

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

OSSE
STUDENT HEARING OFFICE
2009 AUG 17 PM 3:35

Student Hearing Office

1150 Fifth Street, SE
Washington, D.C. 20003
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Confidential

<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: Candace L. Sandifer, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

A Hearing Officer's Determination/Decision (HOD) was issued in this matter on February 12, 2009 wherein DCPS was ordered to complete specified evaluations of the student within a certain timeline; it also required DCPS to convene an MDT meeting within a second deadline. Further, the order authorized the parent to obtain independent evaluations in the event DCPS failed to complete the evaluations within the timeline for evaluations. DCPS failed the timeline for evaluations and the parent arranged the specified evaluations independently; the functional behavioral assessment recommended a clinical psychological evaluation. DCPS convened the MDT meeting, albeit lately, refused to refer the recommended clinical psychological evaluation and issued a Notice of Placement for the student at the neighborhood school. The parent disagreed with the decision on the clinical psychological evaluation and the decision on the placement.

On June 25, 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 refer the recommended clinical psychological evaluation and failed to provide an appropriate educational placement for the student. For relief, a private placement at the _____ was requested.

A Pre-hearing Conference Order was issued in this matter on July 9, 2009. The Order determined the ISSUES as setout below.

A hearing in this matter was scheduled for 1:00 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 but could not conclude in the time requested by Counsel for the Parent. The hearing was continued to 1:00 P.M., Friday, August 7, 2009 in Hearing Room 7A. The continuance was attributed to the parent.

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 inappropriately fail to complete a clinical psychological evaluation of the student?**
 - 2. Was the current IEP for the student inappropriate - too few special education services?**
 - 3. Was the current educational placement for the**

student inappropriate?

4. Was a private placement for the student warranted?

FINDINGS of FACT

By facsimile dated July 15, 2009, the parent disclosed 12 witnesses and 29 documents.

By facsimile dated July 15, 2009, DCPS disclosed 4 witnesses and 4 documents.

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

At the close of the parent's case, DCPS rested on the record.

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

1. The January 13, 2008 IEP disability coded the student Specific Learning Disabled with 3 hours of specialized instruction and a half hour of counseling.²

2. The Educational Advocate testified that she attended the January 13, 2009 and June 19, 2009 MDT meetings; that during the January 13th meeting, the MDT discussed the student's failing grades, his general misbehavior, his fights with schoolmates and ongoing, aggressive and severe disrespect toward teachers.³ The January 13th MDT recommended a psychiatric evaluation to probe the student's misbehavior. At the June 19th MDT meeting, evaluations were reviewed, including the April 2, 2009 Confidential Neuropsychological Evaluation,⁴ the May 13, 2009 Functional Behavior Assessment⁵ and the May 11, 2009 Psychiatric Evaluation⁶. Also at the June 19th MDT meeting, it was announced that the student had failed all but one 7th grade subject.⁷

3. The May 11, 2009 Psychiatric Evaluation did not recommend a clinical psychological evaluation of the student but at page 6 stated that one "may be necessary." A clinical psychological evaluation of the student was completed on October 17, 2008⁸, less than year before and the MDT did not abuse their discretion in not referring the clinical

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² Parent Document No 13

³ - see Par. Doc. No 27

⁴ Par. Doc. No 11

⁵ Par. Doc. No 24

⁶ Par. Doc. No 12

⁷ Par. Doc. No 17

⁸ Par. Doc. No 8

psychological evaluation.

4. Recommendation 1 on page 8 of the May 13, 2009 Functional Behavior Assessment stated that the student “. . . will benefit from a small **heavily** structured, academic environment that allows for a considerable amount of individualized attention and instruction.” At page 5 of the assessment, the evaluator recounted teacher/staff member comments to the effect the present school was not meeting the student needs.⁹ The October 17, 2008 Comprehensive Psychological Evaluation diagnosed the student with Antisocial Personality Disorder.¹⁰

5. The June 19, 2009 IEP disability coded the student Specific Learning Disabled with 15 hours of specialized instruction and 1.5 hours of counseling; the IEP indicated instruction in the general education classroom and counseling in resource room.¹¹

6. The student’s present IEP and educational placement were inappropriate in that the former did not provide instruction in resource room or a special education setting and the latter could not deliver instruction in a special education setting; the student required instruction in a special education setting. The student made little or no progress at the current educational placement during the 2008-09 School Year.

