District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

Frances Raskin, Due Process Hearing Officer
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OSSE
STUDENT HEARING OFFICE
2009 SEP 28 PM 12: 32

Confidential

STUDENT, through the legal guardian[1]	)	
	)	
Petitioner,	)	
	)	
v.	)	Hearing Date: September 15, 2009
	)	
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
	)	
	)	
Respondent.	)	
	)	

HEARING OFFICER DETERMINATION

Counsel for Petitioner: Domiento Hill, Attorney at Law
James E. Brown & Associates
1220 L Street, N.W.; Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202)742-2098

Counsel for DCPS: Harsharen Bhuller, Attorney at Law
Office of the Attorney General
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002
(202) 442-5000; Fax: (202) 442-5097

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

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the parent of a -year-old student learning and emotionally disabled ("Student") who just graduated from a District of Columbia middle school. On June 29, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging that the District of Columbia Public Schools ("DCPS") failed to (1) timely complete the Student's educational re-evaluation; and (2) convene a manifestation meeting following suspensions of the Student for more than ten days.

Petitioner requests as relief independent educational evaluation, functional behavioral assessment, and behavior intervention plan. Petitioner further seeks placement of the Student in a non-public school of Petitioner's choosing at DCPS expense, including transportation services and compensatory education.

Counsel for Respondent filed an Amended Response and Motion to Dismiss Parent's Administrative Due Process Complaint ("Response" and "Motion to Dismiss") on July 10, 2009. The Response was filed two days late. The Response asserted that Petitioner signed a consent form for evaluation of the Student on June 2, 2009, and filed the Complaint twenty days thereafter. The Response asserted that case law in the District of Columbia provides that DCPS has a reasonable time in which to complete re-evaluations, and that twenty days is not an unreasonable time period. The Response further asserted that the Student was suspended for only ten days total, and hence DCPS was not obligated to hold a manifestation determination review. As relief, Respondent requests that this Hearing Officer dismiss the Complaint with prejudice.

III. RECORD

Due Process Complaint Notice, filed June 29, 2009;
DCPS Amended[2] Response and Motion to Dismiss Parent's Administrative Due Process Complaint, filed July 10, 2009;
Petitioner's Opposition to DCPS Motion to Dismiss the Parent's Administrative Due Process Complaint Notice, filed July 15, 2009;
Petitioner's Motion to Continue the Due Process Complaint Notice Hearing Due to Counsel's Unavailability; filed August 7, 2009;
Petitioner's Motion to Continue the Due Process Complaint Notice Hearing Due to Counsel's Unavailability; filed August 14, 2009;

[2] This was the only responsive pleading counsel for DCPS filed.

Prehearing Conference Order, issued August 14, 2009;
Interim Order On Continuance Motion, issued August 26, 2009;
Petitioner Five-Day Disclosure, identifying ten witnesses and including proposed Exhibits 1-13, filed August 4, 2009;
Petitioner Five-Day Disclosure, identifying eleven witnesses and including proposed Exhibits 1-15, filed September 8, 2009; and
DCPS Amended Disclosure Statement, identifying four witnesses and including proposed Exhibits 1-6, filed September 8, 2009.

IV. DISCUSSION

At the outset of the due process hearing on September 15, 2009, DCPS proposed and Petitioner accepted the following proposed settlement of all claims in Petitioner's Due Process Complaint:

In lieu of the formal due process hearing in the above-referenced matter, the parties to this action, District of Columbia Public Schools (hereinafter "DCPS"), and the Petitioner's representative (hereinafter "Petitioner") agree to resolve this matter under the terms and conditions set forth herein. The parties have agreed to the following terms and conditions:

1. Petitioner shall obtain an independent functional behavioral assessment ("FBA") at DCPS expense, at a cost not to exceed the Chancellor's guidelines; and

2. Petitioner shall provide a copy of the FBA to DCPS, and DCPS shall convene a meeting of the multidisciplinary team ("MDT") within fifteen school days of receipt of the independent FBA to review the FBA, and review and revise the Student's IEP as necessary.

ORDER

Upon consideration of the agreement of the parties in this case, it is this 26th day of September 2009 hereby:

ORDERED that Petitioner shall obtain an independent FBA at DCPS expense to be completed on or before October 6, 2009;

IT IS FURTHER ORDERED that, within five business days of receipt of the independent FBA, Petitioner shall provide a copy of the FBA to the special education coordinator at the Student's school, and to counsel for DCPS;

IT IS FURTHER ORDERED that, within fifteen school days of receipt of the independent FBA, DCPS shall convene a meeting of the MDT to review the FBA and review and revise the Student's IEP as necessary; and

IT IS FURTHER ORDERED that this Order is effective immediately.

Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).

Distributed to:

Domiento Hill, Attorney at Law
Harsharen Bhuller, Attorney at Law
Hearing Office