

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

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Office of Dispute Resolution  
August 13, 2014

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PETITIONER <sup>1</sup>	)	
On behalf of STUDENT	)	
	)	
Petitioner,	)	Date Issued: August 12, 2014
	)	
v.	)	Hearing Officer: Christal E. Edwards, Esq.
	)	
District of Columbia Public Schools (DCPS)	)	
	)	
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This is a Due Process Complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed May 19, 2014, on behalf of the Student, who resides in the District of Columbia, by Petitioner (MOTHER), the Student's Parent ("Petitioner"), against Respondent, District of Columbia Public Schools ("Respondent"). Petitioner claims that Respondent denied the student a Free Appropriate Public Education ("FAPE") because Respondent failed to provide access to student records; failed to evaluate the student in all areas of suspected disability; in the alternative, failed to comprehensively re- evaluate the student upon parental request; failed to conduct an appropriate evaluation; failed to timely authorize independent educational evaluations; failed to review existing evaluation data; failed to develop appropriate Individualized Educational Programs ("IEP"); failed to implement IEPs; failed to provide an

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<sup>1</sup> Personal identification information is provided in Appendix A

appropriate placement; and failed to include the parent in the decision-making process.

On May 23, 2014, Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a FAPE.

During the Prehearing Conference, on or about July 15, 2014, the parties agreed that five-day disclosures would be filed by July 30, 2014 and that the Due Process Hearing ("DPH") would be held on August 6 and 8, 2014, 2014.

A Resolution Meeting was held on June 4, 2014, which was not within the 15 calendar days of the filing because of the unavailability of the parties; but it failed to resolve the claims in the DPC. The statutory 30-day resolution period ended on June 18, 2014. The 45-day timeline for this Hearing Officer Determination ("HOD") started to run on June 19, 2014 and the original due date for the HOD was August 2, 2014; however, Petitioner filed a Motion to Continue the HOD due date for 10 days which was granted. The new HOD date is August 12, 2014.

Petitioner's Disclosure Statement, dated July 30, 2014, consisted of a witness list of ten (10) witnesses and documents P-1 through P-23. Respondent objected to Petitioner's disclosure at P-14. The Petitioner's Exhibits: P-1 through P-13 and P-15 through P-23 were all admitted. The Petitioner presented the following witnesses in her case in chief:

- (a) Petitioner;
- (b) Petitioner's child-Student;
- (c) Petitioner's Educational Advocate;

(d) Petitioner's Placement Advisor.

Respondent's Disclosure Statement dated July 30, 2014 consisted of a witness list of seven (7) witnesses and documents R-1 through R-19. Petitioner submitted written objections to Respondent Disclosures at R-1, 2, 5, 6, 9, 11, 12, 13, 15, 16, 18. All objections were overruled. The Respondent's Exhibits: R-1 through R-19 were admitted. The Respondent presented the following witnesses:

(a) Respondent's Special Education Teacher at School A.

Neither party requested or filed any post hearing memorandum.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f), and DCMR tit. 5-E, § 3029.

### **ISSUES AND RELIEF SOUGHT**

The issues to be determined in this case, as identified in the Prehearing, are:

1. Whether Respondent denied Student a Free and Appropriate Public Education ("FAPE") by failing to provide access to student's records;
2. Whether Respondent denied Student a FAPE by failing to evaluate the Student in all areas of suspected disability;
3. Whether Respondent denied Student a FAPE by failing to comprehensively re-evaluate the student upon parental request;
4. Whether Respondent denied Student a FAPE by failing to conduct an appropriate evaluation;
5. Whether Respondent denied Student a FAPE by failing to timely authorize Independent Educational Evaluations;
6. Whether Respondent denied Student a FAPE by failing to review existing evaluation data;
7. Whether Respondent denied Student a FAPE by failing to develop appropriate IEPs for student;
8. Whether Respondent denied Student a FAPE by failing to implement student's IEPs;

9. Whether Respondent denied Student a FAPE by failing to provide student an appropriate placement; and
10. Whether Respondent denied Student a FAPE by failing to include the parent in the decision-making process.

