

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, D.C. 20003

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STUDENT HEARING OFFICE
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STUDENT,¹

Petitioners,

versus

District of Columbia Public Schools,

Respondent.

Date Issued: November 24, 2010

Wanda I. Resto Torres, Hearing Officer

Case No:

Hearing Date: November 16, 2010
Room 2005

HEARING OFFICER DECISION

On September 30, 2010, the petitioners filed a Due Process Complaint (“Complaint”) identifying the District of Columbia Public Schools (“respondent”) and invoking rights under the Individuals with Disabilities Education Improvement Act (“IDEIA”).² The petitioners alleged they were not able to participate in a September 28, 2010 meeting to discuss the student’s individualized education program (“IEP”) because the school was unwilling to adjust the time and date of the meeting to accommodate the parents’ schedules and that the IEP Team met without a LEA representative present at the meeting. The petitioners also alleged the IEP created on September 28, 2010 was based on the IEP from Princes Georges County Public Schools (“PGCPS”) because the school had not yet received the student’s evaluations. The petitioner seeks an increase from 10 hours to 15 hours a week of specialized instruction requests transportation services for the student.

On October 1, 2010, the Hearing Officer was assigned the Complaint. On October 29, 2010, a pre-hearing conference was held the parties reiterated their positions.

On November 16, 2010, a closed hearing was held, representing the Petitioner was Alana Hecht; and the Respondent was represented by Kendra Berner. Eight documents were presented and admitted for the petitioners; labeled P-1 through 8. Three witnesses testified on behalf of the petitioners the: Mother, Stepfather, and Educational Advocate. The Respondent presented twelve documents, labeled DCPS 1 through 12 all were admitted into evidence. Two witnesses testified the Special Education Coordinator, and the Special Education Teacher. The hearing was conducted in accordance with the rights established under federal and local laws and the

¹ Personal identification information is provided in Appendix A.

² 20 U.S.C. §1400 et seq., Title 34 of the Code of Federal Regulations, Part 300.

implementing regulations, and the SOP.³ No written closing arguments or briefs were submitted.

ISSUES

The issues to be determined are as follows:

- a. Whether the IEP team that met on September 28, 2010 failed to include an LEA representative and the parent as required in 34 CFR§ 300. 321 and 322 (a), was the student denied a FAPE as a result?
- b. Was the IEP September 28, 2010 developed without appropriate assessments, without parent input, and by using the IEP created in May 2010 by PGCPs; was there a violation of section 300.306 c. and 300.304 b2 300.323g?
- c. Did respondent during September 20, 2010 through November 16, 2010 violate section 300.323 (f) by failing to provide services comparable to those described in the IEP the student transferred with from PGCPs?
- d. Whether the provision of 10 hours of specialized instruction outside the general education is appropriate to meet the student's reading, writing needs and provide a FAPE?

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 moved from Prince George County Maryland, to the District of Columbia sometime during the summer of 2010. The student brought with him an Individualized Education Program ("IEP") from PGCPs dated May 27, 2010, it identified his primary disability as a specific learning disability in math, reading, language expression, spelling and social emotional/behavioral. The PGCPs' IEP provided the student 5 hours of support inside the general education classroom and 2.5 hours per week of specialized instruction outside the general education classroom in a small group setting. IEP with which the petitioners were in agreement.⁴
2. The student is a year old boy attending a DCPS school as a grader. He is functioning at a grade math level, and a grade reading. When the petitioner

³ 20 U.S.C. §§1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 5-E Original Title 5, District of Columbia Municipal Regulations (D.C.M.R.); and Title 38 of the D. C. Code, Subtitle VII, Chapter 25, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

⁴ P-6, Prince Georges County School, IEP-May 27, 2010.

enrolled the student at DCPS on June 22, 2010, she presented the school with the student's IEP that was in effect in his previous school at Prince Georges County.⁵

3. On August 20, 2010, DCPS sent a letter of invitation to the parents offering three dates for a meeting to discuss the student's IEP. The petitioner confirmed via telephone their participation at September 28, 2010 meeting, and it was understood that the mother would not participate but the step-father would attend.⁶
4. The student started classes in mid September; two weeks after the 2010-2011 school year began. The student was assigned to the special education teacher on the first day he went to school. The student specialized instruction services were provided through a pullout service.⁷
5. On September 28, 2010, respondent convened an IEP meeting to draft an IEP for the student the petitioner did not attend, and the parties' dispute whether respondent was given adequate notice that the parents could not attend.⁸ At the meeting a general education teacher, a special education teacher, a counselor and the special education coordinator who also served as the LEA representative were present. The IEP team drafted an IEP using the student's IEP from PGCPSS because it did not have the evaluation requested from PGCPSS. The IEP Team created an IEP providing 5 hours of specialized instruction outside the general education setting and 30 minutes a week of behavioral support services.⁹
6. On November 11, 2010, an IEP meeting was held the petitioner and her advocate along with other relevant members of the IEP team were present. The IEP team reviewed the draft IEP, discussed progress, parents concerns and specialized instruction hours. The goals and objectives were discussed; the student scores in from a recent Woodcock-Johnson Achievement test, as reflected in the PGCPSS' IEP were also discussed. Teachers and the social worker observations of the student's performance in class and D. C. standardized assessment for third grade in reading and math were discussed. The teachers reported that the student was not having behavior problems and was making some progress with the 5 hours of resource provided; although he had some difficulty with math. The team discussed the student's needs and 10 hours a week of specialized instruction outside the general education setting and 30 minutes a week of behavioral support services was provided. The petitioner requested that the student receive 15 hours a week of specialized instruction because of his weakness in reading, math in writing, and the other members of the IEP team did not believe that more hours were necessary, or that a compensatory award was warranted.¹⁰

