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**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: August 6, 2010

Hearing Officer: Jim Mortenson

Case No:

Hearing Date: July 28, 2010 Room: 4a

HEARING OFFICER DETERMINATION

I. BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 1:00 p.m. on July 28, 2010, in hearing room 4a, and concluded on that date. The due date for the Hearing Officer's Determination (HOD) is August 7, 2010, pursuant to 34 C.F.R. § 300.515, and Standard Operating Procedure (SOP) § 1003. This HOD is issued on August 6, 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

Laura George, Esq., Respondent's Counsel

¹ Personal identification information is provided in Appendix A.

Mia Mack, Respondent Representative

One witness testified at the hearing for the Petitioner:

Carlynn Ross (C.R.), Speech Pathologist, Parker Diagnostic Solutions

One witness testified at the hearing for the Respondent:

Mia Mack (M.M.), Speech Pathologist, DCPS

The complaint in this matter was filed on June 21, 2010. The parties agreed to waive the resolution meeting on June 25, 2010. A response to the complaint was filed on July 1, 2010. A prehearing conference was held on July 7, 2010, and a prehearing order was issued on that date. The District requested the prehearing order be amended on July 7, 2010. This IHO refused to amend the order as requested in an order issued July 13, 2010.

The Petitioner is seeking 30 minutes per week of speech and language services be added to the Student's individualized education program (IEP). The Respondent believes the Student no longer requires speech and language services.

22 documents were disclosed by the Petitioner. (P 1 – P 22). The IHO rejected P 2 and P 3 as duplicative of documents already part of the hearing record. There were no objections to any other disclosed documents and P1 and P 4 through P 22 were admitted into the record. The Petitioner's exhibits are:

P 1	-	undated	-	Due Process Hearing Notice
P 4	-	June 24, 2010	-	DCPS Resolution Session Waiver
P 5	-	March 17, 2010	-	Individualized Education Program (IEP) and Prior Written Notice
P 6	-	April 8, 2010	-	IEP
P 7	-	April 8, 2010	-	Meeting Notes
P 8	-	April 8, 2010	-	MDT Meeting Notes
P 9	-	April 9, 2010	-	Letter from to Hill
P 10	-	May 13, 2010	-	Due Process Complaint Disposition and Meeting Notes
P 11	-	May 13, 2010	-	Proposed Settlement

		May 18, 2010	-	Petitioners' Voluntary Withdrawal, Without Prejudice, of the Administrative Due Process Complaint Notice File on or about April 16, 2010
P 12	-	May 18, 2010	-	Letter from Hill to
		April 16, 2010	-	Speech and Language Evaluation
P 13	-	May 26, 2010	-	Letter from Hill to and
			-	Comprehensive Psychological Evaluation
P 14	-	June 14, 2010	-	IEP, MDT Meeting Notes, and Prior Written Notice
P 15	-	June 14, 2010	-	Meeting Notes
P 16	-	March 11, 2010	-	Comprehensive Speech and Language Evaluation
		April 8, 2010	-	MDT Meeting Notes and Meeting Notes
P 17	-	February 5, 2008	-	Score Report
P 18	-	December 21, 2008	-	Service Tracker
		January 11, 2009	-	Service Tracker
		February 16, 2009	-	Service Tracker
		June 13, 2009	-	Service Tracker (2 pages)
		October 13, 2009	-	Service Tracker
		November 6, 2009	-	Service Tracker
		December 9, 2009	-	Service Tracker
		January 14, 2010	-	Service Tracker
		January 6, 2010	-	Service Tracker
		February 26, 2010	-	Service Tracker
		April 8, 2010	-	Service Tracker
		April 9, 2010	-	Service Tracker
P 19	-	December 21, 2008	-	Service Tracker
		January 11, 2009	-	Service Tracker
P 20	-	April 8, 2010	-	Service Tracker (Draft) (2)
		October 13, 2009	-	Service Tracker
		January 6, 2010	-	Service Tracker
		February 26, 2010	-	Service Tracker
		April 8, 2010	-	Service Tracker
P 21	-	October 13, 2009	-	Service Tracker
		January 6, 2010	-	Service Tracker
		February 26, 2010	-	Service Tracker
		April 8, 2010	-	Service Tracker
		December 21, 2008	-	Service Tracker
		January 11, 2009	-	Service Tracker
P 22	-	undated	-	Curricula Vitae of

Six documents were disclosed and offered by the Respondent. (R 1 – R 6) All six were admitted into the record without objection. Respondent's exhibits are:

