

District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
State Enforcement and Investigation Division
Student Hearing Office

Van Ness Elementary School
1150 5th St., S.E., Washington, D.C. 20003
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OSSE
STUDENT HEARING OFFICE
2009 AUG 13 PM 3: 21

In Re the Matter of :)	
)	
Parent on behalf of Student,)	
)	
Petitioner,)	
)	
)	
v.)	Date of Complaint: May 12, 2009
)	Date of Pre-hearing: June 11, 2009
The District of Columbia Public Schools)	Dates of Hearing: July 16, 2009
825 North Capitol Street, N.W.)	August 11, 2009
Washington, D.C. 20002,)	
)	Student Case Number:
Respondent.)	
)	Student Identification Number:
)	
)	

HEARING OFFICERS' DECISION (HOD)

Hearing Officer:	Attorney Ramona M. Justice
Attorney for Petitioner:	Attorney Domiento Hill The Law Offices of James E. Brown and Associates 1220 L Street, N.W., Suite 700 Washington, D.C. 20005
Attorney for Respondent:	Attorney Laura George, Assistant Attorney General, Office of the Attorney General 825 North Capitol St., N.E., 9 th Floor Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution.

**THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA),
REAUTHORIZED AS THE INDIVIDUALS WITH DISABILITIES EDUCATION
IMPROVEMENT ACT OF 2004 (IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING**

I. INTRODUCTION

The student is _____ years of age, and attends _____ a District of Columbia public charter school, located in the District of Columbia. The student is a resident of the District of Columbia, and is identified as disabled and eligible to receive special education services, pursuant to “The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)”. The student’s disability classification is Other Health Impaired (OHI).

On May 12, 2009, Petitioner, through her Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as “DCPS” or “Respondent”, denied the student a Free Appropriate Public Education (“FAPE”), by failing to:

- (1) complete a psychological, educational, and clinical psychological evaluation, pursuant to parent’s request, and in the event DCPS completed the requested evaluations, it failed to provide parent a copy of the reevaluation data and reconvene the student’s MDT meeting to review the evaluations;
- (2) review the student’s speech and language evaluation;
- (3) develop an appropriate IEP for the student; and
- (4) that the student is entitled to compensatory education services during the period the student was denied services.

The due process hearing initially convened on July 16, 2009, at 9:00 a.m., and reconvened on August 11, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

** Note: During the pre-hearing conference, Petitioner withdrew Issues 1, 2, and 3 of the complaint indicating that the issues were resolved by the parties, at the June 9, 2009 MDT meeting.*

II. JURISDICTION

This proceeding was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

III. DUE PROCESS RIGHTS

At the hearing, Petitioners' Attorney waived a formal reading of parent's due process rights.

IV. ISSUES

The following issues are accepted by the court for decision:

- (1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate Individualized Education Program (IEP), during the 2008/09 school years?
- (2) Whether the student is entitled to compensatory education services, as a result of DCPS' failure to provide the student an appropriate IEP, during the 2008/09 school years?

V. RELIEF REQUESTED

Relief Requested:

- (1) A finding that DCPS denied the student a FAPE by failing to develop an appropriate IEP for the student.
- (2) A finding that the student is entitled to compensatory education services.
- (3) DCPS shall convene an IEP team meeting within ten (10) school or business days upon either receipt or production of the last of the clinical psychological evaluation and functional behavioral assessment, review and revise the student's IEP as appropriate, develop the student's behavior intervention program, and make an appropriate decision regarding the student's educational placement. If a change in placement to a more restrictive setting is recommended, DCPS shall have five (5) schools days to issue a Prior Notice of Placement identifying one of three programs chosen by the parent and the rest of the IEP Team for which the parent will be allowed to choose.
- (4) DCPS shall fund the compensatory education program presented by the parent.

- (5) All meetings shall be scheduled through counsel for the parent with copies of such to the parent and in the parent's native language.
- (6) Pursuant to D.C. MUN. REGS, Title 5, §3000 et seq., DCPS shall ensure that the student's rights and his complainant's rights are protected, and consistent with the Hearing Officer's preamble to all due process hearing that, "the hearing officer will rule on the evidence as presented at the hearing and will ACT in the BEST INTEREST of the child," and make a ruling consistent with the obligation of DCPS and the hearing officer's responsibility.
- (7) The Hearing Officer shall find that the complainant is the prevailing party in this action thereby entitling her to recover her reasonable attorneys' fees and related costs.
- (8) Any other relief the Hearing Officer finds just and reasonable.

VI. PROCEDURAL POSTURE

On May 12, 2009, Petitioner, through her Attorney, filed a due process complaint; and on May 14, 2009, Respondent issued "DCPS Resolution Session Waiver". On May 17, 2009, the Hearing Officer issued a Pre-hearing Conference Notice scheduling the Pre-hearing Conference for June 11, 2009, at 3:00 p.m.. On May 22, 2009, Respondent filed "District of Columbia Public Schools' Response to Parent's Administrative Due Process Complaint Notice".

On June 11, 2009, at 3:00 p.m., the pre-hearing conference convened, as scheduled; and the Hearing Officer issued a Pre-hearing Conference Order, confirming the due process hearing for July 16, 2009, at 9:00 a.m.. The due process hearing convened on July 16, 2009, at 9:00 a.m., however, the hearing required more time than initially requested when the complaint was filed, and was continued. On July 16, 2009, the Hearing Officer issued an Interim Order of Continuance Motion continuing the due process hearing to August 11, 2009, at 9:00 a.m..

