

***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 APR 17 AM 10:13

<p>ADULT STUDENT,<sup>1</sup></p> <p>Petitioner,</p> <p><i>vs.</i></p> <p>District of Columbia Public Schools,</p> <p>Respondent.</p>	<p><b><u>HEARING OFFICER'S DETERMINATION</u></b></p> <p>Counsel for the Adult Student: Domiento C. R. Hill, Esq.</p> <p>Asst. Attorney General for DCPS: Harsharen Bhuller, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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<sup>1</sup> Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

## BACKGROUND

A Hearing Officer's Determination/Decision (HOD) issued in this matter on January 22, 2009 wherein DCPS was ordered to convene an MDT meeting within 40 days of the HOD to review the student's IEP; the MDT did not convene. On March 5, 2009, Counsel for the Student 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 Student complained DCPS violated the January 22, 2009 HOD and, for relief, requested an order to DCPS to convene the MDT.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Thursday, April 9, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4A, Washington, D.C. 20003. The hearing convened as scheduled.

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## 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: Did DCPS violate the HOD issued in this matter January 22, 2009?**

## FINDINGS of FACT

By facsimile dated April 2, 2009, the adult student disclosed 15 witnesses and 25 documents.

By facsimile dated April 2, 2009, DCPS disclosed 2 witnesses and 2 documents.

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

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The undersigned issued an HOD<sup>2</sup> in this matter on January 22, 2009 wherein the student was placed at a private facility on an interim basis and DCPS was ordered to convene an MDT/IEP meeting within 40 days

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<sup>2</sup> Student Document No 3

2. DCPS did nothing to convene the MDT within the 40-day timeline, and to date, the MDT had not convened.

## **CONCLUSIONS of LAW**

The hearing in this matter convened under 34 CFR 300.507(a).

Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the adult student in this matter, and that burden was by the preponderance.

### **ONE**

**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. Moreover, included in this requirement of DCPS is the timely implementation of HODs; that did not occur in this matter.

## **SUMMARY of the DECISION**

The adult student had the burden of proof in this matter and met it. The adult student was the prevailing party.

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

### **ORDER**

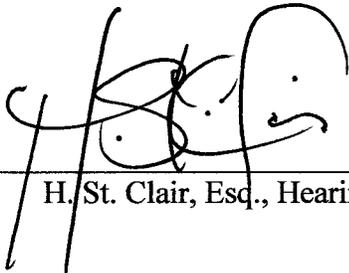
1. Within 30 days hereof, DCPS will convene an MDT/IEP/Placement meeting during which evaluations will be reviewed, the IEP reviewed and revised as appropriate and placement discussed and determined. If a DCPS placement is recommended, a Notice of Placement will be issued within 5 schooldays of the said meeting; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.
2. At the said MDT/IEP/Placement meeting,

the form, amount and delivery of compensatory education, if any, will be discussed and determined. For disputes under this paragraph, either party may request a hearing.

3. For the said MDT/IEP/Placement meeting scheduling is to be through and notices are to be sent to Counsel for the Student except that, for everyday of unavailability of student/educational advocate/Counsel for the Student, the deadline herein will be extended one day. For disputes under this paragraph, documentation of the parties will be relied upon to determine the good faith of each party.

4. With "stay put" protection and until such time as the MDT decides otherwise, DCPS will continue the adult student's placement at the  
Program protection.

Dated this 17<sup>th</sup> day of April, 2009

  
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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.**