

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: July , 2009</p> <p><u>Hearing Officer: Wanda I. Resto, Esquire</u></p>
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On May 14, 2009, the Petitioner, by and through counsel, filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter "IDEIA"), 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied her minor child, a Free Appropriate Public Education ("FAPE") by failing to review the Student's comprehensive psychological evaluation and failing to provide an appropriate individualized education program ("IEP").

The Petitioner requests the Respondent be ordered to convene a MDT/IEP meeting to review the evaluation and craft an appropriate IEP for the Student incorporating the recommendations provided in the April 2009 psychological evaluation. Additionally, the Petitioner requests that the Respondent provide a compensatory education plan.

On May 18, 2009, the District of Columbia Public Schools filed a Motion pursuant to 34 C.F. R. §300.510 agreeing to waive the resolution session and requesting that the case proceed to a due process hearing on the merits.

On May 26, 2009, the DCPS filed a Response to the Parent's Administrative Due Process Complaint. The Respondent asserted the Student was given a comprehensive psychological reevaluation on February 29, 2009, the Petitioner disagree with the assessment and requested an independent comprehensive psychological evaluation, and the parent was granted the request and the report is pending. The Respondent asserted it has not had the opportunity to review the independent evaluations. The school is prepared to reconvene the MDT meeting and review the independent evaluations as required by the IDEIA. The review of the evaluations could lead to changes in the Student's IEP, therefore the Respondent argues that to claim the IEP is insufficient to provide educational benefit without consideration of all the relevant examinations and assessment is speculative. The Respondent asserted that the current IEP is reasonably calculated to provide the student with educational benefit and denied that it failed to provide the Student a FAPE.

The Hearing Officer held a pre-hearing conference call with Counsel for both parties on May 29, 2009 at 3:30 PM. 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 and reiterated the issues as plead. The Respondent claimed it had not received the report of the evaluations. The Petitioner asserted that the report of the evaluation was sent via facsimile to the Respondent.

On June 1, 2009 an Order required the Petitioner to prepare to demonstrate at the June 15, 2009 at 1:00 hearing that the Respondent failed to review evaluations, and what is inappropriate about the IEP. The Petitioner also had to demonstrate how the failures have caused the Student or Petitioner harm. The Respondent had to show that it did not receive the evaluation and that the MDT acted appropriately when it crafted the Student's IEP. The Respondent must also provide evidence that FAPE has been provided.

The Petitioner was ordered to provide Counsel for the Respondent and the Hearing Officer a copy of the evaluation report allegedly sent to the Respondent by June 1, 2009; the Petitioner complied with the Order.

On June 12, 2009, Counsel for the Petitioners requested a continuance because he was not available to participate in the hearing on that date. Counsel for the Respondent did not oppose the request for the continuance. Counsels for the parties agreed on June 25th at 10:00 A.M. as an appropriate date to convene the hearing. The Hearing Officer determined that the request was based upon good cause, the Petitioner's request for a continuance was granted.

A hearing was held on June 25, 2009. The Petitioner presented a disclosure letter dated June 26, 2009 to which twenty-four documents were attached, labeled P-1 through P 24 and which listed eleven witnesses. The Respondent presented a disclosure letter dated June 10, 2009 identifying seven witnesses and to which eight documents were attached, labeled DCPS 1 through 8. The documents were admitted without objections. No witnesses were called to testify because the parties' settled all issues raised in the Complaint during the preliminary stage of the hearing.

The hearing was conducted in accordance with the rights established under the IDEIA 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)

1. Did the Respondent deny the Student a FAPE by failing to review the Student's independent comprehensive psychological evaluation?
2. Has the Respondent failed to provide an appropriate individualized education program IEP?

