

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

ODR  
Office Of Dispute Resolution  
September 23, 2014

---

STUDENT, <sup>1</sup>	)	
through the PARENT,	)	
<i>Petitioner,</i>	)	Hearing Officer: NaKeisha Sylver Blount
	)	
v.	)	
	)	<b>Date Issued:</b> September 23, 2014
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. Section 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 *et seq.*

The DPC was properly served on Respondent on July 11, 2014,<sup>2</sup> by Petitioners (Student’s parents), residents of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On June 17, 2014, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The undersigned IHO held a Pre-hearing Conference (“PHC”) by telephone on July 25, 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 Thursday, August 14, 2014 and that the due process hearing (“DPH”) would be held on August 21, 2014. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued July 25, 2014.

---

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

<sup>2</sup> The DPC had been filed with the former “Student Hearing Office” (renamed “Office of Dispute Resolution” on August 1, 2014) on July 3, 2014. Due to the delay in proper service on Respondent, the timeline was reset to begin as of the date of service (July 11, 2014). A final decision in this matter would have originally been due by September 24, 2014; however, due to the resetting of the timeline, a final decision is due by October 2, 2014.

## Hearing Officer Determination

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-2 and P-4 through P-7 were admitted without objection. Petitioner's exhibits P-1 and P-3 were admitted over Respondent's objection. Respondent's exhibits R-1 through R-4 were admitted without objection.

The following witnesses testified on behalf of Petitioner at the DPH:

- (a) Father (Petitioner);
- (b) Mother (Petitioner).

The following witness testified on behalf of Respondent at the DPH:

- (a) Special Education Coordinator at District Middle School/LEA Representative ("Special Education Coordinator").

The parties gave oral closing arguments.

### **ISSUE**

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

- (a) Whether DCPS denied the student a free and appropriate public education ("FAPE") by failing to evaluate and place the student within 120 days of the request being made by the parent on February 24, 2014.

### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) an Order that DCPS fund all necessary evaluations, including a comprehensive psychological;
- (b) an Order that DCPS convene an eligibility meeting to determine whether the student is eligible for services;
- (c) an Order that, if the student is eligible for services, the school must develop a plan to address the student's behavior and academics.

### **FINDINGS OF FACT**

#### ***Background***

1. Student resides with Parents (Petitioners) in Washington, D.C.<sup>3</sup>
2. During the 2013-2014 school year, Student was in sixth grade and attended District Middle School. During the 2012-2013 school year, Student had attended a different school (an elementary school), and had been in fifth grade.<sup>4</sup>

---

<sup>3</sup> Testimony of Mother; Testimony of Father.

## Hearing Officer Determination

3. Student performed well behaviorally and academically throughout most of his fifth grade year in 2013. However, Student began to have minor academic problems and his behavior began to deteriorate at the end of his fifth grade year.<sup>5</sup>

4. At his elementary school, Student's teachers allowed him to use an electronic tablet to type his writing assignments, because the teachers noticed he had difficulty completing long writing assignments.<sup>6</sup>

5. During the summer of 2013 before he started at District Middle School, Student's mother spoke with Special Education Coordinator during a school event about the minor problems Student had begun having toward the end of fifth grade, and to ask about strategies that could be incorporated for Student in the upcoming school year at District Middle School, such as using a tablet in school to address his problems in the area of handwriting/motor skills.<sup>7</sup>

6. Special Education Coordinator informed Mother that it would be necessary to convene a meeting to discuss Student's needs. A multi-disciplinary team ("MDT") meeting was held for Student in September 2013, which Mother, Special Education Coordinator, a DCPS psychologist, and a DCPS case manager attended.<sup>8</sup>

7. Special Education Coordinator and Parents discussed beginning the Student Support Team ("SST") process for Student. The SST process is a three stage process in which interventions are provided to a student. When a parent raises concerns such as Parents raised about Student, District Middle School generally recommends the SST process first, as a means for the school to obtain current and accurate data for the student, and because if a student is able to respond positively to interventions, s/he may not to be referred through the special education process. Special Education Coordinator does not generally participate in SST meetings, as they are led by the general education staff.<sup>9</sup>

8. Student had numerous behavioral and academic problems throughout the 2013-2014 school year.<sup>10</sup>

9. At Parents' request, an MDT meeting was held regarding Student ("the February meeting"), which Parents and Special Education Coordinator attended. Parents expressed concern about Student's progress.<sup>11</sup>

10. During the February meeting, Special Education Coordinator provided Parents a copy of "District of Columbia's Notice of Procedural Safeguards: Rights of Parents of Students

---

<sup>4</sup> Testimony of Mother.

