

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
February 20, 2014

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: February 19, 2014
Petitioner,)	
)	Hearing Officer: Virginia Dietrich
v.)	
)	
District of Columbia Public Schools)	
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother _____ male Student, filed a due process complaint notice on December 6, 2013, alleging that Student had been denied a free appropriate public education (“FAPE”) by the District of Columbia Public Schools (“DCPS”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner alleged that at the initial eligibility determination meeting in October 2013, DCPS failed to determine Student eligible for special education services under the disability classification of Autism; that DCPS failed to develop a full time Individualized Education Program (“IEP”) with 100% specialized instruction outside of general education with programming specific to a child with Autism; that DCPS failed to fully evaluate Student in all areas of suspected disability prior to the eligibility determination meeting when existing assessments suggested that further evaluation was needed; that DCPS failed to properly interpret the results of the assessments it had available at the time of the eligibility determination meeting; and that placing Student in a general education prekindergarten class with slightly older children instead of same year autistic peers was a denial of a FAPE.

DCPS argued that the eligibility team’s determination that Student was eligible for special education services under the disability category of Developmental Delay was appropriate based on the data available at the time; that Student was properly and adequately evaluated by DCPS prior to the eligibility meeting; that Student was placed in an appropriate classroom

¹ Personal identification information is provided in Appendix A.

pursuant to the services prescribed by his IEP; and that an independent assessment completed after the eligibility meeting, that diagnosed Student with Autism Spectrum Disorder (Pervasive Developmental Disorder – NOS), was not available to the team at the time of the eligibility meeting and cannot be used after the fact to prove that Student should have been classified with Autism and provided with a full-time autism program.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”) and 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on 12/06/13. This Hearing Officer was assigned to the case on 12/11/13. DCPS timely filed a response to the complaint on 12/16/13 and made no challenges to jurisdiction.

Petitioner waived the resolution meeting, but DCPS did not. A meeting between DCPS and Petitioner took place on 01/08/14, which was after the 30-day resolution period ended. The 30-day resolution period ended on 01/05/14, the 45-day timeline to issue a final decision began on 01/06/14 and the final decision is due by 02/19/14.

A prehearing conference took place on 01/09/14. A Prehearing Order was issued on 01/10/14. A Second Prehearing Order was issued on 01/26/14 that addressed Petitioner’s Objections to the Prehearing Order filed by Petitioner on 01/15/14.

The due process hearing was a closed hearing that took place on 02/03/14. Petitioner was represented by Elizabeth Jester, Esq. DCPS was represented by William Jaffe, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person. Parties agreed to a revised disclosure deadline of 1/28/14, per email dated 01/27/14.

Petitioner’s Disclosure Statement, dated 01/28/14, consisted of a witness list of two (2) witnesses and documents P-1 through P-22. P-22 was withdrawn by Petitioner. Petitioner’s witness list and documents P-1 through P-21 were admitted into evidence without objection.

On 01/30/14, Petitioner filed Petitioner’s Objections to Respondent’s Disclosure Materials, noting an objection to DCPS’ document R-02 and any testimony about R-02.

DCPS’ Disclosure Statement, dated 01/28/14, consisted of a witness list of three (3) possible witnesses and documents R-01 through R-04. DCPS withdrew R-02. Petitioner objected to any testimony about R-02. The Hearing Officer ruled that testimony pertaining to R-02 would be allowed, with Petitioner having the right to raise any objections when testimony

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about R-02 was elicited. DCPS' Disclosure Statement, excluding R-02, was admitted into evidence without objection.

Petitioner presented the following two (2) witnesses in her case in chief: (1) Petitioner; and (2) Expert in clinical psychology with a specialty in autism ("clinical psychology expert) from the Georgetown University Hospital Autism and Communication Disorder Clinic ("GUH Autism Clinic").

DCPS presented the following two (2) witnesses: (1) Assistant Principal at School "A"/LEA representative ("LEA Representative"); and (2) Early Stages Director of Evaluations ("Early Stages Director").

Parties stipulated to the following fact:

Stipulated Fact #1 - The assessment completed by the Georgetown University Hospital Autism and Communication Disorders Clinic on 10/21/13, was not available to the IEP Team on 10/08/13.

