

District of Columbia
Office of the State Superintendent of Education

Student Hearing Office
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Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: December 27, 2009
)	
Petitioner,)	Prehearing Order: January 28, 2010
)	
v.)	Hearing Date: February 23, 2010
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

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HEARING OFFICER'S DECISION

Counsel for Petitioner: Joy Purcell, Esquire
The Children's Law Center
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Counsel for DCPS: Kendra Berner, Esquire
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¹ Personal identification information is provided in Attachment A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("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.

Background

Petitioner is an _____ year-old student attending _____

On December 27, 2009, Petitioner filed a Due Process Complaint Notice ("*Complaint*") alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) develop an appropriate Individualized Education Program ("IEP"), (2) comply with disciplinary procedures, and (3) provide an appropriate placement. In the Prehearing Order, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' alleged failure to provide an appropriate IEP

Petitioner alleges that the IEP developed on August 4, 2009 is inappropriate because (1) "other health impaired" ("OHI") was the only disability listed on the IEP, (2) the goals were inadequate,² (3) the IEP fails to provide the full-time specialized instruction that Petitioner requires, (4) the IEP provides insufficient group counseling, social work services, and psychiatric services, (5) the IEP does not include an intervention behavior plan, and (6) the IEP fails to mandate that Petitioner receive services out-of-general education.

DCPS asserts that the IEP, when drafted, was reasonably calculated to provide educational benefit.

- DCPS' alleged failure to provide an appropriate placement

Petitioner alleges that _____ is an inappropriate placement because (1) it cannot provide the full-time services out-of- general education that Petitioner needs, (2) it lacks adequate social work services, (3) lacks a school-wide behavior modification program, (4) the staff is not trained to handle emotionally disturbed ("ED") students, and (5) the school lacks crisis procedures.

² At the prehearing conference, Petitioner's counsel was unable to provide the basis for the allegation that the goals and objectives in the IEP are inadequate. The Hearing Officer advised counsel that he will require proof that such specificity was offered during the Multidisciplinary Team ("MDT") meeting on August 4, 2009 and rejected by DCPS.

DCPS asserts that Petitioner does not require full-time services out-of-general education, has full-time social work services, and that can meet Petitioner's educational needs.

Issues Not to be Adjudicated

Petitioner alleged that DCPS failed to comply with disciplinary procedures. During the prehearing conference, Petitioner's counsel clarified that she was challenging the validity of proceedings that resulted in Petitioner's suspension and not a failure to conduct manifestation determinations after the suspensions were imposed.³ The Hearing Officer has no jurisdiction under IDEIA to adjudicate the validity of disciplinary proceedings.

The due process hearing was convened on February 23, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.⁴ After DCPS' Opening Statement, the Hearing Officer sustained Petitioner's objection to DCPS' introduction of any evidence as to the appropriateness of as a proposed placement.⁵ After the testimony of Petitioner's first witness, Petitioner's mother, the parties agreed to relief for Petitioner as is described in the Findings of Fact below.

Findings of Fact

1. Petitioner is an year-old student attending

³ 34 C.F.R. §§300.534 and 300.536.

⁴ The Hearing Officer sustained DCPS' objection to Petitioner's proposed Exhibit No. 39, an affidavit of a former employee of Petitioner's counsel's firm who would not be available to testify and be available for cross-examination. The Hearing Officer overruled DCPS' objection to Petitioner's Exhibit ("P.Exh.") Nos. 33 and 34, letters from Petitioner's counsel to DCPS.

⁵ The *Complaint* alleged the inappropriateness of After the filing of the *Complaint*, DCPS convened a Multidisciplinary Team ("MDT") meeting on January 20, 2010 at which the MDT revised the IEP and DCPS proposed placing Petitioner at DCPS Exh. Nos. 3-4. In her opening statement, counsel for DCPS stated her intention to introduce evidence as to the appropriateness of

The Hearing Officer disallowed this testimony, because the parent was never offered the opportunity at an MDT meeting to consider as a placement alternative. 34 C.F.R. §300.116(a)(1). DCPS asserts that it has the sole authority to determine the "location" where a student's IEP will be implemented once the parent has had the opportunity to participate in the determination of the "educational setting," which DCPS equates with "placement." This Hearing Officer believes that the capability of any particular facility (staffing, facilities, services available, programs available) to implement the student's IEP is a necessary part of the discussion that affords the parent a meaningful participation in the placement determination. There was also no reference to in DCPS' Disclosure. 34 C.F.R. §300.512(a)(3).

⁶ DCPS Exh. Nos 1 and 3.

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

- a. For the remainder of the 2009-2010 School Year, DCPS will fund and place the student, with transportation, at the
- b. DCPS will convene an IEP meeting on or before June 10, 2010 to review the student's progress at review and revise the IEP, if necessary; and discuss and determine placement and location of services for the 2010-2011 school year.
- c. For compensatory education, DCPS will fund one hour per week of counseling/expressive therapy for six months, to be provided by an independent provider of the parent's choice, at a rate not to exceed per hour and to be completed by October 30, 2010, totaling no more than 30 hours.
- d. For compensatory education, DCPS will fund one hour per week of tutoring for six months per hour and to be completed by October 30, 2010, totaling no more than 30 hours.

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 and the representations of the parties' counsel at the hearing, this 26th day of February 2010, it is hereby

ORDERED, that DCPS shall immediately issue a Prior Notice placing and funding Petitioner at the for the remainder of the 2009-2010 school year, including transportation and all other appropriate related services.

IT IS FURTHER ORDERED, that on or before June 10, 2010, DCPS shall convene an MDT meeting to review the student's progress at review and revise the IEP, if necessary, and discuss and determine placement and location of services for the 2010-2011 school year. DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Joy Purcell, Esquire.

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 shall fund one hour per week of counseling/expressive therapy for six months, to be provided by an independent provider of the parent's choice, at a rate not to exceed _____ per hour and to be completed by October 30, 2010, totaling no more than 30 hour. DCPS shall also fund one hour per week of tutoring for six months _____ per hour and to be completed by October 30, 2010, totaling no more than 30 hours.

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.

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: February 26, 2010