On July 8, 2009, Respondent filed disclosures and a witness list; and on July 9, 2009, Petitioner filed disclosures and a witness list. The due process hearing reconvened on August 11, 2009, at 9:00 a.m., as scheduled.

VII. PRELIMINARY MATTERS

The parties presented no preliminary matters at the hearing. The court proceeded with a hearing on the merits.

IIX. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. Receiving no objections, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibit 16; and a witness list dated July 9, 2009.

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibit 02; and a witness list dated July 8, 2009.

HEARING OFFICER'S EXHIBIT

- Hearing Officers' Exhibit 01. D.C. Public Schools Speech and Language Eligibility/Dismissal Criteria Standards.

IX. STATEMENT OF CASE

1. The student is _____ years of age, and attends _____ a District of Columbia public charter school, located in the District of Columbia. The student is a resident of the District of Columbia, and is identified as disabled and eligible to receive special education services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Other Health Impaired (OHI).

2. On October 30, 2007 a Multidisciplinary Development Team (MDT) convened to conduct an annual review of the student's IEP, and prepare for reevaluation of the student. The team recommended a Comprehensive Psychological Evaluation, Speech Evaluation; and a Social History assessment. The MDT developed an IEP for the student providing for .50 hours per week of speech and language services, and .75 hours per week of psychological services.

The MDT developed a Student Evaluation Plan, recommending comprehensive psycho-educational evaluation and behavior scales, speech evaluation, and social history assessment, which parent authorized by signing the SEP. Parent also executed a "Consent for Evaluation", authorizing triennial reevaluation of the student.

The MDT also issued a Prior to Action Notice indicating that the student remained eligible for special education services, as a student with speech and language impairment. The notice also proposed termination of the student's speech-language and social work services; indicating that based on the student's IEP, his needs can be met at Montgomery Elementary, his neighborhood school.

3. On January 29, 2008, DCPS completed a Speech/Language Evaluation. Results of the CASL indicate that the student's receptive language skills are within the average range of performance, and expressive language skills are also within the average range.

Results of the Receptive One-Word Picture Vocabulary Test (ROWPVT) indicate that the student's hearing/understanding vocabulary to be within the average range; and results of the Expressive One-Word Picture Vocabulary Test (EOWPVT) indicate his speaking vocabulary to be within the borderline range. Assessment data was analyzed in conjunction with DCPS Speech and Language Severity Rating Scale; and assessment results were found not consistent with a diagnosis of speech-language impairment. The evaluator concluded that speech and language intervention was not recommended at that time.

4. On March 12, 2008, parent signed a "Completion of Services Form", indicating that she agreed with DCPS' proposed termination of the student's speech language therapy services. The form indicates that the speech language therapy goals/objectives were completed on January 29, 2008; and results of evaluation reflect that the student exhibits age appropriate oral language skills.

5. On January 27, 2009, the student received a 5-day Suspension Letter, allegedly because he was physically aggressive towards a classmate. On January 30, 2009, Petitioner's Attorney forwarded a letter to the Special Education Coordinator at confirming parent's participation in a Multidisciplinary Development Team (MDT) meeting scheduled for February 4, 2009, at 9:00 a.m.; and requesting a meeting confirmation.

The letter also included a request for reevaluation of the student, to include: psycho-educational, clinical psychological and psychiatric evaluations; because of concerns regarding the student's academic and behavioral progress and ability to render appropriate educational decisions regarding the student. The letter included a request for an independent Speech and Language Evaluation, because of parent's disagreement with DCPS' findings that her child fails to require speech and language services. The letter concluded with a request for copies of all suspension notices generated for the student, since the beginning of the current school year,

6. On January 29-30, 2009, DCPS completed a Report of Psychological Evaluation. The evaluator determined that as a result of the student's attendance problems finally being resolved and his recently being exposed to appropriate intervention services for a reasonable amount of time (which indicated significant difficulties in his mastering skills despite small group and individual instruction), he now meets the criteria for the disability category of "Multiple Disabilities (MD)", which includes "Specific Learning Disabilities" and "Other Health Impairments (OHI)" to address the student's Attention Deficit Hyperactivity Disorder (ADHD), as defined by IDEA.

The evaluator also indicated that it can now be stated with certainty that the student's learning disability is not primarily the result of visual impairment, hearing impairment, motor problems, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage including poor instructional experiences and/or chronic absenteeism.

The evaluator recommended an intensive program to address the student's academic needs as well as the behaviors related to his ADHD; specialized instruction in all academic areas (reading, math, written language). Accommodations for the student's ADHD related behaviors, and psychological counseling; behavior modifications; a multi-sensory teaching approach because of the student's significant short-term auditory memory deficits, as well as working memory.

The evaluator concluded by recommending clear limits, limited distractions, and a small group setting; and assignments broken up in small components. As of the date of hearing, DCPS failed to convene a MDT meeting to review the results of the evaluation, and develop an appropriate IEP for the student.

7. On January 30, 2009, Petitioner's Attorney forwarded a letter to the student's Special Education Teacher and Special Education Coordinator, indicating that after a review of the Speech and Language Evaluation completed by DCPS on January 29, 2008; it disagreed with its findings that the student fail to require speech and language services; and requested an independent Speech and Language Evaluation.

