District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
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In Re the Matter of :	)	
	)	
[1]Parent on behalf of Student,	)	
	)	
Petitioner,	)	
	)	**Date of Complaint:** April 30, 2010
v.	)	**Date Decision Issued:** July 3, 2010
	)	
The District of Columbia Public Schools,	)	**Hearing Room:** 4A
	)	**Student Case Number:**
Respondent.	)	**Student Identification Number:**
	)	
	)	**Hearing Officer:** Attorney Ramona M. Justice
	)	

HEARING OFFICERS' DECISION ("HOD")

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act , Section 145, effective October 21, 10098; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Title 5, Chapter 30 of the District of Columbia Municipal Regulations ("DCMR").

II. BACKGROUND

The student is years of age; and in the grade at a public school, located in the District of Columbia. The student is a resident of the District of Columbia; and is identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)", under the disability classification of specific learning disability (SLD).

[1] *Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution.*

The student has a history of suspensions from school due to fighting and noncompliant behavior. Prior to attending the student attended School, (student repeated the grade), (student evaluated however an eligibility meeting not held), (parent made second request for evaluations and eligibility determination), and (student suspended due to problematic behavior).

On November 27, 2009, while attending a Comprehensive Psychological Evaluation was completed; to assist the MDT in determining the appropriateness of the student's placement; and suggest appropriate social and academic interventions. The student was diagnosed with anxiety disorder, learning disorder, and psychosocial stressors. The evaluator recommended specialized instruction in reading, mathematics, spelling, pseudo word decoding, written language, and oral language skills; intensive individualized instruction in a classroom with a small teacher-pupil ratio to minimize distractions; tutoring in areas of weakness; and a reward program to improve his attendance in classes; counseling for 60 minutes weekly to address his anxieties regarding school and his future; and a safe outlet to discuss feelings of anxiety or tension.

On December 24, 2009, a Multidisciplinary Team at reviewed the evaluation and determined that the student eligible for special education services; under the disability classification of specific learning disability (SLD). The team also developed an IEP for the student recommending a full-time special education program, outside general education. On January 26, 2010, issued a Prior Notice placing the student at

On March 26, 2010, a report card was issued for the student reflecting failing grades in all subjects, primarily due to excessive absences; tardiness, and failure to participate. As of June 18, 2010, the student reported 228 unexcused absences out of a total of 333 days of school; 105 authorized absences; and 21 days of tardiness.

On April 30, 2010, Petitioner, filed a due process complaint alleging that District of Columbia Public Schools ("DCPS"), denied the student a Free Appropriate Public Education ("FAPE"), by failing to: 1) implement the student's December 24, 2009 Individualized Education Program (IEP); and 2) provide the student an appropriate placement during the 2009/10 school year.

On May 3, 2010, the complaint was assigned to this Hearing Officer; and on May 5, 2010, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for June 3, 2010, at 2:30 p.m... On May 11, 2010, Respondent filed "District of Columbia Public Schools' Response to Petitioner's Due Process Complaint".

The prehearing was rescheduled and held on June 2, 2010, at 2:30 p.m.; and on June 3, 2010, the Hearing Officer issued a prehearing conference order. The due process hearing convened on June 25, 2010, at 9:00 a.m., as scheduled, at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

II. ISSUES

The following issues are before the Hearing Officer:

(1) [2]Whether DCPS denied the student a free appropriate public education by failing to implement the students' December 24, 2009 Individualized Education Program ("IEP")?

(2) Whether DCPS denied the student a free appropriate public education by failing to provide the student an appropriate placement during the 2009/10 school year?

III. DISCLOSURES

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF PETITIONER

Petitioner's Exhibits 01 through Petitioner's Exhibits 08; and a witness list dated June 17, 2010.

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF RESPONDENT

Respondent's Exhibits 01 through Respondent's Exhibits 04, and a witness list dated June 17, 2010.

IV. 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 is years of age; and in the grade at and prior to attending the student attended While attending the student was evaluated, determined eligible for special education services and; identified as a student with a disability classification of specific learning disability (SLD). On December 24, 2009, an IEP was developed for the student recommending a full-time special education program, in an *out of general education setting.*

   While attending the student was constantly suspended from classes, due to his behavior; which became unmanageable. The school decided to transfer the student to and on January 26 2010, issued a Prior Notice placing the student at advised the parent that the students' attendance at the school would be for a thirty (30) day trial period.

