District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance

Student Hearing Office
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Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: January 25, 2010
	)	
Petitioner,	)	Prehearing Order: March 1, 2010
	)	
v.	)	Hearing Date: April 1, 2010
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Docket No.
	)	
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

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STUDENT HEARING OFFICE
2010 APR -9 AM 8:10

HEARING OFFICER'S DECISION

Counsel for Petitioner:

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Counsel for DCPS:

Linda M. Smalls, Esquire
Office of the General Counsel, DCPS
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Washington, D.C. 20002

[1] Personal identification information is provided in Appendix A.

Jurisdiction

This hearing was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Introduction

Petitioner is a year-old student attending On January 25, 2010, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) conduct manifestation determinations, (2) implement the Individualized Education Program ("IEP"), (3) conduct triennial evaluations, (4) evaluate Petitioner in all areas of suspected disability, and (5) provide an appropriate placement. In a Prehearing Order issued on March 1, 2010, the Hearing Officer determined the issues to be determined as follows:

- DCPS' alleged failure to conduct manifestation determinations

  Petitioner alleges that DCPS failed to conduct manifestation determinations for suspensions during the 2009-2010 school year. Petitioner's counsel was unable to provide specific dates, durations, or reasons for the alleged suspensions. This issue will be adjudicated only if Petitioner provides specific dates of the alleged suspensions, the durations of the suspensions, and the reasons for the suspensions in the Five-Day Disclosure.

  DCPS asserts that Petitioner has not been suspended during the 2009-2010 school year.

- DCPS' alleged failure to implement the IEP

  Petitioner alleges that DCPS has failed to provide a special education teacher to support Petitioner in his general education classes as required in the IEP. DCPS asserts that Petitioner has received all of the services prescribed in his IEP.

- DCPS' alleged failure to conduct triennial evaluations

  Petitioner alleges that DCPS has not conducted a psychological evaluation since 2006 and has not conducted a speech and language evaluation since 2003. DCPS asserts that a Multidisciplinary Team ("MDT") on December 2, 2009 determined that Petitioner presented with no criteria warranting these evaluations.

- DCPS' alleged failure to evaluate in all areas of suspected disability

  Petitioner alleges that DCPS has ignored Petitioner's written request for an occupational therapy ("OT") evaluation and a functional behavior assessment ("FBA"). He needs an OT evaluation due to his problems with legibility, and he needs an FBA because of behavior-related suspensions and detentions. DCPS asserts that Petitioner is not a behavior problem and an MDT on December 2, 2009 determined that Petitioner presented with no criteria warranting these evaluations.

- DCPS' alleged failure to provide an appropriate placement

  Petitioner alleges that is incapable of meeting Petitioner's educational needs, particularly his social/emotional needs. DCPS asserts that has and can implement Petitioner's IEP.

The due process hearing was convened and completed on April 1, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. At the conclusion of Petitioner's direct case, the Hearing Officer granted DCPS' motion for a directed verdict on all issues except DCPS' alleged failure to conduct triennial evaluations.

Witnesses for Petitioner

Petitioner's Mother
Petitioner
CEO,

Witnesses for DCPS

None

Findings of Fact

1. Petitioner is a year-old student attending

2. On December 13, 2006, DCPS completed a Psychological Evaluation of Petitioner.[4]

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[2] The Hearing Officer sustained DCPS' objection to opinion testimony from Petitioner's counsel failed to notify DCPS of her intention to call an expert witness, and to provide a *curriculum vitae* in the Five-Day Disclosure, as required in the Prehearing Order.
[3] Testimony of Petitioner's mother.
[4] Petitioner's Exhibit ("P.Exh.") No. 1.

