

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

[Parent], on behalf of
[Student],¹

Date Issued: January 20, 2012

Petitioner,

Hearing Officer: Jim Mortenson

v

District of Columbia Public Schools (DCPS),

Respondent.

OSSE
STUDENT HEARINGS OFFICE
2012 JAN 20 PM 4: 21

HEARING OFFICER DETERMINATION

The Complaint in this matter was filed with the Student Hearing Office (SHO) and served on the Respondent on January 5, 2012. The Respondent filed a response on January 19, 2012. A resolution meeting was convened on January 19, 2012, and the parties agreed that no agreement could be reached.² A prehearing conference was held, via telephone, on January 20, 2012. Participating in the prehearing were Petitioner's Counsel, Donovan Anderson, Esq. and Respondent's Counsel, Laura George, Esq.

The Student's and Petitioner's names were confirmed during the prehearing conference, as was the Student's identification number, birthdate, and school of attendance. Following discussion about the resolution meeting, the issue in the complaint and stipulations were discussed. The Petitioner's dispute with the Respondent is that despite an alleged IEP team meeting and agreement in early December to change the Student's placement from his current placement at _____ to a more restrictive setting consisting of "full-time" special education services, the Respondent has not yet made the change and the Student remains at _____.

The parties discussed and stipulated to some key material facts and based on those facts agreed that no evidentiary hearing was necessary and that the Independent Hearing Officer

¹ Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

² The parties did not agree in writing, but Petitioner's Counsel confirmed during the prehearing conference that it was the Petitioner's intent to stop the resolution period and start the 45 day hearing timeline. The Respondent had indicated its intent to do the same in a written "Resolution Period Disposition Form."

(IHO) should issue an order based on the stipulated facts and discussion during the prehearing conference. The IHO agreed to this and this Hearing Officer Determination (HOD) follows.

Findings of Fact (undisputed facts)

After considering the discussion of both counsels as to the undisputed facts, this Hearing Officer's Findings of Fact are as follows:

1. cannot implement the Student's individualized education program (IEP) revised in December 2011.
2. The Special Education Coordinator (SEC) for present at the IEP team meeting for the Student in mid-December 2011, has "already alerted the [LRE] office to observe this Student for a more restrictive environment."³
3. Both School and Foundations School could provide educational benefit to the Student.
4. There is no dispute over the contents of the IEP resulting from the December 2011 IEP team meeting.

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:

1. Placement decisions must be made by a group of people including the parent and others knowledgeable about the child.⁴
2. In the District of Columbia it is the child's IEP team that makes the placement determination.⁵
3. If the Respondent "has two or more equally appropriate locations that meet the child's special education and related services needs, the assignment of a particular school or classroom may be an administrative determination, provided that determination is consistent with the placement team's decision."⁶

³ The notes upon which this statement is based, according to the Respondent's Counsel, state "LEA office" which does not exist. Respondent's Counsel stated that this was an error in the notes and that the SEC meant to state "LRE [for "least restrictive environment"] office. . . ."

⁴ 34 C.F.R. § 300.116(a).

⁵ D.C. Mun. Regs. 5-E3001.1, definition of IEP team that includes: "Determining the placement of a child with a disability in the least restrictive environment (LRE) in accordance with 20 U.S.C. § 1414 (f), and § 3011 of this Chapter."

⁶ Letter to Veazy 37 IDELR 10 (OSEP 2001).

4. The provision of a free appropriate public education (FAPE) to a child with a disability requires, in part, that special education and related services are provided in conformity with the child's IEP.⁷
5. In this case there is no dispute about the Student's IEP. There is also no dispute that the Student's current placement at _____ cannot implement the IEP. The IEP was revised in mid-December, but rather than place the Student pursuant to the IEP, the Respondent deferred the question to an undefined "LRE" office to "observe this Student for a more restrictive environment." This runs counter to the requirements of both IDEA and D.C. law. The IEP team had already determined the Student required a more restrictive environment, and the only thing left to do was find that environment, send the Student there, and implement his IEP. This was to be done as soon as possible following the IEP revision.⁸ There is not even a dispute between two or more locations since none have been identified by the Respondent. The Respondent is questioning and holding up the Student's placement, as determined necessary by the IEP team. The revised IEP has not been implemented for over a month, potentially denying the Student a FAPE.⁹

Determination

The Respondent failed to provide the Student with an educational placement following the IEP team's determination that the Student required a more restrictive educational setting.

Order

1. The IEP team, including a representative of the Respondent who is knowledgeable about the availability of resources of the Respondent, specifically locations that can implement the Student's IEP as revised in mid-December 2011, must meet to discuss and determine that placement no later than February 3, 2012.
2. The Respondent must advise the Petitioner of at least three alternate times for the meeting, which are not consecutive and occur on more than one day, and inform the Petitioner of which time the meeting will proceed if she fails to inform the Respondent of which meeting time she will attend.
3. If the Respondent fails to convene the IEP team meeting as required herein, the Respondent must reimburse the Petitioner for any unilateral placement she makes of the Student at either _____ School or _____ School after February 3, 2012, and before March 1, 2012.

⁷ 34 C.F.R. § 300.17(d).

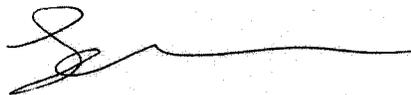
⁸ D.C. Mun. Regs. 5-E3010.2.

⁹ There are insufficient facts to determine whether there has been a material failure to implement the IEP, and this was not an issue specifically pled. The IEP was revised in mid-December and there was a break in classes over the final week of December before the complaint was filed on January 5, 2012. It is also not known what date the special education and related services in the revised IEP were to anticipated to begin, but they were required to start as soon as possible in compliance with D.C. Mun. Regs. 5-E3010.2.

4. Any placement proposal made, that is different from _____ and that the parties do not agree on, may be subject to further dispute resolution as this HOD does not address any disputes that have not yet arisen. If the Respondent proposes _____ such placement is inconsistent with the findings herein and will entitle the Petitioner to reimbursement pursuant to Order 3, above.

IT IS SO ORDERED.

Date: January 20, 2012



Jim Mortenson,
Independent 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 USC §1415(i).