

***DISTRICT OF COLUMBIA***  
Office of the State Superintendent of Education  
Office of Review & Compliance  
Student Hearing Office

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*Confidential*

<p>STUDENT<sup>1</sup>, by and through parent,  Petitioner,  <i>vs.</i>  District of Columbia Public Schools,  Respondent.</p>	<p><b><u>HEARING OFFICER'S DETERMINATION</u></b></p> <p>Counsel for Petitioner/Parent: Joy Freeman-Coulbary, Esq.</p> <p>Asst. Attorneys General for DCPS: Kendra Berner, Esq., for Tanya Chor, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p> <p>OSSE STUDENT HEARING OFFICE 2009 MAY 27 PM 12:01</p>
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<sup>1</sup> Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

## BACKGROUND

In 2007, the student was psychiatrically hospitalized at the Children's Hospital for Depression. At the time of the herein Complaint, the student was not attending school.

On March 23, 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 find" the student and, for relief, requested independent evaluations, an MDT meeting and compensatory education.

The parties waived the Resolution Session.

A Pre-hearing Conference Order was issued in this matter on April 9, 2009. The Order determined the issue as setout the below.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Monday, April 27, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, 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.

**ISSUE: Did DCPS fail "to find" the student?**

## FINDINGS of FACT

By facsimile dated April 20, 2009, the parent disclosed 6 witnesses and 10 documents.

By facsimile dated April 20, 2009, DCPS disclosed 15 witnesses and 7 documents.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

Without prejudice, the parent withdrew the claim for compensatory education.

At the conclusion of the Parent's case, DCPS submitted on the record.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. For the 9th grade, the 2006-07 School Year, the student attended

School. At the beginning of the 10th grade, the student was admitted to Children's Hospital in August of 2007 for Depression and was discharged in September 2007; after discharge from the hospital, the student's school attendance began to fall off. For the 10th grade, the student attended \_\_\_\_\_ School from September 2007 to December 2007 and \_\_\_\_\_ School from December 2007 until the end of the 2007-08 School Year. For the 11th grade, the student returned to \_\_\_\_\_ School where her poor or non school attendance continued because of her Depression.<sup>2</sup>

2. The Parent contacted the counselor at \_\_\_\_\_ between September 2007 and December 2007 and delivered a copy of the Children's Hospital discharge summary; the Parent did not request evaluation of the student for special education services but discussed ways to get the student to resume attending school. The Parent also discussed the student's absences with staff at \_\_\_\_\_

3. The Student was admitted to the HILLCREST CHILDREN'S CENTER on February 10, 2009 for Depression and Anxiety.<sup>4</sup> The center prepared a treatment plan for the student dated March 8, 2009.<sup>5</sup>

4. The October 24, 2008, December 2008 and January 9, 2009 Report to Parents on Student Progress showed that DCPS knew of the student's truancy.<sup>6</sup> The student was truant beginning in August 2007.

5. DCPS did not make a truancy report to the District of Columbia Child and Family Services Agency (CFSA) and, therefore, cannot absolve itself for the responsibility for the student's truancy.

## CONCLUSIONS of LAW

**DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.** *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

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<sup>3</sup> -testimony of the Parent

<sup>4</sup> Parent Document No 2

<sup>5</sup> Par. Doc. No 4a

<sup>6</sup> DCPS Docs. 5, 6 & 7

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

DCPS failed "to find" the Student.

The Student began to have problems attending school in the 9th grade when attending \_\_\_\_\_ knew or should have known the Student had been psychiatrically hospitalized and, therefore, should have suspected the Student of being Emotionally Disturbed.

Regulation 34 CFR 300.111(a) required DCPS to have in place policies and procedures that effectuate the identification, location and evaluation of all children in the District of Columbia who maybe in need of special education services. DCPS violated 34 CFR 300.111(a).

While documents substantiating the Student's mental status earlier than February 2009 were not in the record, the Parent's uncontroverted testimony was that she gave the September 2007 Children's Hospital discharge summary to the counselor at sometime between September and December 2007. As importantly, the truancy in and of itself was enough to put DCPS on notice to suspect the Student had a disability. *See* Letter to Borucki, 16 IDELR 884 (April 11, 1990). The only circumstance under which DCPS can point to a student's truancy as mitigation is after the introduction of a notice from CFSA confirming receipt of a truancy report on the student. DCPS knew that the student was truant and should have filed truancy report with CFSA. The compulsory school attendance age in the District of Columbia is 5 through 17 or 18 years old. *See* D.C. Code 38-202.

## **SUMMARY of the DECISION**

The Parent was the prevailing party in this matter.

In consideration of the foregoing, the hearing officer made the following

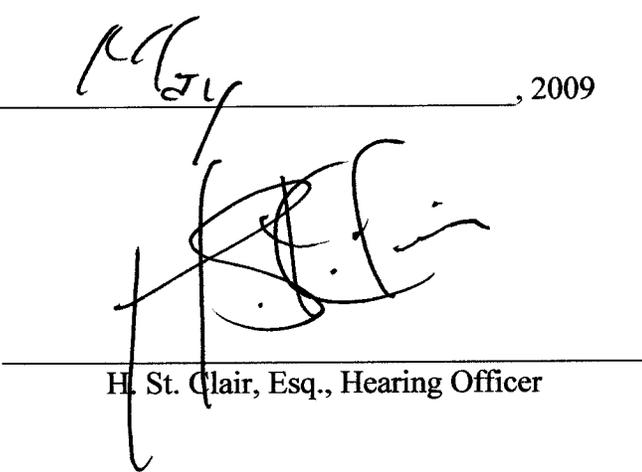
### **ORDER**

1. Provided DCPS has not issued an IEE letter in this matter, according to Superintendent's Directive 530.6, DCPS will fund independently a comprehensive psychological evaluation that includes the social/emotional component and a social history. Within 15 school days of receipt of the last evaluation report, DCPS will convene an MDT/Eligibility/IEP/Placement meeting during which evaluations will be reviewed and the student's eligibility

for special education services discussed and determined. If the student is determined ineligible, a Notice of Ineligibility will be issued at the said meeting. If the student is determine eligible, an IEP will be completed and a Notice of Placement issued within 5 schooldays of the said meeting if a DCPS placement is recommended; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.

2. Issues as to compensatory education are reserved.

Dated this 7<sup>th</sup> day of July, 2009

  
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H. St. Clair, 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.**