

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

<p>STUDENT¹, by and through parent, Petitioner, <i>vs.</i> District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Roberta Gambale, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
--	--

2007 MAY - 1:54 PM 1:54
OSSE
STUDENT HEARING OFFICE

¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

The student suffered from Sickle Cell Anemia and first attended a public charter school in the District of Columbia, one that was its own LEA. While there, he was identified as a child with disabilities, Learning Disabled (LD) and Other Health Impaired (IHO). Later, he attended a DCPS high school where an IEP was completed for him on March 13, 2008. At the beginning of the 2008-09 School Year, the student attended his present school, a DCPS public charter school, one not its own LEA. On October 20, 2008, the student had an injury to one or both of his eyes.

On March 18, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the

a DCPS public charter school, denied the student a Free Appropriate Public Education (FAPE). The allegations were formulated into the ISSUES set out below. For relief, a private placement at the High Road Academy of Washington, D.C. and compensatory education were requested.

The parties waived the Resolution Session.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Thursday, April 23, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street SE - First Floor, Hearing Room 1, Washington, D.C. 20003. The hearing convened as scheduled.

OSSE
STUDENT HEARING OFFICE
2009 MAY -1 PM 1:54

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

- ISSUES:**
- 1. Was the March 13, 2008 IEP appropriate; was it implemented?**
 - 2. Was the November 12, 2008 IEP appropriate; was it implemented?**
 - 3. Was the January 13, 2009 IEP appropriate; was it implemented?**
 - 4. Starting from the beginning of the 2008-09 School Year, did implement the current IEP?**
 - 5. Did DCPS completed an assistive technology**

evaluation of the student as requested at the March 2008 MDT meeting?

6. Was a vocational assessment of the student completed as requested at the January 13, 2009 MDT meeting?

7. Did DCPS fail to comprehensively evaluate the student's vision?

8. Did DCPS fail to provide an appropriate educational placement for the student for the 2008-09 School Year?

FINDINGS of FACT

By facsimile dated April 15, 2009, the parent disclosed 5 witnesses and 37 documents.

By facsimile dated April 15, 2009, DCPS disclosed 15 witnesses and 12 documents.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

The Parent WITHDREW issues 5 and 6.

As to issue 7, the hearing officer reviewed and discussed with Counsel the January 29, 2009 Children's Hospital Pupil Health Notice² where it noted that the student used eye drops and suggested a "magnifying sheet . . . to help reading a whole page." Here, the hearing officer directed a Finding for the Parent on issue 6; the reasons are set out below under CONCLUSION of LAW, SIX.

At the conclusion of the Parent's case, DCPS rested on the record.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The March 13, 2008 IEP disability coded the student Learning Disabled and Other Health Impaired³ with 23.5 hours of special education services in a 73% Out of General Education Setting.⁴

2. The November 12, 2008 IEP disability coded the student Learning Disabled and Other Health Impaired with 23.5 hours of special education services in a 61-100% Out of General Education Setting.⁵

3 of 7 pages

² DCPS Document No 12

³ The underlying health impairment was Attention Deficit Hyper-activity Disorder.

⁴ Par. Doc. No 11

⁵ Par. Doc. No 10

3. The January 13, 2009 IEP disability coded the student Specific Learning Disability with 23.5 hours of special education services in a 73% Out of General Education Setting. The IEP did not specify a Least Restricted Environment (LRE) for the delivery of student's specialized instruction, a required component for an appropriate IEP⁶

4. The Educational Advocate reviewed the student's file and evaluations and attended the March 13, 2009 MDT meeting for the student at The Advocate pointed to the fact that the student's reading comprehension was at the grade equivalent of 6.5⁷ in 2005 and had retrogressed to grade equivalent of 5.4⁸ in March 2009 and went on to opine that the 2008 and 2009 IEPs were inappropriate. The Advocate did not know of the student's absences from school and had not seen the student's attendance record.⁹

5. From August 14, 2008 thru June 10, 2009, the student had 71 excused absences.¹⁰ These excused absences were due to the student's Sickle Cell Anemia. According to the Parent, indicated to her that they could not deliver to the student the 23.5 hours of specialized instruction indicated on the January 13, 2009 IEP in a Special Education Setting; that the student required the delivery of specialized instruction in a resource room and did not have a resource room.¹¹

6. did not defend the January 13, 2009 IEP nor its capacity to implement the IEP.

7. The can provide educational benefit to the student in a 100% Out of General Education Setting. The admissions officer reviewed the student's file and evaluation, interviewed the student and Parent and accepted the student. The academy will place the student in a class with a small teacher-student ratio and all Learning Disabled students, some with Other Health Impairment-ADHD as an additional disability coding. A few of the students have been diagnosed with Sickle Cell Anemia; the academy has a procedure to cope with a student experiencing a Sickle Cell Anemia flare-up.