[2] Prior to proceeding with a hearing on the merits, DCPS stipulated that the student's IEP was not implemented prior to the April 30, 2010 due process complaint; and the parties agreed that the issue remaining for the Hearing Officer to decide is Issue 2.

2. At the time of enrollment, the parent provided the school a copy of the student's class schedule from and the December 24, 2009 IEP; however, provided the student education in a general education setting. Since attending the student exhibited problematic behavior, similar to that at been denied access to several classes because of his behavior, and received failing grades.

3. At a Special Education Department meeting held on April 30, 2010, a member of the team advised the team that is not an appropriate placement for the student; and according to the meeting notes, the team decided to move forward with placement for the student. However, meeting notes also reflect that instead of identifying an appropriate placement for the student, the team decided to change the student's schedule; and although the Compliance Case Manager recommended a change in all of the student's classes to outside general education; the school decided to remove the student from the general education setting to an inclusion setting, in 3 of 6 of his classes (Algebra, Learning Lab 1, and Math Resources); and not place the student in a full-time out of general education setting.

4. is a general education school, with full inclusion and general education classes; and can offer the student a small inclusion setting for several classes; however, according to the Assistant Principal, the school is unable to provide the student the full-time special education program, in an *out of general education setting*, as recommended in his December 24, 2009 IEP; and this student is the only student at the school requiring a full-time special education program, in an out of general education setting.

5. Parent was denied the opportunity to provide "meaningful" input in the placement decision, because she was advised that the student could not attend or and advised that the student would attend Prior to the student attending the parent visited the school to discuss and obtain information regarding the school's program, however, due to the unavailability of staff, parent was not provided the opportunity to tour the school, discuss the program, or visit with the students' teachers. Parent was not provided sufficient information regarding the educational program at prior to DCPS' placement of the student at the school.

6. DCPS failed to carefully consider input from the parent regarding the placements proposed for the student. DCPS unilaterally placed the student at and although parent voiced concern that the placements were inappropriate for the student; and unable to meet the student's academic, developmental, and functional needs.

7. DCPS failed to consider the potential harmful effects on the student or on the quality of the services he requires, by maintaining the student's placement at in a full inclusion and/or general education.

8. The nature of the student's disabilities are such that education of the student at in a full inclusion and/or general education setting, even with the use of supplementary supports and services, cannot be accomplished successfully. The student requires a full-time special education program, in an out of general education setting; which is not available at

9. is not an appropriate placement for the student because it is unable to implement the student's December 24, 2009 IEP; or provide the student educational benefit. The SEC testified that although it can accommodate and grade students, budget cuts and staff shortages, hinder the schools' ability to provide the student the full-time special education program, in an out of general education setting; as recommended in his IEP.

10. of Prince Georges' County is a non-public, special education school, primarily serving students with learning disabilities; as well as, students with other disabilities. The teachers are certified in special education; and the school can provide the student a full-time special education program, in a small, structured, therapeutic environment. Assistant teachers are in each class and have college degrees; with a small student to teacher ratio, two (2) reading resource teachers on staff, Speech and Language, Occupational Therapy, three (3) Social Workers; and one on one reading assistance for students. Every student has a behavioral intervention plan.

of Prince Georges' County can implement the student's IEP and provide the student educational benefit, therefore, of Prince Georges' County is an appropriate placement for the student.

V. 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 burden of proof is the placed on the party seeking relief; and in this case, it is the parent. *See Shaffer v. Weast, 546 U.S. 49, 56-57 (2005).* [3]Under the IDEIA, the Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.

2. In determining the educational placement of the student, DCPS failed to comply with the procedural requirement of the IDEIA, by ensuring that the placement decision was made by a group of persons, including the parent. IDEIA also requires that the determination of the educational placement of a child with a disability must be based on the child's IEP, which in this instance; the student's IEP recommends a full-time special education program, outside general education. Once the December 24, 2009 IEP was developed, it was not implemented through the appropriate placement of the student in an educational setting tailored to his needs. *See Roark ex rel. Roark v. District of Columbia, 460 F.Supp. 2d, 32-35, (D.D.C. 2006).*

   The IDEA also seeks to educate disabled children with non-disabled children "to the maximum extent possible." §1412(a) (5) (A). "Special classes, separate schooling, or other removal...occurs only when the *nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;*" as in this matter. Id.

