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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,[1] through the Parent,	)	
Petitioner,	)	Date Issued: May 9, 2011
v.	)	Hearing Officer: Virginia A. Dietrich
District of Columbia Public Schools	)	Case No:
Respondent.	)	Hearing Date: 05/02/11 Room: 2009

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of Student, filed a due process complaint notice on 03/04/11, alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA").

Petitioner alleges that between February 17, 2011[2] and May 2, 2011, Student was denied a FAPE because Student's speech-language services were not provided by a bilingual speech-language pathologist ("SLP"). -year old Student, classified as Developmentally Delayed, comes from a bilingual household where the primary language spoken at home is Spanish. Student's developmental delays are pervasive and his speech-language delays are being addressed by an Individualized Education Program ("IEP") that prescribes 60 minutes/week of speech-language services. According to Petitioner, when Student received bilingual services during the last school year, Student made sufficient progress towards meeting his IEP goals to indicate that bilingual speech-language services are warranted. Petitioner argued that Student should be presented with all possibilities to enhance communication, i.e., Spanish and English verbal cues during the provision of speech-language services so that Student can be provided with the optimal environment to facilitate communication.

[1] Personal identification information is provided in Appendix A.
[2] The effective date of Petitioner's claim is 02/17/11, as limited by a Settlement Agreement (P-10), and as ruled on in a Prehearing Order issued on 04/02/11.

DCPS asserted that the IDEA does not require DCPS to provide services to Student in his native language of Spanish and that Student's current IEP does not require services to be provided in Spanish. DCPS argued that Student's most recent IEP progress report indicates that Student is making some progress on some of his speech-language goals and even when Student received services from a bilingual speech-language services provider, Student failed to make significant progress as evidenced by IEP goals remaining the same for the past three years. DCPS asserted that Student's delayed communication skills are consistent with his pervasive developmental delay and not due to the non-provision of services by a bilingual speech-language pathologist. DCPS denied that it had denied Student a FAPE.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

The complaint was filed on 03/04/11. This Hearing Officer was assigned to the case on 03/07/11. A resolution meeting took place on 03/23/11 at which time both parties indicated in writing that no agreement was reached by the end of the 30-day resolution period and parties agreed that the case should proceed to a due process hearing. Thus, the 30-day resolution period ended on 03/23/11, the 45-day timeline to issue a final decision began on 03/24/11, and the final decision is due by 05/18/11. See 34 C.F.R. 300.510, 300.515.

The due process hearing was a closed hearing that took place on 05/02/11. Petitioner was represented by Miguel Hull, Esq. and DCPS was represented by Linda Smalls, Esq.. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in person with the assistance of interpreters.

Petitioner presented two witnesses: Petitioner, who testified in person; and Educational Advocate, who testified in person. DCPS presented two witnesses: Student's current speech-language pathologist, who testified by telephone; and Student's former speech-language pathologist, who testified by telephone.

Petitioner's disclosures dated 04/25/11, containing a witness list and Exhibits P-01 through P-33, were timely filed and admitted into evidence without objection. DCPS' disclosures dated 04/25/11, containing a witness list and Exhibits R-01 through R-08, were timely filed and admitted into evidence without objection.

The parties stipulated to the following facts:

#1. Student is a year old special education student who currently attends School for the 2010-2011 school year.

#2. Student's current IEP dated 12/05/10 classifies Student with a primary disability of Developmental Delay and prescribes 23.5 hours/week of specialized instruction outside of general education, 1 hour/week of speech-language services outside of general education, 90 minutes/week of occupational therapy services outside of general education, 1 hour/week of physical therapy services outside of general education, a dedicated aide and transportation.

The sole issue to be determined in this Hearing Officer Determination is as follows:

Whether DCPS denied Student a FAPE by failing to provide Student with an IEP that required that speech-language services be provided by a bilingual speech-language pathologist beginning on 02/17/11.

For relief, Petitioner requested a finding that Student had been denied a FAPE and that DCPS be required to provide Student with a bilingual speech-language pathologist.[3]

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. Student is a year old special education student who currently attends School for the 2010-2011 school year.[4]

#2. When Student's previous IEP was developed on 05/11/10, Student's educational performance level was such that he was unable to toilet, dress or feed himself independently, he was unable to verbally express his needs and desires and he scratched and pinched others on a regular basis. The IEP classified Student as Developmentally Delayed and prescribed 30 minutes/week of speech-language pathology services to address Student's deficits in both receptive and expressive language skills. The speech-language IEP goals were designed to achieve Student's success in following one step commands, using single words, identifying body parts upon request by touching or pointing, responding correctly to "give me" commands, imitating new words spontaneously, blowing bubbles upon request and puckering his lips upon request.[5]