The three issues to be determined in this Hearing Officer Determination are as follows:

Issue #1 – Whether DCPS denied Student a FAPE by failing to provide Student with an appropriate Individualized Education Program ("IEP") that would allow Student to access the general education curriculum; specifically, the IEP developed on 10/08/13: (A) failed to include 100% specialized instruction outside of general education; (B) failed to include 2 hours/week of speech-language services outside of general education; (C) failed to include 2 hours/week of occupational therapy services outside of general education; (D) should have included a disability classification of Autism instead of Developmental Delay; (E) failed to include academic goals for a child with autism; and (F) included goals for a developmentally delayed child which were inappropriate for Student who is autistic.

Issue #2 – Whether DCPS denied Student a FAPE by failing to fully evaluate Student in all areas of suspected disability prior to the eligibility determination and failing to properly interpret the existing evaluations; specifically, DCPS was on notice that Student had significant problems that required more comprehensive evaluation due to (A) a prior evaluation conducted the previous year while Student participated in Strong Start (a DCPS program), (B) Petitioner told DCPS at the eligibility determination meeting that she suspected that Student was autistic, (C) the results of the assessments that DCPS completed indicated that further evaluation was needed, and (D) the psychological assessment, speech-language assessment and occupational therapy assessment conducted by DCPS were too limited in scope to properly evaluate Student's educational needs.

Issue #3² – Whether DCPS denied Student a FAPE by placing Student in a general education prekindergarten class of 4 year olds instead of a full-time autism program with his 3 year old peers.

² As discussed at the prehearing conference, Petitioner's success on the merits of Issue #3 is contingent on Petitioner's success on the merits of Petitioner's Issue #1.

Petitioner requested the following relief:

- (1) A finding of a denial of a FAPE on the issues as stated in this Prehearing Order; and
- (2) Within 10 days, DCPS to convene an IEP meeting to amend Student's IEP to include a disability classification of Autism, 26 hours/week of specialized instruction outside of general education, 2 hours/week of speech-language services outside of general education; 2 hours/week of occupational therapy services outside of general education; 10 hours/week of home based behavioral intervention to address significant delays in Student's areas of development; and family consultation three times/month with a speech/language and occupational therapist; and
- (3) DCPS to provide a classroom that is highly structured and language based, with a small class size and low teacher/student ratio (not to exceed 8 students: 1 teacher who is trained in evidence based approaches to work autistic children), and age appropriate peers; and
- (4) Within 5 days of the IEP meeting, DCPS to offer placements in three different full-time autism programs³ that are able to implement Student's IEP, and let Petitioner choose one of the three programs after observing them; and
- (5) Upon selection of a program, DCPS to facilitate enrollment and transportation; and
- (6) An award of compensatory education consisting of speech-language, occupational therapy and specialized instruction services for DCPS' failure to provide Student with an appropriate IEP and school placement since 10/08/13.

Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

#1. Student is a resident of the District of Columbia. Petitioner is Student's mother.⁴

#2. In September 2012, Student failed an autism screening given by his physician.⁵ As a result, Student's physician referred Student to Strong Start, the DC early intervention program.⁶ Student participated in the Strong Start Program from 10/25/12 until the end of October 2013, The Strong Start program provided Student with a program of 1 hour/week of occupational therapy, 1 hour/week of speech-language therapy and once/month of play therapy, with all services provided in the home.⁷ Student received educational benefit from the Strong Start services; he was able to make

³ Petitioner is amenable to a public placement.

⁴ Petitioner.

⁵ P-9-5.

⁶ P-9-6.

⁷ P-15, P-18.

progress with speaking and identifying letters.⁸ Due to concerns about Student's developmental delays, Strong Start referred Petitioner to the Georgetown University Hospital Autism and Communication Disorder Clinic ("GUH Autism Clinic").⁹

#3. Student also was referred to Early Stages, a division of DCPS, for a series of assessments in anticipation of Student's transition to DCPS at age three. Early Stages completed a Speech-Language Assessment on 09/12/13 that revealed that Student had severe delays in receptive and expressive language skills, which indicated a delay in the area of communication. These severe delays were projected to affect Student's communication skills in the academic setting. The Speech-Language Assessment was comprehensive in that the overall assessment protocol utilized current assessments, interviews, screenings and review of historical assessments and services in order to formulate findings and recommendations for speech-language services.¹⁰

