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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: July 2, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Date: June 28, 2010
Room: 4A

HEARING OFFICER DETERMINATION

BACKGROUND

Student is a year-old female, who has an IEP that entitles her to receive 27.5 hours per week of special education and related services.[1]

On April 28, 2010, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS had provided Student with an inappropriate placement. As relief for this alleged violation of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. §§ 1400 et. seq., Petitioner requested a placement at and transportation to attend one of several listed private special education school and/or residential treatment facilities, or an MDT meeting within 10 days.

On May 5, 2010, DCPS filed its Response to the Complaint. In its Response, DCPS denied the allegations of the Complaint and declined Petitioner's request to place Student in one of the requested private or residential facilities.

On June 2, 2010, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the

[1] Complaint at 3.

conference, Petitioner indicated that it would be willing to consider other DCPS options, and the parties agreed to discuss the matter further after the prehearing conference. The hearing officer issued the Prehearing Order on June 7, 2010.

On June 23, 2010, the hearing officer attempted to convene a second prehearing conference, at the parties' request, to discuss the fact that Student had absconded from her group home and whether the hearing could proceed before Student returned. The hearing officer was unable to convene the scheduled conference because DCPS failed to timely appear. Nevertheless, Petitioner's counsel advised the hearing officer that the parties were planning to resolve the matter by entering into a settlement on the record, and DCPS's counsel later confirmed by email that the parties planned to settle the matter on the record at the hearing.

In light of their decision to settle the matter on the record, the parties did not submit any five-day disclosures.

On June 28, 2010, the hearing officer convened the due process hearing for this case.[2] As promised, the parties entered into a settlement on the record that consisted of the following components: (1) For the purpose of closing out and satisfying the October 11, 2009 HOD for Student, the parties agree that the Prior Notice issued at the April 22, 2010 MDT meeting was actually faxed to Petitioner's counsel, despite the lack of evidence in the form of a fax confirmation, and DCPS will fax the PNOP to counsel again. Therefore, the parties agree that the April 22, 2010 HOD is timely closed for Blackman Jones purposes. (2) DCPS will provide transportation in the form of fare cards to Student. (3) For the 2010/11 school year, Student will be placed at (4) DCPS will fund an independent educational assessment to be completed in 45 days, if at all possible, and at the rates set forth in the Chancellor's Directive of July 18, 2008, and the assessment report is to be faxed to the Resolution Team's inbox at 202-645-8828. (5) DCPS will also fund 150 hours of independent tutoring at the rate of per hour, with said tutoring to be completed by August 31, 2011. (6) The parties will have a meeting prior to the start of the school year to review the educational assessment, discuss the progress in tutoring and credit recovery, and discuss Student's schedule. (7) DCPS will convene an IEP meeting before September 30, 2010 to update Student's IEP as needed. (8) DCPS will fund up to 5 credits of distance learning at a rate not to exceed per credit, for a total of These services are governed by the Chancellor's Directive 210.1. (9) DCPS will fund 50 hours of mentoring at a rate not to exceed per hour and to be completed by August 31, 2011.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to IDEIA, 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:

[2] Counsel for each party and all hearing attendees are listed in the Appendix that accompanies this decision.

1. Does the parties' settlement on the record fully resolve the matters raised in the Complaint?

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 parties entered into a settlement on the record at the June 28, 2010 due process hearing for this case.

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. Placement/Settlement on the Record

Upon consideration, the hearing officer has determined that the parties' settlement on the record fully resolves all issues raised in the Complaint and should be implemented.

ORDER

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

1. The parties shall comply with the following terms of their settlement on the record:

   (i) For the purpose of closing out and satisfying the October 11, 2009 HOD for Student, the parties agree that the Prior Notice issued at the April 22, 2010 MDT meeting was actually faxed to Petitioner's counsel, despite the lack of evidence in the form of a fax confirmation, and DCPS will fax the PNOP to counsel again. Therefore, the parties agree that the April 22, 2010 HOD is timely closed for Blackman Jones purposes.

   (ii) DCPS will provide transportation in the form of fare cards to Student.

   (iii) For the 2010/11 school year, Student will be placed at

   (iv) DCPS will fund an independent educational assessment to be completed in 45 days, if at all possible, and at the rates set forth in the Chancellor's Directive of July 18, 2008, and the assessment report is to be faxed to the Resolution Team's inbox at 202-645-8828.

(v) DCPS will also fund 150 hours of independent tutoring at the rate of per hour, with said tutoring to be completed by August 31, 2011.

(vi) The parties will have a meeting prior to the start of the school year to review the educational assessment, discuss the progress in tutoring and credit recovery, and discuss Student's schedule.

(vii) DCPS will convene an IEP meeting before September 30, 2010 to update Student's IEP as needed.

(viii) DCPS will fund up to 5 credits of distance learning at a rate not to exceed per credit, for a total of These services are governed by the Chancellor's Directive 210.1.

(ix) DCPS will fund 50 hours of mentoring at a rate not to exceed per hour and to be completed by August 31, 2011.

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: 7/2/2010

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