8. On February 4, 2009, _____ convened a MDT meeting to discuss the student's progress at school over the past few months, in order to determine whether the student's current IEP is appropriate; review recent disciplinary infraction; determine whether the behavior is a manifestation of the student's disability; and if necessary, amend the IEP to better meet the needs of the student.

The team determined that the student's involvement in an incident occurring on January 27, 2009, was a manifestation of his disability. _____ agreed to complete the evaluations requested by parent's Attorney on January 30, 2009; and pursuant to parent's request, rescheduled the IEP and SEP meeting to allow for attendance by the Education Advocate.

The MDT meeting notes indicate that the Education Advocate would contact the school that afternoon to coordinate scheduling of the meeting; and the team would convene the meeting as soon as possible to ensure that the IEP is addressed and evaluations ordered. The MDT meeting notes also indicate that parent advised the team that she believes the student is working well at _____ "she sees a lot of improvement with xxx both academically and behaviorally"; and "his current grades look great". The notes also indicate that parent stated that "last year, he was in a lot of trouble and xxx has come a long way. She wants xxx to stay here at _____"

9. On February 27, 2009, _____ convened a MDT meeting to review the student's recent standardized test score reports; review the student's attendance report, current grades, and recent teacher comments; discuss the student's progress at school in all areas impacted by a disability; develop an IEP that appropriately addresses the student's needs; consider whether transportation and extended school year (ESY) services are needed; and develop the Student Evaluation Plan (SEP).

The MDT meeting notes reflect that the Education Advocate failed to contact the school to reschedule the IEP and SEP meeting, and the school issued a Letter of Invitation on February 11, 2009, proposing three dates (2/20/09, 2/23/09, and 2/25/09); and Petitioner's Attorney responded on February 12, 2009.

The team agreed to update the IEP because the student's behavior is a manifestation of his disability; and when not medicated the student exhibits increased negative behavior. The team reviewed findings of the Hawthorne Behavioral Scale; and determined that .30 minutes of counseling would be included in the student's IEP, with goals stemming from the Hawthorne scale.

The student's Science Teacher reported that the student has been motivated; does really well given leadership and responsibility roles in the classroom; and has a "C" average in the class. The student's Math Teacher reported that the student continues to make progress, his assignments and tests are not modified; and as of late, she noticed a drop in quality, whereas he once received A's and B's on homework, and currently exhibits "C" quality; and behavior is great.

The student's Reading Teacher reported that the student is making significant gains in the reading class; is working more and more independently, and really enjoys the reading class. The teacher reported that at times the student struggles to complete an entire assignment because he is trying to perfect the assignment; and in such instances the assignment is modified so that he may complete it in the time given and is graded on that completed. The teacher also indicates that the student has a grade of "C" in reading class; first and second advisories received a "B"; has had minimal issues in reading.

The team discussed the need for the evaluations requested by parent and DC indicated that it believed that the concerns expressed by parent would be addressed through clinical psychological testing. The advocates requested that the psycho-educational testing be conducted and the psychiatric evaluation. The team, including parent and the advocate agreed to psycho-educational testing and a full clinical evaluation with testing for ADHD and PTSD. The team also agreed not to order a Psychiatric Evaluation at that time.

also determined that the Speech Language Evaluation can be conducted by DCPS; and if the parent disagrees with the evaluation, can at that time request an independent evaluation. The advocate reiterated parent's request for an independent Speech Language Evaluation.

explained that its academies are non-LEA (local education agency) schools for special education purposes, therefore, evaluations are conducted by DCPS personnel or contractors; although it makes every effort to expedite the process, evaluation timeframes are dependent on DCPS.

The team developed a SEP, indicating that the team requests testing pursuant to parent's and the advocate's request; the student is reading with low fluency and has had two occasions during the year when his behavior resulted in suspension. The SEP reflects that the team recommends educational testing, psychological testing, speech and language testing (independent), full clinical testing for Attention Deficit Hyperactivity Disorder (ADHD) and Post Traumatic Stress Disorder (PTSD). Parent executed the "Consent for Evaluation-Initial or Reevaluation", at the meeting, authorizing reevaluation of the student.

10. On March 11, 2009, D.C. Public Schools, Office of Special Education forwarded an Independent Educational Evaluation letter to Petitioner's Attorney, authorizing parent to obtain an independent Speech and Language Evaluation, at its expense; and requested a copy of the evaluation, upon completion.

11. On April 1, 2009, DCPS completed a "Confidential Report of Psychological Evaluation" of the student. The purpose of the evaluation was to address concerns regarding the student's reading fluency and behavior difficulties in school; and to determine whether the student continues to satisfy eligibility criteria to receive special education services as a student with special needs.

The evaluation reflects that the student is diagnosed with ADHD and has received pharmacological intervention since 2006; and current cognitive testing revealed verbal reasoning skills, memory skills, and processing speed skills in the low Average range, and non-verbal reasoning skills slightly better developed and just within the Average range. Academic achievement scores were low average/average, with certain writing skills, assessed in the High Average range. Visual-motor integration skills were lower than expected, but not of great concern at that time. Results from self-report measures suggested no social-emotional difficulties, no problems with parents or teachers, and no problems interacting with peers. There were also no depressive symptoms evident.

