

**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

OSSE  
Office of Dispute Resolution  
May 27, 2015

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	Hearing Officer: NaKeisha Sylver Blount
	)	
<i>Petitioner,</i>	)	
	)	Case No:
v.	)	
	)	<b>Date Issued:</b> May 27, 2015
District of Columbia Public Schools,	)	
	)	
<i>Respondent.</i>	)	

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**Hearing Officer Determination**

**SUBJECT MATTER JURISDICTION**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“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 D.C. Code 38-2561.02(a).

**PROCEDURAL BACKGROUND**

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 on March 13, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent District of Columbia Public Schools (“DCPS”). On March 23, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) on March 31, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on April 13, 2015, and the HOD is due on May 27, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on March 27, 2015, during which the parties discussed and

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

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clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by April 24, 2015 and that the DPH would be held on May 1, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on March 27, 2015.

The DPH was held on May 1, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2006. Petitioner elected for the hearing to be closed. Petitioner was represented by Kiran Hassan, Esq. and DCPS was represented by Steven Rubenstein, Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-4 through P-9 and P-11 through P-23 were admitted without objection. Petitioner’s exhibits P-1 through P-3 were admitted without objection, as part of the administrative record and not as evidence. Petitioner’s exhibit P-10 was admitted over Respondent’s objection. Respondent’s exhibits R-1 through R-24 were admitted without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Student
- (c) Educational Advocate
- (d) Parent’s School Psychologist<sup>2</sup>
- (e) Therapist

Respondent called the following witnesses at the DPH:

- (a) Local Education Agency Representative (“LEA Rep”), District Elementary School
- (b) DCPS’ School Psychologist<sup>3</sup>
- (c) General Education Teacher

Petitioner and Respondent gave oral closing arguments.

### ISSUE

As discussed at the PHC and reflected in the PHO, the following issue was presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE pursuant to 34 CFR § 300.8 and/or 34 CFR § 300.306 by failing to determine Student eligible for special education and related services at a February 5, 2015 multidisciplinary team meeting.

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<sup>2</sup> Qualified, without objection, as an expert in school psychology, and reviewing evaluations and providing recommendations with respect to eligibility determinations based on them.

<sup>3</sup> Qualified, without objection, as an expert in school psychology, specifically in the area of evaluating students for special education and related services and making eligibility determinations.

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### RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order that DCPS convene an MDT meeting within 10 days of the HOD to review all new data, along with the evaluations and determine Student's eligibility for special education and, if Student is determined eligible, that DCPS develop an IEP for Student and determine compensatory education;
- (b) an Order that DCPS immediately implement an appropriate BIP for Student;
- (c) an Order preserving of the right to pursue, compensatory education.

### FINDINGS OF FACT

1. Student is \_\_\_\_\_ years old and resides with his mother ("Parent"/"Petitioner") in Washington, D.C.<sup>4</sup> Student has not been determined eligible for special education and related services.<sup>5</sup>
2. Student is a \_\_\_\_\_ grader at District Middle School. From \_\_\_\_\_ through \_\_\_\_\_ grade during the 2013-2014 school year, Student attended City Elementary School.<sup>6</sup>
3. Student was retained in the third grade, and was diagnosed at that time with attention deficit hyperactivity disorder ("ADHD").<sup>7</sup> Student has also been diagnosed with mood disorder.<sup>8</sup> Student has been on medication for the past several school years to manage his ADHD and mood disorder.<sup>9</sup>
4. Student "is smart, but is often off task in class and easily distracted as well as distracts other student." "[H]e requires many prompts to stay on task and/or participate in the class assignments and projects;" however, he generally is easily redirected.<sup>10</sup>
5. During the 2013-2014 and 2014-2015 school years, Student's medications have helped him manage his behaviors. Though he has moments of distraction and inattention, he has generally not demonstrated significant behavioral problems in his academic classes such as would impede his ability to make academic progress.<sup>11</sup>
6. A Comprehensive Psychological Re-evaluation was completed for Student on May 19, 2014. As a part of the re-evaluation, the Woodcock Johnson III Tests of Achievement was administered to Student, which showed Student's overall cognitive and academic

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<sup>4</sup> Testimony of Parent.

