

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

2009 JUL 30 AM 10:03

STUDENT HEARING OFFICE

<p>STUDENT¹, by and through parent, Petitioner, us. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Domiento C.R. Hill, Esq.</p> <p>Asst. Attorney General for DCPS: Nia M. Fripp, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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1 of 6 pages

¹ 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. On April 15, 2009, the MDT met at the day school and completed an IEP for the student; the MDT also recommended the student for a reevaluation. On April 16, 2009, Counsel for the Parent forwarded the IEP and MDT recommendations to DCPS.

On June 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 failed to complete MDT recommended evaluations of the student and, for relief, requested independent evaluations and an MDT meeting.

A Pre-hearing Conference Order was issued, *sua sponte*, in this matter on July 10, 2009. The Order determined the ISSUES as setout below.

A hearing in this matter was scheduled for 3:00 P.M., Thursday, July 23, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, 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.

- ISSUES:**
- 1. Did DCPS fail to complete MDT recommended evaluations of the student?**
 - 2. Was the April 15, 2009 IEP appropriate?**
 - 3. Was compensatory education warranted in this matter?**

FINDINGS of FACT

By facsimile dated July 16, 2009, the parent disclosed 11 witnesses and 13 documents.

By facsimile dated July 16, 2009, DCPS disclosed 6 witnesses and 2 documents.

The documents were admitted 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 MDT met at the private day school on April 15, 2009 and completed an IEP that disability coded the student Learning Disabled (LD) with 30 hours of special education services in a 100% Out of General Education setting; the MDT recommended speech/language and comprehensive psychological evaluations of the student along with a vocational assessment.²
2. On April 16, 2009 and by facsimile, Counsel for the Parent forwarded to DCPS copies of the April 15, 2009 IEP and meeting notes; the recommended evaluations/assessment of the student were mentioned in the meeting notes and in the body of the facsimile.³
3. DCPS did not respond.
4. On May 17, 2009, Counsel for the Parent sent a follow-up facsimile mentioning the recommended evaluations.⁴
5. DCPS did not respond.
6. The herein Complaint was filed June 22, 2009, sixty-seven days after the date of Counsel for the Parent's April 16, 2009 facsimile noted in Finding of Fact No 2, above.
7. On July 10, 2009, DCPS issued authorization to Counsel for the Parent for independent comprehensive psychological and speech/language evaluations; a level II vocational assessment was also authorized.⁵ The authorization was eighty-five days after April 16, 2009.

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

3 of 6 pages

² Parent Document No 6

³ Par. Doc. No 4

⁴ Par. Doc. No 5

⁵ DCPS Doc. No 2

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

This Issue turns on whether the DCPS response to the April 15, 2009 MDT recommended evaluations was reasonable. *IDEIA 2004* does not specify a timeline for the completion of reevaluations, but, it should be noted, the District of Columbia requires DCPS to make FAPE available within 120 days of an initial referral of a student for evaluation for special education services.

Regulation 34 CFR 300.303 concerns reevaluations and provides authority for a public agency to reevaluate a child with a disability, "If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance of the child warrant a reevaluation; . . ." While the student herein attended a private day school and DCPS did not attend the April 15, 2009 MDT meeting, DCPS was notified of the MDT recommended reevaluation and specified evaluations by facsimile the next date, April 16, 2009. DCPS was responsible to monitor the student although placed at the private day school. A second facsimile concerning the status of the evaluations was sent on May 17, 2009. The first DCPS response was the July 10, 2009 IEE letter.

The MDT met on April 15, 2009. Counsel for the Parent sent the MDT recommendation for comprehensive psychological and speech/language evaluations and a vocational assessment to DCPS by facsimile on April 16, 2009, the next day. Sixty-seven days later the herein June 22, 2009 Complaint was filed; after another eighteen days, DCPS issues the July 10, 2009 IEE letter. Eighty-five or so days after the April 16, 2009 notice by facsimile, DCPS makes its first response, an authorization for the requested evaluations.

The undersigned thought ninety days was a reasonable time within which to complete a reevaluation, certainly when the first response from DCPS was to authorize the requested evaluations without an explanation as to why eighty-five days were required to make a decision that could have been made within a week and certainly within a month. The five days left from the reasonable 90 days was not enough time within which to complete three evaluations. DCPS did not complete the April 15, 2009 MDT recommended evaluation of the student within a reasonable period of time.

DCPS argued that, assuming the unreasonableness of the time they took to respond, the student did not suffer a detriment to education benefit. At paragraph (b) of the regulation 34 CFR 300.303, limitations on paragraph (a) are setout. They read:

(b) *Limitations.* A reevaluation conducted under paragraph (a) of this section –

- (1) May occur not more than once a year, unless the parent and public agency agree otherwise; and
- (2) Must occur at least once every three years, unless the parent and the public agency agreed that a reevaluation is unnecessary.

Because this regulation contains its limitations, it's limited only by these limitations, and the general proscription at 34 CFR 300.513(a)(2) is immaterial to their applicability. Still, applying 34 CFR 300.513(a)(2), because evaluations support the student's disability coding and IEP, the failure to complete the MDT recommended evaluations within a reasonable period of time impeded the student's right to a FAPE: the student could no longer be LD, more so, or less so to the point a 100% Out of General Education Setting is no longer needed.

TWO & THREE

These Issues are not ripe.

These claims are susceptible to the limitations at 34 CFR 300.513(a)(2) and, depending on the results of the forthcoming evaluations, maybe meritorious - maybe not. Secondly, the April 15, 2009 MDT knew the existing evaluations were expired when they completed the new IEP, and at the same meeting, they recommended the herein new evaluations.

SUMMARY of the DECISION

The parent met her burden in this matter as to Issue One.

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

ORDER

1. DCPS will fund independent comprehensive psychological and speech/language evaluations along with an independent vocational II assessment.

2. With receipt of the independent evaluations, DCPS will convene an MDT meeting.

3. Issues TWO & THREE are dismissed WITHOUT PREJUDICE.

Dated this *30th* day of *July*, 2009

H. St. Clair

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.

6 of 6 pages