impressions based on the DSM-V classifications were:

1. Unspecified Bipolar and Related Disorder
2. Rule Out Attention-Deficit/Hyperactivity Disorder
3. Cannabis Use Disorder
4. Alcohol Use Disorder
5. Opioid Use Disorder
6. Academic or Educational Problem
7. Problems Related to Other Legal Circumstances (Involvement with the Juvenile Court).

Psychiatrist recommended, with respect to placement, that Student should be placed in a psychiatric residential treatment facility with a locked-doors policy, where he/she could receive 24-hour-a-day structure and supervision, while being treated for emotional problems and issues with substance abuse. Psychiatrist opined that Student would not do well in a less restrictive environment. Exhibit R-20. This psychiatric report was not provided to DCPS until April 2023. Testimony of School Psychologist.

6. Over the years, Mother has transferred Student among a number of schools in the District of Columbia and overseas, including a public charter school in the District, DCPS public schools and nonpublic schools in the District and in Latin America. In November 2021, Mother enrolled Student in City School 1. Testimony of Mother.

7. In a March 10, 2022 Prior Written Notice (PWN), City School 1 staff reported that its IEP team was holding the student's current eligibility "intact" because Mother had not provided a current consent for reevaluation, because Student had not consistently attended school since arrival on November 12, 2021 and because the school did not have access to Student who was then being detained. Exhibit R-64.

8. At the end of the 2021-2022 school year, Mother asked City School 1 staff if a residential placement would be appropriate for Student. Testimony of Mother. Student had been missing since June 14, 2022. In a June 28, 2022 PWN, City School 1 staff reported that Student's IEP team met with Mother and her representative to discuss supports for the student, once Student was located. The PWN reported that the family wished for the City School 1 team to consider a residential treatment center or a psychiatric residential treatment facility for Student, but it was determined that a majority of the student's behaviors/concerns occurred in the community. The PWN reported that Student had been evaluated in the Dominican Republic and that once located, Student would be reevaluated by the DC Department of Behavioral Health, and that the City School 1 team would review Student's evaluation documents when received and determine if any adjustments were necessary to Student's IEP. Exhibit R-65.

9. Around August 25, 2022, Mother unilaterally placed Student at PRTF, an out of state psychiatric residential facility. PRTF serves roughly 105 students with emotional and behavioral disorders. Student was in a program at PRTF that serves children who have experienced extreme trauma. Testimony of Director of Education. (The parent has not sought public funding or reimbursement for her unilateral placement of Student at PRTF.)

10. PRTF has a very highly structured program, with detailed scheduling throughout the day, group meetings three times a day and constant adult supervision using teachers, hallway staff, program managers, and building supervisors. Every

student has a case a manager and a therapist. Nurses are in the building at all times.

Testimony of Director of Education.

11. DCPS had no involvement with Student's placement at PRTF. Testimony of Mother. On October 3, 2022, Petitioner's Counsel provided notice to DCPS by email that Student started treatment at PRTF around August 25, 2022 with an uncertain discharge date. Exhibit P-11.

12. When Student arrived at PRTF, he/she was very defiant and oppositional. Over time, after Student was placed in a compatible classroom, he/she "blossomed" and was able to make progress on his/her DCPS IEP goals. Testimony of Director of Education.

13. On December 13, 2023, DCPS convened an online IEP meeting for Student's annual IEP review. Mother, Petitioner's Counsel and Director of Education participated. Student's IEP present levels of performance were updated to include current reading and math scores provided by PRTF in addition to data from City School 1. The IEP special education and related services section was revised to provide for 27.5 hours per week of Specialized Instruction Services and 240 minutes per month of Behavioral Support Services. The team agreed to reconvene at a later time to amend the IEP to address the IEP post-secondary transition section as well as the social, emotional, and behavioral section, using current data from PRTF. Exhibits P-13, R-54, R-55.

14. On March 1, 2023, Petitioner's Counsel notified DCPS by email that Student had a tentative discharge from PRTF date of April 3, 2023. Petitioner's Counsel

requested that a discharge IEP meeting be scheduled for March 2023. Exhibit P-14.

15. Student's DCPS IEP team met on March 14, 2023. This was called a transition meeting because Student would be transitioning back from PRTF to a less restrictive environment at DCPS. Testimony of School Psychologist.

