

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
1050 First Street, NE, 3rd Floor
Washington, DC 20002

PETITIONER,
on behalf of STUDENT,¹

Date Issued: July 10, 2020

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2020–0031

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Online Video Conference Hearing

Hearing Dates: May 20 and May 22, 2020

Respondent.

FINAL HEARING OFFICER DETERMINATION

The due process hearing in this case was held by video conference on May 20 and May 22, 2020. On June 5, 2020, I issued an Interim Hearing Officer Decision (Interim Decision), which provided my Findings of Fact and Conclusions of Law. In the Interim Decision, I determined, *inter alia*, that DCPS denied Student a free appropriate public education (FAPE) by not determining Student eligible for special education by February 5, 2018 and by not developing appropriate Individualized Education Programs (IEPs) for Student on September 17, 2019 or on December 9, 2019. For relief, I ordered, *inter alia*, that DCPS convene Student’s IEP team to review and revise Student’s IEP, as appropriate, and ensure that the revised IEP provides for Student’s full-time placement in a self-contained behavior support classroom for all academic classes and provides for Student to have a dedicated aide throughout the school day. I also determined that

¹ Personal identification information is provided in Appendix A.

Student was entitled to compensatory education for the denials of FAPE, but that the hearing record lacked sufficient information to conclude where would Student be now, if Student had been determined eligible for special education by February 2018, and provided appropriate IEPs with placement in a self-contained educational setting. Without that information, I was not able to craft a compensatory education award, calculated to place Student in the position Student would be in absent the FAPE denials. *See, e.g., B.D. v. District of Columbia*, 817 F.3d 792, 799 (D.C. Cir. 2016).

In the Interim Decision, I ordered Petitioner and invited DCPS to submit supplemental written compensatory education proposals that provide the additional information needed for the hearing officer to craft a compensatory education award. I kept the case record open solely to supplement the record with information for determination of an appropriate compensatory education award for Student. Both Petitioner and DCPS submitted compensatory education proposals on July 10, 2020. I am now prepared to determine an appropriate compensatory education award and to issue my final hearing officer determination.

Incorporation of Interim Decision

I adopt my Findings of Fact and Conclusions of Law from the Interim Decision and incorporate them by reference in this final Hearing Officer Determination.

Compensatory Education Remedy

For the compensatory education award for DCPS' denial of FAPE to Student, by not determining Student eligible for special education by February 5, 2018 and by not developing appropriate IEPs for Student on September 17, 2019 or on December 9, 2019, I have considered the respective proposals submitted by Petitioner and by DCPS. Petitioner's proposal, updated from a recommendation offered at the due process hearing, was drafted by EDUCATIONAL ADVOCATE. DCPS' proposal was authored by SCHOOL PSYCHOLOGIST 3. Both proposals recognize that as a youth with dual diagnoses of Intellectual Disability and Emotional Disturbance, Student needs extensive support for low cognitive functioning, academics, behaviors and social/emotional concerns. Neither proposal directly addresses the query posited by the D.C. Circuit in *B.D., supra*, namely, what position Student would be in absent the FAPE denials and how to get Student to that position. Educational Advocate does opine that if Student had appropriate IEPs starting in the 2017-2018 school year, Student should have been able to demonstrate "meaningful progress" for the last two school years with a decrease in behavioral instances.

For compensatory education, both professionals recommend academic tutoring and counseling for Student. Educational Advocate recommends 900 hours of academic tutoring, 50 hours of cognitive behavioral therapy and 10 hours of art therapy. School Psychologist recommends 540 hours of academic tutoring and 60 hours of counseling

services. Considering that neither professional elaborated on why she or he recommended the specified hours of tutoring, I will award Student 720 hours of academic tutoring and 60 hours of counseling/therapy. Educational Advocate also recommended 30 hours of mentoring. I decline to adopt the mentoring recommendation, because it is not shown how mentoring would get Student back to the position Student would be in absent the FAPE denials.

Both professionals also recommend that Student be placed in a nonpublic school which provides full time special education programming. Student's prospective placement is beyond the scope of the compensatory education award, but these recommendations should be considered by Student's DCPS IEP team, including the parent.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED:

1. I adopt and incorporate the provisions in my Order in the Interim Decision (Order Paragraph 1) regarding convening Student's IEP team to review and revise, as appropriate, Student's IEP and educational placement;
2. As compensatory education for the denials of FAPE in this case, within 21 days of the date of this decision, DCPS shall provide funding authorization for the parent to obtain for Student, from qualified providers, 720 hours of individual academic tutoring and 60 hours of individual counseling/therapy services and
3. All other relief requested by the Petitioner herein is denied.

Date: July 10, 2020

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record
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