

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003  
Tel: 202-698-3819  
Fax: 202-442-5556

**Confidential**

---

STUDENT,<sup>1</sup>

Petitioner,

v

DCPS,

Respondent.

Date Issued: April 19, 2010

Wanda I. Resto Torres, Hearing Officer

Case No:

Hearing Date: April 13, 2010 Room 5a

2010 APR 20 11:07  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

---

**HEARING OFFICER DECISION**

**BACKGROUND**

On February 9, 2010, parent's counsel filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE").<sup>2</sup> First, the Petitioner alleged that DCPS has failed to develop and implement an appropriate Individualized Educational Program ("IEP") during the 2009-2010 school year. Second, she asserted that DCPS reduced the hours of specialized instruction without cause and despite ADHD concerns. As relief, she requests, *inter alia*, an order that DCPS "shall immediately amend the student's IEP to include accommodations eliminated such as small group work and assisted reading services, DCPS shall increase the level of outside general education services to 15 hours; include 30 minutes of counseling per week"; in the event that the current school is unable to provide the

---

<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> 20 U.S.C. §1415(c)(2)(B)(i)(I)

full extent of outside general education instruction, DCPS shall fund up to 5 hours of 1-1 tutoring per week through the end of the school year; and that DCPS shall develop a BIP with parent participation.

*The Petitioner acknowledged that the Functional Behavior Assessment and Psychological evaluations were consented to in January 2010; and she has not received the reports.*

The undersigned was appointed as the hearing officer on February 12, 2010.

The Respondent denied every allegation and claimed that it did provide the Student a FAPE. The Respondent objects to all the relief requested. DCPS asserts while the Student was not "pulled-out" for services, the Student did receive his specialized instruction hours in the classroom and obtained academic benefit. As to the Student's setting, DCPS responds that the Student was not harmed as a result of services being rendered in an inclusion setting. The Respondent further asserts that the last IEP meeting convened on January 28, 2010. At that IEP meeting, the Parent participated in the development of the Student's IEP as well as agreed to additional psychological testing on behalf of her child. It is the MDT's intent to revisit the Student's IEP once the testing is available to determine if any changes are necessary to the Student's IEP. At no point during the meeting did parent or parent's advocate express disagreement with this arrangement.

#### **FINDINGS OF FACT**

The hearing was convened at 9:30 AM on April 13, 2010, in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP.<sup>3</sup> Respondent's counsel, Daniel Kim was timely to the hearing; Petitioner's counsel, Roberta Gambale was not

---

<sup>3</sup> IDEIA and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

present. A person came to the hearing room and indicated that Counsel for the Petitioner was “caught in traffic”, after waiting 20 minutes the Respondent requested the Complaint be dismissed.<sup>4</sup>

After considering the Respondent’s request for dismissal and no justifiable reason for the failure to appear by the Petitioner, this Hearing Officer determined the Petitioner failed to proceed with the hearing and grants the Respondent’s request to dismiss the Complaint.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

**ORDERED**, Petitioner’s February 9, 2010 due process hearing complaint is **Dismissed**.

**NOTICE OF RIGHT TO APPEAL**

**NOTICE OF RIGHT TO APPEAL**

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 from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Dated: April 19, 2010



\_\_\_\_\_  
Hearing Officer

---

<sup>4</sup> The person did not identify herself, nor provide information on when Counsel would be available.