

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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[Parent], on behalf of,
[Student],¹

Petitioner,

v

District of Columbia Public Schools (DPCS),

Respondent.

Date Issued: July 1, 2010

Hearing Officer: Jim Mortenson

Case No:

Hearing Date: June 29, 2010 Room: 5b

HEARING OFFICER DETERMINATION

I. BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 9:00 a.m. on June 29, 2010, in hearing room 5b, and concluded on that date. The due date for the Hearing Officer's Determination (HOD) is July 9, 2010, pursuant to Standard Operating Procedure (SOP) § 1003. This HOD is issued on July 1, 2010.

The hearing in this matter was conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30. The hearing was closed to the public.

Present at the due process hearing were:

Zachary Nahass, Esq., Petitioner's Counsel

Daniel Kim, Esq., Respondent's Counsel

¹ Personal identification information is provided in Appendix A.

Petitioner, Student's Mother

Student's Father

Bruce Tisdale, Family Therapist

Ekta Aulakh-Patel, Wrap Care Coordinator

One witness testified at the hearing for the Petitioner, Program

Director, The Respondent did not present any witness testimony.

The complaint in this matter was filed on May 7, 2010, along with a motion for expedited hearing. The motion was denied on grounds specified in an Order dated May 11, 2010. A prehearing conference was held on May 19, 2010, and a prehearing order was issued on that date. A response to the complaint was filed on May 19, 2010. A resolution meeting was held on May 28, 2010, and the parties agreed in writing that no agreement was possible. As a result, the 45 day hearing timeline began May 29, 2010, pursuant to 34 C.F.R. § 300.510(c)(2).

Prior to the start of the hearing, the parties stipulated to certain facts and certain requested remedies were withdrawn. In addition, the issues were withdrawn and the remaining question to be resolved was whether the Petitioner's chosen placement, is appropriate for the Student. The Respondent, while agreeing the Student required a new, full-time, individualized education program (IEP) and placement, did not propose a revised IEP or placement. Nor did the Respondent actively challenge the Petitioner's choice of school. Rather, the Respondent simply sought to have the IHO make the determination about the Student's placement.

The Petitioner is seeking full-time programming for the Student at with transportation, and an IEP team meeting to review of the IEP within 30 days of enrollment and to determine whether additional assessment of the Student is required.

24 documents were disclosed and offered by the Petitioner.² (P 1 – P 24) The IHO rejected P 1 and P 2 as redundant.³ There were no objections to the remaining offered documents and they were entered into the record as evidence. Petitioner's exhibits are:

P 3	-	December 8, 2009	-	IEP
P 4	-	March 17, 2010	-	IEP meeting noted and prior written notice
P 5	-	March 17, 2010	-	Advocate IEP meeting notes
P 6	-	November 17, 2009	-	Incident Report
P 7	-	March 23, 2010	-	Incident Report
P 8	-	March 13, 2008	-	Psychological Evaluation
P 9	-	September 11, 2009	-	Psychosocial Assessment
P 10	-	September 17, 2009	-	Psychological Evaluation
P 11	-	June 24, 2009	-	Clinical Discharge Summary
P 12	-	June 24, 2009	-	Patient Discharge Summary
P 13	-	August 25, 2009	-	Patient Discharge Summary
P 14	-	October 6, 2009	-	Physician's Discharge/Transition Order
P 15	-	December 29, 2009	-	Discharge Summary
		October 21, 2009	-	Physician's Discharge/Transition Order
		Undated	-	Clinical Discharge Summary
P 16	-	October 11, 2009	-	Clinical Discharge Summary
P 17	-	December 29, 2009	-	Discharge Summary
		October 12, 2009	-	Psychosocial Assessment Update
P 18	-	February 19, 2010	-	Discharge Summary
		November 16, 2009	-	Discharge Aftercare Plan
		November 7, 2009	-	Psychiatric Admission Assessment
P 19	-	February 19, 2010	-	Discharge Summary
		January 30, 2010	-	Medication Reconciliation
		January 20, 2010	-	Physician's Discharge/Transition Order
		January 23, 2010	-	Psychiatric Admission Assessment
		January 25, 2010	-	Psychosocial Assessment Update
P 20	-	February 2, 2010	-	Patient Discharge Summary
P 21	-	September 10, 2009	-	Letter from Goff to Whom It May Concern
P 22	-	October 26, 2009	-	Diagnostic/Assessment Report
		October 21, 2009	-	Referral for Community Based Intervention
P 23	-	June 9, 2010	-	Letter from Anyanwu to Petitioner
P 24	-	January 6, 2010	-	Individualized Plan of Care