The evaluator recommended that the student continue to receive services as a student with Other Health Impaired. The evaluator determined that the student's diagnosis remains as it has been, ADHD, Combined Type and while it appears that his ADHD symptoms are being managed with prescribed medication, the student still requires services to address his deficits, and assist in maintaining consistent performance in the classroom.

The evaluator also determined that at that time, the current data and review of background information and results/data from previous assessments fail to indicate the presence of emotional difficulties consistent with the presence of PTSD, depression, or any other psychopathology. The evaluator concluded that the MDT may discuss whether or not an Occupational Therapy evaluation is warranted.

12. On April 2, 2009, Diagnostic Consultants, LLC completed an independent Speech-Language Evaluation. The purpose of the evaluation was to determine the student's present levels of functioning in speech and language skills and determine whether the student continues to demonstrate an educationally significant verbal communication deficit that adversely affects his academic performance.

According to the evaluation, test results indicate age and gender appropriate voice and fluency skills; and below average expressive single-word vocabulary skills with a standard score of 84: receptive single-word vocabulary skills are in the low range with a standard score of 78.

On the Expressive One-Word Picture Vocabulary Test (EOWPVT) the student scored 3 years, 2 months below his chronological age and 3 year 4 months below his chronological age on the Receptive One-Word Picture Vocabulary Test (ROWPVT). Receptive and language skills are scattered.

The evaluator determined, among others, that the student demonstrates below average vocabulary skills and scattered receptive and expressive language skills; experienced the most difficulty with receptive vocabulary and receptive language subtests; which can impact his ability to access the classroom curriculum, especially verbally presented information.

The evaluator also indicated that as academic demands become great so will the demand for receptive language ability; recommending intervention 30 minutes per week. The evaluator also recommended reevaluation with formal and informal assessment measures on a triennial-basis or upon request of the parent or educational team to monitor gains in skills and determine present levels of functioning in overall communication skills and determine the need to modify any services to best address the student's educational needs.

13. On April 9, 2009, Petitioner's Attorney forwarded to the Deputy Chancellor, Office of Special Education, and a copy of the independent Speech and Language Evaluation, indicating that the evaluation recommends thirty (30) minutes a week speech and language services for the student. The letter also included a request for a Letter of Invitation to reconvene the student's MDT/IEP team meeting, to review the evaluation.

14. On April 24, 2009, DCPS completed an "Addendum to Psycho-educational Evaluation". Reference was made to the Psycho-educational Evaluation report dated April 14, 2009, noting that it was requested that the student's mother and three of the student's teachers complete rating scales, and the student's mother failed to return the rating scale.

The evaluation indicated that there are some concerns regarding the student's behavior in school, and as indicated in the April 14, 2009 report, the student takes prescribed medication for ADHD, Combined Type. The evaluator indicated that it was reported that no emotional difficulties were identified that would be considered consistent with the presence of depression, PTSD, or any other psychopathology.

The evaluator indicated that results provided in this current report do not indicate the presence of behaviors or emotionality of an extreme nature; and overall the student was reported to be functioning within the range that is considered typical for his age and gender. The evaluator also reported that the slight elevation of the scores in three areas of functioning as reported by one teacher suggest behaviors that may be situational, rather than behaviors that are typical of the student's day to day functioning across subject areas. The evaluator concluded that no other disability classification is warranted at this time.

15. On May 12, 2009, Petitioner, through her Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a Free Appropriate Public Education ("FAPE"), by failing to: (1) complete a psychological, educational, and clinical psychological evaluation, pursuant to parent's request, (2) in the alternative, failed to provide parent a copy of the reevaluation data and reconvene the student's MDT meeting to review the evaluation, (3) review the student's speech and language evaluation, and (4) develop an appropriate IEP for the student; and that the student is entitled to compensatory education services during the period the student was denied services.

16. On June 9, 2009, DC convened an MDT Eligibility meeting. The MDT meeting notes indicate that the special education staff explained that to qualify for special education services, the student must demonstrate a disability (such as a learning disability, an emotional disturbance, mental retardation, or a medical condition). In addition, the disability must impact the child's academic performance.

The team reported that the student's grades during the 4th advisory school year 2008/09 reflect: Reading B-80, Math B-85, and Social Studies C-76. The team determined that the student failed to demonstrate a disabling communication disorder that would prevent him from accessing the general education curriculum; therefore, he failed to satisfy the DCPS Speech and Language Eligibility Criteria Standards for a student with Speech Language Impairments. Special Education Speech and Language Therapy was not recommended. Parent disagreed with the team's decision.

The MDT meeting notes indicate that according to the April 14, 2009 Clinical Psychological Evaluation, test scores reflect academic progress, and scores ranging from 75 to 87, in reading, math, written language.

The MDT meeting notes also indicate that on March 13, 2008 parent signed the completion of services form for speech and language services; and when the team reconvened on March 20, 2008 to develop the student's IEP, the parent and advocate agreed to and signed the IEP changing the student's classification from speech language impaired to Other Health Impaired, and discontinuing speech and language services.

The team determined that the student qualifies for special education services as a student with an Other Health Impairment, per his diagnosis and treatment for Attention Deficit Hyperactivity Disorder (ADHD) and its impact on his performance at school, however, has no other disability; and fail to qualify for transportation or extended school year services.

X. DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

ISSUE 1

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate Individualized Education Program (IEP), during the 2008/09 school years?

Petitioner represents that "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")" requires that all students be provided with a Free Appropriate Public Education ("FAPE"); and the FAPE requirement is satisfied when the State provides personalized instruction that is reasonably calculated to permit the child to benefit educationally. See Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176, 203-204 (1982).

Petitioner further represents that it is clear that DCPS failed to comply with the requirements of the statute. "Here, the student was recommended to receive speech and language services for thirty (30) minutes a week. As of today, DCPS has yet to develop an IEP which calls for the student to receive said services. DCPS' failure to develop an appropriate IEP amounts to a denial of a FAPE."

In closing, Petitioner represents that DCPS failed to provide the student speech and language services, although the student received thirty (30) minutes of speech language services per week, in his 2007/08 IEP. Petitioner also represents that the student scored below the standard deviation in more than one standardized language assessment measure; however the student's IEP was not updated to include speech language services, accommodations/or modifications.

Petitioner concludes that a student's grades are not indicative of progression, without considering other factors; the student may require more assistance than other students; and because the student's IEP was not revised, the student's deficits in the identified areas will advance. Petitioner concludes that the student has deficits in 3-4 areas, and the deficits must be addressed.

Respondent generally denied the allegations that it denied the student a free and appropriate public education ("FAPE"). Respondent specifically denies the allegation that DCPS denied the student a FAPE, by failing to provide the student an appropriate IEP.

Respondent represents that Petitioner claims that DCPS denied the student a FAPE by failing to incorporate the recommendations of an April 2, 2009 Speech and Language Evaluation into the student's IEP. "DCPS asserts that the MDT shall determine whether to adopt the recommendations of the independent evaluator at the confirmed May 29, 2009 meeting. DCPS asserts at this time, the student's IEP is appropriate to provide her with a FAPE."

Respondent concludes that the independent Speech and Language Pathologist testified that the student would benefit from speech and language services; and the DCPS Speech Pathologist testified that the evaluation tests are valid, acknowledging that the student has weaknesses in certain areas, however, viewed as a whole, the student does not have a speech and language disability.

Respondent also concludes that the standard in determining whether an IEP is appropriate is whether the IEP is reasonably calculated to provide the student educational benefit; and the student is likely to progress. Respondent concludes that the team considered information from various sources in developing the student's IEP, including the independent evaluation; and determined that the 2008/09 IEP already addresses the student's areas of weakness in vocabulary, as identified in the independent Speech-Language Evaluation; and the student is benefitting from the accommodations/modifications implemented in his classroom.

Discussion

A free appropriate program or "FAPE" means special education and related services that are provided at public expense, under public supervision, and without charge; meet the standards of the SEA, include an appropriate school; and are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

To ensure that each eligible student receives a FAPE, the IDEA requires that an individualized education program ("IEP") be developed to provide each disabled student with a plan for educational services tailored to that student's unique needs. 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii). To assist in development of an appropriate IEP for a student, the student is evaluated, in accordance with §§300.304 through 300.311, to determine whether the student has a disability and the nature and extent of the special education and related services the student requires.

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child meet to determine whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and... *See, IDEA, §300.306(a)*.

According to IDEA, §300.306 (c)(1)(i)(ii), in interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must—

- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- (ii) Ensure that information obtained from all of these sources is documented and carefully considered.

In this matter, the record reflects that on October 30, 2007 a Multidisciplinary Development Team (MDT) convened to conduct an annual review of the student's IEP, and prepare for reevaluation of the student. The team recommended a Comprehensive Psychological Evaluation, Speech Evaluation; and a Social History assessment. The team also developed an IEP for the student, providing for .50 hours per week of speech and language services, and .75 hours per week of psychological services. At that time, the student's disability classification was speech and language impaired (SLI).

The MDT developed a Student Evaluation Plan (SEP), recommending comprehensive psycho-educational evaluation and behavior scales, speech evaluation, and social history assessment, which parent signed. Parent also signed a "Consent for Evaluation", authorizing DCPS to complete triennial reevaluations of the student.

The MDT also issued a Prior to Action Notice indicating that the student remained eligible for special education services, as a student with a speech and language impairment; however, proposed termination of the student's speech-language and social work services, indicating that based on the student's IEP, his needs could be met at Montgomery Elementary, his neighborhood school.

On January 29, 2008, DCPS completed a Speech/Language Evaluation. Results of the Common Algebraic Specification Language (CASL) test indicate that the student's receptive language skills are within the average range of performance, and expressive language skills are also within the average range. Results of the Receptive One-Word Picture Vocabulary Test (ROWPVT) indicate that the student's hearing/understanding vocabulary to be within the average range; and results of the Expressive One-Word Picture Vocabulary Test (EOWPVT) indicate his speaking vocabulary to be within the borderline range.

Assessment data was analyzed in conjunction with DCPS Speech and Language Severity Rating Scale; and assessment results were found not consistent with a diagnosis of speech-language impairment. The evaluator concluded that speech and language intervention was not recommended at that time.

