

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance

Student Hearing Office
Terry Michael Banks, Due Process Hearing Officer
1150 - 5th Street, S.E.
Washington, D.C. 20003
(202) 698-3819
Facsimile: (202) 698-3825
Tmbanks1303@earthlink.net

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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: June 29, 2009
)	
Petitioner,)	Prehearing Order: August 8, 2009
)	
v.)	Hearing Date: August 25, 2009
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

HEARING OFFICER'S DECISION

Counsel for Petitioner: Olekanma Ekekwe, Esquire
2426 L'Enfant Square, S.E.
Suite 100
Washington, D.C. 20020
(202) 742-6694
academy@olenkanmalaw.com

Counsel for DCPS: Candace Sandifer, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

¹ Personal identification information is provided in Appendix A.

Jurisdiction

This hearing was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Introduction

Petitioner is a _____ year-old student attending _____

On June 29, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) conduct manifestation meetings, (2) provide prescribed services, (3) provide an appropriate placement, and (4) develop a functional behavior assessment ("FBA"). In a Prehearing Order dated August 8, 2009, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' alleged failure to conduct manifestation determinations

Petitioner alleges that he was suspended for one day on May 22, 2008, and had in-school suspensions on the following dates without DCPS having conducted a manifestation determination: 9/8/08, 9/10/08, 9/19/08, 9/28/08, 10/17/08, 4/20/09, 4/30/09, 5/4/09, 5/6/09, 6/1/09.

DCPS asserts that one one-day suspension does not warrant conducting a manifestation determination.

- DCPS' alleged failure to conduct an FBA

Petitioner alleges that he was suspended for one day on May 22, 2008, and had in-school suspensions on the following dates without DCPS having conducted an FBA: 9/8/08, 9/10/08, 9/19/08, 9/28/08, 10/17/08, 4/20/09, 4/30/09, 5/4/09, 5/6/09, 6/1/09.

DCPS asserts that one one-day suspension does not warrant conducting an FBA.

- DCPS' alleged failure to provide prescribed services

Petitioner alleges that DCPS did not provide specialized instruction, social/emotional support services, occupational therapy ("OT") services, and extended year services ("ESY") during the 2008-2009 school year.

DCPS asserts that (1) behavioral support services were terminated at a Multidisciplinary Team ("MDT") meeting on April 7, 2009 with the parent's consent, (2) Petitioner is currently enrolled at [REDACTED] M.S. for ESY, (3) no OT services were prescribed in Petitioner's IEP, and (4) all other prescribed services were provided to Petitioner during the 2008-2009 school year.

- DCPS' alleged failure to provide an appropriate placement

Petitioner alleges that, contrary to the program set forth in Petitioner's Individualized Education Program ("IEP"), Petitioner receives all of his services in a general education classroom. DCPS asserts that Jefferson has, and can, meet Petitioner's educational needs

The due process hearing was convened and completed on August 25, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

Record

Due Process Complaint Notice dated June 29, 2009
District of Columbia Public School's Amended Response to Petitioner's Due Process Complaint dated July 30, 2009
Petitioner's Response to DCPS' Amended Response to Petitioner's Due Process Complaint dated August 10, 2009
Prehearing Order dated August 8, 2009
Petitioner's Five-Day Disclosure dated August 18, 2009 (Exhibit Nos. 1-9)
DCPS' Five-Day Disclosure dated August 18, 2009 (Exhibit Nos. 1-2)
DCPS' Supplemental Five-Day Disclosure dated August 19, 2009 (Exhibit Nos. 3-5)
Attendance Sheet for hearing conducted on August 25, 2009

