

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
State Enforcement and Investigation Division
Student Hearing Office
Van Ness Elementary School
1150 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 698-3825

OSSE
STUDENT HEARING OFFICE
2009 APR 15 AM 11:10

In Re the Matter of :)
))
Parent on behalf of Student,)
))
Petitioner,)
))
))
v.)
))
The District of Columbia Public Schools)
825 North Capitol Street, N.W.)
Washington, D.C. 20002)
(DCPS" or "District"))
))
Respondent.)
))

Initial Complaint: March 2, 2009
Amended Complaint: March 17, 2009
Date of Pre-hearing: March 9, 2009
Date of Hearing: April 6, 2009

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney Domiento Hill
The Law Offices of James E. Brown and Associates
1220 L Street, N.W., Suite 700
Washington, D.C. 20005

Counsel for Respondent: Attorney Laura George, Assistant Attorney
General, D.C. Office of the Attorney General
825 North Capitol St., N.E., 9th Floor
Washington, D.C. 20002

¹ Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution.

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004
(IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING**

I. INTRODUCTION

The student is _____ years of age, and attends _____ School, located in the District of Columbia. The student is a resident of the District of Columbia; and identified as disabled and eligible to receive special education and related services, pursuant to “The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)”. The student’s disability classification is Other Health Impaired (OHI).

On March 2, 2009, Petitioner’s Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as “DCPS”, denied the student a Free Appropriate Public Education (“FAPE”), by failing to complete an independent *Psychological Evaluation*, pursuant to parent’s request.

On March 11, 2009, DCPS filed “DCPS’ Response to Parent’s Administrative Due Process Complaint Notice and Motion for More Definite Statement”, indicating that the allegation in the complaint filed on March 2, 2009, pertains to DCPS’ completion of an independent Psychological Evaluation, however, the facts in complaint alleges that Petitioner requested an independent Speech and Language Evaluation. DCPS requested a more definite statement of the allegations, prior to providing further response.

On March 17, 2009, Petitioner filed an “*Amended Administrative Due Process Complaint Notice*”; restating the issue and relief requested. The complaint alleges that DCPS failed to complete an independent *Speech and Language Evaluation*, pursuant to parent’s request.

The due process hearing convened on April 6, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

II. JURISDICTION

This proceeding was invoked in accordance with the rights established pursuant to “The Individuals with Disabilities Education Act (“IDEA”)”, Public Law 101-476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”)”, Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations (“DCMR”), Chapter 30, Subtitle VII, Chapter 25.

III. DUE PROCESS RIGHTS

Petitioners' Counsel waived a formal reading of parent's due process rights.

IV. ISSUE

The following issue is identified in the *March 17, 2009* due process complaint:

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to complete an independent Speech and Language Evaluation, pursuant to parent's request?

V. RELIEF REQUESTED

- (1) The Hearing Officer shall find that DCPS denied the student a free and appropriate public education by failing to comply with the parent's request for an independent speech and language evaluation.
- (2) DCPS shall fund the parents' independent speech and language, cognitive psychological, and full clinical psychological evaluation at the prevailing market rates in the community.
- (3) DCPS, within five (5) school days upon receipt of the last of the assessments or a reasonable time as determined by the hearing officer, will reconvene the student's MDT/IEP meeting to review the findings and reevaluation, revise and update the student's IEP, as appropriate.
- (4) DCPS shall fund the parent's compensatory education plan for the FAPE denials in this matter.
- (5) DCPS shall schedule all meetings through the parent's counsel, Domiento C.R. Hill, Esq., in writing, via facsimile, at 202-742-2098.
- (6) DCPS agrees to pay counsel for the parent reasonable attorney's fees and related costs incurred in the matter.
- (7) DCPS shall provide counsel for the parent with copies, pursuant to D.C. MUN. REGS. Tit. 3021.8 (2003), of all evaluation reports and all educational records on the student no later than sixteen (16) business days prior to convening of any meeting.
- (8) DCPS shall send all notices to counsel for the parent with copies of such to the parent and in the parent's native language.

