District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance

Student Hearing Office
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Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: April 6, 2009
	)	
Petitioner,	)	Prehearing Order: May 13, 2009
	)	
v.	)	Interim Order: May 13, 2009
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Hearing Dates: May 13, 2009 May 21, 2009
	)	
Respondent.	)	Docket No.
	)	
Student Attending:	)	
	)	

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STUDENT HEARING OFFICE

HEARING OFFICER'S DECISION

Counsel for Petitioner:
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Counsel for DCPS:
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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 year-old student attending On April 6, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) implement Petitioner's Individualized Education Program ("IEP"), (2) develop a new IEP, (3) provide an appropriate placement, and (4) provide access to Petitioner's educational records. The due process hearing was convened on May 21, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.

Record

Due Process Complaint Notice dated April 6, 2009
DCPS Resolution Session Waiver dated April 8, 2009
District of Columbia Public School's Response to Petitioner's Administrative Due Process Complaint dated April 17, 2009
DCPS' Five-Day Disclosure dated May 6, 2009 (Exhibits 1-5)
Petitioner's Five-Day Disclosure dated May 6, 2009 (Exhibits 1-6)
Prehearing Order dated May 13, 2009
Interim Order dated May 13, 2009
Petitioner's Supplemental Five-Day Disclosure dated May 14, 2009 (Exhibits 7-9)
Attendance Sheet dated May 21, 2009
CD-Rom of Hearing conducted on May 21, 2009

Witnesses for Petitioner

Petitioner's Grandmother
Petitioner's Mother
Owner,

Witnesses for DCPS

Special Education Teacher, DCPS
Principal,

Findings of Fact

1. Petitioner is a year-old student attending

2. On September 12, 2008, when Petitioner attended in Prince George's County, Maryland, an IEP was developed. Petitioner was represented at the meeting by her mother and grandmother.[3] Petitioner's primary disability was identified as "speech or language impairment." The "Areas Affected By Disability" were determined to be:

> Academic – Math Problem Solving, Academic – Reading Comprehension, Academic – Reading Fluency, Academic – Reading Vocabulary, Academic – Speech and Language Expressive Language, Academic – Speech and Language Receptive Language, Academic – Written Language Expression, Academic –Written Language Mechanics[4]

The Multidisciplinary Team ("MDT") reviewed Petitioner's current evaluations and determined that she was "Functioning significantly below her chronological age."[5] The MDT prescribed fifteen (15) hours per week of specialized instruction in the general education environment and thirty (30) minutes per week of speech services.[6]

3. Petitioner's mother agreed with and signed the September 12, 2008 IEP. Petitioner's mother is unaware of the amount of services to which Petitioner is entitled on the September 2008 IEP.[7]

4. Petitioner was enrolled at in November 2008.[8]

5. Petitioner's mother has not visited except to bring Petitioner to school and pick her up after school, since Petitioner was enrolled. She has never contacted the school and has never been called by a staff member of the school. Petitioner's mother has received Petitioner's report card. Petitioner's mother sees Petitioner's special education teacher, often when Petitioner's mother picks up Petitioner after school.

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[2] *Complaint* at 1.
[3] Testimony of Petitioner's mother and grandmother; Petitioner's Exhibit ("P.Exh.") No. 6 at 1.
[4] *Id.*
[5] Id. at 7. The individual tests reveal that Petitioner was performing at grade level equivalents between kindergarten and the middle of the first grade. *Id.* at 5-6.
[6] *Id.* at 21 and 23.
[7] Testimony of Petitioner's mother.
[8] Testimony of Petitioner's mother and grandmother.

Petitioner's mother has never requested a meeting concerning Petitioner's academic performance.[9]

6. Petitioner was tested at the in January 2009. Petitioner performed at kindergarten and first grade levels on the tests administered by

Conclusions of Law

Failure to Develop an IEP

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[11] the Supreme Court set forth the requirements for IEPs:

> The "free appropriate public education" required by the Act is tailored to the unique needs of the handicapped child by means of an "individualized educational program" (IEP). § 1401(18). The IEP, which is prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child's parents or guardian, and, where appropriate, the child, consists of a written document containing
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> "(A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved." § 1401(19).
>
> Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. § 1414(a)(5). See also § 1413(a)(11).[12]