16. On March 29, 2023, School Psychologist wrote Petitioner's Counsel by email, advising that DCPS was in the process of identifying a Behavior and Education Support (BES) program for the student when he/she returned to the District. School Psychologist wrote that once Student's enrollment was complete, the agency could put together the packet to submit a referral to OSSE for a nonpublic placement. School Psychologist requested specified documents from PRTF to include in the OSSE referral packet to facilitate OSSE's identifying a nonpublic location for Student. Exhibit R-29.

17. According to the April 4, 2023 PWN sent to Mother, the City School 1 team proposed to change Student's placement due to increased need for support. The school representatives on the IEP team felt that when Student would be discharged from PRTF, he/she would require a location of service that was self-contained and provided behavioral supports to assist him/her with meeting PRTF's discharge goals in order to avoid regression. The school representatives felt that a BES program in a DCPS public school could meet Student's educational needs and continue to gather any other necessary data in the event that therapeutic decisions were required to be made. In the PWN, DCPS identified CITY SCHOOL 2's BES program as the school location closest to Student's home address where the IEP could be implemented. Exhibit R-68.

18. In a March 20, 2023 email to DCPS officials and others, PRTF's Director of Education wrote that Student had been in a multi-grade level classroom at PRTF and had done amazingly well and made vast improvements in both academics and behavior. Director of Education supported Student's receiving a "social promotion" into YY GRADE for the 2023-2024 school year because Student had proven he/she was able to master XX GRADE level skills. Director of Education wrote that Student had become a very active student in the PRTF's school, had run for student council, and showed extreme grace even when he/she did not win the election. Regarding Student's DCPS placement for when he/she would leave PRTF, Director of Education wrote that she believed it would be in Student's best interest to return to DCPS in "an alternative or stepdown program." Director of Education wrote that she thought that placing Student in a large public school right after discharge would be a hindrance to his/her continued recovery. Exhibit P-15.

19. By email of March 27, 2023 to a DCPS attorney and other DCPS staff, Petitioner's Counsel confirmed that Student would be discharged from PRTF on April 3, 2023. Petitioner's Counsel advised that Mother had requested a non-public step-down placement for Student and requested an IEP meeting as soon as possible to discuss this request and how City School 1 could implement Student's IEP. Exhibit R-30.

20. When Student returned from PRTF on April 3, 2023, DCPS did not have a school identified for Student to attend. Testimony of Mother, Testimony of School Psychologist. By letter of April 25, 2023, DCPS notified Mother that City School 2 had

been identified as Student's location of services. The letter stated that the location decision was based on Student's most recent IEP. Exhibit R-51.

21. Mother objected to Student's being placed at City School 2 after PRTF because of an incident when Student attended summer school at City School 2 in 2022. Following a violent altercation with another student the first day of summer school, Student did not return to City School 2 that summer. After DCPS identified City School 2 as the location of services for Student, Mother asked DCPS to find another school location for Student. DCPS agreed to look for another school, but after Student's return from PRTF, DCPS only offered City School 2 as a location for him/her. Testimony of Mother.

22. Student started attending City School 2 around May 1, 2023. Exhibit R-40. Student told Mother after his/her second day at City School 2 that another student was saying Student was going to be jumped. Testimony of Mother. City School 2 staff investigated the alleged bullying threat and could not corroborate it. The other child named by Student as involved in the alleged incident stopped attending City School 2 the next week. Testimony of Assistant Principal. Mother kept Student at home beginning May 12, 2023 out of concern over the alleged bullying threat. Exhibit R-40.

23. At City School 2, there are 6 hours in the school day. The BES class size is 5-6 was students, with a classroom teacher, paraeducator and a behavior technician. For electives, lunch and recess, the students in the BES classroom attended class with general education peers. The behavior technician and paraeducator would accompany

the BES students on transitions and to electives classes. Testimony of Assistant Principal.

24. At City School 2, Student would arrive late in the mornings. Assistant Principal discussed the importance of timely attendance with Mother. Student enjoyed math class and built a strong rapport with the case manager in reading class

25. Given Student's behaviors when not adequately supported at school, Student definitely needs a smaller school environment. Student benefits from social interaction and needs to develop social skills for social maladjustment. Testimony of School Psychologist. Student requires a significant amount of structure and organization across all domains to progress in school. He/she needs a highly structured therapeutic environment. Testimony of Educational Advocate, Exhibit R-20.

