

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>)	
)	Case No: 2015-0112
v.)	
)	Date Issued: June 13, 2015
District of Columbia Public Schools,)	
<i>Respondent.</i>)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Sections 1400 *et seq.*; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400-1482.

The DPC was filed on March 31, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On April 8, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) on April 10, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on May 1, 2015, and the HOD is due on June 14, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “hearing officer”) held a Pre-hearing Conference (“PHC”) on April 15, 2015, during which the parties discussed and clarified the issue and the requested relief. At the PHC, the parties agreed that witnesses and exhibits would be disclosed by May 12, 2015 and that the DPH would be held on May 19, 2015. The

PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on April 15, 2015.

The DPH was held on May 19, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by Carolyn Houck, Esq. and Respondent was represented by Justin Douds, Esq.

Petitioner’s and Respondent’s disclosures of witnesses and exhibits were timely filed. At the DPH, Petitioner’s exhibits P-4 through P-9 and P-11 through P-14 were admitted without objection. Petitioner’s exhibits P-1 through P-3 were admitted over objection; however, they were admitted solely as part of the administrative record, and not as evidence. Petitioner’s exhibit P-10 was admitted over Respondent’s objection. Respondent’s exhibits R-1 through R-26 were admitted into evidence without objection.

Petitioner called the following witnesses at the DPH:

- (a) Petitioner/Parent
- (b) Independent Psychologist²
- (c) Independent Speech Pathologist³

Respondent called the following witnesses at the DPH:

- (a) Early Stages School Psychologist⁴
- (b) DCPS School Psychologist⁵
- (c) DCPS Speech Pathologist⁶
- (d) General Education Teacher

Petitioner and Respondent gave oral closing arguments.

ISSUE

As discussed at the PHC and reflected in the PHO, the following issue⁷ was presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE pursuant to 34 C.F.R. §§ 300.8 and/or 300.306 by failing to determine Student eligible for special education no later than August 2014.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner’s favor as to the issue;

² Qualified, without objection, as an expert in clinical psychology.

³ Qualified, without objection, as an expert in speech and language therapy.

⁴ Qualified, without objection, as an expert in school psychology.

⁵ Qualified, without objection, as an expert in school psychology.

⁶ Qualified, without objection, as an expert in school speech pathology.

⁷ Petitioner withdrew without prejudice some issues listed in the DPC prior to the start of the DPH.

- (b) an Order that DCPS convene a multi-disciplinary team meeting within ten business days of an HOD in this matter.

FINDINGS OF FACT

1. Student is [REDACTED] years old, and resides with his mother (“Parent”/“Petitioner”) in Washington, D.C.⁸ Student has not been determined eligible for special education and related services.⁹
2. Student is a Kindergartener at District Elementary School. During the 2013-2014 school year, Student was in pre-Kindergarten at City Elementary School.¹⁰
3. Parent has had concerns with Student’s speech and behavior since Student was three years old, and Parent began addressing those concerns with DCPS at that time.¹¹

Evaluations

4. DCPS Early Stages conducted an initial speech and language evaluation for Student, detailed in a report dated June 10, 2014.¹²
5. DCPS Early Stages conducted an educational assessment for Student, detailed in a report dated June 15, 2014.¹³
6. DCPS Early Stages conducted a comprehensive psychological evaluation for Student, detailed in a report dated August 8, 2014.¹⁴
7. Student received an independent speech and language evaluation, detailed in a report dated October 30, 2014.¹⁵
8. Student received an independent comprehensive psychological evaluation, detailed in a report dated November 24, 2014.¹⁶

ADHD Diagnosis/Attention

9. In conducting the November 24, 2014 evaluation, Independent Psychologist diagnosed Student with Attention Deficit Hyperactivity Disorder (“ADHD”).¹⁷

⁸ Testimony of Parent.

⁹ Testimony of Parent; testimony of Educational Advocate.

¹⁰ Testimony of Parent.

¹¹ *Id.*

¹² P-3-15; R-11.

¹³ P-3-7; R-13.

¹⁴ P-3-1; R-12.

¹⁵ P-4.

¹⁶ P-5.

¹⁷ P-5-10.

10. Student at times has a short attention span, but he is easily redirected in the classroom setting, and responds well to redirection in the classroom setting.¹⁸

Speech

11. Student has a mild speech delay. Though he exhibits some articulation errors, few of them are significant for his age.¹⁹

12. While speech deficits in general have the potential to cause adverse educational impact, in Student's particular case, his mild speech deficits do not prevent his teacher and classmates from understanding him, and are not causing him an adverse educational impact.²⁰

Behavior

13. Parent has concerns about Student's behavior.²¹

14. Student does not generally have behavioral problems in the classroom setting.²²

Cognitive/Academic Performance

15. Student's cognitive scores generally fall in the average range.²³

16. Student is below grade level in reading and writing;²⁴ however, during the 2014-2015 school year, Student demonstrated progress in reading.²⁵

¹⁸ Testimony of General Education Teacher.

¹⁹ Testimony of Independent Speech Pathologist; testimony of DCPS Speech Pathologist; P-3-15 through P-3-20; R-11.

