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

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

PARENT, on behalf of
[STUDENT],¹

Petitioner,

v

PUBLIC CHARTER SCHOOL,

Respondent.

Date Issued: September 2, 2010

Hearing Officer: Peter B. Vaden

Case No:

Hearing Date: September 1, 2010

Room: 4-A

HEARING OFFICER DETERMINATION

BACKGROUND

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner PARENT (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."). The Due Process Complaint arises out of the June 2010 decision of PUBLIC CHARTER SCHOOL ("PCS") to expel Student following a May 25, 2010 disciplinary incident, which the parties agree was not a manifestation of the Student's disability. Following the expulsion, PCS asserted that it had no duty to provide the Student with an ongoing placement for the 2010-2011 school year. At the request of the Parent, the case was set for an expedited hearing.

¹ Personal identification information is provided in Appendix A.

On August 20, 2010, the Parent and PCS filed a joint motion for the Hearing Officer to issue a determination, without a hearing, on the issue of whether PCS was obliged to continue to provide an appropriate placement for the Student following his expulsion at the end of the 2009-10 school year. In a written decision issued on August 23, 2010, I held that PCS remains responsible for providing a FAPE to the Student until he is enrolled in another LEA. The remaining issue for this hearing is whether to order PCS to place Student at Private Placement for the 2010-2011 school year.

The Student, an AGE boy on the hearing date, is a resident of the District of Columbia and is eligible for special education services under the primary disability, Emotional Disturbance ("ED"). The Parent's due process complaint, filed on July 28, 2010, named PCS as respondent. The undersigned Hearing Officer was appointed on August 3, 2010, after another hearing officer declined the appointment. The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

The due process hearing was held before the undersigned impartial hearing officer on September 1, 2010 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an audio electronic recording device. The parties, who were both represented by counsel, did not appear in person. In lieu of calling witnesses, the parties stipulated that PCS had not proffered an ongoing placement for the Student for the 2010-11 school year and that Student's placement at PRIVATE PLACEMENT would be proper under the IDEA. Counsel for the Petitioner further stipulated that the only relief sought by the Parent in this hearing is for an order to place the Student at Private Placement for the 2010-2011 school year. Petitioner Exhibits P-1 through P-12 and Respondent Exhibits R-1 through R-7 were

admitted without objection. In addition, Exhibits 1 through 9, attached to the Joint Motion for Adjudication on the Pleadings, were admitted without objection.

ISSUE

The sole issue to be determined is whether, due to its failure to offer an appropriate placement for the Student for the 2010-11 school year, PCS must pay the costs of sending the Student to Private Placement.

FINDINGS OF FACT

The parties have previously stipulated to the following undisputed facts:

1. Student is an AGE resident of the District of Columbia who is eligible for specialized instruction and related services as a qualified child with Emotional Disturbance ("ED").
2. Student's current IEP prescribes 26.5 hours per week of specialized instruction, out of the general education setting, and 60 minutes per week of behavioral support services.
3. Student was enrolled at a PCS campus for the 2009-2010 school year.
4. PCS is its own local education agency ("LEA") and receives federal funds under the IDEA for the purpose of implementing the requirements of the IDEA.
5. Shortly before the end of the 2009-2010 school year, PCS expelled Student.
6. A manifestation meeting was held following the incident that resulted in Student's expulsion. The Multi-Disciplinary Team ("MDT") members agreed that the Student's behavior was not a manifestation of his disability.
7. PCS did not provide services for Student following his expulsion.
8. At a resolution meeting held on August 3, 2010, the Parent accepted PCS' s offer of compensatory education to remedy the services missed from the date of the Student's

suspension/expulsion to the end of the school year, June 22, 2010.

9. PCS has not provided the student with a placement for the 2010-2011 school year.

In addition, on the day of the hearing, the Parties further stipulated that (a) PCS still has not offered a placement for Student for the 2010-2011 school year, and (b) that Private Placement would be a proper placement for Student under the IDEA.

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:

As a recipient of federal funds under the IDEA, the District of Columbia ("the District") is required to provide all disabled children within its jurisdiction with "a free appropriate public education." Under the statute, the District is obligated to devise Individualized Education Programs ("IEPs") for each eligible child, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school. *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (citations omitted). Under the D.C. Regs., the Local Education Agency ("LEA") is responsible for making FAPE available to each eligible District child with a disability. *See, e.g.*, D.C. Regs. tit. 5-E, § 3002.1(a). PCS has elected to be an independent LEA under D.C. Regs. tit. 5-E, § 3019.2(b). Having elected to be an LEA, PCS is responsible for complying with all requirements applicable to an LEA under the IDEA. *Id.*, § 3019.3. PCS has therefore assumed responsibility for the District's obligation to match the Student with a school capable of fulfilling his IEP needs, and for paying the costs of an appropriate private school if no suitable public school is available.

In this case, the parties have stipulated that PCS expelled the Student at the end of the 2009-10 school year and that PCS has not been able to match the Student with another school capable of fulfilling his IEP needs. I find, therefore, that PCS has failed to make a FAPE available to the Student for the 2010-11 school year. The parties have also stipulated that Private Placement would be a proper placement for the Student under the IDEA². The U.S. Department of Education regulations implementing the IDEA require that before a public agency may place a child with a disability in, or refer a child to, a private school, the agency must initiate and conduct a meeting to develop an IEP for the child. A representative of the private school must attend the IEP meeting. See 34 CFR § 300.325(a).

ORDER

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

1. PCS shall convene an MDT/IEP meeting, within 10 business days of this HOD, to effect the Student's placement at Private Placement for the 2010-11 school year. The Student's MDT/IEP team at PCS shall develop a private school IEP for the child conforming to the October 19, 2009 determinations of the Student's IEP team, updated as appropriate, and with the requirements of 34 C.F.R. § 300.325. A representative of Private Placement must attend the IEP meeting.
2. All other requests for relief made by the Parent herein are deemed withdrawn.

Date: September 2, 2010



Hearing Officer

² When a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits." *Florence County School Dist. Four v. Carter by and through Carter*, 510 U.S. 7, 11, 114 S.Ct. 361, 364 (1993) (Citations omitted).

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).