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: April 28, 2009
	)	
Petitioner,	)	Prehearing Conference: May 18, 2009
	)	
v.	)	Hearing Date: May 26, 2009
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Docket No.
	)	
	)	
Respondent.	)	
	)	
Student Attending:	)	
Academy	)	

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STUDENT HEARING OFFICE
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HEARING OFFICER'S DECISION

Counsel for Petitioner:
Zachary Nahass, Esquire
James E. Brown & Associates
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(202) 742-2000; Fax: (202) 742-2098

Counsel for DCPS:
Daniel McCall
Tanya Chor, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

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

Jurisdiction

This hearing was invoked 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 April 28, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) evaluate Petitioner in all areas of suspected disability, and (2) provide necessary services. The Hearing Officer issued a Prehearing Order on May 18, 2009 specifying the issues to be adjudicated as follows:

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

  Petitioner alleges that a Multidisciplinary Team ("MDT") meeting was convened on February 25, 2009 at which Petitioner was referred for a speech and language ("S/L") evaluation. That evaluation has not been conducted. DCPS asserts that while the MDT discussed speech services, particularly a 2005 S/L evaluation, no re-evaluation was deemed necessary, and Petitioner was not referred for a re-evaluation.

- DCPS' failure to provide necessary services

  Petitioner alleges that DCPS has failed to provide Petitioner speech and language services. DCPS asserts that Petitioner was previously exited from S/L services and no new services are indicated.

The due process hearing was convened and completed on May 26, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.

Record

Due Process Complaint Notice dated April 28, 2009
DCPS Resolution Session Waiver dated April 29, 2009
District of Columbia Public School's Response to Parent's Due Process Complaint Notice dated May 11, 2009
District of Columbia Public School's Notice of Insufficiency to Parent's Due Process Complaint dated May 11, 2009
Opposition to DCPS' Notice of Insufficiency dated May 12, 2009
Prehearing Order dated May 18, 2009
DCPS' Five-Day Disclosure dated May 19, 2009 (Exhibit Nos. 1-9)
Petitioner's Five-Day Disclosure dated May 19, 2009 (Exhibits 1-7)
Attendance Sheet dated May 26, 2009
CD-Rom of Hearing conducted on May 26, 2009

Witnesses for Petitioner

Petitioner's Mother

Witnesses for DCPS

None

Findings of Fact

1. Petitioner is a year old student attending

2. On March 3, 2008, DCPS convened a MDT to develop Petitioner's annual Individualized Education Program ("IEP"). The MDT classified Petitioner with an emotional disturbance ("ED")[3] and prescribed 29.5 hours per week of specialized instruction and ninety minutes per week of behavioral support services.[4]

3. During the MDT meeting, Petitioner's educational advocate raised the issue of speech and language services for Petitioner. In 2005, speech and language services were terminated.[5] The MDT developed a Student Evaluation Plan ordering a speech and language evaluation.[6]

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[2] *Complaint* at 1.
[3] Petitioner's Exhibit ("P.Exh.") No. 5 at 1.
[4] *Id.* at 13.
[5] P.Exh. No. 6 at 2.
[6] P.Exh. No. 7.

Conclusions of Law

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.[7] 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.[8] In this case, the MDT determined that Petitioner "would benefit from speech/lang." and ordered a speech and language evaluation to be conducted. That evaluation has not been conducted, and DCPS offered no evidence of any intention to conduct the evaluation. Therefore, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS has failed to evaluate Petitioner in all areas of suspected disability.

Petitioner offered no testimony on the second allegation in the *Complaint*, that DCPS failed to provide necessary services. There was no testimony suggesting that Petitioner actually suffers from speech or hearing deficiencies. There was only a brief reference in the meeting notes that speech services were terminated in 2005. Therefore, at this time, there is no indication that Petitioner requires speech services. The Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS has failed to provide needed speech services to Petitioner.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearings, and the representations of the parties' counsel at the hearing, this 4th day of June 2009, it is hereby

ORDERED, that Petitioner is authorized to obtain an independent speech and language evaluation *and is not constrained by 5 D.C.M.R. Section 3027.5*. Petitioner's counsel shall provide copies of the completed assessment to the Special Education Coordinator at the appropriate DCPS Placement Specialist, and the DCPS Office of Special Education ("OSE") Legal Unit by facsimile transmission and first-class mail along with a written request to schedule the MDT meeting described below *only if the independent evaluation recommends the need for speech services*.

IT IS FURTHER ORDERED, that within fifteen (15) school days of its receipt of the independent evaluations, and in the event the independent evaluation recommends the need for speech services, DCPS shall convene an MDT meeting at DCPS

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[7] 34 C.F.R. §300.304(c)(4).
[8] 34 C.F.R. §300.304(b)(2).
[9] For purposes of this HOD, a school day means a day when regular classes are held at If one of Petitioner's teachers is not available due to summer vacation, the MDT meeting shall be scheduled for a date at the beginning of the 2009-2010 school year.

shall coordinate scheduling the MDT meeting with Petitioner's counsel, Zachary Nahass, 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 Coordinator at the appropriate DCPS Placement Specialist, and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply. [10]

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: June 4, 2009

[10] 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.