At the beginning of each school year, the LEA is required to have a current IEP in effect for each child with a disability within its jurisdiction. Each child's IEP is accessible to each regular education teacher, special education teacher, and every related service provider who provides services to the student. Each teacher and service should be informed of his or her specific responsibilities related to implementing the child's IEP,

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[9] Testimony of Petitioner's mother.
[10] Testimony of ; P.Exh. No. 5.
[11] 458 U.S. 176 (1982).
[12] *Id.* at 1
81-82.

including the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.[13] Each child's IEP must be reviewed annually.[14]

"If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency-- (1) Conducts an evaluation… and (2) Develops, adopts, and implements a new IEP, if appropriate…[15]

In this case, Petitioner's mother and grandmother participated in the development of Petitioner's IEP at in September 2008. Neither the mother nor grandmother provided any testimony critical of the IEP developed at When they enrolled Petitioner at Petitioner's mother at no time expressed any reservations to the staff about the IEP that was developed at Therefore, pursuant to 34 C.F.R. Section 300.323(f), was justified in implementing the IEP that, when Petitioner enrolled at was less than two months old. The Hearing Officer concludes that Petitioner has failed to meet her burden of proving that DCPS failed to develop an appropriate IEP.

Failure to Implement the IEP

Petitioner's theory of the case was based on the grandmother's testimony that Petitioner has made no progress since she arrived at and the results of testing conducted by the However, Petitioner's representatives presented no testimony or evidence that has not implemented Petitioner's IEP. Neither Petitioner's mother nor grandmother was aware of the level of services Petitioner was entitled to receive. The grandmother was aware that Petitioner was entitled to "speech and individual instruction," but was unaware of the amount of services. Petitioner's mother, who signed the IEP, was aware that Petitioner was entitled to "reading, math, and speech" services, but was unaware of the amount of services. She disclaimed any knowledge as to whether Petitioner was receiving speech services. The Hearing Officer concludes that Petitioner has failed to meet her burden of proving that DCPS has failed to implement the IEP.[16]

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[13] 34 C.F.R. §300.323(d)(2).
[14] 34 C.F.R. §300.324(b)(1)(i).
[15] 34 C.F.R. §300.323(f).
[16] The only specific information on implementation was offered by DCPS through She testified that she is with Petitioner in a general education classroom for two and one-half hours each morning and also provides pull-out services in the afternoon. While testified that she provides a minimum of "10" or "12" hours of services per week, it appears that between services provided in the general education classroom and in pull-out classes, Petitioner services approximate 15 hours per week. At any rate, Petitioner's mother, who is the moving party in this case, offered no testimony to refute DCPS' contention that Petitioner's IEP services are being provided.

Inappropriate Placement

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[17] the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

> The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to *benefit* from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[18]

Thus, Petitioner's burden is to show that has failed to provide an environment in which Petitioner can derive educational benefit. The gravamen of Petitioner's counsel's argument is that Petitioner is performing well below grade level, and has done nothing to correct her deficits since her enrollment there. However, as noted in the Findings of Fact, Petitioner was "Functioning significantly below her chronological age" when her mother agreed to and signed the IEP at in September 2008. The only credible evidence that Petitioner is not making progress is the testing conducted by the in January. That testing merely confirmed the performance levels provided on pages 5-7 of the IEP developed four months earlier. When tested Petitioner, she had been at less than two months. Clearly, this is an insufficient amount of time to judge effectiveness, particularly with a child who came to unable to read. While the Hearing Officer recognizes that Petitioner has critical academic deficiencies, these deficiencies are not attributable to DCPS, and Petitioner's representatives made no persuasive showing that cannot meet the needs established in Petitioner's IEP.

Failure to Provide Access to Petitioner's Educational Records

During testimony, she revealed that she is in possession of educational records that may not have been provided to Petitioner's mother. These include IEP Report cards and standardized test results. The Hearing Officer concludes that as to these items, Petitioner has met her burden of proving that DCPS has failed to provide complete access to Petitioner's educational records.

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[17] 458 U.S. 176 (1982).
[18] *Rowley, supra,* at 200-01.

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 31st day of May 2009, it is hereby

ORDERED, that on or before June 12, 2009, DCPS shall provide Petitioner's mother copies of all IEP Report Cards, Report Cards, and standardized test results that have been developed for Petitioner.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.

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: May 31, 2009