

RECEIVED

AUG 16 2010

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003

---

PARENT, on behalf of  
[STUDENT],<sup>1</sup>

Petitioner,

v

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Date Issued: August 13, 2010

Hearing Officer: Peter B. Vaden

Case No:

Hearing Date: August 9, 2010

Room: 1

---

**HEARING OFFICER DETERMINATION**

**BACKGROUND**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner PARENT (the "Parent"), under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. §1400 et seq., and Title 5-E, Chapter 5-E30, of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, Parent alleges that the District of Columbia Public Schools ("DCPS") failed to comply with parts of two prior Hearing Officer Determinations ("HODs") concerning the Student: (1) a 2008 order that DCPS fund the Student's enrollment in the \_\_\_\_\_ and (2) a 2009 order that DCPS convene an MDT/IEP team to discuss compensatory education for the Student.

---

1

Personal identification information is provided in Appendix A.

The Student, an AGE boy at the time of the hearing, was last found eligible for special education services on June 1, 2009 under the primary disability, Multiple Disabilities. For the 2009-10 school year, the Student was enrolled at PUBLIC CHARTER SCHOOL ("PCS"). PCS is not named as a party respondent in this proceeding.<sup>2</sup>

The Parent's Due Process Complaint Notice was filed on June 1, 2010. The undersigned Hearing Officer was appointed on June 2, 2010. The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029. In addition to her claims regarding violations of prior HODs, the Parent alleges in her complaint that DCPS failed to develop an appropriate IEP for the 2009-10 school year and that DCPS failed to provide an appropriate placement for the 2009-10 school year.

On August 2, 2010, DCPS filed a Motion to Dismiss on the grounds, *inter alia*, that the Parent's claims are barred by the doctrines of res judicata or collateral estoppel and that the Parent's claims pertaining to the 2009-10 and 2010-11 school years are moot because, before the start of the 2009-10 school year, the Parent withdrew the Student from DCPS and enrolled him at PCS. In her Memorandum in Opposition to the motion to dismiss, the Parent stipulated that she had never presented a claim for violations affecting the 2009-10 school year and that, to the degree that DCPS has not yet acted as the LEA for the Student, she does not press claims against DCPS for the 2010-11 school year.

The due process hearing was held before the undersigned impartial hearing officer on August 9, 2010 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an audio electronic recording device. The Parent appeared for the hearing and was represented by counsel. DCPS was represented by counsel. Prior to the

---

<sup>2</sup> PCS has elected to be a Local Educational Agency and is responsible for ensuring that the requirements of Part B of the IDEA are met in regard to children enrolled in PCS. *See* D.C. Regs. tit. 5-E, § 3019.2.

due process hearing, DCPS's motion to dismiss was argued by counsel. The Hearing Officer found that any claims regarding the 2010-11 school year fail to state a claim against DCPS because, since before the start of the 2009-10 school year, PCS, not DCPS, has been the Student's LEA. See 34 C.F.R. § 300.28(b)(2); D.C. Regs. tit. 5-E, § 3001.1, 3002.1(a). The Hearing Officer took under advisement DCPS's arguments regarding prior adjudications and ordered that the due process hearing would go forward on the two remaining issues pertaining to the alleged violations of the prior HODs.

Counsel for both sides made opening and closing statements. Testifying for the Petitioner were the Parent and SPECIAL EDUCATION ADVOCATE ("Advocate"). Witnesses for DCPS were DCPS SPECIAL EDUCATION SPECIALIST ("SPED Specialist") and PCS SPECIAL EDUCATION COORDINATOR ("SEC"). Petitioner Exhibits P-1 through P-10 and Respondent Exhibits DCPS-1 through DCPS-10 were admitted without objection. Both parties made oral closing statements in lieu of filing written memoranda.

### ISSUES

After dismissal of the Parent's claims relating to the 2010-11 school year, the issues remaining to be determined are as follows:

1. Whether the Parent is entitled to reimbursement under an August 27, 2008 HOD for she paid for the evaluation of Student at and
2. Whether DCPS violated a June 29, 2009 HOD order by failing to discuss compensatory education for the Student at an MDT/IEP meeting convened pursuant to the HOD.

As the party seeking relief, the burden of proof is the responsibility of the Parent. D.C. Regs. tit. 5-E, § 3030.3

### 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. Student was born on BIRTHDATE. He is a resident of the District of Columbia and is enrolled at PCS.