26. Prior to the first day of the due process hearing, Student had been admitted to a District psychiatric facility for 21 days out of concern that he/she would do harm to him/herself. Testimony of Mother.

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 parent 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 child's IEP or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

Analysis

Student's Placement after Discharge from PRTF

- Whether DCPS denied the student a FAPE by failing to hold a proper IEP discharge meeting to discuss Student's placement upon discharge in April 2023 from PRTF;
- Whether DCPS denied the student a FAPE by failing to provide an appropriate location of services at CITY SCHOOL 2, on his/her IEP, because Student's IEP provides for 27.5 hours of specialized instruction outside of general education;
- Whether DCPS denied the student FAPE by failing to allow parent's participation in the IEP placement decision for her child upon discharge from PRTF;
- Whether DCPS denied the student FAPE by issuing an improper PWN on April 4, 2023 that does not mention parent's request for a non-public school placement and the reasons for its denial of her request.

The substance of the parent's claims in this case is that, upon Student's discharge from PRTF in spring 2023, DCPS failed to offer Student, a child with an Emotional Disturbance disability, an appropriate ongoing educational placement. In August 2022,

Mother had unilaterally placed Student at PRTF, an out-of-state residential treatment center. This followed a July 15, 2022 Psychiatric Evaluation Report², in which a court-appointed psychiatrist recommended that Student should be placed in a psychiatric residential treatment facility for treatment, with a locked-doors policy, where Student could receive 24-hour-a-day structure and supervision. The psychiatrist reported that Student's background included being suicidal, making homicidal threats against the parent, running away from the home, involvement with a gang and human trafficking, and substance abuse.

During ■■■ time at PRTF, Student reportedly made remarkable progress, both behaviorally and in academics. Student's discharge from PRTF was tentatively scheduled for March or April 2023. By email of March 2, 2023, Petitioner's Counsel wrote DCPS to convey Mother's request that upon discharge, Student be stepped down from the PRTF placement to a full-time special education day school. In a follow-up email sent March 9, 2023, Petitioner's Counsel wrote that Student's PRTF therapist strongly recommended that Student attend a nonpublic school after leaving the residential facility, because his/her PRTF team had significant concerns regarding Student's tendency to revert to past habits without structured daily programming.

Student's DCPS IEP had been revised on December 13, 2022, while Student was at PRTF. The December 13, 2022 annual IEP provided for Student to receive for 27.5 hours per week of Specialized Instruction Services, outside of the general education

² This psychiatric evaluation report was not provided to DCPS until April 2023.

setting, and 240 minutes per month of Behavioral Support Services. These IEP services were proposed to be provided, upon Student's discharge from PRTF. Following notice that Student would be discharged from PRTF on April 3, 2023, Student's DCPS IEP team met on March 14, 2023. The DCPS representatives felt that a Behavior Education Support (BES) program in a DCPS public school could meet Student's educational needs. In a follow-up PWN, DCPS identified the BES classroom at City School 2 as the location of services for Student.

On March 20, 2023, PRTF's education director wrote DCPS that she believed it would be in Student's best interest to return to DCPS in "an alternative or stepdown program." The education director cautioned that placing Student in a large public school right after discharge would be a hindrance to his/her continued recovery. The parent's request for a nonpublic school placement notwithstanding, the IEP team did not review or revise Student's December 13, 2022 IEP, except to amend the IEP on March 14, 2023 to correct a typographical error.

Petitioner asserts an assortment of claims pertaining to DCPS's alleged acts and omissions at the time of Student's discharge from PRTF in spring 2023. These include failure to hold a "discharge meeting"; providing Student an inappropriate location of services at City School 2; not allowing the parent to participate in the ongoing placement decision and providing an allegedly inappropriate PWN which did not address Mother's request for a nonpublic placement. Reading these claims together, I understand the thrust of the parent's complaint to be that DCPS did not ensure that the Student's IEP

team appropriately reviewed the December 13, 2022 IEP following Student's treatment at PRTF or considered revising the IEP based upon information provided by PRTF staff and the parent. I agree.