VI. PROCEDURAL POSTURE

On March 2, 2009, Petitioner's Attorney, filed a due process complaint. On March 6, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the pre-hearing conference for March 9, 2009, at 4:00 p.m.. On March 9, 2009, the pre-hearing conference convened, however, failed to proceed due to the parties' failure to appear. On March 9, 2009, the Hearing Officer issued a Pre-hearing Conference Order, confirming the due process hearing for April 6, 2009, at 9:00 a.m..

On March 11, 2009, DCPS filed "DCPS' Response to Parent's Administrative Due Process Complaint Notice and Motion for More Definite Statement". On March 17, 2009, Petitioner filed "Petitioner's Reply to the Respondent's Motion for a More Definite Statement", and an "Amended Administrative Due Process Complaint Notice". DCPS entered no objections to Petitioner's amended complaint.

On March 25, 2009, Respondent filed "DCPS' Motion for Summary Judgment"; and on March 30, 2009, Petitioner filed "Memorandum of Points and Authorities Submitted in Opposition of the Respondent's Motion for Summary Judgment and in Support of the Petitioner's Cross Motion for Summary Judgment". Disclosures were submitted by the parties on March 30, 2009.

Petitioner filed the initial complaint on March 2, 2009, and an amended complaint on March 17, 2009, under Student Case Number: 0358-09. In the interest of judicial economy, the due process complaint filed on March 2, 2009, and the amended due process complaint filed on March 17, 2009 are consolidated; and the issue properly before the court is as follows: Whether DCPS denied the student a free appropriate public education (FAPE); by failing to complete an independent Speech and Language Evaluation, pursuant to parent's request?

VII. PRELIMINARY MATTERS

As a preliminary matter, DCPS entered on the record its Motion for A More Definitive Statement, however, represented that because Petitioner filed an amended due process complaint, clarifying the issue in the complaint, and the relief sought, DCPS would withdraw the motion.

The parties stipulated to certain facts not in dispute, and DCPS requested that the court render a decision on DCPS' Motion for Summary Judgment based on the stipulated facts, and the fact that the relief requested by Petitioner, has been granted.

The Hearing Officer deferred a ruling on DCPS' Motion for Summary Judgment, and Petitioner's Memorandum of Points and Authorities Submitted in Opposition of the Respondent's Motion for Summary Judgment and in Support of the Petitioner's Cross Motion for Summary Judgment. A decision on Respondent's Motion for Summary Judgment, and Petitioner's Cross-Motion for Summary Judgment, is provided herein.

The Hearing Officer also finds that the issue in the March 17, 2009 amended complaint pertains to a Speech and Language Evaluation, therefore, Petitioner's requested relief for an independent cognitive psychological, and full clinical psychological evaluation are not relevant to the issue in the complaint, or matters properly before this court.

VIII. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties and whether there were any objections to the disclosures. Receiving no objections to the disclosures submitted, the disclosures identified herein, were admitted into the record as evidence.

DISCLOSURES SUBMITTED BY PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibit 12; and a witness list dated March 30, 2009.

DISCLOSURES SUBMITTED BY RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibit 04; and a witness list dated March 30, 2009.

IX. STATEMENT OF CASE

1. The student is _____ years of age, and attends

School, located in the District of Columbia. The student is a resident of the District of Columbia; and identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Other Health Impaired (OHI).

2. On October 30, 2007, DCPS convened a MDT meeting, to conduct an annual review of the student's IEP and prepare for reevaluation of the student. The team recommended reevaluation, including a comprehensive psycho-educational and speech evaluation, social history assessment, and behavior scales to "rule out" the disability classifications of emotionally disturbed and learning disabled. The team also recommended counseling to address the student's "anger issues" and frustration.

The team developed a Student Evaluation Plan indicating that the student had developed behavior issues, fights, and is disrespectful to adults; has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD); and is medicated; seems emotionally fragile at times, and cries easily. The SEP recommended a Comprehensive Psycho-educational Evaluation, and behavior scales, Speech and Language Evaluation, and social history assessment. Parent signed the consent form authorizing DCPS to reevaluate the student.

The MDT developed an IEP for the student recommending .5 hours of speech and language services, and .75 hours of psychological services, each week. The team also issued a "Prior to Action Notice", advising parent that based on the student's IEP, his needs can be met at his neighborhood school; and that the student will no longer receive speech and language, or social work services, as a related service.

