DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

2011 JAN -3 AM 7:26
STUDENT HEARING OFFICE

[Parent/Guardian], on behalf of,
[Student],[1]

Petitioner,

v

District of Columbia Public Schools (DPCS),

Respondent.

Date Issued: December 31, 2010

Hearing Officer: Jim Mortenson

Case No:

Hearing Date: December 16, 2010

Room: 2006

HEARING OFFICER DETERMINATION

I. BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 1:30 p.m. on December 16, 2010, in hearing room 2006, and concluded on that date. The due date for the Hearing Officer's Determination (HOD) is January 24, 2011, pursuant to 34 C.F.R. § 300.515(a). This HOD is issued on December 31, 2010.

The hearing in this matter was conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30. The hearing was closed to the public.

The complaint in this matter was filed on November 10, 2010. No timely response to the complaint was filed. A resolution meeting was held on December 5, 2010. No agreements were reached, including an agreement that the matter could not be resolved.

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[1] Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

The Petitioner is seeking transportation from school to the Student's visual cognitive therapy and then home and 40 hours of visual cognitive therapy.

Present at the due process hearing were:

Domiento Hill, Esq., Petitioner's Counsel

Daniel McCall, Esq., Respondent's Counsel

Two witnesses testified at the hearing, both for the Respondent:

James Barnes, Compliance Case Manager (J.B.); and

Maureen Anderson, Transportation Specialist (M.A.)

Four documents of those disclosed were offered by the Petitioner (P 4, P 24, P 27, and P 28). These four documents were admitted as evidence into the record. Petitioner's exhibits are:

P 4	December 5, 2010	Resolution Meeting Notes
P 24	July 15, 2010	Resolution Meeting Notes, Compensatory Educational Plan, and two letters from Barnes to Petitioner
P 27	December 9, 2010	Email from Hill to Barnes
P 28	December 9, 2010	Email from Barnes to Hill

No documents were offered by the Respondent.

II. ISSUE

Whether the Respondent failed to ensure the Student was provided a free appropriate public education (FAPE) when it did not provide transportation for the Student from his school to his visual cognitive therapy and then home?

III. 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 Student is an year old learner with disabilities who attends a private school in Maryland.[2] The Student was placed by the Respondent.[3]
2. A complaint was filed in July 2010 and was resolved as of July 15, 2010.[4] The resolution consisted of a compensatory education plan that was part of the Student's individualized education program (IEP).[5] The vision therapy services were to be provided for three months, from an independent provider chosen by the Petitioner, to be completed between August 1, 2010, and August 30, 2011.[6] The plan indicated the maximum hourly price the Respondent would pay but did not include the location of services or indicate how the Respondent would supervise the provision of the services.[7] The Student was to be provided transportation to obtain his vision therapy services.[8]
3. As of December 9, 2010, no vision therapy services had been provided because transportation had not been arranged by the Respondent.[9]

IV. 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. 34 C.F.R. § 300.17 provides:

> Free appropriate public education or FAPE means special education and related services that —
> (a) Are provided at public expense, under public supervision and direction, and without charge;
> (b) Meet the standards of the SEA, including the requirements of this part;

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[2] Undisputed fact (UF) from complaint.
[3] UF from complaint.
[4] P 24. (The documents note both, that no settlement was offered and that the compensatory education plan was due to a settlement agreement. Regardless, there is no dispute about the substance of the agreements made including both the vision therapy services and the transportation to be provided to access those services.)
[5] P 4, P 24.
[6] P 24.
[7] P 24.
[8] UF, Testimony (T) of P 4, P 24.
[9] T of P 4, P 28.

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

2. An IEP must include, in relevant part:

> (4) A statement of the special education and related services and supplementary aids and services, based on peerreviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
> (i) To advance appropriately toward attaining the annual goals;
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> . . .
> (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

34 C.F.R. § 300.320(a)(4) & (7).

3. The Student's IEP included a compensatory education plan that required, in relevant part, two hours per week of vision therapy services for three months from an independent provider to be completed between August 1, 2010, and August 30, 2011. While the plan did not specify transportation, the parties agreed it was to be provided to the Student. Transportation was not provided for several months following the agreement. However, the scope of time for the services to be provided, three months between August 2010 and August 2011, has not yet expired. Thus, there was not a failure to ensure the services were provided in conformity with IEP.

4. The plan did not include the anticipated location of the services, in violation of 34 C.F.R. § 300.320(a)(7), because it permitted the parent to choose an independent provider. While this issue was not raised by the Petitioner, this should be corrected by the IEP team.

V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered: The Respondent prevails because the Student was not denied a FAPE as a result of the delayed arrangements for transportation. The Respondent is cautioned to ensure the Student's IEP is properly documented and that the provision of all services, including those provided by an independent provider, are properly supervised pursuant to 34 C.F.R. § 300.17.

IT IS SO ORDERED.

Date: December 31, 2010

Independent Hearing Officer

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).