<sup>5</sup> Testimony of Mother.

<sup>6</sup> Testimony of Mother; Testimony of Father.

<sup>7</sup> Testimony of Mother; Testimony of Special Education Coordinator.

<sup>8</sup> Testimony of Mother; Testimony of Special Education Coordinator.

<sup>9</sup> Testimony of Special Education Coordinator.

<sup>10</sup> Testimony of Mother; Testimony of Father; P-3.

<sup>11</sup> Testimony of Mother; Testimony of Father; Testimony of Special Education Coordinator.

## Hearing Officer Determination

with Disabilities” (“Notice of Procedural Safeguards”). Special Education Coordinator also provided Parents a form for the purpose of acknowledging receipt of the Notice of Procedural Safeguards. On February 24, 2014, Mother signed the form acknowledging receipt of the Notice of Procedural Safeguards, and returned the form to Special Education Coordinator.<sup>12</sup>

11. Student failed two classes in \_\_\_\_\_ school and had to attend summer school in an attempt to make those course up. However, Student was expelled from summer school after two weeks due to his behavior problems.<sup>13</sup>

12. Interpreting the filing of the DPC as a request for evaluation, DCPS began to evaluate Student for special education and related services after the DPC was filed. An eligibility meeting had not been held by the date of the DPH. Parents had not received evaluation reports by date of the DPH.<sup>14</sup>

13. If a student is determined eligible for special education and related services, the student’s IEP team determines the student’s assistive technology needs, and whether further testing is necessary to assess those needs, after the initial eligibility determination is made.<sup>15</sup>

### 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 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).

#### **I. Whether DCPS denied Student a free and appropriate public education (“FAPE”) by failing to evaluate and place Student within 120 days of the request being made by Parent on February 24, 2014.**

DCPS must conduct initial evaluations to determine the child’s eligibility for special education services “within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment.” *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C.2011),

---

<sup>12</sup> Testimony of Special Education Coordinator; P-4.

<sup>13</sup> Testimony of Mother; Testimony of Father.

<sup>14</sup> Testimony of Special Education Coordinator.

<sup>15</sup> Testimony of Special Education Coordinator.

## Hearing Officer Determination

*quoting* D.C. Code § 38–2561.02(a). Once the eligibility determination has been made, the District must conduct a meeting to develop an IEP within 30 days. 34 CFR § 300.323(c)(1); *G.G. ex rel. Gersten v. District of Columbia* 2013 WL 620379, 5-6 (D.D.C. Feb. 20, 2013). There are a number of ways a student can be referred to DCPS for initial evaluation for special education eligibility, and one such method is via a parent’s request for evaluation. *See* 34 C.F.R. 300.301(b) and 5 D.C.M.R. E-3004.1(a) and (b).

The District of Columbia’s Municipal Regulations state as follows:

If the child to be referred attends a D.C. public school or is enrolling in a D.C. public school at the time this referral is made, this referral shall be submitted by his or her parent to the building principal of his or her home school, on a form to be supplied to the parent by the home school at the time of the parent's request.

5 D.C.M.R. E-3004.1(b). Respondent argues that the record contains no written request from Parents that Student be evaluated; thus, the 120 timeline did not begin to run until the DPC was filed, which Respondent construes as a written request to evaluate. Father testified that he believed he requested that District Middle School evaluate Student at the February meeting; however, he was not certain. Special Education Coordinator testified that the SST process was a topic of discussion at the February meeting, but she did not testify that Parents requested at that meeting that the school evaluate Student. After considering and weighing all the evidence, the hearing officer concludes that Parents requested that the school evaluate Student during the February meeting.

This conclusion is based on the fact that the focus of the meeting was Student’s special education needs, not just his lack of progress through the SST process. Additionally, Special Education Coordinator testified that she does not participate in SST meetings, but that SST meetings are led by the general education teachers. For this reason, Special Education Coordinator’s participation in the February meeting was significant to the hearing officer’s conclusion. Further, Special Education Coordinator provided to Parents a Notice of Procedural Safeguards at the February meeting, and had Mother to sign an acknowledgement of receipt of the Notice of Procedural Safeguards. Pursuant to 34 CFR § 300.504(a), a copy of the IDEA procedural safeguards must be given to parents at certain times. The two potentially relevant occasions in this case are: (1) upon initial referral or parent request for evaluation or (2) upon request by a parent.

