

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

1150 Fifth Street, SE  
 Washington, D.C. 20003  
 Telephone: (202) 698-3819  
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*Confidential*

<p>STUDENT<sup>1</sup>, by and through parent,   <div style="text-align: center;">Petitioner,</div>   <div style="text-align: center;">us.</div>   the  School    <div style="text-align: center;">Respondent.</div></p>	<p style="text-align: center;"><b><u>HEARING OFFICER'S        DETERMINATION</u></b></p> <p>Counsel for Petitioner/Parent:        Will Purcell, Esq.</p> <p>Counsel for        Jon A. Hoppe, Esq.</p> <p style="text-align: center;"><u>Impartial Hearing Officer</u>        H. St. Clair, Esq.</p>
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OSSE  
 STUDENT HEARING OFFICE  
 2007 MAY -4 AM 8:47

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<sup>1</sup> Identifying personal information is attached to this decision as Appendices A and must be detached prior to public distribution.

## BACKGROUND

On February 12, 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 its own LEA, denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained of the inappropriateness of IEP and educational placement and, for relief, requested independent evaluations and an MDT/IEP meeting.

A Pre-hearing Conference Order was issued in this matter on April 2, 2009. The Order determined the ISSUES as setout below.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 11:00 A.M., Monday, April 13, 2009, at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 1, Washington, D.C. 20003; the hearing convened as scheduled. For further evidence, the hearing was continued to 11:00 A.M., April 16, 2008 and again for further evidence, to 11:00 A.M., Tuesday, April 28, 2009. The continuation convened at 11:00 A.M., April 28, 2009 in Hearing Room 4B.

## 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.

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- ISSUES:**
1. Was the September 25, 2008 IEP appropriate?
  2. Was the student assessed in all areas related to the suspected disability?
  3. Was an appropriate educational placement for the student?

## FINDINGS of FACT

By facsimile dated April 6, 2009, the parent disclosed 4 witnesses and 10 documents.

By facsimile dated April 6, 2009, DCPS disclosed 4 witnesses and 4 documents. The documents were admitted into the record and are referenced/footnoted herein where relevant.

At the conclusion of the Parent's case, Counsel for moved for Directed

Findings on all issues. The hearing officer took the motion under advisement and ordered to move forward. Here, for the reasons set forth in CONCLUSIONS of LAW, below, the motion was DENIED.

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

1. The student started at at the beginning of the 2007-08 School Year. The Parent first asked for help for the student in December 2007 because she did not understand why the student was failing; that when she informed she suspected the student had dyslexia because a side of the family had a history of the disorder, she was told to consult her family physician. Because of what she considered poor academic performance, the Parent thought the student should not have been promoted from the 7th grade to the 8th grade at the end of the 2007-08 School Year. The Parent attended only one MDT/IEP meeting and that was on September 25, 2008 for the completion of the IEP of the same date; that she understood that the IEP would be implemented for two or three months before being reconsidered. She did not receive any notification from concerning the consideration of a new placement for the student or for the scheduling a second MDT/IEP meeting.<sup>2</sup>

2. There was no written request or referral for evaluation of the student for special education services in the record. Although there was testimony on when and how the evaluation of the student began, from the record, neither was clear; also missing from the record was the MDT decision to evaluate and the MDT decision as to what evaluations were to have been completed. The psychiatric evaluation was dated July 25, 2008; the psychoeducational evaluation and IEP were dated September 25, 2008.

3. The September 25, 2008 IEP disability coded the student Multiply Disabled<sup>3</sup> (MD) with 16 hours of special education services in a 49% Out of General Education Setting.<sup>4</sup> The IEP contained adequate hours and goals to address the student's Learning Disability; it did not address any possible Other Health Impairment, or ADHD as suggested by the evaluating psychiatrist.

4. In the record, neither to the Parent nor to any public agency was there a written notification from declaring the inappropriateness of for the student or requesting an MDT/placement meeting to arrange a new placement for the student.

