

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

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STUDENT HEARING OFFICE
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, on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

Case No:

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND

Student is a _____ year-old female, who recently began attending a private full-time special education school at public expense. Student's most recent IEP lists Specific Learning Disability ("SLD") as her primary disability and requires her to receive 25 hours per week of specialized instruction, 90 minutes per week of speech-language pathology services, and 30 minutes per week of behavioral support services, all in an outside general education setting.

On December 28, 2010, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS failed to convene an IEP meeting within 30 days of changing Student's placement and failed to convene an IEP meeting upon Parent's request. As relief for these alleged denials of FAPE, Petitioner requested, *inter alia*, an IEP team meeting within 10 days to review Student's placement, and review and revise the IEP as appropriate, as well as discussion and determination of compensatory education at the ordered IEP meeting, or alternatively, funding of an independent evaluation to determine appropriate compensatory education.

On January 6, 2011, DCPS filed its Response to the Complaint. In its Response, DCPS asserted that (1) it had sent Parent a letter of invitation ("LOI") on September 15, 2010 proposing three possible dates for an IEP meeting but Parent never responded, and (2) Student's current school had been in contact with Parent throughout the semester and Parent had not requested an IEP meeting.

On February 10, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. After the parties advised the hearing officer that an IEP meeting was scheduled to take place on the day after the scheduled due process hearing, the hearing officer encouraged the parties to work together to ensure that the meeting took place prior to the due process hearing. The hearing officer issued the Prehearing Order on February 10, 2011.

By emails dated February 15, 2011, the parties scheduled an IEP meeting for February 17, 2011 and advised the hearing officer of same.

By their respective disclosure letters dated February 17, 2011, Petitioner disclosed eight documents (Petitioner's Exhibits 1 – 8), and DCPS disclosed DCPS-1 through DCPS-5.

The hearing officer convened the due process hearing on February 24, 2011.¹ The parties' disclosed documents were admitted into the record without objection. Upon the hearing officer's review of the issues, Petitioner withdrew its claim for failure to convene an IEP meeting within 30 days of changing Student's placement, leaving only its claims for failure to convene an IEP meeting upon parental request. Thereafter, the parties indicated that the February 17, 2011 IEP meeting had gone forward, and Student's IEP had been revised to include additional goals, changes in accommodations, and changes in the number of hours of specialized instruction. Nevertheless, Petitioner stated its intent to move forward with the hearing and seek compensatory education.

The hearing officer received opening statements and allowed Petitioner an opportunity to call its sole witness, but Petitioner was unable to reach the witness and chose to rest on the documentary evidence. DCPS made a motion for a directed finding, asserting primarily that Petitioner had the burden of proof and needed a witness to usher in the documentary evidence. Petitioner responded that the documents were admitted evidence and cases are often brought simply on the documents. The hearing officer considered the parties' arguments and denied DCPS's motion on the ground asserted. Thereafter, DCPS rested on the record as well, and the hearing officer received closing statements prior to concluding the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUES

The issues to be determined are as follows:

1. Did DCPS deny Student a free appropriate public education by failing to convene an IEP team meeting upon Parent's request?

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

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. By settlement agreement dated August 5, 2010, DCPS agreed to change Student's location of services from a DCPS school to a private full-time special education school for school year 2010/11, and to provide funding and transportation for Student to attend the private school during SY 2010/11.²
2. At the time of the August 5, 2010 settlement agreement, Student's current IEP was dated May 7, 2010, and the IEP required Student to receive 25 hours per week of specialized instruction, 90 minutes per week of speech-language services, and 30 minutes per week of behavioral support services, with all instruction and services to be provided in an outside general education setting.³
3. On September 15, 2010, DCPS prepared an LOI suggesting September 27, 28 or 30 as possible meeting dates to develop/review Student's IEP.⁴
4. On October 1, 2010, one of Petitioner's counsel's attorney colleagues at his current law firm sent to the special education coordinator ("SEC") at Student's current private school a fax transmission that enclosed Student's updated IEP and stated that Parent had made the firm aware that the SEC was trying to schedule a 30-day review. Counsel asked the SEC to fax an LOI to the educational advocate and indicated that Parent and/or her representatives planned to attend the meeting by phone.⁵
5. On December 28, 2010, Petitioner filed the instant Complaint.
6. By Initial Order issued on January 11, 2011, the undersigned hearing officer scheduled the due process hearing for this case for February 24, 2011.
7. On February 1, 2011, DCPS held a resolution session meeting for this case. After the compliance case manager ("CCM") stated his understanding that the current private school has an open line of communication with Parent, Parent stated that she did not receive the LOI in the mail but was not contesting that it had been sent. Petitioner's counsel then stated that having the IEP meeting that was the subject of the Complaint would not resolve the Complaint. Prior to concluding the meeting, the CCM asked for

