

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

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STUDENT HEARING OFFICE
2012 APR - 2 AM 8:35

Parent ¹ , on behalf of Student,)	
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)	
Petitioner,)	
)	Hearing Officer: James McKeever
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Hearing Date: March 22, 2012
)	
Respondent.)	

HEARING OFFICER DETERMINATION

I. Introduction and Procedural Background

This is a due process proceeding brought in accordance with the Individuals with Disability Education Act 2004 (“IDEA”) and its implementing regulations codified at 20 U.S.C. Section 1400 *et seq.*, against Respondent, District of Columbia Public Schools (DCPS).

Petitioner is the parent of the Student, a year-old girl who resides in the District of Columbia and who is not classified as a child with a disability. The Student currently attends the grade at a High School in the District of Columbia (Exhibit R-6).

On January 17, 2012, Petitioner filed a Due Process Complaint (DPC) against DCPS alleging that DCPS failed to offer the Student a free and appropriate public education (FAPE) during the 2011-2012 school year because DCPS failed to locate, identify and evaluate the Student for special education services pursuant to their Child Find obligations under the IDEA. Specifically, Petitioner contends that DCPS should have identified the Student as a child with a disability because DCPS was aware of the Student’s poor performance at school over the last several years and because DCPS was provided with a private

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

psychological evaluation of the Student on October 17, 2012, which recommended that the Student be deemed eligible for special education services under the IDEA (DPC).

On February 9, 2012, DCPS filed its Response to the DPC. DCPS asserted that the Student's poor performance in school is due to truancy (DCPS Response).

The Resolution session was held on February 2, 2012. The parties did not resolve the issues raised in the DPC, but continued the resolution period to February 16, 2012. The initial forty-five day HOD timeline began on February 17, 2012.

The Prehearing Conference (PHC) was held on February 29, 2012. Counsel for Petitioner and counsel for DCPS participated. During the PHC the parties discussed the issues raised in the DPC and Petitioner's requested relief (set forth below). It was agreed that the Due Process Hearing (DPH) would be held on March 22, 2012 and that the disclosures would be filed by March 15, 2012.

The disclosures were filed as agreed on March 15, 2012. Petitioner's Exhibits 1-25 were admitted into evidence. Respondent's Exhibits 1-8 were also admitted into evidence².

The following witnesses testified on behalf of the Petitioner: Parent, Student's sister and Clinical Psychologist.

The following witnesses testified on behalf of the Respondent: School Psychologist and Special Education Teacher.

II JURISDICTION

The Due Process Hearing was held in accordance with the rights established under the Individuals with Disability Education Act 2004 ("IDEA"), and its implementing regulations at 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25. This decision constitutes the Hearing Officer's Determination (HOD) pursuant to 20 U.S.C. §1415 (f); 34 C.F.R. §300.513.

III. ISSUES PRESENTED

The following issues were certified for adjudication at the due process hearing:

² A list of all Exhibits entered into evidence is annexed hereto at Appendix "B"

Whether DCPS denied the Student a free and appropriate public education by failing to locate, identify and evaluate the Student for special education services pursuant to their Child Find obligations under the IDEA when DCPS was aware of the Student's poor performance at school over the last several years and when DCPS was provided with a private psychological evaluation on October 17, 2012, which recommended that the Student be found eligible for special education services under the IDEA.

Petitioner seeks an Order finding the Student eligible for special education services under the IDEA under the classification of Specific Learning Disability and/or Emotionally Disturbed. Petitioner also requests an Order directing DCPS to develop an appropriate IEP, as well as an award of compensatory education services.

IV. FINDINGS OF FACT

Based upon the evidence adduced at the Due Process Hearing, I make the following findings of fact:

The Student is a year-old girl who resides in the District of Columbia. The Student has not been found eligible by DCPS for special education and related services under the IDEA as a child with a disability. The Student presently attends the grade at a DCPS High School in the District of Columbia. The Student has attended DCPS public schools since the first grade (Testimony of Parent).

The Student's report card from the 5th grade indicated that the Student struggled with math and reading and that she had made very little progress in all subjects (Exhibit P-17). The report card also recommended summer school services (Exhibit P-17).

The Student was retained in the 8th grade for failing math, English, history and art (Exhibit P-12, page 2). During this school year, the Student had 64 absences in math and 38 absences in English (Exhibit P-19, page 2).

During the summer of 2011, the Student was referred to the Juvenile Justice Court in the District of Columbia to address her truancy (Testimony of Clinical Psychologist). The Juvenile Justice Court directed that a comprehensive psychological be conducted for the Student (Testimony of Clinical Psychologist and Exhibit P-14).

