

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
Frances Raskin, Due Process Hearing Officer
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Washington, D.C. 20003
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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian¹)
)
 Petitioner,)
)
 v.)
)
 THE DISTRICT OF COLUMBIA)
 PUBLIC SCHOOLS,)
)
 Respondent.)
)

Hearing Date: September 21, 2009

HEARING OFFICER DETERMINATION

Counsel for Petitioner:

Miguel Hull, Attorney at Law
James E. Brown & Associates
1220 L Street, N.W.; Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202)742-2098

Counsel for DCPS:

Nia Fripp, Attorney at Law
Office of the Attorney General
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002
(202) 442-5000; Fax: (202) 442-5097

¹ Personal identification information is provided in Attachment A.

I. 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"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the parent of a [REDACTED]-year-old student ("Student") at a District of Columbia Public Schools ("DCPS") school. In a prior Hearing Officer Determination (HOD), issued on May 28, 2009, this Hearing Officer ordered DCPS to conduct a psycho-educational evaluation of the Student on or before June 15, 2009, and to hold a meeting to review the Student's evaluation on or before June 20, 2009. The HOD also ordered that, if DCPS failed to conduct the psycho-educational evaluation by June 15, 2009, DCPS was to fund an independent psycho-educational evaluation by a provider of Petitioner's choice.

On July 27, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging that DCPS completed the previously ordered psycho-educational evaluation on June 8, 2009, but failed to convene the meeting to review the evaluation until July 24, 2009.² Petitioner further alleges that, at the meeting on July 24, 2009, DCPS found that the Student was not eligible for special education. Petitioner alleges that DCPS failed to (1) timely convene a meeting of the multidisciplinary team to review the Student's psych-educational evaluation as required by this Hearing Officer's prior Hearing Officer Determination ("HOD"); and (2) find the Student eligible for special education. It alleges that DCPS failed to find the Student eligible despite a February 10, 2009, psychiatric report that supports her eligibility for special education.³

In the instant case, Petitioner seeks only a finding that (1) DCPS failed to comply with the timeline established in the prior HOD in that DCPS failed to comply with the deadlines in the HOD for convening a meeting to review the Student's psycho-educational evaluation; and (2) the Student is eligible for special education. Petitioner does not seek any particular placement for the Student, only an order requiring DCPS to place the Student in one of several non-public schools in the Washington, D.C., area, and provide the Student transportation to one of those schools. Petitioner also seeks compensatory education for the failure of DCPS to find the Student eligible as early as February 10, 2009, when a psychiatric report diagnosed the Student with anxiety disorder, adjustment disorder with emotional disturbance, and narcolepsy.

Counsel for Respondent filed a timely Response to Parent's Administrative Due Process Complaint Notice ("Response") on August 5, 2009. The Response asserted that the data considered by the multidisciplinary team supported its decision to find the Student not eligible

² Petitioner alleges that, according to the deadline established by this Hearing Officer's prior HOD, DCPS was required to conduct the evaluation by July 15, 2009, and hold a meeting by July 20, 2009. This is a mis-statement of the deadlines established by the HOD, as discussed above.

³ This claim was not litigated in the prior case because the case was resolved by agreement of the parties and no hearing was held.

for special education. The Response further asserted that the Student's neurological condition does not impact her academic performance, that the Student has a B grade-point average, and that she has no behavioral issues.

III. RECORD

Due Process Complaint Notice, filed July 27, 2009;
DCPS Response to Parent's Administrative Due Process Complaint Notice, filed August 5, 2009;
Petitioner's Motion for Continuance; filed August 27, 2009;
Petitioner Five-Day Disclosure, identifying fourteen witnesses and including proposed Exhibits 1-38, filed September 1, 2009;
DCPS Disclosure Statement, identifying seven witnesses and including proposed Exhibits 1-12, filed September 15, 2009.
Interim Order On Continuance Motion, issued September 16, 2009; and
Prehearing Order, issued September 21, 2009.

IV. DISCUSSION

At the outset of the due process hearing on September 21, 2009, DCPS proposed and Petitioner accepted the following proposed settlement of all claims in Petitioner's Due Process Complaint:

In lieu of the formal due process hearing in the above-referenced matter, the parties to this action, District of Columbia Public Schools (hereinafter "DCPS"), and the Petitioner's representative (hereinafter "Petitioner") agree to resolve this matter under the terms and conditions set forth herein. The parties have agreed to the following terms and conditions:

1. The Student is eligible for special education with a disability classification of other health impaired as a result of her narcolepsy.
2. DCPS will convene a meeting within twenty school days of this order to develop an individualized educational program ("IEP") for the Student, determine an educational placement for the Student, and discuss compensatory education.
3. Within thirty calendar days, DCPS shall provide the Student a dedicated aide. If DCPS fails to provide the Student a dedicated aide within thirty calendar days, DCPS will fund a total of five hours per week of independent tutoring for the Student until DCPS provides the aide.
4. DCPS will fund independent tutoring at DCPS expense for three hours per week for up to 45 days, or until the IEP meeting convenes. If the IEP meeting does not convene within 45 days due to delays by Petitioner, her counsel, or her advocate, the Student will not receive any additional tutoring after 45 days. If the IEP meeting does not within 45 days due to delays by DCPS, DCPS will continue to fund three hours per week of independent tutoring after the expiration of 45 days and until the IEP meeting is held.