2. The Student is eligible for special education services under the Primary Disability classification Multiple Disabilities. His last eligibility date was June 1, 2009.

3. On August 27, 2008, Hearing Officer Charles R. Jones, Jr. issued an HOD<sup>3</sup>, following a due process hearing on the issues of whether, in violation of the IDEA, DCPS denied a Free Appropriate Public Education ("FAPE") to the Student (i) by failing to comply with a December 1, 2005 HOD and (ii) by failing to provide an appropriate educational placement for the Student. Hearing Officer Jones found that DCPS had denied the Student FAPE by failing to complete the placement determination process. The Hearing Officer ordered, *inter alia*, that "DCPS shall fund the \_\_\_\_\_ Program, on an interim basis of thirty days, pending the convening of an appropriate placement meeting and the determination of an appropriate educational placement for the [Student]."

4. By letter of April 24, 2009 to the Parent, DCPS COMPLIANCE CASE MANAGER reported that DCPS authorized the funding of the \_\_\_\_\_ program, on an interim

---

<sup>3</sup> Neither party introduced the August 27, 2008 HOD or the final November 28, 2008 HOD into evidence, although both documents were attached as exhibits to DCPS's motion to dismiss. I take cognizance of both HODs as official Student Hearing Office records of prior proceedings involving this Student. These HODs are attached to this determination at Appendix B.

basis of thirty days for the Student. Parent did not receive the April 24, 2009 letter, but it is undisputed that DCPS did in fact fund the Student's enrollment in the for at least thirty days.

5. In the fall of 2008, Parent paid to to conduct a pre-admission evaluation of the Student. DCPS has declined to reimburse Parent for this expense.

6. On October 9, 2008, the Parent filed a due process complaint against DCPS in which she alleged that DCPS did not comply with the August 27, 2008 HOD. The Parent requested the Hearing Officer to order, *inter alia*, that DCPS fund Student's completion of the Program.

7. On November 28, 2008, Hearing Officer Virginia A. Dietrich issued an HOD, following a due process hearing, on the issues of whether DCPS failed to comply with the August 27, 2008 HOD (i) by not scheduling and convening an MDT/IEP placement meeting in accordance with the HOD, (ii) by not issuing a Notice of Placement in accordance with the HOD and (iii) by not determining an appropriate placement for the Student during the 2008-09 school year. Hearing Officer Dietrich found that DCPS had failed to comply with the August 27, 2008 HOD by having convened an MDT/IEP meeting on September 25, 2008 without proper notice to the Parent and that this procedural inadequacy significantly impeded the Parent's opportunity to participate in the decision-making process. Notwithstanding, the Hearing Officer concluded that the IEP placement at ABC SCHOOL was an appropriate placement for the Student. The November 28, 2008 HOD required that DCPS (i) convene another MDT/IEP team meeting, within 30 days of the receipt of all updated evaluations, to review the evaluations, review and revise the IEP as appropriate; (ii) determine an appropriate placement for Student; (iii) issue a Notice of Placement; and (iv) discuss Extended School Year services and compensatory education for the Student.

8. In the November 28, 2008 HOD, Hearing Officer Dietrich found that “[e]ven if Petitioner had attended the [September 25, 2008] meeting, DCPS would have reviewed the existing IEP, come to the same conclusion, and based on the information at hand, issued a Notice of Placement to [ABC School]. Parent would have objected and not signed the IEP indicating consent to the contents of the IEP and implementation of services contained in the IEP. Inevitably, the same result would have been reached, and as such, there is no harm to Student even though Parent was not present at the meeting.”

9. On June 4, 2009, the Parent filed a due process complaint notice alleging that DCPS failed to comply with the November 28, 2008 HOD. The Parent contended that a June 1, 2009 MDT/IEP meeting convened by DCPS was improper because, without prior notice to the Parent, DCPS sent two of its attorneys to the MDT/IEP meeting and allowed the attorneys to interact with MDT team members in a non-legal advisory capacity. The Parent alleged that rather than participate in a team meeting with the DCPS attorneys, she left the meeting, and that the MDT/IEP team proceeded to develop an IEP for the Child without the Parent’s participation.

