

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
Frances Raskin, Due Process Hearing Officer
1150 – 5th Street, S.E.; Room 3
Washington, D.C. 20003
Phone: (202) 506.7801
Facsimile: (202) 506.4091

Confidential

STUDENT, through the legal guardians¹)
)
 Petitioner,)
)
 v.) Hearing Date:
) None held
)
 THE DISTRICT OF COLUMBIA)
 PUBLIC SCHOOLS,)
)
 Respondent.)
)

HEARING OFFICER DETERMINATION

Counsel for Petitioner: William Purcell, Attorney at Law
MidCity Law Group, P.L.L.C.
1822 11th Street, N.W.
Washington DC 20001
(202) 528-2800; Fax: (202) 518-2700

Counsel for DCPS: Daniel McCall, Attorney at Law
Office of the Attorney General
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002
(202) 442-5000; Fax: (202) 442-5097

OSSE
STUDENT HEARING OFFICE
2009 JUN 22 AM 10:06

¹ Personal identification information is provided in Attachment A.

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("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"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the mother of an _____-year-old, _____ grade, general education student ("Student") attending a DCPS middle school ("School"). Both Petitioner and the Student reside in Washington, D.C.

On April 30, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging that the Student has exhibited severe behavioral difficulties that have resulted in numerous discipline and suspensions and negatively impacted the Student's educational performance. The Complaint alleged that DCPS failed to identify the Student as a child in need of special education pursuant to its "child find" obligations pursuant to IDEIA. The Complaint alleged that DCPS agreed to conduct educational evaluations within 30 days or allow Petitioner to obtain independent evaluations at DCPS expense. It further alleged that DCPS has failed to evaluate the Student in all areas of suspected disability.

The Complaint further alleged that DCPS failed to develop an individualized educational program ("IEP") for the Student. It further alleged that the Student's disabilities, which may include emotional disturbance severely hamper her learning process. The Complaint further alleged that the Student requires behavioral intervention and full time, special education and related services.

The Complaint also alleged that DCPS failed to provide the Student an appropriate educational placement. It alleged that the refusal by DCPS to provide the Student an appropriate placement is damaging her social-emotional progress.

As relief, the Complaint requested an order requiring DCPS to:

1. Fund independent evaluations to include comprehensive psychological, social history, and speech and language evaluations as well as a speech and language assessment;
2. Convene a meeting of the multidisciplinary ("MDT") team within five days of receipt of the independent evaluations to determine whether additional evaluations are necessary, review and revise (or develop) the Student's IEP, determine an appropriate educational placement, and develop and fund a compensatory education plan.

On May 27, 2009, counsel for DCPS filed an untimely Response, Notice of Insufficiency, and Motion to Dismiss Petitioner's Due Process Notice ("Response"). This Hearing Officer responded the same day to inform counsel for DCPS that the Response made no allegations that the Complaint was insufficient other than in the caption of the Response. The next day, counsel for DCPS filed an Amended Response, Notice of Insufficiency, and Motion to Dismiss Petitioner's Due Process Notice ("Amended Response").

The Response/Amended Response asserted that, on December 19, 2008, DCPS authorized Petitioner to obtain independent evaluations if DCPS did not complete a comprehensive psychological and physical therapy evaluations within three weeks of the meeting. The Response/Amended Response further asserted that Petitioner at all times had authorization to obtain independent evaluations and request that this Hearing Officer dismiss the Complaint. Attached to the Amended Response were IEP meeting notes from December 19, 2008, MDT meeting. Also attached was a May 26, 2009, letter from the Office of the Chancellor authorizing Petitioner to obtain an independent comprehensive psychological (which includes educational, cognitive, and clinical components as well as a social history assessment) evaluation, a speech and language evaluation, and vocational assessment at DCPS expense.

III. RECORD

Due Process Complaint Notice, dated April 30, 2009;
DCPS Response, Notice of Insufficiency, and Motion to Dismiss, filed May 27 and 28, 2009.

IV. ISSUES PRESENTED

- A. Whether DCPS denied the Student FAPE by failing conduct child find and identify the Student as a student with a disability pursuant to IDEIA;
- B. Whether DCPS failed to evaluate the Student in all areas of suspected disability;
- C. Whether DCPS failed to develop an appropriate IEP for the Student; and
- D. Whether DCPS failed to provide an appropriate educational placement to the Student;

V. DISCUSSION

The parties agreed by email that this Hearing Officer could summarily resolve this case with an order granting Petitioner the independent evaluations and requiring DCPS to hold a meeting 10 business days after receiving the evaluations. This Hearing Officer advised counsel for Petitioner that she does not delegate compensatory education determinations to the MDT/IEP team. Counsel for Petitioner agreed to would withdraw all other claims in the Complaint in exchange for the order granting the evaluations and MDT meeting.

Pursuant to the Student Hearing Office Standard Operating Procedures §1002.1:

It is the policy of the DC Public Schools to encourage resolution of disputes in special education through negotiation and other alternative dispute devices. . . . Together, the parent(s) and the school system may reach an agreement, thus eliminating the need for a due process hearing or any other resolution action. The Hearing Officer has authority to dismiss a hearing when informed by the parties that the case has been settled . . . and may, if requested, incorporate the terms of an agreement into an Order with consent of both parties.

VI. ORDER

Upon consideration of Petitioner's Complaint and the Response thereto, and the representations of counsel by email, upon the consent of all parties, it is this 20th day of June 2009 hereby:

ORDERED that Petitioner shall obtain an independent comprehensive psychological (which includes educational, cognitive, and clinical components as well as a social history assessment) evaluation, a speech and language evaluation, and vocational assessment at DCPS expense, to be completed on or before July 20, 2009;

IT IS FURTHER ORDERED that within five business days of receiving copies of the completed evaluations and reports, Petitioner shall send copies of each evaluation and report to the Office of State Superintendent of Education Office of Compliance and Review, the special education coordinator at the Student's school, and DCPS Attorney McCall;

IT IS FURTHER ORDERED that DCPS shall hold an MDT meeting within ten (10) business days of receiving the evaluations and reports and at this meeting shall (1) review the evaluations; (2) develop and/or revise the Student's IEP, if necessary; and (4) determine an appropriate educational placement for the Student;

IT IS FURTHER ORDERED that DCPS shall schedule all meetings through the office of Petitioner's attorney and shall include in all meetings Petitioner and any evaluators Petitioner may desire participate;

IT IS FURTHER ORDERED that DCPS shall be granted one day of delay for every day of delay caused by Petitioner;

IT IS FURTHER ORDERED that all remaining claims in this Complaint, including the claims regarding the appropriateness of the Student's IEP and educational placement as well as compensatory education, are **DISMISSED WITHOUT PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/

Frances Raskin
Hearing Officer

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).

Copies to:

William Purcell, Attorney at Law
Daniel McCall, Attorney at Law
Student Hearing Office