

DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
State Enforcement and Investigation Unit
Office of Review and Compliance

STUDENT HEARING OFFICE
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CONFIDENTIAL

In the Matter of:

STUDENT,

Petitioner,

v.

LOCAL EDUCATIONAL
AGENCY,

Respondent.

Case No.

**HEARING OFFICER
DECISION**

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ATTORNEY GENERAL'S OFFICE
OSSE

I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on April 29, 2009.

Petitioner waived the resolution session. Respondent answered the complaint on May 8, 2009.

On June 24, 2009, Petitioner requested a continuance, which Respondent did not oppose.

I granted that request.

On July 20, 2009, I held a due-process hearing under the applicable sections of the Individuals with Disabilities Education Improvement Act of 2004 (*see* 34 C.F.R. §§ 300.1-300.718) and of the District of Columbia municipal regulations (*see* 5 DCMR §§ 2500-3033). At the hearing, both parties were represented by counsel. Petitioner entered into evidence, without objection, twenty-one documents marked P-1 to P-21. Three witnesses testified on Petitioner's behalf. Respondent entered into evidence, without objection, six documents marked R-1 to R-6. No witnesses testified on its behalf.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied him a free and appropriate education (“FAPE”) by failing to appropriately place him.¹ For this lapse, Petitioner requests an award of compensatory education.

III. FINDINGS OF FACT

Based on the witnesses’ testimony, the documentary evidence presented by the parties, the arguments made by counsel, and my own observations at the due-process hearing, I find:

1. Petitioner is a -year old, learning- and emotionally-disabled student who attends School A.
2. On April 22, 2008, Respondent placed Petitioner at School B and provided in his IEP that he receive each week 26.5 hours of specialized instruction and one hour of psychological services. The IEP’s meeting notes state that the “setting accepted by the MDT is: out of General Education Classroom.”
3. Petitioner’s mother testified that she was told at the April 22, 2008 IEP meeting that her son would be placed in a “full-time special education program.” This is historically consistent with a prior notice issued by Respondent on June 8, 2006 (see P-14), which switched Petitioner’s educational setting from general to out of general and which recommended “a full-time therapeutic placement for his educational setting.”
4. Nonetheless, Petitioner was placed at School B, which served both special and general education students.
5. Petitioner’s mother further testified that her son—despite the requirements of his IEP—took art, gym, and math classes with general-education students at School B.

¹ Petitioner had raised other issues, but abandoned them, apparently, because the parties had reached agreement on those issues.

6. At some point in during the 2008-09 school year, Petitioner threatened to kill student or staff at School B. He was immediately hospitalized and remained there for a month, according to his mother.

7. Witness One, a clinical therapist testified, that it was his opinion that Petitioner's violent incident and hospitalization probably resulted from frustration and anxiety that he built up as a result of not having the proper educational, counseling, and speech-language services at School B. He surmised that Petitioner experienced a decompensation of behavior (or breakdown), which is consistent with the diagnosis Petitioner received when he was hospitalized (the documents refer to him having a "mood disorder.") Witness One also testified that he was familiar with the full-time special education programs in the District of Columbia because for Respondent for several years before going into private practice. He said that School B does not have a full-time emotional disturbance program, which Petitioner needed, and he was sure of that because it is not currently on Respondent's distributed list for emotionally disturbed placement programs.

8. Petitioner's mother testified that Petitioner returned to School B on his release from the hospital, but was told by the school's principal that Petitioner's attendance there would be temporary until they could find him "an appropriate placement."

9. Petitioner eventually was transferred to School A, which he now attends. No one disputes that it is a full-time special-education program with only special-education students attending or that Petitioner is not having the same difficulties he experienced at School B.

10. Petitioner's academic math, reading, and written expression objectives were carried over almost verbatim from his April 22, 2008 IEP to his April 20, 2009 IEP.

IV. CONCLUSIONS OF LAW

Petitioner shoulders the burden of proof in this due-process proceeding, *see* 5 DCMR § 3030.3, and must carry it by a preponderance of the evidence. *See* 20 U.S.C. § 1415 (i)(2)(c). He has done so.

Petitioner's IEPs in 2006, 2008, and 2009 require that he be placed in a full-time special education setting. Indeed, that is what the multidisciplinary team promised Petitioner's mother on April 29, 2008—that he would be placed in such a school. Yet, for the 2008-2009 school year, Respondent placed him in a school that is not full-time and that gave him classes in general education.

The consequence of not keeping that promise—whether or not intentional—is that Petitioner experienced an emotional breakdown that put him and others at School B at physical risk. In addition, Petitioner lost an entire month away from school while he was hospitalized.

Petitioner was transferred to School A, a full-time special-education setting and a program that he should have been placed in last school year. His academic objectives are the same on his current IEP as they were on his previous one. This strongly suggests that during his last school year, Petitioner received little to no educational benefit.

Witness One testified that Petitioner requires 48 hours of emotional counseling to compensate for his inappropriate placement at School B. His reasoning did not make sense to me since he made no correlation between cause, effect, and remedy.

Still, I find that Petitioner has been denied a free and appropriate public education based on the clear and unambiguous language of his IEPs. They required he be placed in a full-time program and he was not. Petitioner was hospitalized for a month and did not receive his required one hour of psychiatric services during any of those four weeks. He should at least receive those

hours. In addition, because his emotional breakdown likely was caused by the frustration and anxiety of being inappropriately placed, he will need additional rehabilitative assistance to find his own kind of normalcy. Two hours for each month (four) he was inappropriately placed, while not scientific, should aid him. So, I order that Petitioner shall receive at Respondent's expense twelve hours of emotional counseling as a compensatory award.

Petitioner prevails on the sole issue of inappropriate placement.

V. **ORDER**

It is this 30th day of July 2009—

ORDERED that Respondent shall pay for twelve hours of emotional counseling for Petitioner, and it is further

ORDERED that this shall be a FINAL DECISION from which the parties have ninety days from today to file an appeal in a court of competent jurisdiction, and it is further

ORDERED that this matter is closed for all purposes.



Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office