The comprehensive psychological evaluation was conducted on August 12, 2011. The assessments utilized for the evaluation were administered by a

Master's level intern and were supervised by the Clinical Psychologist who has a Ph.D in psychology. The Clinical Psychologist edited the final report and made the ultimate findings (Testimony of Clinical Psychologist). At the impartial hearing, the Clinical Psychologist was qualified as an expert in clinical psychology. The Clinical Psychologist also has 12 years of experience as a School Psychologist, concluded that the Student is eligible for special education services under the IDEA as a student who is "Learning Disabled," "Emotionally Disturbed" or as a Student with "Multiple Disabilities" (Exhibit P-14).

The cognitive testing that was conducted as part of the psychological evaluation revealed that the Student had a full scale IQ of 74. The Student attained a 69 on the Verbal Comprehension Index (VCI), which placed her in the "Extremely Low" range of functioning and at the 2nd percentile rank among her peers (Exhibit P-14, page 6). The Student's low scores on the language tasks of the VCI suggest deficits in reading, spelling, writing and calculation. The low scores indicate the Student's inability to negotiate conflicts and her inability to express her feelings (Exhibit P-14). The Student's earned a composite score of 82 on Perceptual Reasoning (Non-Verbal), which placed her in the Low Average range and in the 12th percentile rank among her peers (Exhibit P-14, page 5). The Student's reading, writing and functional communication abilities are less developed than her nonverbal skills (Testimony of Clinical Psychologist).

The results of the Woodcock Johnson revealed that the Student was functioning at a 5th grade level across all academic skill areas with a standard score of 79 that placed her in the 8th percentile with respect to her peers (Exhibit P-14, page 9). The Student's limited academic skills make it difficult for her to function in the classroom, and contribute to her school avoidant behavior (Exhibit P-14).

The social emotional testing that was conducted as part of the psychological evaluation included the Millon Adolescent Clinical Inventory (MACI), the Behaviors Assessment System for Children-Second Edition (BASC-2), the Trauma Symptom Checklist for Children (TSCC) and the Rorschach Inkblot Test (Exhibit P-14).

The Student is in the "At-Risk" range in areas of adaptive behavior, social skills, functional communication and activities of daily living (Exhibit P-14). The Student's adaptive dysfunction contributes to the Student's inability to function at school (Testimony of Clinical Psychologist, Exhibit P-14).

The Student has a significant Verbal/Performance discrepancy, which is found in less than 18% of the base rate population (Exhibit P-14). This pattern is found in a "Mixed Expressive/Receptive Language Disorder and in Autism (Testimony of Clinical Psychologist, Exhibit P-14). The Student's cognitive and

behavioral profile “suggests a possible Autistic Spectrum Disorder with her signs of social withdrawal, avoidance, possible school phobia and atypical thinking patterns” (Exhibit P-14, page 2).

The Student’s academic and social skills are significantly affected by her poor language and communication skills (Exhibit P-14). The Student has very low speech, poor eye contact and fails to identify important social cues (Testimony of Clinical Psychologist, Exhibit P-14). The Student engages in school avoidant behavior because she is overwhelmed and frightened at school (Testimony of Clinical Psychologist).

The Student avoids crowds and has difficulty interacting with peers and adults (Testimony of Parent, Testimony of Student’s sister, Testimony of Clinical Psychologist). The Student’s relationship with her mother is turbulent (Testimony of Parent, Exhibit P-15). The Student requires social skills training (Testimony of Clinical Psychologist). The Student has an interest in dance and photography (Testimony of Student’s sister and Testimony of Clinical Psychologist) A summer dance movement therapy class would help enhance the Student’s social skills (Testimony of Clinical Psychologist).

In September 2011, the Student entered the _____ grade at a DCPS High School. During this school year, the Student rarely went to school (Exhibit P-23). DCPS sent an Attendance Counselor to the Student’s home on one occasion and the Student went to school on that day (Testimony of Petitioner). The Student is failing all of her subjects during the current school year (Testimony of Petitioner).

On or about October 17, 2011, DCPS was provided with a copy of the psychological evaluation administered to the Student On August 12, 2012 (Exhibit P-5).

In November 2011, the Student was hospitalized at the _____ for 5 days. The Student’s hospitalization occurred after the Student’s parent called the police when the parent learned that the Student destroyed property in the parent’s home (Testimony of Petitioner). PIW diagnosed the Student with a mood disorder (Exhibit P-16).

