

**District of Columbia  
Office of the State Superintendent of Education**

Student Hearing Office  
810 First Street, N.E., Suite 2001  
Washington, DC 20002

OSSE  
Student Hearing Office  
May 5, 2014

<p><b>STUDENT<sup>1</sup>,</b> <b>By and through AUNT AND GUARDIAN,</b></p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p><b>DISTRICT OF COLUMBIA PUBLIC SCHOOLS,</b></p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Impartial Hearing Officer: Charles M. Carron</p>
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**HEARING OFFICER DETERMINATION**

**I. 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 *et seq.*

The DPC was filed March 19, 2014, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student’s Aunt and Guardian, against Respondent, District of Columbia Public Schools (“DCPS”).

On March 20, 2014, the undersigned was appointed as the Impartial Hearing Officer.

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

Respondent's Response to the DPC was due Saturday, March 29, 2014. On March 31, 2014, Respondent filed its Response stating, *inter alia*, that Respondent has not denied the Student a free appropriate public education ("FAPE").

The undersigned held a Prehearing Conference ("PHC") by telephone on April 14, 2014 at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by April 28, 2014 and that the Due Process Hearing ("DPH") would be held on May 5, 2014. Petitioner elected for the DPH to be closed. The undersigned issued a Prehearing Conference Summary and Order (the "PHO") on April 15, 2014, summarizing the PHC and confirming the time and location of the DPH.

The undersigned was not informed whether a Resolution Meeting was held.

The statutory 30-day resolution period ended on April 18, 2014.

The 45-day timeline for this Hearing Officer Determination ("HOD") started to run on April 19, 2014 and will conclude on June 2, 2014.

No prehearing motions were filed by either party.

## **II. JURISDICTION**

The DPH was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA's implementing regulations, 34 C.F.R. §300.511, and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029 and E3030. This decision constitutes the HOD pursuant to 20 U.S.C. § 1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures*.

### **III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT**

The circumstances giving rise to the DPC were as follows:

The Student is female, Current Age, and attends Current Grade at a public school (the “Attending School”). The Student has not been determined to be eligible for special education and related services as a child with a disability under the IDEA.

Petitioner claimed that Respondent denied the Student a FAPE by failing to evaluate her in all suspected areas of disability, and by failing to find her eligible for special education and related services.

### **IV. ISSUES**

As discussed at the PHC and confirmed in the PHO, the following issues were presented for determination at the DPH:

(a) On or about March 14, 2014, did Respondent deny the Student a FAPE by determining her to be ineligible for specialized instruction and related services and by failing to develop an Individualized Education Program (“IEP”) for her?

(b) Since on or about February 14, 2014, has Respondent denied the Student a FAPE and/or significantly impeded Petitioner’s participation in the decision-making process regarding provision of FAPE, by failing to comprehensively evaluate the Student in all areas of suspected disability, specifically, by failing to conduct speech and language and occupational therapy assessments?

## V. RELIEF REQUESTED

Petitioner requested the following relief:<sup>2</sup>

(a) a finding that the Student is eligible for special education;

(b) that the undersigned develop an IEP for the Student or order

Respondent to convene a Multidisciplinary Team (“MDT”) meeting within five days of receipt of the HOD to develop an IEP for the Student and determine placement;

(c) compensatory education;

(d) an Order that Respondent fund independent educational assessments, specifically, speech and language and occupational therapy assessments;

(e) an Order that within 10 days of receiving the reports of the speech and language and occupational therapy assessments, Respondent convene a meeting of the Student’s IEP Team to review those assessments and revise her IEP accordingly; and

(f) any other relief deemed appropriate.

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<sup>2</sup> In the DPC, Petitioner also requested the following relief which the undersigned determined to be inappropriate: (a) an order that Respondent convene a Multidisciplinary Team (“MDT”) to determine compensatory education, which is inappropriate because a hearing officer cannot delegate that equitable remedy to an MDT; and (b) attorney’s fees and costs, which only a court can award.

## **VI. THE DUE PROCESS HEARING**

The undersigned convened the DPH at 9:33 a.m. on May 5, 2014, at the Student Hearing Office, 810 First Street, NE, Suite 2001, Washington, DC 20002.

At the time the DPH was convened, Petitioner was not present. Petitioner's counsel stated that she had advised Petitioner to be present at 9:00 a.m., and that she had called Petitioner, who said she was on her way.

The undersigned made an opening statement on the record and admitted the following documentary exhibits into evidence without objection:

Petitioner's Exhibits: P-1 through P-26

Respondent's Exhibits: R-1 through R-23

Hearing Officer's Exhibits: HO-1 through HO-6

At that time, 9:37 a.m., Petitioner still had not arrived. The undersigned recessed the DPH and advised the parties' counsel that if Petitioner arrived by 10:15 a.m., the DPH would proceed; otherwise, the DPC would be dismissed for want of prosecution.

During the recess, Petitioner's counsel made additional calls to Petitioner, who stated that she was on her way and expected to arrive shortly after 10:00 a.m.

At 10:15 a.m., Petitioner had not arrived. The undersigned reconvened the DPH and stated on the record that the case was dismissed for want of prosecution. Petitioner's counsel stated on the record the efforts she had made to ensure Petitioner's presence at the DPH.

**VII. ORDER**

Based upon Petitioner's failure to appear at the DPH, Petitioner's DPC dated March 19, 2014 is dismissed in its entirety, with prejudice, for want of prosecution.

Dated this fifth day of May, 2014.



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Charles Carron  
Impartial Hearing Officer

## **NOTICE OF APPEAL RIGHTS**

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial 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. §1415(i)(2).