

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

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PARENT, as Attorney-in-Fact for  
ADULT STUDENT,<sup>1</sup>

Petitioner,

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Date Issued: April 29, 2018

Hearing Officer: Peter B. Vaden

Case No: 2018-0033

Hearing Date: April 18, 2018

Office of Dispute Resolution, Room 111  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.).

Student, an AGE adult, is a resident of the District of Columbia. Petitioner, who is Student's mother, brings this matter under an Education Power of Attorney granted by Student. Petitioner's Due Process Complaint, filed on February 13, 2018, named District of Columbia Public Schools (DCPS) as Respondent. In her due process complaint, Petitioner alleges that DCPS has denied Student a free appropriate public education (FAPE) by failing to provide Student an appropriate Individualized Education Program (IEP) in the 2017-2018 school year to address Student's attendance issues, by

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<sup>1</sup> Personal identification information is provided in Appendix A.

failing to fully implement Student's IEP and by failing to timely conduct a special education reevaluation of Student.

Petitioner and DCPS met for a resolution session on March 15, 2018 but DCPS was unable to resolve the dispute that was the basis for the due process complaint. On March 12, 2018, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters. The due process hearing was convened before this Impartial Hearing Officer on April 18, 2018 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The parent appeared in person and was represented by PETITIONER'S COUNSEL. Student did not appear. Respondent DCPS was represented by DCPS' COUNSEL.

Mother testified and called as additional witnesses EDUCATIONAL ADVOCATE and INDEPENDENT PSYCHOLOGIST. DCPS called as witnesses REENGAGEMENT SPECIALIST, SPECIAL EDUCATION COORDINATOR and COMPLIANCE CASE MANAGER. Petitioner's Exhibits P-1 through P-26, P-32, P-38, P-44 through P-50, P-52 through P-68, P-70, P-76 and P-83 through P-96 were admitted into evidence without objection. Exhibit P-43 was admitted over DCPS' objection. DCPS' objections to Exhibits P-27 through P-31, P-74, P-75 and P-78 through P-82 were sustained. Exhibits P-33 through P-37, P-39 through P-42, P-51, P-69, P-71 through P-73 and P-77 were withdrawn. DCPS' Exhibits R-1 through R-10 were admitted into evidence without objection. Counsel for the respective parties made opening statements and closing arguments. There was no request to file post-hearing written briefs.

## **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

## **ISSUES AND RELIEF SOUGHT**

The following issues for determination were certified in the March 12, 2018

Prehearing Order:

1. Whether DCPS denied Student a FAPE in the current 2017-2018 school year by failing to provide Student an appropriate IEP and educational placement/location of services to address the Student's attentional and school and work avoidance issues;
2. Whether from December 2017 forward, DCPS denied Student a FAPE by failing to provide an appropriate, timely and accurate Comprehensive Psychological Reevaluation, Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) and or Attendance Plan/Contract to redress the Student's chronic poor attendance;
3. Whether from January 2018 forward, DCPS has denied Student a FAPE by failing to provide funding at the parent's request for an Independent Educational Evaluation (IEE) Comprehensive Psychological Reevaluation, FBA and BIP;
4. Whether in the 2017-2018 school year, DCPS has failed to fully implement the hours of direct instruction and behavioral support services required by Student's IEPs or taken appropriate measures to address Student's poor attendance in order to implement the IEP and
5. Whether since December 2017, DCPS has failed to provide the parent access to all of Student's education records from ASSIGNED SCHOOL, failed to provide the parent a copy of the IEP drafted for Student prior to the December 2017 IEP team meeting and failed to provide the finalized IEP within five days after the meeting.