DCPS did not convene a meeting to review the Student’s private psychological evaluation and/or to discuss the Student’s eligibility for special education services until March 6, 2012. At this meeting, DCPS decided to postpone an eligibility determination because DCPS believed that a speech and language evaluation and an Autism rating scale needed to be conducted in order to determine the Student’s eligibility under the IDEA (Testimony of DCPS School Psychologist). In lieu of classification under the IDEA, DCPS discuss

support services, which included a modified class schedule and “school start times,” as well as individual tutoring and after school program (Exhibit P-13, page 1)

As of the date of the impartial hearing a speech and language evaluation had not been conducted because on the one date that the DCPS speech pathologist attempted to do so, the Student was not in school (Testimony of Special Education Teacher). The Autism Rating Scales were also not completed by the Student’s general education teachers because the Student was not in school. No other attempts were made by DCPS to rule out a diagnosis of Autism for this Student (Testimony of DCPS School Psychologist).

The parent’s telephone is often out of service because the parent cannot pay the phone bill every month. The parent relocated during the 2011-2012 school year and gave DCPS her new address. The Student’s grandmother is the Student’s emergency contact. DCPS has the Student Grandmother’s telephone number and the Student’s grandmother’s telephone service has not been interrupted (Testimony of Petitioner).

No additional MDT meetings have been scheduled for the Student (Testimony of Special Education Teacher).

V. BURDEN OF PROOF

The burden of proof in a special education due process hearing lies with the party seeking relief. DCMR 5-3030.3; see, Schaffer v. Weast, 546 U.S. 49 (2005).

VI. SUMMARY

The Hearing Officer concludes that Petitioner has met her burden of proof with respect to the alleged denial FAPE based on the DCPS failure identify the Student as a Child with a disability in October 2011 and its failure to find the Student Eligible as a Student with a Specific Learning Disability (SLD). Petitioner has not met her burden of demonstrating that the Student should have been classified as a student with an Emotional Disturbance.

VII CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony.

VII STATUTORY FRAMEWORK

Under the IDEA, the federal government provides funding to state and local educational agencies, including those of the District of Columbia, see 20 U.S.C. § 1401(31), for the education of disabled children. As a condition of receiving that funding, an educational agency must maintain policies and procedures ensuring that a "free appropriate public education is available to all children with disabilities residing in the [jurisdiction] between the ages of 3 and 21." 20 U.S.C. § 1412(a)(1)(A). A "central component of a disabled student's special education under the IDEA" is the individualized education program ("IEP"), which is a written statement setting out the student's "individually tailored goals and the means of achieving them." District of Columbia v. Doe, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010) (citing 20 U.S.C. § 1414(d)). The IDEA also guarantees a student's parents "both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." Id. at 890 (quoting Honig v. Doe, 484 U.S. 305, 311-12 (1988)) (internal quotation marks omitted).

VI. ANALYSIS AND CONCLUSIONS OF LAW

Child Find:

20 U.S.C. Section 1412(a)(3) and 34 C.F.R. 300.11(a) and (c) required that a local educational agency identify, locate and evaluate all students whom they suspect may have a disability.

In N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008), the Court held that the Child Find obligation extends to all children suspected of having a disability, not merely to those students who are ultimately determined to be disabled. 34 C.F.R. § 300.111 (c)(1).

Pursuant to DCMR Section E-3002.1(d) the LEA shall ensure that procedures are implemented to identify, locate and evaluate all children with disability residing in the District who are in need of special education and related services, including children with disability attending private schools, regardless of the nature or severity of their disabilities.

Petitioner asserts that the Student should have been identified and evaluated by the DCPS when DCPS was aware of the Student's poor performance at school over the last several years and when DCPS was provided with a private psychological evaluation on October 17, 2012 that recommended that the Student be found eligible for special education services under the IDEA.