### **RELIEF REQUESTED**

Petitioner requests the following relief:

- (1) A finding that DCPS denied the student a FAPE;
- (2) An Order that Respondent immediately fund and place student at New Beginning Vocational School, with transportation;
- (3) An Order that Respondent reimburse parent for her transportation expenses incurred during the 2013-2014 school year;
- (4) An Order that Respondent fund independent FBA, speech-language, and vocational level II evaluations, and any other evaluation these evaluations recommend, at market rate;
- (5) An Order Respondent convene an IEP team meeting (or two) within 10 days of receiving the final independent evaluation, to review all independent evaluations, and review and revise the student's IEP, accordingly;
- (6) An Order for Compensatory Education; and
- (7) An Order for other relief this Hearing Officer deems appropriate.

### **FINDINGS OF FACTS**

After considering all of the evidence, as well as argument of counsel, this Hearing Officer's findings of facts are as follows:

- 1) Student is a male, resides with Mother in the District of Columbia. (Testimony of Mother)
- 2) Student currently has an IEP and the primary disability is Specific Learning Disability. Pursuant to the student's IEP with a meeting date of January 11, 2013,

- student receives 10 hours per week of specialized instruction outside the general education setting and transportation services. (P-13) The Student's IEP with a meeting date of December 19, 2013, the student was to receive the same number of hours for service but not transportation service was approved. (P-16).
- 3) Student has attended School A for the last three school years and is currently in the 9<sup>th</sup> grade (Testimony of Petitioner) Student has repeated the 9<sup>th</sup> grade and kindergarten (Testimony of Petitioner)
  - 4) Student has had a truancy problem since first year at School A. During the beginning of the second year at School A, Student missed about six weeks of school and this year, 2013/2014, Student has be present 35 out of 66 days. (Testimony of Petitioner and P – 10)
  - 5) Through Petitioner's counsel, a letter dated August 1, 2014, Petitioner requested the complete records of student (P-6- 9)<sup>2</sup> Respondent provided Petitioner's counsel with some of the requested documents by email and informed counsel that Respondent was not able to access report cards from last school, there were no incident reports in SPED database, and that Petitioner's counsel could come to Respondent's office for any additional information needed, including prior IEPs', etc. (P-6-15)
  - 6) A letter dated December 11, 2013 was hand-deliver to Respondent's SEC and Assistant Principal at School A requesting the student's triennial evaluations and specifically requested a comprehensive psychological. (P -19).
  - 7) Respondent completed the student's comprehensive psychological reevaluation on March 4, 2013. (P -9).

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<sup>2</sup> When citing to exhibits, the third range represents the page number within the referenced exhibit.

- 8) By letter dated August 1, 2013, Petitioner, through counsel requested several independent educational evaluations ("IEEs"), specifically, an independent comprehensive psychological, functional behavior assessment ("FBA"), speech-language, and vocational level II evaluations.
- 9) On October 10, 2013, a Multi-Disciplinary Team ("MDT") meeting was held and Respondent did not authorize the Speech and language assessment or the Vocational Level II evaluation. However, Respondent agreed to perform the FBA.
- 10) Respondent completed the student's FBA on December 1, 2013. (P -10 and R-17).

## **CONCLUSIONS OF LAW**

### **Purpose of the IDEA**

The IDEA is intended "(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1); *accord*, DCMR §5-E3000.1.

### **FAPE**

The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

special education and related services that -

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or

secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

### Procedural Violations of IDEA

#### 11. Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

20 U.S.C. §1414(f)(3)(E). *See also*, 34 C.F.R. §300.513(a); *accord*, *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (B.C. Cir. 2006).

