

DISTRICT OF COLUMBIA

Office of the State Superintendent of Education Office of Review & Compliance Student Hearing Office

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Confidential

7:07 DEC 17 PM 2:45
STUDENT HEARING OFFICE
OSSE

<p>STUDENT¹, by and through parent, Petitioner, vs. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: John Straus, Esq.</p> <p>Asst. Attorney General for DCPS: Blair Matsumoto, Esq.</p> <p><u>Impartial Hearing Officer</u> Seymour DuBow, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On August 5, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to 1) develop an appropriate transition services plan, 2) failed to convene the IEP team to review the findings and recommendations of assessments and review and revise the student's IEP and 3) failed to develop an IEP that is reasonably calculated to provide a FAPE.

A Pre-hearing Conference Order was issued in this matter on September 8th, 2009. The Order determined the ISSUES as set out below.

A hearing in this matter was scheduled for October 8th, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6A , Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

- ISSUES:**
- 1. Did DCPS fail to develop an appropriate transition services plan?***
 - 2. Did DCPS fail to reconvene the IEP team to review the findings and recommendations of the assessments and review and revise the student's IEP?***
 - 3. Did DCPS deny a free appropriate public education (FAPE) by failing to develop an IEP that is reasonably calculated to provide a FAPE?***

FINDINGS of FACT:

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As to issue 1 and in consideration of the testimony and documents herein, the hearing officer found the following facts:

1. The student is a [REDACTED] bld male student who has been found eligible for special education services by DCPS as a student with a specific learning disability. He is currently attending [REDACTED] (DCPS-9)
2. The April 27, 2009 IEP contains a post-secondary transition plan with the annual goal on post-secondary education and training to "develop necessary skills to transition into training to become fireman." The annual goal for employment is student is interested in pro-wrestling or becoming a fireman. (DCPS-9)
3. The parent's expert witness, who was stipulated by counsel for the parties as an expert in special education, testified that the student is a severe asthmatic and has not wrestled or shown an interest in wrestling and that therefore these goals are not realistic. (Testimony of Dr. Holman)

As to issue 2 and in consideration of the testimony and documents herein, the hearing officer found the following facts:

1. An MDT/IEP meeting was held on June 1, 2009 with the parent and her advocate Dr. Holman in attendance. The MDT team agreed in the MDT Meeting Notes to do a speech and language assessment and assistive technology assessment. (P-9)
2. Counsel for DCPS concedes DCPS did not perform the above assessments which resulted in this complaint being filed. At an August 18th 2009 Resolution meeting to resolve this complaint, DCPS agreed to fund a speech and language, assistive technology and vocational assessments. The MDT team agreed to reconvene after the agreed assessments were completed. (DCPS-4) DCPS authorized funding of the above independent evaluations by letter. (DCPS-6)
3. The agreed independent vocational assessment was completed on September 21, 2009 (P-10) and the independent speech and language assessment was completed on September 29, 2009. (P-11) Counsel for the parent was unable to obtain an independent assistive technology assessment and requested at the hearing for DCPS to perform it which counsel for DCPS agreed to do. The completed independent assessments were sent to DCPS on October 1, 2009.
4. At the time of the hearing on October 8th, DCPS had not yet convened an MDT/IEP meeting to review the assessments. Counsel for DCPS agreed to reconvene the MDT meeting on the two completed assessments and than again when the assistive technology assessment is completed.

As to issue 3 and in consideration of the testimony and documents herein, the hearing officer found the following facts:

1. The current IEP for the student was developed on April 27, 2009. On June 1, 2009, the MDT/IEP team convened and agreed the student needed new speech and language and assistive technology assessments to help him with his speech and language deficits. The MDT team has not yet reconvened to review and revise the student's IEP based on the recommended new assessments. At the resolution meeting on August 18, 2009 the MDT team recognized the further need for a new vocational assessment. The student's current IEP of April 27th has not been reviewed and revised pursuant to the new assessments as of the date of this hearing.

DISCUSSION AND CONCLUSIONS of LAW

The first issue is whether the IEP's transition service plan is inappropriate for the student and denied a FAPE. *IDEA* requires at 34 C.F.R 300.320(b)(1) that beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined appropriate by the IEP team that the IEP must include "appropriate measurable postsecondary goals, based upon age-appropriate transition assessments related to training, education, employment and where appropriate independent living skills." The IEP must also include "transition services (including courses of study) needed to assist the child in reaching goals." 34 C.F.R. 300.320 (b)(2). Both the statute at 20 USC 1401(34) and the Regulation at 34 C.F.R. 300.43 define transition services as a coordinated set of activities for a child with a disability that is based on the individual child's needs, taking into account the child's strengths, preferences and interests. This hearing officer concludes based on the findings of fact on this issue that the student's IEP's transition service plan fails to meet that above law's requirements especially not being based on the child's individual needs. The testimony that this student is severely asthmatic would make the goal of becoming a fireman highly unlikely. Both the goal of fireman and wrestler fail to take into account the student's strengths, preferences and interests. DCPS apparently recognizes this failure in ordering a new vocational assessment. DCPS has thus failed to provide a FAPE on transition services.

The second issue is whether DCPS failed to reconvene an IEP meeting to review and revise the student's IEP based on new assessments ordered. This hearing officer concludes that based on the findings of fact on this issue that DCPS took no action after the June 1, 2009 IEP meeting to follow through on the team's recommendations for new speech and language and assistive technology assessments to address the student's deficits and reconvene to review and revise the student's IEP. Only after a due process complaint was filed and a resolution meeting held did DCPS order independent evaluations in the areas of need. An appropriate IEP must be in place at the beginning of the school year. 34 C.F.R. 300.323(a) DCPS's failure to complete recommended assessments and review and revise the student's IEP before the start of the school year violated that section of *IDEA* and results in a denial of a FAPE.

The third related issue is whether DCPS denied a FAPE in not developing an IEP reasonably calculated to provide a FAPE. Based on all of the above Findings of Fact, this hearing officer concludes that DCPS denied a FAPE in not having an IEP in place at the start of the current school year that could address the student's current individual needs based on recommended assessments. In *Justin G. by Gene R. and Jacalyn A.G. v. Board of Education of Montgomery County*, 35 IDELR 3 (D. Md. 2001), the court held: "Only [the school district] has a statutory duty to affirmatively and expeditiously prepare an IEP for Justin before the commencement of the 1998-1999 school year." Only after a due process complaint was filed, did DCPS order new independent assessments. The delays in completing recommended assessments has now resulted in delays in reconvening an MDT/IEP meeting to review and revise the student's IEP.

In consideration of the foregoing, it is hereby:

ORDERED

DCPS shall reconvene an MDT/IEP meeting by October 23rd 2009 to review and revise the student's IEP taking into consideration the recently completed independent vocational and speech and language assessments. The MDT team shall also discuss and determine the form, amount and delivery of compensatory education based on the recommendations of the vocational and speech and language assessments. The MDT team shall reconvene within ten school days of receipt of the assistive technology assessment to further review and revise the student's IEP.

Dated this 12th day of October, 2009

/s/ Seymour DuBow

Seymour DuBow Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.