DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
STUDENT HEARING OFFICE
2010 NOV 30 PM 4: 40

Parent, on behalf of the Student,[1]

Petitioner,

v.

The District of Columbia Public Schools,
("DCPS")

Respondent.

Date Issued: November 30, 2010

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2006

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; 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; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL HISTORY

On September 30, 2010, parent, through her Attorney, filed an "Administrative Due Process Complaint Notice", on behalf of the student, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free appropriate public education (FAPE), because it failed to ensure that as soon as possible following development of the student's June 8, 2010 IEP, the student received the 13 hours of specialized instruction in the general education setting, 1 hour of counseling services, 1 hour of speech and language services, per week; 1 hour per month of speech and language consultation services; classroom and Statewide Assessment accommodations, in accordance with the IEP.

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

The Petitioner seeks relief in the form of an Order finding that the Respondent denied the student a free appropriate public education by failing to implement the student's June 8, 2010 IEP; that the Hearing Officer order immediate implementation of the student's June 8, 2010 IEP; and award the student compensatory education services, to compensate the student for the services he failed to receive from August 23, 2010, the beginning of the 2010/2011 school year, through September 30, 2010, the date of the complaint.

The due process complaint was assigned to this Hearing Officer on October 1, 2010; and on October 4, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for October 20, 2010 at 3:00 p.m... The Hearing Officer also issued an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting. Due to the unavailability of the parties on October 20, 2010, the prehearing conference was rescheduled and held on October 18, 2010. On October 19, 2010, Respondent filed a response to the complaint; and on October 20, 2010, the Hearing Officer issued a "Prehearing Order", summarizing the issues in the complaint, matters discussed, and confirming the due process hearing for November 22, 2010, at 9:00 a. m...

The due process hearing convened on November 22, 2010, at 9:00 a.m., at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by counsel; Petitioner's Attorney provided an opening statement; and the Respondent waived an opening statement. The parties introduced no preliminary matters; or objected to the introduction of disclosures submitted by opposing counsels. The Petitioner offered into evidence Petitioner's Exhibits 1-16; and the Respondent offered no exhibits. Each party submitted witness lists dated November 15, 2010. Receiving no objection, Petitioners' Exhibits 1-16 were admitted into the record as evidence.

Petitioner's witnesses included the student's parents, Education Advocate, independent mentor and tutor from Newlen Educational Services, and the Chief Executive Officer and Co-Founder of Newlen Educational Services. Respondent's witnesses included the Case Manager and Speech and Language Pathologist, at the student's senior high school.

III. BACKGROUND

The student resides in the District of Columbia with his biological father and stepmother; is fifteen (15) years of age; and a 9th grade student at a District of Columbia public high school. The student is disabled and eligible to receive special education and related services, pursuant to "The the Individuals with Disabilities Act" ("IDEA"); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), under the disability classification of multiple disabilities.

On June 8, 2010, a MDT developed an Individualized Education Program (IEP) for the student, recommending 13 hours of specialized instruction in the general education setting, 1 hour per week of counseling services, 1 hour per week of speech and language services, 1 hour per month of speech and language consultation services, and classroom accommodations.

On September 30, 2010, Petitioner filed a due process complaint alleging that the Respondent denied the student a free appropriate public education because since the beginning of the 2010/2011 school year, the DCPS failed to implement the student's June 8, 2010 IEP, by failing to provide the student the specialized instruction, related services, and accommodations, recommended in the IEP.

The Petitioner also alleges that because the DCPS failed to implement the student's June 8, 2010 IEP, the student struggles academically and behaviorally, has ideations and attempted suicide, is depressed and withdrawn, is reluctant to attend school, and is increasingly tardy.

IV. ISSUE

The issue before the Hearing Officer is as follows:

Whether D.C. Public Schools denied the student a free appropriate public education, because it failed to implement the student's June 8, 2010 IEP, by failing to ensure that as soon as possible following development of the IEP, the student received the special education and related services; classroom and Statewide Assessment accommodations, in accordance with the student's IEP?

V. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is years of age; and a grade student at a District of Columbia public high school.[2] The high school adopts an inclusion method of teaching, wherein, the specialized instruction is provided by a Special Education Teacher, in cooperation with the student's General Education Teacher, in the general education setting, with non-disabled students.

2. On May 25, 2010 an IEP team reviewed the student's Comprehensive Psychological Evaluation, Speech and Language Evaluation, and a Vocational Evaluation; and determined the student eligible to receive special education and related services; under the disability classification of multiple disabilities, including specific learning disability, and other health impairment, identified as attention deficit hyperactivity disorder, inattentive type.[3]

3. On June 8, 2010, an Individualized Education Program (IEP) was developed for the student, recommending 13 hours of specialized instruction in the general education setting, 1 hour of counseling services, and 1 hour of speech and language services, weekly; 1 hour per month of speech and language consultation services; classroom and Statewide Assessment accommodations, to include: repetition of directions, simplification of oral directions, calculators, location with minimal distractions, preferential seating, extended time on subtests, and breaks during a subtest.[4]

---

[2] Petitioner's Exhibit 1.
[3] Petitioner's Exhibits 4 and 5.
[4] Petitioner's Exhibit 1.

The IEP team determined that the student would receive 6.5 hours of specialized instruction per week, in Geometry; and 6.5 hours per week in extended literacy for a total of 13 hours per week of specialized instruction, in the inclusion setting; without discussing the days and times of the week the student would receive the services.[5] Each session with the Special Education Teacher is approximately 85-90 minutes in length.[6] The student also receives tutoring and mentoring services, outside of school, from Newlen Education Services.[7]

4. The student began attending the DCPS high school at the beginning of the 2010/2011 school year; and according to the September 23, 2010 and October 28, 2010 progress reports, the student progressed academically and behaviorally, although at times, was tardy or absent. For instance, although it is documented that the student was excessively tardy in his Biology I class, according to his October 28, 2010 progress report, he received a grade of "B".[8] Petitioner presented no evidence of academic regression.

5. Allegations that the DCPS failed to implement the student's June 8, 2010 IEP, are unsubstantiated, and are not based on the parent's knowledge, information, personal observation; or information gathered from other sources.

The parent has no knowledge regarding the provision of specialized instruction and related services the student received or failed to receive during the 2010/2011 school year. The parent has very limited familiarity with the students' IEP, its content, the individuals responsible for providing the specialized instruction and related services; or when the student receives the specialized instruction.

Although the parent is aware that the student is entitled to receive support in the classroom, she has no knowledge regarding the nature and amount of support the student is entitled to receive each day, the individual responsible for providing the student the specialized instruction, the days and times during the week the services are provided; or whether the accommodations in the student's IEP are provided.

Additionally, the parent is unable to identify the student's special and general education teachers; has had no discussions with the student's teachers, or service providers at the student's school, regarding the provision of specialized instruction and related services, and classroom accommodations. Discussions with the student were also limited to whether an Assistant was present in his classes.[9]

Unless the parent becomes personally familiar with the student's teachers, their roles and responsibilities, and has a discussion with the student and each of the student's teachers regarding the provision of services and accommodations as recommended in the June 8, 2010 IEP, she is unable to determine whether the student received the services and accommodations, as recommended in his IEP, since the beginning of the 2010/2011 school year.

---

[5] Petitioner's Exhibits 2 and 3.
[6] Testimony of DCPS Case Manager.
[7] Testimony of CEO, Mentor and Tutor at Newlen Education Services.
[8] Petitioner's Exhibits 9 and 10.
[9] Testimony of Parent.

On several occasions, ***after filing of the complaint***, for approximately 1 to 4 minutes in duration, the parent peered through the windows of the student's Geometry and other classes, and observed one teacher in the class, however, the parent has no knowledge whether the teacher was the student's special or general education teacher; [10] or at what times during the week the student receives services. There is no evidence that the parent observed the student in the classroom prior to filing of the complaint.

