District of Columbia
Office of the State Superintendent of Education

Student Hearing Office
Terry Michael Banks, Due Process Hearing Officer
1150 - 5th Street, S.E.
Washington, D.C. 20003
(202) 698-3819
Facsimile: (202) 698-3825
terry.banks2@dc.gov

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STUDENT, through the legal guardian[1]	)	Complaint Filed: June 8, 2010
	)	
Petitioner,	)	Prehearing Order: July 16, 2010
	)	
v.	)	Hearing Date: July 26, 2010
	)	Room 6B
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	
	)	Docket No.
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

HEARING OFFICER'S DECISION

Counsel for Petitioner:
Zachary Nahass, Esquire
James E. Brown & Associates
1220 L Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202) 742-2098

Counsel for DCPS:
Tanya Chor, Esquire
Office of the General Counsel, DCPS
1200 First Street, N.E.; 10th Floor
Washington, D.C. 20002-4232
(202) 442-5189; Fax: (202) 442-5098

[1] Personal identification information is provided in Appendix A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Introduction

Petitioner is an year-old student attending
On June 8, 2010, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) conduct an adaptive behavior assessment, and (2) provide an appropriate placement. By the time of the prehearing conference on July 14th DCPS had conducted the adaptive assessment. In a Prehearing Order issued on July 16, 2010, the Hearing Officer determined the issues to be adjudicated at the hearings as follows:

- DCPS' alleged failure to provide an appropriate placement

  Petitioner alleges DCPS placed Petitioner at
  without adequate evaluations, particularly an adaptive behavior assessment recommended by the Multidisciplinary Team ("MDT") that placed Petitioner at on May 5, 2010. Thus, the placement was not based upon Petitioner's needs as identified through evaluations.

  DCPS asserts that further evaluations would not change Petitioner's long-standing disability classification, mental retardation ("MR").

  The parties agreed to reconvene an MDT meeting to consider placement alternatives on July 15, 2010. Petitioner's counsel agreed to contact the Hearing Officer by email and report on the outcome of the meeting, including DCPS' proposed placement. In the event Petitioner was not dissatisfied with the proposed placement, Petitioner's counsel would provide reasons for rejecting the placement. The parties' concede that neither Lee nor is an appropriate placement for Petitioner.

  In a July 16, 2010 email, Petitioner's counsel reported that DCPS failed to offer an appropriate placement at the meeting on July 15th, but counsel gave no reasons for rejecting the proposed placement. In a separate email, counsel for DCPS reported that DCPS offered
  and "other DCPS schools for parent consideration…"
  and that Petitioner requested placement at At the hearing, DCPS will be permitted to assert the appropriateness of any school offered to Petitioner at the July 15th MDT meeting. Petitioner will be

permitted to propose placement at any school to which Petitioner has been admitted and that is disclosed in the Five-Day Disclosure.

The due process hearing was convened and completed on July 26, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. The parties stipulated that neither nor is an appropriate placement for Petitioner. Thus, the only issue before the Hearing Officer is Petitioner's placement for the 2010-2011 school year. DCPS proposes to place Petitioner at . Petitioner requests placement at

Witnesses for Petitioner

Assistant Director of School,
Serene Peterson, Educational Advocate
Petitioner's Mother

Witnesses for DCPS

Principal,
Dr. Sonia Pilot, School Psychologist, DCPS

Findings of Fact

1. Petitioner is an year-old student attending .

2. DCPS convened a Multidisciplinary Team ("MDT") meeting on January 10, 2010 and developed an annual Individualized Education Program ("IEP"). The MDT classified Petitioner with a Specific Learning Disability ("SLD") and prescribed 27.0 hours per week of specialized instruction out of general education, and one hour per week each of speech-language ("S/L") pathology, behavioral support services, and occupational therapy ("OT").[3] The MDT also prescribed extended year services ("ESY").[4]

3. DCPS reconvened an MDT meeting on May 5, 2010. Petitioner was in a 1st – 3rd grade classroom, but "he is currently reading and writing on the kindergarten level. [Petitioner] has been receiving 1 on 1 instruction in reading and math, because he cannot keep up with his academic peer group."[5] The Lead Teacher at recommended that Petitioner be placed in a setting designed for students with

[2] Testimony of Petitioner's mother; *Complaint* at 1.
[3] Petitioner's Exhibit ("P.Exh.") No. 5 at 1 and 10.
[4] *Id.* at 14.
[5] P.Exh. No. 6 at 2.

mental retardation ("MR"). DCPS proposed placing Petitioner in an MR classroom at Petitioner's mother objected to the MR classification and the proposed placement.[6] DCPS issued a Prior Notice placing Petitioner at and referred Petitioner for an adaptive assessment.[8] was not an appropriate placement for Petitioner primarily because he had no academic peer group.[9]

4. Dr. Sonia Pilot conducted a Psychological Re-Evaluation of Petitioner on June 18, 2010. Dr. Pilot's findings and recommendations, inter alia, include the following:

> [Petitioner] is currently identified as a student with Mental Retardation. [Petitioner] was referred for a re-evaluation at a Multidisciplinary Team Meeting (MDT) in order to get his current level of functioning. There was concern that [Petitioner] was classified as Mentally Retarded because it was not believed that he had significant limitations in his adaptive functioning.
>
> Previous testing indicates that [Petitioner's] Full Scale IQ is 66 (Extremely Low) as measured with the Wechsler Preschool and Primary Scale of Intelligence... His Verbal Scale score was 75 (Borderline range). His Performance score was 63 (Extremely Low range). His Processing Speed was 56 (Extremely Low range). Previous testing with the Vineland placed his adaptive functioning in the Low range.
>
> [Petitioner's] current Vineland results indicate that there is not severe impairment in his adaptive functioning. His mother's responses place his overall adaptive functioning standard score at 80 which is in the Moderately Low range. His teacher's responses place his overall adaptive functioning standard score at 82 which is also in the Moderately Low range.
>
> Although [Petitioner's] overall intelligence level is in the Extremely Low range, because he does not have severe deficits in adaptive functioning, his functioning is not consistent with a classification of Mental Retardation...
>
> [Petitioner's] report cards indicate that he has made minimal progress with his reading and writing goals. He still struggles to decode short vowel words and has been unable to attempt to decode words with blends. He is unable to write a sentence without teacher prompting. In math, he is able to add and subtract numbers to 20 using a number line. He can not consistently identify numbers past 14.[10]

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[6] *Id.* at 2-4; testimony of
[7] Last page of P.Exh. No. 6.
[8] *Id.* at 4.
[9] Testimony of Petitioner's mother, and Dr. Pilot.
[10] P.Exh. No. 9 at 12-13.

5. DCPS reconvened an MDT on July 15, 2010 to review Dr. Pilot's evaluation and to consider placement alternatives. The MDT changed Petitioner's classification from MR to SLD.[11] In light of the changed classification, DCPS proposed placing Petitioner at the principal at described the program at Petitioner's mother agreed to visit Ms. DeSibour joined the meeting by telephone and described the program at Ivymount.[13] The MDT deferred a placement determination until the parent completes her visit.[14]

6. Petitioner was accepted by on June 8, 2010.[15] is a private school that offers full-time specialized instruction to disabled 215 students aged 6 – 21. services students with all primary disabilities except emotional disturbance. If Petitioner were to attend he would be in a class of eight students. The class is taught by a masters level teacher who is certified in special education. The teacher has two assistants, each of which has at least a bachelor's degree, but no special education certification. A clinical social worker, speech therapist, and an occupational therapist are assigned to the class on a half-time basis. The other students in the class are aged 7 – 9 and have a range of disabilities.[16]

7. There are 97 students currently enrolled at which offers full-time specialized instruction to disabled students. Approximately 119 students attended during the 2009-2010 school year. The maximum capacity is 140 students. The overwhelming majority of the students have a primary disability of SLD. employs 16 teachers, two speech therapists, two social workers, one occupational therapist, one physical therapist, and one adaptive physical education teacher. offers an after school program from 3:00 – 5:00 p.m. The average student-to-teacher ratio at is 1:5. All of its teachers are certified in special education, the majority of teachers have an additional certification in a subject matter area, and most of the teachers have ten years of experience. Each teacher is assisted by an instructional aide, most of whom have bachelors or masters degrees.

Conclusions of Law

Failure Provide an Appropriate Placement

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[17] the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

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[11] P.Exh. No. 7 at 3.
[12] *Id.* at 6; testimony of and
[13] *Id.* at 8.
[14] *Id.* at 10.
[15] P.Exh. No. 12.
[16] Testimony of Ms. DeSibour.
[17] 458 U.S. 176 (1982).

> The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to *benefit* from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[18]

Thus, Petitioner's burden is to show that DCPS has not, and is incapable of providing an environment in which Petitioner can derive educational benefit.

At the time the *Complaint* was filed, DCPS had placed Petitioner at DCPS now concedes that was not an appropriate placement. Therefore, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to provide an appropriate placement.

Under *Florence County School District Four v. Carter*,[19] when a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits."[20] "[O]nce a court holds that the public placement violated IDEA, it is authorized to 'grant such relief as the court determines is appropriate.' '[E]quitable considerations are relevant in fashioning relief'... and the court enjoys 'broad discretion' in so doing."[21] After the *Complaint* was filed, DCPS re-evaluated Petitioner, changed his disability classification to SLD, and proposed placement at The student body is made up primarily by students with Petitioner's disability classification, SLD. All of its teachers are certified and experienced. Each teacher is assisted by instructional aide. offers a small class, low student-to-teacher ratio that affords the opportunity for considerable individual attention. also offers a two-hour after-school program that provides additional opportunities for individual attention. The Hearing Officer concludes that Petitioner would be likely to derive educational benefit at Therefore, despite DCPS' initial failure to offer an appropriate placement at the Hearing Officer concludes that a private placement is not warranted in this case to meet Petitioner's educational needs.

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[18] *Rowley, supra,* at 200-01.
[19] 510 U.S. 7 (1993).
[20] *Id.,* 510 U.S. at 11.
[21] *Id.*, 510 U.S. at 15-16.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 5th day of August 2010, it is hereby

ORDERED, that DCPS shall immediately issue a Prior Notice placing Petitioner at Prospect Learning Center for the 2010-2011 school year, including transportation and all other appropriate related services.

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/
Terry Michael Banks
Hearing Officer

Date: August 5, 2010