²⁰ Testimony of Independent Speech Pathologist; testimony of DCPS Speech Pathologist; testimony of General Education Teacher. In reaching this finding, the hearing officer credits General Education Teacher's testimony over Parent's testimony, as General Education Teacher spends significantly more classroom time with Student than Parent does. Additionally, the hearing officer notes that Independent Speech Pathologist testified to *potential* educational consequences that Student could face if he is not determined eligible. She did not testify that Student is currently experiencing these consequences.

²¹ Testimony of Parent.

²² Testimony of General Education Teacher; testimony of DCPS School Psychologist; R-12-2; R-12-5; R-12-6; R-13-3; R-14-6; R-15-2. In reaching this finding, the hearing officer credits the testimony of General Education Teacher and DCPS School Psychologist over that of Parent, because they are present in the same school as Student on a regular basis and Parent is not. Additionally, the evaluations do not indicate that Student has regular behavioral problems in school. There are no suspension/behavioral reports or other items in the record that would lead the hearing officer to conclude that Student has a pattern of in-school behavioral difficulty. The hearing officer has noted that Student had behavioral challenges/participation resistance during some of the evaluations (for example, the DCPS Early Stages Speech and Language Evaluation (R-21-3) and the DCPS Early Stages Comprehensive Psychological Evaluation (R-12-3; testimony of Early Stages School Psychologist)); however, the hearing officer does not find a sufficient basis for concluding that these situational (and arguably age-related) behavioral difficulties translate to the classroom setting.

²³ Testimony of Independent Psychologist; testimony of Early Stages School Psychologist; testimony of DCPS School Psychologist; P-5-4 through P-5-5; R-12-3 through R-3-6; R-13-4 through R-13-6.

²⁴ Testimony of Independent Psychologist.

²⁵ P-13; R-23.

17. Student has had an extremely high absence rate (over 100 absences during the 2013-2014 school year and approximately 45 absences during the 2014-2015 school year, as of the DPH), in addition to tardies.²⁶ Some of Student's absences are attributable to Parent's work schedule, her difficulty with getting him to school, and Student's asthma.²⁷ However, missed instruction time has had an adverse impact on Student's academic progress.²⁸

August 2014 Eligibility Determination

18. Student's multi-disciplinary team ("MDT") met on August 13, 2014 and considered Student's eligibility for special education and related services under the disability classification "developmental delay," and determined Student was not eligible, in part because Student did not exhibit a severe developmental delay, nor did he require specially designed instruction to access the general education curriculum.²⁹

January 2015 Eligibility Determination

19. Student's MDT met on January 23, 2015 and considered Student's eligibility for special education and related services under the disability classification "Other Health Impairment," based on Student's diagnosis of ADHD, and determined Student was not eligible because his diagnosed health impairment did not affect his educational performance.³⁰

CONCLUSIONS OF LAW

"Based solely upon 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 a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also*, *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the student's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a).

²⁶ Testimony of DCPS School Psychologist.

²⁷ Testimony of Parent.

²⁸ Testimony of General Education Teacher.

²⁹ R-16; R-17.

³⁰ R-19.

(a) Whether DCPS denied Student a FAPE pursuant to 34 C.F.R. §§ 300.8 and/or 300.306 by failing to determine Student eligible for special education no later than August 2014.

According to the IDEA, a student is eligible for special education and related services if he has been evaluated as having one or more of the disability conditions listed and defined in 34 C.F.R. § 300.8(b) and (c), and “by reason thereof, needs special education and related services.” See 34 CFR § 300.8(a)(1). Student’s MDT met in August 2014 and in January 2015. In August 2014, Student did not have an ADHD diagnosis, and the team considered his eligibility under the classification “developmental delay.” By January 2015, Parent’s Independent Psychologist had diagnosed Student with ADHD, and the team considered Student’s eligibility under the classification “other health impairment” (“OHI”), due to the ADHD diagnosis. The team did not find Student eligible in either instance, because Student did not require specialized instruction to access the general education curriculum and because Student’s ADHD diagnosis did not cause an adverse impact on Student’s educational performance. As indicated in the findings of fact above, the hearing officer does not find that Student had attention, speech or behavioral problems that impeded his educational progress as of the August 2014 or January 2015 MDT meetings. Student has made some limited academic progress, for example in reading; however, missed instruction time has been a major impediment to further progress he may have made.

To the extent that there were any procedural violations as to the composition of Student’s MDT or otherwise, pursuant to 34 C.F.R. § 300.306, in this instance they would not rise to the level of a denial of FAPE. As Student did not meet the “educational impact” criterion in either August 2014 or January 2015, such a procedural violation would not have impeded his right to a FAPE, significantly impeded Parent’s opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. The hearing officer does not find either the August 2014 or the January 2015 ineligibility determinations to be a denial of FAPE. Petitioner did not meet the burden of proof on this issue.

ORDER

As no denial of FAPE was found on the issue alleged, all relief Petitioner requested in the due process complaint must be **DENIED**. The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

Date: June 13, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:

Petitioner (by U.S. mail)

Petitioner’s Attorney: Carolyn Houck, Esq. (electronically)

DCPS’ Attorney: Justin Douds, Esq. (electronically)

Chief Hearing Officer Virginia Dietrich, Esq. (electronically)

OSSE-SPED (electronically)

ODR (electronically)

2014-0112
Hearing Officer Determination

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).