

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

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

2009 JUL 27 PM 12: 23
STUDENT HEARING OFFICE
OSSE

<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: Donovan W. Anderson, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, 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

The student attended a 100% Outside General Education DCPS day school for Emotionally Disturbed students during the 2008-09 School Year. The Parent considered the educational placement inappropriate.

On June 19, 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 educational placement was inappropriate and that the student had been placed on suspensions to the point of a change of placement. For relief, a placement at the _____ of Prince George's County, MD was requested.

On June 30, 2009, DCPS filed a Motion to Dismiss along with their Response; here, for the facts and reasons set forth herein, the motion was DENIED.

A Pre-hearing Conference Order was issued in this matter on July 6, 2009. The Order determined the ISSUES as setout below.

A hearing in this matter was scheduled for 11:00 A.M., Thursday, July 16, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room No 1, 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.

- ISSUES:**
- 1. Was the present DCPS educational placement appropriate for the student?**
 - 2. Had the student been suspended to the point of a change of placement?**

FINDINGS of FACT

By facsimile dated July 9, 2009, the parent disclosed 4 witnesses and 7 documents.

By facsimile dated July 9, 2009, DCPS disclosed 12 witnesses and 4 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. December 15, 2008 IEP disability coded the student Multiply Disabled with 32 hours of special education services Outside General Education; ESY Services were indicated for the student for the summer of 2009.²
2. The 6th grade 2008-09 Report Card revealed that the student did not make any academic progress for the school year; the student received "1"s or "Below Basic" in all subjects except art and physical education and for those subjects, just basic. The IEP Report Card showed that the student did not meet any of his IEP goals. The student did not make any academic progress at the current educational placement during the 2008-09 School Year.³
3. The August 18, 2008 thru June 23, 2009 Attendance Summary for the student showed absences from school for 44 schooldays; 11 of the school days were suspensions in compliance with Chapter 25 of the D.C. Board of Education Rules and were noted as such on the summary. The student was truant but nowhere in the record was there a truancy report to the District of Columbia Child and Family Services Agency (CFSA).⁴
4. The mother testified that the student very often misbehaved at school to the point the assistant principal, teacher aide or other staff called and requested that she come to the school, take the student and keep him home for one or two days; the days she kept the student home were not accompanied by suspension documentation in compliance with Chapter 25 of the D.C. Board of Education Rules and were in addition to the abovementioned 11 school day suspensions. While in school, the student would not remain in the classroom. The student was Emotionally Disturbed and Learning Disabled.⁵
5. The Special Education Coordinator (SEC) at educational placement testified via telephone that she was familiar with the student and that he had very serious behavioral problems; that often because of his misbehavior, the school would call the mother and give her the "option" to come for the student and take him home or to leave him in school. Often when the parent came to the school, a meeting concerning the

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² Parent Document No 2

³ Par. Doc. Nos 5, 6 & 7

⁴ DCPS Doc. No 4, page 1

⁵ -testimony of the mother

student's behavior would occur. The SEC though the student would make progress if he came to school and behaved; that classes there were 10 students, a teacher, a teacher aide and, often, dedicated aides.⁶

6. The educational placement often called the parent and informed her that if she did not come to the school and take the student home he would be placed on suspension; these suspensions were not processed through Chapter 25 of the D.C. Board of Education Rules and are not shown on the student's education records.

7. The student did not make any progress at the current educational placement during the 2008-09 School Year, neither academically nor socially/emotionally. The record did not reveal where the MDT addressed the student's truancy or lack of progress beyond suspensions.

8. The Senior Director at _____ of Prince George's County (HRS) testified via telephone that the school was a therapeutic special education day school servicing student with Emotionally Disturbance, Learning Disabilities and Other Health Impairments; that the student body numbered approximately 74 students. The student toured _____ on July 7, 2009, met with staff and was interviewed. _____ determined they could meet the student's academic and social/emotional needs and accepted him. _____ could deliver all related services and maintained social workers on staff. _____ maintained a crisis intervention program for students that act out and/or walkout of class. _____ had a ESY Services program in progress during the summer of 2009. The student would be placed in a class with 9 other similarly disabled students, a special education teacher and a teacher aide. The student would receive educational benefit at the

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 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).

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⁶ -testimony of the Special Education Coordinator

⁷ -testimony of the Senior Director, the

of Prince George's County

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.

ONE

The DCPS educational placement for the student was inappropriate and a Denial of FAPE.

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 student with a disability as indicated on the student's IEP.

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 student with a disability is based on the student's IEP, and that the parent of the student is included in the placement-decision making process.

While the DCPS educational placement was 100% Outside General Education, the student did not make any progress thereat. In fact, the DCPS maintained education records on the student showed a serious lack of expected progress. An educational placement must demonstrate that a student has/is making progress, meaningful progress and that was not shown in the herein record, neither academically nor socially/emotionally; neither was the MDT convened to review and revise the student's IEP and/or educational placement.

As importantly, the truancy in and of itself was enough to put DCPS on notice to review the student's IEP and educational placement. *See* Letter to Borucki, 16 IDELR 884 (April 11, 1990). The only circumstance under which DCPS can point to a student's truancy as mitigation is after the introduction of a notice from CFSA confirming receipt of a truancy report on the student filed by DCPS. DCPS knew that the student was truant and should have filed a truancy report with CFSA. The compulsory school attendance age in the District of Columbia is 5 through 17 or 18 years old. *See* D.C. Code 38-202.

An interim private placement was warranted in this matter.

TWO

By suspensions, according to Chapter 25 of the D.C. Board of Education Rules and not, DCPS caused a change of placement for the student.

At regulation 34 CFR 300.536 change of placement is set out and prohibited. At paragraph (a)(2), suspensions totaling more than 10 school days in a school year raises the presumption the suspensions are a change of placement for the student and requires the MDT to convene and consider whether a change of placement has occurred; that did not happen. This CONCLUSION of Law is made not just upon the officially noted 11 suspensions for the student, but upon those and the unreported and unknown number of suspensions that resulted when school staff called the parent and gave her the "option" to come to the school for the student and to keep him at home the next one or few days.

SUMMARY of the DECISION

The parent met her burden in this matter.

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

ORDER

On an interim basis with transportation,
DCPS will place fund the student at the [REDACTED]
[REDACTED] School, Capital Heights, Maryland.

Dated this *25th* day of *July*, 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.