² DCPS-2.

³ Petitioner's Exhibit 1.

⁴ DCPS-1.

⁵ Petitioner's Exhibit 6.

available dates and times for the meeting, but Petitioner's counsel indicated that he would check with the advocates to determine availability.⁶

8. On or about February 1, 2011, DCPS issued a letter setting an IEP meeting for Student for February 15, 2011, and Monroe issued an LOI indicating that the IEP meeting had been scheduled for February 15 but that February 17 and 18 were also available as alternative meeting dates. By her signature dated February 6, 2011, Parent indicated on both documents that she was unavailable on the dates offered and would not be available for a meeting until February 25, 2011, which was the day after the scheduled due process hearing for this case.⁷
9. At the February 10, 2011 prehearing conference for this case, the hearing officer strongly urged the parties to conduct the IEP meeting prior to the scheduled due process hearing.
10. On February 17, 2011, DCPS convened an IEP meeting for Student. The IEP team reviewed Student's goals in each academic area and added two new reading goals and one additional written language goal. The comments by the teachers and service providers who attended the meeting indicated that Student is doing well and making great progress, is a good advocate for herself and asks for help when she needs it, and will be college bound if she continues to do well. Petitioner's advocate's meeting notes also indicate that the team increased Student's hours of specialized instruction to 27.5 and added certain accommodations, such as extended time and use of a calculator, to Student's IEP.⁸

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:

Failure to Convene an IEP Meeting Upon Parental Request

An LEA must ensure that a disabled child's IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the child's annual goals are being achieved, and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals, the results of any reevaluation conducted pursuant to the statute, information about the child that has been provided to or by the parents, the child's anticipated needs, or other matters. 34 C.F.R. § 300.324(b)(1).

In the instant case, Petitioner has alleged that DCPS denied Student a FAPE by failing to conduct an IEP meeting pursuant to Parent's October 1, 2010 request. However, the evidence in this case does not reveal an October 1, 2010 parental request for an IEP meeting. Instead, the evidence includes only an October 1, 2010 fax transmission from Petitioner's counsel to the SEC at

⁶ DCPS-3.

⁷ DCPS-5.

⁸ Petitioner's Exhibits 2 and 3.

Student's current private school, in which counsel acknowledged receiving notice from Parent that the SEC was trying to schedule an IEP meeting for Student, and counsel asked the SEC to send the LOI for the meeting to Petitioner's educational advocate. Moreover, while the evidence demonstrates that DCPS and/or the SEC at the current school attempted to schedule an IEP meeting without receiving a request for a meeting from Parent and appeared at all times to be willing to conduct such a meeting, the evidence further demonstrates that Parent and/or her representatives seemed to be in no rush at all to proceed with a meeting. Hence, when asked for potential meeting dates and times at the February 1, 2011 resolution session meeting for this case, Petitioner's counsel stated that he would have to check with his advocates and get back to DCPS. Moreover, when DCPS and the current private school subsequently scheduled a meeting for February 15, 2011, Parent indicated her unavailability and sought to postpone the meeting for ten days. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving that DCPS failed to convene an IEP meeting upon Parent's request.⁹

ORDER

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

1. Petitioner's December 28, 2010 is **DISMISSED** and all requests for relief therein are **DENIED**.

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: 3/10/2011

/s/ Kimm Massey
Kimm Massey, Esq.
Hearing Officer

⁹ In light of the standard set by 34 C.F.R. § 300.324(b)(1), in deciding this case the hearing officer has also taken into account the evidence of record demonstrating that at all times relevant to this case, Student was attending a private full-time special education school where she was doing well.