DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,[1] through the Parent,	)	
Petitioner,	)	Date Issued: December 22, 2012
	)	Hearing Officer: Virginia Dietrich
v.	)	
District of Columbia Public Schools Respondent.	)	

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HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of Student, filed a due process complaint notice on October 18, 2012 alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Act ("IDEA").

Petitioner alleged that District of Columbia Public Schools ("DCPS") had failed to evaluate Student and determine his eligibility for special education services within 120 days of Petitioner's written request for Student to be evaluated.

DCPS asserted that Petitioner had failed to meet her burden of proof that Petitioner had made a written request for evaluation to the principal of Student's school on February 17, 2012.

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.

[1] Personal identification information is provided in Appendix A.

Procedural History

The due process complaint was filed on 10/18/12. This Hearing Officer was assigned to the case on 10/19/12. DCPS filed a response to the complaint on 10/22/12. A prehearing conference took place on 11/07/12 and a Prehearing Order was issued on 11/08/12. A resolution meeting took place on 11/09/12, at which time parties agreed to let the 30-day resolution period expire prior to proceeding to a due process hearing. The 30-day resolution period expired on 11/17/12, the 45-day timeline to issue a final decision began on 11/18/12, and the final decision was due on 01/01/13.

The due process hearing was a closed hearing that took place on 12/12/12.

Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing by telephone due to a medical condition that prevented her from appearing in person. Parties were unable to resolve the complaint despite attempts made prior to the presentation of evidence.

Petitioner presented one witness: Petitioner.

DCPS elected not to present any witnesses.

Petitioner's disclosures dated 12/05/12, containing a witness list and Exhibits P-1 through P-8, were admitted into evidence without objection.

DCPS' disclosures dated 12/05/12, containing a witness list and Exhibits R-1 through R-3, were admitted into evidence without objection.

The sole issue to be determined in this Hearing Officer Determination is as follows:[2]

Whether DCPS denied Student a FAPE by failing to evaluate Student and determine eligibility for special education services within 120 days of Petitioner's written request for evaluation that was made to the principal of the school on February 17, 2012.

For relief,[3] Petitioner requested a finding that Student was denied a FAPE on the issue presented; that DCPS convene a Multidisciplinary Team meeting that includes DCPS and Petitioner, to review a psychological evaluation that was completed by the District of Columbia

[2] The issue of whether DCPS denied Student a FAPE by failing to provide Student with special education services since 08/27/12 when Student enrolled at public high school #2 but was refused services in the day program, was withdrawn by Petitioner at the start of the due process hearing and dismissed without prejudice.

[3] Petitioner withdrew the following requests for relief, without prejudice: (1) DCPS to develop an Individualized Education Program within 30 days of Student being determined eligible for special education services, and DCPS to discuss and determine an award of compensatory education for DCPS' failure to provide Student with special education services since 08/27/12; and (2) the Hearing Officer to determine an award of compensatory education for the lack of services since 08/27/12 if DCPS has not already determined an appropriate award of compensatory education and DCPS has determined Student eligible for services at the resolution meeting on 11/09/12.

Superior Court in August 2012, determine whether further evaluations are necessary, and determine Student's eligibility for special education services.

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.[4] Petitioner is the mother of Student.[5]

#2. DCPS is the local education agency for Student. Student attended public high school #1 during the 2011-2012 school year. During the current school year, Student was enrolled in public high school #2, but was not attending.[6]

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).

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 sole issue to be determined is whether DCPS denied Student a FAPE by failing to evaluate Student and determine eligibility for special education services within 120 days of

[4] P-8.
[5] Petitioner.
[6] P-8, Petitioner.

Petitioner's written request for evaluation that was made to the principal of the school on February 17, 2012.

Pursuant to 34 C.F.R. 300.301, DCPS must conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. DCPS must assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment. 38 D.C. Code 2561.02. The referral may be made by a child's parent and if the child attends a District of Columbia public school, this referral shall be submitted by the parent to the building principal of the child's home school. 5 D.C.M.R. E-3004.1

Petitioner's evidence was insufficient to prove that Petitioner submitted a written request to the principal of public high school #1 on February 17, 2012 requesting that Student be evaluated for special education services. Petitioner failed to meet her burden on proof.

In support of her position, Petitioner offered into evidence a letter dated February 17, 2012, with an attached facsimile confirmation sheet that was addressed to the principal of public high school #1. The letter was a request from Petitioner's legal representative for Student to be evaluated for special education and related services.[7] Although Petitioner proved that Student attended public high school #1 in February 2012 and that DCPS was the relevant local education agency, Petitioner failed to prove that the letter was actually submitted to the principal by facsimile. The facsimile number on the letter matched the facsimile number on the facsimile cover sheet, but it did not match the facsimile destination address to which the facsimile was actually sent. And, even if the facsimile numbers did match, which would have been evidence that the letter was successfully transmitted to the facsimile number on the letter, Petitioner failed to offer any proof that the transmittal facsimile number was the correct number for the principal at the school that Student attended on February 17, 2012.

Additionally, Petitioner credibly testified that she had never seen or had any knowledge of the February 17, 2012 letter prior to the due process hearing and that personnel at public school #1 told her that they had no knowledge of Petitioner's request that Student be evaluated for special education services.

ORDER

All requested relief is denied. The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

[7] P-2.

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: December 22, 2012

/s/ Virginia A. Dietrich
Hearing Officer