Based upon the above Findings of Fact and argument and legal memoranda of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

### **BURDEN OF PROOF**

In a Special Education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S.49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a

preponderance of the evidence. DCMR §5-E3022.16; *See also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

### **Analysis**

- (1) Whether Respondent denied Student a Free and Appropriate Public Education (“FAPE”) by failing to provide access to student’s records; and
- (2) Whether Respondent denied Student a FAPE by failing to include the parent in the decision-making process.

Petitioner claims that DCPS has denied Student a FAPE by failing to provide access to the student’s records and failing to include the parent. I find that Petitioner has not met her burden of proof on these issue.

Pursuant to 34 C.F.R §300.501(a):

a) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

By letter dated August 1, 2014, Petitioner requested the complete records of the student. Respondent provided by email several documents from the student’s records and further informed Petitioner’s counsel that he could come to school for any additional documents. Petitioner did not present any evidence of going to school to obtain such records. Additionally, Respondent informed Petitioner’s counsel that all student records have been provided to Petitioner and further, Petitioner provided in disclosures some of the student records seeking

form Respondent. I conclude therefore that DCPS did not deny Student a FAPE by failing to provide access to student's records.

- (3) Whether Respondent denied Student a FAPE by failing to evaluate the Student in all areas of suspected disability.
- (4) Whether Respondent denied Student a FAPE by failing to comprehensively re-evaluate the student upon parental request;
- (5) Whether Respondent denied Student a FAPE by failing to conduct an appropriate evaluation;

Petitioner claims that DCPS has denied Student a FAPE by failing to evaluate the student in all areas of suspected disability, upon parental request, and by failing to conduct appropriate evaluations. I find that Petitioner has not met her burden of proof on any of these issue.

Pursuant to 34 C.F.R. § 300.304(c)(4): The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and

34 C.F.R. § 300.304(c)(6): In evaluating each child with a disability under Sec. Sec. 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

During the MDT meeting on or about October 10, 2013, Respondent timely addressed the Petitioner's request to evaluate the student. The student's comprehensive psychological reevaluation occurred on March 4, 2013 and the student's FBA was performed on December 1, 2014. I conclude therefore that DCPS did not deny Student a FAPE.

The remaining issues are addressed as follows:

- (6) Whether Respondent denied Student a FAPE by failing to timely authorize Independent Educational Evaluations;
- (7) Whether Respondent denied Student a FAPE by failing to review existing evaluation data;
- (8) Whether Respondent denied Student a FAPE by failing to develop appropriate IEPs for student;
- (9) Whether Respondent denied Student a FAPE by failing to implement student's IEPs;
- (10) Whether Respondent denied Student a FAPE by failing to provide student an appropriate placement; and

The IDEA requires that to provide a FAPE, “[t]he IEP must, at a minimum, ‘provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). At issue here is the second prong.

Further, 34 C.F.R. §300.324 require that in the development of the IEP, the IEP team must consider:

- (1) The strengths of the child;
- (2) The concerns of the parent for enhancing the education of their child;
- (3) The results of the initial or most recent evaluation of the child; and

(4) The academic, developmental, and functional needs of the child.

The main issue with the Student was his attendance. I conclude therefore that DCPS did not deny Student a FAPE and I find that Petitioner has not met her burden of proof on these issues.

To constitute a denial of FAPE, a material failure to implement a student's IEP must be shown. *Banks ex rel. D.B. v. District of Columbia*, 720 F. Supp. 2d 83, 88 (D.D.C. 2010). In the case at bar, Respondent timely evaluated and attempted to implement the student's IEP; however, the student had a serious truancy problem. I conclude therefore that DCPS did not deny Student a FAPE.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

(1) All requested relief by Petitioner in this matter is DENIED.

**IT IS SO ORDERED.**

### **NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

08/12 /14

Dated

**/s/Christal E. Edwards**

Christal E. Edwards, Esq.  
Hearing Officer