DISTRICT OF COLUMBIA

Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

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OSSE
STUDENT HEARING OFFICE

Confidential

STUDENT[1], by and through guardian, Petitioner, *vs.* District of Columbia Public Schools, Respondent.	**HEARING OFFICER'S DETERMINATION** Counsel for Petitioner/Guardian: Domiento C. R. Hill, Esq. Asst. Attorney General for DCPS: Daniel McCall, Esq. Impartial Hearing Officer H. St. Clair, Esq.

[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 religious school in the District of Columbia. On April 18, 2007, DCPS completed an IEP for the student that expired April 19, 2008.

On June 15, 2009, Counsel for the Guardian 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 Guardian complained DCPS failed to review and revise the student's April 18, 2007 IEP and, for relief, requested a private placement, independent evaluations and an MDT meeting

A Pre-hearing Conference Order was issued in this matter on July 10, 2009. The Order determined issues that were modified at the hearing as setout below.

A hearing in this matter was scheduled for 3:00 P.M., Wednesday, July 22, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 5B, 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. **Was the failure on the part of DCPS to review the student's April 18, 2007 IEP a Denial of FAPE?**

2. **Did DCPS fail "to find" the student?**

FINDINGS of FACT

By facsimile dated July 10, 2009, the Guardian disclosed 7 witnesses and 17 documents.

By facsimile dated July 13, 2009, DCPS disclosed 7 witnesses and 11 documents; on July 15, 2009, DCPS disclosed an additional witness.

After objection by DCPS, Counsel for the Guardian withdrew Guardian Documents Nos 5 & 6.

Counsel for the Guardian objected to DCPS Documents 5 & 6 arguing they addressed the parents' residency, an issue immaterial to this matter. The objection was noted and was here OVERRULED.

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

DCPS requested the Rule on Witnesses; the rule was applied.

At the conclusion of the Guardian's case, DCPS moved for Directed Findings; the motion was taken under advisement and DCPS was ordered forward. Here, for the reasons setout below, the DCPS motion was GRANTED.

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

1. No Finding of Fact is made herein as to the legal sufficiency of the grandmother's May 5, 2009 guardianship for the student; for the determinations herein, the legal sufficiency of the guardianship was assumed.[2]

2. The mother completed and signed a DCPS Annual Student Enrollment Form on January 1, 2007; the form showed the mother and student residing at the same address in Mt Rainer, Maryland.[3] The mother and student were Maryland residents on January 1, 2007.

3. A DCPS Private-Religious School Student Referral Form was completed and signed by the mother on January 10, 2007. The mother listed her address and the student's address at the same address in Mt. Rainer, Maryland.[4] The mother and student were Maryland residents on January 10, 2007.

4. On April 18, 2007, DCPS completed an IEP that disability coded the student Specific Learning Disabled (SLD) with 15 hours of specialized instruction and 1 hour of counseling in a 49% Out of General Education setting.[5] The parent declined to sign the DCPS Form for consent for the initial provision of special education and related services.[6]

5. DCPS determined the student eligible for special education services on April 18, 2007 and itself not obligated to make FAPE available to the

[2] Parent Document No 17
[3] DCPS Doc. No 5
[4] DCPS Doc. No 3
[5] DCPS Doc. No 7, pages 1-16
[6] *ibid*, page 17

student as neither he nor his parents was a resident of the District of Columbia at the time. The April 18, 2007 IEP was never implemented. No special education services have been delivered to the student by DCPS, by any other public agency nor under the authority of any public agency.

6. The Grandmother testified that the student was her grandson, and that since sometime in 2005, had lived with her at her home in the District of Columbia; that she became Guardian for her grandson on May 5, 2009. The grade student attended the same religious school in the District of Columbia since the beginning of his schooling. The Guardian testified that she never contacted DCPS concerning the student's education or residency or her guardianship for the student.[7]

7. The student was registered at Center, DCPS, on July 1, 2009. A Maryland address and telephone number was listed for the student.[8]

8. Administrative Notice was taken of the DCPS publicly available documents, DCPS PRIVATE AND RELIGIOUS PROCEDURES, revised 02/09/2009 and Questions and Answers, Services for Children with Disabilities placed by their Parents in Private and Religious Schools, revised 2-09-09.

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 locate, identify, evaluate and determine eligibility for special education services every child suspected of having a disability in the District of Columbia, ages 3 through 21; for every child of a District of Columbia resident or residing child who is eligible for special education services, DCPS must provide 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/Guardian in this matter, and that burden was by preponderance.

[7] -testimony of the Guardian
[8] -testimony of DCPS Residency Official

ONE

DCPS was not obligated to review the student's April 18, 2007 IEP because they were not obligated to complete an IEP on April 18, 2007.

The thrust of the Guardian's argument was that *IDEIA 2004* required DCPS to review the student's April 18, 2007 IEP and that the failure to do so was Denial of FAPE. The undersigned was not persuaded.

In January 2007, the student was referred for evaluation for special education services. DCPS completed the evaluation and determined the student eligible for special education services; at that point, DCPS had met its obligation under *IDEIA 2004*. The DCPS obligation to locate, identify and evaluate children who maybe in need of special education services extends to children attending private schools in the District of Columbia though not residing in the District of Columbia; the student was one such. *See* 34 CFR 300.111. At that time, there was no dispute as to the fact the student resided with his parent(s) in Maryland; on every official document in the record, the parent listed her address and her son's address at the same address in Maryland. Regulation 34 CFR 300.111 does not speak to the availability of FAPE, and at the time then in question, as neither the student nor his parent(s) was a resident of the District of Columbia, DCPS was not obligated to make FAPE available to the student as required at 34 CFR 300.101(a).

Arguendo, had DCPS been obligated to make FAPE available to the student, under the facts herein, DCPS still would not have been obligated to review the April 18, 2007 IEP. Regulation 34 CFR 300.300(b)(1-3) requires an LEA to obtain informed consent from a parent for the initial provision of special education and related services. Paragraph 4 of the regulation provides that, without the consent, the LEA is not required to complete an IEP for the student or even to convene an IEP team meeting. Herein, the parent never gave the consent for the initial provision of special education and related services. Moreover, the requirement for the review of IEPs found at 34 CFR 300.112 specifically exempts IEPs for which consent for the initial provision of special education and relates services was never given.

The IEP for which the Guardian claims an *IDEIA 2004* mandated review, was never legally required, was rejected by the parent and was never implemented.

TWO

DCPS did not violate "Child Find" in this matter.

The student attended the religious school in the District of Columbia for all of his schooling to date. The guardianship was signed May 5, 2009. The herein Complaint was file June 15, 2009 and the student was enrolled as a non-attending student at the Center, DCPS, on July 1, 2009. Without any Finding as to reasonableness of the any time within which DCPS was to have found the student, with

the publication of DCPS PRIVATE AND RELIGIOUS PROCEDURES, revised 02/09/2009 and Questions and Answers, Services for Children with Disabilities placed by their Parents in Private and Religious Schools, revised 2-09-09, DCPS met their obligation under regulation 34 CFR 300.111(a)(1) to establish policies and procedures to ensure that children in the District of Columbia who maybe in need of special education services are located, identified and evaluated.

Had the student received special education services under an IEP completed in another LEA and moved into the District of Columbia with the IEP having expired or the IEP expiring after moving into the District of Columbia, "Child Find" could have been an issue. This, however, was not the circumstance herein.

SUMMARY of the DECISION

The Guardian did not meet her burden in this matter.

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

ORDER

WITH PREJUDICE, the herein
Complaint is DISMISSED.

Dated this 31st day of July, 2009

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.