Under IDEA, DCPS is obliged to ensure a child's IEP team reviews the child's IEP when appropriate and revises the IEP to address information about the child provided to or by the parent, the child's anticipated needs or "Other matters." *See* 34 C.F.R. § 300.324(b)(1). On March 9, 2023, prior to Student's discharge, Petitioner's Counsel notified DCPS that the PRTF therapist recommended that Student attend a non-public school upon discharge, out of concerns regarding Student's tendency to revert to past habits without structured daily programming. Similarly, on March 20, 2023, the PRTF education director informed DCPS that Student needed an alternative or step-down program and that a large public school would be hindrance to Student's recovery. Despite receiving this information about Student's anticipated needs, Student's IEP team did not review the December 13, 2022 IEP or revise the IEP's educational placement either at the March 14, 2023 IEP meeting or thereafter. Instead, DCPS unilaterally placed Student in the BES program at City School 2.

School Psychologist wrote Petitioner's Counsel that once Student's enrollment in City School was complete, the agency could put together a packet to submit a referral to OSSE for a nonpublic placement. This was improper. The District may not condition the revision of an IEP for a formerly enrolled student, whom the district knows is disabled and domiciled in the district, on a requirement that the student first re-enroll

in a DCPS public school. *See District of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 88 (D.D.C. 2012)

I find that DCPS' failure to convene the IEP team to review and consider revising Student's IEP when it received information from PRTF and the parent about Student's alleged need for a step-down placement in a nonpublic school, and the alleged inappropriateness of a large public school for Student, violated the requirements of Section 300.324(b)(1) to review and revise an IEP to address information about the child's anticipated needs on receipt of such information. This failure to convene an IEP review meeting at the time of Student's discharge from PRTF was a procedural violation of the IDEA.

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

- (i) Impeded the student's right to a FAPE;
- (ii) Significantly impeded the parent's (or adult student's) opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or
- (iii) Caused a deprivation of educational benefit.

See 34 C.F.R. § 300.513(a)(2). Here, DCPS' decision to place Student in the City School 2 BES program, without convening Student's IEP team to review Student's IEP in light of the information and recommendations of PRTF staff, as well as Mother's request for a nonpublic school placement, significantly impeded the parent's opportunity to participate in the decision making process for her child. I find that this was a denial of

FAPE.³

Petitioner also alleges that the DCPS' placement of Student at City School 2 was inappropriate because the BES program could not provide the 27.5 hours per week of specialized instruction services specified in the December 13, 2023 IEP. I find that the parent did not make a *prima facie* showing that the BES program could not implement the IEP's provision for 27.5 hours per week of specialized instruction. Otherwise, in this decision, I do not reach whether DCPS' proposed placement of Student in the BES program at City School 2 was appropriate for Student.

June 1, 2022 Request for Change in Placement

– Whether DCPS denied the student FAPE by failing to issue a prior written notice (PWN) for its denial of Mother's June 1, 2022 Request for a Change in Placement.

At the end of the 2021-2022 school year, Mother asked City School 1 staff if a residential placement would be appropriate for Student. The parent alleged in her complaint that DCPS denied Student a FAPE by not issuing a PWN in response this "request." This claim was not established by the evidence. In a June 28, 2022 PWN, City School 1 staff reported that Student's IEP team met with Mother and her representative to discuss supports for the student. The PWN reported that the family wished for the City School 1 team to consider a residential treatment center or a psychiatric residential treatment facility for Student, but it was determined that a

³ In light of this conclusion, it is unnecessary for me to address the parent's claim that DCPS' April 4, 2023 PWN was improper.

majority of the student's behaviors/concerns occurred in the community. The PWN reported that at the time of the meeting, Student was "missing" and that once Student was located, the City School 1 team would review Student's evaluation documents when received and determine if any adjustments were necessary to Student's IEP. Petitioner did not meet her burden of persuasion that DCPS did not issue a PWN following her June 2022 request for a change in placement for Student.

Remedy

In this decision, I have found that DCPS denied Student a FAPE by not convening Student's IEP team to review Student's December 13, 2022 IEP at the time of his/her discharge from PRTF in spring 2023. For relief, Petitioner requested in her complaint that DCPS be ordered to place Student in a nonpublic school to be presented at the due process hearing, or order DCPS to hold an IEP meeting to revise the student's IEP to align with the hearing officer's findings regarding the student's IEP and placement needs. The parent also seeks a compensatory education award.

