

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

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Confidential

OSSE
STUDENT HEARING OFFICE
2009 JUN -4 AM 11:39

<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: Maria E. Blaeuer, Esq.</p> <p>Asst. Attorney General for DCPS: Linda M. Smalls, 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

Sometime in February 2009, the student ran out of the building at his current educational placement and approached the highway before being persuaded to return to the school building.

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). Specifically, Counsel for the Parent complained the current DCPS educational placement was unsafe for the student and, for relief, requested a private placement at the Maryland.

A Pre-hearing Conference Order was issued in this matter on May 19, 2009. The Order determined the ISSUE as setout the below.

A hearing in this matter was scheduled for 9:00 A.M., Friday, May 29, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 5B, 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: Is the current educational placement safe for the student?

FINDINGS of FACT

By facsimile dated May 21, 2009, the parents disclosed 4 witnesses and 6 documents.

By facsimile dated May 21, 2009, DCPS disclosed 8 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 current February 5, 2009 IEP disability coded the student Emotionally Disturbed (ED) with 1920 minutes of special education services per week in Out General Education; the current educational

placement (CEP) for the student is a full-time therapeutic placement for ED students.²

2. The student attended his neighborhood DCPS elementary school but was placed the CEP beginning with the 2008-09 School Year, a full-time therapeutic placement for ED students, because of serious misbehavior at the neighborhood school; the student has been under the care of a psychiatrist for about two years. He is on two medications, one for ADHD and the other for his emotional disturbance. The CEP often called the mother during the school day about the student's misbehavior in school; on occasion she would go to the school and sit with the student. The CEP provides family therapy. The student had disciplinary problems while traveling to and from the CEP on the DCPS provided bus. He disobeys staff, disrupts the school environment and assaults staff and schoolmates. He was psychiatrically hospitalized at Children's Hospital for about 7 days in February 2009 because he ran out of the school building toward a nearby highway; that since the hospitalization, his medication was changed and his behavior has improved. The student's academic performance is "good." The mother thought the CEP's major deficiency was that it was near a highway and that _____ was preferable as it was not near a highway; that it would be a safer placement for the student.³

3. As a result of calls from the CEP, the father often visits the school and sits with the student. The student becomes upset when he can not have his way. The father thought that the student would again run out of CEP school building toward the highway; the father considers the CEP unsafe. After the hospitalization and change of medication, the CEP called the father less and the student's behavior improved; the student's academic performance also improved while at the CEP. The father does not believe the student's behavior has improved because of the change in medication to the degree CEP records reflect. On one occasion, the police were called to correct the student's behavior on the bus. The father attends family therapy at the CEP and thought it was helpful. The father thought the CEP was unsafe because of its proximity to the highway; that the _____ would be a safer placement for the student as it was not near a highway or a large amount of vehicular traffic.⁴

4. In February 2009, the student ran out of the school building, crossed a nearby street and ran up an embankment toward a highway; he stopped

² DCPS Document No 3

³ -testimony of the mother

⁴ -testimony of the father

near the highway. School staff chased out of the building after the student but stopped when the student stopped near the highway. Staff successfully coaxed the student down the embankment away from the highway. The student then ran past staff but was eventually caught and returned to the building. The parents were called. The student has not run out of the building since February 2009.

5. The Educational Advocate had no experience with the CEP before the herein April 17, 2009 Complaint.⁵

6. The _____ serves students disability coded ED and has a crisis room for students in crisis, a system for monitoring student behavior and an academic program that meets the requirements of DCPS and the State of Maryland; the school can deliver all relates services. The school can provide educational benefit to the student.⁶

