

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

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Confidential

OSSE
STUDENT HEARING OFFICE
2009 MAR -6 PM 2: 37

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| <p>STUDENT¹, by and through parent, Petitioner, <i>vs.</i> District of Columbia Public Schools, Respondent.</p> | <p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Zachary Nahass, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, Esq.</p> <p><u>Hearing Officer</u> H. St. Clair, Esq.</p> |
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1 of 4 pages

¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On November 21, 2008, DCPS delivered a comprehensive psychological evaluation of the student to Counsel for the Parent.

On January 5, 2009, Counsel for the Parent requested an independent comprehensive psychological evaluation of the student under 34 CFR 300.502.

On January 26, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS unnecessarily delayed its authorization for the requested independent educational evaluation (IEE) and, for relief, requested the IEE and an MDT meeting.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Tuesday, February 24, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 7A, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

ISSUE: Was the twenty-one (21) days between the January 5, 2009 request for an IEE and the herein January 26, 2009 Complaint an unnecessary delay on the part of DCPS?

FINDINGS of FACT

By facsimile dated February 17, 2009, the parent disclosed 6 witnesses and 4 documents.

By facsimile dated February 17, 2009, DCPS disclosed 11 witnesses and 3 documents.

The documents were placed into the record and are referenced/footnoted herein where relevant.

In consideration of the documents and arguments herein, the hearing officer found the following: By letter dated January 5, 2009², Counsel for the Parent notified DCPS of

² Parent Document No 3

the parent's disagreement with the September 17, 2008 DCPS Comprehensive Psychological Evaluation³ and requested an IEE as provided for at 34 CFR 300.502.

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

IDEIA 2004 requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

At 34 CFR 300.502, once a public agency – LEA- has been notified of a parent's disagreement with the an agency evaluation, the public agency must, without unnecessary delay, either authorize an IEE or file for Due Process to establish the appropriateness of the agency evaluation.

In this matter, the notification of disagreement was dated January 5, 2009, starting the timeline the next day, the 6th; the herein Complaint was filed on January 26, 2009, 21 days later. In the 21 days were 13 work days, including the 26th of January; the 19th of January was the Martin Luther King, Jr. Holiday and the next day was the inauguration of the 44th President of the United States. DCPS is located in the Nation's Capital.

The undersigned concluded that the DCPS 13-business day delay in deciding whether to take the September 17, 2008 DCPS Comprehensive Psychological Evaluation to Due Process was just that, a delay, and not an unnecessary delay which the regulation prohibits.

Secondly, were the 13 business day delay unnecessary, the parent would been required to meet one of the strictures at 34 CFR 300.513(a)(2): that the unnecessary delay either impeded the student's right to a FAPE, 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 caused a deprivation of educational benefit.

SUMMARY of the DECISION

The parent did not meet her burden in this matter.

In consideration of the foregoing, the hearing officer made the following

³ DCPS Doc. No 3

ORDER

WITH PREJUDICE, the herein
Complaint is DISMISSED.

Dated this 6th day of March, 2009



H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.