In this decision, I have not reached the issue of whether the BES program at City School 2 is inappropriate for Student. Moreover, while Petitioner offered evidence at the due process hearing that Student had been conditionally accepted by NONPUBLIC SCHOOL, no representative from Nonpublic School testified and there was no probative evidence that Nonpublic School would be an appropriate placement for Student. *See Branham v. Government of the Dist. of Columbia*, 427 F.3d 7 (D.C. Cir. 2005) (Considerations "relevant" to determining whether a private school is appropriate for a

particular student.) Therefore, I deny without prejudice Petitioner's request that DCPS be ordered to fund a nonpublic placement for Student.

I will order DCPS to convene Student's IEP team to review Student's IEP, taking into consideration, all relevant information on Student, including, without limitation, the July 15, 2022 psychiatric evaluation report and information and recommendations obtained from PRTF. It was also established at the due process hearing that Student needs a highly structured therapeutic environment, and a significant amount of structure and organization across all domains, to progress in school. It will be the responsibility of Student's IEP team, including the parent, to consider all of this information, as well as other relevant data concerning Student's anticipated needs, in order to determine the appropriate educational placement for Student, whether in a DCPS special class, in a special school or other setting. *See* 34 C.F.R. § 300.115(b) (Continuum of alternative placements).

Petitioner also seeks a compensatory education award for Student. The D.C. Circuit Court of Appeals explained the compensatory education remedy in *B.D. v. District of Columbia*, 817 F.3d 792 (D.C. Cir. 2016):

As we held in *Reid ex rel. Reid v. District of Columbia*, an award of compensatory education "must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." 401 F.3d at 524. In other words, compensatory education aims to put a student like B.D. in the position he would be in absent the FAPE denial.

An appropriate compensatory education award must "rely on individualized assessments," and the equitable and flexible nature of the remedy "will produce

different results in different cases depending on the child's needs." *Id.* . . . To fully compensate a student, the award must seek not only to undo the FAPE denial's affirmative harm, but also to compensate for lost progress that the student would have made.

B.D., 817 F.3d at 797–98. For purposes of the compensatory education analysis, I determine that the period of harm from DCPS' not reviewing Student's IEP at the time of his/her discharge from PRTF ran from about April 3, 2023, when Student was discharged, to the end of DCPS' 2022-2023 school year. For much of that period, Student was hospitalized in a mental health facility.

For compensatory education, Petitioner's Expert, Educational Advocate recommended an award of 500 hours of intensive, integrated, community-based therapeutic mentoring services by a trained practitioner. When reminded at the hearing that Student was not discharged from PRTF until April 3, 2023, Educational Advocate testified that she would still recommend 25 hours per week of mentoring services for 16 weeks. I find that Educational Advocate's compensatory education recommendation bears little relation to the educational benefits that likely would have accrued, *see B.D.*, *supra*, if Student had been offered an appropriate educational placement from April 2023 through the end of the school year and I decline to follow her recommendation.

At this point in time, there are too many unknowns to fashion a compensatory education award based on procedural violation found in this decision. Once Student's IEP team has met to determine Student's ongoing placement needs and a suitable location of services has been identified, the IEP team, including the parent, should seek

to reach agreement on what additional services Student may need to get him/her back to the place he/she would have been if such a placement had been offered when Student was discharged from PRTF in April 2023. If the parent and DCPS are unable to agree on such services, the parent may request another due process proceeding.

ORDER

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

ORDERED:

1. Within 15 business days of the date of this decision, DCPS shall convene Student's IEP team, including the parent and her representatives, to review Student's IEP in light of the findings in this decision, the July 15, 2022 psychiatric evaluation report, information and recommendations from PRTF as well as any other information the IEP team needs to determine the nature and extent of the special education and related services that Student now needs, and to revise the IEP and Student's educational placement as appropriate;
2. Petitioner's request for a compensatory education award is denied without prejudice;
3. Petitioner's request that DCPS be order to fund a nonpublic placement for Student is denied without prejudice and
4. All other relief requested by the Petitioner herein is denied

Date: July 1, 2023

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