7. The Special Education Coordinator at the CEP conducted February 5, 2009 MDT/IEP meeting at which an IEP and behavior intervention plan (BIP) were completed.⁷ The Coordinator described the CEP as a full-time therapeutic placement for ED disability coded students; that the student began at the CEP with the 2008-09 School Year. The CEP provides counseling services- individual and group - to students and families with the assistance of the D. C. Department of Mental Health. The student's in-school behavior is monitored and recorded every 5 minutes, rated green for good, yellow for warning or red for bad behavior; two crisis rooms are maintained, one with padding on the floor for the student completely out of control, the other with a counselor to provided one-to-one counseling and assistance with class work. A security guard with a hand-held radio is posted at each door to the school; the doors cannot be locked. During the February 2009 incident, the staff knew immediately when the student left the building and immediately gave chase; the student was safely returned to the school. The parents were notified as they had requested to be notified whenever the student misbehaved. The student has behavior problems traveling to and from school on the DCPS provided school bus; an MDT meeting convened in March 2009 to discuss the student's behavior on the bus. Since the February incident and the March 2009 MDT meeting, the student's behavior has improved; a dedicated aide is assigned to the student.⁸

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⁵ -testimony of the Educational Advocate

⁶ -testimony of the Director of Transition Services, the

⁷ DCPS Doc. No 3

⁸ -testimony of the Special Education Coordinator at the CEP

8. The Special Education Teacher described the student's behavior as very much improved since February 2009; the student also has made progress academically. Four adults, including the teacher, and 10 students, including the student, make up the student's the classroom; one of the adults is an aide dedicated to the student. The Teacher could not recall when the dedicated aide was assigned to the student. The Teacher is trained in proper physical restraint; he explained the roles of the himself, the dedicated aide and the student in monitoring and recording the student's in-school behavior. Students are not allowed in the hallway without a pass and are always under adult supervision. When a student not completely out of control is sent to the crisis room, an adult accompanies the student and counsels and assist the student with the class work; a student completely out of control is sent to the padded crisis room.⁹

9. The Mental Health Specialist counsels the student, individually and group, and completed the functional behavioral assessment (FBA) of the student that is the basis of the current BIP; the February 11, 2009 MDT used the FBA to increase the student's counseling from 1 session per week to 2 sessions per week. The Specialist has counseled the student since February 2009; during that period, the student's behavior has improved. The change in medication has helped the student. The Specialist consults with the D.C. Department of Mental Health psychiatrist that treats the student.¹⁰

10. The CEP suspended the student during the 2008-09 School Year for fighting, disruption, disobedience and general disregard for school routine.¹¹ The student is severely emotionally disturbed with serious behavior problems.

11. The CEP is appropriately implementing the February 5, 2009 IEP and BIP and is an appropriate educational placement for the student.

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

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⁹ -testimony of the Special Education Teacher

¹⁰ -testimony of the Mental Health Specialist, D.C. Department of Mental Health

¹¹ Parent Doc. No 5

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. A violation of the regulation was not established.

At regulation 34 CFR 300.116, the process for making placement decisions is set out. The process is to ensure that the placement decision for a child with a disability is based on the child's IEP, and that the parent of the child is included in the placement-decision making process. A violation of the regulation was not established.

At regulation 34 CFR 300.148(e)(1)(iii) the likelihood of physical harm is addressed. While there is a possibility of the student running from the CEP building toward the highway, even with the safety precautions in place at the CEP, the hearing officer was not persuaded that such an event was probable or likely to repeat itself and result in physical harm; such an incident has not happened since February 2009 and that one did not result in physical harm.

The student's behavior has improved since his hospitalization, psychiatric treatment, change in medication, BIP, assignment to a dedicated aide and increased counseling.

While not specifically stated in the regulation, placements must be safe for the children with disabilities attending them. Herein, the parents did not show the CEP to be unsafe.

SUMMARY of the DECISION

The parents did not meet their burden.

The CEP and the _____ can implement the student's current IEP. Moreover, everyone agreed that the student made behavioral and academic progress at the CEP.

The parents want the student away from the highway that the CEP happens to be near. The problem as demonstrated once in February 2009 and not since is that the student might bolt and run from the school; the student's behavior is going to be the same at either placement. Short of a lock-down facility, the possibility of the student bolting is unavoidable whichever the placement, and no one at the hearing suggested a residential or lock-down placement for the _____ year-old.

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

ORDER

WITH PREJUDICE, the herein
Complaint is DISMISSED.

Dated this *4th* day of *June*, 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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