10. On June 29, 2009, Hearing Officer Virginia A. Dietrich issued an HOD, based upon the pleadings. She found that DCPS’s sending its attorneys to the MDT/IEP meeting without notice to the Parent, and DCPS’s insistence that its attorneys participate in the meeting “without limitation,” resulted in forcing the Parent to leave the meeting. The Hearing Officer concluded that as a result, DCPS did not properly comply with her November 28, 2008 order to convene an MDT/IEP meeting. The Hearing Officer ordered, *inter alia*, that DCPS convene another MDT/IEP meeting within 10 business days and that at that meeting, DCPS “complete all of the meeting objectives identified in the November 28, 2008 HOD.”<sup>4</sup>

---

<sup>4</sup> In the June 29, 2009 HOD, Hearing Officer Dietrich found that Petitioner had made no evidentiary showing that the Student suffered any loss of educational benefits as a result of DCPS’s IDEA violations in connection with the June 1, 2009 MDT/IEP meeting. The Hearing Officer denied the Petitioner’s request for compensatory education for the period from June 1, 2009 until the MDT/IEP team reconvened. *See* Exh. DCPS-2, p. 9.

11. An MDT/IEP meeting for the Student was convened at ABC School on July 30, 2009 and on August 20, 2009. The Parent and Advocate attended. The team members discussed compensatory education at the August 20, 2009 meeting and the team decided that the Student was not eligible for compensatory education at that time. The Parent and Advocate disagreed with that decision. The Notes taken by SEC<sup>5</sup> at the August 20, 2009 meeting, Exh. DCPS-6, reflect that DCPS took the position that compensatory education was not warranted because there had been no educational harm to the Student from DCPS's violation of the IDEA. The Parent and Advocate contended at the meeting that there had been educational harm.

### 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:

1. Whether the Parent is entitled to reimbursement under the August 27, 2008 HOD for sum she advanced for evaluation of Student at

The August 27, 2008 HOD ordered DCPS to fund the \_\_\_\_\_ program on an interim basis of thirty days. The Parent's testimony in this case was undisputed that in the fall of 2008, she paid \_\_\_\_\_ to \_\_\_\_\_ to complete a pre-admission evaluation to determine whether \_\_\_\_\_ could address the Student's needs. Assuming that the \_\_\_\_\_ evaluation was a supportive service required to assist the Student to benefit from the compensatory education services at \_\_\_\_\_ it may well be that this was an expense that should have been borne by DCPS as a related service. *See*

---

<sup>5</sup> In her testimony at the August 9, 2010 due process hearing, SEC showed confusion over whether she had taken the typewritten notes in June 2009 or at the August 20, 2009 meeting. It is clear from the typewritten notes (Exh. DCP-6) that they were recorded in August 2009. For example, a typewritten note on Page 4 of 8 states that "the MDT, at the previous meeting, held on August 10, 2009 tentatively agreed to reconvene on August 17, 2009 @ 9:00 a.m., another date/time was also offered. At this meeting, the MDT will finalize the IEP, review the vision evaluation, and address the remaining items in the HODs. (The MDT reconvened on August 20, 2009@ 9:00 a.m.)"

34 CFR 300.24; 20 U.S.C. § 1401(22). However, I must agree with DCPS's Motion to Dismiss argument that the Parent's claim for reimbursement is barred by the principles of res judicata. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. *Bennett-Bey v. Shulman*, 2010 WL 3043710, 1 (D.C. Cir. 2010). In the District of Columbia, res judicata and collateral estoppel are applicable in administrative proceedings when "the agency is acting in a judicial capacity, resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate." *Walden v. District of Columbia Dept. of Employment Services*, 759 A.2d 186, 189 (D.C.2000), citing *Oubre v. District of Columbia Dep't of Employment Services*, 630 A.2d 699, 703 (D.C.1993).

In the present case, the Parent testified that she paid \_\_\_\_\_ for a pre-admission evaluation of the Child in the fall of 2008. The evidence establishes that the Child began attending \_\_\_\_\_ prior to September 12, 2008. (See November 28, 2008 HOD, p. 5.) In her October 9, 2008 due process complaint involving the same parties, the Parent requested the Hearing Officer to order DCPS to fund the Student's completion of the \_\_\_\_\_ program, but did not ask for reimbursement of the pre-admission evaluation fee.<sup>6</sup> The November 2008 due process hearing on the Parent's October 9, 2008 complaint was the equivalent of a judicial proceeding. An evidentiary hearing was held on the Parent's claim, the parties were given an opportunity to make opening and closing statements, to call witnesses, to cross-examine witnesses, and to introduce exhibits. The Hearing Officer made findings of fact and conclusions of law on the issues and entered an order for injunctive relief. These factors mark the due process hearing as an adjudicative function. See *Oubre, supra*, at 703. Hearing Officer Dietrich entered a final judgment on the merits.