#4. Early Stages completed an Occupational Therapy Evaluation Report on 09/23/13 to determine Student's need for occupational therapy services in the educational setting. The Occupational Therapy Evaluation Report was comprehensive in that it used the following evaluation tools: relevant medical/developmental history/equipment, services being provided to Student, prior evaluations completed by Strong Start, a parent interview, clinical observations, a motor scales assessment, and a sensory profile.¹¹ The results of the Occupational Therapy Evaluation Report were that Student had occupational therapy needs that needed to be addressed in order to facilitate his learning and participation in the educational environment. The Occupational Therapy Evaluation Report provided many recommendations for educational staff and caregivers.¹²

#5. Early Stages also completed a Confidential Psychological Report on 10/04/13. The reason for conducting the psychological report was not only to prepare for Student's transition to Part C of the IDEA, but also to address pediatrician and parents' concerns regarding Student's ability to attend to a task, and atypical behaviors relation to Autism Spectrum Disorder. The Confidential Psychological Report was comprehensive in that it utilized the following assessment procedures: Clinical interview with parents, clinical observations, previous evaluations, The Vineland Adaptive Behavior Scales-II, and the Childhood Autism Rating Scale.¹³ The results showed that overall, Student had developmental delays. Student presented in the Moderately Low range in communication, daily living skills and social skills. Although there was a discrepancy in the findings on the Childhood Autism Rating Scale, the findings did not support an educational classification of Autism Spectrum Disorder as delineated by the D.C. Office of the State Superintendent of Education, because Student's scores suggested minimum to no symptoms for Autism Spectrum Symptoms.¹⁴ The results of the Autism Rating Scale indicated that in a classroom setting, Student would require instruction on social skills, adaptive and basic pre-academic skills. The Confidential Psychological Report recommended that

⁸ Petitioner.

⁹ Petitioner, P-5.

¹⁰ P-6-5.

¹¹ P-7-2.

¹² P-7-11.

¹³ P-8

¹⁴ P-8-6, Early Stages Director.

Student would benefit from a general education classroom environment with structure and consistency.¹⁵

#6. Early Stages convened an eligibility team meeting on 10/08/13. The team, composed of Petitioner, a DCPS psychologist, a DCPS occupational therapist, a DCPS speech-language therapist, the program coordinator from Strong Start and the occupational therapist from Strong Start, reviewed the assessments conducted by Early Stages. The participating DCPS psychologist, DCPS occupational therapist and DCPS speech-language therapist were the clinicians who conducted the Early Stages assessments that were reviewed by the team.¹⁶ Based on the data before the team, the team appropriately determined that Student was eligible for special education services with a disability classification of Developmental Delay.¹⁷ Student qualified for this disability classification because his abilities were in the Low Average to Low range in his cognitive skills, speech and language and adaptive skills; he fit the criteria for the disability.¹⁸

#7. A child with a *clinical* diagnosis of Autism has specific delays in social communications, including non-verbal communication, back and forth interactions, ability to communicate via gestures, social interactions, desire not to play with other children and restrictive, repetitive behaviors. Some of these behaviors might be found in a child with Specific Developmental Delay, but these behaviors are particularly seen in autistic children. A child with Autism can also have Developmental Delay.¹⁹ Based on review of the assessments completed by Early Stages, the eligibility team could not conclusively rule in or out a *clinical* diagnosis of Autism.²⁰ There was sufficient data for the team to rule out an educational Autism classification;²¹ Student did not exhibit restrictive, repetitive behaviors.²²

#8. An initial IEP for Student was developed by the team on 10/08/13 that classified Student with a Developmental Delay²³ and provided for the following services: 10 hours/week of specialized instruction within general education; 60 minutes/month of occupational therapy services outside of general education; 2 hours/month of speech-language services outside of general education; and 60 minutes/month of occupational therapy consultation services.²⁴ The IEP had goals in the areas of Adaptive/Daily Living Skills; Cognitive; Communication/Speech and Language due to severe delays in receptive and expressive language skills;²⁵ and Motor Skills/Physical Development.²⁶ Petitioner was content with the disability classification of Developmental Delay; she did not want a diagnosis of Autism.²⁷ When the IEP was being developed, DCPS indicated that once Student began school, the amount of services would be

¹⁵ P-8-6.

¹⁶ R-3-3, P-6, P-7, P-8, Petitioner.

¹⁷ P-3, P-4.

¹⁸ P-8-6, P-4.

¹⁹ Clinical psychology expert.

²⁰ Clinical psychology expert.

²¹ P-8-6.

²² P-8-4.

²³ P-1-1.

²⁴ R-1-9.

