

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: May 21, 2020

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2020–0072

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Online Video Conference Hearing

Hearing Date: May 14, 2020

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (GUARDIAN) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her due process complaint, Petitioner alleges that Student has been denied a free appropriate public education by the failure of Respondent District of Columbia Public Schools (DCPS) to provide Student’s education records to Petitioner’s counsel upon written request first made on January 17, 2020.

Petitioner’s Due Process Complaint, filed on March 18, 2020, named DCPS as Respondent. The undersigned hearing officer was appointed on March 19, 2020. On

¹ Personal identification information is provided in Appendix A.

March 26, 2020, the parties met for a resolution session and were unable to resolve the issues in dispute. On April 2, 2020, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

On April 9, 2020, Petitioner, by counsel, filed a motion for summary judgment, which I denied by order issued April 14, 2020.

Due to the closing of the hearing rooms at the Office of Dispute Resolution in the wake of the Coronavirus outbreak, the due process hearing was held on line and recorded, using the Microsoft Teams video conference platform. The hearing, which was closed to the public, was convened before the undersigned impartial hearing officer on May 14, 2020. Guardian appeared by telephone for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for the parties made opening statements. Petitioner's Counsel called no witnesses and offered no exhibits, but chose to rely upon the administrative record for this case. DCPS also called no witnesses. DCPS' Exhibits R-1 through R-5 were all admitted into evidence without objection. At the conclusion of the taking of the evidence, counsel for the respective parties made oral closing arguments. Petitioner's Counsel submitted a citation to authority on May 15, 2020.

JURISDICTION

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUE AND RELIEF SOUGHT

The issue for determination in this case, as clarified in the April 28, 2020 Prehearing Order Addendum, is:

Whether DCPS denied Student a FAPE by failing to provide Student's education records to Petitioner's Counsel upon written request first made on January 17, 2020.

For relief, Petitioner requests that upon the reopening of DCPS school buildings for staff, DCPS be ordered to immediately provide to Petitioner's Counsel copies of all of Student's education records for the past 4 school years, including any discipline records collected or maintained by DCPS and Student's school, as well as a complete print-out of DCPS' Special Education Data System (SEDS) index for Student.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides in the District of Columbia. Student is eligible for special education services under the IDEA disability classification Intellectual Disability (ID). Student is currently enrolled in and attending CITY SCHOOL. Exhibit R-1.
2. Guardian, by counsel, made a request to DCPS for copies of Student's

education records on January 17, 2020. Exhibit R-1. DCPS provided copies of some records on February 3, 2020, Petitioner's Counsel requested more records, specifically Student's education records for the last four school years. On February 12, 2020, DCPS responded that the records were being compiled and Petitioner's counsel would be informed when the records would be available for pick up from City School. Exhibit R-1, Petitioner's Motion for Summary Judgment, Exhibit 2. On March 17, 2020, Petitioner's Counsel responded by email that Guardian was not able to pick up the education records at school and requested that City School mail the records to Petitioner's Counsel. Petitioner's Motion for Summary Judgment, Exhibit 2.

3. Since March 16, 2020, DCPS school buildings have been closed due to the Coronavirus outbreak. Hearing Officer Notice.

4. On April 3, 2020, DCPS' counsel emailed to Petitioner's Counsel computer screen shots of the list of documents in Student's SEDS file from the 2016-2017, 2017-2018, 2018-2019 and 2019-2020 school years. Petitioner's Counsel responded the same day with a request that DCPS' Counsel provide certain documents highlighted on the screen shot lists which she "[needed] for now." Petitioner's Counsel wrote that she would like additional documents, service trackers, when school starts again. Exhibit R-4. On April 8, 2020, LEA Representative Designee sent Petitioner's Counsel, by email, all of the documents highlighted by Petitioner's Counsel. Exhibit R-5.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this

hearing officer's own legal research, my Conclusions of Law are as follows:

Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6). Petitioner has the burden of persuasion in this case.

Analysis

Did DCPS deny Student a FAPE by failing to provide Student's education records to Petitioner's Counsel upon written request first made on January 17, 2020?

Petitioner claims that DCPS denied Student a FAPE by failing to provide Student's complete education records for the past 4 school years, upon the request of Petitioner's counsel made on January 17, 2020. DCPS admits receipt of the records request and avers that it has been unable, as yet to provide copies of all of the requested records due to the closing of City School on March 16, 2020 in the wake of the Coronavirus national emergency.

