

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

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Confidential

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STUDENT HEARING OFFICE
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STUDENT ¹ , by and through his Parent Petitioners, v. DCPS Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Dates: April 7, 2009, & April 14, 2009 <u>Representatives:</u> Counsel for Petitioners: John Straus, Esq. 1220 L Street NW Suite 700 Washington, DC 20005 Counsel for DCPS: Tanya Chor, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened April 7, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on March 4, 2009, alleging the issue(s) outlined below. The hearing was continued, resumed and completed on April 14, 2009, so that the parent would be available at the hearing. The Hearing Officer denied DCPS's challenged sufficiency of the complaint which was based on the parent not signing the complaint and/or being present for the hearing.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-16 and DCPS Exhibits 1-7) which were admitted into the record.

ISSUE(S):²

1. Did DCPS fail to provide the student with a free and appropriate public education by failing to evaluate the student in all areas of suspected disability to determine the student's special education and related services needs? Specifically, Petitioner alleges DCPS did not conduct a speech and language evaluation.
2. Did DCPS fail to provide the student with a free and appropriate public education by failing to reconvene the IEP team to review the findings and recommendations of the assessments, review and revise the student's IEP and determine a placement where the IEP may be implemented?
3. Did DCPS failings entitle the student to compensatory education?

² The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn.

FINDINGS OF FACT ³:

1. The student is _____ years old, currently attends School A, a private full time special education school. The student's attendance at School A is funded by DCPS. (Petitioner's Exhibit . (Petitioner's Exhibit 14)
2. A Hearing Officer's Determination (HOD), dated October 2, 2008, ordered DCPS to place the student at School A. (Petitioner's Exhibit 14)
3. On December 17, 2008, DCPS convened a multidisciplinary Team at School A. Ms. Ring, the Speech and Language Pathologist, noted the student "scored in the low average range on the intelligence quotient; however, his achievement scores suggested deficiencies in reading and written language. The team determined the discrepancy may be due to behavior or speech and language deficits" The team determined the student required a speech and language assessment.... (Petitioner's Exhibit 15)
4. On January 15, 2009, the parent, through counsel, requested a status report regarding the speech and language assessment. As of the date of the due process hearing DCPS had not conducted the speech language evaluation. (Petitioner's Exhibit 5)
5. The student's speech and language evaluation has been referred to an evaluator and should be completed within two weeks of the due process hearing. (Ms. Tate's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. ⁴ In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

³ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding.

⁴ Based solely upon the 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 FAPE.

1. Did DCPS fail to provide the student with a free and appropriate public education by failing to evaluate the student in all areas of suspected disability to determine the student's special education and related services needs? Conclusion: Petitioner's counsel sustained the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.304(c)(4) and (6), DCPS shall ensure the "the child is assessed in all areas related to the suspected disability...[and] in evaluating each child with a disability...the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." Pursuant to 34 C.F.R. § 300.303(a)(2), DCPS shall ensure "a reevaluation of each child with a disability is conducted...if the child's *parent or teacher* requests a reevaluation.

On December 17, 2008, the IEP team determined the student requires a speech and language assessment. Ms. Ring, the Speech and Language Pathologist, noted the student scored in the low average range on the intelligence quotient; however, his achievement scores suggest deficiencies in reading and written language. The discrepancy may be due to behavior or speech and language deficits. The team determined the student requires a speech and language assessment to determine current levels of functioning. As of the date of the due process hearing, DCPS has yet to complete a speech and language assessment.

2. Did DCPS fail to provide the student with a free and appropriate public education by failing to reconvene the IEP team to review the findings and recommendations of the assessments, review and revise the student's IEP and determine a placement where the IEP may be implemented?

Pursuant to 34 C.F.R. § 300.324(b)(1), DCPS

must ensure that...the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals...and in the general education curriculum, if appropriate; the results of any reevaluation conducted ...; information about the child provided to, or by, the parents...; the child's anticipated needs; or other matters.

On December 17, 2008, the IEP team determined that the student required an evaluation. That evaluation has yet to be conducted and has yet to be determined by a full team. DCPS' failure to reconvene the student's meeting amounts to a denial of a FAPE because the parent is unable to make a decision regarding placement and the student's right to receive compensatory education services.

3. Did DCPS failings entitle the student to compensatory education?

Pursuant to *Reid v. District of Columbia*, "the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."

The student does not have speech and language services on his IEP. The speech and language therapy assessment may state the student requires speech language services or it may not. The Hearing Officer concludes it is pre-mature to make bring a claim of compensatory education under these facts and for the district to be determined to be in violation in this regard.

ORDER:

1. DCPS shall, within fifteen (15) business days of the issuance of this Order, complete the speech and language evaluation of the student and convene a multidisciplinary team (MDT) meeting to review the student's existing evaluations, determine the student's eligibility for special education services, determine if additional evaluations are necessary.
2. DCPS will be given a day for a day extension of any of the prescribed time frames in this Order for any delay caused by the student, the parent(s) and/or their representative(s).

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: April 24, 2009