²⁵ P-1-5.

²⁶ P-1-5, P-1-7.

²⁷ Petitioner.

revisited to determine whether Student needed an adjustment to his IEP.²⁸ At the time that the initial IEP was developed, Student had never attended daycare or school; he stayed at home with his parents and siblings and had not participated in any structured activities during the day.²⁹

#9. Prior to the eligibility meeting on 10/08/13, Student had been referred to the Georgetown University Hospital Autism and Communication Disorder Clinic (“GUH Autism Clinic”) by DC’s Early Intervention Program, Strong Start. Student was evaluated by the GUH Autism Clinic on 10/02/13 and 10/21/13.³⁰ This assessment report was not available to the IEP Team on 10/08/13.³¹ The assessment report, prepared with the findings of a psychiatrist, psychologist and speech-language therapist, diagnosed Student with Autism Spectrum Disorder, specifically Pervasive Developmental Disorder, Not Otherwise Specified. That diagnosis is used for children who have features of Autism Spectrum Disorder *without* the pronounced pattern of repetitive behavior and restricted interests often seen, and it was given because Student’s repetitive and restricted behaviors were minimal. Student’s assessment scores were below the level associated with a classical diagnosis of Autism. Student’s behavior and his scores, however, were consistent with a clinical diagnosis on the Autism Spectrum.³²

#10. Student attended preschool at DCPS School A approximately one month before the due process complaint was filed.³³ Based solely on the observations of Petitioner, Student was having difficulty adjusting to the structure and unfamiliarity of school; he is reluctant to enter the classroom and cries, but is willing to enter the classroom with the teacher; he cannot do the classwork independently; he does not respond to close communication with classmates; and he is generally not on par with the other children in his classroom.³⁴

Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The overall purpose of the IDEA is 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. 34 C.F.R. 300.1.

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

²⁸ Petitioner.

²⁹ P-8-2, P-13.

³⁰ P-5.

³¹ Stipulation #1.

³² P-5-7, Clinical psychology expert.

³³ LEA representative.

³⁴ Petitioner.

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The first issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an appropriate Individualized Education Program ("IEP") that would allow Student to access the general education curriculum; specifically, the IEP developed on 10/08/13: (A) failed to include 100% specialized instruction outside of general education; (B) failed to include 2 hours/week of speech-language services outside of general education; (C) failed to include 2 hours/week of occupational therapy services outside of general education; (D) should have included a disability classification of Autism instead of Developmental Delay; (E) failed to include academic goals for a child with autism; and (F) included goals for a developmentally delayed child which were inappropriate for Student who is autistic.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

For an IEP to be appropriate, it must be "reasonably calculated to enable the child to receive educational benefits." *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176, 206-207 (1982).

Petitioner failed to meet her burden of proof on the totality of this issue. The initial IEP developed on 10/08/13 was appropriate for Student, age 3, who did not meet the educational definition of Autism under the IDEA and who had never before been in a structured educational setting before.

Petitioner failed to prove that Student met the definition of Autism under the IDEA. Under the IDEA, Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, but also after age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. 34 C.F.R. 300.8(c)(1)(i). Under the IDEA, a child with a disability means a child evaluated as having autism, who by reason of the disability, needs special education and related services. 34 C.F.R. 300(a)(1).

An educational classification of Autism was inappropriate at the eligibility meeting on 10/08/13 because Student did not demonstrate the repetitive and restricted movements typically associated with classical Autism. Student did not demonstrate the classic indicators of classic

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Autism during the DCPS psychological assessment or during the clinical autism assessment conducted by GUH Autism Clinic. Student simply did not fit the definition of “Autism” in either the educational or the clinical realm. Moreover, Petitioner was content with the disability classification of Developmental Delay; she did not want a classification of Autism. Petitioner was very credible on that point.

Student did meet the definition of Developmental Delay under the IDEA. At the eligibility determination meeting, the team determined that Student exhibited severe delays in both cognitive development and in language and communication development, which met the IDEA criteria for a disability of developmental delay. Under the IDEA, a child with a disability includes a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who by reason thereof, needs special education and related services. 34 C.F.R. 300.8(b). There was no challenge to the validity of the assessments used by the team.

