

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
Frances Raskin, Due Process Hearing Officer
1150 – 5th Street, S.E.; Room 3
Washington, D.C. 20003
(202) 698-3819
Facsimile: (202) 698-3825

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STUDENT HEARING OFFICE
2009 OCT -5 AM 8:56

Confidential

STUDENT, through the legal guardian¹)
)
Petitioner,) Case No. 2009-1083
)
v.) Hearing Dates: none held
)
)
THE DISTRICT OF COLUMBIA)
PUBLIC SCHOOLS,)
)
Respondent.)
)

HEARING OFFICER DETERMINATION

Counsel for Petitioner: Sarah Tomkins, Attorney at Law
Law Office of Donna L. Wulkan
1020 16th Street, NW, Ste. 602
Washington, DC 20036
(202) 682-3909; Fax: (202) 955-1015

Counsel for DCPS: Kendra Berner, 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 mother of a [REDACTED]-old, special education student ("Student") at a District of Columbia Public Schools ("DCPS") senior high school. Both Petitioner and the Student are residents of the District of Columbia.

On July 24, 2009, Petitioner filed a Due Process Compliant Notice ("Complaint") alleging that DCPS denied the Student a free, appropriate, public education ("FAPE") by failing to:

- A. Timely and comprehensively evaluate the Student upon the recommendation of his special education teacher and the request of Petitioner;
- B. Identify and address areas of the Student's disabilities;
- C. Provide the Student an appropriate individualized education program ("IEP") for the 2007-2008 and 2008-2009 school years and develop an IEP for the 2009-2010 school year; and
- D. Provide the Student an appropriate educational placement;² and ensure the Student makes adequate educational progress.

The remedies Petitioner seeks include a finding by this Hearing Officer that the Student is multiply disabled with mental retardation, learning disability, and other health impairment (Attention Deficit Hyperactivity Disorder). Petitioner seeks and order from this Hearing Officer requiring DCPS to fund independent speech-language and vocational assessments and to reimburse Petitioner for an independent educational evaluation she obtained at her own expense in June 2009. Petitioner further seeks an order from this Hearing Officer that (a) places the Student in a non-public, full-time, special education setting at DCPS expense; and (b) provides the Student compensatory education at DCPS expense.

² The Complaint alleges that DCPS failed to provide the Student an appropriate placement because it failed to develop an IEP for the Student for the 2009-2010 school year (and thus did not specify a placement for the Student for the 2009-2010 school year), and the Student's expired 2008-2009 IEP provided only part-time, special education services and instruction at [REDACTED] which was insufficient because the Student requires a full-time, out-of-general-education placement

This Complaint is identical to the Complaint Petitioner filed just two days earlier in case number 2009-1073. When this Hearing Officer inquired, counsel for Petitioner asserted that she had not filed a second complaint for the Student. Petitioner did not make any effort to litigate this case and proceeded only in 2009-1073, which was adjudicated on the merits after a due process hearing.

Thus, this Hearing Officer can only conclude that the filing of this Complaint was inadvertent.³

ORDER

Upon consideration of the Complaint in this case, the identical Complaint filed in case number 2009-1073, and the adjudication on the merits in case number 2009-1073, it is this 5th day of October 2009 hereby:

ORDERED that the Complaint is **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/ Frances Raskin
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:

Sarah Tomkins, Attorney at Law
Kendra Berner, Attorney at Law
Hearing Office

³ The Student Hearing Office uploaded a motion for continuance, filed August 17, 2009, into this case file in i-Sight. However, as the fax cover sheet for the motion clearly states, Petitioner intended to file the motion in case number 2008-1073. Thus, the existence of this motion in i-Sight should not be construed as an attempt by Petitioner to litigate this case.

APPENDIX A



Student	[Redacted]
Date of Birth	[Redacted]
Student ID No.	[Redacted]
Petitioner (specific relationship)	[Redacted]



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