On March 12, 2008, parent signed a "Completion of Services Form", agreeing with DCPS' proposed termination of the speech-language therapy services. The form indicates that the speech language therapy goals/objectives were completed on January 29, 2008; and results of evaluation reflect that the student exhibits age appropriate oral language skills. The June 9, 2009 MDT meeting notes also reflect that the team reconvened on March 20, 2008, to develop the student's IEP, and at that time, parent and advocate agreed to, and signed the IEP changing the student's classification from speech language impaired to Other Health Impaired, and discontinuing speech and language services.

On March 11, 2009, D.C. Public Schools, Office of Special Education forwarded a letter to Petitioner's Attorney authorizing parent to obtain an independent speech language evaluation, at its expense; and requesting a copy of the evaluation, upon completion.

On April 2, 2009, pursuant to the IEE letter issued by DCPS, Diagnostic Consultants, LLC completed an independent Speech-Language Evaluation, to determine the student's present levels of functioning in speech and language skills and determine whether the student continues to demonstrate an educationally significant verbal communication deficit that adversely affects his academic performance.

According to the evaluation, test results indicate age and gender appropriate voice and fluency skills; and below average expressive single-word vocabulary skills with a standard score of 84; receptive single-word vocabulary skills are in the low range with a standard score of 78.

On the Expressive One-Word Picture Vocabulary Test (EOWPVT) the student scored 3 years, 2 months below his chronological age and 3 years 4 months below his chronological age on the Receptive One-Word Picture Vocabulary Test (ROWPVT). Receptive and language skills are scattered. The evaluator determined, among others, that the student demonstrates below average vocabulary skills and scattered receptive and expressive language skills; and experienced the most difficulty with receptive vocabulary and receptive language subtests; which can impact his ability to access the classroom curriculum, especially verbally presented information.

The evaluator also indicated that as academic demands become great so will the demand for receptive language ability; recommending intervention 30 minutes per week. The evaluator also recommended reevaluation with formal and informal assessment measures on a triennial-basis or upon request of the parent or educational team to monitor gains in skills and determine present levels of functioning in overall communication skills and determine the need to modify any services to best address the student's educational needs.

At the hearing, the independent Speech Pathologist who completed the independent Speech and Language Evaluation testified that the student demonstrates below average vocabulary skills and scattered receptive and expressive language skills; exhibiting the most difficulty with receptive vocabulary and receptive language subtests. The Speech Pathologist also testified that although she agrees with DCPS' eligibility criteria for speech and language services, she disagrees with the DCPS' Speech Pathologist testimony that the student requires an overall score of 1.5 below the standard deviation, in all areas of an assessment, to qualify for speech and language services.

The independent Speech Pathologist testified that the student tested two (2) standard deviations below the mean in concepts and following directions, and word definitions, which impacts his overall vocabulary skills; and three (3) standard deviations below the mean in understanding spoken paragraphs; which qualifies him for speech and language services. The independent Speech Pathologist also testified that the student requires speech language services because the identified areas of weakness are important areas; and the provision of services would focus on these specific areas of weakness.

During rebuttal testimony, the independent Speech Pathologist testified that according to the results of the independent speech and language evaluation which she administered, the student is not speech language impaired, however, the student would benefit from 30 minutes of speech language intervention, per week.

The DCPS Speech Pathologist testified that she reviewed the independent Speech and Language Evaluation, and is in agreement regarding the validity of test results included in the independent Speech and Language Evaluation; and acknowledged that the student exhibits weaknesses in the following subtest areas: concepts and following directions, word definitions, understanding spoken paragraphs. The DCPS Speech Pathologist also agreed that the student scored below average in the language content index, however, disagrees with the evaluator's recommendation of speech language intervention 30 minutes per week.

The DCPS Speech Pathologist testified that the student performed below average on two vocabulary (2) subtests, which is not indicative of a disabling condition. The Speech Pathologist also testified that although the student performed below average on two vocabulary (2) subtests, according to the independent Speech and Language Evaluation, the student's *overall* communication ability is in the average range, and adequate to access the general curriculum.

The Speech Pathologist also testified that she disagrees with the independent Speech and Language Pathologist that the speech language deficits identified in the evaluation, adversely impact the student's education; or denies the student access to the general curriculum. The Speech Pathologist testified that at the MDT meeting convened for the student, the student's teachers advised the team that the student fail to exhibit speech language difficulties in the classroom.

The DCPS Speech Pathologist concluded that the MDT considered evaluation test scores and results, DCPS' eligibility guidelines for speech and language services, and input from individuals most familiar with the student, including the student's reading and special education teachers; and based on that information, the MDT determined that the classroom modifications and accommodations included in the student's 2008/09 IEP are adequate to address the areas of weakness identified in the independent Speech and Language Evaluation; and provide the student access to the general curriculum. The Speech Pathologist recommends additional reading and vocabulary building for the student.

The Speech Pathologist also concluded, reiterating that although the student may exhibit weaknesses in certain areas of vocabulary, his overall communication, receptive and expressive scores are within the average range; and the weaknesses identified on certain subtests of the independent Speech Language Evaluation are insufficient to find that the student presents with a speech language disability, and requires speech language services.

The student's Special Education Teacher testified that he was the student's teacher during the 2008/09 school years, providing pull-out and inclusion services, on the student's behalf; and also serves as the Special Education Coordinator for this campus. The teacher testified that he has had a great experience with the student, who is extremely motivated, although he has weaknesses in reading and writing. As a result, the student received 8 hours of specialized instruction focusing on reading and writing; and his fluency and vocabulary are addressed in the classroom.