<sup>5</sup> Testimony of Parent; testimony of Educational Advocate.

<sup>6</sup> Testimony of Parent.

<sup>7</sup> Testimony of Parent's School Psychologist; P-9-3; P-11-1.

<sup>8</sup> Testimony of Parent's School Psychologist; P-9-3; P-10; P-11-1.

<sup>9</sup> Testimony of Parent's School Psychologist; P-12-2.

<sup>10</sup> Testimony of DCPS' School Psychologist; testimony of General Education Teacher; P-9-3; P-11-3; P-14-1; R-6-1; R-8-6.

<sup>11</sup> Testimony of General Education Teacher; P-9-3; P-11-3; P-12; R-3.

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functioning in the average range.<sup>12</sup> According to the evaluator, Student's ADHD did not have a significant adverse impact on him academically at that time.<sup>13</sup>

7. A Functional Behavior Assessment was completed for Student on May 20, 2014 that indicated that Student's medications were helping him manage his behaviors, and that he was generally not demonstrating behavioral problems in his academic classes, and that though he has moments of distraction, he is able to maintain sufficient attention in class to access the curriculum.<sup>14</sup>

8. A Section 504 Plan was put in place for Student on June 17, 2014, toward the end of his fifth grade year at City Elementary School ("2014 504 Plan").<sup>15</sup> The 2014 504 Plan states that "If [Student] is not provided with his medication it will impact his ability to perform academically as well as behave appropriately within the academic setting." The 2014 504 Plan also states that "When not provided with medication, [Student] has been known to engage in maladaptive behaviors which ultimately impact his ability to complete academic tasks."<sup>16</sup>

9. Student's grades have dropped precipitously during the 2014-2015 school year. He achieved honor roll in 2013-2014, but has received some "Fs" in 2014-2015.<sup>17</sup>

10. During a February 5, 2015 meeting of Student's multidisciplinary team ("MDT"), Parent and her advocate requested that the team reconsider Student's eligibility under the classification Other Health Impairment. The DCPS members of the team indicated that Student's absences needed to be under control before his eligibility would be reconsidered, but agreed to assess Student's social emotional functioning with an Ohio Scale.<sup>18</sup> The team determined that at that time Student did not qualify as a student with a disability, as the data did not support a conclusion that there was a negative effect on his overall academic achievement.

11. The team met on March 12, 2015 to revise Student's 504 Plan. A revised 504 plan was proposed for Student. While Parent is open to the interventions proposed in the revised plan, as of the DPH Parent had not yet signed the consent form for the revised 504 Plan, and it remained in draft form.<sup>19</sup>

12. A behavioral intervention plan ("BIP") was proposed for Student on April 9, 2015. The only behavior the plan needed to target was Student's attendance. While Parent is open to the interventions proposed in the plan, Parent had not yet consented to the BIP as of the DPH, and it remained in draft form.<sup>20</sup>

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<sup>12</sup> Testimony of Parent's School Psychologist, testimony of DCPS' School Psychologist.

<sup>13</sup> P-11-10.

<sup>14</sup> P-12.

<sup>15</sup> P-6.

<sup>16</sup> P-6-1.

<sup>17</sup> Testimony of Parent; P-14; P-15; P-16.

<sup>18</sup> Testimony of LEA Representative; P-7-2; P-9-3; R-11-3.

<sup>19</sup> Testimony of Parent; P-9; R-14.

<sup>20</sup> Testimony of Parent; P-13; R-15.

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13. Student's attendance has been of great concern during the 2014-2015 school year. As of the February 5, 2015 meeting, Student had approximately seventeen absences and a high number of tardies.<sup>21</sup> Student also had a high absence rate during the 2013-2014 school year.<sup>22</sup>

14. Student was reading on grade level as of the February 5, 2015 MDT meeting, and his reading scores had improved since the 2013-2014 school year and from the beginning of the 2014-2015 school year. Student's math and extended literacy Unit scores were above his class and school average. Student's progress report grades as of December 8, 2014 demonstrated improvement over his report card grades from Term 1 of the 2014-2015 school year.<sup>23</sup>

15. Missed instructional time via absences and tardies, and lack of homework completion were a challenge for Student in elementary school, yet he was still able to achieve good grades. However, these challenges have significantly impeded Student's progress during the first portion of his first year of middle school.<sup>24</sup>

### CONCLUSIONS OF LAW

"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*, 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).