#3. Speech-language pathology has nothing to do with teaching or using Spanish or English words. Although speech-language services were provided to Student in both Spanish and English during the 2009-2010 school year by a bilingual provider, Student showed no preference for either language. The use of Spanish or English will not make any difference in the outcome because the use of language is secondary for Student; without visual cues, he will not get the message at all. At the end of the 2009-2010 school year, the bilingual speech-language pathologist was still working with Student on opening and closing his mouth and making eye contact; pre-verbal skills that are required to reproduce language. Student was

[3] Petitioner's request for compensatory education was merged into her request for the prospective relief of adding to Student's IEP the provision that speech-language services be provided by a bilingual provider.
[4] Stipulation #1.
[5] P-5.

unable to repeat or produce any sounds, he sporadically produced grinding sounds unrelated to the communication situation, and he was unable to point to an object or put two syllables together to form a word.[6]

#4. A bilingual speech-language evaluation was conducted in September 2010 by the speech-language pathologist who had provided speech-language services to Student for the 2009-2010 school year. Student's non-responsiveness precluded the use of standardized testing or completing the speech-language evaluation in any language. The evaluator gave Student verbal instructions in both Spanish and English and Student produced no true words and he was unable to answer yes/no questions.[7]

#5. Student's current IEP, dated 12/05/10, classifies Student with a primary disability of Developmental Delay and prescribes among other things, 60 minutes/week of speech-language services outside of general education. The speech-language goals identified in this IEP are identical to those found in the 05/11/10 IEP and the 07/28/09 IEP. None of these IEPs required that Student's speech-language services be provided by a bilingual speech-language services pathologist.[8]

#6. Since 02/15/11, Student has been receiving direct speech-language services primarily in English, supplemented with some Spanish vocabulary during every session, by a monolingual speech-language pathologist. Simple commands, such as "give me," "sit down in chair," and "give kisses" are all related to IEP goals and are provided in both Spanish and English. Student is unable to follow the commands at all without visual cues, responds sometimes to verbal commands with visual cues and still requires hand over hand assistance with the execution of commands. Student's motor speech is undeveloped; he is still in the pre-verbal stage of communication and Student has not vocalized any meaningful vocabulary words. Student cannot imitate sounds, words or even babbling. When Student is presented with verbal commands in English and Spanish, Student shows no preference for either language; Student's response is the same for either language or there is no response.[9] Student is not at a stage in his development where he can benefit from bilingual therapy.[10] A monolingual speech-language pathologist can provide the same services as a bilingual speech-language pathologist given Student's current level of non-verbal functioning.[11]

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:

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of

[6] Testimony of Student's former SLP.
[7] *Id.*
[8] R-5; P-5; P-8.
[9] Testimony of Student's current SLP.
[10] Testimony of Student's former SLP.
[11] Testimony of Student's current SLP.

proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The sole issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an IEP that required that speech-language services be provided by a bilingual speech-language pathologist beginning on 02/17/11.

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

34 C.F.R. 300.320(a) requires DCPS to provide Student with an IEP that includes a statement of the special education and related services to be provided to the child to enable the child to advance appropriately toward attaining the annual goals.

The strongest evidence that Petitioner produced in support of her position that Student required bilingual speech-language services was the testimony of her educational advocate and that testimony was unreliable. The educational advocate did not qualify as an expert in speech-language pathology, had never worked with Student, and had never even observed Student in his speech-language pathology class. The opinion of the educational advocate that Student required bilingual speech-language services carried no weight and the evidence presented by Petitioner was grossly insufficient to meet Petitioner's burden of proof.

The evidence presented by DCPS that included the reliable and credible testimony of Student's former and current speech-language pathologists, showed that Student was at a pre-verbal stage of development, language was secondary for Student and without visual cues, Student was unable to respond and even with visual cues, Student's response rate was very poor. Student's level of development was such that he could not imitate words, sounds or babble, and would not benefit from bilingual speech-language services.[12] The speech-language IEP goals for Student had remained unchanged since July 2009,[13] and this implied that Student had not mastered any of these goals regardless of the language that the verbal instructions were given in.

Moreover, since 02/15/11, Student had been receiving the limited commands required by his IEP in both Spanish and English from a monolingual speech-language pathologist and

[12] Findings #3, #4, #6.
[13] Findings #2, #5.

Student showed no preference for either language. Student's response was the same for either language or there was no response.[14]

Petitioner failed to meet her burden of proof that Student was denied a FAPE by DCPS' failure to provide Student with speech-language services by a bilingual speech-language pathologist beginning on 02/17/11.

ORDER

The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

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 U.S.C. §1415(i).

Date: May 9, 2011

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner (U.S. mail)
Petitioner's Attorney: Miguel Hull, Esq. (electronically)
DCPS' Attorney: Linda Smalls, Esq. (electronically)
DCPS (electronically)
SHO (electronically)

[14] Finding #6.