

**DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT
OFFICE OF COMPLIANCE AND REVIEW**

DOB

Petitioner,

v

Patrick Lane, Hearing Officer

Case#

District of Columbia Public Schools,

Respondent.

OSSE
STUDENT HEARING OFFICE
2009 AUG 18 PM 1:16

HEARING OFFICER DECISION

BACKGROUND

This due process hearing is administered pursuant to 20 USC 1400, et seq., (IDEA), its implementing regulations under 34 CFR 300, et seq. and District of Columbia regulations. The student in this matter is a year old male with ADHD. The Complaint was filed May 22, 2009. The Hearing was continued on Motion by Petitioner's Counsel. The Hearing was held on August 11, 2009. John Strauss, Esq. represented Petitioner. Nia Fripp, Esq. represented LEA. Petitioner offered ten documents into evidence and called two witnesses. LEA offered seven documents into evidence and called two witnesses, including one rebuttal witness.

ISSUES

The issues to be determined are as follows:

1. Did LEA deny student FAPE by failing to follow proper procedures in determining the student's need for extended school year services?

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. Student is a male year old student with ADHD who has previously been determined eligible for special education services and has received such services under an IEP. *See P-5.*
2. Student previously received extended school year services. However those ESY services were offered as a compensatory education plan. *See P-6.*
3. During an IEP team meeting on April 27, 2009, the mother and her educational advocate requested ESY for student. *Testimony of mother.*
4. During the April 27, 2009, IEP team meeting, the discussion regarding ESY lasted roughly five minutes. *Testimony of educational advocate and mother.*
5. During the April 27, 2009, IEP team meeting, the mother participated in the ESY discussion by requesting ESY and stating her concerns to the team. *Testimony of mother.*
6. During the April 27, 2009, IEP team meeting, the team discussed the difference between summer school and ESY for the student. *Testimony of general education teacher.*
- 7.

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. The provision of FAPE is determined by a two prong test: First, has the LEA complied with the procedures of IDEA. Second, is the IEP reasonably calculated to provide the student with educational benefit? *Bd.of Educ. V Rowley, 102 S. Ct. 3034 (1982).*

2. A student is eligible for services under IDEA if the student has a disability and who, by reason of the disability, needs special education and related services. *20 U.S.C. 1401, 34 C.F.R. 300.8*
3. The applicable statutory authority is found at 20 U.S.C. 1400, et seq. (IDEA) and its regulatory interpretations at 34 C.F.R. 300, et seq.
4. The student is a disabled child within the meaning of 20 USC 1400, et seq. (IDEA), its implementing regulations at 34 CFR 300, et seq. and District of Columbia Municipal Code.
5. A Claim under IDEIA for a procedural violation is viable only if the violation affects the student's substantive rights. *Lesesne v. District of Columbia, 447 F.3rd 828 (C.A.D.C. 2006)*.
6. LEA must provide ESY services to students when such services are necessary to provide FAPE. *34 CFR 300.106*.
7. Petitioner failed to meet his burden.

DISCUSSION

Petitioner in this matter alleges that LEA has committed a procedural violation in determining whether or not student is entitled to ESY. It is important to note that the Petitioner's Due Process Complaint does not allege a substantive denial of FAPE. Rather, the Petitioner alleges only a single issue presented as follows: "DCPS failed to follow proper procedures in determining the need for Extended School Year services." *See Due Process Complaint*. Although Petitioner requests relief in the form of a declaration from the Hearing Officer that a

denial of FAPE has occurred, no substantive violation was presented and no evidence of a substantive denial was presented.¹

Procedural violations may be the basis for relief under IDEIA only if the violation affects the student's substantive rights. *Lesesne v. District of Columbia*, 447 F.3rd 828 (C.A.D.C. 2006). It is clear from the testimony of the mother and the educational advocate that a discussion of ESY took place at the request of the mother. Procedures require that such a discussion take place and because such discussion did in fact take place, the procedural requirement was met. It is clear that the mother and the advocate participated in the discussion. The discussion was certainly brief and the mother did not agree with the outcome of the discussion. However, disagreement with the outcome of an ESY discussion does not rise to the level of a procedural violation.²

ORDER

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

1. That this Due Process Complaint be DISMISSED.
2. That this case be closed.

NOTICE OF RIGHT TO APPEAL

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

¹ Petitioner did make vague references to student suffering from regression and emerging skills; however, there was no coherent argument or evidence presented to prove such a claim. Moreover, since Petitioner did not allege the substantive violation, any attempt to prove such a claim may have been outside the scope of this hearing.

² Because the Petitioner only alleged a procedural violation, no discussion of the substantive relief requested is necessary.

(90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Dated: 8/17/09 _____ /s/ Patrick Lane
Hearing Officer