7. The Parent testified via telephone that she was convinced that the student’s present educational placement could not meet the student’s needs; that the current placement often telephoned her because they could not cope with the student’s misbehavior. The student was suspended on approximately 5 occasions during the 2008-09 School Year, on at least one occasion to the a disciplinary alternative placement. The Parent thought the current educational placement was inappropriate for the student.¹²

8. The Admissions Director, the testified via telephone to the program, daily school routine, curriculum, classes, class sizes, teaching staff, relates services provider staff and student body at the guild – 108 students, 50 DCPS students, ages 5 thru 14; that the guild was a private level-5 educational facility that serviced children with disabilities, primarily those emotionally disturbed. The Student was interviewed at the guild, evaluated by the staff at the including all current evaluations, and accepted for the 2009-10 School Year. The

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⁹ -testimony of the Educational Advocate

¹⁰ Par. Doc. No 8, October 17, 2008 Comprehensive Psychological Evaluation, page 11

¹¹ DCPS Doc. No 3

¹² -testimony of the Parent

student was scheduled to be placed in a classroom with 9 other students, a certified special education teacher and a teacher assistant. The student had a behavior model and procedures for students in crisis. The student could provide educational benefit to the student¹³

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 in the District of Columbia, ages 3 thru 21, who maybe in need of special education services, and for every child of a District of Columbia resident or resident child who is eligible for special education services, DCPS must make FAPE available.

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

The June 19, 2009 MDT decision not to refer a second clinical psychological evaluation of the student within the same year was appropriate.

The May 11, 2009 Psychiatric Evaluation stated that “. . . may be . . .” the student should undergo a clinical psychological evaluation. The student had undergone an independent clinical psychological evaluation on October 17, 2008, 7 months before. The parent understood the wording to be a recommendation for the said evaluation. The hearing officer understood the wording to mean the MDT should consider and determine whether the student warranted a second psychological evaluation within a year. This Conclusion of Law would have been the same had the psychiatric evaluation clearly recommended a clinical psychological evaluation. Regulation 34 CFR 300.303 provides for a second reevaluation within a year only if the LEA and parent agree the second evaluation is warranted. In this matter, there was no agreement between DCPS and the parent as to a second clinical psychological evaluation of the student.

TWO, THREE & FOUR

The June 19, 2009 IEP and current educational placement for the student were inappropriate; a private placement was warranted.

While the June 19, 2009 IEP increased the special education services for the

¹³ -testimony of the Admissions Director, the

student from 3.5 hours to 16.5 hours, all of the instruction was to have been delivered in general education, an inclusion model. The current functional behavior assessment identified the student's behavior as the controlling aspect of his educational performance, and the current educational placement did not have a program to cope with the student's behavior, behavior that prevented him from learning; the student needed a small classroom setting and a large amount of one-to-one instruction. The Advocate and Parent were convinced the current educational placement could not meet the student's need; there was no contradictory testimony.

As both the current IEP and educational placement were inappropriate and the only two weeks remained to the 2008 summer recess, a private placement was warranted. The private placement was consistent with and *Florence County School District 4 vs Carter* 510 U.S. 7 (1993)

SUMMARY of the DECISION

The parent met her burden as to issue 2, 3 and 4.

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

ORDER

1. For the 2009-10 School Year and with transportation, DCPS will place and fund the student at the
2. At the 30 day IEP review meeting, the form, amount delivery of compensatory education, if any, will be discussed and determined. For disputes under this paragraph, either party may file for Due Process.

Dated this *17th* day of *August*, 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.