

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

<p>STUDENT¹, by and through parent, Petitioner, vs. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Zachary E. Nahass, Esq.</p> <p>Asst. Attorney General for DCPS: Harsharen Bhuller, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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STUDENT HEARING OFFICE
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On April 23, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS violated two Hearing Officer's Determinations/Decisions (HOD) issued in the matter, one issued May 23, 2008 and the other issued January 23, 2009. Each, *inter alia*, ordered the MDT to consider compensatory education for the student. For relief, compensatory education was requested.

A Pre-hearing Conference Order was issued in this matter on May 13, 2009. The Order determined the ISSUES as setout the below.

On May 5, 2009, DCPS filed a combination Response and Motion to Dismiss and, on May 7, 2009, filed a Motion for Summary Judgment. Here, for the reasons set out below in CONCLUSIONS of LAW, the Motion to Dismiss and the Motion for Summary Judgment are DISMISSED.

A hearing in this matter was scheduled for 11:00 A.M., Wednesday, May 27, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

- ISSUES:**
- 1. Should compensatory education be awarded to the student for the 2006-07 and 2007-08 School Years?**
 - 2. Should tutoring be added to the current IEP for the student?**

FINDINGS of FACT

By facsimile dated May 20, 2009, the parent disclosed 7 witnesses and 7 documents.

By facsimile dated May 19, 2009, DCPS disclosed 6 witnesses and 4 documents. The documents were admitted into the record and are referenced/footnoted herein where relevant.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. A Hearing Officer's Determination/Decision (HOD) was issued in this matter on May 23, 2008² wherein it was determined that DCPS had denied the student a FAPE for the 2006-07 and 2007-08 School Years. In the HOD, the student was placed at his current private educational placement, and DCPS was ordered to reconvene the MDT for the student and during the meeting, *inter alia*, consider compensatory education for the student. The MDT reconvened on August 5, 2008 and determined that educational testing should be completed prior to consideration of compensatory education. The testing was not completed timely, and a second complaint was filed.

2. The second HOD was issued in this matter on January 23, 2009.³ In the HOD, evaluations and a second MDT meeting were ordered. At the meeting, *inter alia*, the MDT was again to consider compensatory education for the student. The MDT reconvened on March 31, 2009 and, referring to the January 23, 2009 HOD only, determined that failure to complete a timely educational evaluation did not merit compensatory education. The MDT did not refer to the May 23, 2008 HOD and as a result violated the May 23, 2008 HOD.

3. Both the May 23, 2009 and January 23, 2009 HODs contained the following paragraph in their respective orders: "At the said MDT/IEP/Placement meeting, the form, amount and delivery of compensatory education, if any, will be discussed and determine. For disputes under this paragraph, either party may request a hearing."

4. For approximately 300 children with disabilities over the previous eight years, the Educational Advocate had extensive experience in the formulation of IEPs and compensatory education plans. The Advocate attended both the August 5, 2008 and March 31, 2009 MDT meetings. The August 5, 2008 MDT decided that educational testing should be completed before consideration of compensatory education for the student; that the MDT was to reconvene with the completed testing and consider compensatory education for the student. As DCPS did not complete the educational testing, a second complaint was filed. The second HOD resulted in the March 31, 2009 MDT meeting during which DCPS decided that no compensatory education was merited.⁴

3 of 6 pages

² Parent Document No 1

³ Par. Doc. No 2

⁴ -testimony of the Educational Advocate

5. The grade student's IQ was average and, over the course of the 2008-09 School Year at the current educational placement, achieved three grade levels in reading comprehension. If the same progress was achieved over the 2009-2010 School Year, the student would be at grade level in reading comprehension. Numerical operations/calculation retrogressed; the student scored at the 3rd grade level. Deficits were evident in pseudoword decoding, but the speech/language services provided at the current placement should remediate word decoding.⁵

6. At the March 31, 2009 MDT meeting, the MDT decided that compensatory education for the student was unwarranted because the January 23, 2009 HOD pointed out a procedural violation; the MDT did not refer to the May 23, 2008 HOD. The Parent's compensatory education plan for the student recommended 100 hours of tutoring, two hours per week, at a specified tutoring center, 25% for math tutoring and 75% for reading/spelling tutoring. One of the student's teachers at the meeting recommended after school tutoring, but for social skills⁶

7. The student made academic and social/emotional progress at the current educational placement, but needed help with math. The March 31, 2009 MDT thought the student would benefit from after school tutoring in math which the current educational placement could provide with a certified math teacher.⁷

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

4 of 6 pages

⁵ *ibid*; scores are set out at page 2 of the May 23, 2008 HOD and page 10 of the March 3, 2009 Psychological Evaluation, Par. Doc. No 4.

⁶ *ibid*, 4 above; (teacher comments at page 1 of 3, DCPS notes of March 31, 2009 MDT meeting, Par. Doc. No 7)

⁷ -testimony of the Head of School at the current educational placement

ONE & TWO

DCPS violated the May 23, 2008 HOD. The student is awarded compensatory education.

The May 23, 2008 HOD found that DCPS had denied the student FAPE for the 2006-07 and 2007-08 School Years and ordered the MDT to consider compensatory education for the student. The MDT convened on August 5, 2008 and, reasonably, referred the student for testing before considering compensatory education. The testing was not completed timely, and the parent filed for Due Process.

A second HOD was issued January 23, 2009, wherein a second MDT meeting was ordered during the course of which the MDT was again to consider compensatory education for the student. At the March 31, 2009 MDT meeting, the MDT reviewed the March 3, 2009 Psychological Evaluation and, mistakenly, considered the student for compensatory education only in connection with the delayed completion of the March 3, 2009 evaluation; the student was not considered at all for the compensatory education ordered in the May 23, 2008 HOD, the one wherein DCPS was found to have denied the student FAPE for two school years.

DCPS violated the May 23, 2008 HOD.

As compensatory education for the denial of FAPE found in the May 23, 2008 HOD, the student is awarded one hour of tutoring in math each school week during the 2009-2010 School Year. The Head of School at the current placement recommended tutoring in math; the Educational Advocate recommended 75 % of the 100 hours of tutoring for reading. The record showed that the student made 3 years progress in reading comprehension during the 2008-09 School Year at the current educational placement, a placement that DCPS is funding. At the current rate of reading progress the student should be at grade level in reading comprehension at the end of the 2009-10 School Year. The speech/language services at the current educational placement should enhance the student's pronunciation and word decoding.

SUMMARY of the DECISION

The parent met her burden in this matter though not as to all of the compensatory education requested.

In consideration of the foregoing, the hearing officer made the following

ORDER

As compensatory education, DCPS will fund one

hour of math tutoring for the student per school week during the 2009-2010 School Year; transportation cost are to be included in the cost of tutoring. The tutoring is to be delivered at the current educational placement at the time agreed upon by the parent and current educational placement.

Dated this *3rd* day of *June*, 2009

H. St. Clair

H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.

6 of 6 pages