3. On or about January 15, 2009 and January 29, 2009, DCPS completed a "Speech and Language Evaluation". The student was referred for a "Speech and Language Evaluation", to determine her current level of functioning and assist with appropriate educational planning at the request of the MDT.

The evaluator concluded that assessment data was analyzed in conjunction with DCPS Speech and Language Severity Rating Scale, and assessment results were not consistent with a diagnosis of speech-language impairment. The evaluator also concluded that speech and language intervention was not recommended, at that time.

4. On January 30, 2009, Petitioner's counsel forwarded a letter to the Special Education Coordinator at _____ Academy, confirming participation in a MDT meeting scheduled for February 4, 2009, at 9:00 a.m..

The letter requested reevaluation of the student, by completing psycho-educational, clinical psychological, and psychiatric evaluations; because of concerns regarding the student's academic and behavioral progress, and to render appropriate educational decisions regarding the student. The letter also included a request for an independent Speech and Language Evaluation, pursuant to 34 C.F.R. §300.502 of the IDEIA, because of parent's disagreement with DCPS' findings that her child does not require speech and language services.

5. On February 27, 2009, _____ convened a Multidisciplinary Development Team (MDT) meeting. The MDT determined that the student remained eligible for special education and related services, with a disability of Other Health Impaired (OHI).

The MDT also reviewed a Speech and Language Evaluation completed by DCPS and parent's written request for an independent Speech and Language Evaluation. The MDT advised parent and the Education Advocate that it could not authorize an independent Speech and Language Evaluation; and DCPS can complete the evaluation, if parent disagreed with the prior evaluation completed by DCPS.

The MDT also recommended reevaluation of the student, to include a psychological, educational, and comprehensive clinical psychological evaluation. The MDT developed an IEP for the student, recommending 8 hours of specialized instruction, and .5 hours of behavioral support services, each week.

6. On February 27, 2009, _____ convened a MDT meeting to review the student's recent standardized test score reports, attendance report, current grades, and recent teacher comments; discuss the student's progress in all areas impacted by the disability; develop an IEP that appropriately addresses the student's needs; consider whether transportation and extended school year (ESY) services are needed, and develop a SEP. DCPS was not in attendance.

The team determined that the incident that occurred on January 27, 2009, was a manifestation of her disability; and updated the student's IEP, accordingly. The team developed an IEP for the student recommending 4.0 hours of specialized instruction, and .5 hours of behavioral support services, per week.

determined that the speech and language evaluation could be conducted by DCPS; and if the parent disagrees with the evaluation, may request an independent evaluation.

advised parent and the advocate that academies are non-LE (local education agency) schools for special education purposes; therefore, evaluations are conducted by DCPS personnel or contractors. also advised that although it makes every effort to expedite the process, evaluation timeframes are dependent on DCPS.

The team completed a Student Evaluation Plan (SEP), recommending educational testing, psychological testing, speech and language testing, and testing for ADHD and Post Traumatic Stress Disorder (PTSD). The team requested testing per parent and the advocate's request. The SEP summarizes the following areas of concern: the student is reading with low fluency and has had two (2) occasions during the school year, where his behavior has resulted in suspension. Parent provided written consent for reevaluation of the student.

7. On March 2, 2009, Petitioner's Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS", denied the student a Free Appropriate Public Education ("FAPE"), by failing to complete an independent *Psychological Evaluation*, pursuant to parent's request.

8. On March 10, 2009, DCPS filed with the Student Hearing Office "DCPS' Response to Parent's Administrative Due Process Complaint Notice and Motion for More Definite Statement". DCPS responded that Petitioner's sole allegation appeared to be that DCPS failed to timely comply with the parent's request for an independent speech/language evaluation, pursuant to 34 C.F.R. 300.502.

DCPS also responded that with this written response, it agreed to fund the speech/language evaluation by reimbursing for reasonable and documented fees; and if DCPS had not done so already, it would also provide an authorization letter to this effect. DCPS concluded that there has been no unnecessary delay in ensuring that the independent speech and language evaluation would be funded at public expense.

