

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

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

STUDENT HEARING OFFICE
2009 JUL 28 PM 1:03

<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: Domiento C. R. Hill, Esq.</p> <p>Asst. Attorney General for DCPS: Kendra Berner, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

For the 2008-09 School Year, the Emotionally Disturbed disability coded student attended a cluster program for emotionally disturbed students at the DCPS neighborhood elementary school. The Guardian considered the placement inappropriate.

On June 23, 2009, Counsel for the Guardian 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denied the student a Free Appropriate Public Education (FAPE); an Expedited Hearing was requested but was subsequently withdrawn. Specifically, Counsel for the Guardian complained DCPS failed to implement the student's IEP and, for relief, requested a private placement at the Reginald S. Lourie Center, Rockville, Maryland.

A Pre-hearing Conference Order was issued in this matter on July 9, 2009. The Order determined the ISSUE as setout below.

A hearing in this matter was scheduled for 1:00 P.M., Monday, July 20, 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.

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.

ISSUE: Was the educational placement for the student was inappropriate?

FINDINGS of FACT

By facsimile dated July 13, 2009, the guardian disclosed 12 witnesses and 25 documents.

By facsimile dated July 13, 2009, DCPS disclosed 6 witnesses and 5 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 January 28, 2009 IEP disability coded the student Emotionally Disturbed (ED) with 26.5 hours of specialized instruction and 1 hour of Behavioral Support Services Outside General Education; the IEP indicated

ESY Services for the summer of 2009.²

2. For the summer of 2009, the student attended ESY Services at a DCPS school other than the neighborhood school; whether counseling or Behavioral Support Services were delivered was not established during the hearing.

3. The Behavioral Support Services indicated on the IEP were delivered to the student, 1 hour per week, October 7 thru 28, 2009 and February 6, 2009 thru April 20, 2009; thereafter no Behavioral Support Services were delivered.³

4. The Behavioral Support Services were discontinued because a social worker or professional was not available to deliver the services at the neighborhood school.⁴

5. By letter dated May 21, 2009, Counsel for the Parent requested certain education records including related service tracking logs; the logs were requested at the June 15, 2009 MDT meeting. According to the Special Education Coordinator (SEC) at the neighborhood school, the tracking logs were made available to the Guardian for the June 15, 2009 MDT meeting. The logs were a part of the herein DCPS disclosure.⁵

6. The Guardian thought the neighborhood school could not cope with the student's behavior and that the student was exposed to a series of incompetent dedicated aides; that the lack of continuity in aides disrupted the student's social/emotional progress. The Guardian testified that the student could not read a book without assistance and should not have been promoted to the 5th grade that with such a reading deficiency. The Guardian thought the school staff were not trained to meet the needs of disabled children; that the student should be placed at the Reginald S. Lourie Center.⁶ At the June 15, 2009 MDT meeting, the Guardian signed a Continuation of Services Form for Missed Services for the missed Behavioral Support Services.⁷

7. The SEC at the neighborhood school testified via telephone that she was familiar with the student; that the student attended her daily after school class. The SEC attended the January 28, 2009 MDT meeting at

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² DCPS Document No 1

³ DCPS Doc. No 3

⁴ -testimony of the Special Education Coordinator

⁵ Parent Doc. No 16; DCPS Doc. No 3

⁶ -testimony of the Guardian

⁷ DCPS Doc. No 5

which time the student's progress was noted and his dedicated aide discontinued as no longer needed; the student was in a class with 7 students, a teacher and a teacher assistant. The SEC testified that DCPS had informed her that a social worker would start at the school at beginning of the 2009-2010 School Year.⁸

8. The ED disability coded student was easily distracted, easily agitated and 1 to 2 grade levels behind in reading; still, he made academic and social/emotional progress during the 2008-09 School Year at the neighborhood school.⁹

9. The Director of the Reginald S. Lourie Center testified via telephone to the program, curriculum, teaching staff, related services provider staff, classes, class sizes and student body- 30 students, 10 from DCPS; that the center serviced primarily emotionally disturbed students. The student visited the center during the week of July 13, 2009; that after interviewing the student, reviewing his IEP, file and evaluation, the center accepted him. The student was scheduled to be in a class with 7 other 3-5th grade students, a certified special education teacher, a teacher aide and one or two dedicated aides. The student would receive educational benefit at the Reginald S. Lourie Center.¹⁰

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.

At regulation 34 CFR 300.115, an LEA is required to ensure a continuum of alternative placements, placements that can deliver the special education services to a child with a disability as indicated on the child's IEP.

The Guardian complained the DCPS neighborhood school was inappropriate for the student and, to substantiate the position, pointed to the fact that the school did not deliver all of the Behavioral Support Services indicated on the IEP; the non-delivered

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⁸ -testimony of the Special Education Coordinator

⁹ DCPS Doc. Nos 2 & 4; -testimony of educational Advocate

¹⁰ -testimony of the Director, Reginald S. Lourie Center

service was one hour out of 27.5 hours of special education services per week amounting to 12 or so hours. DCPS admitted the services had not been delivered, and DCPS and the Guardian agreed on June 15, 2009 to an amount of services to be delivered as compensatory services.

True, the IEP was not fully implemented, but was the non-implementation to the degree it constituted a Denial of FAPE. The hearing officer determined, No.

In Board of Education of Hendrick Hudson Central School District, West Chester County, et al. vs. Rowley, 458 U.S. 176 (1982), the Supreme Court had occasion to address the FAPE and at page 200 wrote:

We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

The IEP and its implementation more than met the Rowley test. The student made progress, meaningful progress, at the neighborhood school, progress both academically and socially/emotionally; this was born out by the education records for the student as well as by the testimonies from the SEC and the Educational Advocate, though the progress was not to the satisfaction of either. The Guardian pointed to the missed Behavioral Support Services or counseling and dissatisfaction with the dedicated aides for the student, but with those problems, the student progressed socially/emotionally to the point the January 28, 2009 MDT decided the aide was no longer needed.

Still, under IDEIA 2004, the Guardian could insist on an educational placement for the student that could fully implement the student's IEP. Behavioral Support Services or counseling is a great deal more important for the ED disability coded student than for the student disability coded Learning Disabled or Speech/Language impaired; counseling is a direct amelioration for emotional disturbance.

SUMMARY of the DECISION

The Guardian met her burden in this matter, but not the point warranting a private placement, not just yet, however.

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

ORDER

In the event a social worker, licensed counselor or psychologist is not assigned to the neighborhood school by the first day of the 2009-10 School Year, either on a

permanent or itinerate basis, DCPS will place and fund the student at the Reginald S. Lourie Center with transportation for the 2009-10 School Year.

Dated this *28th* day of *July*, 2009

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.

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