Here, the evidence shows that the Student's report card in the 5th grade indicated that she was not performing well and that she was recommended for summer school services because of her failing grades (Exhibit P-17). I find that although the report card confirmed that the Student was struggling in school at

the time, nothing else was offered to suggest that the Student was then in need of special education services. As such, I do not find that DCPS was on notice that the Student may have been a Student with a disability in the 5th grade. Additionally, although the evidence shows that the Student was retained in the 8th grade because she failed all of her classes, the evidence shows that the Student rarely went to school during that school year. Thus, while truancy may be a factor for an LEA to consider when a Student might be a candidate for special education services, under the facts of this case, I find that the Student's truancy during the 8th grade, without any other supporting evidence, was insufficient to put DCPS on notice at that time that the Student may have been a child with a disability. However, with respect to the psychological evaluation of the Student that was provided by Petitioner to DCPS in October 2011, wherein a Clinical Psychologist found that the Student was eligible for special education services, I find that DCPS was on notice that the Student was more than likely a child with a disability and that DCPS' failure to convene a meeting to discuss the psychological evaluation and consider identifying the Student as a child with a disability until March 6, 2012, was a violation of their Child Find obligations. Additionally, DCPS' contention that that the Student's absences from school prevented DCPS from performing their own evaluations is unpersuasive. Here, the evidence shows that the DCPS "attendance counselor" only went to the Student's home on one occasion during this time and nothing else was offered at the hearing to suggest that DCPS attempted to evaluate the Student outside of school. Accordingly, I find that Petitioner has demonstrated that the DCPS denied the Student a FAPE by failing to timely locate, identify and evaluate the Student as a child with a disability after receiving the psychological evaluation from the Petitioner in October 2011.

Eligibility :

Pursuant to Section 34 C.F.R. Section 300.8(a)(4)(i) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) Inappropriate types of behavior or feelings under normal circumstances; (D) A general pervasive mood of unhappiness or depression; (E) A tendency to develop physical symptoms or fears associated with personal or school problems; (ii) Emotional disturbance includes schizophrenia. However, the term does not apply to children who are socially maladjusted.

Here, Petitioner contends that the Student qualifies for an ED classification because the Student does not have relationships with her peers and teachers and because the Student displays inappropriate behavior under

normal circumstances (Testimony of Clinical Psychologist). Contrary to Petitioner's contentions, I find that the evidence does not support a finding that the Student qualifies for special education services under an ED classification because the evidence presented at the impartial hearing demonstrated that the Student has had friends from middle school that she continued to have in high school and that the Student had a close relationship with her sister (Testimony of Parent, Testimony of Sister). Additionally, no evidence was presented with respect to the Student's inability to develop relationships with her teachers. Further, and assuming that the Student was unable to build and maintain relationships with her peers and her teachers, Petitioner failed to demonstrate that this occurred over a long period of time and to such a marked degree that it adversely affected a child's educational performance. As such, I find that the evidence presented does not support ED classification for this Student.

With respect to the Student displaying inappropriate behavior under normal circumstances, the only evidence presented was that the Student reacted badly to being left alone on one occasion when her mother and sister failed to include her in an outing (Exhibit P-16). Here, I find that Petitioner failed to meet her burden of proof with respect to demonstrating that the Student was eligible for an ED classification under this definition because even assuming that the Student's behavior on this occasion was inappropriate and that the circumstances were normal, no evidence was presented that this type of behavior occurred over a long period of time and to such a marked degree that it adversely affected a child's educational performance. Accordingly, Petitioner's request for a finding that the Student meets ED classification under the IDEA is denied.

Specific Learning Disability:

Pursuant to Section 34 C.F.R. Section 300.8 (a)(10) a Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Here, the cognitive testing that was conducted as part of the psychological evaluation revealed that the Student attained a 69 on the Verbal Comprehension Index (VCI), which placed her in the "Extremely Low" range of functioning (Exhibit P-14, paged 6). The evidence also shows that the Student's low scores on the language tasks of the VCI suggested deficits in reading, spelling, writing and math calculation (Exhibit P-14). The results of the Woodcock Johnson confirmed that the Student was functioning at a 5th grade level across all academic skill areas with a standard score of 79, which placed

her in the 8th percentile with respect to her peers (Exhibit P-14, page 9). Additionally, the evidence shows that the Student has a significant Verbal/Performance discrepancy, which is found in less than 18% of the base rate population (Exhibit P-14) and is a pattern found in a "Mixed Expressive/Receptive Language Disorder and in Autism (Testimony of Clinical Psychologist, Exhibit P14). Thus, based on these facts, I find that the results of the Student's cognitive and achievement testing supports a finding that the Student has a learning disability. Specifically, I find that the Student's weaknesses on the VCI (SS 69, percentile) and her composite score of 82 on Perceptual Reasoning (Non-Verbal) (12th percentile) impacts her ability to "ability to listen, think, speak, read, write, spell, or to do mathematical calculations." Accordingly, I find that the Student is eligible for special education services under the IDEA as a Student with a Specific Learning Disability (SLD).