⁵ P-7, Student Enrollment Profile Form-June 22, 2010.

⁶ DCPS -3, Letter of Invitation to meeting, August 30, 2010 and Testimony of the Special Education Coordinator.

⁷ Testimony of the Special Education Coordinator and the Special Education teacher.

⁸ Testimony of the Petitioner and the Special Education Coordinator.

⁹ Testimony of the Petitioner and the Special Education Coordinator, and DCPS 5, E-mail correspondence from SEC to Attorney for Petitioner-September 29, 2010.

¹⁰ Testimony of the Education Advocate and the Special Education Coordinator.

7. The student has missed 15 days out of 48 school days some have been excused absences. When he goes to class he participates, and there are no behavior problems. In math he is working on adding and subtraction, in reading he is working with decoding, character analysis, vocabulary and comprehension skills. There is some inconsistency in the student's progress due to his many absences. The student is provided homework four times a week and the mother told the teacher that she found some of the students homework behind a piece of furniture at home.¹¹
8. The step-father was not aware there had been an increase in the student's specialized instruction hours in the November 2010 IEP. He stated that his main concern with the IEP had been the lack of transportation services.¹²
9. The Education Advocate did not go to the school to observe the student and did not ask a teacher if specialized instruction was being provided to the student. She presented a compensatory education plan indicating the student requires 75 hours, because he was four weeks without IEP Services.¹³
10. The parties agreed at the hearing that transportation would be incorporated into the student's IEP.

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:

The petitioner alleged the IEP Team that met on September 28, 2010 failed to include the LEA representative and the parent as required in the IDEIA. The petitioner argued that having the special education coordinator from the school present at a meeting is not sufficient. According to the petitioner a representative of DCPS with authority to make decisions that the school is not permitted to make must be made available for every IEP meeting so that important issues may be discussed and decided.

In accordance with the IDEA 20 U.S.C. 1414(d)(1)(B)–(d)(1)(D) and its regulations at 34 C.F.R. §300.321(a) the IEP Team must include the parents of the child, at least one regular education teacher of the child, at least one special education teacher of the child, a representative of the public agency who is qualified to provide or supervise special education services, is knowledgeable about the general curriculum, general curriculum; and is knowledgeable about the availability of resources of the public agency; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team...; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever

¹¹ Testimony the Special Education Teacher, and DCPS-1 Attendance Summary-November 9, 2010..

¹² Testimony of the step-father and DCPS1.

¹³ Testimony of the education advocate and P1-Compensatory Education Plan-November 5, 2010.

appropriate, the child with a disability. In the instant matter, the evidence was the special education coordinator was the designated representative as permitted by id § 300.321(d).

According to 34 C.F.R. § 300.322(a), it is the public agency's responsibility to ensure that one or both of the parents of a child with a disability is present at each IEP team meeting or are afforded a chance to participate. The agency must notify the parents of the meeting early enough to ensure that the parent has an opportunity to attend and schedule the meeting at a mutually agreeable time.

In the current case, the petitioner was notified at least a month before the September 28, 2010, meeting date and she confirmed participation. It was understood that the petitioner would not attend; however the student's step-father would attend. At the hearing the step-father testified that on the day of the IEP meeting he had to go to a court hearing. The Education Advocate also chose not to attend. The credible evidence was that DCPS was not aware that the step-father would not attend until the meeting was over. Accordingly the meeting was properly convened.

The petitioner argued that the draft IEP dated September 28, 2010 was inappropriate because it was developed by using the IEP previously created by PGPCS. The respondent admitted that it created the draft IEP in September 2010 based on the student's May 2010 IEP from PGPCS' IEP because it had not received the evaluations request from PGPCS.

The requirements for when IEPs for students who transfer from one public agency to another public agency within the same school year must be in place are found in the IDEA at 20 USC 1414(c)(2) and in the corresponding regulations at 34 CFR §300.323 (f), and (g).