3. On April 7, 2009, DCPS convened an MDT meeting and developed an IEP. The IEP included goals and objectives in Mathematics, Reading, Written Expression, and Emotional, Social, and Behavioral Development.[5] The MDT prescribed 15 hours per week of specialized instruction.[6]

4. At the end of the second advisory period of the 2009-2010 school year, Petitioner received the following grades: A in Projects & Problem Solving, Bs in Health & Physical Education and Science, Cs in Computer Applications and Math, and Passing in MS Support and Reading Workshop MS.[7]

5. Petitioner receives five hours of special education support in mathematics each week from and ten hours of special education support in reading each week from

Conclusions of Law

Failure to Conduct Manifestation Determinations

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local education agency ("LEA"), the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or (2) if the conduct in question was the direct result of the LEA's failure to implement the IEP.[9] Petitioner offered no evidence of a suspension or any other change in placement. Although Petitioner testified that he has received four in-school detentions during the current school year, these do not constitute a change in placement. Therefore the Hearing Officer granted DCPS' motion for a directed verdict on this issue.

Failure to Implement the IEP

Petitioner testified that he receives fifteen hours per week of special education support in mathematics and reading as prescribed in his IEP. Therefore the Hearing Officer granted DCPS' motion for a directed verdict on this issue.

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[5] DCPS Exh. No. 5 at 2-4.
[6] *Id.* at 5.
[7] P.Exh. No. 13.
[8] Testimony of Petitioner; P.Exh. No. 13.
[9] 34 C.F.R. §300.530(e)(1).

Failure to Evaluate in All Areas of Suspected Disability

The LEA must evaluate a child suspected of a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.[10] No single procedure should be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.[11] Petitioner's counsel argued that Petitioner needs an OT evaluation due to his problems with legibility, and he needs an FBA because of behavior-related suspensions and detentions. However, counsel offered no evidence as to deficiencies in Petitioner's motor control. As for the FBA, Petitioner received four in-school detentions for relatively minor infractions, and has not been suspended at any time during the school year. The Hearing Officer concludes that Petitioner failed to meet his burden of proving that DCPS failed to evaluate him in areas of suspected disability. The Hearing Officer reached the same conclusion in an HOD dated September 4, 2009.[12]

Failure Provide an Appropriate Placement

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[13] the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

> The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to *benefit* from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[14]

Thus, Petitioner's burden is to show that DCPS has not, and is incapable of providing an environment in which Petitioner can derive educational benefit. Petitioner offered no evidence that he is not deriving educational benefit at His second advisory progress report indicates that he is making satisfactory progress in all of his

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[10] 34 C.F.R. §300.304(c)(4).
[11] 34 C.F.R. §300.304(b)(2).
[12] Docket No. 2009-958 at 5-6.
[13] 458 U.S. 176 (1982).
[14] *Rowley, supra,* at 200-01.

courses. Therefore the Hearing Officer granted DCPS' motion for a directed verdict on this issue.

Failure to Conduct Triennial Evaluations

Once a child has been determined to be eligible for services, he or she must be reevaluated at least every three years.[15] DCPS has not conducted a psychological evaluation since the evaluation it conducted in 2006. Therefore, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to conduct a triennial evaluation.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 9th day of April 2010, it is hereby

ORDERED, that Petitioner is authorized to obtain an independent comprehensive psychological evaluation in accordance with 5 D.C.M.R. Section 3027.5. Petitioner's counsel shall provide copies of the completed evaluation to the Special Education Coordinator at Jefferson and the DCPS Office of Special Education ("OSE") Resolution Team by facsimile transmission and first-class mail along with a written request to schedule the MDT meeting described below.

IT IS FURTHER ORDERED, that within fifteen (15) school days of its receipt of the independent evaluation, DCPS shall convene an MDT meeting.[16] DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Olekanma Ekekwe, Esquire. The MDT shall review all current evaluations and assessments and update Petitioner's IEP as necessary.

IT IS FURTHER ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education

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[15] 34 C.F.R. §300.303(b)(2).

[16] For purposes of this HOD, a school day means a day when regular classes are held. If the independent evaluation is not provided to DCPS before the end of May 2010, the MDT meeting shall be scheduled for a date at the beginning of the 2010-2011 school year.

Coordinator at Jefferson and the DCPS OSE Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.[17]

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision 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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/
Terry Michael Banks
Hearing Officer

Date: April 9, 2010

[17] If DCPS fails to contact Petitioner's counsel to coordinate scheduling the MDT meeting by a date that would make compliance with this Order feasible, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.