8. A record upon which to award compensatory education in compliance with *Reid vs the District of Columbia* 401 F3rd 516 (D.C. Cir. 2005) was not established in this matter.

4 of 7 pages

⁶ Par. Doc. No 9

⁷ Parent Doc. No 16: the May 16, 2005 Confidential Psychoeducational Evaluation, page 5

⁸ DCPS Doc. No 5: the March 21, 2009 Confidential Comprehensive/Vocational Evaluation, page 13

⁹ -testimony of Educational Advocate

¹⁰ DCPS Doc. No 9

¹¹ -testimony of the Parent

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

ONE & TWO

The March 13, 2008 and November 12, 2008 IEP were not established as inappropriate.

The requirements for an appropriate IEP are set out at 34 CFR 300.320 and neither was pointed out as missing in either of the two IEPs. True, the IEPs did not contain components directed at the student's Sickle Cell Anemia, but it was not established what those components would or should have been. Secondly, there was nothing in the record that the special education services indicated on the respective IEPs were not delivered to the student to a degree that constituted a Denial of FAPE. The fact that the student had regressed in one area of achievement did not alone establish the inappropriateness of either IEP, especially where, as herein, there was a large number of absences from school.

THREE & FOUR

The January 13, 2009 IEP was inappropriate, and could not implement the IEP.

The January 13, 2009 IEP indicated the delivery of 23.5 hours of specialized instruction in an Out of General Education Setting but did not indicate an LRE¹² for its delivery; it indicated an LRE for the delivery of 1 hour of counseling or Behavioral Support Services. The uncontradicted testimony of the Parent was that informed her that the specialized instruction indicated on the IEP was to be delivered in a resource room and that did not have a resource room.

At regulation 34 CFR 300.115, an LEA is required to ensure a continuum of alternative placements, placements that can deliver the special education services to a child with a disability as indicated on the child's IEP. At regulation 34 CFR 300.116, the process for making placement decisions is set out. The process is to ensure that the

¹² LRE: Least Restricted Environment

placement decision for a child with a disability is based on the child's IEP, and that the parent of the child is included in the placement-decision making process. /DCPS violated these regulations.

FIVE & SIX were WITHDRAWN.

SEVEN

DCPS was required to provide an eye examination of the student.

At regulation 34 CFR 300.304(c), an LEA is required to assess a student in all areas of suspected disability, "... including, if appropriate, ... vision ...". It was clear from the Children's Hospital Pupil Health Notice that the student had problems seeing regular sized print. Further, from the form itself, it was clear that it was to be used only after the professional completing the form had first concluded that further review of the noted malady by a physician was needed; the form was to be returned to the hospital by the parent or physician after the latter had completed his/her examination of the student and completed the questionnaire located in the lower part of the form.

The Visual Impairment disability coding is set out at 34 CFR 300.8(c)(13) and clearly obligated DCPS to examine/evaluate the student's vision, not just screen it. DCPS did not evaluate the student's vision.

EIGHT

A private placement was warranted in this matter.

With the establishment of the inappropriateness of the January 13, 2009 IEP and the inability of the to deliver specialized instruction in the required Special Education Setting in DISCUSSIONS of LAW, THREE & FOUR, above, a private placement for the student was warranted.

SUMMARY of the DECISION

For issues 3,4, 7 and 8, the Parent met her burden.

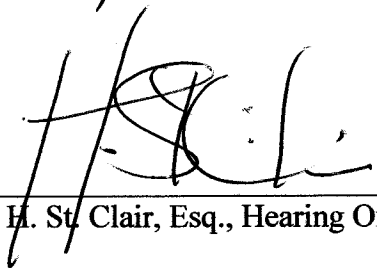
In consideration of the foregoing, the hearing officer made the following

ORDER

1. With transportation, DCPS will place and fund the student at the

2. Within 30 days hereof, DCPS will have completed an ophthalmological evaluation of the student. DCPS failing the said evaluation schedule, the parent is authorized to arrange independent evaluation for which DCPS will pay according to Superintendent's Directive 530.6. Within 15 school/business days of completion/receipt of the said evaluation report, DCPS will convene an MDT/IEP/ Placement meeting during which evaluations will be reviewed, the IEP reviewed and revised as appropriate and placement discussed and determined. If a DCPS placement is recommended, a Notice of Placement will be issued within 5 schooldays of the said meeting; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.

Dated this 1st day of July, 2009



H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.