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STUDENT HEARING OFFICE

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT, a minor, by and through
her Parent[1]

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

SHO Case No:
Erin H. Leff, Hearing Officer

HEARING OFFICER DETERMINATION

DECISION

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STATEMENT OF THE CASE

On April 7, 2011 Parent, on behalf of her child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f) (1) (A) (Supp. 2010). Respondent filed a Response to Parent's Administrative Due Process Complaint Notice (HO 5) on April 26, 2011. A resolution meeting was held on April 25, 2011. The parties were not able to reach an agreement. HO 9. On May 2, 2011, following the Prehearing Conference of the same date (HO 13), Petitioner file a Motion requesting a continuance of 10 days due to witness unavailability (HO 10). I granted the Motion. HO 11. As a result, the 45 day timeline which began to run on April 26, 2011 was extended, and my Hearing Officer Determination is due on June 17, 2011.

Several issues related to pleadings were addressed during the Prehearing Conference. On April 25, 2011 Petitioner had filed a Motion for Judgment on the Pleadings citing Respondent's late filing of its response to the Due Process Complaint of April 17, 2011. HO 6. On April 26, 2011 DCPS filed its Response to both the Administrative Due Process Complaint and its Response to the Motion for Judgment on the Pleadings.[3] Petitioner withdrew the Motion for Judgment on the Pleadings at the Prehearing Conference held on May 2, 2011. On the same date, Respondent's counsel withdrew an allegation of frivolousness contained in its April 26, 2011 response to Petitioner's Due Process Complaint. Furthermore, I noted, and then included in my Prehearing Order of May 3, 2011 that Petitioner's claim regarding the development of the May 9, 2008 IEP was outside the IDEA two year statute of limitations and, therefore, not justiciable. No exceptions to the two year statute of limitations were claimed.

[3] For completeness two responses to the due process complaint are included in the record of this case. One was forwarded to me as a Response and the second was identified as an amended response. Both documents are labeled amended response and appear to be identical. The provision of two separate, identical documents filed on the same date had no impact on the posture of this matter.

On May 27, 2011, Petitioner's counsel informed Respondent's counsel and me that she was withdrawing one issue. She had decided not to proceed on the issue regarding implementation of past counseling services. Petitioner was proceeding to hearing only on the issue involving the provision of wrap around services.

At all times relevant to these proceedings Petitioner was represented by Kimberly Glassman, Esq., and Victoria Fetterman, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for June 3, 2011. The hearing was held as scheduled.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (Supp. 2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE(S)

The issue is:

> Whether DCPS denied Student a free, appropriate public education ("FAPE ") by failing to include the provision of wrap around services in Student's April 1, 2011 individualized education program ("IEP").

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are found in Appendix A.[4]

Exhibits admitted on behalf of Respondent are found in Appendix B.

Exhibits admitted on behalf of Hearing Officer are found in Appendix C.

[4] Respondent identified six of the exhibits introduced by Petitioner as Joint Exhibits. They are: P 9, P 10, P 11, P 12, P 13 and P 16.

B. Testimony

Petitioner testified and presented the following witnesses:

- Student
- Ed.D., admitted as an expert in special education programming for students with emotional disabilities and in the psycho-educational delivery of services designed to infuse the expression of feelings and emotions and the teaching of appropriate behavior in education.[5]
- Wraparound counselor/Mentor, Independence & Dependence, LLC.

DCPS presented the following witness:

- Special Education Case Manager,

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. Student is years old. He attends a large, DCPS high school. He is classified as a student with an emotional disability under the IDEA. P 14.
2. Among other symptoms, Student's disability manifests itself in impulsive behaviors including truancy and poor decision making. Student has been receiving wrap around services from Independence & Dependence, LLC ("I&D") focused on improving his school attendance, assisting him with his homework, supporting his staying in school during the school day, providing positive social experiences and creating opportunities to learn positive social behaviors. These activities are intended to

[5] In response to my question, Dr. Hughes-Booker provided extensive explanation, on the record, of what psycho-educational instruction involves. Her explanation is incorporated here by reference.

provide Student the supports he needs to graduate from high school and become a productive adult. Testimony of Petitioner; Testimony of Student; Testimony of

Testimony of

3. Wrap around services consist of a combination of related services including individual counseling, parent counseling and therapeutic recreation. Testimony of

4. I&D has provided services to Student's family since February 2010. Originally I&D began working with Student's family because his older brother had been identified as being in need of services. While working with Student's family, I&D became aware that Student also needed services. Because I&D works on a family basis they were able to initiate services with Student when his needs were identified. Student's older brother has left the family household and services can no longer be provided under his umbrella. On April 25, 2011 DCPS authorized 50 hours of mentoring services to be provided to Student through a provider of Petitioner's choice. The services were to be completed by June 1, 2011. Petitioner selected I&D as the provider of service. Student received 15 to 20 hours of service per week. R 4; Testimony of Hughes – Booker; Testimony of Moore

