



Office of Review & Compliance

Student Hearing Office
 Van Ness Elementary School
 1150 5th Street, S.E., 1st Floor
 Washington, D.C. 20003
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Confidential

The Student Through their)

Parents,*)
Case No.:)

Petitioner,)

vs.)

The District of Columbia Public Schools,)
Home School:)
Attending:)

Respondent.)

IMPARTIAL
DUE PROCESS HEARING

DECISION AND ORDER

Due Process Compl. Filed: Mar. 24, 2009

Scheduled Hr'g Date: Apr. 28, 2009

Held at: Van Ness Elementary School

1150 5th Street, S.E., 1st Floor

Washington, D.C. 20003

Counsel for the Parent/Student:

Roberta L. Gambale, Esq.
James E. Brown & Associates, PLLC
Attorneys at Law
1220 L Street N.W., Suite 700
Washington, D.C. 20005

District of Columbia Public Schools:

Candace Sandifer, Esq.
Assistant Attorney General
Office of the General Counsel, OSSE
825 North Capitol Street, N.E., 9th Floor
Washington, D.C. 20002

Independent Hearing Officer:

Frederick E. Woods

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OSSE
 STUDENT HEARING OFFICE

I. Case Background and Procedural Information

A. JURISDICTION

This Decision and Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, codified at 20 U.S.C. §§ 1400 -1482, 118 Stat. 2647; and its implementing regulations codified at 34 C.F.R. §§ 300.01 – 300.818; 5 D.C.M.R. §§ 3000 - 3033; and Section 327 of the D.C. Appropriations Act.

B. DUE PROCESS RIGHTS

Before the hearing, the parent had been advised of their due process rights.

C. FIVE-DAY DISCLOSURES

Petitioner: Admitted, without objection, a disclosure letter filed on 04/20/09 that list four (4)-witnesses and attached twelve exhibits sequentially labeled and tabbed Parent-01 through Parent-12. One (1)-witness was present but was not called to testify: (1) the student's mother.

Respondent: Admitted, without objection, a disclosure letter filed on 04/20/09 that list six (6)-witnesses and attached two exhibits sequentially labeled and tabbed DCPS-01 through DCPS-02. No witnesses were present or called to testify.

D. STATEMENT OF THE CASE

The student, born _____ age _____ years 9-months, is a student with a disability receiving special education and related services, according to his 04/08/08 IEP, as a _____ grade, 49% out-of-general education, Specific Learning Disabled ("SLD") student attending _____ located at

(R. at Parent-05.)

On 09/30/08 the parent requested that DCPS reevaluate her son and asked for specific assessments "as a result of the student's on going academic problems in school." (R. at Parent-04.) To date DCPS has not performed the requested assessments. DCPS has, however, agreed to perform them within a specified time period or to authorize the parent to obtain independent educational evaluations (IEEs).

Consequently on 03/24/09 parent's counsel filed the student's 03/24/09 Due Process Complaint ("DPC") alleging that DCPS as the LEA violated the IDEA and denied the student a Free Appropriate Public Education ("FAPE") during the 2008-09

school year by doing one thing: (1) failing to evaluate the student when the parent requested a reevaluation on 09/30/08. (R. at Parent-04.) As relief, the parent wants DCPS to either perform the requested reevaluation or fund the parent's IEEs; then convene a MDT/IEP Team Meeting to review the assessment reports. (R. at Parent-02.)

DCPS' 04/08/09 Response to the Due Process Complaint stated that special education coordinator said that the evaluations will be completed in the near future after which an IEP Team Meeting will be convened." (R. at DCPS-01.) DCPS counsel did, however, stipulate to the parent's facts at the due process hearing, and agreed to provide the parent's requested relief.

The OSSE Student Hearing Office ("SHO") scheduled the due process hearing for 9:00 a.m. on Tuesday, April 28, 2009, at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parent selected to have a closed due process hearing that convened, as scheduled, 34-days after the 03/24/09 DPC was filed.

