

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

PARENT,
on behalf of STUDENT,¹

Date Issued: May 17, 2021

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2022-0064

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Online Video Conference Hearing

Hearing Date: May 16, 2022

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (Petitioner or Mother) 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.”). In her due process complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools’ (DCPS) failure to provide the parent’s representatives access to Student’s complete education records.

Petitioner’s Due Process Complaint, filed on April 8, 2022, named DCPS as Respondent. The undersigned hearing officer was appointed on April 11, 2022. On

¹ Personal identification information is provided in Appendix A.

November 16, 2020, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters. On April 25, 2022, the parties met for a resolution session and were unable to resolve the issues in dispute. My final decision in this case is due by June 22, 2022.

In the wake of the COVID-19 pandemic, with consent of the parent, the due process hearing was held on line and recorded, using the Microsoft Teams video conference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on May 16, 2022. Mother appeared by telephone for part of the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for both parties made opening statements. The parent called as witness LEGAL ASSISTANT. Petitioner's Counsel intended to also call Mother to testify. During Legal Assistant's testimony, Mother's cell phone battery was apparently depleted and she was not available to testify. I granted a short adjournment of the hearing, but Mother did not reconnect for her testimony. DCPS' Counsel then made an oral motion to dismiss the due process request on the grounds that Mother was not available to participate and because the parent had not made a *prima facie* showing that DCPS had not provided access to Student's education records or had denied Student a FAPE. I denied DCPS' motion to dismiss the case for Mother's absence, but held that Mother would not be permitted to testify, should she return after DCPS started presentation of its case. I denied DCPS' motion to dismiss for the parent's not making a *prime facie*

showing that DCPS had failed to provide access to Student's records. I took under advisement DCPS' motion with respect to whether DCPS' alleged failure to provide Student's education records would be deemed a denial of FAPE. DCPS then called witnesses LEA REPRESENTATIVE ALT. and RESOLUTION SPECIALIST.

Mother eventually returned to the hearing by telephone. She did not testify.

Petitioner's Exhibits P-1 through P-13 were admitted into evidence without objection. DCPS' Exhibits R-1 through R-12 and R-14 were admitted into evidence without objection. Exhibit R-13 was admitted over Petitioner's objection.

Following presentation of the evidence, counsel for the respective parties made oral closing arguments. Neither party requested leave to file written closings.

JURISDICTION

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

ISSUE AND RELIEF SOUGHT

The issue for determination in this case, as certified in the April 25, 2022 Prehearing Order, is:

Whether DCPS denied a FAPE to the Student by failing to provide complete copies of all of Student's education records first requested by Petitioner's counsel on or about February 14, 2022.

For relief, Petitioner requests that the hearing officer order DCPS to provide copies of all requested education records for Student. Petitioner also requests that the IDEA statute of limitations be tolled from February 14, 2022 until such date as all requested records have been produced to Petitioner's counsel.

FINDINGS OF FACT

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE child, is a resident of the District of Columbia and is eligible for special education under the IDEA disability classification, Other Health Impairment/Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder. Exhibit R-7.

2. Student has attended DCPS' CITY SCHOOL since the 2019-2020 school year. Student is currently in GRADE. Testimony of LEA Representative Alt.

3. In a February 14, 2022 letter sent by email to City School's principal and FORMER LEA REPRESENTATIVE, Petitioner's Counsel requested copies of Student's education records. This letter was copied to the "Director of Special Education" and the "Office of General Counsel." In the letter, Petitioner's Counsel requested a copy of the student's entire academic file including, specifically:

[A]ny and all records or writings in the possession of the District of Columbia Public Schools that includes and are not limited to the following:

- | | |
|--------------------------------------|---|
| 1. All Attendance Records | 9. Portfolios |
| 2. Progress Reports (IEPs) | 10. Charts and Observations |
| 3. Standardized Test Scores | 11. Reports, Letters, Memos, Notes, E
Emails |
| 4. Class Schedules | 12. Data Compilations |
| 5. Individualized Education Programs | 13. Letters of Understanding |
| 6. Evaluations and Assessments | 14. Disciplinary Records |
| 7. Multidisciplinary Meeting Notes | 15. Related Service Provider Logs and
Service Trackers |
| 8. Progress Reports and Report Cards | |

The request included a signed authorization from the parent to release the records to LAW FIRM. Exhibit P-4.

4. Legal Assistant resent the records request by email to the principal and Former LEA Representative on March 4, 2022. Exhibit P-6.

5. On March 4, 2022, Former LEA Representative send, by email, three documents to Law Firm. The same day, Petitioner's Counsel wrote Former LEA Representative by email that she was requesting the entirety of Student's academic file. Exhibit P-7. No response was received. On March 31, 2022, Legal Assistant sent a follow-up email to Former LEA Representative and the school principal again requesting Student's entire academic file. That day, Petitioner's Counsel also sent an email noting that an annual Individualized Education Program (IEP) meeting was scheduled for Student for April 7, 2022 and demanding the entire academic file and draft IEP by close of business on March 31, 2022. Exhibit P-8; Testimony of Legal Assistant.