In addressing the student's academic progress during the 2008/09 school year, the student's special education teacher testified that the student's progress fluctuates, and he presents as an average student, receiving grades of "C's" and "B's" and occasionally a grade of "A". The teacher testified that at the end of the Third Advisory, the student read 62 words per minute with 97% accuracy, with grade level text; and at the end of the 4th Advisory, read 86 words per minute, with 95.5% accuracy.

The teacher testified that in March, 2009 the MDT determined that although the student demonstrated great improvement, the student would continue to work on improving his fluency skills. The teacher testified at the June, 2009 meeting the team agreed that although the student has made progress, he continues to require assistance with fluency, vocabulary' and made extreme progress in meeting his writing, spelling, and paragraph structure goal.

The teacher testified that in addressing the student's receptive skills the student sits in front of the class, is presented information verbally and visually, although he struggles at times when receiving information verbally; he readily requests assistance when needed; raises his hand; participates in class; and volunteers to read.

The teacher also testified that consistent with the student's IEP, the student receives classroom accommodations and modifications, such as small groups in reading class, written and verbal instructions, receives medication which assists with his ADHD, information is broken down in segments, utilizes graphic organizers on vocabulary, repetition of verbal and written directions, and recalling sentences.

The teacher testified that he agreed with the recommendation of the DCPS Speech Pathologist; and at the MDT meeting the MDT agreed to 4 hours of resource room and 4 hours of inclusion services, modifications and accommodations in the classroom. The teacher also testified that according to the Woodcock Johnson III academic testing, the greatest challenge for the student in the classroom is reading, letter word identification, reading fluency, written language, and passage comprehension; and occasionally the student has difficulty following directions.

The teacher concluded that although the team reviewed the independent Speech Language Evaluation, the student's IEP was not modified at the June, 2009 MDT because the team was already aware of the areas of weakness in vocabulary, identified in the independent Speech Language Evaluation, these areas of weakness were already addressed in the student's-

2008/09 IEP; and the student's grades demonstrated academic progress, therefore, modification of the student's IEP was not warranted. The teacher testified that the student's grades during the Fourth Advisory consisted of: "B" (80%) in Reading; "C" (76%) in Social Studies; "B" (86%) in writing; "B" (85%) in math; and Excellent in Music and Physical Education.

Parent testified that she disagrees with DCPS that the student does not require speech services; indicating that she assists the student with his homework and his speech deficits are apparent, the student stutters, and his words fail to correlate. Parent also testified that other students assist the student in the classroom with assignments; and his memory, and recall are poor.

Parent also testified that she agreed to terminate the speech and language services the student received previously because the Speech Pathologist indicated the student no longer required speech language services; however, as time progressed, she realized that the student requires speech and language services.

Parent testified that she has no concerns regarding the education the student receives at the student has improved, and "is doing much better"; and communication with staff at the school is good. Parent also testified that the student could benefit from speech language services; although the student's teachers have not informed her that the student has difficulty with memory or stuttering in class.

Finally, on June 9, 2009, _____ convened an MDT Eligibility meeting. The MDT meeting notes indicate that the DCPS Speech Pathologist explained to the team that to qualify for special education services, the student must demonstrate a disability (such as a learning disability, an emotional disturbance, mental retardation, or a medical condition). In addition, the Speech Pathologist explained that the disability must also impact the child's academic performance; and according to the student's grades and the April 14, 2009 Clinical Psychological Evaluation, test scores reflect academic progress and scores ranging from 75 to 87, in reading, math, written language.

The June 9, 2009 MDT meeting notes indicate that the student's Reading teacher reported that the student made significant progress during the 2008/09 school year; is becoming more apt to independently comprehend 5th grade level text which is demonstrated through his writing. The teacher also reported that at times, the student still requires modified class work and assessments. The teacher also reported that the student prefers to sit at the front of the room away from any distraction; demonstrates improved reaction to other student's and is utilizing strategies such as requesting to take a break or move his seat when needed.

The team determined that the student failed to demonstrate a disabling communication disorder that would prevent him from accessing the general education curriculum, therefore, he failed to satisfy the DCPS Speech and Language Eligibility Criteria Standards for a student with Speech Language Impairments. Special Education Speech and Language Therapy was not recommended. Parent disagreed with the team's decision.

Findings of Fact

1. To assist in development of an appropriate IEP for a student, DCPS reevaluated the student, and pursuant to parent' request, authorized an independent Speech-Language Evaluation, in accordance with §§300.304 through 300.311, to determine whether the child has a speech language disability and the nature and extent of the special education and related services the child requires.

2. Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals, and the parent of the child met to determine whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child, pursuant to IDEA, §300.306(a).

3. In interpreting the evaluation data for the purpose of determining if the child is a child with a disability under §300.8, and the educational needs of the child, DCPS drew upon information from a variety of sources, including aptitude and achievement tests, reevaluations, an independent Speech-Language Evaluation, input from the parent, Education Advocate, student's Science, Math, Reading, and Special Education Teacher, DCPS Psychologist, and Speech Therapist, as well as considered information regarding the child's ADHD, physical condition, social or cultural background, and adaptive behavior. DCPS ensured that the information obtained from all of these sources was documented and carefully considered.