[3] 20 U.S.C. §1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d. 516, 521 (D.C. Cir. 2005).

"The proper inquiry" in every mainstreaming case is "whether a proposed placement is appropriate under the Act." *See, Doe v. Arlington County Sch. Bd.., 41 F. Supp. 2d 599, 604 (E.D. VA. 1999)*. However, assessment of whether the child is placed in the least restrictive environment is [**94] "ultimately a goal subordinate to the requirement that disabled children receive educational benefit." *Hartmann by Hartmann v. Loudoun County Bd. Of Educ., 118 F.3rd 996, 1002 (4th Cir. 1997).* The educational benefit to be provided a child must be- "meaningful" and it "must be assessed based on the educational capacity of each individual student." *J.P. v. County Sch. Bd. Of Hanover County, 447 F.Supp. 2d 553, 584 (E.D. VA. 2006)*.

In this matter, the nature of the students' disabilities are such that education in a full inclusion or general education classes, even with the use of supplementary aids and services, cannot be achieved satisfactorily; the student was denied access to the general education curriculum, and educational benefit. The student requires full-time special education, in a small, structured, therapeutic environment, as recommended in his December 24, 2009 IEP; which is not available at Cardozo SHS. DCPS failed to comply with the procedural, and ***Least Restrictive Environment (LRE)*** requirements of the IDEIA, 34 C.F.R. §300.116; in determining the student's placement.

3. DCPS failed to comply with the IDEA, 34 C.F.R. §300.323(c) (2), by ensuring that as soon as possible following development of the student's December 24, 2009 IEP, special education and related services were made available to the child, in accordance with the child's IEP; and the students' placement is based on the IEP. An IEP was developed for the student on December 24, 2009; however, as of the date of this decision DCPS failed to implement the student's IEP, by failing to provide the student the specialized instruction and related services, in an out of general education setting, as recommended in his IEP.

4. IDEIA provides that a "free appropriate public education" must be made available to all disabled children residing in the District of Columbia, between the ages of 3 and 21; and defines a free appropriate public education ("FAPE"), as special education and related services provided, inter alia, in conformity with the IEP. See 34 C.F.R. §300.16 (d). Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA is tailored to the unique needs of the student by means of an IEP. *See Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982)*.

   In determining whether the student received a FAPE, a Hearing Officers' inquiry is twofold. *First*, has the State complied with the procedural requirements of the IDEIA. S*econd*, whether the IEP developed for the student is reasonably calculated to provide the student educational benefit. If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress and the courts can require no more.

   Here, DCPS failed to comply with the procedural, and least restrictive requirements of the IDEIA in determining the student's placement; and the December 24, 2009 IEP is not reasonably calculated to provide the student educational benefit because the students' placements at and are not based on the students' IEP. As a result,- the schools are unable to implement the IEPs, the student is denied access to the general education curriculum; and fails to receive educational benefit. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

The violations also result in substantive harm to the parent and the student because the parent was denied the opportunity to provide "meaningful" input in all decisions regarding the provision of a FAPE to the student, and the student's placement, as a result, the student is deprived an individualized education program specifically designed to address his unique academic, developmental, and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

5. The Petitioner satisfied its burden of proof by presenting evidence that the student was denied a FAPE from December 24, 2009 to April 30, 2010, entitling the student to compensatory education services, however, failed to satisfy its burden by presenting evidence regarding the nature and amount of compensatory education services the student is entitled to receive, consistent with the standard established in *Reid v. District of Columbia*.

VI. ORDER

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

1. **ORDERED**, that within thirty (30) calendar days from the date of this decision, DCPS shall issue to parent a Prior Notice of Placement, authorizing funding of the student's tuition; and transportation, for the student to attend of Prince Georges' County, and it is further;

2. **ORDERED**, that DCPS shall fund the student's tuition and transportation at of Prince Georges' County, until such time as DCPS can provide the student a free appropriate public education , consisting of the full-time special education program, in an out of general education setting; as recommended in his IEP, and which is necessary for the student to access the general education curriculum and receive educational benefit; and it is further

3. **ORDERED**, that in the event of failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at of Prince Georges' County; and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

4. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

VII. 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).

Date: *June 4, 2010*

Attorney Ramona M. Justice

Hearing Officer