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

Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: September 14, 2009
	)	
Petitioner,	)	Prehearing Conference: October 20, 2009
	)	
v.	)	Hearing Date: November 17, 2009
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Docket No.
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

HEARING OFFICER'S DECISION

Counsel for Petitioner:

Diana M. Savit, Esquire
Savit & Szymkowicz, LLP
7315 Wisconsin Avenue
Suite 601N
Bethesda, Maryland 20814
(301) 951-9191; Fax: (301) 718-7788

Counsel for DCPS:

Kendra Berner, 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 September 14, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to comply with a June 4, 2008 Hearing Officer's Decision by failing develop an appropriate Individualized Education Program ("IEP") and by failing to provide an appropriate placement. The Hearing Officer conducted a prehearing conference on October 16, 2009 and issued a Prehearing Order on October 17, 2009.

On October 19, 2009, Petitioner's counsel filed *Petitioner's Objections/Corrections to Prehearing Order.* On October 20, 2009, the Hearing Officer issued an Amended Prehearing Order. On October 22, 2009, Petitioner's counsel filed *Petitioner's Objections/Corrections to Amended Prehearing Order.* On October 23, 2009, the Hearing Officer issued an Interim Order denying further modifications to the Amended Prehearing Order.

In the Amended Prehearing Order, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' alleged failure to comply with a June 4, 2008 HOD

  Petitioner alleges that DCPS failed to develop an appropriate IPE and failing to propose an appropriate placement as ordered in a June 4, 2008 HOD. DCPS asserts that several meetings were convened in an effort to comply with the HOD, culminating in the development of an IEP and the issuance of a notice of placement to S.H.S. on January 21, 2009.

- DCPS' alleged failure to develop an appropriate IEP

  Petitioner alleges that a June 4. 2008 HOD required DCPS to convene a Multidisciplinary Team ("MDT") meeting within thirty days to develop an IEP and determine an appropriate placement; despite meetings on September 16, 2008, October 16, 2008, December 18, 2008, and January 21, 2009, DCPS failed to develop an IEP. Petitioner objects principally to DCPS' proposal to reduce Petitioner's specialized

instruction from full-time (from an IEP that was "partially completed" on September 16, 2008) to ten hours per week. Petitioner submits that she requires a full-time program in a small-class, small school environment "that reduces her anxiety and has appropriate supports in place for her to address any setbacks she experiences during the school day or during school-related extra-curricular activities."

DCPS asserts that it developed an IEP that addresses Petitioner's educational needs on January 21, 2009.

- DCPS' alleged failure to provide an appropriate placement

  Petitioner alleges that DCPS has not determined an appropriate placement for Petitioner for the 2008-2009 and 2009-2010 school years. DCPS asserts that it issued a notice of placement to S.H.S. on January 21, 2009, and that can meet Petitioner's educational needs.

The due process hearing was convened on November 17, 2009. Neither party offered testimonial evidence. The parties agreed to relief for Petitioner as is described in the Findings of Fact below.

Record

Due Process Complaint Notice dated September 14, 2009
District of Columbia Public School's Response to Petitioner's Due Process Complaint dated October 13, 2009
Due Process Complaint Disposition dated October 13, 2009
Letter Requesting Continuance dated October 16, 2009
Interim Order dated October 17, 2009
Prehearing Order dated October 19, 2009
Petitioner's Objections/Corrections to Prehearing Order dated October 19, 2009
Amended Prehearing Order dated October 20, 2009
Petitioner's Objections/Corrections to Amended Prehearing Order dated October 22, 2009
Interim Order dated October 23, 2009
Stipulations and Request for Entry of Order by Consent filed November 17, 2009
Attendance Sheet for hearing conducted on November 17, 2009

Findings of Fact

1. Petitioner is a year-old student attending

[2] Representation by Petitioner's counsel.

2. During the hearing, the parties agreed to the following relief for Petitioner:

   a. Within sixty (60) days of the issuance of this decision, DCPS shall convene a Multidisciplinary Team ("MDT") meeting to review all current evaluations, update the IEP, and to discuss placement alternatives.
   b. The parties agreed to comply with the terms of the *Stipulations and Request for Entry of Order by Consent*, filed with the Hearing Officer at the Hearing.

Conclusions of Law

The parties' agreement is in Petitioner's best interests and its terms will be substantially included in the order below.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the *Stipulations and Request for Entry of Order by Consent,* and the representations of the parties' counsel at the hearing, this 19th day of November 2009, it is hereby

ORDERED, that on or before January 18, 2010, DCPS convene a Multidisciplinary Team ("MDT") meeting. The MDT shall coordinate scheduling the MDT meeting with Petitioner's counsel, Diana M. Savit, Esquire. The MDT shall review all current evaluations, update the IEP, and discuss placement alternatives.

IT IS FURTHER ORDERED, that DCPS shall afford Petitioner's parents an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parents of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parents. DCPS shall provide Petitioner's parents an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes or Prior Notice. DCPS shall issue a Prior Notice within seven days of the MDT meeting if Petitioner is placed in a public facility or within 30 days if Petitioner is placed in a private facility.

IT IS FURTHER ORDERED, that DCPS will continue to fund Petitioner's placement at , including appropriate related services, until Petitioner's placement is changed with her parent's consent or through proceedings under IDEIA.[3] The remaining terms of the *Stipulations and Request for Entry of Order by Consent* are incorporated herein.

[3] *Stipulations and Request for Entry of Order by Consent*, ¶10.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact counsel for DCPS and the DCPS Office of Special Education Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.[4]

IT IS FURTHER ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

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: November 19, 2009

[4] If DCPS fails to contact Petitioner's counsel to coordinate scheduling the MDT meeting by a date that would make compliance with this Order feasible, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.