

***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*

<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: Domiento C. R. Hill, 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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OSSE  
STUDENT HEARING OFFICE  
2009 MAY 20 AM 11:46

<sup>1</sup> Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

## BACKGROUND

On May 13, 2008, the MDT recommended that the student receive a functional behavior assessment (FBA).

On April 13, 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) and the Hospitality Public Charter School (HPCS), a DCPS public charter school denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to complete an FBA of the student and, for relief, requested an independent FBA.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Wednesday, May 13, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6B, 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 fail to complete a FBA of the student?**

## FINDINGS of FACT

By facsimile dated May 6, 2009, the parent disclosed 6 witnesses and 17 documents.

By facsimile dated May 6, 2009, DCPS disclosed 13 witnesses and 5 documents.

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

**DCPS stipulated that, to date, the FBA had not been completed.**

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

1. The May 13, 2008 MDT recommended an FBA of the student.<sup>2</sup>

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<sup>2</sup> Parent Document No 10, page 2

2. DCPS did not complete the FBA as recommended by the May 13, 2008 MDT.

## 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.

At regulation 34 CFR 300.305(a), the MDT is authorized to determine, . . . "what additional data, if any, are needed . . ." In this matter the May 13, 2008 MDT determined that the student needed an FBA. DCPS violated the regulation by failing to complete the FBA.

## SUMMARY of the DECISION

The parent met her burden on the issue.

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

## ORDER

1. According to Superintendent's Directive 530.6, DCPS will fund an independent FBA of the student. Within 15 school/business days of receipt of the said FBA, 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 *20th* day of *May*, 2009

*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.**

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