

<p>STUDENT¹, by and through his Parent Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent. Case</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Dates of Hearing: August 13, 2009 August 24, 2009 Date of Complaint: June 22, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street, N.W. Suite 700 Washington, DC 20005</p> <p>Counsel for DCPS: Kendra Berner, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002</p> <p><u>Hearing Officer:</u> Coles B. Ruff, Esq.</p>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened August 13, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003. The Hearing was continued and concluded on August 24, 2009. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on June 22, 2009, alleging the issue(s) outlined below.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1- 15 and DCPS Exhibit 1) which were admitted into the record.

ISSUE(S): ²

Did DCPS deny the student a free and appropriate public education by failing to the student an appropriate placement for the 2009-10 School Year? ³

FINDINGS OF FACT ⁴:

1. The student is _____ years old and resides in the District of Columbia with his parent(s). (Petitioner's Exhibit 9)

² The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn. Petitioner's counsel specifically eliminated the claim of the alleged failure to convene a placement meeting and reduced the claim to the single issue of alleged failure to provide an appropriate placement.

³ Although the due process complaint did not specifically challenge the appropriateness of School B, the parties agreed that when the hearing reconvened on August 24, 2009, following a MDT/Placement meeting, the appropriateness of School B as the placement would be adjudicated.

⁴ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. When citing an Exhibit that is the same for both parties but submitted separately, the Hearing Officer will cite only one party's Exhibit.

2. The student is eligible to receive special education and its related services as a result of his being specific learning disabled. (Petitioner's Exhibit 9)
3. The student, according to his individualized educational program ("IEP"), is to receive twenty-seven and a half hours of specialized instruction (27.5) hours a week of special education instruction. (Petitioner's Exhibit 9)
4. The student attended School A for the 2008-09 School Year. School A was a full time special education program that provided the services prescribed in the student's IEP. At the end of the 2008-09 School Year the student aged out of School A. At the end of the school year a placement for the student had not been communicated to the parent by DCPS. (Stipulation)
5. On June 22, 2009, Parent's counsel filed the current due process complaint alleging DCPS had failed convene a placement meeting and failed to identify an appropriate placement for the student for the 2009-10 School Year. (Petitioner's Exhibit 2)
6. DCPS sent a letter to the student's parent dated July 15, 2009, stating that an IEP meeting needed to be convened to update the student's IEP and a meeting would be convened to do so and answer any questions of the parent prior to the beginning of the 2009-10 School Year. Attached to the letter was a letter of invitation inviting the parent to the MDT meeting. (Petitioner's Exhibit 7)
7. Parent's counsel responded to the DCPS letter stating that the parent was unavailable for to meet on the date proposed by DCPS and offered alternative dates including August 14, 17, and 18, 2009.⁵ (Petitioner's Exhibit 8)
8. The student has been interviewed by and admitted to the _____ is a full time special education school that serves students with language based learning disabilities. There are approximately 70 students at the school. There are no more than 8 students in each classroom with one special education teacher. _____ has certified special education teachers and related services providers who can implement the student's IEP. The parent proposed at the hearing that the student attend _____ and that the Hearing Officer place the student there as a remedy for DCPS's alleged violation. (Ms. Lourie's testimony)
9. DCPS has identified the student's identified educational placement for the 2009-10 School Year as a special education program located at his neighborhood school, School B. Prior to the 2009-10 School Year School B did not have a full time specialized program within its facility. (DCPS counsel representation)
10. School B is a general education DCPS public middle school; however, the students who aged out of and left School A were all offered placement in a self contained special

⁵ The initial due process hearing was convened before the dates offered by Petitioner's counsel for this meeting had expired. Consequently, the hearing was continued so that the meeting could be convened. However, the meeting was not convened.

education classroom with a special education teacher at School B. The classroom only has special education students and all the student's classes at School B will be with special education students. Although there may be special subjects taught by teachers who are not special education certified, in those classes there will be only special education students and the assigned special education teacher will be available to assist in the student's instruction in those classes. The student's IEP can be implemented in this full time program at School B. (Ms. Thompson's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief.⁶ In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Did DCPS deny the student a free and appropriate public education by failing to provide an appropriate placement? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

DCPS, as the local and state education agency, is to make certain that the educational placement, for each child with a disability within its jurisdiction, is able to implement the student's Individualized Educational Program. Pursuant to 34 C.F.R. § 300.17,

Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..."

DCPS shall implement an IEP for each student with a disability. *See id.* at § 614(d)(2). Pursuant to D.C. MUN. REGS. tit. 5, § 3010.2 (2003), DCPS "shall implement an IEP as soon as possible after the meeting where the IEP is developed..." Pursuant to 34 C.F.R. § 300.115(a), DCPS "must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services."

⁶ Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

DCPS has identified the a full time special education program at School B to implement the student's IEP for the 2009-10 school year. Although prior to the 2009-10 School Year there has not been such a program at School B and most of the students at School B are general education students, there is no restriction that the Hearing Officer is aware of or that was cited by the Petitioner's counsel that restricts the student's IEP from being implemented in a program within a facility where there are general education students.

Ms. Thompson credibly testified that that the full time special education program at School B was specifically developed for the students who aged out of School A and provides a full level of specialized instruction by a special education teacher. Although there may be special subjects taught by teachers who are not special education certified, in those classes there will be only special education students and the assigned special education teacher will be available to assist in the student's instruction in those classes. As there was no evidence presented by Petitioner to refute Ms. Thompson testimony, the Hearing Officer concludes that the program as described by Ms. Thompson can implement the student's IEP and the burden of demonstrating that the program at School B was inappropriate for this student was not met.

The Hearing Officer notes that that hearing was continued so that DCPS could convene a placement meeting and in the interim no placement meeting was held. In light of DCPS representations that a meeting would be held DCPS's July 15, 2009, letter indicating that the student's IEP needed to be updated the Hearing Officer strongly urges DCPS to promptly upon receiving this Order convene an IEP meeting for the student.

ORDER:

The due process complaint in this matter is hereby dismissed.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer

Date: September 3, 2009