

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
Student Hearing Office

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**Confidential**

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STUDENT HEARING OFFICE  
2009 NOV - 5 AM 11: 07

<p>STUDENT<sup>1</sup>, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools</p> <p>Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>November 5, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Miguel Hull, Esq.</p> <p>Counsel for DCPS: Daniel Kim, Esq.</p> <p><u>Hearing Officer:</u> Kimm H. Massey, Esq.</p>
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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

## I. JURISDICTION

The Due Process hearing was convened and this Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. §§ 1400 et. seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

## II. PROCEDURAL BACKGROUND

Petitioner filed its Complaint on July 27, 2009, alleging that DCPS failed to place Student in an appropriate school and that compensatory education may be appropriate as a result. DCPS filed its Response on August 11, 2009, asserting therein that Student's present school site can implement his IEP, and therefore, is an appropriate location of services.

The prehearing conference for this matter was held on September 9, 2009, and the hearing officer issued the Pre-Hearing Order on September 15, 2009.

The parties submitted their Five-Day disclosures on September 21, 2009, with Petitioner submitting 14 documents (Petitioner's Exhibits 1 - 14) and DCPS submitting five documents (DCPS-01 through DCPS-05).

The due process hearing for this matter was originally scheduled for September 28, 2009; however, by letter dated September 25, 2009, Petitioner requested a continuance due to Parent's inability to attend based on a medical condition. On September 28, 2009, the hearing officer issued an Interim Order on Continuance Motion that reset the hearing to October 26, 2009.

The due process hearing was convened on October 26, 2009, as scheduled, and DCPS's disclosed documents were admitted into the record without objection. DCPS objected to the admission of Petitioner's Exhibits 6, 8 and 9 on the ground that they were irrelevant because they were generated prior to the current placement, as well as to Petitioner's Exhibit 7 on the ground that it purports to be a psychoeducational evaluation, but the evaluator merely holds a Master's in Special Education. Moreover, Petitioner withdrew Exhibits 10 - 14 from the record. The hearing officer overruled the objection to Exhibits 6, 8 and 9, ruling that the documents would be accepted as relevant background documents. However, with respect to Exhibit 7, the hearing officer held that the document would be admitted into the record but its use would be limited to the educational testing portion only. Petitioner's remaining documents, Exhibits 1 - 5, were admitted into the record without objection.

## III. ISSUE(S)

1. Did DCPS fail to place Student in an appropriate school?
2. If so, is Student entitled to compensatory education as a result?

#### IV. FINDINGS OF FACT

1. Student is a [REDACTED] old disabled student whose disability classification is Autism.<sup>2</sup>
2. Student's most recent IEP is dated April 14, 2009. Pursuant to the IEP, Student is to receive 1382 minutes per week of specialized instruction and 45 minutes per week of speech-language pathology services.<sup>3</sup>
3. At Student's April 14, 2009 IEP meeting, the IEP team determined that Student would transition to high school for SY 2009/10, and DCPS indicated that it has placements for autism at two particular high schools.<sup>4</sup>
4. DCPS ultimately assigned Student to attend one of the two autism programs it had mentioned at the April 14, 2009 IEP meeting. The program is a full-time out-of-general education cluster program that offers a low student-to-teacher ratio. The students are taught academic skills, social skills, and pre-vocational skills for self-sufficiency in society. The program consists of three classrooms for autistic students. In Student's classroom, there is one special education teacher, two aides, and a total of six students. Of the remaining two classes, one has seven students, one teacher and three aides (because one of the students has a dedicated aide), while the other has six students, one teacher and two aides.<sup>5</sup>
5. On July 27, 2009, which was prior to the start of the current school year, Petitioner filed its Complaint alleging that DCPS had failed to place Student in an appropriate school because the autism program at the assigned school is geared toward students with full-blown autism who are functioning at a much lower level than Student, who allegedly is quite high functioning.
6. Parent and her husband did not go to visit the autism program at Student's assigned school until the end of August, approximately one month after the Complaint was filed. Parent was not happy with the program during her visit to the school because all of the students were drawing paintings at the time, the students did not respond to Parent's attempts to communicate with them, the teacher advised Parent that all of the students were not reading at and diagnosed at the same level, the teacher indicated that the older students would not obtain credits toward graduation, and Parent wants Student to obtain credits toward graduation. However, Parent has not requested a meeting concerning Student since he began at the current placement.<sup>6</sup>
7. The educational advocate did not go to visit the autistic program at Student's current

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<sup>2</sup> See DCPS-01.

