

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Compliance and Review
State Enforcement and Investigation Division
CONFIDENTIAL

In the Matter of:

)	BEFORE A SPECIAL EDUCATION
)	
)	Wanda I. Resto, Esq.
Petitioner)	INDEPENDENT HEARING OFFICER
Vs.)	
DCPS)	STATE EDUCATION AGENCY
Respondent		

OSSE
 STUDENT HEARING OFFICE
 2009 MAY -7 AM 8:56

On March 31, 2009, parent’s counsel filed a Due Process Hearing Complaint (“Complaint” against the District of Columbia Public Schools (“Respondent”) pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter “IDEA 04”), 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education (“FAPE”) by failing provide an appropriate Individualized Education Program (“IEP”) and an inappropriate educational placement.

On April 17, 2009, the Respondent filed a Response to Petitioner’s Complaint and asserted the Student does not require a full time educational school setting. The Respondent further asserted that the MDT met on March 30, 2009, and determined the Student would be appropriately serviced in the Autism program with the recommended support and services. The Petitioner expressed her interest in having the Student placed at _____ but the team felt that would not satisfy the IDEIA’s least restrictive environment mandate.

On April 17, 2009, a telephonic pre-hearing conference for the above reference matter was conducted. The parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing (“hearing”) to be held in a closed session and reiterated the issues as plead. The Respondent reasserted the Student does not require a full time educational school setting. The MDT met in March 2009 and determined the Student would be appropriately serviced in the Autism program with the recommended support and services. The Respondent further alleged that the Student is behind in only one academic area and performs well with support and is not being denied a FAPE.

An Order issued on April 20, 2009, required the Petitioner to be prepared to demonstrate why the Student requires a full time placement, how the Petitioner’s choice of placement is appropriate and why the Respondent’s proposed placement is not. The Respondent was ordered to demonstrate that the proposed placement is appropriate and that the MDT acted appropriately when it decided to place the Student at _____. The Petitioner requested that the hearing be closed.

A hearing was held on May 1, 2009. The Petitioner presented a packet with Petitioner’s disclosure letter dated April 23, 2009 including four documents labeled P-1 through 4 and listing four witnesses.

The Respondent presented a packet with Respondent's disclosure letter dated April 24, 2009 identifying fifteen witnesses and attaching seven documents, labeled DCPS1 through 7. The documents were admitted without objections.

The parties in their opening statements provided a synopsis of their witnesses for the hearing. The Respondent objected to the testimony of the General Education teacher, on the basis of the lack of expertise in the special education area. The Hearing Officer ruled the testimony would be accepted and given its due weight.

The Petitioner called the witness; the General Education teacher was then not available. The Respondent alleged the witness had not been compelled and the Petitioner asserted that the witness had accepted testifying and therefore it had not been necessary to compel her presence at the Hearing. After negotiations the parties agreed that the Respondent will produce the witness for a future hearing. The parties also agreed and the Hearing Officer approved, should the a Complaint be filed on similar issues it would be heard on an expedited schedule. The present Complaint will be dismissed.

ORDER

The Hearing Officer hereby directs, based upon the processing, that the Complaint filed March 31, 2009 is hereby **DISMISSED**.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)

/s/Wanda Iris Resto Torres -electronically signed
Special Education Hearing Officer

SIGNED: MAY 6, 2009

Copy to: Attorney for Parent - C/O: Donovan W. Anderson, Esquire
DCPS - C/O: Attorney for Respondent: Tanya J. Chor, Esquire