For relief in this case, Petitioner requests as follows:

- a. An order for DCPS to fund placement and transportation of Student to a public or non-public school that can provide Student with educational benefit;
- b. Alternatively, order DCPS to convene an multidisciplinary team (MDT) meeting with the parent and counsel to discuss and determine an appropriate placement/setting/location of services;

- c. An order for DCPS to fully implement Student's February 2017 Hearing Officer Determination to ensure a FAPE;
- d. An order for DCPS to fully implement Student's current IEP;
- e. An order for DCPS to fund, devise and/or implement an appropriate psychological reevaluation, FBA and BIP and or attendance plan or contract, as well as any other assessment needed to ensure a FAPE, to ensure that Student's work, class and school avoidance issues are sufficiently addressed, along with any other issues undermining Student's ability to attend school and access the curriculum;
- f. Alternatively, order DCPS to convene a student evaluation plan meeting to determine whether additional assessments are required to redress the student's attendance, academic and social-emotional deficits; fund any other necessary evaluations; and review with the parent and revise the student's IEP upon completion of this process;
- g. An order for DCPS to provide the parent full access to Student's education records through counsel to ensure Student's meaningful participation in development and implementation of the IEP and
- h. An order for DCPS to provide compensatory education, as warranted.

At the conclusion of Petitioner's case-in-chief, I granted DCPS' motion for a directed finding as to Issue 5 above, because Petitioner had offered no evidence that DCPS had denied her or her representatives the right to inspect and review Student's education records. *See* 34 CFR § 300.613. In addition, there was no evidence that an IEP for Student was drafted prior to the December 15, 2017 IEP team meeting or that Student's March 15, 2017 IEP was revised at that meeting.

#### **FINDINGS OF FACT**

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments of counsel, this hearing officer's findings of fact are as follows:

1. Student, who is an adult, resides with the Mother in the District of Columbia. Testimony of Mother. Student is eligible for special education and related

services as a student with an Other Health Impairment - Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (OHI-ADHD). Exhibit P-7.

2. In September 2017, Student was enrolled in Assigned School, where Student is in GRADE. Student is repeating Grade for the third time. Testimony of Mother, Testimony of Educational Advocate. Student has not attended school since January 2018. Testimony of Special Education Coordinator.

3. In the 2016-2017 school year, Mother brought two prior due process complaints on behalf of Student, both of which went to hearing. In the first case, Case No. 2016-0290, the parent alleged that DCPS had failed to provide Student an appropriate IEP in January 2016 and that DCPS had failed to comprehensively evaluate Student. In her Hearing Officer Determination issued February 28, 2017, former Impartial Hearing Officer NaKeisha Sylver Blount determined that Student's January 2016 IEP and placement at CITY SCHOOL 1 were inappropriate and that DCPS had not conducted an appropriate comprehensive evaluation of Student. Hearing Officer Blount ordered DCPS, *inter alia*, to ensure that Student's IEP was revised to provide for at least 21 hours per week of Specialized Instruction Services, 240 minutes per month of Behavioral Support Services and 120 minutes per month of Speech-Language Pathology and to conduct a comprehensive reevaluation of Student to include an FBA and a psychological evaluation. Exhibit R-1.

4. In Case No. 2017-0103 filed on April 18, 2017, Mother alleged that since March 2017, DCPS had failed to provide an appropriate IEP and educational placement to address Student's safety, attentional and school/work avoidance issues and that DCPS had failed to appropriately address Student's poor attendance and safety concerns by conducting an FBA and developing a BIP or attendance plan/contract. In his

Hearing Officer Determination issued June 28, 2017, Impartial Hearing Officer Keith Seat determined that DCPS had met its burden of persuasion that it had appropriately implemented the February 28, 2017 HOD as best it could when, despite DCPS' documented efforts, Student was not going to school and that DCPS had made repeated efforts to complete an FBA and BIP for Student but could not get any response at all from the parent or Petitioner's Counsel. Hearing Officer Seat determined that DCPS had not denied Student a FAPE and dismissed the complaint with prejudice. Exhibit R-2.

5. Reengagement Specialist became involved in Student's case in May 2017. Her office at DCPS works to help young people who have been out of school for 3 months to reconnect with the educational options. Reengagement Specialist learned that due to violence in a particular neighborhood, Student did not feel safe attending the neighborhood school. Initially there was discussion of Student attending CITY SCHOOL 2. However, due to Student's age and lack of academic credits, Reengagement Specialist realized that City School 2 was not a good option for this student. Reengagement Specialist eventually thought of Student's attending an "Opportunity Academy." DCPS operates four Opportunity Academies designed to serve students who are "over age and under credit." She presented this plan to Mother and her attorney by email and met with Mother and Student. They agreed with the plan and, in mid-September 2018, after the school year had already started, Student enrolled in Assigned School. Assigned School is an Opportunity Academy and is not located in one of the quadrants of Washington, D.C. where Student had safety concerns. Reengagement Specialist also arranged for Student to have a mentor and for nonpublic transportation to the school.