Further, I find that DCPS' decision not to find the Student eligible for special education services under a SLD classification at the meeting held on March 6, 2011 denied the Student FAPE. As set forth above, during this meeting, DCPS had more than sufficient information in which to classify the Student and develop an IEP (See, Exhibit 14, Testimony of Clinical Psychologist).

Compensatory Education:

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, which is the replacement of educational services that the child should have received in the first place, Reid v. District of Columbia, 401 F.3d. 516 (D.C. Cir. 2005). Because compensatory education is a remedy for past deficiencies in student's educational program, a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award," Peak v. District of Columbia, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

As indicated above, Petitioner has proven that the Student was denied a FAPE during the current school year. As such, the Student is entitled to compensatory education. (See, The Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115 (D.D.C. 2008).

Here, Petitioner requests compensatory education services in the form of individual counseling, individual tutoring and a "dance/movement therapy" to address the Student's academic and social emotional delays. The evidence shows that DCPS should have identified the Student as a child with a disability in October 2011. As such, I find that the period that needs to be remediated is from

October 2011 to March 2012, when DCPS offered some support services, but declined to find that Student eligible for special education services under the IDEA.

The evidence shows that the Student has made very little, if any, academic progress during this time. Accordingly, I find the two hours per week of individual tutoring for the remainder of the 2011-2012 school year and during the summer of 2010 is appropriate.

Further, the evidence shows that the Student is in the "At-Risk" range in areas of adaptive behavior, social skills, functional communication and activities of daily living. The evidence also shows that the Student's adaptive dysfunction contributes to the Student's inability to function at school (Testimony of Clinical Psychologist, Exhibit P-14). Additionally, the evidence shows that the Student avoids crowds and has difficulty interacting with peers and adults (Testimony of Parent, Testimony of Student's sister, Testimony of Clinical Psychologist). Accordingly, in order to address these deficits, I find that individual therapy one hour per week for the remainder of the 2011-2012 school year and during the summer of 2010 is appropriate.

With respect to Petitioner's request for a summer dance movement therapy class, I find that the evidence is insufficient to support this request because the Student did not testify at the hearing with respect to this issue and because no evidence was presented from the proposed dance program. As such, Petitioner's request for a "dance/movement" class during the summer of 2012 is denied.

Autism Spectrum Disorder:

As indicated above, the Student has a significant Verbal/Performance discrepancy, which is found in less than 18% of the base rate population (Exhibit P-14). This pattern is found in a "Mixed Expressive/Receptive language Disorder and in Autism (Testimony of Clinical Psychologist, Exhibit P14). Additionally, the Student's cognitive and behavioral profile "suggests a possible Autistic Spectrum Disorder with her signs of social withdrawal, avoidance, possible school phobia and atypical thinking patterns" (Exhibit P-14, page 2). Moreover, the Student's academic and social skills are significantly affected by her poor language and communication skills and she has very "low speech, poor eye contact and fails to identify important social cues" (Testimony of Clinical Psychologist, Exhibit P-14). Accordingly, I find that the Student's academic and social/emotional issues may not be limited to the SLD classification. As such, I find that DCPS must rule out an Autism Spectrum Disorder in order to complete the Student's educational profile. To that end, DCPS shall conduct a

neuropsychological evaluation of the Student to determine whether the Student's disability also falls of the Autism Spectrum continuum.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 31^h day of March, 2012, it is hereby

ORDERED, that DCPS shall provide find the Student eligible for special education services under the IDEA as a Student with a Specific Learning Disability;

ORDERED, that DCPS shall convene an IEP meeting within 10 school days of the date of this decision to develop an appropriate IEP for the Student that addresses the Student cognitive, academic and social deficits as indicated in the psychological evaluation dated August 12, 2011. DCPS shall address the Student's school avoidant behavior in this IEP.

ORDERED, that DCPS shall fund one hour per week of individual therapy for the remainder of the 2011-2012 school year and during the summer of 2012;

ORDERED, that DCPS shall fund two hours per week of individual tutoring in reading, math and written expression for the remainder of the 2011-2012 school year and during the summer of 2012

ORDERED, that DCPS shall conduct a Neuropsychological Evaluation of the Student within 20 school days from the date of this decision in order to rule out an autism spectrum disorder.

ORDERED, that DCPS shall convene an IEP meeting within 20 school days after receiving a copy of the Neuropsychological Evaluation to review the report. DCPS shall also invite the Neuropsychologist to the IEP meeting to assist in the MDT's review of the report.

Dated March 31, 2012

By: /s/ James McKeever
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer's Determination 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. Section 1415(i)(2).