

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
Student Hearing Office

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**Confidential**

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STUDENT HEARING OFFICE  
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STUDENT <sup>1</sup> , by and through his Parent  Petitioners,  v.  DCPS  Respondent.   Case	<b>HEARING OFFICER'S DETERMINATION</b>  Hearing Date: May 1, 2009  <u>Representatives:</u>  Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street NW Suite 700 Washington, DC 20005  Counsel for DCPS: Tanya Chor, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002  <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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<sup>1</sup> Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

## **JURISDICTION:**

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

## **PROCEDURAL BACKGROUND:**

A Due Process Hearing was convened May 1, 2009, at the Vann Ness School, 1150 5<sup>th</sup> Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on March 26, 2009, alleging the issues outlined below.

## **RELEVANT EVIDENCE CONSIDERED:**

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-28<sup>2</sup> and DCPS Exhibits 1-16) which were admitted into the record.

## **ISSUE(S):<sup>3</sup>**

1. Did DCPS fail to provide the student with a free and appropriate public education by failing to evaluate the student with an occupational therapy and vocational level II and/or convene a MDT meeting to review said evaluations?
2. Did DCPS fail to provide the student with a free and appropriate public education by failing to conduct the student's clinical psychological reevaluation as recommended at a December 23, 2008, MDT meeting?

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<sup>2</sup> The psychiatric evaluation was received by Petitioner's counsel prior to the hearing but after the five day disclosure time frame. The hearing officer admitted the evaluation and the issue regarding that evaluation was removed from the issues to be adjudicated.

<sup>3</sup> The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn. Because the student has been receiving fair cards for transportation to school the issued regarding transportation was withdrawn by Petitioner's counsel.

#### **FINDINGS OF FACT<sup>4</sup>:**

1. The student is \_\_\_\_\_ years old, currently attends School A and resides in the District of Columbia with the student's parent(s), (hereinafter "Petitioner" or "Parent"). The student has been is a child with a disability under IDEA and has an individualized educational program (IEP) developed and implemented at School A. School A is a private special education school and the student's attendance there is funded by DCPS. (Petitioner's Exhibit 18)
2. An administrative due process hearing was held for the student on October 20, 2008. A Hearing Officer Determination (HOD) was issued in the matter on October 30, 2008, which ordered DCPS reconvene the student's MDT/IEP meeting within fifteen (15) calendar days to review the student's independent evaluations and revise and update the student's IEP as appropriate, and to determine if additional evaluations were necessary. (Petitioner's Exhibit 9)
3. A MDT meeting was convened on December 23, 2008. A DCPS representative did not attend the meeting. The parent, her educational advocate, and staff at School A participated in the meeting and agreed that the student should be reevaluated with a comprehensive psychological, and evaluated with an occupational therapy evaluation, a psychiatric evaluation, and a vocational level II evaluation. (Petitioner's Exhibit 7- Findings of Fact, Petitioner's Exhibit 20)
4. Petitioner filed another due process complaint which resulted in an additional HOD issued February 19, 2009. That HOD ordered DCPS to conduct an occupational therapy evaluation, a psychiatric evaluation and vocational II assessment within thirty (30) calendar days of the issuance of the HOD. DCPS was also ordered to convene a MDT meeting to review the evaluations within forty-five (45) calendar days of the issuance of the HOD. (Petitioner's Exhibit 7)
5. On February 25, 2009, another MDT meeting was convened for the student at School A. The outstanding evaluations were not available at the time and thus were not reviewed at the meeting. (Petitioner's Exhibit 22)
6. In February 2009, the student was not allowed to ride the DCPS school bus to school because of an incident that occurred with the bus attendant. The student missed two weeks of school during February 2009, as a result of this incident. Other than this absence the student generally attends school; however, she also missed about a week of school because of illness. During April 2009, the student attended school every day; however, she was late to school on a couple of occasions. (Student's testimony)
7. The student does not recall having been assessed for the occupational therapy evaluation or vocational assessment. (Student's testimony)

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<sup>4</sup> The evidence that is the source of the finding of fact is noted within a parenthesis following the finding.

8. DCPS evaluators have attempted to conduct evaluations of the student at school. However, the student has been absent from school and as result all the evaluations have not yet been conducted. DCPS has been able to complete the psychiatric evaluation of the student. The vocational assessment has been assigned to a DCPS evaluator and it should be conducted shortly. (Ms. Tate's testimony)

#### CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief.<sup>5</sup> In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

1. Did DCPS fail to provide the student with a free and appropriate public education by failing to comply with 34 C.F.R. § 300.304(c)(4), 30 DCMR§ 3005.9(g) and evaluate the student with a occupational therapy and vocational level II and/or convene a MDT meeting to review said evaluations? Conclusion: Petitioner's counsel sustained the burden of proof by a preponderance of the evidence.

2. Did DCPS fail to provide the student with a free and appropriate public education by failing to Comply with 34 C.F.R. Sec. 300.303 of the Individuals with Disabilities Education Improvement Act and conduct the student's parentally requested clinical psychological reevaluation as recommended at a December 23, 2008, MDT meeting? Conclusion: Petitioner's counsel sustained the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.304(c)(4) and (6), DCPS shall ensure that "the child is assessed in all areas related to the suspected disability...[and] in evaluating each child with a disability...the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified." Pursuant to 34 C.F.R. § 300.303(a)(2), DCPS shall ensure "a reevaluation of each child with a disability is conducted...if the child's *parent or teacher* requests a reevaluation. [emphasis added]".

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<sup>5</sup> 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 with FAPE.

Pursuant to 34 C.F.R. § 300.306,

upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability...and the educational needs of the child...If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child...

On December 23, 2008, the MDT determined the a vocational level II evaluation, a vocational Level II and an occupational therapy evaluation should be conducted of the student. As of the date of the due process hearing DCPS had not yet conducted the student's vocational nor the occupational therapy or comprehensive psychological evaluations. The parent and the rest of the IEP Team, without the evaluations, are unable to make the appropriate educational decisions regarding the student thereby denying the student a FAPE.

**ORDER:**

1. DCPS shall, within fifteen (15) business days of the issuance of this Order, conduct and provide reports of the following evaluations of the student to Petitioners counsel: occupational therapy, vocational II assessment, and comprehensive psychological focusing on social and emotional factors. DCPS may immediately authorize Petitioner to obtain the evaluations independently. If DCPS does not provide the parent's counsel the above evaluation reports within the time frame prescribed above, DCPS shall fund the evaluations and Petitioner is authorized by this Order to obtain the evaluations independently.
2. Within thirty calendar days of the issuance of this Order, or within fifteen (15) school days following its receipt of the independent evaluations if they are conducted independently, DCPS shall convene a multidisciplinary team (MDT) meeting to review the student's evaluations and review and revise the student's IEP as appropriate.
3. The MDT meeting shall be scheduled through counsel for the student and parent.
4. DCPS will be given a day for a day extension of any of the prescribed time frames in this Order for any delay caused by the student, the parent(s) and/or their representative(s).

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: May 10, 2009**