<sup>3</sup> DCPS-01; Petitioner's Exhibit 3.

<sup>4</sup> Petitioner's Exhibits 4 and 5.

<sup>5</sup> Testimony of educational advocate; testimony of special education teacher.

<sup>6</sup> Testimony of Parent.

school until mid-September, which was also subsequent to the filing of the July 27, 2009 Complaint. The advocate's visit lasted for approximately one hour, and during that time, the advocate did not spend any one-to-one time with Student or any of the other students in the program. Indeed, according to the advocate, the individuals representing Student and Parent in this case "just felt" the environment at the current school would not be beneficial to Student. Moreover, Petitioners' representatives have no concerns about Student's IEP, and they acknowledge that the IEP is being implemented in that Student has been placed in a full-time out-of-general education program.<sup>7</sup>

8. Student's current special education teacher has 22 years of experience as an educator. The teacher helped start the autism program at Student's current school ten years ago and has worked there ever since. In the teacher's opinion, Student is an autistic student who needs a small student-to-teacher ratio, and he is not a higher functioning student than the other students in his class because he has scattered skills. Student may be a little higher functioning in math in that he can add single digits and tell time by looking at a clock, but Student cannot add two double-digit numbers or tell the amount of time elapsed between two times such as 11:40 and 12:00. Similarly, Student has comprehension issues and he cannot apply all ten of the capitalization rules in grammar. As a result, Student cannot function in a regular ninth grade classroom and he could not earn credits toward graduation even if given a chance to do so. In addition to Student's lack of readiness for a regular education class on a cognitive level, Student "spaces out," talks to himself, and laughs inappropriately. These behavioral issues would be a problem in a regular education class, but the autism program at Student's current school is equipped to deal with these behaviors.<sup>8</sup>
9. Student's most recent educational assessment, which is dated December 21, 2007, indicates that Student scored on the second to third grade level in broad reading, broad math, and broad written language, and his remaining scores on academic testing tended to cluster primarily at the third grade level.<sup>9</sup>

## V. CONCLUSIONS OF LAW

As the party seeking relief in this case, Petitioner bears the burden of proof. *See* 5 D.C.M.R. § 3030.3; *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

### 1. Appropriateness of School Site

Petitioner has alleged that DCPS failed to place Student in an appropriate school because the autism program at Student's assigned school is geared toward students with full-blown autism who are functioning at a much lower level than Student, who allegedly is quite high functioning. However, the evidence in this case demonstrates that Student is not functioning at a higher level than his classmates and, as of his most recent academic testing two years ago, Student was

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<sup>7</sup> Testimony of advocate.

<sup>8</sup> Testimony of special education teacher.

<sup>9</sup> Petitioner's Exhibit 7.

functioning at the second to third grade level academically. Based on this evidence, the hearing officer concludes that Petitioner has failed to meet its burden of proof on its claim of an inappropriate school site.

## **2. Compensatory Education**

Petitioner failed to present any evidence at all, either documentary or testimonial, in support of its claim for compensatory education. As a result, the hearing officer declines to consider the claim herein.

## **VI. SUMMARY OF DECISION**

The hearing officer determined that Petitioner failed to meet its burden of proof on both claims asserted.

## **VII. ORDER**

1. Petitioner's July 27, 2009 Complaint is hereby **DISMISSED**, and its requests for relief therein are hereby **DENIED**.

/s/ Kimm H. Massey

Kimm H. Massey, Esq.  
Impartial Due Process Hearing Officer

Dated this 5th day of November, 2009.

### **NOTICE OF APPEAL RIGHTS**

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision may appeal to a State court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. § 1415(i)(2).

APPENDIX A

INDEX OF NAMES

In the MATTER OF "Student" v. DCPS

Placement Specialist Monitor	
Principal	
DCPS School Psychologist	
Third Grade Teacher	
Special Education Teacher, Roosevelt BHS	Dr. Shency R. Hawkins
Special Education Specialist, Cluster IV	
Occupational Therapist	
Physical Therapist	
Private Psychologist	
Child and Child's DCPS ID # or SSN (insert ID # or Case Number on each page of the HOD vice child's name)	[REDACTED]
Child's Parent(s) (specific relationship)	[REDACTED]
Child/Parent's Representative	[REDACTED]
School System's Representative	[REDACTED]
Parent's Advocate	[REDACTED]
Name of School	[REDACTED]
Student's Cousin	
Admissions Coordinator	
Clinical Therapist	
Spanish Language Interpreter	[REDACTED]

