DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

[Parent], on behalf of,
[Student], [1]

Petitioner,

v

District of Columbia Public Schools (DPCS),

Respondent.

Date Issued: June 25, 2010

Hearing Officer: Jim Mortenson

Case No:

Hearing Date: June 17, 2010 Room: 7a

RECEIVED
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HEARING OFFICER DETERMINATION

I. BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 9:00 a.m. on June 17, 2010, in hearing room 7a, and concluded on that date. The due date for the Hearing Officer's Determination (HOD) is June 26, 2010, pursuant to 34 C.F.R. § 300.515(a). This HOD is issued on June 25, 2010.

The hearing in this matter was conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30. The hearing was closed to the public.

Present at the due process hearing were:

Domiento Hill, Esq., Petitioner's Counsel

Daniel Kim, Esq., Respondent's Counsel

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[1] Personal identification information is provided in Appendix A.

Petitioner, Student's Grandmother

Speech and Language Pathologist

Five witnesses testified at the hearing:

For Petitioner:

Independent Speech and Language pathologist.

Dori Cook, Educational Advocate. (D.C.)

Petitioner. (P)

For Respondent:

Psychologist (Expert in psychology and psychological testing of students).

Speech and Language Pathologist.

The complaint in this matter was filed on April 15, 2010. The Respondent filed a response on April 29, 2010. A prehearing conference was held on April 29, 2010, and a prehearing order issued on May 3, 2010. A resolution meeting was held on May 12, 2010, and the parties agreed in writing that no agreement was possible. As a result, the 45 day hearing timeline began May 13, 2010.

The Petitioner is seeking one hour per week of speech and language services for the Student, delivered twice weekly for 30 minutes per session, and an independent psychological assessment.

22 documents were disclosed and offered by the Petitioner. (P 1 – P 22) There were no objections to any of the offered documents and all were entered into the record. Petitioner's exhibits are:

P 1 - Administrative Due Process Complaint Notice, April 14, 2010
P 2 - Resolution Meeting Confirmation, (undated)

P 3	-	Due Process Complaint Disposition, May 12, 2010
P 4	-	Notice of Prehearing Conference, April 20, 2010
P 5	-	Prehearing Order, May 3, 2010
P 6	-	Individualized Education Program (IEP), December 14, 2009
P 7	-	Letter from Hill to Nyankori, December 16, 2009
P 8	-	Letter from Hill to Nyankori, February 11, 2010, and Occupational Therapy Evaluation, January 26, 2010
P 9	-	Letter from Hill to Keeling, December 2, 2009, and HOD
P 10	-	Letter from Keeling to Hill, March 25, 2010
P 11	-	Letter from Hill to Keeling, March 26, 2010
P 12	-	Letter from Keeling to Hill, April 6, 2010
P 13	-	Letter from Hill to Keeling, February 26, 2010; Letter from Hill to Nyankori, February 3, 2010; Speech Language Evaluation, January 20, 2010; and Letter from Keeling to Hill, January 18, 2010
P 14	-	Letter from Hill to Richards, February 8, 2010
P 15	-	IEP, April 13, 2010; meeting notes; Motiki report, March 22, 2010; and IEP progress reports
P 16	-	Speech Language Evaluation, January 20, 2010
P 17	-	Speech and Language Re-Evaluation Report, August 27, 2007 (See R 8)
P 18	-	Speech and Language Evaluation Report, January 6, 2008
P 19	-	Speech and Language Evaluation, April 9, 1999
P 20	-	Speech and Language Evaluation, January 14, 2002
P 21	-	Speech and Language Re-Evaluation Report, October 3, 2009 (See R 14)
P 22	-	IEP, April 13, 2010; meeting notes; and IEP progress reports

22 documents were disclosed and offered by the Respondent. (R 1 – R 22) There were no objections to any of the offered documents and all were entered into the record. Respondent's exhibits are:

R 1	-	IEP, January 11, 2008
R 2	-	IEP, June 12, 2009
R 3	-	IEP progress reports, June 12, 2009
R 4	-	Letter from Nyankori to Hill, June 16, 2009
R 5	-	Letter from Nyankori to Hill, July 7, 2009
R 6	-	Psychoeducational Re-Evaluation Report, September 20, 2007
R 7	-	Educational Evaluation, October 24, 2007
R 8	-	Speech and Language Re-Evaluation Report, August 27, 2007 (See P 17)
R 9	-	Review of Independent Assessment, October 15, 2009
R 10	-	Educational Evaluation Report, July 14, 2009
R 11	-	IEP, September 3, 2009
R 12	-	Multidisciplinary Team (MDT) [IEP team] Meeting Notes, September 3, 2009
R 13	-	IEP, October 15, 2009

R 14 - Speech and Language Re-Evaluation Report, October 3, 2009 (See P 21)
R 15 - Letter from Nyankori to Hill, December 29, 2009
R 16 - IEP, December 14, 2009
R 17 - Monica D. Blanton-Lacy, PH.D. Curricula Vitae
R 18 - Resolution Meeting Notes, May 12, 2010
R 19 - IEP progress reports, February 3, 2010
R 20 - IEP progress reports, April 20, 2010
R 21 - IEP progress reports, June 1, 2010
R 22 - HOD #2009-1274, November 29, 2009

II. ISSUES

1) Whether the Respondent failed to timely provide the Student with an individualized education program (IEP) reasonably calculated to provide educational benefit when it proposed removing speech and language services from the Student's IEP?

2) Whether the Respondent was required to and failed to conduct a psychological assessment requested by the Petitioner in April, 2010?

III. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student attended Education Center from grade through (the 2009-2010 school year).[2]
2. At the end of the 2008-2009 school year the Student's progress reports concerning speech and language, as recorded by her speech and language pathologist, indicate in summary:[3]

[2] Uncontested Fact, Testimony (T) of P.
[3] R 3.

> Progress Report 2 Speech and Language Pathologist: [Student] has new goals per new IEP. She is currently working on recalling sentences as they increase in length and complexity, making predictions and use of subordinate conjunctions. Therapy will focus on goals per IEP. . . .
>
> Progress Report 3 [Student] is making gains with recalling sentences as it increases in length and complexity. She is also working on predictions. Therapy will continue with current goals per IEP. .
>
> Period 4 [Student] continues to make gains within her sessions. She is making slow gains with using conjunctions therefore therapy will only focus on two to three conjunctions at a time. [Student] exhibits difficulty with memory therefore she is also given visual aids for support. She continues to benefit from language services. Goals not mastered will be transferred to the 2009-2010 school year.

3. A revised IEP was proposed on September 3, 2009.[4] The IEP included five communication/Speech and Language goals to be met by June 11, 2010.[5] The speech and language services to be provided included 45 minutes per week, outside of the general education setting.[6] When the IEP was revised, the Student had not yet met the 70% accuracy level required by all five goals from the previous revision of the IEP (June 2009).[7]

4. A complaint was filed September 9, 2009, concerning the Student's IEP and a due process hearing was held and this IHO determined:[8]

> The Student's IEP includes academic goals aligned with State standards. However, the IEP is not reasonably calculated to provide educational benefit to the extent it lack statements of present levels of functional performance concerning the Student's identified executive functioning deficits and emotional needs. It also lacks measurable annual goals and the necessary special education and related services necessary to enable the Student to reach those goals. This is a denial of a free appropriate public education.

5. A speech and language assessment was conducted by the Respondent (specifically on October 3, 2009.[9] The Student's strengths and weaknesses, according to the assessment report, were as follows:[10]

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[4] R 11.
[5] R 11.
[6] R 11.
[7] R 12.
[8] R 22.
[9] R 14/P 21, T of
[10] R 14/ P 21.