Assistant Attorney General Candace Sandifer appeared in-person for DCPS. Attorney Roberta Gambale appeared in-person representing the student who was not present; and the student's mother who was present. No testimony was taken because the parties resolved all issues raised in the DPC.

II. Issue

Did DCPS, as the LEA, violate the IDEA and deny the student a FAPE during the 2008-09 school year when it did not reevaluate the student as requested by his mother on 09/30/08 "as a result of the student's on going academic problems in school?" (R. at Parent-04.)

III. Preliminary Matter

Before taking any testimony the parties informed the hearing officer that they agreed the student needed to be evaluated and an IEP Team Meeting convened. And after being granted their requested relief the parent said it resolved all issues raised in the student's 03/24/09 DPC. And the parties wanted to incorporate their settlement terms into an agreed order.

That request was granted because pursuant to the DCPS SOP § 1002.1 Settlement, "the hearing officer has the authority ... and may, if requested, incorporate the terms of an agreement into an Order with consent of both parties."

So because the parties requested that their settlement terms be incorporated into an order, the hearing officer exercised discretionary authority to accommodate that request by issuing this—

THE PARTIES' AGREED SETTLEMENT ORDER

DCPS shall

1. Conduct and provide the parent a copy of these assessments on or before May 11, 2009:
 - a. Psychological;
 - b. Educational;
 - c. Speech-Language;
 - d. Social History; and
 - e. Classroom Observation.

2. Fund at public expense the parent's Independent Educational Evaluations (IEEs), if DCPS fails to comply in whole or in part with paragraph one of this order, to wit:
 - a. Psychological;
 - b. Educational;
 - c. Speech-Language;
 - d. Social History; and
 - e. Classroom Observation.

3. That IEEs shall be completed by the parent's selected independent evaluator on or before June 30, 2009.

4. Convene the student's BLMDT/IEP Team Meeting at
within 10-school days after the school's special education coordinator either completes the ordered evaluations or after the special education coordinator receives the completed IEE reports from the parent; and receives in writing three (3)-proposed IEP Team Meeting dates and times from the parent convenient for the parent to attend an IEP Team Meeting. A meeting shall be convened for this student before the end of the 2008-09 school year even if all of the evaluations are not completed. And the meeting will be scheduled for this purpose:
 - a. To review and discuss the DCPS conducted assessments and/or the IEEs provided to the IEP Team by the parent;
 - b. To determine the student's continued eligibility for special education services; and if still eligible, review and revise his IEP, and decide whether the student is eligible for summer 2009 Extended School Year Services ("ESY"); and
 - c. To discuss and decide placement; and issue the student's Prior Written Notice of Change in Placement (PNCOP), only if there is a change in

placement for the 2009-10 school year, at the conclusion of the meeting or as follows:

- (i) Issue the PNCOP within 5-school days after the BLMDT Meeting if the placement is to a public school; and
 - (ii) Issue the PNCOP within 30-calendar days after the BLMDT Meeting if the placement is to a non-public school.
5. Schedule all meetings at a mutually agreeable time through the parent and parent's counsel. And provide counsel written notice of all meetings by facsimile at (202) 742-2098.
6. Day-for-Day Caveat: Any scheduling, evaluation or meeting delay due to acts of the parent, student, student-advocate, student's attorney or because of an unscheduled school closing for any reason shall extend DCPS' performance timelines established in this Order by one day for each day of delay.
7. The student's 03/24/09 Due Process Complaint is dismissed with prejudice— meaning that the issues that were or could have been raised in the 03/24/09 DPC based on the same facts against the same parties or privies that arise from the same time period that formed the basis for the 03/24/09 DPC that is resolved herein by a final judgment on the merits cannot be relitigated. See Apotex, Inc. v. FDA, 393 F.3d 210, 217 (D.C. Cir. 2004).
8. And the hearing officer made no additional findings.

This is the final ADMINISTRATIVE DECISION. An appeal can be made to a court of competent jurisdiction within ninety (90)-days from the date of this Decision and Order pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B); 34 C.F.R. § 300.516 (b).

/s/ Frederick E. Woods
Frederick E. Woods
Hearing Officer

April 28, 2009
Date