If a child with a disability was receiving special education and related services pursuant to an IEP in a previous public agency transfers to a new public agency in another State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must, provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either - (1) Conducts an evaluation, if determined necessary by the new public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324. Pursuant to 34 C.F.R. § 300.323(g), "to facilitate the transition for a child described in paragraphs (e) and (f) of this section," sections dealing with student that transfer from a school in one state to a school in another state, "(1) the new public agency in which the child enrolls must make reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled."

In this case, the respondent asked for supporting documents from the student's previous school which was unresponsive, and instead of leaving the student without services until they received additional information it decided to provide services using the PGPCS' IEP as the baseline.

The petitioner also argued DCPS failed to provide comparable services to those described in the student's previous IEP from PGCS from September 20, 2010 through November 16, 2010.

The student's PGCS' IEP provided 5 hours of support inside the general education classroom and 2.5 hours per week of specialized instruction outside the general education classroom in a small group setting. On September 28, 2010, the respondent met and with that information drafted an IEP for 30 days providing the student 5 hours of specialized instruction outside the general education setting with 30 minutes per month of counseling. It was estimated by DCPS that by doubling the specialized instruction hours outside the general education setting, and providing 30 minutes of counseling would be comparable services until it had the opportunity to observe the student.

The respondent has an obligation to provide comparable services until it determined evaluations were necessary, adopted the PGCS' IEP or implemented a new IEP. Here, the respondent modified the IEP for 30 days offering 90 minutes less a month of counseling for the student and did not provide the parent with an explanation on why. The respondent at the hearing explained that the services were to allow for an observation of needs during that month of service. However, the Petitioner did not show that an educational harm was caused by the respondent not providing the explanation of reduction in counseling minutes.

Notwithstanding that the respondent failed to perform a procedural requirement of the IDEA. The IDEA at 20 U.S.C. § 1414 (E) (ii), and as provided in 34 C.F.R. § 300.513(a) regarding hearing officer decisions on procedural issues, "[I]n matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education [FAPE] only if the procedural inadequacies—

- i. impeded the child's right to a free appropriate public education;
- ii. significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
- iii. caused a deprivation of educational benefits."

The Petitioner additionally failed to demonstrate that the student's right to a FAPE was denied or that the parent was significantly impeded from participating in the decision making process. The Petitioner also failed to demonstrate that the reevaluation is warranted. The Hearing Officer finds that DCPS acted in accordance to the IDEIA requirement.

The petitioner also claimed the student was not offered a classroom when he went to register at the start of the 2010-2011 school year and as a result the student did not receive specialized instruction. The special education teacher credibly stated she provided specialized instruction to the student from the first day he started attending classes in mid September 2010. The hearing officer finds that the primary reason the student did not attend school until the second week was not attributable to the respondent. There was an obvious concern with the fact that the step-father had to provide daily transportation to school and which he stated was his main concern with the IEP. However, the evidence showed that it was related to the lack of accurate information from the petitioner which cause there not to be transportation included. The parties agreed to include transportation in the November 2010 IEP.

The petitioner argued the provision of 10 hours of specialized instruction outside the general education is not appropriate to meet the students reading and writing needs and will not provide educational benefit to the student. Yet, it is important to mention that the petitioners did not have concerns with the 5 hours of specialized instruction provided in the May 2010 PGCPS' IEP.

Pursuant to 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Programs or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

- aa. 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
- bb. Meet each of the child's other educational needs that results from the child's disability."

At the November 10, 2010, IEP Team meeting neither the petitioner nor the student's education advocate indicated they thought more evaluations were needed or that the previous IEP contained inaccurate information. The IEP Team heard from teachers, the social worker, the petitioner about the student's progress and along with the information from the May 2010 IEP; which include information from evaluations and had been agreed to the petitioners in May it revised the student's draft IEP and increased the specialized instruction hours to 10 hours outside the general education setting and counseling to 30 minutes per week.

The petitioner further claimed the student requires 15 hours per week of specialized instruction. The only evidence that the student requires additional specialized instruction was the petitioner desire and the education advocate's unexplained request. The petitioner who was assisted by an Education Advocate signed the IEP with the 10 hours of specialized instruction on November 11, 2010.

The Hearing Officer finds that the student's November 28, 2010 IEP is reasonably calculated to enable the student to receive educational benefits. The Petitioner had the burden to prove that the challenged IEP did not provide the student with a FAPE, she did not.

The United States Supreme Court has established the following two-part test to determine whether a state has met the requirements of IDEA: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*, 458 U.S. 176, 206-07 (1982).

The Hearing Officer finds the respondent complied in this case with the IDEIA requirements. The student was not denied a FAPE and a compensatory education award, is not warranted.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:
The Due Process Complaint filed on September 30, 2010, is **Dismissed**.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1415(i)(2)(B).

Dated: November 24, 2010



Hearing Officer