> **Strengths:** [Student's] oral musculature, fluency, hearing were deemed normal. Her strengths were also in following directions using linguistic concepts, formulating sentences, using parts of speech, conjunctions and compound sentences. [Student] also exhibited strength in word class; she demonstrated the ability to name and identifies synonyms, antonyms and part whole items.
>
> **Areas of weakness:** [Student] exhibited difficulty with recalling sentences as it increased in length and complexity. Her expressive and receptive one word levels were also low.

6. An IEP team meeting was held on October 15, 2009, and the IEP was revised, with slight modifications to the five speech and language goals.[11] The Petitioner did not agree with the revision.[12]
7. Despite the stay-put status of the Student and five speech and language goals now to be achieved by October 2010 (as opposed to June 2010 in the previous revision), the Respondent stopped providing speech and language services in or about October 2009.[13]
8. The IEP team met on December 14, 2009, and another revised IEP was proposed.[14] The speech and language goals were not revised, but rather removed from the IEP because the Student had "mastered" the goals (performing at 70% accuracy).[15] No written notice was provided to the Parent before the revision of the IEP and the removal of speech and language goals.[16] The Petitioner did not agree with the revision.[17]

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[11] R 13.
[12] R 13.
[13] R 13, T of ' provided questionable testimony on this point. She repeatedly testified that she provided no speech and language services to the Student the entire year, and also testified that she provided the speech and language services indicated in the IEP, and that speech and language services had been in the IEP prior to October 15, 2009. Also, the parties were in stay-put status because a complaint had been filed September 9, 2010, over the IEP and the only changes thus permitted under 34 C.F.R. § 300.518(a) were those to which the parties agreed to. The Petitioner had indicated on the October 15, 2009, proposed IEP that she was not in agreement.
[14] R 16.
[15] R 16.
[16] This fact is determined from the failure of either party to present such key evidence. A challenge to or defense of the appropriateness of proposed changes (or a refusal to change) an IEP must focus on the rationale as recorded in the prior written notice, pursuant to 34 C.F.R. § 300.503. Where that evidence is not presented it is only logical to conclude it does not exist.
[17] T of P.

9. An IEE (speech and language assessment) was authorized by the Respondent in December 2009.[18] The evaluation was completed by C.R. for Parker Diagnostic Solutions on January 20, 2010.[19] The evaluation found the Student's areas of difficulty with regard to speech and language were "comprehension of age appropriate curriculum based vocabulary terms."[20] This was consistent with the evaluation conducted by the Respondent in October 2009.[21] The IEE was reviewed by the IEP team and the Respondent's staff determined the Student no longer "qualified" for speech and language services.[22]

10. Some of Student's speech and language needs can be addressed in the classroom without speech and language therapy, specifically; modeling appropriate communication in all environments and presenting work in smaller chunks.[23] The Student requires, however, speech and language goals in her IEP to work toward.[24] An appropriate goal for receptive language is: Student will apply critical thinking to comprehend, describe and solve problems – to be measured by her ability to: identify facts and opinions from curriculum based text; provide the correct response to a verbal or written analogy; identify literal and non-literal meaning of curriculum based figurative language; and utilizing curriculum based context and syntactical cues to identify meaning of unfamiliar terms.[25] An appropriate goal for expressive language is: Student will use age appropriate linguistic rules for conveying ideas through speech or writing – to be measured by her ability to: utilize correct noun/verb agreement to express her thoughts and ideas; utilize the correct

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[18] Uncontested Fact.
[19] P 16, T of provided consistent and more credible testimony.)
[20] P 16, T of
[21] R 14, T of
[22] Uncontested Fact.
[23] P 16, T of T of
[24] P 16 (This is also consistent with 34 C.F.R. § 300.320(a)(2)).
[25] P 16.

singular and plural possessive pronouns to express her thoughts and ideas; to utilize the correct regular and irregular past tense verbs to express her thoughts and ideas; and to create grammatically correct past tense and passive sentences in order to determine which is the most appropriate for utilization within curriculum based experiences.[26] To reach these goals, in addition to the specialized instruction referred to above, the Student requires at least one hour of speech and language therapy per week.[27]