R 1	-	June 14, 2010	-	Prior Written Notice
R 2	-	March 11, 2010	-	Comprehensive Speech and Language Evaluation
R 3	-	May 26, 2010	-	Comprehensive Psychological Evaluation
R 4	-	June 14, 2010	-	MDT Meeting Notes and Meeting Notes
R 5	-	June 18, 2010	-	Report to Parents on Student Progress
R 6	-	October 19, 2009	-	Service Tracker
		October 29, 2009	-	Service Tracker
		October 13, 2009	-	Service Tracker
		November 6, 2009	-	Service Tracker
		January 21, 2010	-	Service Tracker
		January 14, 2010	-	Service Tracker
		January 6, 2010	-	Service Tracker
		February 26, 2010	-	Service Tracker
		March 2, 2010	-	Service Tracker
		April 9, 2010	-	Service Tracker
R 7	-	January 29, 2010	-	Goal for [Student]

II. ISSUE

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

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 is a year old learner who finished the grade at the end of the 2009-2010 school year.²
2. The Student has multiple disabilities, including: learning disabilities; emotional disorders; and speech and language disorders, which impact her in a number of ways.³ She has

² P 14.

³ R 2/P 16, R 3, P 5, P 6, P 14, Testimony (T) of C.R., T of M.M.

difficulty keeping up with peers on a wide variety of verbal and non-verbal reasoning tasks.⁴ Her performance in May, 2010, on the Woodcock Johnson III, Tests of Achievement indicate academic performance in the following ranges: reading at grade 4.5; math at grade 2.5; written language at grade 3.8; and oral language at grade 2.3.⁵ The Student's Depressive Disorder results in low self-esteem and anxiety, affecting her ability to cope and resulting in negative behaviors.⁶ Her speech and language disabilities impact her academic progress because she has deficits in vocabulary skills, expressive and receptive language, and following directions.⁷

3. On June 14, 2010, an IEP was proposed and the Respondent notified the Petitioner that the Student's speech and language services would be discontinued as a result of the Student mastering her speech and language goals and her speech and language disabilities not having an educational impact.⁸
4. The Respondent cited a speech and language evaluation and a comprehensive psychological evaluation for the data to support this position, but these documents show the Student did suffer an educational impact.⁹ However, the speech and language assessment performed by the District Speech Pathologist, indicates the Student "presents as a student with mild receptive language and expressive vocabulary skills."¹⁰

⁴ R 3.

⁵ R 3.

⁶ R 3, P 6, P 14.

⁷ R 2/P 16, P 12, T of T of

⁸ R 1, P 14, T of

⁹ R 1, R 2/P 16, R 3. (Interestingly, the District's Speech and Language Assessment Report states the Student "does not meet eligibility criteria for continued speech and language services" so no such services are recommended. Then the report continues to recommend several "educational modifications" for classroom teachers to use to address the Student's speech and language difficulties. The report demonstrates a narrow view of what speech and language services are, because it limits them only to those provided by a speech pathologist.)

¹⁰ R 2/P 16.

The report recommended no speech pathology, but rather classroom-based supports including:¹¹

- Presenting new vocabulary concepts in context and in relation to previously mastered vocabulary concepts; to help the Student to associate and accommodate new words into her lexicon.
- Enhancing lessons with visual aids to explain and model.
- Using verbal and tactile reinforcement.
- Allowing the Student extra time to process and give answers.
- Adopting the length and complexity of oral/written directions

These recommendations are very similar to those included in the privately conducted speech and language assessment and were also similar to those testified the Student requires.¹² testified the Student needs to:¹³

- Increase her vocabulary skills
- Enhance her expressive and receptive language
- Improve following directions
- Be permitted to have extra time or adapting the length of assignments

5. The IEP proposed on June 14, 2010, also states the “[d]eficits are noted with her ability to follow increasing level commands containing sequencing (second, first, last), temporal, (before, after, then), and inclusion/exclusion (and/or) concepts. . . . [and] deficits with her expressive vocabulary in the area of explaining and or defining words.”¹⁴

6. The Respondent stated that the recommendations for classroom-based supports would be provided by the classroom teacher, even though they were not recorded in the IEP.¹⁵

did not know why the speech and language services were not included in the Student’s IEP, attributing this to record keeping that was out of her control.¹⁶

¹¹ R 2.

¹² P 12, T of

¹³ T of

¹⁴ P 14.

¹⁵ T of P 14

¹⁶ T of

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:

1. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

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.

34 C.F.R. § 300.17. 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). It is within this legal context we must examine the case at hand.

2. "Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability[.]" 34 C.F.R. § 300.39(a)(1). Federal

Regulations at 34 C.F.R. § 300.39(b)(3) defines "specially designed instruction" as:

adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

3. 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); . . .
- (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; . . .
- (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), *see also*, D.C. Mun. Regs. tit. 5, § 3009.1.

