DC Office of the State Superintendent of Education
Office of Compliance & Review
State Enforcement & Investigation Division
STUDENT HEARING OFFICE
Van Ness Elementary School
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STUDENT HEARING OFFICE
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Virginia A. Dietrich, Esq.
Impartial Due Process Hearing Officer

CONFIDENTIAL

In Re the Matter of:	*	
	*	**CASE NO.**
Parent on behalf of Student*	*	
	*	
Petitioner,	*	**Complaint Filed: 05/14/09**
	*	**Hearing Date: 06/17/09**
vs.	*	
	*	**Hearing Site:**
	*	**Van Ness Elementary School**
The District of Columbia Public Schools	*	**1150 5th Street, S.E., 1st Floor**
	*	**Washington, D.C. 20003**
Respondent.	*	
	*	

HEARING OFFICER DETERMINATION
(Agreement on the Record)

Petitioner's Attorney: Fatmata Barrie, Esq.
Law Offices, Christopher N. Anwah, PLLC
10 R Street, N.E.
Washington, D.C. 20002

Respondent's Attorney: Candace Sandifer, Esq.
Assistant Attorney General
Office of the Attorney General as Counsel
for D.C. Public Schools
Office of the General Counsel
825 North Capitol Street, N.E., 9th Floor
Washington, D.C. 20002

*Personally identifiable information is attached as an Index to this document and must be removed prior to public distribution.

JURISDICTION

The Due Process Hearing was convened and this Hearing Officer Determination ("HOD") and Order written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Section 1400 et. seq., the implementing regulations for IDEIA; 34 C.F.R. Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

INTRODUCTION

On 05/14/09, a Due Process Complaint Notice ("Complaint") was filed by the parent ("Parent" or "Petitioner") on behalf of the year old student ("Student"), alleging that District of Columbia Public Schools ("DCPS") denied Student a Free Appropriate Public Education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEIA") when DCPS made an inappropriate eligibility determination, when DCPS failed to provide Student with an Individualized Education Program ("IEP") for the 2008-2009 school year, when DCPS failed to evaluate Student in all areas of suspected disability, and when DCPS failed to provide Student with an appropriate placement for the 2008-2009 school year.

A pre-hearing conference convened on 06/04/09. A Pre-Hearing Conference Order that memorialized the substance of the pre-hearing conference was issued on 06/04/09.

DUE PROCESS HEARING

The due process hearing convened on 06/17/09 at the Van Ness Elementary School located at 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003.

Petitioner was represented by Fatmata Barrie, Esq. ("Petitioner's Attorney"). DCPS was represented by Candace Sandifer, Esq. ("DCPS' Attorney"). Petitioner attended the due process hearing.

After the issues presented and relief requested were read into the record, the parties requested and were granted a recess in order to discuss possible stipulations. Approximately 30 minutes later, the parties indicated that they had reached an agreement that is reflected in the Order of this HOD.

No documentary or testimonial evidence was introduced into the record. The following issues presented and relief requested by Petitioner are considered resolved by this Agreement on the Record:

Issue #1 – Whether DCPS made an inappropriate eligibility determination, thereby denying Student a FAPE? More specifically, Petitioner alleges that on 05/13/09, the Multidisciplinary Team ("MDT") convened and reviewed a 04/24/09 psychological evaluation, an educational evaluation, and a 04/22/09 speech/language

evaluation. Although each evaluation recommended special education services, DCPS determined that Student was ineligible for special education services. Petitioner disagreed with the determination. Petitioner contends that DCPS made an inappropriate determination that Student was ineligible for special education services.

Issue #2 – Whether DCPS failed to provide Student with an IEP for the 2008-2009 school year, thereby denying Student a FAPE? More specifically, Petitioner alleges that the 04/24/09 psychological evaluation and the 04/22/09 speech/language evaluation both recommended special education services, i.e., small group instruction and speech/language therapy. DCPS failed to provide Student with an IEP when it made an inappropriate determination that Student was ineligible for special education services.

Issue #3 – Whether DCPS failed to evaluate Student in all areas of suspected disability, thereby denying Student a FAPE? More specifically, Petitioner alleges that Student's inattentive behavior was addressed in Student's 04/24/09 psychological evaluation and 04/22/09 speech/language evaluation. Although Student exhibited inattention in the classroom that affected academic progress, DCPS failed to administer a psychiatric evaluation and a Connor's Rating Scale to rule out Attention-Deficit Hyperactivity Disorder ("ADHD")'ADD. At the 05/13/09 MDT meeting, Petitioner requested that DCPS conduct a psychiatric evaluation based on a recommendation contained in the 04/24/09 psychological evaluation, and DCPS refused.

Issue #4 – Whether DCPS failed to provide Student with an appropriate placement for the 2008-2009 school year, thereby denying Student a FAPE? More specifically, Petitioner alleges that at the 04/01/09 MDT/SEP meeting, it was recognized that Student had processing difficulties and performed better when placed in small groups and provided with one-on-one instruction. At the 05/13/09 MDT meeting, the MDT recognized that Student had not progressed academically during the 2008-2009 school year. Petitioner alleges that Student has not received any educational benefit while attending , and DCPS has failed to provide Student with a placement other than during the 2008-2009 school year.

Relief requested by Petitioner:

(1) A finding of a denial of a FAPE on Issues #1 - #4;
(2) A determination that Student qualifies for special education services;
(3) A determination that DCPS made an inappropriate eligibility determination; and
(4) DCPS to fund an independent psychiatric evaluation and/or Conner's Rating Scale and reconvene a MDT meeting within 10 days of receipt of those assessments to review them, develop an appropriate IEP, develop a behavioral intervention plan and discuss placement.

Petitioner withdrew without prejudice the relief requested in the Complaint of DCPS funding an appropriate placement of Petitioner's choice, i.e., or

ORDER

IT IS ORDERED, that

(1) DCPS shall provide the Connor's Rating Scale report (long form) and social history report to Petitioner through Petitioner's Attorney by the close of business on 06/18/09;

(2) DCPS and Petitioner and Petitioner's advocate agree to a tentative IEP meeting date of 06/30/09 at 1:30 p.m. to discuss all evaluations, make an eligibility determination, draft an IEP, discuss Extended School Year services and Student's placement, and DCPS shall issue a Prior Notice of Placement within 5 business days if to a public placement and within 30 calendar days if to a non-public placement. If the 06/30/09 tentative IEP meeting date cannot be confirmed, then the IEP meeting shall occur within 20 calendar days of the HOD issue date. Notice of a revised IEP meeting date and time shall be provided in writing by DCPS through Petitioner's Attorney; and

(3) Any delay caused by Petitioner, Petitioner's Attorney or representative of Petitioner shall result in a day for day extension of time for DCPS to meet any deadline specified in this HOD.

This is the FINAL ADMINISTRATIVE DECISION in this matter. Any party aggrieved by the findings and decision may APPEAL to a state court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. Section 1415(i)(2).

06/18/09
Date

Virginia A. Dietrich /s/
Virginia A. Dietrich, Esq.
Impartial Due Process Hearing Officer

Issued: June 18, 2009