ORDER

Upon consideration of the agreement of the parties in this case, it is this 2nd day of October 2009 hereby:

ORDERED that the Student is eligible for special education with a disability classification of other health impaired as a result of her narcolepsy;

IT IS FURTHER ORDERED that DCPS will convene a meeting within twenty school days of this order to develop an IEP for the Student, determine an educational placement for the Student, and discuss compensatory education;

IT IS FURTHER ORDERED that, within thirty calendar days, DCPS shall provide the Student a dedicated aide;

IT IS FURTHER ORDERED that, if DCPS fails to provide the Student a dedicated aide within thirty calendar days, DCPS will fund a total of five hours per week of independent tutoring for the Student until DCPS provides the aide;

IT IS FURTHER ORDERED that DCPS will fund independent tutoring at DCPS expense for three hours per week for up to 45 days, or until the IEP meeting convenes. If the IEP meeting does not convene within 45 days due to delays by Petitioner, her counsel, or her advocate, the Student will not receive any additional tutoring after 45 days. If the IEP meeting does not within 45 days due to delays by DCPS, DCPS will continue to fund three hours per week of independent tutoring after the expiration of 45 days and until the IEP meeting is held; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/ Frances Raskin

Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).

Distributed to:

Miguel Hull, Attorney at Law
Nia Fripp, Attorney at Law
Hearing Office

APPENDIX A

Case Number 2009-1092

Student Attending: [REDACTED]

Student	[REDACTED]
Date of Birth	[REDACTED]
Student Identification Number	[REDACTED]
Student's Parent/Guardian	[REDACTED]
Student's/Parent's Representative	[REDACTED]
School System's Representative	[REDACTED]



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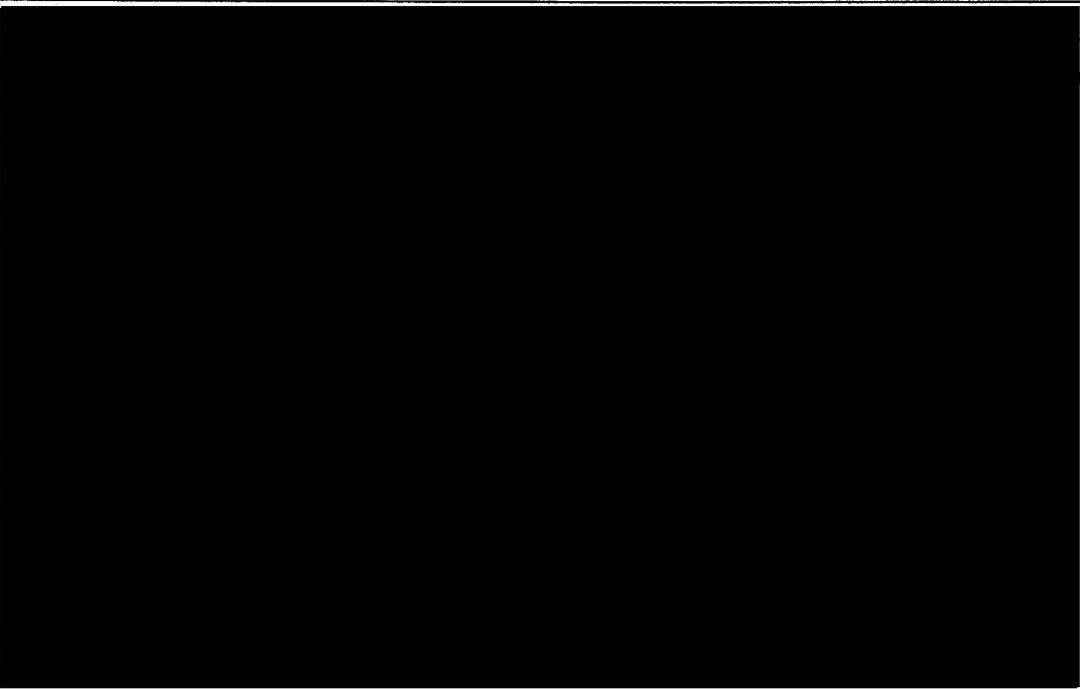
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