

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 guardian¹)	Complaint Filed: June 23, 2009
)	
Petitioner,)	Prehearing Order: July 22, 2009
)	
v.)	Hearing Date: August 4, 2009
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

HEARING OFFICER'S DECISION

Counsel for Petitioner: Christopher L. West, Esquire
James E. Brown & Associates
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Counsel for DCPS: Candace Sandifer, Esquire
Office of the General Counsel, DCPS
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¹ Personal identification information is provided in Appendix A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("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.

Background

Petitioner is a year-old student attending

On October 29, 2008, Petitioner filed a Due Process Compliant Notice alleging that the District of Columbia Public Schools ("DCPS") failed to (1) conduct evaluations ordered at a Multidisciplinary Team ("MDT") meeting, (2) review completed evaluations, (3) convene an MDT upon the parent's request, and (4) develop an appropriate Individualized Education Program ("IEP). On December 2, 2008, this Hearing Officer issued a Hearing Officer's Decision ("HOD") concluding that Petitioner had met his burden of proving that DCPS has failed to evaluate Petitioner in all areas of suspected disability. The HOD authorized Petitioner to obtain an occupational therapy ("OT") evaluation and a psychological assessment to determine Attention Deficit Hyperactivity Disorder ("ADHD"). The HOD ordered DCPS to convene a Multidisciplinary Team ("MDT") meeting within fifteen (15) school days of DCPS' receipt of the independent evaluations to review all current evaluations, revise the IEP as necessary, and discuss placement alternatives.

Petitioner filed the instant Due Process Compliant Notice ("*Complaint*") on June 23, 2009 alleging that DCPS violated the December 2, 2008 HOD, failed to develop an annual IEP, failed to develop an appropriate IEP, and failed to provide an appropriate placement. The due process hearing was convened on August 12, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. Neither party offered testimonial evidence. The parties agreed to relief for Petitioner as is described in the Findings of Fact below.

Record

Due Process Complaint Notice dated June 23, 2009

DCPS Resolution Waiver dated June 23, 2009

District of Columbia Public School's Response to Petitioner's Due Process Complaint dated July 1, 2009

Prehearing Order July 22, 2009

DCPS' Five-Day Disclosure dated July 28, 2009 (Exhibit Nos. 1-5)

Petitioner's Five-Day Disclosure dated July 28, 2009 (Exhibit Nos. 1-18)

Consent Motion to Continue Due Process Hearing dated August 5, 2009

Interim Order dated August 10, 2009

Findings of Fact

1. Petitioner is a year-old student attending
2. During the hearing, the parties agreed to the following relief for Petitioner: within fifteen (15) school days of the hearing, DCPS shall convene a Multidisciplinary Team ("MDT") meeting to review all current evaluations, update Petitioner's IEP, discuss public and private school placement alternatives, and discuss and determine Petitioner's need for compensatory education services.

Conclusions of Law

The parties' agreement is in Petitioner's best interests and its terms will be substantially included in the order below.³

ORDER

Upon consideration of Petitioner's request for a due process hearing, Petitioner's Five-Day Disclosure Notice, and the representations of the parties' counsel at the hearing, this 21st day of August 2009, it is hereby

ORDERED, that on or before September 15, 2009 DCPS shall convene an MDT meeting to review all current evaluations, develop an Individualized Education Program ("IEP"), and discuss placement alternatives.

² *Complaint* at 1.

³ The Order will not include a requirement to discuss compensatory education services. "Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a give period of time to provide a FAPE to a student..." *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. 2005). "[C]ourts and hearing officers may award "educational services . . . to be provided prospectively to compensate for a past deficient program." *Id.* at 522. Thus, compensatory education services constitute relief to be awarded upon a finding of a violation of IDEA. In the absence of an agreement between the parties that a certain amount of such services are warranted, compensatory education services is not an appropriate subject of discussion for an MDT. In fact, the Court in *Reid* held that a hearing officer "may not delegate his authority to a group that includes an individual specifically barred from performing the hearing officer's functions." *Id.* at 526. Since the hearing officer is required to be independent of DCPS, the hearing officer may not delegate his authority to award compensatory education services to a team that includes an employee of DCPS. Rather than discuss compensatory education services, the MDT should determine an educational plan that meets Petitioner's unique needs. If the MDT is aware that Petitioner was deprived of services to which Petitioner was entitled for a finite period of time, an appropriate program may require services in addition to the traditional formula of specialized instruction and an hour or two per week of related services.

IT IS FURTHER ORDERED, that DCPS shall afford Petitioner's parent an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS representative shall advise Petitioner's parent of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parent. DCPS shall provide Petitioner's parent an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes. DCPS shall issue a Prior Notice within seven days if Petitioner is placed in a public facility or within 30 days if Petitioner is placed in a private facility.

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 Langdon and the Office of Special Education Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.⁴

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 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: August 21, 2009

⁴ If DCPS fails 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.