

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

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

OSSE
Office of Dispute Resolution
August 19, 2014

PETITIONER ¹)	
On behalf of STUDENT)	
)	
Petitioner,)	Date Issued: August 18, 2014
)	
v.)	Hearing Officer: Christal E. Edwards, Esq.
)	
District of Columbia Public Schools (DCPS))	
)	
Respondent.)	
)	

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 June 4, 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's daughter ("STUDENT") was found eligible for special education services with a primary disability designation of Specific Learning Disability ("SLD") on or about February 5, 2013. However, Petitioner believes Respondent denied Student a Free and Appropriate Public Education ("FAPE") by failing to provide the student with an appropriate Individualized Educational Program ("IEP") or placement during the 2013/2014 school year.

¹ Personal identification information is provided in Appendix A

On June 16, 2014, Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a FAPE. Specifically, stating that the Student's IEP is reasonably calculated to allow the Student to obtain an educational benefit. Further the student's IEP and placement are appropriate based on information currently available to Respondent and the student is improving.

Respondent further states that the Student was not tested properly by the independent evaluator as explained by Respondent's school psychologist. The Behavior Intervention Plan ("BIP") and Functional Behavioral Assessment ("FBA") were not reviewed at the May 29, 2014 Multi-Disciplinary Team ("MDT") meeting because the parent and parent's attorney left the meeting prematurely before Respondent's social worker, could attend.

During the Prehearing Conference, on or about July 24, 2014, the parties agreed that five-day disclosures would be filed by July 31, 2014 and that the Due Process Hearing ("DPH") would be held on August 7, 2014.

A Resolution Meeting was held on June 20, 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 July 3, 2014. The 45-day timeline for this Hearing Officer Determination ("HOD") started to run on July 5, 2014 and will conclude on August 18, 2014.

Petitioner's Disclosure Statement, dated July 31, 2014, consisted of a witness list of nine (9) witnesses of which seven were called to testify at the DPH and the disclosure documents P-1

through P-44. Respondent objected to Petitioner's disclosures at P-44, and P-22 through P-33. The Petitioner's Exhibits: P-1 through P-21 and P-34 through P- 43 were all admitted. The Petitioner presented the following witnesses in her case in chief:

- (a) Petitioner;
- (b) Petitioner's expert witness – Psychologist;
- (c) Petitioner's Placement Representative;
- (d) Petitioner's Community Service Provider;
- (e) Petitioner's tutor; and
- (f) Petitioner's Clinical Social Worker.

Respondent's Disclosure Statement dated July 30, 2014 consisted of a witness list of three (3) witnesses and documents R-1 through R-11. The Respondent's Exhibits: R-1 through R-11 were all admitted without objections. The Respondent presented the following witness:

- (a) Respondent's Special Education Coordinator.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issue to be determined in this case, as identified in the Prehearing is:

Whether Respondent denied Student a Free and Appropriate Public Education ("FAPE") by failing to provide the student with an appropriate Individualized Educational Program ("IEP") or placement during the 2013/2014 school year.

RELIEF REQUESTED

Petitioner requests the following relief:

- (1) A finding of a denial of a FAPE;
- (2) An Order that Respondent shall revise the student's IEP to include goals

- in mathematics and placement in a full time outside or general education, therapeutic setting;
- (3) An Order stating that if Respondent fails to provide the student with an appropriate placement and/or location of service prior to commencement of the 2014/2015 school year, Respondent shall fund the private placement of the student with transportation;
 - (4) An Order for Compensatory Education; and
 - (5) Any Order for other appropriate 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:

- 2) Student is a resident of the District of Columbia. *Id.* (P 20-1)
- 3) On or about February 5, 2013, Student was found eligible for special education services with a primary disability designation of Specific Learning Disability ("SLD"). Further, the student's IQ showed an academic deficit in written expression. (P- 18) The Student's initial IEP provided for specialized education services for written expression inside the general education setting and related services for behavioral support services outside the general educational setting. (P-18) The Student's current IEP provides for 2 hours per week of specialized education services for written expression inside the

² When citing to exhibits, the third range represents the page number within the referenced exhibit, in this instant, page 1.

general education setting and 4 hours per month of related services for behavioral support services outside the general educational setting. (P-9)