² One document, P 23, was changed at the last moment with the consent of the Respondent.

³ These documents were the Complaint and the Prehearing Order, respectively. They are already part of the hearing record.

11 documents were disclosed by the Respondent. (R 1 – R 11) R 9 was not offered as it was redundant.⁴ The remaining documents were offered into evidence and there were no objections.

Respondent's exhibits are:

- | | | | | |
|------|---|-------------------|---|--|
| R 1 | - | February 24, 2009 | - | IEP with meeting notes |
| R 2 | - | December 8, 2009 | - | IEP |
| R 3 | - | March 17, 2010 | - | IEP meeting notes |
| R 4 | - | March 17, 2010 | - | Prior Written Notice |
| R 5 | - | May 6, 2010 | - | Suspension/Expulsion Form |
| R 6 | - | March 13, 2008 | - | Psychological Evaluation |
| R 7 | - | September 4, 2007 | - | Psychological Re-Evaluation |
| R 8 | - | June 12, 2007 | - | Classroom Observation and Educational Evaluation |
| R 10 | - | undated | - | Curricula Vitae, Marquita Elmore |
| R 11 | - | undated | - | Curricula Vitae, Jamila Mitchell Murray |

II. ISSUE⁵

Whether placement at _____ is appropriate for the Student?

III. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student attended _____ during the 2009-2010 school year.⁶ The Student suffers from Post Traumatic Stress Disorder, Mood Disorder NOS, and various other psychiatric conditions, has attempted to harm herself, and engages in high risk behavior including _____ and engaging in _____. The Student has engaged in fighting and disruptive and threatening behavior at school.⁸

⁴ It, too, was the May 19, 2010, Prehearing Order.

⁵ As noted, supra, the original issues have been reduced to the issue stated here.

⁶ Stipulated fact.

⁷ P 9, P 10, P 11, P 12, P 13, P 14, P 15, P 17, P 18, P 19, P 20, P 21, P 22, P 24.

⁸ R 5, P 7.

2. The Student's current IEP was last revised in December 2009.⁹ The IEP lacks a clear statement of present levels of academic achievement and functional performance including how her disability affects her involvement and progress in the general education curriculum.¹⁰ It includes eight goals in the areas of reading, writing, math, and emotional, social, and behavioral development.¹¹ The IEP provides the Student with 600 minutes (10 hours) per week of specialized instruction in the general education setting and 30 minutes per week of behavioral support services outside of the general education setting.¹²
3. The Student requires a full-time IEP as a result of her emotional disturbance.¹³
4. The Petitioner attempted to obtain a revision of the IEP and placement for the Student at a residential treatment program in March, 2010.¹⁴ The Special Education Coordinator at the IEP team meeting March 17, 2010, stated she did not have the authority to approve placement of the Student at a residential treatment program, and that the placement request would be forwarded to the Assistant Superintendent's office for review.¹⁵ The IEP, including placement, has not been revised since the request for a residential placement and the Respondent has not yet made a placement proposal.¹⁶
5. The Student was accepted at _____ in Prince George's County, Maryland, on June 9, 2010.¹⁷ The admissions team at _____ believe the Student is a

⁹ R 2/P 3.

¹⁰ R 2/P 3.

¹¹ R 2/P 3.

¹² R 2/P 3.

