

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

STUDENT, through the legal guardian ¹)	
)	
Petitioner,)	
)	Complaint Filed: March 27, 2009
v.)	
)	Hearing Dates: May 6, 2009
THE DISTRICT OF COLUMBIA)	May 26, 2009
PUBLIC SCHOOLS)	
)	
Respondent.)	

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

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¹ Personal identification information is provided in Attachment A.

I. JURISDICTION

This hearing was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. INTRODUCTION

Petitioner is the parent/guardian of a _____-year-old emotionally disturbed, special education student ("Student") attending a District of Columbia public school. Petitioner filed a Due Process Compliant Notice ("Complaint") on March 27, 2009. The Complaint alleged that the District of Columbia Public Schools ("DCPS") failed to provide the Student an appropriate placement because the Student's school cannot provide the Student with the level of therapeutic and academic supports she requires. During the prehearing conference, counsel for Petitioner alleged that staff at the Student's school informed Petitioner that, because of student's intense emotional concerns, the school is unable to address the student's emotional issues. Petitioner sought an order requiring DCPS to fund a private school placement for the Student.

On April 9, 2009, Counsel for DCPS filed a Response to Parent's Administrative Due Process Complaint ("Response"). The Response asserted that DCPS had updated the Student's individualized educational program ("IEP") in March 2009, and that Petitioner was in agreement with the IEP. The Response also asserted that the Student's IEP requires DCPS to provide the Student 27.5 hours of specialized instruction and two hours of behavioral support services each week and that the Student's IEP is appropriate. The Response further asserted that the Student's teacher believes the Student's current placement is appropriate. The Response further asserted that DCPS either has or is in the process of conducting a functional behavior assessment and developing a behavior intervention plan to address the Student's behavioral concerns.

A prehearing conference took place on April 13, 2009. This Hearing Officer issued a prehearing order on May 6, 2009. The due process hearing was scheduled for 1:00 p.m. on May 6, 2009. On May 6, 2009, counsel for Petitioner was not prepared to proceed and the hearing was continued to May 26, 2009. At the due process hearing on May 6, 2009, counsel for Petitioner presented three witnesses: Petitioner, the Student's community-based case manager ("Case Manager"), and a representative from the _____ a non-public school in Rockville, Maryland. DCPS rested on the record and presented no testimony.

III. RECORD

Due Process Complaint Notice, filed March 27, 2009;
DCPS Response to Parent's Administrative Due Process Complaint Notice, filed April 9, 2009;
Petitioner's Letter Motion for Continuance, filed April 15, 2009;

Petitioner's Letter Motion for Continuance, filed May 6, 2009;
Interim Order on Continuance Motion, issued May 11, 2009;
Prehearing Order, issued May 6, 2009;
Petitioner's Five-Day Disclosure, filed April 28, 2009 (Exhibits 1-19);
DCPS Five-Day Disclosure, filed April 28, 2009 (identifying two witnesses and including proposed exhibit 1);
Compact Disc of Hearing conducted on May 6, 2009; and
Compact Disc of Hearing conducted on May 26, 2009.

IV. ISSUE PRESENTED

Whether DCPS denied the Student a free, appropriate, public education by failing to provide an appropriate placement for the Student 2008-2009 school year.

V. FINDINGS OF FACT

1. The Student is a _____ year-old, _____-grade, special education student who attends a District of Columbia school.² Both the Student and Petitioner reside in the District of Columbia.³

2. The Student's cognitive functioning is in the average range and her full scale IQ is 100.⁴ The Student was diagnosed with dysthymic disorder and oppositional defiant disorder in 2007.⁵ She does not appear to warrant special education services as a student with learning disabilities; however, she requires special education services as a student with an emotional disturbance ("ED").⁶

3. The Student's most recent IEP was developed on March 6, 2009.⁷ The IEP classifies the Student as ED and requires DCPS to provide the Student 27.5 hours of specialized instruction weekly outside of the general education setting.⁸ The IEP also requires DCPS to provide the Student 60 minutes of behavioral support services each week outside the general education setting.⁹ The Student is in a full-time, out of general education placement.¹⁰

² DCPS Exhibit 1.

³ *Id.*

⁴ Petitioner Exhibit 2 (November 26, 2007, Comprehensive Psychological Evaluation).