The GUH Autism Clinic assessment was not available to the team on 10/08/13. There is no indication in the record that Petitioner either did or didn't mention to the team that the autism assessment at GUH Autism Clinic assessment was underway. Nevertheless, the results of the GUH Autism Clinic assessment are not inconsistent with the findings of the DCPS Early Stages psychological assessment. Both found that Student had severe developmental delays and neither determined that Student fit the criteria for classic Autism.

Each public agency must ensure that (1) to the maximum extent appropriate, children with disabilities are to be educated with children who are nondisabled, and (2) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.114.

Student had never been observed in an educational setting before. Employing the Least Restrictive Environment criteria (C.F.R. 300.114), the team appropriately provided Student with the services contained in the 10/08/13 initial IEP. Student had just been in the educational setting about 30 days before the due process complaint was filed. Student was having adjustment problems in school, but that was to be expected. He was 3 years old and having difficulty separating from his mother. He was unfamiliar with being away from home; he had never been to daycare and had received Strong Start services in his home. He was not acclimated to life away from home.

The services in the initial IEP were sufficient. Student received more services in occupational therapy and speech-language than he received in the Strong Start Program. Student's initial IEP also provided for specialized instruction. Petitioner failed to offer proof that this initial IEP was insufficient to confer educational benefit. It had only been in effect for approximately 30 days. There was no evidence in the record that the initial IEP services prevented Student from accessing the curriculum. Moreover, the IEP development team agreed

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to revisit Student's adjustment in school with the services provided. One month of time was insufficient time for the Hearing Officer to conclude that Student suffered any educational harm from being in a general education setting with some supports, for a child who had never before participated in a structured educational setting.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to fully evaluate Student in all areas of suspected disability prior to the eligibility determination and failing to properly interpret the existing evaluations; specifically, DCPS was on notice that Student had significant problems that required more comprehensive evaluation due to (A) a prior evaluation conducted the previous year while Student participated in Strong Start (a DCPS program), (B) Petitioner told DCPS at the eligibility determination meeting that she suspected that Student was autistic, (C) the results of the assessments that DCPS completed indicated that further evaluation was needed, and (D) the psychological assessment, speech-language assessment and occupational therapy assessment conducted by DCPS were too limited in scope to properly evaluate Student's educational needs.

Each public agency must conduct a full and individual initial evaluation, before the initial provision of special education and related services to a child with a disability. 34 C.F.R. 300.301. Under the IDEA, an "evaluation" denotes a process or procedure. 34 C.F.R. 300.122.

In conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability. The public agency also must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. 34 C.F.R. 300.304(b). The public agency must also ensure that 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. 34 C.F.R. 300.304(c)(4).

Petitioner failed to meet her burden of proof on this issue. The assessments conducted by DCPS Early Stages, i.e., the Speech-Language Assessment, Occupational Therapy Evaluation Report, and Confidential Psychological Report, all used a variety of assessment tools and were comprehensive. The assessments provided the relevant information, i.e., that Student was developmentally delayed and would benefit from specialized instruction, speech-language services and occupational therapy services in the educational environment. There was no challenge to the validity of these assessments. All assessments provided data, findings and recommendations. None of the assessments were sketchily put together. Moreover, the DCPS Confidential Psychological Report utilized a Childhood Autism Rating Scale. The Hearing Officer determines that Student was appropriately assessed in all areas of suspected disability and the assessments conducted by DCPS were sufficient to provide Student with an initial IEP.

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Petitioner's argument that DCPS should have done further screening and assessments to determine whether or not Student had Autism was misplaced. The assessment by GUH Autism Clinic didn't even diagnose Student with classic Autism, and that clinic specialized in the diagnosis of Autism in children.

The third issue to be determined³⁵ is whether DCPS denied Student a FAPE by placing Student in a general education prekindergarten class of 4 year olds instead of a full-time autism program with his 3 year old peers.

Petitioner failed to meet her burden of proof on Issue #1. Necessarily, Petitioner fails to meet her burden of proof on Issue #3.

ORDER

Petitioner failed to meet her burden of proof on all of the issues presented.

This complaint is **DISMISSED WITH PREJUDICE**.

All requested relief 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).

Date: February 19, 2014

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:
Petitioner: (U.S. mail)
Petitioner's Attorney: Elizabeth Jester, Esq. (electronically)
DCPS' Attorney: William Jaffe, Esq. (electronically)
OSSE Division of Specialized Education (electronically)
SHO (electronically)

³⁵ Petitioner's success on the merits of Issue #3 is contingent on Petitioner's success on the merits of Petitioner's Issue #1.