

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
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Confidential

<p>STUDENT¹, by and through parent, Petitioner, us. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Zachary E. Nahass, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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SSSE
STUDENT HEARING OFFICE

¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

The -year-old student attended a religious school for the 2006-07 and 2007-08 School Years and started at the Academy for a private non-LEA school, for the 2008-09 School Year. DCPS identified the student as a child with a disability and made FAPE available on August 14, 2008, but the parent refused to enroll the student at a DCPS school.

On April 17, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). For relief, an MDT meeting and compensatory education were requested.

A Pre-hearing Conference Order was issued in this matter on May 18, 2009. The Order determined the first two issues as setout below. At the hearing, Counsel for the Parent withdrew issue two and stated a third issue. The third issue is also setout below.

A hearing was scheduled in this matter for 11:00 A.M., Tuesday, May 26, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, Washington, D.C. 20003. The hearing convened as scheduled.

Post-hearing closing statements were ordered.

Petitioner's Summation was filed May 27, 2009.

DCPS' Closing Argument was filed May 28, 2009.

Petitioner's Motion To Strike DCPS' Attachment to its Closing Argument was filed May 28, 2009. Here, Administrative Notice is taken of the DCPS attachment, Questions and Answers, Services for Children with Disabilities Placed by Their Parents in Private and Religious Schools, (REVISED 2-9-09) and Statement of Services Agreement for Private-Religious Schools (Revised July 21, 2005). The document is a DCPS document for public distribution. Moreover, during the hearing the undersigned specifically directed the Assistant Attorney General to submit such a document, if it existed. Petitioner's motion to strike is DENIED.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education 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:**
- 1. Did DCPS fail "to find" the student for the period April 7, 2007 thru August 14, 2008?**
 - 2. Should compensatory education be awarded to the student for the above stated period?**

3. Should DCPS have delivered services to the student from August 14, 2008 thru the present, eventhough the parent refused to enroll the student at a DCPS school and continued the student at the religious school?

FINDINGS of FACT

By facsimile dated May 18, 2009, the parent disclosed 4 witnesses and 5 documents.

By facsimile dated May 18, 2009, DCPS disclosed 7 witnesses and 12 documents.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The student was identified as a child with a disability sometime prior to the 2006-07 School Year while attending the _____ a public charter school in the District of Columbia and its own LEA.

2. The Parent enrolled the student at a religious school in the District of Columbia for the 2006-07 and 2007-08 School Years. Prior to enrolling the student, the Parent informed the school of the student's IEP. The principal of the school informed the Parent that the student would be "accommodate[d]." The religious school did not agree to implement the student's IEP. The Religious school did not implement the IEP. The Parent stated that the student had a right to attend the school of his choice.³

3. In March of 2008, the principal at the religious school informed the Parent that the student was academically struggling and suggested that DCPS be notified. The Parent requested DCPS to evaluate the student.⁴

4. DCPS completed the August 4, 2008 Report of Psychological Evaluation⁵ and convened an MDT/IEP/Placement meeting on August 14, 2008.⁶ An IEP was completed and Notice of Placement

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² -testimony of the Parent (No documentation whatever of the TOL eligibility determination was in the record, nor was the IEP.)

³ *ibid*

⁴ *ibid*

⁵ Parent Document No 3

⁶ DCPS Docs 1-5

issued for the student at _____ at _____ The Parent approved the August 14, 2008 IEP which disability coded the student Learning Disabled (LD) with 10 hours of specialized instruction and no related services.⁷ The MDT informed the Parent that DCPS would not implement the IEP at the private school. The Parent rejected the placement and enrolled the student at the _____ a private school in the District of Columbia. The Parent wanted the IEP implemented at the private school. No special education services were provided to the student at the private school.

5. The appropriateness of August 14, 2009 IEP was not challenged nor was the appropriateness of the placement at _____ at _____ challenged.