11. The Petitioner sought evidence of the Student's academic growth at the April 2010 IEP team meeting, but was not provided any.[28] A request for a psychoeducational assessment was made in April, based on the Student's growth and services in the general education setting and because the Petitioner wanted to know exactly where the Student is at academically and she did not believe unsupported assurances.[29] The District did not believe additional psychoeducational assessment was necessary, at least prior to the Student beginning her grade year at a new school, and because of a comprehensive assessment within the last year.[30] No written notice of this refusal was provided to the Petitioner.[31]

IV. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

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[26] P 16.
[27] P 16, T of
[28] T of T of P.
[29] P 22, T of P. (No documentary evidence of the Student's academic progress in the general education curriculum was provided by either party.)
[30] R 22, T of
[31] This fact is determined from the failure of either party to present such key evidence. A challenge to or defense of a refusal by a public agency must focus on the rationale as recorded in the prior written notice, pursuant to 34 C.F.R. § 300.503. Where that evidence is not presented, it is only logical to conclude it does not exist.

1. 34 C.F.R. § 300.17 provides:

> Free appropriate public education or FAPE means special education and related services that —
> (a) Are provided at public expense, under public supervision and direction, and without charge;
> (b) Meet the standards of the SEA, including the requirements of this part;
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

The Supreme Court has described the purpose of the IDEA quite clearly:

> When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Board of Educ. v. Rowley, 458 U.S. 176, 203-204 (1982).

2. An IEP must include:

> (1) A statement of the child's present levels of academic achievement and functional performance, including —
> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
> (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
> (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
> (B) Meet each of the child's other educational needs that result from the child's disability;
> (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
> (3) A description of —
> (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
> (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
> (i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
(A) The child cannot participate in the regular assessment; and
(B) The particular alternate assessment selected is appropriate for the child; and
(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

34 C.F.R. § 300.320(a).

3. "Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology. . . ." 34 C.F.R. § 300.34(a). The Federal Regulations further define speech-language pathology services as including:

(i) Identification of children with speech or language impairments;
(ii) Diagnosis and appraisal of specific speech or language impairments;
(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

34 C.F.R. § 300.39(c)(15).

4. The due process procedures for parents and children with disabilities include written notice before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). The notice must include the following contents:

(1) A description of the action proposed or refused by the agency;
(2) An explanation of why the agency proposes or refuses to take the action;
(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
(4) A statement that the parents of a child with a disability have protection under the procedural

safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
(7) A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. § 300.503(b).

5. Federal regulations at 34 C.F.R. § 300.324(b)(ii) provide a comprehensive set of factors to consider in reviewing a revision of an IEP. These factors are useful in conducting an administrative review and are summarized here. 1) Has there been a lack of expected progress toward the annual IEP goals or progress in the general education curriculum? 2) What were the results of any recent reevaluations? 3) What information about the educational needs of the child were provided by or to the parent? 4) What are the child's anticipated needs? 5) What other matters impact the IEP? *See*, 34 C.F.R. § 300.324(b)(ii).
6. Progress toward annual speech and language goals and progress in the general education curriculum. The Student's prior speech and language goals had been achieved, but no new ones were put in place to replace them. There was no written notice or other explanation to describe why this was, other than the less than clear testimony of indicating that the Student no longer required speech and language therapy. In addition, no evidence was presented regarding the Student's progress in the general education curriculum.
7. Results of recent speech and language evaluations. The October 2009 and January 2010 assessments of the Student's speech and language skills were fairly consistent, showing general improvement in the Student's abilities, but continued struggles with vocabulary. Vocabulary is important for learning in general.
8. Information about the educational needs of the child provided by or to the parent. Critical to this point is the lack of information that should have been provided in a prior written

notice. The notice would have included a description of what the school district was proposing (removal of speech and language goals and services),[32] an explanation why the school district was making the proposal, a description of the data used to make the proposal, a description of other options considered and why rejected, and a description of other factors relevant to the school districts proposal. The Petitioner repeatedly indicated she did not agree with the proposal to remove speech and language services.

