



Office of Review & Compliance

Student Hearing Office
Van Ness Elementary School
1150 5th Street, S.E., 1st Floor
Washington, D.C. 20003
Telephone (202) 698-3819
Facsimile: (202) 698-3825

Confidential

The Student Through their)	IMPARTIAL
)	DUE PROCESS HEARING
Parents,*)	
Case No.:)	
)	<u>DECISION AND ORDER</u>
Petitioner,)	
)	
vs.)	Due Process Compl. Filed: May 6, 2009
)	Scheduled Hr'g Date: June 11, 2009
The District of Columbia Public Schools,)	Held at: Van Ness Elementary School
Home School:)	1150 5th Street, S.E., 1st Floor
Attending:)	Washington, D.C. 20003
)	
Respondent.)	Pre-Hearing Conference Held By-Phone
)	Thursday, May 21, 2009 at 4:30 p.m.

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OSSE
STUDENT HEARING OFFICE

Counsel for the Parent/Student: **Law Office of
Patrick J. Hoover
Attorney at Law
600 E. Jefferson Street, Suite 600
Rockville, MD 20852**

District of Columbia Public Schools: **Daniel Kim, 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**

- Party identification information is stated in Appendix A of this order and Appendix A shall be removed from this order before public dissemination

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 06/04/09 that list seven (7)-witnesses and attached fourteen exhibits sequentially labeled and tabbed Parent-01 through Parent-14. Two (2)-witnesses were present but not called to testify: (1) the student's mother; and (2) the student's father.

Respondent: Admitted, without objection, a disclosure letter filed on 06/01/09 that list three (3)-witnesses and attached two exhibits sequentially labeled DCPS-01 and DCPS-02. No witnesses were present or called to testify.

D. STATEMENT OF THE CASE

The student, born _____ age _____ years 3-months, is a _____ grade general education student attending _____ School for Public Policy _____ phone number _____ (R. at DCPS-01.)

During the 2008-09 school year the parents requested that DCPS evaluate their son but DCPS did not evaluate him; and that DCPS should have identified, located, and evaluated their son under its IDEA Child Find obligation as a result of the student's on-going behavior problems in school. (R. at 05/06/09 DPC.) To date DCPS has not performed any assessments. DCPS had, however, authorized and funded the parents' independent educational evaluation ("IEE")—a Comprehensive Psychological Assessment.

Consequently on 05/06/09 parents' counsel filed the student's 05/06/09 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 an evaluation; and failing to evaluate the student pursuant to its IDEA Child Find obligation. (R. at 05/06/09 DPC.) As relief, the parents want DCPS to perform the requested evaluation or fund the parents’ IEE; then convene a MDT/IEP Team Meeting to review the assessment reports to determine if the student is eligible for special education services; and if so, provide the appropriate level of services. (R. at 05/06/09 DPC.)

DCPS’ 05/13/09 Response to the Due Process Complaint denied the parents’ claims because (1) academically the student was on the honor roll so there were no academic difficulties to put DCPS on notice of a suspected disability. (2) The student’s parents’ never requested an evaluation. (3) And the student only had two behavior incidents at school.

DCPS counsel did, however, stipulate to the parent’s facts at the due process hearing, and agreed to provide the parents’ requested relief.

The OSSE Student Hearing Office (“SHO”) scheduled the due process hearing for 11:00 a.m. on Thursday, June 11, 2009, at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parents selected to have a closed due process hearing that convened, as scheduled, 35-days after the 05/06/09 DPC was filed.

Assistant Attorney General Daniel Kim appeared in-person for DCPS. Attorney Patrick J. Hoover appeared in-person representing the student who was not present; and the student’s parents who were present. No testimony was taken because the parties resolved all issues raised in the 05/06/09 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 evaluate the student as requested by his parents or evaluate the student pursuant to its IDEA Child Find obligations as a result of the student’s on-going behavior problems in school?

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 parents said it resolved all issues raised in the student’s 05/06/09 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. Fund at public expense at a reasonable and documented rate the parents’ Independent Educational Evaluation (“IEE”), to wit a:
 - a. Comprehensive Psychological Assessment.
2. The parents’ IEE shall be completed by the parents’ selected independent evaluator on or before August 21, 2009.
3. Convene the student’s MDT/IEP Team Meeting at a designated office at 825 North Capital Street, N.E., within 20-business days after this order’s issue date or, at the parents election, after the school’s special education coordinator receives the completed IEE report from the parents; and receives in writing three (3)-proposed MDT/IEP Team Meeting dates and times from the parents convenient for the parents to attend an MDT/IEP Team Meeting—to wit: the parents offer these dates for a meeting: July 1, 3, 7, or 10, 2009. The parties shall mutually agree to a meeting date for this student before the start of the 2009-10 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 IEE provided to the student’s IEP Team by his parents;
 - b. To determine whether additional assessments are needed to decide if the student is eligible for special education services and, if warranted, either perform those needed assessments or fund the parents IEE;
 - c. To determine the student’s eligibility for special education services; and if eligible, develop his initial IEP; and
 - d. To discuss and decide placement; and issue the student’s Prior Written Notice of Change in Placement (PNCOP), 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-business days after the MDT Meeting if the proposed placement is to a public school; and
 - (ii) Issue the PNCOP within 30-calendar days after the MDT Meeting if the proposed placement is to a non-public school.
4. Issue the student's Notice of Ineligibility if the student's MDT/IEP Team determines that the student is not eligible for special education services.
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 (301) 424-5777.
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 Agreed Order by one day for each day of delay.
7. The student's 05/06/09 Due Process Complaint is dismissed with prejudice— meaning that the issues that were or could have been raised in the 05/06/09 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 05/06/09 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 F. Woods
Frederick E. Woods
Hearing Officer

June 19, 2009
Date