4. In reviewing this determination, a court's inquiry will be "twofold. First, has the State complied with the procedures set for in the Act? And second, is the [IEP] developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" Board of Educ. v. Rowley, 458 U.S. 176, 206-207 (1982). Thus, the IHO should also utilize this two part test in analyzing the facts.

5. Whether the procedural requirements were complied with requires an examination of the IEP and whether it was created in compliance with 34 C.F.R. § 300.320. (*See, Id.* at 206, fn 27 (1982).) In this case, the requirements of 34 C.F.R. § 300.320 were not complied with.¹⁷
6. The Student still has speech and language deficits which require specialized instruction or supplementary aids and services to address. The IEP fails to include measurable annual goals for her to work toward regarding her speech and language skills, and lacks the recommended specialized instruction or supplementary aids and services to help her meet those goals (vocabulary, expressive and receptive language, and following directions). The IEP, to be procedurally or substantively compliant, must include goals to meet the Student's needs that result from her disability to enable the her to be involved in and make progress in the general education curriculum and to meet each of her other educational needs that result from her disability, in this case her speech and language disability. Measurable annual goals require the implementation of appropriate special education and related services, and supplementary aids and services, to enable to Student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children in those activities. The proposed IEP lacks speech and language goals and speech and language services recommended by the speech and

¹⁷ It can be found that the IEP was not reasonably calculated to enable the child to receive educational benefits. The two Rowley questions are closely intertwined in a case like this because an IEP that is not developed in accordance with the procedures, specifically those pertaining to IEP content, are not reasonably calculated to provide educational benefit, as this case demonstrates.

language pathologist.¹⁸ Thus, it is both procedurally noncompliance (because it was not developed in accordance with 34 C.F.R. § 300.320) and substantively inappropriate (because all of the Student's needs resulting from her disabilities are not addressed.) The Student, therefore, has been denied a FAPE.

V. ORDER

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

1. The Petitioner prevails because the proposed IEP is not reasonably calculated to provide educational benefit and denies the Student a FAPE.
2. The IEP will be revised before the start of the 2010-2011 school year to include the measurable annual goals addressing each of the following skills:
 - a. Vocabulary
 - b. Expressive language
 - c. Receptive language
 - d. Following directions
3. The IEP will be revised to include a description of how the Students progress toward each of the goals will be measured and when periodic reports on her progress toward reaching the goals are made.

¹⁸ This case included testimony, exclusively, from a DCPS speech pathologist and a private speech pathologist. Both witnesses were testified credibly and were, largely consistent with each other. They acknowledged they each took a little different view of the Student's speech and language needs and this was reflected, in part, in the tests they each administered as part of their respective assessments. Since was operating from a school perspective, her recommendations are given greater weight, given the fact that both evaluations and witnesses were essentially recommending the same things, one difference being the recommendation for 30 minutes of speech and language pathology. The IHO is not convinced, based on the weight of the evidence that this service is required. However, the Respondent failed to understand the requirements of the law with regard to services, relying on "eligibility criteria" that do not exist in local or federal law. This aside, based on the evidence presented it is more likely than not that speech and language pathology, as a specific related service, is not required at this time.

4. The IEP will be revised to include a statement of the special education and related service and supplementary aids and services the Student will require to reach the annual goals.

The specialized instruction or services will include, at a minimum:

- a. Presenting new vocabulary concepts in context and in relation to previously mastered vocabulary concepts in every class starting the first day of school of the 2010-2011 school year and continuing through the end of the year.
 - b. Enhanced lessons in every class with visual aids to explain and model starting the first day of school of the 2010-2011 school year and continuing through the end of the year.
 - c. Use of verbal and tactile reinforcement in every class starting the first day of school of the 2010-2011 school year and continuing through the end of the year.
 - d. Extra time to process and give answers in every class starting the first day of school of the 2010-2011 school year and continuing through the end of the year.
 - e. Adapting the length and complexity of oral and written directions in every class starting the first day of school of the 2010-2011 school year and continuing through the end of the year.
5. The IEP team may include, with agreement between the Petitioner and the Respondent, any other additional goals, special education and related services, or supplementary aids and services it deems necessary to address the Student's speech and language needs. The IEP team is not required to include speech pathology services, but may do so if there is agreement between the Petitioner and the Respondent. This order constitutes the final determination for the minimal speech and language services required for the 2010-2011 school year.

IT IS SO ORDERED.

Date: August 6, 2010

A handwritten signature in black ink, consisting of a stylized, cursive 'S' followed by a horizontal line.

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).