¹³ Stipulated fact.

¹⁴ R 3/P 4, P 5.

¹⁵ R 3/P 4, P 5.

¹⁶ Stipulated fact.

¹⁷ P 23, Testimony (T) of _____ (Respondent presented no contradictory evidence to _____ testimony and did not cross examine

“perfect fit” for their program.¹⁸ focuses on strengthening the academic and behavioral abilities of students.¹⁹ Each classroom at includes a teacher and an assistant teacher.²⁰ Teachers at focus on the individual learning styles of each student.²¹ Behavior modification is employed to aid students and all staff are trained in behavior modification techniques.²² Group therapy is used with students and both voluntary and directed time-out procedures are used.²³ There is frequent communication with families, including daily behavioral and academic checklists and monthly check-ins with parents.²⁴

IV. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. 34 C.F.R. § 300.115 provides that:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that —

(a) The placement decision —

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child’s placement —

(1) Is determined at least annually;

(2) Is based on the child’s IEP; and

(3) Is as close as possible to the child’s home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

¹⁸ T of

¹⁹ T of

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²¹ T of

²² T of

²³ T of

²⁴ T of

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

2. The Respondent, while admitting the Student required a “full-time” IEP,²⁵ failed to revise the IEP to reflect this and, subsequently, convene a team to make a placement determination where the IEP could be implemented. The Petitioner found a non-public special education school designed to assist children similar to the Student and the Student was, after review and consideration by an admissions team, was accepted into the school. Because the Respondent has offered no alternative, and did not convene a meeting, including the Parents, to make a placement determination, the Student will be permitted to attend at public expense, pursuant to the Order below.

3. 34 C.F.R. § 300.17 provides:

Free appropriate public education or FAPE means special education and related services that —

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

4. An IEP must include:

- (1) A statement of the child’s present levels of academic achievement and functional performance, including —
 - (i) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - (ii) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;
- (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
 - (A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child’s other educational needs that result from the child’s disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of —
 - (i) How the child’s progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
 - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of

²⁵ “Full-time” IEP is a term of art used in the District of Columbia to refer to an IEP requiring special education and related services to be provided completely outside of the general education classroom.

report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child; and

(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

34 C.F.R. § 300.320(a).

5. The Student's IEP lacks a clear statement of the Student's present levels of academic achievement and functional performance that includes how her disabilities affect her involvement and progress in the general education curriculum. This must be revised based upon the Student's medical records, academic records, and her performance during her first few weeks at school this summer. The remainder of the IEP must then be revised accordingly.

V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. The Petitioner prevails because the Respondent has not proposed a revised IEP with full-time special education services or placement and _____ is an appropriate placement that can provide full-time special education and related services for the Student.

- a. The Student's IEP is hereby revised to include full-time special education and related services, that is, education and services that are provided entirely in a setting segregated from non-disabled peers. In order to perfect this, the Student will be immediately placed at _____ pursuant to the acceptance letter from _____ until, at least, the end of the 2010-2011 school year.²⁶ The Respondent will provide or pay for the Student's transportation to and from _____
- b. The IEP team, including the required representatives from the Respondent, as well as from _____ must meet by August 1, 2010, to revise the IEP and must, specifically, revise the statement of the Student's present levels of academic achievement and functional performance, including how the Student's disabilities affect her involvement in and progress in the general education curriculum (not the educational setting). Goals and specific specialized instruction, related services, and supplementary aids and services for the regular school year must also be revised. The Student's academic and functional progress will be monitored and recorded by _____ pursuant to _____ procedures, and periodically shared with the IEP team as determined by the IEP team and recorded in the IEP. The Respondent will remain responsible for the due process procedures, including compliance with this order.

IT IS SO ORDERED.

Date: July 1, 2010



Independent Hearing Officer

²⁶ Any change in placement at that time must be based upon a significant change in the Student's then present levels of academic achievement and functional performance, and placements available and proposed by the Respondent, based on the revised IEP.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).