4. In accordance with 20 U.S.C. §1414(d); 34 C.F.R. §300.300 et seq., DCPS developed an appropriate individualized education program ("IEP") for the student, for the 2008/09 school years, including educational services specifically tailored to meet the student's unique educational needs.

On June 9, 2009, the MDT reviewed evaluations completed by DCPS and the independent Speech-Language Evaluation. The MDT revised the student's IEP to include classroom accommodations and modifications, addressing specific areas of weakness identified in the April 9, 2009 independent Speech-Language Evaluation.

5. The DCPS Speech-Language Eligibility Criteria includes the following four (4) components:

- (a) A minimum of one standardized language assessment measure was administered, and the student scored at or below 1.50 standard deviations on the measure.
- (b) A standardized expressive and receptive vocabulary measure was administered.
- (c) Documentation (communication samples, checklist, interview, observation, other) that this impairment affects oral communication in the student's academic environment and that this delay has an adverse affect on the student's educational performance, social and/or vocational development;

- (d) The student requires speech and language intervention to address this language impairment that cannot reasonably be provided solely through his current educational setting; or that accommodations and modifications that can be made in the student's regular program do not, on their own, meet the communication needs of the student.

6. Petitioner presented evidence that: (a) A minimum of one standardized language assessment measure was administered, and the student scored at or below 1.50 standard deviations on the standardized language assessment measure; and (b) a standardized expressive and receptive vocabulary measure was administered; satisfying two (2) of the four (4) DCPS Speech-Language Eligibility Criteria.

The record reflects that on April 2, 2009, an independent Speech Language Evaluation was completed; representing a minimum of one standardized language assessment measure, wherein the student scored at or below 1.50 standard deviations. The record reflects that the student scored two (2) standard deviations below the mean in concepts and following directions, and word definitions; and three (3) standard deviations below the mean in understanding spoken paragraphs; which satisfies the first DCPS Speech-Language Eligibility criteria.

The record also reflects that a standardized expressive and receptive vocabulary measure was administered, as part of the independent Speech Language Evaluation, satisfying the second DCPS Speech-Language Eligibility Criteria.

7. There is no evidence that the student has a speech-language impairment. As a result, there is no documentation (communication samples, checklist, interview, observation, other) that this impairment affects oral communication in the student's academic environment; and that this delay has an adverse affect on the student's educational performance, social and/or vocational development. The student fails to satisfy the third DCPS Speech-Language Eligibility Criteria.

8. Although there is evidence that the student may benefit from speech language intervention, there is no evidence that the student requires speech and language intervention to address this speech language impairment, that cannot reasonably be provided solely through his current educational setting; or that accommodations and modifications that can be made in the student's regular program do not, on their own, meet the communication needs of the student. Therefore, the student fails to satisfy the fourth and final DCPS Speech-Language Eligibility Criteria.

9. Petitioner failed to satisfy the DCPS Speech-Language Eligibility Criteria, for speech and language services; and although recent evaluations, including the independent Speech Language Evaluation, indicate that the student would benefit from speech language intervention, the evaluations fail to indicate that the student is speech and language impaired, and eligible to receive speech language services, in accordance with the DCPS Speech-Language Eligibility Criteria.

10. Petitioner presented evidence that the student would benefit from speech and language intervention, to address the three (3) areas of weakness identified in the independent Speech Language Evaluation, specifically, concepts and following directions, word definitions, and understanding the spoken language.

11. Petitioner failed to present evidence that the student fail to receive speech and language intervention services, through the use of classroom accommodations and modifications, or that these measures are not specifically designed to address the areas of weakness identified in the independent Speech Language Evaluation. Petitioner also failed to present evidence that the intervention measures implemented in the student's classroom are ineffective; and as a result there is an adverse impact upon the student's education and learning; he is denied access to the general curriculum, and educational benefit.

12. Petitioner failed to present evidence that the student's 2008/09 IEP fail to include necessary specialized instruction, related services, accommodations and/or modifications; or that the accommodations and modifications included in the student's IEP, and implemented in the student's classroom are insufficient to address the student's special education needs, rendering the student's IEP inappropriate.

13. Petitioner failed to present evidence that DCPS failed to comply with the procedural requirements of the IDEA, in developing, reviewing and revising the student's 2008/09 IEP;

14. Petitioner failed to present evidence that DCPS failed to comply with the statutory elements of the student's IEP, and the goals and objectives in the IEP are not reasonable, realistic and attainable.

15. Petitioner failed to present evidence that the special education and related services in the student's IEP are not reasonably calculated to enable the child to receive educational benefit, and is likely to produce regression, and not progression.

Conclusions of Law

It is the Hearing Officers decision that Petitioner failed to satisfy its burden of proof by presenting evidence that DCPS failed to provide the student an appropriate IEP, during the 2008/09 school years; in violation of 34 C.F.R. §300.320 et. seq., of "The Individuals with Disabilities Education Act (IDEA)", reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)".

XII. ORDER

Based on the aforementioned, it is hereby:

1. **ORDERED**, that the relief requested by Petitioner is denied; and it is further
2. **ORDERED**, that this decision and order are effective immediately.

XIII. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date of this decision.

Ramona M. Justice

8-12-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Laura George, Office of the Attorney General
Attorney Domiento Hill: Fax: 202-742-2098