⁵ *Id.*

⁶ *Id.*

⁷ DCPS Exhibit 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

4. The Case Manager visits the Student's school about every other week.¹¹ During those visits, she observed that the Student is greatly challenged in controlling her behavior and outbursts.¹² The Student is otherwise doing well academically.¹³

5. The Student is socially isolated from her peers.¹⁴ The Student makes inappropriate comments to staff and other students.¹⁵ The Student is unable to control herself in class.¹⁶ The Student's behavior requires the staff at her school to remove her from class daily.¹⁷ When the Student disrupted the class, the school staff asked that the Student leave school early that day.¹⁸

6. The Student's teacher employs strategies to assist the Student, including seating her away from the other students, placing her by the teacher's desk, redirecting her, and sending her to the school therapist when the therapist is available.¹⁹ The Student's teacher, informed the Case Manager that the Student should be educated in a smaller and more therapeutic setting.²⁰

7. At a meeting of the multidisciplinary team ("MDT") on March 6, 2009, the MDT indicated that it wanted to implement more behavioral implementation plans for the Student. To make her educational program more suited to her needs.²¹ Both the May 20, 2008, IEP and the March 6, 2009, IEP contained numerous behavioral goals.²²

8. Petitioner does not believe the Student's school is providing the Student the services she requires.²³ However, the Student's behavior improved after she went to court and met with a judge in April 2009.²⁴ Since then, the Student has not been in any trouble at school.²⁵

9. The School could meet the Student's social-emotional, behavioral, and academic needs.²⁶ At the Student would be in a class of five students.²⁷ She would participate in two sessions of group counseling every day and family counseling once a week.²⁸

¹¹ Testimony of Case Manager.

¹² *Id.*

¹³ *Id.*

¹⁴ Petitioner Exhibit 2.

¹⁵ Testimony of Case Manager.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See Petitioner Exhibit 3 and DCPS Exhibit 1.

²³ Testimony of Petitioner.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Testimony of _____, clinical coordinator of _____

²⁷ *Id.*

10. The _____ provides a high level of support and supervision to its students.²⁹ _____ could implement the Student's IEP.³⁰ The Student has been accepted for enrollment at _____ The annual tuition at _____ is a little over \$50,000.³²

VI. CREDIBILITY DETERMINATIONS

This Hearing Officer found the testimony of all of the witnesses credible as it was uncontroverted.

VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.³³ Under IDEA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.³⁴

IDEIA requires DCPS to assure a "free appropriate public education" ("FAPE") for all disabled children.³⁵ A free, appropriate public education "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."³⁶ DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."³⁷

VIII. DECISION

Petitioner Failed to Prove By a Preponderance of the Evidence that DCPS Failed to Provide the Student an Appropriate Placement.

IDEIA "imposes no clear obligation upon the District of Columbia beyond the requirement that [disabled] children receive some form of specialized education."³⁸ The District is required only to make available a "basic floor of opportunity" that is "reasonably calculated to enable the child to receive educational benefits . . . sufficient to confer some educational benefit

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Testimony of _____ Admissions Director.

³³ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

³⁴ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

³⁵ 20 U.S.C. § 1412(1).

³⁶ *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).

³⁷ 34 C.F.R. § 300.101.

³⁸ *Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 195 (1982)).

upon the [disabled] child,” or a program “individually designed to provide educational benefit.”³⁹

Here, counsel for Petitioner failed to prove any procedural inadequacy in the development of Student’s IEP that resulted in the Student’s inability to access her education or otherwise hamper her ability to progress academically. Counsel for Petitioner did not prove that the content of the IEP was inappropriate. Nor did he establish that Petitioner’s school either (1) failed to make specialized instruction available to Petitioner or (2) that the specialized instruction the school provided was inappropriate.

Finally, counsel for Petitioner did not prove that DCPS failed to address the Student’s behavioral problems. To the contrary, the Case Manager testified that the school employed strategies in the classroom, including seating the Student away from the other students, placing her by the teacher’s desk, redirecting her, and sending her to the school therapist, in attempt to assist the Student and reduce her outbursts and other behavioral problems. The Case Manager also testified that DCPS recently implemented new BIPs to make the Student’s environment more accommodating. Moreover, Petitioner testified that the Student’s behavior has improved since April 2009.

In a perfect world, Petitioner would receive one-on-one instruction and a multitude of services to address her suspected disabilities. However, IDEIA does not require DCPS to “maximize the potential” of this Student. *McKenzie*, 882 F.2d at 886 (noting that the Supreme court stressed the lack of any such requirement four separate times in *Rowley*, 458 U.S. at 189, 197 n. 21, 198, 199). Rather, it only has to provide a “basic floor of opportunity.” 882 F.2d at 886.

Counsel for Petitioner failed to show that DCPS did not provide the Student an appropriate educational opportunity, much less a basic floor of opportunity. Petitioner offered no evidence that the Student’s current placement in any way compromised the Student’s substantive rights. *See Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007) (upholding placement in public school). Thus, Petitioner failed to establish by a preponderance of the evidence that DCPS failed to provide an appropriate placement for the Student.

³⁹ 882 F.2d at 886.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the response thereto, and the testimony and exhibits presented at the due process hearing, this 5th day of June 2009, it is hereby

ORDERED that this case is **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/

Frances Raskin
Hearing Officer

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision 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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

Copies to:

Donovan Anderson, counsel for Petitioner

Laura George, counsel for Respondent

Student Hearing Office