6. The October 9, 2007 Children's Hospital Speech/Language Evaluation⁸ recommended speech/language services for the student, but when or if the evaluation was ever delivered to DCPS was not established.

7. The December 10, 2008 HSC Pediatric Center Speech Therapy Evaluation⁹ recommended speech/language services for the student, but when or if the evaluation was ever delivered to DCPS was not established.

8. Questions and Answers, Services for Children with Disabilities Placed by Their Parents in Private and Religious Schools, (REVISED 2-9-09) and Statement of Services Agreement for Private-Religious Schools (Revised July 21, 2005), DCPS documents for public distribution, met the requirements at 34 CFR 300.131.

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

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⁷ DCPS Doc. No 4; DCPS Doc. No 6

⁸ Par. Doc. No 1

⁹ Par. Doc. No 4

ONE

DCPS did not fail at “child find.”

At regulation 34 CFR 300.111 the obligation on the part of an LEA to put in place procedures to identify, locate and evaluate children who are in need of special education and related services is set out. At regulation 34 CFR 300.131, this obligation is extended to parentally placed private school children with disabilities.

In this matter, the Parent placed the student in a religious school and then in a private school, each located in the District of Columbia. Starting from April 2007, two years prior to the herein April 17, 2009 Complaint, the Parent had enrolled the student at the religious school. Before the Parent enrolled the student for the 2006-07 School Year, the principal at the religious school informed the Parent that the “IEP” would not be implemented. Still, the Parent enrolled the student in the religious school.

During the period in question, DCPS had procedures in place for the identification, location and evaluation of parentally placed private school children with disabilities. The post-hearing submission of the DCPS documents for public distribution, Questions and Answers, Services for Children with Disabilities Placed by Their Parents in Private and Religious Schools, (REVISED 2-9-09) and Statement of Services Agreement for Private-Religious Schools (Revised July 21, 2005) met the requirements at 34 CFR 300.131. The Statement of Services Agreement indicated that only speech/language and occupational therapy services are provided to parentally placed private school children with disabilities.

In March 2008 and consistent with abovementioned procedures, the principal at the religious school suggested to the Parent to have the student evaluated by DCPS; the Parent did, and on August 4, 2008, DCPS completed a psychological evaluation of the student that indicated the student qualified for the LD disability coding. On August 14, 2008, DCPS completed an IEP that disability coded the student LD with 10 hours of specialized instruction; no speech/language services were included on the IEP, though two evaluations in the record recommended such services. Not in the record, however, was whether the evaluations came to the attention of DCPS or to the attention of any of the schools the student was attending at the time. The Parent approved the current IEP on August 18, 2008. As the Parent did earlier, she elected to continue the student at the private school. The Parent did not give consent for the initial provision of special education and related services as required at 34 CFR 300.300(d). *IDEIA 2004* did not require DCPS to implement an IEP in a religious-private school.

Herein, neither the August 14, 2008 IEP nor the proposed placement was alleged as being inappropriate.

TWO

This issue was WITHDRAWN.

THREE

Issue 3 is not cognizable under 34 CFR 300.507(a).

Regulation 34 CFR 300.140(c) provides that complaints concerning 34 CFR 300.132 through 300.135 and 300.137 must be filed in accordance with the State complaint Procedures at 34 CFR 300.151 through 300.153.

Petitioner cited D.C. Code 38-2561.5 as a jurisdictional basis to determine the issue. The undersigned disagreed. The abovementioned *IDEIA 2004* implementing regulations specify clearly the complaint procedures for disposition of complaints under 34 CFR 300.132 through 300.135 and 300.137. Had the implementing regulations not addressed the issue, a different jurisdictional circumstance would have been presented.

SUMMARY of the DECISION

The Parent did not meet the burdens on issues 1 and 3.

In consideration of the foregoing, the hearing officer made the following

ORDER

WITH PREJUDICE, the herein
Complaint is DISMISSED.

Dated this *5th* day of *June*, 2009

/s/ H. St. Clair

H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.