Testimony of Reengagement Specialist, Exhibit P-55. Initially, Student liked going to Assigned School. Testimony of Mother, Testimony of Reengagement Specialist.

6. Reengagement Specialist set up school transportation for Student through a private contractor. The transportation was provided as part of a safety plan to get Student to school because of the threats Student felt from other young people in Student's neighborhood. (Hearing Officer Blount's February 28, 2017 IEP had ordered DCPS to convene Student's MDT/IEP team "to make any necessary safety plan (to include transportation services, if necessary) for Student." Both services were funded by DCPS. Testimony of Reengagement Specialist, Exhibit R-1. Student's IEP was not amended to provide for school transportation or for mentoring. Testimony of Special Education Coordinator.

7. Assigned School is a separate school, attached to another District public school. It has a separate entrance and is physically separated from the other school. At Assigned School, the Summit personalized learning program, an on-line platform, is used for all classes. Student was provided a laptop computer to access the program. At Assigned School, at any time, there are at most 10-15 students in a classroom. Testimony of Special Education Coordinator, Testimony of Reengagement Specialist, Exhibit P-16.

8. By October 2017, Student again had school attendance issues. Special Education Coordinator, the school social worker, the dean of students and the school behavior technician all spoke with Student about attendance and Student would always promise to do better, but it did not happen. The school staff made telephone calls to the parent, made home visits, conducted counseling and attempted to develop an attendance contract, but Student would not "buy in." Attempts to contact Mother were

rarely successful. Mother never went to the school and Special Education Coordinator never met her. Special Education Coordinator documented her attempts to contact the parent in the Special Education Database (SEDS), DCPS' ASPEN digital parent portal and in emails. Beginning in October 2017, Special Education Coordinator contacted Petitioner's Attorney by email concerning Student's "extreme" attendance issues and requested a meeting with the parent. Testimony of Special Education Coordinator. Despite numerous email attempts by Special Education Coordinator to set up an IEP meeting for Student, due to untimely responses from the parent's representatives and the parent's unavailability, the meeting did not occur until December 15, 2017.

Testimony of Special Education Coordinator, Exhibits R-6, P-53.

9. Reengagement Specialist contacted Student's mentor about Student's attendance. The mentor said that he had made several efforts but had not been able to reconnect with Student. In January 2018, Mother contacted Reengagement Specialist and told her that the transportation provider and tutor were not being paid by DCPS. Reengagement Specialist telephoned the mentor and he told her that Student was not engaging with him any more. Testimony of Reengagement Specialist.

10. At the December 15, 2017 IEP team meeting, Mother stated that Student was not attending school, or if at school was not going to class, because Student has a "safety issue" at Attending School. Special Education Coordinator and the school social worker both stated that Student had never expressed any safety concerns to them and had not had any altercations with other students. The social worker told the IEP team that he had witnessed Student cordially speak to and interact with peers and that Student had reported no "beefs." He reported that Student had not logged onto the

Summit on-line program all year. He said that Student had no behavioral issues at school. Exhibits P-16, R-5.

11. Because Student's school attendance in the 2017-2018 school year was so sporadic, the school was not able to conduct a psychological reevaluation or an FBA.

Testimony of Special Education Coordinator.

12. The parent testified that the contract transportation provider stopped transporting Student to school because the firm was not paid by DCPS. Compliance Case Manager testified that the provider told him that the firm had provided transportation from September to December. At some point the transportation services stopped and were reinstated by DCPS in April 2018. Testimony of Compliance Case Manager.

13. At the beginning of February 2018, Attending School "withdrew" Student due to nonattendance in the second semester. Student was allowed to re-enroll at any time. Special Education Coordinator passed on this information to Petitioner's attorney and to Educational Advocate. Testimony of Special Education Coordinator.

