

**DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF COMPLIANCE & REVIEW
STATE ENFORCEMENT & INVESTIGATION DIVISION
STUDENT HEARING OFFICE**

CONFIDENTIAL

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STATE SUPERINTENDENT OFFICE
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HEARING OFFICER'S DETERMINATION

IN THE MATTER OF:)	
)	
DOB)	DATE OF HEARING
)	August 5, 2009
ID)	
Petitioner,)	
)	DATE OF COMPLAINT
V.)	June 29, 2009
)	
The District of Columbia)	ATTENDING SCHOOL:
Public Schools,)	
Respondent)	

COUNSEL FOR PARENT/STUDENT: Christopher West
James E. Brown & Assoc.
1220 L Street, N.W.
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Washington, D.C. 20005

COUNSEL FOR DCPS: Candace Sandifer
Office of the General Counsel
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Washington, D.C. 20002-4232

STUDENT¹, by and through his Parent

Petitioners,

v.

DCPS

Respondent.

HEARING OFFICER'S
DETERMINATION

August 12, 2009

Representatives:

Petitioner – Christopher West
DCPS – Candace Sandifer

Hearing Officer:

Jane Dolkart

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

V. FINDINGS OF FACT

1. This is an [redacted] year old child who is eligible for special education under the classification of multiple disabilities (mental retardation and other health impaired). The student completed the [redacted] grade at [redacted] at the end of the 2008-2009sy and was found eligible for ESY services for summer 2009. The student's present IEP calls for 30 hours of specialized instruction, 60 minutes of occupational therapy (OT), 90 minutes of speech language pathology (S/L), and 30 minutes of behavioral support per week, in an out of general education setting. The student is in a self-contained classroom for students with MR. (P 5)

2. During the 2005-2006sy the student attended [redacted] where he received 20 hours of specialized instruction, 1 hour of S/L, and 1 hour of occupational therapy (OT) per week. The student was in a combination general education and special education setting. At that time the student was classified as S/L impaired and OHI. At an April 4, 2006 IEP meeting it was agreed that the student would be provided a full time dedicated aide to help with his behavior and attention issues. The student remained at [redacted] through the 2006-2007sy when [redacted] was closed. (P 10, Testimony of mother)

3. The student attended [redacted] from the commencement of the 2007-2008sy until February 2008. The student began the year with a part time IEP and in a combination setting. The record is unclear as to whether the student began the school year at [redacted] with a dedicated aide. (P 6)

4. While at [redacted] the student was administered a comprehensive psychological evaluation and a report was written on January 28, 2008. The report found that the student's cognitive and academic performance placed him in the classification of MR. The student's full scale IQ on the Wechsler Intelligence Scale for Children – Fourth Addition (WISC-IV), was 44, in the extremely low range. The report concluded that the student "presents with severe achievement and ability delays that seem too tremendous for his current special education placement." The report recommended that the student was in considerable need of a more specialized therapeutic environment to address his needs. (P 15)

5. On February 13, 2008, an IEP meeting was convened at [redacted] Present were the mother, the principal, the special education teacher, the SEC, the school psychologist, the classroom teacher, the social worker, and several other persons. The student's IEP was revised to reflect the classification of MD (MR, OHI) and the student was provided with a full time IEP, including 25.5 hours of specialized instruction, 1 hour of S/L, 1 hour of OT, and 1 hour of counseling per week. The student was placed in a 100% out of general education setting.

The IEP included a Behavioral Intervention Plan (BIP) which indicated that the student had been having behavioral problems at [redacted] He exhibited off task behaviors, temper tantrums, impulsivity, inappropriate language and gestures towards adults, and difficulty interacting with peers.

The IEP included a full time dedicated aide. DCPS indicated in the meeting notes that it would perform a site review ASAP in order to find a more appropriate placement for the student.

(P 6, 7, 8)

6. In February 2008, the student was placed in the MR program at [redacted]. The student continued to receive the services of a dedicated aide while his February 13, 2008 IEP was in effect. On December 3, 2008, an IEP meeting was called to draft the student's 2009-2010 IEP, which would commence on February 13, 2009. Present at the meeting were the parent, the SEC, the S/L Pathologist, the social worker, the special education teacher, and the OT therapist. The IEP provided 30 hours of specialized instruction, 1 hour of OT, 1.5 hours of S/L, and ½ hour of behavioral support services per week in an out of general education setting. The IEP did not provide for a dedicated aide. The parent signed the IEP indicating agreement with its contents. (P 5).

7. At [redacted] the student is in a self contained classroom for MR students. The class has a teacher and an assistant and this past school year there were 7 students in the class ranging from the 3rd – 5th grades by age. The student is not a behavior problem, follows directions and routines, and is independent in the classroom. The DCPS part of the MDT Team did not believe an aide was warranted and wanted to allow the student to become more independent. The parent agrees that the question of an aide was discussed at the IEP meeting and that the MDT Team, with the exception of herself, did not believe the student needed an aide. (Testimony of SEC, parent). There is no evidence that the MDT Team agreed to provide an aide for the student at the December 3, 2008 IEP meeting.

8. The SEC testified that the student had made progress during the 2008-2009sy as evidenced by testing data, portfolio work, and progress reports. Only the progress reports were introduced into evidence. The progress reports show the student making progress in all of his goals and there are concrete comments providing specifics as to his progress. (Testimony of SEC, DCPS 2, 3)

9. The parent and her fiancé both testified that the student has not made progress. There is no evidence supporting these assertions. It appears that the parent and fiancé do not understand how slowly progress is made by a student with this student's cognitive abilities. (Testimony of parent, fiancé)

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.*, guarantees "all children with disabilities" "a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

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 State educational agency..., (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEA's guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a "basic floor of opportunity" for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3rd Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See*, 20 U.S.C. ¶ 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See*, 20 U.S.C. ¶ 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include "a statement of the child's present levels of educational performance, ... a statement of measurable annual goals, [and] a statement of the special education and related services ... to be provided to the child...." 20 U.S.C. ¶ 1414(d)(1)(A).

Petitioner has the burden of proof and has not met that burden in this case. *Schaffer et al. v. Weast*, 546 U.S. 49 (2005). The record and testimony reflect that until the student was placed at he was in a combination setting that failed to provide the intensive therapeutic environment he needed to make educational progress. During the student's time at and LC the student had behavioral problems including off task behaviors, temper tantrums, impulsivity, inappropriate language and gestures towards adults, and difficulty interacting with peers. A dedicated aide was provided to address these behavioral and attention problems. In February 2008, the student was placed at in a small self contained classroom for students with MR and with a teacher and assistant in the classroom. The dedicated aide was continued consistent with the student's February 13, 2008 IEP. The student is doing well in his new placement. He does not exhibit the behavioral problems reported by LC, is able to function independently in the classroom, and has made educational progress appropriate for a student at his cognitive level. The MDT Team did not agree to fund a dedicated aide for the student at the December 3, 2008 IEP meeting.

A dedicated aide might further enhance the student's educational progress. However, the IDEA does not require that a student be provided the best education possible. It only requires that the student be provided with an education that provides a basic floor of opportunity such that the student can make educational progress. DCPS is providing an appropriate education and the student is making progress both academically and behaviorally. DCPS has not denied the student FAPE by failing to provide him with a dedicated aide.

VII. SUMMARY OF RULING

DCPS has not denied the student FAPE by failing to provide him with a dedicated aide at the December 3, 2008 IEP meeting.

VIII. ORDER

It is hereby **ORDERED** that this case is dismissed with prejudice.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: August 12, 2009