

**DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF COMPLIANCE & REVIEW
STATE ENFORCEMENT & INVESTIGATION DIVISION
STUDENT HEARING OFFICE**

CONFIDENTIAL

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STUDENT HEARING OFFICE
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HEARING OFFICER'S DETERMINATION

IN THE MATTER OF:)	
)	
DOB)	DATE OF HEARING
)	July 10, 2009
Student I.D.)	
Petitioner)	DATE OF COMPLAINT
)	June 1, 2009
V.)	
)	
The District of Columbia)	ATTENDING SCHOOL:
Public Schools,)	
Respondent)	

COUNSEL FOR PARENT/STUDENT: **Domiento Hill**
James E. Brown & Assoc.
1220 L Street, N.W.
Ste. 700
Washington, D.C. 20005

COUNSEL FOR DCPS: **Laura George**
Office of the General Counsel
825 North Capitol Street, N.E., 9th Fl.
Washington, D.C. 20002-4232

STUDENT¹, by and through his Parent

Petitioners,

v.

DCPS

Respondent.

HEARING OFFICER'S
DETERMINATION

July 19, 2009

Representatives:

Petitioner – Domiento Hill
DCPS – Laura George

Hearing Officer:

Jane Dolkart

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old student eligible for special education under the classifications of Other Health Impaired (OHI) and Learning disabled (LD). The student presently attends a full time special education school for students with learning disabilities. The student was placed at by DCPS and at DCPS expense. This complaint was filed alleging that DCPS has denied the student FAPE by refusing to fund the student at a two week summer program at designed to aid students in completing mandatory summer assignments in math and reading.

A pre-hearing conference in this case was held on June 16, 2009, and a pre-hearing order was issued on June 23, 2009.

DCPS filed a waiver of resolution session June 3, 2009.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by refusing to fund a two week summer program at designed to aid students in completing mandatory summer assignments in reading and math?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated June 24, 2009, containing a list of witnesses with attachments P 1-10. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, the student's educational advocate, and the Head of School at

DCPS submitted a five day disclosure letter dated June 24, 2009, containing a list of witnesses with attachments DCPS 1-2. The disclosure was admitted in its entirety. DCPS did not call any witnesses.

V. FINDINGS OF FACT

1. This is a year old student eligible for special education under the classifications of Other Health Impaired (OHI) and Learning disabled (LD). The student presently attends , a full time special education school for students with learning disabilities. The student was placed at by DCPS and at DCPS expense. (P 5, Testimony of mother, educational advocate).

2. An IEP meeting was held for the student on May 18, 2009. At the meeting DCPS agreed to continue to fund the student at for the 2009-2010 school year. DCPS refused to fund the two week summer program at (P 5, Testimony of educational advocate, mother).

3. The student received grades all of which ranged in the A to B range during the first three quarters of the 2008-2009sy. The student is doing very well at and intends to go on to college. (P 5, DCPS 2).

4. Students at are given required summer work in reading and math, for which they are graded. (Dr. Susan Johnson)

5. In order to help students successfully complete their summer assignments, runs a summer program consisting of one week of math and one week of reading. The program is for students only and costs per week. Approximately 20-25% of students attend the summer program. Those who attend the program are students motivated to do well and students with attention issues and low reading efficiency. The student would benefit from the program. (Testimony of Dr. Susan Johnson).

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.*, guarantees “all children with disabilities” “a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency . . . , (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEAs guarantee of FAPE “is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a “basic floor of opportunity” for students with disabilities. It need not provide the best education possible, but the educational

benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3rd Cir. 1988).

This is a student who is motivated to do well in school, and has done well at
If the legal standard under the IDEA required DCPS to provide all specialized instruction that would benefit the student, there is no question but that that summer program would meet that standard. However, the law is very clear that DCPS need not provide the best possible education for the student, but only that education which would provide him with a floor of opportunity.

DCPS is already funding the student's full time placement at and the student is clearly receiving substantial educational benefit from that placement. The summer program at is optional and only approximately 20-25% of students take advantage of it. The evidence suggests that this student is capable of successfully completing the summer assignments without the summer program, as do the vast majority of students.

Petitioner has failed to meet her burden of proof that DCPS has denied the student FAPE by refusing to fund the summer program at

VII. SUMMARY OF RULING

DCPS has not denied the student FAPE.

VIII. ORDER

It is hereby **ORDERED** that this case be dismissed with prejudice.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: July 19, 2009