9. The Student's anticipated needs. The Student's anticipated needs include, with regard to speech and language, improving vocabulary skills thus enabling her to better understand words, figure out the meaning of words, comprehend the context of what she reads, and generally participate effectively in and progress in the general education curriculum.
10. Other matters that impact the IEP. This complaint is the third that this IHO has resolved between the parties in the last year. This is not an insignificant level of dispute. The Student has, according to both parties, made some significant growth over the last several years. However, given the level of dispute between the parties, one would expect the Respondent to pay closer attention to basic due process requirements, which could help avoid or more quickly resolve disputes when they arise.
11. Based on the above analysis, it is more likely than not that the speech and language goals and services should not have been removed from the IEP. The removal of the speech and language goals and services resulted in an IEP not reasonably calculated to provide educational benefit.
12. A parent may request a reevaluation of a student, which must be provided, unless the reevaluation is within one year of the prior evaluation. 34 C.F.R. § 300.303. A when a

[32] The services were removed prior to the goals. It is not clear why this was, but certainly would have been more clear had the Parent been provided proper due process.

school district refuses to reevaluate a student it must provide written notice regarding the refusal. 34 C.F.R. § 300.503.

13. A comprehensive evaluation of the Student took place within the last year, thus the Respondent was justified in refusing the Petitioner's request. The Respondent failed to provide written notice, pursuant to 34 C.F.R. § 300.503, of its refusal. There is no evidence to indicate this specific violation of the Petitioner's and Student's due process rights negatively impacted the Student's right to FAPE, significantly impeded the Petitioner's opportunity to participate in the decision making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit.

V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. The Petitioner prevails on Issue #1 because the Respondent failed to provide the Student with an IEP reasonably calculated to provide educational benefit when it removed speech and language services from the Student's IEP and, furthermore, did so without prior written notice. To come into compliance with this determination the Respondent must, within 30 days of the date of this determination, provide the Petitioner and her Counsel a copy of the Student's IEP that includes:
    a. A statement of the Student's present level of academic achievement and functional performance as it relates to speech and language skills, based on the January 2010 speech and language assessment;

b. At least the following two goals concerning speech and language with the accompanying statements of how her progress toward meeting the annual goals will be measured:

   i. Student will apply critical thinking to comprehend, describe and solve problems. Measured by her ability to: identify facts and opinions from curriculum based text; provide the correct response to a verbal or written analogy; identify literal and non-literal meaning of curriculum based figurative language; and utilizing curriculum based context and syntactical cues to identify meaning of unfamiliar terms.

   ii. Student will use age appropriate linguistic rules for conveying ideas through speech or writing. Measured by her ability to: utilize correct noun/verb agreement to express her thoughts and ideas; utilize the correct singular and plural possessive pronouns to express her thoughts and ideas; to utilize the correct regular and irregular past tense verbs to express her thoughts and ideas; and to create grammatically correct past tense and passive sentences in order to determine which is the most appropriate for utilization within curriculum based experiences.

c. The IEP must include at least 60 minutes per week of speech and language therapy, beginning no later than August 1, 2010[33].

d. The IEP must include the following specialized instruction/supplementary aids or services to be provided from the start of the 2010-2011 school year for at least

[33] These are extended school year services and is intended to help the Student catch up from those she has missed over the past year.

one year: modeling appropriate communication in all environments and presenting work in smaller chunks in all language/reading classes.

e. Any additional changes to the IEP must be proposed following a properly constituted IEP team meeting and prior written notice to the Petitioner.

2. The Respondent prevails on Issue #2 because it legitimately denied the Petitioner's request for a psychological assessment in April, 2010. The Respondent failed to provide written notice of the refusal, in violation of 34 C.F.R. § 300.503, but neither the Petitioner nor Student were harmed by this violation. This issue is dismissed with prejudice.

IT IS SO ORDERED.

Date: June 25, 2010

Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).