

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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Confidential

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

Hearing Date: July 28, 2009

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OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
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HEARING OFFICER DETERMINATION

Counsel for Petitioner:

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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 mother of the Student, a -year-old, special education student at a District of Columbia Public Schools ("DCPS") middle school. Both Petitioner and the Student are residents of the District of Columbia. On June 23, 2009, Petitioner filed a Due Process Compliant Notice ("Complaint") alleging that DCPS denied the Student a free, appropriate, public education ("FAPE") violated this Hearing Officer's April 25, 2009, Hearing Officer Decision ("HOD"), in case number by failing to:

A. Convene a meeting within 20 days of the issuance of the HOD to revise the Student's individualized educational program ("IEP") to include one hour of weekly social-emotional counseling and two and one half hours of tutoring; and

B. Review the Student's occupational therapy evaluation and revise the Student's IEP, if necessary, by June 1, 2009.²

The Complaint alleged that Petitioner obtained the occupational therapy evaluation on May 29, 2009, which was fourteen days after the date specified in the order. The Complaint alleged that DCPS and Petitioner agreed to attend an IEP meeting scheduled by DCPS for June 15, 2009, but the meeting did not proceed.³ The Complaint alleged that Petitioner made a second request for an IEP meeting on June 19, 2009.

The Complaint further alleged that DCPS failed to:

A. Review the Student's occupational therapy evaluation, in violation of 34 C.F.R. § 300.305; and

² The April 25, 2009, HOD ordered Petitioner to obtain the occupational therapy evaluation on or before May 15, 2009. The HOD also provided that DCPS would receive one day of delay in complying with the terms of the order for every day of delay caused by Petitioner.

³ Elsewhere in the Complaint, Petitioner alleged that DCPS held an IEP meeting on June 14, 2009, at which the IEP team changed the Student's IEP to specify that the Student would receive extended school year ("ESY") services at but failed to provide any tutoring services, develop any goals for the Student's ESY program, or place the Student in a "specialized school program with a small student to teacher ratio and lots of individualized attention." In her Response, counsel for DCPS asserted that this meeting occurred on May 14, 2009.

B. Develop an appropriate extended school year ("ESY") program in that DCPS failed to provide ESY at the designated school, and failed to develop goals for the Student's ESY program.

Petitioner sought relief in the form of an order requiring DCPS to:

A. Convene an IEP meeting to develop the Student's ESY program, review her occupational therapy evaluation, and revise her IEP in accordance with the evaluation;

B. Issue a prior notice of placement to an ESY program of Petitioner's choice, and fund the ESY placement as well as transportation services for the Student; and

C. Provide the Student 2.5 hours of weekly tutoring.

On July 6, 2009, counsel for DCPS filed a Response to Petitioner's Administrative Due Process Complaint ("Response"). The Response was three days late. Among the specific assertions in the Response, DCPS asserted that DCPS will attempt to hold a meeting to review the Student's occupational therapy evaluation but a full IEP team is not available until the start of the 2009-2010 school year in August 2009. The Response further asserted that the first day of ESY was not until June 29, 2009. (This was after Petitioner filed the Complaint.) The Response further asserted that Petitioner should have brought her concerns about ESY to the staff of the Student's school or DCPS, and that there is no indication that Petitioner attempted to enroll the Student in ESY.

The Response asserted that DCPS was unable to hold the IEP meeting on June 1, 2009, because Petitioner did not provide the occupational therapy evaluation to DCPS until July 2, 2009. The Response further asserted that DCPS would provide the Student compensatory education if DCPS failed to provide the Student the tutoring required by the HOD.

Because Petitioner did not provide the occupational therapy evaluation to DCPS until June 2, 2009, this Hearing Officer can only conclude that it would have been impractical for DCPS to hold a meeting on June 2, 2009, since DCPS would not have had the occupational evaluation in its possession at that time. In any event, since Petitioner obtained the evaluation two weeks after the date specified in the HOD, DCPS was allowed a two-week delay pursuant to the day-for-day delay provision in the HOD. Thus, this Hearing Officer concludes that the earliest DCPS would have been required to hold the IEP meeting would have been June 15, 2009.

Counsel for Petitioner, counsel for DCPS, and this Hearing Officer participated in a prehearing conference on July 10, 2009. On July 17, 2009, this Hearing Office issued a prehearing order memorializing the prehearing conference.

The due process hearing commenced on July 28, 2009. Present at the hearing were Petitioner, counsel for Petitioner, counsel for DCPS, and this Hearing Officer. The parties entered into a settlement on the record at the inception of the hearing.

III. RECORD

Due Process Complaint Notice, filed June 23, 2009;
DCPS Response to Petitioner's Due Process Complaint, filed July 6, 2009;
Petitioner's Five-Day Disclosure Statement, filed July 21, 2009 (Exhibits 1-26 attached);
and
DCPS Five-Day Disclosure Statement, filed July 21, 2009 (Exhibit 1 attached).

IV. DISCUSSION

At the outset of the due process hearing, both counsel and this Hearing Officer engaged in a discussion regarding the intent of the April 25, 2009, HOD. Counsel both agreed that the HOD ordered DCPS to include 2.5 hours per week of tutoring in the HOD for the 2009-2010 school year. Both counsel further agreed that the revision of the HOD to include 2.5 hours per week of tutoring was not compensatory education but an equitable remedy for the failure of DCPS to develop an appropriate IEP for the Student and place the Student in an appropriate educational setting. The parties further agreed that:

- (A) DCPS shall reconvene the IEP team meeting by August 31, 2009, and the IEP team shall include Petitioner and the Student's teachers for the 2009-2010 school year;
- (B) At the aforementioned IEP meeting, the IEP team shall amend the Student's current IEP to include 2.5 hours per week of tutoring services in the subject areas of English and math, and the tutoring shall be provided by a certified special education teacher individually or in a small group outside of the classroom;
- (C) The revised IEP shall list the 2.5 hours per week of tutoring as related services to be provided for one year from the date the IEP is amended at the meeting on or before August 31, 2009;
- (D) The parties agree that, by revising the Student's IEP as specified above, DCPS will have complied with this Hearing Officer's April 25, 2009, HOD; and
- (E) Petitioner shall withdraw all remaining claims in the Complaint as these claims were resolved at the meeting on July 21, 2009.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the response thereto, and the agreement of the parties at the outset of the due process hearing, it is this 7th day of August 2009 hereby:

ORDERED that, on or before August 31, 2009, DCPS shall convene a meeting of the IEP team;

IT IS FURTHER ORDERED that this IEP team shall include Petitioner and the Student's teachers for the 2009-2010 school year;

IT IS FURTHER ORDERED that the IEP team shall amend the Student's current IEP to include 2.5 hours per week of tutoring services in the subject areas of English and math;

IT IS FURTHER ORDERED that the Student's IEP shall specify that the 2.5 hours per week of tutoring in English and math shall be provided by a certified special education teacher individually or in a small group outside of the classroom;

IT IS FURTHER ORDERED that, the revised IEP shall reflect that the 2.5 hours per week of tutoring are related services and that the tutoring shall be provided for one year from the date of the revision of the IEP;

IT IS FURTHER ORDERED that DCPS shall receive one day of delay for every day of delay caused by Petitioner, her counsel, or her educational advocate;

IT IS FURTHER ORDERED that all of Petitioner's remaining claims are **DISMISSED WITHOUT PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/

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).

Issued: August 7, 2009

Distributed to:

John Strauss, Attorney at Law
Candace Sandifer, Attorney at Law
Hearing Office