9. On March 11, 2009, DCPS forwarded a letter to Petitioner's counsel responding to Petitioner's request for the independent speech and language evaluation; and authorizing parent to obtain the evaluation, at DCPS expense.

10. On March 17, 2009, Petitioner filed an "*Amended Administrative Due Process Complaint Notice*"; restating the issue and relief requested. The complaint alleges that DCPS failed to complete an independent *Speech and Language Evaluation*, pursuant to parent's request.

X. DISCUSSION AND CONCLUSIONS OF LAW

Motion and Cross-Motion for Summary Judgment

DCPS represents that there are no genuine issues of material fact remaining for the court to decide, because DCPS responded without unnecessary delay to Petitioner's request for an independent Speech and Language Evaluation; Petitioner failed to present evidence that the student was harmed as a result of any delay occurring; and the relief requested has been granted therefore, the student has not been denied a FAPE.

Petitioner represents that DCPS delayed in responding to parent's request for an independent Speech and Language Evaluation, and as a result, the student was harmed as a result of the delay, and the student was denied a FAPE.

In addressing DCPS' Motion for Summary Judgment, and Petitioner's Opposition to DCPS' Motion for Summary Judgment and Cross-Motion, the parties stipulated to facts not in dispute, and Respondent requested that the court decide the Motion for Summary Judgment, based on the stipulated facts, and the fact that the relief requested by Petitioner is granted.

The parties stipulated to the following facts:

- On January 29, 2009, parent through counsel, requested an independent Speech and Language Evaluation, pursuant to 34 C.F.R. §300.502 of IDEA, because of parent's disagreement with the Speech and Language Evaluation, completed by DCPS.
- The student attends _____ and DCPS is the local education agency for the student.
- On February 27, 2009, parent and the advocate attending a MDT meeting at _____ and renewed its request for an independent Speech and Language Evaluation; and the team failed to authorize the request.
- On March 2, 2009, Petitioner filed a due process complaint alleging that DCPS failed to complete an independent Speech and Language Evaluation, pursuant to parent's request.
- On March 10, 2009, DCPS responded to parent's request for the independent Speech and Language Evaluation, and agreed to fund the independent evaluation.
- On March 11, 2009, DCPS forwarded an independent educational evaluation (IEE) letter to Petitioner's counsel authorizing funding of an independent Speech and Language Evaluation.

Time limitations

After the lawsuit is filed and 20 days have passed, the party seeking to recover on a claim may move for summary judgment. The party against whom a claim is asserted can move for summary judgment at any time.

In this matter, the due process complaint was filed on March 2, 2009, and the Motion for Summary Judgment was filed by DCPS on March 25, 2009, more than twenty (20) days after the date the complaint was filed. On March 30, 2009, Petitioner filed "Petitioner's Cross Motion for Summary Judgment". The motions were filed in a timely manner.

Summary Judgment Standard

After a lawsuit is filed, the plaintiff (the party suing) or the defendant (the party being sued) can file a motion for summary judgment. By making a motion for summary judgment, the moving party claims that all necessary factual issues are resolved or need not be tried because they are so one-sided.

In deciding a summary judgment motion, the court reviews the pleadings, any depositions, any answers to interrogatories, any admissions on file, and any affidavits. Summary judgment should be granted only when there is no genuine issue as to any material fact. A material fact is a fact that could affect the outcome of the case.

An issue of fact is genuine if the evidence would justify a verdict for the party opposing the summary judgment motion. All inferences drawn from the evidence presented and all ambiguities must be resolved in favor of the party who opposes the summary judgment motion.

Burden of Production and Proof

The party making the summary judgment motion has the initial burden of showing the absence of a disputed material fact. If this is shown, the burden of proof shifts to the opposing party to show specific facts that present a genuine issue for trial.

Opposing Party's Obligation to Respond

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

Based on the pleadings, evidence; stipulations, and representations of the parties, the Hearing Officer finds that there are genuine issues of material fact for the court to decide. Therefore, Respondent failed to satisfy its initial burden of showing the absence of a disputed material fact; and the burden of proof does not shift to Petitioner. However, Respondent prevails on the issue of "mootness".