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<sup>2</sup> -testimony of the Parent

<sup>3</sup> MD: Learning Disabled/Emotionally Disturbed

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

5. The Psychologist for the Parent reviewed the student's records and the disclosure and described the September 25, 2008 Psycho-educational Evaluation<sup>5</sup> as insufficient in that it did not include the subtest of the WIAT-II nor a clinical component. Pointing to the dysfunction in the student's family as noted in the July 25, 2008 Psychiatric Evaluation<sup>6</sup>, the Psychologist thought a clinical psychological evaluation and a social history should have been completed for a full evaluation; that the Emotionally Disturbed (ED) and Learning Disabled (LD) disability codings were not fully evaluated. The Psychologist pointed out that the evaluating psychiatrist had indicated "Rule Out Attention-Deficit/Hyperactivity Disorder" in his evaluation under Axis I, and from the record that was not done.<sup>7</sup>

6. The Psychologist completed the September 25, 2008 Psycho-educational Evaluation that was adequate to assess the student for learning disabilities and to determine his needs for specialized instruction for that disability; the evaluation scored the student's FSIQ at 89, a score within the average range.<sup>8</sup> The School Psychologist testified that she did not refer the student for a clinical psychological evaluation because Depression and ADHD often overlap and that a psychiatric evaluation would be a definitive evaluation to distinguish appropriateness between Depression or the ED disability coding and ADHD or the Other Health Impairment disability coding; that she considered the distinction beyond the scope of her ability. The Psychologist testified that was not an adequate placement for a student diagnosed with Dysthymia. The psychiatric evaluation predated the psychoeducational evaluation.

7. did not Rule Out Attention-Deficit/Hyperactivity Disorder for the student as recommended in the July 25, 2008 Psychiatric Evaluation.<sup>9</sup> The student was not assessed in all areas related to ADHD, a suspected disability.

## 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**

4 of 6 pages

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<sup>5</sup> Doc. No 3

<sup>6</sup> Doc. No 2, page 3; Axis I diagnoses: Dysthymic Disorder, Rule Out ADHD; Rule Out Learning Disorders

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*, 5 above, page 2

<sup>9</sup> *ibid*, 6 above

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).

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.

## **ONE & TWO**

### **The September 25, 2008 IEP was inappropriate in that the student was not assessed in all areas of suspected disability.**

The September 25, 2008 Psycho-educational Evaluation contained two assessments, the WAIT II and the WISC-IV and, albeit just barely, complied with the requirement at 34 CFR 300.304(b). The IEP was appropriate to meet the needs of the student for his Learning Disability; he was adequately assessed for the LD disability coding and the IEP contained appropriate goals and hours to meet his learning needs.

The inappropriateness of the September 25, 2008 IEP sprung from two defects. First, the student was not fully assessed for the ED disability coding. The psychiatric evaluation pointed out dysfunction in the student's family indicating the need for a social history, which did not refer. The second defect was that the student was not assessed at all for ADHD; an assessment could have qualified the student for the Other Health Impairment (OHI) disability coding. The July 25, 2008 Psychiatric Evaluation indicated the need to Rule Out two Axis I diagnoses, ADHD and learning disabilities. While the September 25, 2008 Psychoeducational Evaluation adequately addressed the student's learning issues and served as the basis for disability coding the student Learning Disabled, did not assess or evaluate the student for ADHD, a mental disorder that possibly could have become the basis for the OHI disability coding.

The main defect in the September 25, 2008 IEP and the one that made it inappropriate was that it was not based on a full evaluation or assessment of the student as required at 34 CFR 300.3049(c)(4).

## **THREE**

### **was an inappropriate educational placement for the student.**

The Psychologist testified that could not service a student diagnosed with Dysthymia; the student was diagnosed with the mental disorder on July 25, 2008. There was nothing in writing to the effect notified OSSE or any other public agency of their inability to service the student.

At regulation 34 CFR 300.115, an LEA is required to ensure a continuum of alternative placements, placements that can deliver the special education services to a child with a disability as indicated on the child's IEP. violated this regulation

when they failed to notify OSSE of their inability to service the student.

## SUMMARY of the DECISION

The Parent prevailed on all issues.

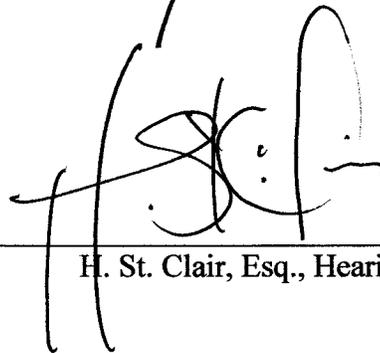
In consideration of the foregoing, the hearing officer made the following

### ORDER

1. According to Superintendent's Directive 530.6, will fund an independent clinical psychological evaluation, an independent social history and an independent functional behavior assessment. Within 15 school/business days of receipt of the last evaluation report, will convene an MDT/IEP/Placement meeting during which evaluations will be reviewed, the IEP reviewed and revised as appropriate and placement discussed and determined.

2. will invite OSSE to participate in the said MDT/IEP/Placement meeting.

Dated this 4<sup>th</sup> day of May, 2009



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.**