

**DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT  
OFFICE OF COMPLIANCE AND REVIEW**

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DOB

Petitioner,

v

Patrick Lane, Hearing Officer  
Case#

District of Columbia Public Schools,

Respondent.

OSSE  
STUDENT HEARING OFFICE  
2009 AUG 17 AM 11:48

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**HEARING OFFICER DECISION**

**BACKGROUND**

This due process hearing is administered pursuant to 20 USC 1400, et seq., (IDEA); it's implementing regulations under 34 CFR 300, et seq. and District of Columbia regulations. The student in this matter is a male                      year old with multiple disabilities although speech and language are listed as the primary disability on his IEP. The Complaint was filed June 12, 2009. A Prehearing Conference was held. The Hearing was held on August 7, 2009. Donovan Anderson, Esq. represented Petitioner. Kendra Berner, Esq. represented LEA. Petitioner offered nine documents into evidence and called three witnesses. LEA offered one document into evidence and called no witnesses.

**ISSUES**

The issues to be determined are as follows:

1. Is the location of services appropriate for the student given the services required by the IEP?



7. At the end of the MDT meeting on March 19, 2009, DCPS issued a Prior Notice Letter indicating student would attend the neighborhood school during the 2009/2010 school year. *P-6.*
8. The neighborhood school is large and very crowded with nine hundred to one thousand students. *See testimony of mother and special education coordinator.*
9. Up to and through the 2008/2009 school year, the neighborhood school had no students with an IEP requiring services in the nature and frequency of the student in this matter. The neighborhood school did not have the programs and staff to provide services to students with these types of needs. *See testimony of special education coordinator.*
10. The neighborhood school will be able to accommodate students with learning disabilities who require full time special education services beginning with the 2009/2010 school year. This ability to provide services is a result of the neighborhood school being designated as a "cluster school for LD". *See testimony of special education coordinator.*
11. The neighborhood school program was formally approved the day before the hearing and has not yet been fully staffed or supplied with materials. *Testimony of special education coordinator.*
12. The LEA provided no evidence that the newly created cluster program for LD students would provide the services required by the IEP for this particular student who needs a program designed specifically for speech and language deficiencies and ADHD.

### **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. The provision of FAPE is determined by a two prong test: First, has the LEA complied with the procedures of IDEA. Second, is the IEP reasonably calculated to provide the student with educational benefit? *Bd. of Educ. V Rowley, 102 S. Ct. 3034 (1982).*
2. A student is eligible for services under IDEA if the student has a disability and who, by reason of the disability, needs special education and related services. *20 U.S.C. 1401, 34 C.F.R. 300.8*
3. The applicable statutory authority is found at 20 U.S.C. 1400, et seq. (IDEA) and its regulatory interpretations at 34 C.F.R. 300, et seq.
4. The student is a disabled child within the meaning of 20 USC 1400, et seq. (IDEA), its implementing regulations at 34 CFR 300, et seq. and District of Columbia Municipal Code.
5. "Placement" refers to the environment in which services are provided rather than the physical location of services. A change in schools usually does not automatically mean a change in placement. *AW ex rel Wilson v. Fairfax County Sch. Bd., 372 F.3d 674 (Court of Appeals, 4<sup>th</sup> Cir. 2004).*
6. FAPE may be affected by a change in location if the change results in a dilution of the quality of the student's education. *Id.*
7. While the location of services may be changed by LEA, in this case the LEA denied the student FAPE by failing to provide a program at the new location which provides services required to implement the IEP during the 2009/2010 school year.

8. Private placement at public expense may be appropriate where the LEA's proposed placement is not appropriate and the desired private placement is appropriate. *Burlington v. Dept. of Ed.*, 105 S.Ct. 1996 (1985).
9. LEA failed to offer any location in which the agreed upon and necessary IEP services may be implemented.
10. The student has proposed a private placement which is appropriate and designed to confer educational benefit.

### DISCUSSION

The issue in this case centers upon whether the LEA has offered an appropriate placement for the student. It should be noted that there was no issue presented wherein the parties disagreed upon the services provided by the IEP and the appropriateness of the services themselves. The essential complaint made by Petitioner is that the neighborhood school to which the LEA wishes to send student is not equipped with necessary programs and staff to implement the agreed upon IEP.

Placement" refers to the environment in which services are provided rather than the physical location of services. A change in schools usually does not automatically mean a change in placement. *AW ex rel Wilson v. Fairfax County Sch. Bd.*, 372 F.3d 674 (Court of Appeals, 4<sup>th</sup> Cir. 2004). FAPE may be affected by a change in location if the change results in a dilution of the quality of the student's education. *Id.* While the location of services may be changed by LEA, in this case the LEA denied the student FAPE by failing to provide a program at the new location which provides services required to implement the IEP during the 2009/2010 school year. The special education coordinator testified that the program at the neighborhood school

was a cluster program for LD students. She described a basic small classroom setting. However, it should be noted that LEA presented no evidence that the neighborhood school was equipped to provide services to a student who requires services to overcome language based disabilities and ADHD combined with speech and language deficiencies. Furthermore, while the special education coordinator said she was familiar with the student's IEP and stated that the IEP could be implemented; LEA elicited no details about how this specific student's IEP could or would be implemented at the neighborhood school. It should also be noted that the credibility of the special education coordinator is suspect when asserting that the cluster program was indeed available. The special education coordinator testified that the LD cluster program was put into place on the eve of the hearing. The special education coordinator and the mother agree that they spoke within a few days leading up to the hearing during which time the special education coordinator reiterated the MDT team position that the student's IEP could not be implemented at the neighborhood school. It is suspect that the cluster program to which the student was assigned simply appeared on the day before the hearing. When pressed by Petitioner's counsel for documentation verifying the existence of the program, the special education coordinator could not produce any. LEA failed to produce any documents relating to its proposed program at the neighborhood school. Consequently, this Hearing Officer is doubtful that the cluster program is in place for the student. Moreover, if the program is in place, there has been no evidence presented by LEA showing that the program would be able to provide the specific services needed for a student with language based disabilities combined with ADHD. Therefore, Petitioner has met his burden in showing the neighborhood school placement was not appropriate and could not implement the IEP.

Private placement at public expense may be appropriate where the LEA's proposed placement is not appropriate and the desired private placement is appropriate. *Burlington v. Dept. of Ed., 105 S.Ct. 1996 (1985)*. LEA failed to offer any location in which the agreed upon and necessary IEP services may be implemented. The student has proposed a private placement which is appropriate and designed to confer educational benefit. The student proposes a placement at \_\_\_\_\_ of Prince Georges County. According to the testimony of the Director of Admissions of \_\_\_\_\_ the school is able to provide the services specifically outlined in the IEP.

### **ORDER**

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

1. Within 10 school days of this Order, LEA shall fund the costs of the student's attendance at the private school requested during the Hearing. The funding shall include any transportation costs and related services needed.
2. Petitioner is the prevailing party.
3. The case may be closed.

### **NOTICE OF RIGHT TO APPEAL**

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 from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Dated: 8/10/09 \_\_\_\_\_ /s/ Patrick Lane  
Hearing Officer