5. Student benefits from the services provided by I&D, and his entire family has formed a positive relationship with the individuals working with them through I&D. Testimony of Petitioner; Testimony of Student; Testimony of

   Testimony of Student has begun discussing plans for the future that include finishing high school and working in construction. Testimony of The services have resulted in Student's having some periods of improved grades and improved

attendance. However, these results have been transitory, and Student currently is showing poor attendance and poor grades. Testimony of

Testimony of Testimony of Petitioner; Testimony of Student; R 1; R 2.

6. A December 2010 Psychological Evaluation shows Student's intellectual functioning, for the most part, is in the average to low average range. In contrast, his academic achievement ranges from the very low range in reading and written language to the low average range in math. P 16. When student attends his classes he does well in school. R 2; Testimony of Petitioner; Testimony of
7. DCPS indicated it would be willing to provide wrap around services to Student through First Home Care in March 2011. P 14; Testimony of Petitioner received no information regarding an appointment with First Home Care until approximately two weeks prior to the June 3, 2011 due process hearing. An intake appointment with First Home Care was originally scheduled for June 3 and moved to June 10, 2011. Testimony of Petitioner.
8. Student's current IEP was developed on April 1, 2011. It includes goals in mathematics, reading and written expression. It also includes behavioral support services for 120 minutes per month. Wrap around services are not included in Student's current IEP. P 14.
9. Student needs some wrap around services linking school, home and the community. Testimony of Petitioner; Testimony of Testimony of

   Testimony of These services are not included in Student's IEP because the Special Education Coordinator thought wrap around services were outside the services included on IEPs. Testimony of

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Furthermore, I had some concerns with particular aspects of testimony. While she is clearly an intelligent, knowledgeable individual, with significant expertise in the development and provision of wrap around services, she had some conflict of interest when she testified as to Student's need for extensive wrap around services. Not only does she consult to and earn significant income from I&D and other wrap around service provider agencies, but her testimony itself, suggests she has formulaic views of who should receive wrap around services and how they should be delivered that do not appear to account for individual differences. Secondly, appeared to conveniently forget information about Student's brother's residence at one point in her testimony stating she did not know whether Student's brother was living in the family home and then later contradicting herself and testifying that Student's brother was not living in the family home. did provide relevant and reliable testimony regarding the wrap around process, its design and its intent, though, as stated above, at times her responses were formulaic. For these reasons I place less than full credence in her testimony regarding Student's specific needs and rely, instead, primarily on the testimony of in this regard. testimony was both knowledgeable and clearly based on an understanding of Student's individual needs.

The issue before me is

Whether DCPS denied Student a free, appropriate public education by failing to include the provision of wrap around services in Student's April 1, 2011 individualized education program,

Under the IDEA each local education agency is required to provide a free appropriate public education to each student found eligible for special education and related services. A FAPE is:

> Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . .[a]re provided in conformity with an . . .IEP that meets the requirements of [the IDEA regulations]. 34 C.F.R. § 300.17. *See also*, 30 D.C.M.R. § 5-E.3001.1.

An IEP is a written statement that includes, among other things, a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to a student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. 34 C.F.R. § 300.320. *See also*, 30 D.C.M.R. § 5-E.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, 30 D.C.M.R. § 5-E.3007. Related services include, among other services: counseling, parent counseling, recreation, rehabilitation counseling, and social work. 34 C.F.R. § 300.34; 30 D.C.M.R. § 5-E.3001.1.

The content of an IEP is a team decision 34 C.F.R. §§ 300.320 – 300.323. *See also*, 30 D.C.M.R. §§ 5-E.3007.1 & 3008.1. Teams are required to consider all the relevant information before them. *Id.* An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982). In reviewing whether an IEP provides a

student a FAPE as required by IDEA, a hearing officer must consider whether the district complied with IDEA's procedural requirements and determine whether the program was reasonably calculated to enable the student to receive educational benefit. *Rowley,* 458 U.S. at 207. Here, there is no question raised regarding the district's compliance with IDEA procedural requirements. The only question is whether the IEP at issue is calculated to enable the student to receive educational benefit.

