

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

STUDENT¹, by and through parent,

Petitioner,

vs.

District of Columbia Public Schools,

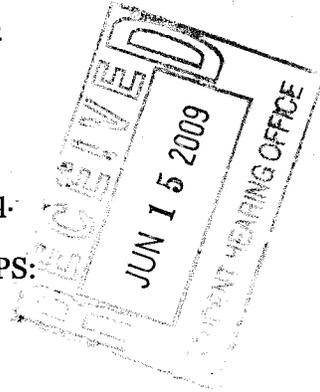
Respondent.

**HEARING OFFICER'S
DETERMINATION**

Counsel for Petitioner/Parent:
Domiento C. R. Hill, Esq.

Asst. Attorney General for DCPS:
Nia M. Fripp, Esq.

Impartial Hearing Officer
H. St. Clair, Esq.



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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On October 17, 2008, a Hearing Officer's Determination/Decision (HOD) was issued in this matter whereby the student was placed at the _____ a private facility.

On April 2, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent demanded compensatory education for the past denial of FAPE.

On April 8, 2009, DCPS filed a Response and Motion to Dismiss. On April 13, 2009, Counsel for the Parent filed an Opposition.

April 14, 2009, Counsel for the Parent filed a second Complaint essentially making the same demand.

On April 24, 2009, DCPS filed a second Response and Motion to Dismiss. The motions essentially set out two arguments: first, that the Parent agreed to resolve the issue of compensatory education at an MDT meeting, and second, that the student did not suffer academic harm. The MDT meeting convened on March 30, 2009 and did not resolve the issue of compensatory education. The second argument was rejected for the reasons set out in CONCLUSIONS of LAW, below. Here, the DCPS Motions to Dismiss are DENIED.

On May 7, 2009, Counsel for the Parent filed a Motion for Consolidation and on May 18, 2009, the undersigned consolidated the two Complaints. A hearing was scheduled for 9:00 A.M., Friday, June 5, 2009, at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 7B, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

ISSUE: **Should compensatory education be awarded to the student?**

FINDINGS of FACT

By facsimile dated May 28, 2009, the parent disclosed 16 witnesses and 64 documents.

By facsimile dated May 29, 2009, DCPS disclosed 9 witnesses and 20 documents. The documents were admitted into the record and are referenced/footnoted herein where relevant.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. On October 17, 2008, a Hearing Officer's Determination/Decision² (HOD) was issued in this matter whereby the year-old grade Other Health Impaired (OHI)-Attention Deficit Hyper-activity Disorder (ADHD) student was placed at the (), a private facility. The HOD found that DCPS had not made FAPE available to the student in a timely manner; the FINDINGS of FACT in the said HOD are incorporated herein by reference. The Parent requested evaluation of the student for special education services on November 15, 2007.

2. At the March 30, 2009 MDT meeting,³ the Educational Advocate proposed the following compensatory education for the student:

- a. Lindamood Bell Diagnostic Reading Assessment;
- b. 30 Hours of individual clinical reading tutorials;
- c. a laptop computer;
- d. 1 year at the Tae Kwon Do at the
- e. 25 hours of individual occupational therapy;
- f. 25 hours of individual speech/language therapy;
- g. 25 hours of individual tutorials services in written expression;
- h. 3 pieces of Merritt Software for students with ADHD, Read and Respond Punch - Starter Paragraph Punch - and Vocabulary-
- i. Bongonji Indoor Jumper - (trampoline); and,
- j. 1 week of summer camp at either or D.C. Camp for Students with Special Needs.

At the same meeting, DCPS counter proposed:

- a. 3 hours of tutoring for 6 months by an independent provider chosen by the Parent @ per hour;
- b. 1 hour per week of individual counseling for up to 6 months by an independent provider chosen by the Parent @ per hour; and
- c. a martial arts program for 6 months @ per month.

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² DCPS Document No 8; Parent Doc. No 39

³ Par. Doc. No 47; DCPS Doc. No 12

3. At the March 30, 2009 MDT meeting,⁴ DCPS rejected the compensatory education plan proposed by the Advocate; the Parent filed the two herein consolidated Complaints.
4. The record did not show any need on the part of the student for occupational therapy.
5. The SUMMARY to the May 9, 2008 Educational Evaluation Report,⁵ read, in part: [The student's] English oral language skills are average when compared to other at his age level. His Academic Skills are high average. His ability to apply academic skills is average. When compared to others at his age level, [the student's] performance is high average in written language and average in mathematics. The evaluation recommended a computer and software.
6. The student's academic achievement did not merit compensatory education in Reading, Written Expression nor Mathematics.
7. The student's academic achievement did not merit tutoring as compensatory education.
8. The May 6, 2008 Speech/Language Evaluation Report⁶ recommended speech/language services for the student, but the student received or could receive the services at the
9. The student was doing well at the but had problems controlling his behavior. At the April 17, 2009 MDT meeting at the the student's teacher opined that, ". . . the student is making good steady progress and doesn't need any additional services beyond what the school is already providing."⁷
10. The Parent thought the Advocate's compensatory education plan was best for the student; that the student received counseling at the and had very much calmed down since attending the⁸
11. The student's DCPS Kindergarten Teacher thought the student did not qualify for special education services and further thought there was no need compensatory education; that the student misbehave in her

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⁴ Par. Doc. No 46

⁵ Par. Doc. No 29

⁶ Par. Doc. No 26, page 5

⁷ DCPS Doc. No 19

⁸ -testimony of Parent

classroom, and but for his misbehavior, his achievement would have been higher.⁹

12. A trampoline was not an assistive technology device for the student.

13. During the DCPS delay in making FAPE available to the student the student's disability worsened. The student's ADHD affected the student's attention, concentration and behavior and negatively affected the student's educational performance. Accordingly, any compensatory services must be directed at ameliorating the consequences of the student's disability, OHI-ADHD.

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

In *Reid vs the District of Columbia* 401 F3rd 516 (D.C. Cir. 2005), the Court amplified compensatory education in the District of Columbia.

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individual assessments.

Some students may only require short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.

In every case, however, the inquiry must be fact specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefit that likely would have accrued from the special education services the school district should have supplied in the first place.

Reid requires a "fact specific" inquiry and calculation in fashioning an award of

⁹ -testimony of the student's DCPS Kindergarten Teacher

compensatory education.

Inquiry into this matter revealed that during the time of the DCPS delay in making FAPE available to the student, the student's ADHD negatively affected his educational performance; that the appropriate compensatory education plan was one that would directly reduce the impact of the student's ADHD on his behavior, and from the record, that was the summer camp and/or Tae Kwon Do classes. A computer and the identified software would also assist the student in focusing his attention and concentration.

SUMMARY of the DECISION

The Parent met her burden as to some but not all of the requested compensatory education.

In consideration of the foregoing, the hearing officer made the following

ORDER

1. As compensatory education for the past denial of FAPE, DCPS will pay for a period of one year for a summer camp, a Tae Kwon Do program or any combination thereof as the parties shall agree; and,
2. DCPS shall provide to the student a laptop computer and 3 pieces of Merritt Software for students with ADHD (Read and Respond Punch, Starter Paragraph Punch and Vocabulary)

Dated this *15th* day of *June*, 2009

/s/ H. St. Clair

H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.