

DC Office of the State Superintendent of Education
Office of Compliance and Review
Student Hearing Office

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Confidential

<p>STUDENT¹, by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Date: May 23, 2009</p> <p><u>Hearing Officer: Wanda I. Resto, Esquire</u></p>
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STUDENT HEARING OFFICE
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On April 10, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to provide special education and related services; failing to provide triennial evaluations; failing to evaluate areas of suspected disability as recommended by a December 17, 2008 evaluation plan; failing to perform a vocational, functional behavior assessment and a behavior intervention plan; and failing to convene a manifestation determination review ("MDR") meeting. The Petitioner further alleged that the Respondent failed to convene a proper multidisciplinary team ("MDT") to review evaluations; failed to develop a transition plan; failed to invite the parent and the child to a meeting, and did not provide access to the Student's educational records. The Petitioner requests that the Respondent be deemed to have denied the Student a FAPE and ordered to immediately evaluate the Student in all areas of suspected disabilities, including a functional behavior assessment, convene an Individualized Education Program ("IEP") team meeting to determine placement and requests the Student be funded at

On April 13, 2009, the parties agreed to waive the Resolution Session pursuant to 34 C.F.R. 300.510 and requested a hearing date. On April 15, 2009, a Notice was sent scheduling April 23, 2009 at 4:30 PM as the Pre-hearing Conference call date.

The DCPS' Response to Petitioner's Complaint was filed on April 21, 2009. It alleged the Student's IEP is appropriate and that both the psychological and educational evaluations were done. The Respondent asserted that a MDT agreed on December 17, 2008, the Student was in need of psychological, educational and speech and language re-evaluation and developed a student evaluation plan. The Respondent also alleged that the Student has not been suspended for a period exceeding 10 consecutive days and a manifestation review determination was not required. The Respondent further alleged that the Student's academic struggles are due to his lack of attendance and he has not been denied a FAPE. The Respondent refutes denying access to the Student's school records. It's the Respondent's contention that the claim that the educational program is inappropriate is premature because there are re-evaluations pending.

On April 23, 2009, at 4:30 PM the Hearing Officer attempted to contact the attorneys for the Pre-hearing conference call. Counsel for the Petitioner had an emergency and requested to reschedule the Pre-hearing conference call. On April 30, 2009 at 6:00 PM the hearing Officer attempted to contact the attorney. Counsel for the Petitioner was not available.

On May 4, 2009, a prehearing conference call with Counsel for both parties for the above reference matter was conducted. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and reiterated the issues as plead. The parties stipulated that the Student is entitled to special education, is a resident of the District of Columbia. The Petitioner reasserted her claims. The Respondent reasserted it has not denied the Student a FAPE. Both Counsels provided a synopsis of the testimony their witnesses.

On May 10, 2009, the Petitioner was ordered to demonstrate at the hearing what areas of suspected disability did the Respondent fail to evaluate; why a vocational, functional behavior assessment, a behavior intervention plan and a MDR are necessary. What is improper about the

MDT; why a transition plan is required; what meetings were the parent and the child not invited, and what educational records were not accessible? The Petitioner must show what aspects of the IEP are inappropriate, why the Student requires a full time placement, how the Petitioner's choice of placement is appropriate and why the Respondent's proposed placement is not. The Respondent was ordered to demonstrate that the both the IEP and placement are appropriate, that the MDT acted appropriately when it decided to place the Student, that the FBA, BIP and MDR were not required. The Respondent must demonstrate that related services were provided and the Student has not been denied a FAPE.

A hearing was convened on May 18, 2009. At the preliminary stage of the hearing Counsels presented their documentary evidence and opening statement, issues were consolidated, the parties made a number of stipulations that resulted in an agreement on the key issues relevant to the Complaint. Counsel for the parties requested that the Hearing Officer incorporate the facts as agreed into an Order.

The hearing was conducted in accordance with the rights established under the Individuals with Disabilities Education Act of 2004 ("IDEIA"), 20 U.S.C. § 1400 et seq. and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

Petitioner's Exhibits admitted-Petitioner's disclosure letter dated May 11, 2009 identifying five documents, labeled P-1 through 5 and listing four witnesses.

