

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

OSSE
STUDENT HEARING OFFICE
2009 MAY 27 AM 8:29

<p>STUDENT¹, by and through parent, Petitioner, us. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Domiento C. R. Hill, Esq.</p> <p>Asst. Attorney General for DCPS: Candace Sandifer, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On April 7, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Allegations were formulated into the below setout issues. The request for relief narrowed itself to compensatory education and a private placement at the _____ School.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Tuesday, May 19, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6B, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

- ISSUES:**
- 1. Did DCPS violated the December 12, 2008 Hearing Officers Determination/Decision (HOD)?**
 - 2. Did DCPS fail to review the February 6, 2009 Assistive Technology Evaluation?**
 - 3. Did DCPS fail to reconvene the MDT as requested by the Parent?**
 - 4. Did DCPS fail to provide an IEP that was reasonably calculated to provide a FAPE to the student?**
 - 5. Did DCPS fail to provide an appropriate educational placement for the student?**
 - 6. For counseling not delivered between December 2, 2008 and April 16, 2009, should the student be awarded 16 hours of counseling as compensatory education?**

FINDINGS of FACT

By facsimile dated May 12, 2009, the parent disclosed 13 witnesses and 23 documents.

By facsimile dated May 12, 2009, DCPS disclosed 8 witnesses and 1 document.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

Counsel for the Parent stated that issues 1, 2, 3, & 4 had been resolved; they were noted as settled.

At the conclusion of the Parent's case, DCPS rest on and argued the record.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The April 16, 2009 IEP disability coded the grade student Learning Disabled (LD) with 17 hours of special education services in the Out of General Education Setting.²

2. The September 17, 2008 Comprehensive Psychological Evaluation revealed the grade student's Broad Reading at 4.8 grade equivalent (GE), Broad Math at 2.5 GE and Broad Written language at 3.1 GE.³

3. The Educational Advocate observed the student in two classes at his current placement: the math class on November 18, 2008 and the language arts class on November 25, 2008. While the April 18, 2008 IEP indicated specialized instruction in math and a "... low student to teacher ratio," in Section IX. LRE,⁴ no special education was provided to the student during either class and the math class numbered at least 20 students. At the December 2, 2008 MDT meeting, the student's general education and special education teachers stated that he would benefit from one-to-one instruction; that the inclusion model was not appropriate for the student. Since the April 16, 2009 IEP, which indicated 17 hours of special education services, the student has been in the resource room for the entire school day. The Advocate opined that student did not make meaningful progress at his current placement and that the placement was inappropriate.⁵

4. From December 2, 2008, DCPS failed to deliver 16 hours of counseling

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² Parent Document No 19. The IEP date was referred to as April 16, 2009 and April 22, 2009.

³ Par. Doc. No 6, Table of Scores, Woodcock-Johnson III

⁴ Par. Doc. No 17

⁵ -testimony of the Educational Advocate

to the student as indicated on the December 2, 2008 IEP Addendum.⁶

5. At Recommendation 2 of the February 6, 2009 Assistive Technology Evaluation, a class size of 8-10 students was recommended for the student.⁷

6. The Parent attended the December 2, 2008 MDT meeting and recalled the MDT decision to the effect the current placement was inappropriate for the student; that class sizes for the student should not be larger than 8 to 10 students. From December 2, 2008 to April 16, 2009, the current placement changed the student's educational setting from inclusion to all resource room; that the assignments in the resource room were the same for all 10 to 15 students. The Parent was not notified of the change in educational setting.⁸

7. The School is a private special education day school serving students with language based learning disabilities 10 months a year with ESY services, 8:30 A.M. to 3:30 P.M., grades 6 thru 12; the school is college preparatory with 79 students, 29 students from DCPS. Class sizes are 8 students to 1 teacher; reading classes can be as small as 3 to 1. All teachers are special education certified. The student visited the school December 10th and 11th, 2009 and was accepted as a student. The School can provide educational benefit to the student. The student will need transportation to attend the school.⁹

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

Issues ONE, TWO, THREE & FOUR were resolved.

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⁶ *ibid*; See also Par. Doc. No 18 for addition of 1 hour of counseling per week.

⁷ Par. Doc. No 21, page 5

⁸ - testimony of the Parent

⁹ -testimony of Admission Director, School

FIVE

The current DCPS educational placement was inappropriate for the student.

The uncontradicted testimony of the Parent and Educational Advocate was that the December 2, 2008 MDT decided that the current placement was not providing educational benefit to the student; that from then to April 2009 and contrary to the then current IEP, student was placed in a resource room for the entire school day. Moreover, while the current April 16, 2009 IEP indicated 17 hours of special education services, from the testimony, the student was placed in the resource room for the entire school day.

At regulation 34 CFR 300.115, an LEA is required to ensure a continuum of alternative placements, placements that can deliver the special education services to a child with a disability as indicated on the child's IEP.

At regulation 34 CFR 300.116, the process for making placement decisions is setout. The process is to ensure that the placement decision for a child with a disability is based on the child's IEP, and that the parent of the child is included in the placement-decision making process.

DCPS violated both regulations.

SIX

The student is awarded 16 hours of counseling at DCPS expense.

The DCPS December 2, 2008 IEP Addendum added 1 hour of counseling to the student's IEP but as of April 16, 2009, had not been delivered.

SUMMARY of the DECISION

The Parent met the burden of issues five and six.

In consideration of the foregoing, the hearing officer made the following

ORDER

DCPS will place and fund the student at the _____ School
with transportation.

As DCPS and the Parent agree, DCPS will pay for the private

delivery of 16 hours of counseling according to
Superintendent's Directive 530.6.

Dated this *27th* day of *May*, 2009

H. St. Clair

H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.

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