6. On April 1, 2022, Former LEA Representative wrote Law Firm by email that he was out sick due to COVID-19. Former LEA Representative wrote that the IEP meeting would be rescheduled upon his return and that all records would be shared at that time also. Exhibit P-10. The same day, Petitioner's Counsel responded by email that it had been 45 days since Law Firm had requested Student's records and asked for someone else from DCPS to provide Student's records as soon as possible. Exhibit P-11.

7. Petitioner's due process complaint in this case was filed on April 8, 2022.

At the Resolution Session Meeting on April 18, 2022, Resolution Specialist stated that DCPS was working to get Student's education records together and hoped to send them to Law Firm by April 22, 2022. Exhibit P-12.

8. On April 22, 2022, Resolution Specialist sent Petitioner's Counsel by email education records for Student that Resolution Specialist wrote were currently available. These included some 200 pages of documents. On April 29, 2022, Resolution Specialist sent counsel by email some 100 additional pages of documents. Exhibits R-10, R-12, R-13, R-2 through R-9.

9. On May 2, 2022, Petitioner's Counsel wrote Resolution Specialist by email to request additional educational records, including Student's 2020 IEP, IEP Progress Reports, Standardized Testing, Report Cards and Behavioral Support service trackers. Several of these additional requested documents have now been provided. Testimony of Legal Assistant, Exhibit P-13.

10. An IEP team meeting for Student is scheduled, after the due process hearing, for May 17, 2022. No IEP meetings for Student were convened between February 14, 2022 and the due process hearing date. Testimony of LEA Representative Alt.

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 the local education agency, in this case DCPS, the agency 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 agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

Analysis

Did DCPS deny a FAPE to the Student by failing to provide complete copies of all of Student's education records first requested by Petitioner's counsel on or about February 14, 2022.

On February 14, 2022, Law Firm requested Former LEA Representative and the principal at City School to provide copies of Student's entire education record. Former LEA Representative was generally unresponsive, providing only 3 documents on March 4, 2022. On April 1, 2022, Former LEA Representative wrote Law Firm by email that he was out sick due to COVID-19 and that all records would be shared upon his return. LEA Representative Alt. was charged with responsibility for Student's case around

March 15, 2022. In her testimony, LEA Representative Alt. stated that Former LEA Representative had not been carrying out his responsibility to provide Student's education records.

On April 22 and April 29, 2022, after the due process hearing request was filed in this case, DCPS did provide the bulk of Student's education records requested by Law Firm. Petitioner contends that DCPS' failure to provide the requested records within 45 days of Law Firm's February 14, 2002 request resulted in the denial of FAPE to Student. DCPS argues that its delayed production should be excused because of challenges faced by its staff in the wake of the COVID-19 pandemic and because the parent would have been able to access to many of the requested records by other means, such as Parent-Teacher conferences and DCPS' Aspen digital parent portal.

Under the IDEA and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, DCPS must permit parents to inspect and review any education records relating to their child with a disability that are collected, maintained, or used by the agency. *See* 34 C.F.R. §§ 300.613(a), 300.501(a); *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C. 2006). The D.C. Regs. provide that DCPS must honor the records request as soon as possible, but in no case in more than 45 calendar days. *See* 5E DCMR § 2600.6. The parent's right to her child's education records is "unequivocal." *See, e.g., Malloy v. Dist. of Columbia*, No. 20-CV-03219 (DLF), 2022 WL 971208, at *5 (D.D.C. Mar. 30, 2022).

DCPS did not provide Student's education records to Law Firm until some 100

days after receiving the parent's request. I find that this delayed response in providing Student's records was a violation of the federal and District of Columbia IDEA regulations. The failure to timely comply with a parent's request to inspect education records, as occurred here, is a procedural violation of the IDEA. *See, e.g., Malloy, supra.* Procedural violations may only be deemed a denial of FAPE if the procedural inadequacies—

- (i) Impeded the child'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)(2).

In this case, there was no evidence of IEP team meetings or other decision-making events for Student that occurred after Law Firm's February 14, 2022 education records request. Student's annual IEP review meeting, initially scheduled for April 7, 2022, was rescheduled for May 17, 2022, some two week after DCPS provided Student's education records to Law Firm. Without in any way excusing DCPS' failure to timely provide Student's education records, I find that Petitioner did not meet her burden of persuasion that Law Firm's not receiving Student's education records until April 29, 2022 impeded Student's right to a FAPE, caused a deprivation of educational benefit or significantly impeded Mother's opportunity to participate in the decision-making process. I conclude that DCPS' procedural violation here may not be deemed a denial of

FAPE. *See id.*

Petitioner alleges that there are still a few records for Student which DCPS has not produced to Law Firm, such as some IEP progress reports, standardized testing scores, report cards and Behavioral Support service trackers. Given that DCPS provided Law Firm some 300 pages of education records for Student, these alleged omissions appear *de minimis*, and in any case, Petitioner did not establish that DCPS maintains or uses the records at issue. Although I decline to order relief for this alleged violation, DCPS is under a continuing obligation to permit Mother and her attorneys to inspect and review any education records relating to Student that are collected, maintained, or used by DCPS and the District should search its files for any allegedly missing education records specifically identified by the parent or her representatives. *See* 34 C.F.R. § 300.613(a).

In light of my findings and conclusions in this decision, DCPS' oral motion to dismiss the due process complaint for failure to make a *prima facie* showing that Student was denied a FAPE is denied.

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: May 17, 2022

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
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