---

<sup>6</sup> The Parent also failed to assert her claim for reimbursement for \_\_\_\_\_ expenses in her June 4, 2009 due process complaint.

Therefore, the November 2008 due process hearing meets the criteria for application of res judicata. The dispute as to whether the August 27, 2008 HOD required DCPS to reimburse the Parent for the evaluation fee she paid to \_\_\_\_\_ was an issue that could have been raised and litigated in the earlier due process hearing. Accordingly the principles of res judicata preclude the Parent from litigating that issue in the present proceedings.

2. Whether DCPS failed to comply with the November 28, 2008 HOD Order to discuss compensatory education for the Student

In her June 29, 2009 HOD, Hearing Officer Dietrich ordered DCPS to convene an MDT/IEP meeting, and, at the meeting, to complete all of the “meeting objectives” identified in her November 28, 2008 HOD. The meeting objectives identified in the November 28, 2008 HOD include to “discuss” compensatory education. Certainly the use of the word “discuss” in the HOD order left DCPS with considerable flexibility. Moreover, there are no factual findings in the November 28, 2008 HOD which would compel compensatory education relief. Specifically the Hearing Officer did not make a finding of any educational deficit in either the November 28, 2008 HOD or the June 29, 2009 HOD. In the November 28, 2008 HOD, the Hearing Officer found that despite DCPS’s failure to notify the Parent of the September 25, 2008 IEP Meeting, the IEP placement at ABC School was appropriate and there was no denial of FAPE resulting from the manner in which DCPS convened and conducted the meeting.<sup>7</sup> The D.C. Circuit Court of Appeals held in *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516,

---

<sup>7</sup> Advocate opined at the present due process hearing that the Student will need hundreds of hours of compensatory education and related services. Her opinion assumed an educational deficit resulting from the Student’s supposed lack of placement for the 2008-09 school year. However, in the November 28, 2008 HOD, which Parent seeks to enforce in this proceeding, Hearing Officer Dietrich found that DCPS “did not fail to determine an appropriate placement” for the 2008-09 school year. *See* November 28, 2008 HOD, p. 14. The assumption that the Student did not have a placement for the 2008-09 school year is not supported by the evidence. I therefore find that Educational Advocate’s opinion on the need for compensatory education is not entitled to weight.

523 (D.C. Cir. 2005) that “compensatory education involves discretionary prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student.”

*Id.* Citation omitted (Emphasis supplied).

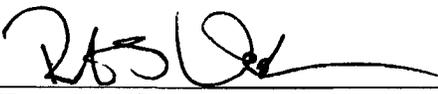
The evidence establishes that the MDT/IEP team did discuss compensatory education at the August 20, 2009 meeting. Notwithstanding the Parent’s contention that the DCPS representative had predetermined that there would be no compensatory education, it is undisputed that the MDT/IEP Team did discuss compensatory education, in at least a summary fashion, at that meeting. With the exception of the Parent and her advocate, the team agreed that compensatory education was not warranted. My inquiry is limited to whether DCPS complied with the order to discuss compensatory education at the meeting – not whether the determination was correct. From my review of the November 28, 2008 HOD and the June 29, 2009 HOD, there do not appear to be any findings which would support compensatory education relief under the *Reid* standard. Under those circumstances, I find that the MDT/IEP Team’s August 20, 2009 discussion of compensatory education, even if *pro forma*, sufficed to meet the requirement of the HODs.

**ORDER**

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

1. DCPS’ motion to dismiss the Parent’s request for reimbursement for her expense in obtaining the initial evaluation of the Student at \_\_\_\_\_ is granted;
2. The Parent’s request for an award of compensatory education is denied.
3. All other relief requested by the Parent in her Due Process Complaint Notice is denied.

Date: August 13, 2010

  
\_\_\_\_\_  
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 U.S.C. §1415(i).