14. In January 2018, Mother contacted Reengagement Specialist about Student's placement at Assigned School and alerted her to concerns about Student's academics and school transportation. Reengagement Specialist attempted to contact Mother by telephone (January 12, 22, and 24; February 20; March 24, and April 4, 2018) and made home visits (January 16, February 20, March 20 and April 10, 2018). Mother never returned Reengagement Specialist's calls. Neither Mother nor Student were found at home on the home visits. Testimony of Reengagement Specialist, Exhibit R-9. Mother did not have email access and she could not take telephone calls during her

workday. Mother has never been to Assigned School or has not met Student's teachers or the school social worker. Testimony of Mother.

### CONCLUSIONS OF LAW

Based upon the above findings of fact and argument of counsel, as well as this hearing officer's own legal research, my conclusions of law are as follows:

#### Burden of Proof

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the District. The burden of persuasion shall be met by a preponderance of the evidence. See D.C. Code § 38-2571.03(6).

#### Analysis

1. Whether DCPS denied Student a FAPE in the current 2017-2018 school year by failing to provide Student an appropriate IEP and educational placement/ location of services to address the Student's attentional and school and work avoidance issues;
2. Whether from December 2017 forward, DCPS denied Student a FAPE by failing to provide an appropriate, timely and accurate Comprehensive Psychological Reevaluation, Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) and or Attendance Plan/Contract to redress the Student's chronic poor attendance;
3. Whether from January 2018 forward, DCPS has denied Student a FAPE by failing to provide funding at the parent's request for an Independent Educational Evaluation (IEE) Comprehensive Psychological Reevaluation, FBA and BIP;

4. Whether in the 2017-2018 school year, DCPS has failed to fully implement the hours of direct instruction and behavioral support services required by Student's IEPs or taken appropriate measures to address Student's poor attendance in order to implement the IEP.

In this case, as with the preceding two due process proceedings brought by the parent in the last school year, the core of the parent's complaint is that DCPS has not done enough to get student to attend school. In the current 2017-2018 school year, except for a brief 30-day "honeymoon" in the fall, Student has not regularly attended school or gone to class when at school. Nor has Student been available for in-school evaluations, including a psychological evaluation and a functional behavioral assessment ordered by Hearing Officer Blount in the February 28, 2017 HOD. Student, who is repeating Grade for the third time, is failing all classes and has made no educational progress this school year. Petitioner blames DCPS for this situation. Specifically, Petitioner alleges that DCPS has denied Student a FAPE by not completing needed reevaluations of Student, not ensuring that Student's IEP has been appropriately revised to address Student's non-attendance and not implemented the hours of specialized instruction and behavioral support services required by Student's March 15, 2017 IEP. For its part, DCPS insists that it has done what it reasonably could to make FAPE available, but that it has run up against Student's unwillingness to go to school and attend classes as well as the parent's alleged lack of responsiveness to the school's outreach efforts. The Petitioner has the burden of persuasion on this issue.

Under District of Columbia law, it is the obligation of the parent or guardian to ensure that his or her minor child attends school. *See* D.C. Code § 38-202 (2016). Notwithstanding, as Hearing Officer Seat wrote in the June 28, 2017 Hearing Officer Determination, the IDEA requires that DCPS respond to a special education student's

frequent and extended absences. *See, e.g., Springfield Sch. Comm. v. Doe*, 623 F.Supp.2d 150, 159 (D.Mass.2009) (finding that once a special education student's truancy became excessive, and where the absenteeism was a documented aspect of the student's disability, the School had an affirmative duty to take some sort of responsive action, such as reconvening the student's IEP team). However, the IDEA does not require school districts "to undertake the responsibility of, for instance, forcing a child physically to attend school when the child is a neither unable to attend nor impeded by an emotional condition to a marked degree in following through on his ability to attend." *W.G. v. New York City Dept. of Educ.*, 801 F.Supp.2d 142, 170 (S.D.N.Y.2011).