III. FINDINGS OF FACT

1. Both the parent and the Student reside within the District of Columbia. The Student was enrolled in a DCPS the 2008-2009 school year.²
2. The Student is a student with disabilities under the IDEIA. The Student's most recent Individualized Educational Program is dated November 19, 2008 and provides 26.5 hours of specialized instruction, and 1 hour of psychological counseling services. The Student has multiply disabilities including emotional disturbance and other health impairment. The Student, according to the IEP was also to receive transportation services.
3. During the course of the MDT Meeting, the parents, by and through their educational advocate, and the staff at the _____ recommended that the student be reevaluated with a comprehensive psychological evaluation, to include projective measures, due to concerns about the student's rise in problematic behavior and current level of academic functioning. See MDT Meeting Notes dated November 19, 2008.
4. A comprehensive psychological evaluation indicates the Student has anxiety disorder, a mathematics disorder, learning disorder, and ADHD. The psychologist went on to

² P#10 Individualized Educational Program dated November 19, 2008.
HOD

recommend that the Student's IEP include strategies to address his mathematics disorder, significantly delayed processing speed, that he would benefit from additional time for prolonged test taking, longer assignments broken down into smaller units, active involvement with as many classroom assignments and activities as possible, increased teacher/staff assistant roles, positive reinforcement for gradual successful attainment of incrementally set objectives; and expressive therapy modality.³

5. On April 8, 2009, the parents, through counsel, submitted to the Respondent, a copy of the Student's completed comprehensive psychological evaluation, along with a request to reconvene the Student's MDT Meeting in order to review the reports. *The Responded* did not respond. As of May 14, 2009, the Respondent has not reconvened the Student's MDT/IEP Meeting.⁴

IV. CONCLUSIONS OF LAW

FAPE Determination

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

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 has not met its legal obligation under the IDEA. Here is why.

The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the Respondent 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.⁵

Evaluations

³ P#18 - Comprehensive Psychological Evaluation dated April 4, 2009.

⁴ P #18 Requests for meeting dated April 8, 2009.

⁵ IDEA § 1400(d)(1)(A).

Pursuant to 34 C.F.R. § 300.502(c)(1) , “if the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency...in any decision made with respect to the provision of FAPE to the child.” In the instant matter, the Respondent failed to comply with the requirements of the statute.

Here, the parent, through counsel, provided to DCPS, a copy of the independent psycho-educational evaluation on April 8, 2009 along with a request for a review. The parties agreed the Respondent has not convened the MDT to review the evaluation.

V. SUMMARY OF DECISION

The Respondent received current evaluations of the Student. The parties agreed the Respondent has not convened a MDT meeting. The Student’s IEP has not been reviewed. The undersigned accepted the agreement and determines that there is an agreement to provide the Student with the meeting to review evaluations and update the IEP as necessary.

Upon consideration of Petitioner’s request for a due process hearing, reviewing the documents in the record, the case law, the above findings of fact and the parties’ agreement on the vital issue of the Complaint, this Hearing Officer accepted the stipulation and determines that there is an agreement to provide the Student with a FAPE and issues the following:

VI. ORDER

ORDERED, that the Respondent shall reconvene the Student’s MDT/IEP Meeting on or before August 15th, 2009 for the purposes of reviewing the independent comprehensive psychological assessment, revise and update the Student’s IEP as warranted, discuss and determine if the Student is in need of additional assessments, and if additional assessments are warranted determine who will perform them.

IT IS FURTHER ORDERED, following the MDT/IEP meeting, the Respondent shall have five school days to issue a prior notice of placement to a DCPS shall have five business days to issue a prior notice of placement to a DCPS school, and 20 school days to issue a prior notice of placement to a non public or private school.

It is further **ORDERED** that the Respondent shall coordinate the scheduling of the MDT meeting through Petitioner’s counsel, Domiento C.R. Hill, Esq. in writing, via facsimile, at 202-742-2097 or 202-742-2098.

It is further **ORDERED** that any delay in meeting any of the deadlines in this Order because of Petitioner’s absence or failure to respond promptly to scheduling requests, or that of Petitioner’s representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner’s representatives. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner’s representatives.

IT IS FURTHER ORDERED, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

This order resolves all issues raised in the Petitioner's May 14, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)

/s/WIRestorres
Wanda Iris Resto - Hearing Officer

Date: July 10, 2009