

***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 JUN 29 PM 2:44

<p>STUDENT<sup>1</sup>, by and through parent,  Petitioner,  us.  District of Columbia Public Schools,  Respondent.</p>	<p><b><u>HEARING OFFICER'S DETERMINATION</u></b></p> <p>Counsel for Petitioner/Parent: Christopher West, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, 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**

The student attended a private special education day school in the District of Columbia.

On September 18, 2008, a Hearing Officer's Determination/Decision (HOD) was issued in this matter wherein DCPS was ordered to complete specified evaluations of the student within a timeline and to reconvene the MDT.

On May 22, 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 violated the HOD issued in this matter on September 18, 2009 and for relief, requested an MDT meeting.

A Pre-hearing Conference Order was issued in this matter on June 11, 2009. The Order determined the ISSUE as setout below.

A hearing in this matter was scheduled for 11:00 A.M., Wednesday, June 24, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 7B, 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: Did DCPS violate the HOD issued in this matter  
September 18, 2009?**

## **FINDINGS of FACT**

By facsimile dated June 17, 2009, the parent disclosed 8 witnesses and 13 documents.

By facsimile dated June 17, 2009, DCPS disclosed 11 witnesses and 5 documents. The documents were admitted into the record and are referenced/footnoted herein where relevant.

At the conclusion of the Parent's case, DCPS rested on and argued the record.

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

1. An HOD was issued in this matter on September 18, 2009 wherein DCPS was ordered to complete specified evaluation of the student within a timeline; the Parent was authorized to arrange independent evaluations in the event DCPS failed to complete the specified evaluations timely. Within fifteen (15) schooldays of completion/receipt of the newly completed evaluations, DCPS was to convene an MDT meeting.<sup>2</sup>
2. DCPS did not complete the evaluations as ordered, and the Parent arranged independent evaluations. The last independent evaluation was delivered to DCPS on March 2, 2009.<sup>3</sup> The fifteenth school day was March 23, 2009. As of March 24, 2009, DCPS was in violation of the September 18, 2009 HOD.
3. On April 2, 2009 the Parent filed a complaint; the complaint was withdrawn on May 7, 2009 because DCPS and the Parent had agreed to an MDT meeting on May 21, 2009.<sup>4</sup>
4. DCPS cancelled the May 21, 2009 MDT meeting after the Parent and Educational Advocate had arrived at the day school for the meeting.<sup>5</sup>
5. The herein Complaint was filed on May 22, 2009.
6. On May 28, 2009, DCPS proposed new dates for the MDT meeting.<sup>6</sup>
7. The parties agreed to convene the MDT on June 19, 2009.<sup>7</sup> (Neither the DCPS Letter of Invitation for the June 19, 2009 MDT meeting nor the Parent's Letter of Confirmation was in the record.)
8. Upon arriving at the day school on June 19, 2009, the Educational Advocate was informed that staff were not present and that the MDT meeting would not convene.<sup>8</sup>
9. At the date of the herein hearing, the parties had agreed to convene the MDT on July 1, 2009.<sup>9</sup>

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

<sup>3</sup> Par. Doc. No 2

<sup>4</sup> Par. Docs. Nos 12 & 13

<sup>5</sup> -testimony of the Educational Advocate

<sup>6</sup> DCPS Doc. No 5

<sup>7</sup> -testimony of the Educational Advocate and the Parent

<sup>8</sup> *ibid*, No 5, above

<sup>9</sup> *ibid*, No 5, above

10. The June 11, 2008 IEP<sup>10</sup> indicated speech/language services for 90 minutes per week. On July 9, 2009, the day school reduced the services to 1 hour per week.<sup>11</sup> The decision to reduce the speech/language services for the student was based on the May 22, 2008 Speech/Language Progress Summary and was appropriate.<sup>12</sup> No one qualified in speech/language pathology testified at the hearing or contradicted the progress summary report.

11. The Parent thought the student's speech had regressed and that the student needed speech/language services more than 1 hour per week of.<sup>13</sup>

## 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.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

### ONE

#### **DCPS violated the September 18, 2009 HOD.**

The September 18, 2009 HOD found that DCPS had failed to complete MDT recommended evaluations of the student; this was a delay in making FAPE available the student.

The HOD ordered DCPS to complete the MDT recommended evaluations. DCPS did not complete the evaluations as ordered; this caused the Parent to arrange independent evaluations, another delay.

The Parent delivered the newly completed evaluations to DCPS on March 2, 2009 setting the timeline for DCPS to convene the MDT on or before March 23, 2009. Well beyond March 23, 2009, DCPS scheduled the first MDT meeting for May 21, 2009 and, on May 21, 2009, cancelled the meeting after the Parent and

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<sup>10</sup> Par. doc. No 11

<sup>11</sup> Par. Doc. No 7

<sup>12</sup> *ibid*

<sup>13</sup> -testimony of the Parent

Educational advocate had arrived at the day school: two more delays.

While there was no documentation in the record concerning the June 19, 2009 MDT meeting, the undersigned accepted the testimony of the Educational Advocate and Parent to the effect DCPS scheduled a second MDT meeting scheduled for June 19, 2009 that did not go forward.

DCPS is required to comply with HODs and settlement agreements. Moreover, there is a rebuttable presumption that such non-compliance causes educational harm. See Blackman/Jones Consent Decree, C.A. 97-1629 (PLF) consol'd with C.A. 97-2402 (PLF).

## SUMMARY of the DECISION

The parent met her burden in this matter.

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

### ORDER

Within 15 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.

Dated this *29th* day of *June*, 2009

*/s/ H. St. Clair*

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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.**