

DC Office of the State Superintendent of Education
Office of Compliance and Review
Student Hearing Office

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Confidential

<p>STUDENT¹, by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Date: April 11, 2009</p> <p><u>Hearing Officer: Wanda I. Resto, Esquire</u></p>
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OSSE
STUDENT HEARING OFFICE
2009 APR 13 AM 9:36

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On March 3, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to conduct the Student's recommended comprehensive psychological evaluation and functional behavior assessment.

The Petitioner requests the Respondent be deemed to have denied the Student a FAPE and as a relief ordered to fund an independent comprehensive psychological evaluation and functional behavior assessment, convene an multidisciplinary team ("MDT") meeting to review the assessments and update the Student's individualized education plan ("IEP"), develop a behavior intervention program, determine placement, determine the amount of compensatory education services owed and develop a compensatory education plan.

On March 26, 2009, the Respondent filed a Response to the Parent's Administrative Due Process Complaint. The Respondent argued that both the IDEIA and DCMR require written parental consent for a reevaluation and that parent's counsel is not an authorize party to request evaluations of the Student. The Respondent also argued that the request for evaluations is being made solely based upon the results of a Vineland adaptive assessment, through counsel, and there is nothing evidencing that the Student requires a functional behavior assessment ("FBA") to access his current educational program.

A telephonic pre-hearing conference for the above reference matter was conducted on March 27, 2009 at 11:00 AM. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session. The Petitioner indicated that the Respondent had recently authorized the independent funding for the clinical psychological and that the MDT in a recent meeting agreed that a FBA was required but did not agree to fund the assessment. The Petitioner agreed to send by March 27, 2009 to the Hearing Officer a copy of the March 20, 2009 meeting notes.

The Respondent reiterated its defenses. Additionally, the Respondent argued that the doctrine of *res judicata* and collateral *estoppel* prevent the reconsideration of the facts and issues alleged in the current complaint, numbered paragraphs one through 28. The Respondent further argued that the facts and allegations were finalized in an agreement between the parties, placed on the record at the November 17, 2008 hearing, and any facts or allegations incorporated into the current Complaint from the previous Complaint should be barred from consideration of any current allegations of a denial of FAPE to the Student. Finally, the Respondent argued that the Student has not been denied a FAPE, is currently in the Autism program at GES with six other students and is placed appropriately.

The Petitioner asserted that the information in paragraphs mentioned is for background. The Hearing Officer determined that the November 17, 2008 HOD did not address a failure to provide a comprehensive psychological evaluation and therefore neither *res judicata* nor *estoppel* defenses were appropriate.

The Respondent argued that the Office of State Superintendent of Education ("OSSE") Standard Operating Procedures ("SOP") requires the Petitioner to sign the Complaint. The Respondent claims that in the absence of the parent's signature the Complaint was an insufficient notice to the local education agency. Counsel for the Petitioner asserted that the Petitioner would be present at the hearing. The Hearing Officer determined that the Petitioner could sign the Complaint at the hearing and Counsel for the Respondent agreed.

A hearing was convened April 7, 2009 @ 3:00 PM. The hearing was conducted in accordance with the rights established under the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S.C. § 1400 et seq. and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

II. ISSUE(S)

Was the Student entitled to evaluations?

Was the Student denied a FAPE?

Can the Complaint be dismissed for the Petitioner's failures to provide the requested MDT notes, failing to sign the Complaint and failing to appear to the Hearing?

III. FINDINGS OF FACT

1. A hearing was convened **April 7, 2009 @ 3:00 PM**. Petitioner's Counsel and Counsel for the Respondent were present at the hearing however the Petitioner did not appear.
2. The Respondent argued that a March 20, 2009 meeting settled the matter of the evaluations; all that was pending are the results of the evaluations and a follow-up meeting to discuss the reports. The Respondent requested the Complaint be dismissed with prejudice.
3. The parties agreed at the hearing that an MDT on March authorized the independent funding for the clinical psychological and to perform a FBA and to reconvene once the evaluations was completed.
4. The Petitioner failed to provide the Hearing Officer a copy of the March 20, 2009 MDT as ordered, failed to appear to the hearing and did not sign the Complaint.

IV. CONCLUSIONS OF LAW

FAPE Determination

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

The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living. The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as “special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP).”

Burden of Proof

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that 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 a FAPE.

The Respondent met its legal obligation under the IDEA. Here is why.

Violations

The evidence is that the Respondent may have failed a statutory obligation to provide evaluations in a timely manner. Notwithstanding that the Respondent failed to perform a procedural requirement of the IDEA. The IDEA at 20 U.S.C. § 1414 (E) (ii), and as provided in 34 C.F.R. § 300.513(a) regarding hearing officer decisions on procedural issues, “[I]n matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education [FAPE] only if the procedural inadequacies

- i. impeded the child’s right to a free appropriate public education;
- ii. significantly impeded the parent’s opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent’s child; or
- iii. caused a deprivation of educational benefits.”

The Petitioner alleged among others a violation of the statutory right for a reevaluation upon the parent’s requests. ² The Petitioner received the requested evaluations therefore all

² See: 34 C.F.R. Sec.300.303(a)(1)(2),

claims of failure to provide evaluations prior to March 20, 2009 are dismissed. The Petitioner did not show that an educational harm was caused by any procedural violation the Respondent may have committed.

V. SUMMARY OF DECISION

The Respondent authorized an independent comprehensive psychological evaluation and functional behavior assessment, will convene an multidisciplinary team "MDT" meeting to review the assessments and update the Student's individualized education program.

The Petitioner did not show that an educational harm was caused by any procedural violation the Respondent committed. The Petitioner additionally failed to demonstrate that the Student's right to a FAPE was denied or that the parent was significantly impeded from participating in the decision making process. All claims of request for evaluations prior to March 20, 2009 are dismissed.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the Respondent has not denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, the Complaint is **Dismissed** with **prejudice**.

This order resolves all issues raised in the Petitioner's March 3, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. Final decisions of special education Hearing Officer may be appealed to a state or federal district court of competent jurisdiction. (20 U.S.C. §1415(i)(2) and 34 C.F.R. §300.516)

/s/WIResto (electronically signed)
Wanda I. Resto - Hearing Officer

Date: April 11, 2009