Respondent's Exhibits admitted - Respondent's disclosure letter dated May 14, 2009 identifying eight witnesses and listing eight documents, labeled DCPS1 through 8.

Witnesses were not called to testify because the parties' stipulated essential facts raised in the Complaint and others allegations were withdrawn.

II. ISSUE(S)

1. Did the Respondent fail to provide triennial evaluations; fail to evaluate the Student in all areas of suspected disability and fail to develop a behavior intervention plan?
2. Did the Respondent fail to convene a proper MDT to review evaluations?

All other issues alleged were withdrawn at the hearing.

III. FINDINGS OF FACT

1. The Petitioner and the Student are residents of the District of Columbia. The Student has been identified as needing special education and related services. The Student's most recent IEP is dated December 17, 2008 and provides 29.5 hours per week of specialized instruction, 1.5 hours of psychological counseling weekly, and 1 hour weekly of speech/language therapy. The

Student's disability classification is multiple disabilities –emotional disturbance and learning disabled. The Petitioner signed and agreed with the IEP. ²

2. On 12/17/08, the MDT developed a Student Evaluation Plan and recommended that a comprehensive psychological, educational, and speech and language evaluations be conducted on the Student. The Respondent has failed to perform recommended evaluations.³ The Respondent also has failed to convene a MDT/IEP meeting to review evaluation reports.⁴
3. The Respondent agreed to complete within 15 school days of the issuance of this Order a speech/language and an audio logical evaluation. The parties offered the following dates for the evaluations to be conducted:
 - a. May 26-27, 2009 or June 3-4, 2009⁵
4. The parties agreed that the completion of the evaluations is contingent on the Student's attendance to school. The Petitioner agreed to secure the Student's attendance to school.⁶
5. The Respondent will convene a MDT within 10 business days of the completion of the last evaluation. The Respondent will transmit to the Petitioner with no less than 48 hours notice an invitation to a meeting.⁷
6. The Petitioner withdrew the allegations of lack of access to the Student's educational records, failure to hold a MDT/MDR, failure provide special education and related services; failure to convene a manifestation determination review meeting.

IV. SUMMARY OF DECISION

During the preliminary matters in effort to consolidate issues, the parties made a number of stipulations that resulted in an agreement on the key issues relevant to the Complaint. The Respondent will complete within 15 school days of the issuance of this Order a speech/language and an audiological evaluation. The Respondent will convene a MDT within 10 business days of the completion of the last evaluation. The parties agreed that the completion of the evaluations is contingent on the Student's attendance to school. The Petitioner agreed to secure the Student attends school. The Petitioner withdrew the allegations of failure to hold a MDT/MDR; failure provide special education and related services; failure to convene a manifestation determination review meeting; lack of access to the Student's educational records and the failure to provide an inappropriate placement.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the Respondent has not contended significant elements of the Complaint and issues the following:

² P-4 December 17, 2008- Individualized Education Program

³ DCPS 4 December 17, 2008- Student Evaluation Plan

⁴ Facts as agreed by the parties at the hearing.

⁵Facts Id.

⁶ Facts Id.

⁷ Facts Id.

V. ORDER

ORDERED, the Respondent will complete by June 16, 2009 a speech/language and an audiological evaluation on the Student. The Respondent will make efforts to evaluate the Student during May 26-27, 2009 or June 3-4, 2009. The completion of the evaluations is contingent on the Student's attendance to school. The Respondent must document all attempts to evaluate the Student. The Petitioner agreed to secure the Student's attendance to school.

IT IS FURTHER ORDERED, the Respondent shall convene a MDT/ IEP Meeting, within 10 business days of the completion of the last evaluation. The MDT shall review and revise the Student's IEP, develop a behavior intervention plan if warranted and discuss the Student's placement.

IT IS FURTHER ORDERED, The Respondent shall schedule all meetings through counsel for the Student via facsimile. The Respondent will provide the Petitioner with no less than 48 hours notice prior to an invitation to a meeting.

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, this order resolves all issues raised in the Petitioner's April 10, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)

/s/WI Restorres
Wanda I. Resto - Hearing Officer

Date: May 23, 2009