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 student'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).

**(a) Whether DCPS denied Student a FAPE pursuant to 34 CFR § 300.8 and/or 34 CFR § 300.306 by failing to determine Student eligible for special education and related services at a February 5, 2015 multidisciplinary team meeting.**

During a February 5, 2015 MDT meeting, Petitioner requested that Student be considered for eligibility for special education and related services under the disability classification "Other Health Impairment" ("OHI"). Pursuant to 34 CFR § 300.8(c)(9), OHI means having limited

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<sup>21</sup> Testimony of Educational Advocate; testimony of Parent's School Psychologist;

<sup>22</sup> Testimony of Parent; P-14.

<sup>23</sup> LEA Representative; R-10-4.

<sup>24</sup> P-5-2; P-14-1; P-15-1; P-16-1; R-8-6; R-18-4; R-20-2.

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strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that (i) is due to chronic or acute health problems such as ADHD, and (ii) adversely affects a child's educational performance.

All parties acknowledge that Student meets the first prong of the test for OHI – he has been diagnosed with the chronic health problem ADHD. As to the second prong of the test, Petitioner asserts that Student's ADHD is adversely affecting his educational performance because his grades have declined this school year. However, the preponderance of the evidence does not demonstrate that the drop in Student's grades is due to his ADHD. When Student is in class, he is able to understand the material, complete his assignments, and respond relatively easily and well to redirection when his attention wanes and he gets off task. Student's significant amount of missed instructional time and missed homework are highly likely to be impeding his progress academically. While Student was able to compensate for these same deficits in elementary school and still achieve strong grades, it has not been as easy for him to do so during this initial transition to the likely more rigorous middle school experience. Although Student's medication is helping his behavior at school, Parent and Student report that Student's medication is impacting his sleep patterns and making it difficult for him to wake up on time to get to school. To the extent that this is a possible explanation for some of Student's absences and tardies, the hearing officer does not find that there is sufficient evidence to conclude that it is more likely than not that Student's absences are closely and/or mostly tied to his medications. The hearing officer does not find that Respondent denied Student a FAPE pursuant to 34 CFR § 300.8(c)(9) in not finding Student eligible as of February 5, 2015.

Additionally, Respondent complied with the requirements of 34 C.F.R. §300.306. As of the February 5, 2015 meeting, Student had recently had a comprehensive psychological re-evaluation and a functional behavior assessment. Though Student's grades had dropped since those assessments, the data in the assessments remains valid, and factors such as attendance and lack of homework completion were having a greater impact on his academic progress in middle school than they had in elementary school when those assessments were completed. In addition to considering those assessments, the team also agreed to complete an Ohio Scale for Student, to revise his 504 Plan, and to put in place a BIP for Student. These further measures will provide additional data to help the team continue to monitor and assess whether Student's ADHD is impacting his education progress, though it does not appear to be at this time. The team also considered input from Parent and Parent's advocates; however, some of the experiences Parent is having with Student at home do not comport with the school's experiences with Student in an academic setting. The hearing officer does not find that Respondent denied Student a FAPE pursuant to 34 C.F.R. §300.306 in not finding Student eligible as of February 5, 2015.

As of the February 5, 2015 MDT meeting, the team determined that it could not find that Student's ADHD was causing him an adverse educational impact. Based on the record, the hearing officer does not find the MDT's February 5, 2015 conclusion to have been unreasonable, necessarily inaccurate, or a denial of FAPE. Petitioner did not meet the burden of proof on this issue.

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**ORDER**

As no denial of FAPE was found on the issue alleged, all relief Petitioner requested in the complaint must be **DENIED**. This complaint is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

Date: May 27, 2015

**/s/ NaKeisha Sylver Blount**  
Impartial Hearing Officer

Copies to:

Petitioner (by U.S. mail)

Petitioner's Attorney: Kiran Hassan, Esq. (electronically)

DCPS' Attorney: Steven Rubenstein, Esq. (electronically)

Chief Hearing Officer Virginia Dietrich, Esq. (electronically)

OSSE-SPED (electronically)

ODR (electronically)

**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).