In responding to Petitioner's cross-motion for summary judgment, the court finds that the motion is misplaced. As indicated supra, the standard for a motion for summary judgment is that the moving party claims that all necessary factual issues are resolved or need not be tried because they are so one-sided.

By filing a cross-motion for summary judgment, Petitioner is in fact representing that all necessary factual issues are resolved or need not be tried because they are so one-sided, which would support granting DCPS' motion for summary judgment. However, in its supporting argument, Petitioner argues the merits of the issue, and if accepted on its face, supports a finding that there exist genuine issues of material fact; which is contrary to the standard for a motion for summary judgment.

The Hearing Officer finds that Petitioner's cross-motion fails because it fails to satisfy the standard for a motion for summary judgment; which even if satisfied, would not result in Petitioner's favor.

Based on the pleadings, evidence; and representations of the parties, the Hearing Officer finds that although there are genuine issues of material fact for the court to decide; supporting denial of Respondent's Motion for Summary Judgment; and Petitioner's cross-motion for summary judgment; at the time that the March 17, 2009 amended due process complaint was filed, the issue was "moot", and no longer ripe for review by the court. For reasons provided herein, the due process complaints filed in this matter are dismissed.

DISPOSITION

According to the "D.C. Public Schools, The Special Education Student Hearing Officer Due Process Hearing Standard Operating Procedures (SOP)", §303 (A)(2)(b); if a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.

The record reflects that Petitioner filed the initial complaint on March 2, 2009; and on March 10, 2009 and March 11, 2009, after the complaint was filed, DCPS agreed to fund an independent speech and language evaluation. The fact that DCPS agreed to fund an independent speech and language evaluation after the March 2, 2009 complaint was filed, may not have rendered the issue in the March 2, 2009 complaint "moot". However, in response to DCPS' Notice of Insufficiency, on March 17, 2009, Petitioner amended the due process complaint, identifying a new issue and requesting new relief; and according to the (SOP), §303 (A)(2)(b); when a due process complaint is amended, the timelines for resolving the issues in the complaint begin again.

The record reflects that prior to Petitioner filing the amended due process complaint on March 17, 2009, on March 10, 2009 DCPS agreed to fund the independent speech and language evaluation, and on March 11, 2009, issued an IEE letter authorizing the independent speech and language evaluation, at DCPS expense. Therefore, all necessary factual issues were resolved and need not be tried.

In United States law, a matter is **moot** if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic.

The Hearing Officer finds that at the time Petitioner filed the amended due process complaint, the issue in the March 17, 2009 complaint was “moot”, and no longer ripe for review by the court; and further legal proceedings with regard to it can have no effect, and events have placed it beyond the reach of the law. Therefore, the matter has been deprived of practical significance or rendered purely academic.

Assuming arguendo, the issue in the March 17, 2009 due process complaint is not “moot”; and is ripe for review by the court, the Hearing Officer finds that although DCPS’ initial formal response may have been somewhat delayed, there was no unnecessary delay in ensuring that an independent educational evaluation was provided at public expense. In fact, based on the evidence presented, DCPS responded promptly by convening a meeting, providing parent relevant information regarding obtaining the evaluation; in its response to the complaint DCPS agreed to fund the independent evaluation; and subsequently issued an IEE letter authorizing the evaluation, without any unnecessary delay.

Based on the aforementioned, it is the Hearing Officer’s decision that the issue in the March 17, 2009 due process complaint is “moot”, and no longer ripe for review by the court; and the due process complaints filed on March 2, 2009, and the amended due process complaint filed on March 17, 2009, are dismissed.

XI. ORDER

Based on the aforementioned, it is hereby:

1. **ORDERED**, that DCPS’ Motion for Summary Judgment, and Petitioner’s Cross-Motion for Summary Judgment, is denied; and it is further
2. **ORDERED**, that the due process complaint filed on March 2, 2009, and March 17, 2009, are dismissed; and it is further
3. **ORDERED**, that this decision and order are effective immediately.

XII. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date this decision was issued.

Ramona M. Justice

4-15-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Laura George, Office of the Attorney General
Attorney Domiento Hill: Fax: 202-742-2098