As the U. S. District Court for the Eastern District of Pennsylvania explained in *E.D. by & through T.D. v. Colonial Sch. Dist.*, No. CV 09-4837, 2017 WL 1207919 (E.D. Pa. Mar. 31, 2017),

Parents of a child with a disability must have the “opportunity ... to examine all records relating to such child” 20 U.S.C. § 1415(b)(1). Parents have a right to “inspect and review the education records of their children.” 20 U.S.C. § 1232g(a)(1)(A). This right includes “the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records,” the right to request that the agency provide copies if failure to do so would affect the parents' ability to inspect and review, and the right to have a parents' representative conduct the inspection and review. 34 C.F.R. § 300.613(b).

E.D., 2017 WL 1207919 at 8. The agency must comply with a request for education records without unnecessary delay and before any meeting regarding an IEP, or any special education due process hearing or resolution session, and in no case more than 45 days after the request has been made. 34 CFR § 300.613(a). Failure to timely comply with a parent's request to inspect education records is a procedural violation of the IDEA. *See E.D., supra.*

Although “a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a [FAPE],” a hearing officer can, in limited circumstances, find that a child did not receive a FAPE based on procedural violations. 20 U.S.C. § 1415(f)(3)(E). In order to make such a determination on procedural grounds, the hearing officer must find that the “procedural inadequacies (I) impeded the child's right to a [FAPE]; (II) significantly impeded the parents' opportunity to participate in the decision making process . . . or (III) caused a deprivation of educational benefits.” 20 U.S.C. § 1415(f)(3)(E)(ii).

E.D., supra.

In this case, DCPS admits that the Guardian, by counsel, made a request to DCPS for copies of Student's education records on January 17, 2020. Under the 45 day deadline, 34 CFR § 300.613(a), DCPS was obliged to comply with the Guardian's request by March 2, 2020. That does not mean that DCPS had to provide copies of all of the education records collected over four school years, but DCPS was required to allow Guardian or her representative inspect and review the records at City School or another suitable site. *See id.*

DCPS' agent, LEA REPRESENTATIVE DESIGNEE, provided copies of some of Student's education records to Petitioner's Counsel by email on February 2, 2020. Counsel requested copies of more records. On February 12, 2020, LEA Representative Designee informed Petitioner's Counsel that the records were being compiled and Petitioner's counsel would be informed when the records would be available for pick up from City School. On March 17, 2020, after the March 2, 2020 deadline to comply with the Guardian's request has passed, Petitioner's Counsel wrote LEA Representative Designee by email that Guardian was not able to pick the education records up at school and requested that the school mail the records to Petitioner's Counsel.

City School closed on March 16, 2020 for an indefinite period, due to the Coronavirus emergency. Subsequently, DCPS' counsel provided additional documents specifically requested by Petitioner's counsel and informed counsel that she would be permitted to inspect and review Student's education records at City School when the school reopened.

On this evidence, I find that the record does not establish whether DCPS did, or did not, allow Petitioner's Counsel to inspect and review all of Student's education records by March 2, 2020. Petitioner's Counsel declined to go to City School to examine the records and requested that City School mail the records to her. The record does establish that DCPS did not provide copies of all of Student's education records to Petitioner's Counsel, which is not a requirement of 34 CFR § 300.613(a). But even if the District had unduly delayed allowing Petitioner's Counsel to examine Student's education records, Petitioner must shoulder the additional burden of showing that the procedural violation resulted in a denial of FAPE to Student. *See, e.g., Carnwath v. Grasmick*, 115 F. Supp. 2d 577, 584 (D. Md. 2000). A procedural violation gives rise to a substantive violation of the IDEA only if the procedural deficiency "(i) [i]mpeded the child's right to a FAPE; (ii) [s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) [c]aused a deprivation of educational benefit." *Hart v. District of Columbia*, 323 F. Supp. 3d 1, 3-4 (D.D.C. 2018) (quoting 34 C.F.R. § 300.513(a)(2), other internal quotations omitted).

At the due process hearing in this case, the Petitioner, by counsel, elected not to put on any evidence at all, but to rely on the administrative record. The pleadings in the case record are just that – allegations of the parties which are subject to proof at the due process hearing. *See, e.g., United States v. Kearns*, 595 F.2d 729, 734 (D.C. Cir. 1978). In any event, from my review of the pleadings, as well as the exhibits introduced (by

DCPS) at trial, I find no probative evidence that DCPS' not providing to Petitioner's Counsel copies of all of Student's education records from the last four school years, before the March 16, 2020 school closing, impeded Student's right to a FAPE, impeded Guardian's opportunity to participate or caused Student a deprivation of educational benefit. Petitioner has not met her burden of persuasion on this claim.

ORDER

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

ORDERED:

All relief requested by the Petitioner herein is denied, without prejudice to Petitioner's right to renew her request to inspect and review Student's education records upon the reopening of City School for staff and visitors.

Date: May 21, 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).

Case No. 2020-0072
Hearing Officer Determination
May 21, 2020

cc: Counsel of Record
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