

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

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Parent or Guardian, on behalf of
Student, ¹

Petitioner,

Date Issued: July 5, 2010

Hearing Officer: Jane Dolkart

v

The District of Columbia
Public Schools

Case No:

Hearing Date: June 21, July 1,
2010

Room: 7a

Respondent.

HEARING OFFICER DECISION

Counsel for Petitioner:

Elizabeth Jester
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Counsel for Respondent:

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District of Columbia Public Schools
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¹ Personal identification information is provided in Appendix A.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old student who was diagnosed with Spinal Muscular Atrophy (SMA) Type I at the age of 6 months. The student is ventilator, tracheostomy, and feeding tube (GTube) dependent. At age 2 an Individualized Family Service Plan (IFSP) was developed for the student by the D.C. Early Intervention Program. Services were provided by the program. The student's family resided in Maryland from some time in 2007 to fall 2009. The student alternated living at home and residing in an inpatient medical facility where she received treatment. The student has resided at Center since February 16, 2009.

In the Spring of 2009, the student's mother registered the student at her neighborhood elementary school as a non-attending student and requested that the student be evaluated to determine her eligibility for special education services. The mother signed a consent to evaluate form. The student's medical records were forwarded to DCPS by in late summer or early fall 2009. In November 2009, personnel from the DCPS Early Stages program met with personnel at to discuss the student's needs. DCPS allegedly had not begun to evaluate the student and in January 2010, conducted the evaluations which were supplied to DCPS. An IEP meeting was held on March 23, 2010 to review the evaluations, determine eligibility, and develop an IEP. Personnel from were present at the meeting and indicated that the student's cognitive skills were intact and recommended that she attend a mainstream elementary school. DCPS refused to place the student in a mainstream elementary school and instead placed her at a 100% out of general education setting.

At the March 23, 2010, meeting, staff provided information concerning the accommodations and assistive technology that the student required to participate in a school program. They included a dedicated nurse throughout the school day, a power wheel chair and a variety of devices, equipment, and software. The Team determined that the student required a formal assistive technology evaluation. The evaluation was completed on May 13, 2010.

Petitioner filed a due process complaint on May 2, 2010, alleging that DCPS had denied the student FAPE by failing to provide an appropriate IEP and placement in the least restrictive environment, a mainstream elementary school, failing to evaluate the student in all areas of disability, failing to timely identify the student pursuant to child find, and

failing to accommodate the student by providing the needed assistive technology for her to attend school. DCPS filed a response on May 21, 2010.

A pre-hearing conference was held on June 2, 2010, and a pre-hearing order was issued on June 10, 2010.

A resolution meeting was held on May 27, 2010, and no resolution was reached. A Due Process Complaint Disposition was signed on May 28, 2010. The 45 day timeline to issue an HOD in the case began running on May 29, 2010, and ends on July 13, 2010.

The hearing was held on July 1, 2010. However, because of the unavailability of the student's pediatrician on that date, her testimony was taken on June 21, 2010.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by

1. Did DCPS violate its child find obligations by failing to identify the student as a child with a disability at the time she turned 3?
2. Did DCPS fail to evaluate the student in all areas of disability and fail to timely evaluate her in all areas of disability?
3. Has DCPS failed to provide an appropriate IEP for the student and an appropriate placement in that the proposed IEP fails to place the student in the least restrictive alternative, which is in a mainstream elementary school with her non-disabled peers?
4. Has DCPS failed to provide the accommodations and equipment necessary for the student to attend school?
5. Did DCPS deny the student FAPE by holding an IEP meeting without the presence of a general education teacher on March 23, 2010?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated June 24, 2010, containing a list of witnesses with attachments P 1-37. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, the student's treating pediatrician, speech and

language pathologist, occupational therapy therapist, physical therapy therapist, assistive technology specialist, and special education teacher.

DCPS submitted a five day disclosure letter dated June 24, 2010, containing a list of witnesses with attachments R 1-17. The disclosure was admitted in its entirety. DCPS called as a witness the DCPS school pediatrician.

V. FINDINGS OF FACT

The parties stipulated to the following findings of fact:

1. An IEP meeting was held for the student on March 23, 2010.
2. In attendance at the IEP meeting were those persons listed in P 1 who signed page 1 of the document.
3. The classroom aids and services listed at P 1-10 were agreed to by the IEP team and are appropriate to allow the student to attend school.
4. The Assistive Technology Evaluation was completed on May 13, 2010.
5. The related and consultation Occupational Therapy, Physical Therapy and Speech and Language Therapy services listed at P 1-10 are appropriate.
6. The student is properly classified as eligible for special education services under the classification of Other Health Impaired (OHI).
7. The student requires a dedicated 1:1 nurse to attend school whether she attends a mainstream school or

No further findings of fact were made because the parties reached an agreement resolving this complaint.

VI. AGREEMENT OF THE PARTIES

Following the testimony of all of Petitioner's witnesses and the testimony of Dr. Nathaniel Beers, DCPS School Pediatrician, the parties and Dr. Beers agreed to discuss resolution of this complaint and the hearing was suspended. The parties reached an agreement which they would like incorporated into an HOD.

1. The parties agree to revisit the issue of an appropriate placement for the student.
2. Dr. Nathaniel Beers shall observe the student at _____ and gather all available information concerning the student's cognitive levels. There will not be any new standardized testing.

3. The parent shall within three business days provide consent for Dr. Beers to evaluate the student.
4. Dr. Beers shall meet with the student's _____ team and the parent at _____ to discuss the appropriate placement for the student.
5. DCPS shall provide three mainstream elementary schools for the parent's consideration. The parent shall then choose one of these schools to be considered as an alternative to _____ at the "official" IEP meeting to be held no later than August 27, 2010.
6. On or before August 27, 2010, an "official" IEP meeting shall be convened. The meeting shall include, but is not limited to, the parent, the parent's representative, a general education teacher, and _____ staff, as needed. The meeting shall take place at the neighborhood school chosen by the parent.
7. At the "official" IEP meeting the team shall determine the frequency with which assistive technology reviews will occur and the frequency with which the IEP will be reviewed.
8. DCPS shall arrange for the training of a dedicated nurse for the student prior to the start of the 2010-2011 school year. The training shall take place at _____
9. Dr. Beers shall arrange to train the student's educational staff.
10. DCPS shall ascertain which of the equipment listed in P 1-10 it already has available for use by the student. DCPS shall order all equipment it does not presently have available no later than July 16, 2010.
11. _____ has already ordered the appropriate wheelchair for the student. DCPS shall work with _____ in an effort to expedite the arrival of the wheelchair.
12. No later than one week following the "official" IEP meeting all preparations for the student to attend school shall be completed and the student shall begin attending classes at the chosen DCPS school.
13. Dr. Beers shall stay involved in the student's case for at least one year from the date of this HOD. DCPS Early Stages shall assist DCPS in managing the student's case at least until she graduates from kindergarten.
14. This constitutes the entire agreement between the parties and resolves all issues raised in the May 11, 2010, Due Process Complaint.

VIII. ORDER

It is hereby **ORDERED** that the above Agreement of the Parties be incorporated into this HOD.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: July 5, 2010