Witnesses for Petitioner

Petitioner's Mother

Witnesses for DCPS

Special Education Coordinator,

Findings of Fact

1. Petitioner is a [REDACTED] year-old student attending [REDACTED]
2. On December 13, 2006, Dr. [REDACTED] completed a Psychological Evaluation of Petitioner. Dr. Boyd diagnosed Petitioner with Attention Deficit Hyperactivity Disorder (“ADHD”) and recommended “individualized instructions in all deficient achievement areas” and “proximity seating away from high traffic areas such as windows and doors.”³
3. On February 5, 2007, DCPS convened a Multidisciplinary Team (“MDT”) meeting. The MDT developed an Individualized Education Program (“IEP”) in which Petitioner was classified with multiple disabilities: learning disabled (“LD”) and other health impaired (“OHI”). The MDT prescribed fifteen (15) hours per week of specialized instruction in a combination of general education and resource room environments. Petitioner’s mother signed the IEP and indicated her agreement with its contents.⁴
4. DCPS reconvened an MDT on April 7, 2009 to develop Petitioner’s annual IEP. The MDT again prescribed fifteen hours per week of specialized instruction, entirely in a general education environment.⁵
5. Petitioner’s final grades for the 2008-2009 school year were as follows: C in Math ([REDACTED]s in Math (Ms. [REDACTED], English, and Science, and Fs in World History and Geography, Computer Applications, and Art ([REDACTED]. Mr. [REDACTED] provided the following comments: “Poor Behavior, Does Not Complete Class Assignments, Does Not Participate.” Ms. [REDACTED] noted: “Needs More Study.” Ms. [REDACTED]: “Excellent Behavior, Needs More Study.”⁶
6. Petitioner received one in-school suspension during the 2008-2009 school year. Petitioner completed summer school at [REDACTED]

Conclusions of Law

At the conclusion of Petitioner’s direct case, counsel for DCPS moved for a directed verdict on five issues. The Hearing Officer agreed with counsel that Petitioner’s counsel had offered no evidence regarding the need for manifestation determinations, ESY, or compensatory education services; the Hearing Officer granted the directed verdict as to these issues. The Hearing Officer deferred ruling on two issues: (1) the need

² *Complaint* at 1.

³ Petitioner’s Exhibit (“P.Exh.”) No. 1 at 4.

⁴ DCPS Exh. No. 2 at 1 and ¶XIII.

⁵ DCPS Exh. No. 2 at 5.

⁶ DCPS No. 5.

⁷ Testimony of Petitioner’s mother.

for a functional behavior assessment, and (2) failure to provide necessary services: OT and behavioral support services.

Failure to Provide an Appropriate Placement

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (“Rowley”),⁸ the Supreme Court held that the local education agency (“LEA”) must provide an environment in which the student can derive educational benefit.

The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of “free appropriate public education,” in addition to requiring that States provide each child with “specifically designed instruction,” expressly requires the provision of “such... supportive services... as may be required to assist a handicapped child to *benefit* from special education”...We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.⁹

Thus, Petitioner’s burden is to show that DCPS has failed to provide an environment in which Petitioner can derive educational benefit. Petitioner certainly did not perform well academically during the 2008-2009 school year. However, Petitioner offered no evidence of any inadequacy on the part of [REDACTED] or its staff. The logical next step to improve Petitioner’s performance would be to increase the level of specialized instruction. However, Petitioner did not allege that DCPS failed to develop an appropriate IEP. Therefore, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS failed to provide an appropriate placement.

Failure to Conduct an FBA, OT, or to Provide Emotional Support Services

Petitioner offered no persuasive evidence that his behavior warranted an FBA or behavioral support services. Petitioner’s mother testified that Petitioner had but one in-school suspension during the 2008-2009 school year. She did not provide information about the provocation for that suspension. In the section of the April 7, 2009 IEP devoted to “Emotional, Social, and Behavioral Development,” the MDT concluded that “[Petitioner] is able to function in a prosocial manner without the assistance of behavior support.”¹⁰ Only one of Petitioner’s teachers included a negative comment about his behavior on his final report card, while another teacher described his behavior as “excellent.” Finally, Petitioner offered no testimony or evidence concerning Petitioner’s

⁸ 458 U.S. 176 (1982).

⁹ *Rowley*, *supra*, at 200-01.

¹⁰ DCPS Exh. No. 2 at 4.

need for behavioral support services. The Hearing Officer concludes that Petitioner has failed to meet his burden of proving the need for an FBA or behavioral support services.

As for DCPS' alleged failure to provide OT services, the only relevant evidence submitted was a Student Evaluation Plan ("SEP") developed on February 5, 2007 ordering an OT evaluation.¹¹ However, Petitioner offered no testimony concerning the evaluation, whether or not it was conducted, or as to classroom performance over the more than two years since the SEP was developed that evinces a need for OT services. Therefore, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS failed to provide necessary OT services.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 4th day of September 2009, it is hereby

ORDERED, that the Complaint is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

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 (90) days of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/
Terry Michael Banks
Hearing Officer

Date: September 4, 2009

¹¹ P.Exh. No. 2.