- 4) Student's December 15, 2013 Comprehensive Psychological Evaluation, conducted by Petitioner's licensed psychologist, reports states, *inter alia*, when reviewing the test scores from the Wechsler Intelligence Scale for Children, Fourth edition, student's verbal comprehension intelligence (VCI) was considered "low average" with a score of 83 regarding her ability to use words and numbers in analyzing, expressing and communicating, (P-1). In reviewing the Woodcock Johnson Tests of Achievement, Third edition, Student's broad range reading cluster score, which includes letter word identification, reading fluency, passage comprehension, word attack, and basic reading, was in the average range. (P-1). Student's broad math cluster, which includes applied problems, calculation, math fluency, and math calculation skills, was in the average range and ranked in the 5.6 grade level. (P-1). Regarding the Behavior Assessment System for Children, Second Edition –Self Report – Adolescent (BASC 2), one score in the internalizing problems composite - scale T score was 72, which falls in the clinically significant range. (P-1) And the Student's emotional symptoms index composite-scale T score was 65, which falls in the at-risk classification range. (P-1).
- 5) The Student's December 15, 2013 Comprehensive Psychological Evaluation further revealed that Student's English Language teacher indicates that Student is very outspoken, a willing participant in class and very motivated; however, student's attendance is becoming a concern. (P-1). The Student's math teacher states that

Student has the potential to do well in the subject as she easily grasps the skills, but her current grade is an “F” mainly because of her attendance. (P-1).

- 6) On or about May 29, 2014, Student’s current school conducted a MDT meeting. (P-3, R-5). The MDT team discussed the review of assessments for Student. (R-5).

Respondent’s Social Worker was available but was called away for an emergency

The parent stated that Student was getting better and her attitude towards her work was getting better. Further, the parent stated that Student is handling situations better but she is too shameful to ask for assistance. (R-5). Parent also stated that she did not agree with the one-time test of the independent psychological assessment and felt that the evaluator should have followed-up with the

Student to see consistent results.(R-5). Parent also states that Student has been exhibiting behavioral problems at home and at the beginning of the school year,

2013/2014, she was getting a lot of calls regarding her behavior at school. Testimony of Parent). Further, the Student’s general education teacher stated that Student’s math

teacher reported she was problems with Student attendance and that she lacked motivation. However, now the Student comes to school every day and she has a “B”

in the class and the Student has transformed into a better student. (R-5).

Further, the Student’s school psychologist reviewed the independent assessment for the parent and found that Respondent does not recognize “oppositional Defiant

Disorder’ (R-5). The parent and advocate were not available to meet until 1:00 and did not want to wait until Respondent’s Social Worker returned to the meeting (R-5).

- 7) Respondent’s School Psychologist reviewed the parent’s independent psychological evaluation and found, *inter alia*, that Student’s behavior difficulties have been

apparent since she was an elementary school student. (R-6). Further, the School Psychologist felt that most of the test scored underestimated the Student's current intellectual functioning, as her academic achievement is higher than her assessed cognitive functioning and the Student was given an adult intelligent test (WAIS) instead of the student intelligent test which may have affected the results. (R-9). Further, the Student's teachers have reported that her attendance is an issue but she can do the work. (R-9). Further, the Student's behavior ratings do not indicate any signs of an emotional disturbance as a pervasive handicap and therefore not eligible for fulltime placement. (R-9).

- 8) Respondent's Special Education Coordinator ("SEC") testified credibly and confirms the Student's attendance problem and this has affected her progress. Respondent's SEC further testified that Student's overall behavior has improved.

(Testimony of Respondent's SEC) Further, the Respondent's SEC does not believe a fulltime placement for the Student is her least restrictive environment because the Student is improving and the Student has no experience outside the general education setting. Further, even though Student was improving, the MDT team agreed with parent to add more behavioral support to the Student's Behavioral Intervention Plan ("BIP"). Lastly, the Respondent's SEC testified that the Student was a delightful child, adorns adult attention and is popular at school. (Testimony of Respondent's SEC).

CONCLUSIONS OF LAW

Purpose of the IDEA

1. 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

2. 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

1. 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 the student with an appropriate Individualized Educational Program (“IEP”) or placement during the 2013/2014 school year.

Petitioner claims that DCPS has denied Student a FAPE by failing to provide the student with an appropriate IEP. I find that Petitioner has not met her burden of proof on this issue.

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.

On or about May 29, 2014, Respondent conducted an MDT meeting to review current assessments for Student. Respondent timely evaluated the Student and developed an appropriate IEP based on all information provided at the time of the MDT meeting. The Student has shown progress in all areas of concern, especially with her behavior issues and regarding her academics, the Student has improved to a "B" in English and a C+ in math. (P-17). The parent's concerns were addressed as evidenced by the team agreeing to increase the Student behavioral support services. Furthermore, this hearing officer did not find the testimony of Petitioner's Psychologist to be credible and Respondent's MDT team and licensed school psychologist found several inaccuracies in his report. Furthermore, as discussed previously, the student is showing progress toward her IEP goals, the MDT team agreed to increase behavioral services and the Student showed progress in this area as well. I conclude therefore that DCPS did not deny Student a FAPE by failing to develop an appropriate IEP for the 2013/2014 school year and no placement is needed.

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).

08/18 /14

Dated

Christal E. Edwards /s/

Christal E. Edwards, Esq.
Hearing Officer