Student's current IEP was developed on April 1, 2011. It includes goals in mathematics, reading and written expression. It also includes behavioral support services for 120 minutes per month. At the IEP meeting Student's need for wrap around services was discussed. This need also had been identified and discussed at other meetings. Wrap around services were not included on the IEP because the Special Education Coordinator thought they should not be included. The basis for the Special Education coordinator's belief that wrap around services should not be included in the IEP is not clear. Different witnesses offered different explanations for the services being excluded. Whatever the underlying basis for her belief, it is clear she thought wrap around services were beyond the limits of an IEP.

This blanket exclusion of wrap around services from consideration for inclusion in an IEP is *contra* the intent of the IDEA. Students' IEPs are to include all the services necessary to allow them to receive educational benefit. *Rowley*. In the instant matter, Student has been receiving wrap around services of approximately 15 to 20 hours per week. These services have supported him in developing more positive behaviors, beginning to plan for his future[6] and in attending school more often that he would have without these services. There is general

[6] One of the purposes of IDEA is to ensure that students with disabilities have a FAPE that prepares them for further education, employment and independent living. See 34 C.F.R. § 300.1(a).

agreement that the services have been of benefit to Student and that he needs them. Yet wrap around services are not included on Student's IEP.

DCPS suggested that Student could receive wrap around services even if they are not included in the IEP. Clearly this is true. Any student's family may obtain services outside of those provided in school, but the IEP is the delineation of the services a student needs in order to receive FAPE. If the services are not included in Student's IEP, they are not considered necessary for him to receive FAPE. Yet the witnesses testified consistently that Student did require services that linked school, community and family in order to be successful in school. This linkage is created by wrap around services such as those Student has been receiving.

DCPS argued that while the wraps around services are of benefit to Student they are not related to education. However, the testimony of directly contradicts this supposition. testified all the services were provided with the intent of assuring Student graduated from high school. testimony further indicated that the wrap around services were having some positive effect. Student is participating more in the programs provided by I&D, and he has begun discussing a desire to graduate from high school and have a career in construction. Student, himself acknowledged the services benefitted him. I note, in this regard, that the positive effects of I&D's interventions were not overstated. Testimony candidly recognized Student's on-going attendance problems and poor grades. Student himself stated that sometimes I&D staff take him to school, and he leaves. Yet the trend for Student is one of slow progress and improvement.

DCPS failure to include wrap around services in Student's IEP within this context is inexplicable. The wrap around services provided are services recognized under IDEA. Student receives counseling as does his parent. Student also participates in therapeutic recreation and

receives academic support. Both DCPS staff and I&D staff recognize the need for these services as do Petitioner and Student. Under these circumstances the exclusion of these services from Student's IEP must be deemed a denial of FAPE as it is these services that support Student's attendance as well as responsiveness to the education provided in school.

DCPS, for some unexplained reason, has indicated they would prefer the services be provided by First Home Care rather than I&D. Yet Student has been receiving services from I&D for two years, and he has formed a connection with the agency personnel. Petitioner's witnesses testified that it did not matter where Student received the services as long as he received them. I must disagree. The statement that the provider of services does not matter at this point in time rings of a Solomon's choice, cutting the baby in half being suggested as the only fair resolution when clearly that is not a resolution. Here, Student, who has a history of social and academic problems has an established relationship with the staff at I&D. He has adjusted to their program and participates in it on a daily basis. To change providers would require him to start over creating new relationships and adjusting to a new service delivery processes. Requiring Student to learn a new set of people and rules is a process that I believe is prone to failure. For an individual, such as Student, who is impulsive and prone to poor decision making, adjusting to a new services provider is as likely to lead to negative responses as it is to lead to positive responses. Changing providers is adding a new layer of difficulty to an all ready difficult situation.

I therefore find that Student has been denied a FAPE by the failure to include wrap around services in his IEP. Moreover, not only does Student require wrap around services be added to his IEP but, in order to provide these services in a manner likely to have success, the wrap around services must continue to be provided by I&D. testified that Student

continues to require the 15 to 20 hours of service he is all ready receiving. I, therefore, further find that Student should receive 20 hours of wrap around services per week.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

DCPS denied Student a FAPE by failing to include wrap around services in the amount of 20 hours per week in his IEP.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

DCPS shall hold an MDT meeting within 15 days of the receipt of this HOD to amend Student's IEP to include 20 hours of wrap around services per week on Student's IEP. The services shall be provided by Independence & Dependence LLC. DCPS shall fund the provision of these wrap around services by Independence & Dependence, LLC at the prevailing hourly rate. The services shall continue through the 2011 – 2012 school year as long as Student remains enrolled in a DCPS school or DCPS remains responsible for the provision of a FAPE to Student during that time period.

IT IS SO ORDERED:

6/17/11
Date

Erin H. Leff
Hearing Officer

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 §1451(i)(2)(B).