DC Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office
1150 5th Street, SE
Washington, D.C. 20003
CONFIDENTIAL

[Parent], on behalf of [Student], Petitioner, v. District of Columbia Public Schools, Respondent.	Case HEARING OFFICER'S DETERMINATION May 8, 2009 Representatives: John Straus, Petitioner Daniel Kim, Respondent Independent Hearing Officer: Jim Mortenson

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OSSE
STUDENT HEARING OFFICE

I. PROCEDURAL BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 9:00 a.m. on May 1, 2009. The Petitioner and the Petitioner's Counsel were not present at the hearing. Petitioner's Counsel had requested that the hearing be delayed 30 minutes because the Petitioner would not be able to make the hearing at 9:00 a.m. This request came, via email, on April 29, 2009. The IHO responded to the message, that day, advising both counsel that the scheduled conclusion time for the hearing, 11:00 a.m., could not be extended due to the IHO's calendar that day. The Petitioner gave no indication he would not be present at the scheduled hearing, even if his client arrived late. On the day of hearing, the IHO attempted to contact Petitioner's Counsel's office, and checked for messages and emails from Petitioner's Counsel. There was no contact with or

from Petitioner's Counsel. The IHO convened the hearing at 9:15 a.m. and the Respondent chose to present its case. The hearing concluded on May 1, 2009. The due date for the Hearing Officer's Determination (HOD) is May 11, 2009, in accordance with the Blackman/Jones Consent Decree. This HOD is issued on May 8, 2009.

The hearing in this matter was conducted and this decision is written pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30.

Present at the due process hearing was:

Respondent's Counsel, Daniel Kim, Esq.

One witnesses testified at the hearing: Kim A. Wells, Occupational Therapist.

The complaint in this matter was filed on March 30, 2009. A prehearing conference was scheduled for April 6, 2009. Counsel for both parties failed to participate or inform the IHO that they could not participate. A prehearing order was issued on April 7, 2009. A response was filed by the Respondent on April 9, 2009.

Nine documents were disclosed and filed by the Petitioner on April 28, 2009. Because the Petitioner and Petitioner's Counsel did not appear for the hearing, none of the exhibits were admitted into the record.

Seven documents were disclosed and filed by the Respondent on April 24, 2009, all of which were admitted into the record. (R 1 – R 7). Respondent's exhibits are as follows:

R 1 - Letter of invitation, March 4, 2009
R 2 - Letter of invitation, March 24, 2009
R 3 - Related Services Report, March 17, 2009
R 4 - IEP, March 26, 2009
R 5 - IEP team meeting notes, March 26, 2009
R 6 - Procedural Manual Receipt, March 26, 2009
R 7 - Consent to Evaluate, March 26, 2009

II. ISSUES

1) Whether the Student's individualized education program (IEP) is reasonably calculated to provide educational benefit? Specifically, whether the Student continues to require occupational therapy (OT) services in order to progress in and be involved in the general education curriculum?

2) Whether DCPS failed to implement the Student's IEP? Specifically, whether OT services in the IEP have been provided during the duration of the IEP, last revised April, 2008?

III. FINDINGS OF FACT

1. The Student is a year old learner currently enrolled at of Prince George's County. R 4, Testimony (T) of The Student has been identified as a child with emotional disturbance. R 4.

2. The Student has difficulty with visual-perceptual-motor, fine motor, and handwriting skills. R 4. His cursive writing is poor and his printing, which he prefers to use, is legible. R 4.

3. is the occupational therapist (OT) that worked with the Student at his school. T of She provided 30 minutes of OT services per week, pursuant to the prior IEP, to the Student and recommended the OT services be discontinued at an IEP team meeting held March 26, 2009. R 3, R 4, T of The OT services were recommended to be discontinued because he prints legibly. R 3, T of He also often refuses to attend OT service sessions. R 3, T of

4. The Petitioner and the Student attended the March 26, 2009, IEP team meeting. R 5. The Petitioner objected to the discontinuation of the OT services for the Student. R 5. The Petitioner signed the revised IEP, which did not include OT services, on March 26, 2009. R 4. The Respondent provided no evidence that the Petitioner was provided written notice, pursuant to 34 C.F.R. § 300.503, of the proposed change.

5. The "begin date" for the services in the IEP was March 19, 2009. R 4.

6. The IEP goals do not include benchmarks or short-term objectives. R 4.

IV. CONCLUSIONS OF LAW

1. "Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. . . ." 34 C.F.R. § 300.34. Occupational therapy is a related service under this regulation. Id.

2. The Student no longer requires OT to benefit from special education, as he can write legibly when he prints, which is an effective means of written communication.

3. The IEP did not require OT services following the revision on March 26, 2009. Thus, there was not a failure to implement the IEP with regard to OT services. *See* 34 C.F.R. § 300.17 (FAPE requires the provision of special education and related services in conformity with an IEP).

4. A cursory review of the IEP, as part of making the above determinations, reveals that the IEP lacks annual measurable goals which include benchmarks or short-

term objectives, as required by D.C. Mun. Regs. tit. 5, § 3009.1(c). This procedural error must be corrected.

5. The Respondent failed to provide the Petitioner prior written notice, as required by 34 C.F.R. § 300.503, before putting the revised IEP into effect. This is coupled with the fact that the services in the IEP (and presumably the ceasing of OT) were begun (or ended) *prior* to the IEP revision, as the start date for the services in the revised IEP in March 19, 2009, and the IEP team meeting did not occur until March 26, 2009. This flaw is also a procedural error, and one that must not be repeated. This point is raised here because the Petitioner did object to the ceasing of OT services during the IEP team meeting. She was entitled to written notice explaining both the Respondent's proposals and refusals, prior to the implementation of the revised IEP. 34 C.F.R. § 300.503. While her consent for the revised IEP is not required by law, it was improper for the Respondent to implement the revised IEP without first holding an IEP team meeting (the start date was prior to the meeting) and providing written notice of the proposals in the IEP and refusals. These errors must not recur.

V. DECISION

1. The Student does not continue to require OT services and it was not improper to propose removing them from the Student's IEP. The Respondent did fail to propose and include measurable annual goals which included benchmarks or short-term objectives.

2. The District did not fail to implement the IEP with regard to OT services because the OT services were no longer required. The Respondent did fail to provide prior written notice before implementing the revised IEP.

VI. ORDER

1. The Respondent will provide written instructions to all staff providing supervision and direction for special education and related services to Prince George's County regarding the requirements for: 1) prior written notice under 34 C.F.R. § 300.503; and 2) measurable annual academic and functional goals which must include benchmarks or short-term objectives under D.C. Mun. Regs. tit. 5, § 3009.1(c).
2. These written instructions must be reviewed for compliance with the Office of the State Superintendent of Schools (OSSE), Office of Monitoring & Program Certification, State Enforcement & Investigation Division, 1150 5th Street, SE Washington, DC 20003, (202) 548-3700, prior to distribution to the required staff. Following OSSE review, the instructions must be provided to the Petitioner, through her attorney, as well as the required staff, above.
3. The written instructions must be provided to OSSE for review by May 22, 2009.

IT IS SO ORDERED.

Dated this 8th day of May, 2009.

Jim Mortenson, Esq.
Independent 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. § 1415(i)(2).