

I. 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.

II. BACKGROUND

Petitioner is the parent of a _____ year-old student attending a non-public school. Petitioner filed a Due Process Compliant Notice ("Complaint") on March 26, 2009, and an Amended Complaint on April 23, 2009. On April 29, 2009, counsel for Petitioner filed *Petitioner's Motion for Leave to Amend or in the Alternative Motion to Consolidate* as instructed by this Hearing Officer. On May 10, 2009, this Hearing Officer granted the Motion, consolidated the two cases.

The Consolidated Complaint alleged that DCPS denied the Student a free, appropriate, public education ("FAPE") by failing to:

- A. Review and revise the Student's individualized educational program ("IEP"), which expired on February 26, 2009;
- B. Provide Petitioner a meaningful opportunity to participate in the Student's educational decisions by failing to timely revise the Student's individualized educational plan ("IEP"), which expired on February 26, 2009;
- C. Timely review and revise the Student's evaluations, which expired on May 15, 2005, and re-evaluate the Student in response to Petitioner's September 23, 2008, request for psycho-educational, speech and language, vocational, and social history evaluations;
- D. Include Petitioner at the multidisciplinary team ("MDT") meeting at which the MDT reviewed and revised the Student's IEP; and
- E. Provide the Student an appropriate educational placement at a DCPS public high school, which necessitated Petitioner's unilateral placement of the Student at the non-public school on Sept. 30, 2008.

The Consolidated Complaint further alleged that the student's disability code is mental retardation and his IEP requires DCPS to provide the Student 21 hours of specialized instruction outside of the general education setting. It alleged that DCPS placed the Student in a general education classroom with 25 students, an inappropriate setting for the Student. The Consolidated Complaint requested relief that included an order requiring DCPS to fund independent psycho-educational, speech and language, vocational, and social history evaluations of the Student. It requested an order requiring DCPS to fund the Student's placement at the non-public school and transportation to and from the school. It further requested that this Hearing Officer order DCPS to fund compensatory education for the Student.

Counsel for Respondent filed a timely Response to Parent's Administrative Due Process Complaint Notice ("Response") on April 3, 2009, and a timely Response and Motion to Dismiss Complaint 2 on April 24, 2009. The Responses asserted that DCPS updated the Student's IEP on March 11, 2008, after attempting without success to invite the parent to the IEP meeting, the Student's non-public placement is now solely responsible for further updating the Student's IEP, and that Petitioner waited too long to request re-evaluations and thus is barred by the common law doctrine of laches. The Response further asserted that, after unilaterally placing the Student in a non-public placement, Petitioner failed to register the Student with the DCPS Private and Religious Office, which is responsible for coordinating services for Students in non-public schools. Finally, the Response asserted that the Student was not denied a FAPE by DCPS and thus funding of the private placement and compensatory education are not warranted.

This Hearing Officer held a prehearing conference on May 29, 2009. Participating in the conference were counsel for Petitioner and counsel for Respondent. In the prehearing conference, both counsel agreed that this Hearing Officer should order DCPS to hold a meeting to review the Student's independent comprehensive psychological, speech and language, and vocational evaluations, which were completed and sent to DCPS in May 2009. Both counsel agreed that the due process hearing would focus solely on the placement issue.

The due process hearing was scheduled for June 19, 2009. At the outset of the hearing, both counsel informed this Hearing Officer that the parties agreed to meet on June 29, 2009, to review the Student's independent psycho-educational, speech and language, and vocational evaluations. Counsel for DCPS stated that the intent of DCPS was to discuss compensatory education and placement at this meeting.

The parties requested that, in lieu of the due process hearing, this Hearing Officer should issue a summary decision finding that, after Petitioner filed the Complaint, DCPS issued a letter providing authorization for Petitioner to obtain independent comprehensive psychological, speech and language, and vocational assessments at DCPS expense. The parties agreed that the decision should also memorialize the agreement of the parties to meet on June 29, 2009, to review the Student's evaluations, review and revise the Student's IEP, and discuss placement and compensatory education.

The parties then agreed that Petitioner would withdraw without prejudice the claims regarding (1) the denial of FAPE for the inappropriate DCPS placement of the Student; (2) failure of DCPS to timely revise the Student's IEP; (3) failure of DCPS to include Petitioner in the MDT meeting at which the IEP was revised; (4) reimbursement of Petitioner for the non-public placement and prospective funding of the non-public placement and transportation; and (5) compensatory education.

III. DECISION

Based on the agreement of the parties, this Hearing Officer hereby finds that, after Petitioner filed the Complaint, DCPS issued a letter providing authorization for Petitioner to obtain independent comprehensive psychological, speech and language, and vocational assessments at DCPS expense. Richard Nyankori, Deputy Chancellor of Special Education for DCPS, on April 3, 2009, issued the letter authorizing the evaluations at DCPS expense.

This Hearing Officer further finds that the parties agreed to hold an MDT meeting on June 29, 2009, to review the Student's evaluations, review and revise the Student's IEP, and discuss placement and compensatory education. Petitioner shall be permitted to refile any of the claims in this case not resolved at the MDT meeting.

ORDER

Upon consideration of Petitioner's request for a due process hearing, Respondent's Answer, and the agreement of the parties, this 29th day of June 2009, it is hereby

ORDERED, that DCPS shall hold a meeting on June 29, 2009, to review the Student's independent comprehensive psychological, speech and language, and vocational assessments; review and revise the Student's IEP; and discuss placement and compensatory education;

IT IS FURTHER ORDERED that DCPS shall receive a day of delay of the MDT meeting for every day of delay caused by Petitioner, the Student, Petitioner's educational advocate, or counsel for Petitioner;

IT IS FURTHER ORDERED that Petitioner's claims regarding (1) the inappropriate DCPS placement of the Student; (2) the failure of DCPS to timely revise the Student's IEP; (3) the failure of DCPS to include Petitioner in the MDT meeting at which the IEP was revised; (4) reimbursement of Petitioner for the non-public placement and prospective funding of this placement and transportation; and (5) compensatory education are hereby **DISMISSED WITHOUT PREJUDICE**; and

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

/s/

Frances Raskin
Hearing Officer

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).

Copies to:

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