If the school division has made conscientious and appropriate efforts to get the student to attend school, especially when, as in this case, the student is at or approaching adulthood, the failure of a student to attend school does not necessarily mean that the agency has denied the student a FAPE. *See, e.g., Garcia ex rel. Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, 2007 U.S. Dist. LEXIS 96703, 2007 WL 5023652 (D.N.M. 2007) (unpublished) *aff'd in part sub nom. Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116 (10th Cir. 2008). ("IDEA does not provide a remedy for this kind of case - where the access to a free and appropriate public education is wide open, but the student refuses to attend school and refuses the numerous and extensive educational opportunities afforded to her." *Id.*) What must a school division do when a special education student persists in not going to school? The IDEA does not say, but in another context, when a school division is unable to convince parents to attend IEP meetings for their child, the IDEA regulations outline what is expected of the school division:

[An IEP] meeting may be conducted without a parent in attendance if the

public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 CFR § 300.322(d). By analogy, when an special education student, who is approaching the age of majority, fails to attend school, the school division should, at minimum, likewise attempt to contact the parent and student to try to convince the student to return to school, make home visits, communicate with the parent's attorneys, and keep detailed records of these efforts. As the U.S. Supreme Court pronounced in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017), a “focus on the particular child is at the core of the IDEA.” *Id.* at 1000. The school division's efforts to address a student's non-attendance must be designed to meet that student's “unique needs.” *Cf. id.*

In this case, the evidentiary record establishes that from of the beginning of the 2017-2018 school year, DCPS has been assiduous in its efforts to get Student to attend school. These efforts were individualized to Student's specific needs, specifically Student's safety concerns about perceived threats in Student's neighborhood. To address these concerns, DCPS identified a school for Student in a different quadrant of the city. This school was selected also because it serves students who, like Student, are “overage and under credit.” Also in response to Student's safety concerns, DCPS' Reengagement office set up contract school transportation for Student. Reengagement Specialist also arranged for a contract mentor to work with Student and support school

attendance. At first these efforts were successful, but after some 30 days – by October 2017 – Student reverted to not attending school. School staff responded proactively. Special Education Coordinator, the school social worker, the dean of students and the school behavior technician all spoke with Student about attendance. The school staff made telephone calls to the parent, made home visits, send emails to the parent’s legal counsel and attempted to convene an IEP team meeting to consider Student’s attendance issues. After the parent left a message for Reengagement Specialist in January 2018, Reengagement Specialist was also proactive in attempting to address the problem and contacted Student’s mentor, left messages for the parent, and made two visits to Student’s home. Despite these efforts, as of the due process hearing date, Student had not set foot in the school building since January 2018. Due to Student’s age, DCPS cannot require that Student attend school. I conclude that DCPS has shown that since Student stopped regularly going to school in October 2017, it made diligent and appropriate efforts to address Student’s failure to attend school. Even though these efforts were unavailing, I find that DCPS did not fail to offer Student a FAPE.

With regard, specifically, to the Petitioner’s claims that in the 2017-2018 school, DCPS failed to provide Student an appropriate IEP and educational placement, in his June 28, 2017 HOD, Hearing Officer Seat rejected the parent’s contention that the March 15, 2017 IEP and educational placement were not appropriate for Student. The problem then, as in the current school year, was that Student did not regularly attend school. Special Education Coordinator testified that Assigned School is capable of implementing the IEP if Student came to school. I find that DCPS has met its burden of persuasion that Student’s lack of progress educationally is the result of Student’s not attending school, not the inappropriateness of the March 15, 2017 IEP. Petitioner also

claims that DCPS has failed to implement the hours of direct instruction and behavioral support services required by the March 15, 2017 IEP. This again is an issue of Student's not being available to receive services, rather than any unwillingness or inability on the part of DCPS and Assigned School to implement Student's IEP. Petitioner has not met her burden of persuasion on this issue.

Lastly, Petitioner claims that DCPS has denied Student a FAPE by not conducting a comprehensive psychological reevaluation or an FBA and by not developing a Behavior Intervention Plan or attendance contract to address Student's chronic poor attendance. As noted above, the parent (and the adult Student) have not made Student available to be assessed in the current school year. Assigned School attempted to develop an attendance contract for Student, but Student would not "buy-in." Under these circumstances, I find that DCPS' not completing the reevaluations to date was not a denial of FAPE.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

All relief requested by the Petitioner herein is denied.

Date: April 29, 2018

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(I).

cc: Counsel of Record  
Office of Dispute Resolution  
OSSE - SPED  
DCPS Resolution Team