STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA
STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)
SPECIAL EDUCATION PROGRAMS

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on behalf of,
Student
(DOB STARS

Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Case No.
Bruce Ryan, Hearing Officer

Hearing: March 10, 2009
Decided: March 13, 2009

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STUDENT HEARING OFFICE
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HEARING OFFICER DECISION

I. PROCEDURAL BACKGROUND

This due process complaint was filed February 5, 2009, on behalf of a ·year old student (the "Student") who resides in the District of Columbia and attends School Petitioner was represented by Steven J. Boretos, Esq., and Respondent District of Columbia Public Schools ("DCPS") was represented by Candace Sandifer, Esq., Assistant Attorney General for the District of Columbia.

The complaint was brought pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations, as well as relevant provisions of the District of Columbia Code and the Code of D.C. Municipal Regulations. It alleges various claims, including: (1) violation of a March 28, 2008 Settlement Agreement; (2) inappropriate placement at Hart since 10/31/08; (3) failure to provide a Behavior Intervention Plan ("BIP") and Functional Behavior Assessment ("FBA") as part of the Student's current individualized education program ("IEP"); (4) failure to review and revise the IEP annually; and (5) failure to perform a triennial evaluation with respect to the Student's occupational therapy ("OT") evaluation.

DCPS filed a detailed response on February 20, 2009, asserting (*inter alia*) that it has made numerous efforts to place the Student in an appropriate private program over the past two years and has not denied the Student a FAPE. In response to DCPS' defense of *res judicata*/claim preclusion, Petitioner's counsel confirmed at the February 24, 2009 Prehearing Conference ("PHC") that the claims and issues to be heard in this case did ***not*** precede the date

of the March 28, 2008 Settlement Agreement, and agreed to modify the complaint accordingly.[1] In addition, the parties disclosed at the PHC that there had been a further meeting of the Student's Multi-disciplinary Team ("MDT") on February 11, 2009, and that information concerning such meeting may be presented at hearing insofar as it bears on the issues and requested relief.

Five-day disclosures were filed by both parties, and the Due Process Hearing convened as scheduled on March 10, 2009. At the hearing, a total of 14 documentary exhibits were offered by Petitioner (P-1 through P-12, and P-14 –P-15) and admitted into the record without objection; and five documentary exhibits were offered by DCPS ("DCPS-02" through "DCPS-06") and admitted into the record without objection. [2] Petitioner testified on her behalf, but additional scheduled witnesses were not presented by either party due to the agreement reached as set forth below.

II. PARTIES' STIPULATION AND AGREEMENT

After the hearing had begun and testimony of the first witness had been heard, the parties engaged in settlement discussions off the record. The parties informed the Hearing Officer that they had reached an agreement, thus eliminating the need to complete the due process hearing. The parties then requested the Hearing Officer to incorporate the terms of their agreement into an Order with consent of both parties pursuant to *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP")* §1002.1.

The Hearing Officer has authority to enter the agreed Order pursuant to Section 1002.1 of the *SOP* and the IDEA, 20 U.S.C. §1415(i)(2)(C)(iii). Solely for that purpose, this decision and agreed Order also may be deemed to constitute the Hearing Officer's Determination pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. However, no other findings are made herein, including any finding or adjudication as to whether or not DCPS has denied a FAPE to the Student.

III. AGREED ORDER

Accordingly, based upon the stipulation, agreement and proposed order of the parties, and the entire record herein, it is hereby ordered:

1. The Student's current placement shall continue to be located at School, pending any further determination by the Student's MDT in accordance with this Order.
2. DCPS shall provide a dedicated one-to-one aid for the Student within three (3) school days of this Order, *i.e.*, by **March 18, 2009.**
3. DCPS shall provide Petitioner with a copy of the Student's Functional Behavior Assessment ("FBA") within three (3) school days of this Order, *i.e.*, by **March 18, 2009.**

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[1] Specifically, Petitioner agreed to strike paragraphs a, h, k, n, and o under "issues presented" in the complaint, and otherwise confine any factual allegation predating 3/28/08 to background information only. *See Prehearing Conference Order*, dated 3/9/09, at p. 2.

[2] Petitioner's Exhibits 13, 16, 17, 18 and 19 were withdrawn; and DCPS-01 was withdrawn.

4. DCPS shall complete an Occupational Therapy ("OT") Evaluation of the Student within 30 calendar days of this Order, *i.e.,* by **April 13, 2009**.

5. DCPS shall provide the Student with a laptop computer equipped with two educational software programs, pursuant to paragraph 4. b. of the March 28, 2008 Settlement Agreement, within 45 calendar days of this Order, *i.e.*, by **April 27, 2009.**

6. DCPS shall convene an MDT/IEP team meeting within 45 calendar days of this Order, *i.e.*, by **April 27, 2009**. The MDT/IEP team meeting shall be convened for the following purposes:
   (a) to discuss the Student's progress at with the benefit of a dedicated aid, as well as to discuss school as a possible alternative location for the Student;
   (b) to review the OT evaluation of the Student;
   (c) to develop a Behavior Intervention Plan ("BIP") based on the Student's FBA;
   (d) to review and revise, as appropriate, the Student's IEP, including to incorporate therein the BIP; and
   (e) to address any other outstanding issues.

7. Petitioner shall attend the MDT/IEP team meeting specified in paragraph 6.

8. This agreed Order resolves all issues and requested relief alleged in Petitioner's February 5, 2009 Due Process Complaint, and Petitioner specifically withdraws her claim for compensatory education services.

9. All written communications regarding the scheduling of the MDT meeting or related issues shall include copies to Petitioner's counsel, Steven J. Boretos, Esq., via facsimile (540-895-0801), or via email (s.boretos@verizon.net).

10. Any delay in meeting the deadline in this Order due to delays caused by Petitioner or Petitioner's representatives shall extend the deadline by the same number of days.

11. Upon the issuance of this Order, this case shall be, and hereby is, **CLOSED.**

Dated: March 13, 2009

/s/ Bruce D. Ryan
Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to 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 U.S.C. §1415(i)(2).