

JURISDICTION:

The hearing was convened, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on December 20, 2017, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, N.E., Washington, D.C. 20003, in Hearing Room 2003.

BACKGROUND AND PROCEDURAL HISTORY:

The student (“Student”) is a child and with a disability pursuant to IDEA who attended a DCPS school prior to January 2016. In January 2016 Student’s parent (“Petitioner”) and DCPS agreed Student would attend a non-public special education separate day school (School A). Student attended School A from January 2016 until June 2017. Student now attends a different non-public special education separate day school (School B). Petitioner filed a due process complaint on October 16, 2017, alleging that DCPS, as Student’s local educational agency (“LEA”) while Student was attending School A during school year (“SY”) 2016-2017, denied Student a free appropriate public education (“FAPE”) by, inter alia, failing to provide Student an appropriate individualized educational program (“IEP”) in June 2016.

DCPS filed a response to the complaint on October 26, 2017, and an amended response on November 16, 2017. DCPS in its response asserted, inter alia, there was no denial of a FAPE to Student.

The parties participated in a facilitated resolution meeting on November 7, 2017. The complaint was not fully resolved during the facilitated resolution. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on November 16, 2017, and originally ended on December 30, 2017. The decision due date was extended to January 20, 2018, by an order granting Petitioner’s unopposed motion to continue.

The undersigned Impartial Hearing Officer (“Hearing Officer”) convened a pre-hearing conference on November 14, 2017, and issued a pre-hearing order on November 17, 2017, outlining, inter alia, the issues to be adjudicated.

The parties appeared for hearing on December 20, 2017, and on the record informed the Hearing Officer that they had reached an agreement as to the due process complaint and requested that the terms of that agreement be incorporated into a Hearing Officer’s Decision.

ISSUES:

The issues that were to be adjudicated and that were settled at hearing by the parties are:

1. Whether the DCPS denied Student a free appropriate public education (“FAPE”) by failing to provide Student an appropriate IEP in June 2016 IEP because the IEP contained inappropriate academic PLOPs and inappropriate academic goals.

2. Whether the DCPS denied Student a FAPE by denying Petitioner meaningful participation in the development of the June 2016 IEP by not adopting or even responding to Petitioner's objections and requests for modification to the IEP.
3. Whether the DCPS denied Student a FAPE by evaluating Student without Petitioner's consent by conducting a FBA, denying Petitioner participation in conducting the FBA and developing of the BIP, and thus developing an inappropriate BIP.
4. Whether the DCPS denied Student a FAPE by failing to evaluate Student or requesting consent to evaluate Student in June 2016 and October 2016.
5. Whether the DCPS denied Student a FAPE by failing to provide educational records within 45 days of Petitioner's October 5, 2016, and June 26, 2017, requests.
6. Whether the DCPS denied Student a FAPE by failing to review and consider Student's 2017 independent evaluations.
7. Whether the DCPS denied Student a FAPE by failing to implement Student's IEP during periods Student was allegedly secluded from the classroom and/or barred from attending school and without OSSE transportation due to the alleged incorrect determination by DCPS regarding Petitioner's D.C. residency.

ORDER:

The parties engaged in settlement discussions and reached an agreement that resolved all claims and issues in the complaint and requested that the Hearing Officer incorporate their settlement terms into a Hearing Officer Decision and/or into an order.

1. DCPS agrees to fund 320 hours of tutoring services provided by Lindamood Bell Processing Services, or a competitor of Lindamood Bell, or a private tutor, or independent counseling at a rate not to exceed \$126.00 per hour, which is Lindamood Bell's current hourly tutoring rate.
2. DCPS shall provide and fund private transportation for Student to attend the instructional programming at Lindamood Bell.
3. Petitioner agrees to provide DCPS in advance with a tutoring schedule for any summer program at Lindamood Bell so that DCPS is able to arrange for transportation.
4. DCPS agrees to provide the Petitioner, by emailing Petitioner's counsel, an authorization letter for the tutoring and counseling within fourteen (14) days of the issuance of this order. The service authorization letter will expire December 31, 2019, and any unused hours after this date will be forfeited.

5. Petitioner agrees that complaint # 2017-0283 will be withdrawn, with prejudice, and that written evidence of such withdrawal must be provided to DCPS.

APPEAL PROCESS:

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 ninety (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. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.

Hearing Officer

Date: December 26, 2017

Copies to: Counsel for Petitioner
 Counsel for LEA
 OSSE-SPED {due.process@dc.gov}
 ODR {hearing.office@dc.gov}
 contact.resolution@dc.gov