

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF REVIEW AND COMPLIANCE
STUDENT HEARING OFFICE

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STUDENT HEARING OFFICE
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<p>STUDENT¹, by and through Parent Petitioners, v. DISTRICT OF COLUMBIA PUBIC SCHOOLS Respondents.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Case No. <u>March 13,</u> _____, 2009</p> <p><u>Representatives:</u> Counsel for Petitioners: MIGUEL HULL, ESQ.</p> <p>Counsel for DCPS: NIA FRIPP, ESQ.</p> <p><u>Hearing Officer:</u> CHERYLEN LONG</p>
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Confidential

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.
HO Decision

I. PROCEDURAL BACKGROUND

The Complaint in this matter was filed February 11, 2009. The hearing was scheduled for March 13, 2009 at 9:00 am, to be held at 1150 5th Street, SE, Washington, D.C . The hearing was conducted and this decision was written pursuant to the *Indiv. With Disab. Act* (IDEA) (P.L. 101-476), reauthorized as the *IDEA Improvement Act of 1997*(IDEIA) (P.L. 105-17) 20 U.S.C. 1400 Et. Seq.; and their current regulations, specifically the Code of Federal Regulations at 34 CFR Part 300; further reauthorized as the *IDEA Improvement Act of 2004* (P.L. 108-446) and Title 5 of the DCMR and section 145 of the D.C Appropriations Act, effective October 21, 1998.

Preliminarily, counsel for DCPS filed a Motion to Dismiss and Petitioner responded. DCPS asserts that the two issues raised in the Complaint have been resolved. The student's eligibility was determined, and his IEP was developed on January 16, 2009. Further, a social history assessment was conducted and reviewed at the eligibility meeting on January 16. While Petitioner acknowledged that each of those issues have been resolved, there remained an issue regarding compensatory education services. Undersigned was prepared to hear brief oral arguments from counsel at the start of the hearing. However, counsel for DCPS was not present at the initiation of the hearing.*

In counsel's absence, Petitioner's counsel moved for leave to amend the Complaint to include a claim for failure to timely implement an HOD, and requesting compensatory education services. Counsel's motion was granted, and the hearing went forward on that issue alone.

Petitioner timely filed initial disclosures which included Exhibits 1-23 (hereinafter PE 1-23). Petitioner's exhibits were admitted in absence of DCPS counsel without objection. DCPS timely filed disclosures as well which included exhibits 1-12 (hereinafter DCPS 1-12), which were admitted. Witnesses were sworn and testimony was received. A list of all participants is attached.

*Counsel arrived during testimony and raised an objection to Petitioner's motion to amend which was ruled untimely and subsequently denied.

II. ISSUE(S)

1. Whether Student was denied FAPE as a result of DCPS' failure to provide him with O/T services, pursuant to his entitlement to such services under Section 504 of the Rehabilitation Act of 1973.*
2. Whether Student was denied FAPE as a result of DCPS' failure to convene an MDT meeting to review his clinical evaluation, determine eligibility, and develop an IEP in a timely manner;* and
3. Whether Student was denied FAPE as a result of DCPS' failure to comply with an HOD issued on October 16, 2008.

*Issues withdrawn by Petitioner.

III. FINDINGS OF FACT

1. Parties entered into a settlement agreement (SA) on March 16, 2008, wherein DCPS agreed, *inter alia*, to fund the student's independent clinical psychological evaluation and convene an MDT meeting to review the results of the evaluation, make an eligibility determination within 15 business days of receiving the results. (PE 10)
2. As a result of DCPS' alleged failure to convene the MDT meeting and make an eligibility determination within 15 days of receiving the evaluation results, a Due Process Complaint was filed on behalf of Parent on August 26, 2008. (PE 10)
3. A hearing was held October 1, 2008 to adjudicate the issues alleged in the August 26 Complaint, and an HOD was issued. (PE 10)
4. Undersigned found a denial of FAPE, and Ordered DCPS to convene an MDT meeting within 10 business days of the Order dated October 16, 2008 to review an outstanding evaluation and determine eligibility for special education and related services. (PE 10)
5. DCPS convened an MDT meeting on December 11, 2008, wherein Student's clinical psychological was reviewed and it was determined that the student was ineligible, but the Team agreed to re-visit the matter after performing a social history and obtaining an ADHD Checklist. (Ortega, PE 10)
6. A psychological evaluation was conducted on December 17, 2008 and a social history was completed on January 15, 2009. (PE 11,12)
7. On January 16, 2009, an MDT meeting was convened and the Team found the student eligible to receive special education as a student classified as OHI. (PE 17)
8. The student's current IEP requires 10 hours of specialized instruction in reading and math. (PE 17)

IV. CONCLUSIONS OF LAW

The sole issue being addressed herein is whether DCPS violated the terms of an HOD issued October 16, 2008. The HOD was issued pursuant to a Complaint filed by Petitioner alleging that DCPS violated a Settlement Agreement entered into by both parties on March 16, 2008. Undersigned found that Petitioner had proven its case and that the student was denied FAPE as a result of DCPS' failure to timely convene an eligibility determination meeting. Further, DCPS was Ordered to convene the meeting within 10 business days. By undersigned's calculations, that date was October 30, 2008. The meeting did not occur by all accounts, until December 11, 2008. However, the Team, after reviewing the student's evaluation, and consideration of other factors, found the student was ineligible without more information, and recommended additional evaluations before revisiting the issue. Petitioner asserts that the additional evaluations did not provide any information necessary to the eligibility determination. Hence, Petitioner now seeks compensatory education services to compensate Student for missed services from the date of DCPS' initial breach of the October 16, 2008 SA through the eligibility determination date, January 16, 2009. The recommended evaluations were performed by DCPS within a reasonable time after the recommendation was made, and the Team reconvened within just over a month of the initial determination.

Petitioner presented testimony from their advocate that nothing changed as a result of the additional evaluations, and that the determination should have been made at the December meeting. However, undersigned considered this testimony in light of the bias presented from testimony by an employee of Petitioner's counsel in weighing the credibility of the witness. Parent testified that the student has had attention deficit issues since a very young age, and that he has not progressed academically this year. Lastly, testimony was given by a representative for a related service provider. Parent testified that she would like to provide missed service hours to Student.

The initial eligibility meeting was attended by Parent (via conference call), Advocate, SEC, a related service provider, a psychologist, and special education teacher. (PE 17) Based on the IEP notes, Advocate's notes, the Team had a detailed discussion of the student's assessment results and still felt more information was required. The team's eligibility determination was made in compliance with 34 CFR 300.306, 34 CFR 300.308. There was insufficient evidence presented to show that the determination was improper. The assessments were performed and the team reconvened within a reasonable time. Since the team determined the student ineligible

at the meeting, compensatory education services are not justified for the delay in complying with the HOD by convening the meeting within 10 days, or the time period between the breach of the SA and the January 16, 2009 determination.

V. SUMMARY OF DECISION

Undersigned finds NO DENIAL OF FAPE to the student, as DCPS substantially complied with October 16, 2008 HOD. In light of this, undersigned issues the following Order:

VI. ORDER

It is hereby ORDERED:

That this case is hereby DISMISSED with prejudice, having been decided on its merits.

/s/ Cherylen Long, Esq.
Hearing Officer

Dated this 1 st day of APRIL, 2009.

NOTICE OF APPEAL RIGHTS

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.