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
2009 APR 23 PM 3: 13

Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: March 9, 2009
	)	
Petitioner,	)	Hearing Date: April 13, 2009
	)	
v.	)	Docket No.
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

HEARING OFFICER'S DECISION

Counsel for Petitioner:
Domiento C.R. Hill, Esquire
James E. Brown & Associates
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Counsel for DCPS:
Tanya Chor, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

[1] Personal identification information is provided in Attachment A.

Jurisdiction

This hearing was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("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"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Introduction

Petitioner is a seventeen year-old student attending
On March 9, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed timely to implement a compensatory education plan. The due process hearing was convened on April 13, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.[2]

Record

Due Process Complaint Notice dated March 9, 2009
DCPS' Five-Day Disclosure dated April 6, 2009 (Exhibits 1-7)
Petitioner's Five-Day Disclosure dated April 6, 2009 (Exhibits 1-8)
Attendance Sheet dated April 6, 2009
CD-Rom of Hearing conducted on April 6, 2009

Witnesses for Petitioner

Dori B. Cook, Educational Advocate, James E. Brown & Associates
Petitioner's Mother

Witnesses for DCPS

Jocelyn Tate, DCPS Placement Specialist

[2] DCPS objected to the admission of Petitioner's Exhibit ("P.Exh.") Nos. 7 and 8, Petitioner's Individualized Education Program ("IEP") and meeting notes from the most recent IEP meeting. The Hearing Officer ruled that DCPS was not prejudiced by the admission of these documents. Moreover, in this Hearing Officer's experience, a student's current IEP is the starting point for analyzing the competing positions in an IDEIA proceeding.

Findings of Fact

1. Petitioner is a seventeen year-old student attending

2. On March 20, 2008, a Hearing Officer's Decision was issued in which Hearing Officer Will Purcell ordered DCPS that "develop a compensatory education plan within 30 days of the issuance of this order. That the compensatory education plan shall award 140 hours of reading and math tutorial services and that the compensatory education plan shall identify the person(s) and/or entity responsible for providing the tutoring services...[4]

3. On or about March 29, 2008, Petitioner's mother approved a compensatory education plan ("Plan") developed by DCPS that provided the 140 hours of tutoring services ordered in the March 20, 2008 HOD. The Plan also provided that the services would be provided by DCPS, but it did not identify the individual who would provide the services.[5]

4. Ms. McKitty of DCPS provided services to Petitioner on no more than four occasions.[6]

Conclusions of Law

It is undisputed that DCPS prematurely

ceased providing Petitioner the tutoring services prescribed in his IEP. The only issue is the amount of services DCPS failed to provide. DCPS offered no credible testimony to refute Petitioner's mother's testimony that Ms. McKitty provided services only on three or four occasions. In light of the minimal amount of the prescribed services that were provided, and the lack of continuity in the services provided, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to provide the services prescribed in the Plan.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearings, and the representations of the parties' counsel at the hearing, this 23rd day of April 2009, it is hereby

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[3] *Complaint* at 1.
[4] P.Exh. No. 3 at 2.
[5] P.Exh. No. 5.
[6] Testimony of Petitioner's mother. DCPS offered testimony through Ms. Tate that Ms. McKitty provided 70 hours of services to Petitioner. However, Ms. Tate admittedly had no direct knowledge as to the amount of services Ms. McKitty provided. DCPS offered no documentation of Ms. McKitty's services to Petitioner.

ORDERED, that Petitioner is authorized to obtain a diagnostic evaluation of Petitioner from the Linda-Mood Bell Learning Processes program ("LMB"), at DCPS expense, to determine the level of his deficiencies in reading and math. Petitioner is also authorized to obtain up to 140 hours of individual tutoring services in reading and math from LMB at DCPS expense *and is not limited by 5 D.C.M.R. Section 3027.5*

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision may 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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/
Terry Michael Banks
Hearing Officer

Date: April 23, 2009