

STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA
STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)
SPECIAL EDUCATION PROGRAMS

on behalf of,

Student,

(DOB STARS

Petitioner,

Case No.

Bruce Ryan, Hearing Officer

v

Hearing: May 28, 2009

Decided: June 5, 2009

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DECISION

I. PROCEDURAL BACKGROUND

This Due Process Complaint was originally filed March 2, 2009, and was amended March 17, 2009. The complaint was brought pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§ 1400 *et seq.*, on behalf of a 13-year old student who resides in the District of Columbia and attends School

Petitioner is represented by Fatmata Barrie, Esq., and Respondent District of Columbia Public Schools ("DCPS") is represented by Candace Sandifer, Esq., Assistant Attorney General for the District of Columbia.

Petitioner's amended complaint alleges that DCPS: (a) failed to comply with a prior Hearing Officer Decision ("HOD") issued November 3, 2008; (b) failed to provide the Student with an appropriate individualized educational program ("IEP"); (c) failed to convene an appropriate Eligibility/IEP meeting; (d) failed to evaluate the Student in all areas of suspected disability; and (e) failed to provide an appropriate placement.

The November 3, 2008 HOD had entered an order, based on the parties' stipulation and agreement, requiring DCPS to convene a meeting of the Student's Multi-disciplinary Team ("MDT") within 15 school days of receiving the results of independent evaluations authorized by DCPS to determine eligibility and, if eligible, to develop an appropriate IEP. *See HOD, Case No. 2008-0397* (dated 11/03/08).

DCPS filed its initial response to the complaint on March 12, 2009, asserting that it has not denied the Student a free appropriate public education ("FAPE"). DCPS further asserted that an MDT/IEP meeting was held on 2/20/09, at which it reviewed the Student's most recent evaluations, including comprehensive psychological and occupational therapy ("OT")

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evaluations, and determined the Student to be eligible for special education as a child with an emotional disturbance ("ED"). The team developed an IEP calling for 15 hours of specialized instruction, one hour of counseling, and 45 minutes of OT services weekly, and determined that Hart was an appropriate location of services for the Student.

DCPS filed an amended response on April 10, 2009. DCPS stated that it had agreed to conduct a functional behavioral assessment ("FBA") and develop a behavioral intervention plan ("BIP"), and that it intended to convene a further MDT/IEP team meeting to review all evaluations, "re-draft the Student's IEP" and determine placement. An FBA and BIP were completed on or about April 9, 2009.

Prehearing Conferences were held on March 12 and 17, 2009, and again on April 13, 2009. A Prehearing Order was issued April 16, 2009, clarifying the issues and requested relief. Five-day disclosures were filed by both parties as required. The Due Process Hearing was originally scheduled for April 23, 2009. It was continued to May 11, 2009, and then to May 28, 2009, because of parental unavailability due to illness and re-scheduling time constraints for both parties.

The Due Process Hearing convened on May 28. At the hearing, 15 documentary exhibits submitted by Petitioner (identified as "P-01" through "P-15") and 15 documentary exhibits submitted by DCPS (identified as "DCPS-1" through "DCPS-15") were admitted into the record without objection. Neither party presented any witnesses. At the outset of the hearing, counsel for both parties agreed as to the appropriate relief to be awarded, as described further below.

II. ISSUE(S) AND REQUESTED RELIEF

As indicated in the Prehearing Order, and as discussed further at the outset of the Due Process Hearing, the following issues were presented for determination:

- 1) ***Failure to comply with HOD*** - Whether DCPS failed to comply with the HOD dated 11/03/08 by failing to convene an MDT/IEP team meeting within 15 school days of receipt of the independent evaluations;
- 2) ***Inappropriate IEP*** - Whether DCPS failed to provide the Student with an appropriate IEP, including specifically with respect to OT services recommended by the 10/31/08 OT evaluation;
- 3) ***Failure to evaluate*** - Whether DCPS failed to evaluate the Student in all areas of suspected disability because it has not performed a neurological evaluation as recommended by the 10/31/08 comprehensive psychological evaluation; and
- 4) ***Inappropriate placement*** - Whether DCPS failed to determine and provide an appropriate placement to address the Student's unique needs.

Based on these issues, the amended complaint requested the following relief: (a) finding that DCPS violated the 11/03/08 HOD; (b) ordering DCPS to fund an independent neurological evaluation; (c) ordering DCPS to convene an MDT/IEP meeting to review the evaluations, develop an appropriate IEP, discuss placement, and develop a compensatory education plan for the Student; and (d) ordering DCPS to fund the Student at an appropriate placement of parent's choice.

Subsequent to the filing of the complaint, as noted above, DCPS conducted an FBA and developed a BIP for the Student. *See DCPS-11; DCPS -12.* In addition, DCPS developed a Compensatory Educational Plan designed to compensate the Student for missed specialized instruction in math and reading and for missed counseling services during the time period 9/1/08 to 2/20/09. The plan provides for an additional 100 hours of one-on-one tutoring and 20 hours of counseling services. *See DCPS-15.*

In light of these developments and given the status of the case at the outset of the hearing, counsel for both parties informed the Hearing Officer that they were jointly requesting the entry of an order to convene an MDT meeting (*i.e.*, requested relief under subparagraph (c) above). The parties subsequently agreed to a mutually convenient date/time of June 10, 2009, at 10:00 am. ***Both parties agreed that this requested relief would fully resolve all issues in the amended complaint, based on the written record and representations of counsel, without the need to complete a full evidentiary hearing and in lieu of any findings of fact and conclusions of law on the specified issues.***

The IDEA authorizes district courts and hearing officers to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005).

Accordingly, this decision and agreed order are being issued pursuant to 20 U.S.C. §§1412 (f) and 1415(i), 34 C.F.R. §300.513, and Sections 1002-1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures (“SOP”)*.

III. ORDER

Based upon the pleadings and representations of the parties as set forth above, and the entire record herein, it is hereby ordered:

1. DCPS shall convene an MDT/IEP team meeting at School on **June 10, 2009, at 10:00 AM**, for the following purposes:
 - (a.) To review all completed evaluations, including the speech and language evaluation and the FBA/BIP;
 - (b.) To review and revise, as appropriate, the Student’s IEP, including with respect to Goals and Objectives;
 - (c.) To discuss and determine appropriate placement for the Student, with DCPS’ issuing a Proposed Notice of Placement (“PNOP”) within five (5) business days of the meeting if the placement is to a public school and within thirty (30) calendar days of the meeting if the placement is to a private school;
 - (d.) To review the Compensatory Educational Plan developed by DCPS (contained at *DCPS-15*), and to determine whether any additional services are warranted and appropriate to meet the needs of the Student in light of any continued delay/disruption of services beyond 2/20/09, and to incorporate such plan or revised plan into the Student’s IEP; and
 - (e.) To take such further actions as may be deemed appropriate by the team.

2. All written communications from DCPS concerning the above matters shall include copies to counsel for Petitioner, Fatmata Barrie, Esq., via facsimile (202-626-0048), or via email (fbarrie@verizon.net).
3. Any delay in meeting a deadline specified in this Order that is caused by Petitioner or Petitioner's representatives (*e.g.*, absence or failure to attend a meeting) shall extend the deadline by the number of days attributable to such delay.
4. This case shall be, and hereby is, **CLOSED**.

Dated: June 5, 2009



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to 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 from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).