The parent also opines, albeit in error, that as an accommodation, the student's IEP recommends a college calculator which allows the student to perform Geometry tasks, however, the June 8, 2010 IEP merely recommends a calculator, which is only intended to assist the student with basic math calculations; which the student received.[11] Any delay in providing the student the calculator is no more than deminimis, because the student continued to progress academically.[12]

6. The Education Advocate has no personal knowledge of whether the student failed to receive the specialized instruction, related services, or accommodations, as recommended in his June 8, 2010 IEP. The Education Advocate failed to observe the student in his classes; discuss the provision of services and accommodations with the student, student's teachers, or service providers at the student's school; however, relied solely upon representations of the parent that the student failed to receive the services recommended in his IEP.[13]

The Education Advocate also relied solely upon information received by the parent, in developing the proposed Compensatory Education Plan. The proposed plan was not based on personal observation of the student in the classroom or information gathered from the student, student's teachers or service providers at the school; which is necessary in determining whether the student failed to receive the services recommended in his IEP, identifying the services the student failed to receive, and offering an opinion regarding the services necessary to place the student in the position he would have been had the services been provided.[14] Therefore, this evidence is also unreliable.

On November 10, 2010, ***after filing of the complaint***, the Education Advocate forwarded an email to the Special Education Coordinator at the student's high school, indicating that on this date she telephoned and left a message requesting encounter tracking forms to determine the related services received by the student.[15]

There is no evidence that prior to filing of the complaint, the Education Advocate sought, or obtained the information necessary to determine whether the student received the specialized instruction, related services, or accommodations, as recommended in his June 8, 2010 IEP. The Education Advocate reportedly visited the student's school to obtain access to the student's encounter tracking forms, to verify the provision of related services, however, the date of the visit is uncertain.[16]

---

[10] Testimony of Parent.
[11] Testimony of DCPS Case Manager and Petitioner's Exhibit 1.
[12] Petitioner's Exhibits 9 and 10.
[13] Testimony of Education Advocate.
[14] *Id.*
[15] Testimony of Education Advocate and Petitioner's Exhibit 12.
[16] Testimony of Education Advocate.

7. The Petitioner presented no evidence, that the student failed to receive the services and accommodations recommended in his June 8, 2010 IEP, either through witnesses, documentary evidence, student testimony, or compelling the appearance of DCPS' teachers and service providers to testify regarding the provision of services and accommodations, as recommended in the student's IEP.

There is evidence that the student began receiving speech and language services on September 24, 2010, approximately one month after the start of the 2010/2011 school year, however, missed services were subsequently provided to the student.[17] Furthermore, any impact on the student's learning is deminimis because the student received any missed services; and continued to progress academically.[18]

8. There is no evidence that the student struggles academically or behaviorally, has ideations and attempted suicide, is depressed and withdrawn, is reluctant to attend school; or that these reported symptoms and the student's tardiness are because the student failed to receive the services and accommodations, recommended in the student's June 8, 2010 IEP, during the 2010/2011 school year.

9. The allegations in the complaint and witness testimony are based solely on representations of the parent, which is unreliable and unsubstantiated.[19]

VI. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[20] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[21]

2. The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), is the federal statute governing the education of students with disabilities; and the Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.

3. The IDEIA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d)(I)(A)*.

---

[17] Testimony of the Speech/Language Pathologist.
[18] Testimony of Speech/Language Pathologist.
[19] Testimony of Parent, Education Advocate, Chief Executive Officer and Mentor at the Newlen Educational Center.
[20] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[21] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)

The IDEIA defines a FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State involved; and that the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[22]

4. The IDEA, at 34 C.F.R. §300.323(c) (2) provides in pertinent part that each public agency must ensure that as soon as possible following development of a child's IEP, special education and related services are made available to the child in accordance with the child's IEP.

5. The Petitioner failed to prove by a preponderance of the evidence that the DCPS denied the student a FAPE, because it failed to implement the student's June 8, 2010 IEP, by failing to ensure that as soon as possible following development of the IEP, the student received the special education and related services; classroom and Statewide Assessment accommodations, in accordance with the student's IEP; in violation of the IDEA, at 34 C.F.R. §300.323(c) (2).

VII. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that the relief requested by the Petitioner, in the complaint, is denied.

IIX. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: *November 30, 2010*

Ramona M. Justice
Attorney Ramona M. Justice
Hearing Officer

[22] IDEA, 34 C.F.R. §300.17(d).