There was no evidence that Parents specifically requested a copy of the Notice of Procedural Safeguards and, based on the record, the hearing officer does not find it to be likely that Parents requested this document, particularly without also requesting that Student be evaluated. Rather, the hearing officer concludes that, even if the request was made imprecisely, Special Education Coordinator understood Parents to be expressing dissatisfaction in the lack of results Student was receiving from the SST process, and to be communicating that Student needed to be evaluated for eligibility, which prompted Special Education Coordinator to provide Parents a copy of the Notice of Procedural Safeguards and ask them sign in acknowledgement of receipt. The hearing officer also considered Special Education Coordinator’s testimony that

## Hearing Officer Determination

when parents raise concerns such as Parents raised, District Middle School starts with directing the student into the SST process, rather than immediately evaluating them for special education eligibility, because it is possible that the student may not need special education. This approach would explain how the focus could have remained on the SST process throughout the entire school year, despite Student's behavioral and academic troubles, and despite Parents' request for heightened services for Student.

Respondent argued that Parents did not make a written request to the building principal as indicated in 5 D.C.M.R. E-3004.1(b); therefore, Parents could not have made a request that would trigger the start of the 120 day timeline. First, 5 D.C.M.R. E-3004.1(b) makes clear that the school is responsible for providing the parent with the correct form to fill out and submit. The record only reflects one form having been provided to Parents to complete, which was the acknowledgement of receipt of Notice of Procedural Safeguards, which Mother signed and returned to Special Education Coordinator. Petitioner could have argued that DCPS' obligations under IDEA's "child find" provision were triggered long before the February meeting; however, as Respondent pointed out at the DPH, Petitioner did not make this argument. However, in addition to the analysis above, the undersigned also relies on *Scott v. District of Columbia*, 45 IDELR 160 (D.D.C. 2006) in concluding that the 120 day period began to run at least as of February 24, 2014.

In *Scott*, the United States District Court for the District of Columbia rejected the argument that a parent's request for initial evaluation is invalid unless it is in writing, notwithstanding the requirement set out in 5 D.C.M.R. E-3004.1(b). The school in *Scott* had engaged in "alternative strategies" which, similar to the SST process, were designed to provide interventions to the student, prior to/in lieu of evaluating to the student for special education and related services. The hearing officer had found that there had not been a denial of FAPE, in part because the parent "[appeared] to have wanted the student tested, but rather than tell DCPS of her desire, she went along with the alternative strategies." *Id.* In *Scott*, DCPS also argued that the record did not "include any documents which show that Plaintiff submitted any written requests that [the student] be evaluated." Noting the policies and procedures set out in 5 D.C.M.R. E-3004.1(b), the court rejected the notion that a parent must make a written request for an evaluation before DCPS has an obligation to conduct the evaluation. *Id.* ("The Circuit's holdings require DCPS to identify and evaluate students in needs of special education services and related services, whether or not parents have made any request, written or oral. The undersigned finds that Defendants' contention that DCPS was not required to evaluate [the student] because his mother did not submit a written request is therefore without merit."). In this case, Petitioners could have chosen to, but did not, argue that DCPS' obligation to evaluate was triggered earlier than February, pursuant to child find. Nevertheless, *Scott* indicates that whatever form Parents' request took on February 24, 2014, DCPS' affirmative obligation to evaluate Student was triggered, at least as of that day.

The 120 day period began to run at least as of February 24, 2014, and lapsed on or about June 24, 2014. By June 24, 2014, an eligibility determination should have been made and, if Student had been found eligible, an IEP should have been in place for him within the next 30 days, which would have been by around July 24, 2014. The testimony at the DPH was that Student began to be or was evaluated in July 2014. By the August 21, 2014 hearing, an

## Hearing Officer Determination

eligibility meeting had been tentatively scheduled, but not yet held (therefore, no IEP could yet be in place).

The failure to initially evaluate a potentially disabled child is a substantive violation of IDEA and, in itself, constitutes a denial of FAPE. *G.G. v. District of Columbia*, 924 F. Supp. 2d 273 (D.D.C. 2013), *citing N.G. v. District of Columbia* 556 F.Supp.2d 11, 16 (D.D.C. 2008). Even if it had been a procedural violation, it would have constituted a denial of FAPE because it impeded the child's right to a FAPE and/or caused a deprivation of educational benefit. Petitioners, therefore, met their burden of proving that DCPS denied Student a FAPE by failing to evaluate and place the student within 120 days of the request being made by Parent on February 24, 2014.

### **Requested Relief**

Respondent argued that, since Student's evaluation process began in July, and since a date for an eligibility meeting had been offered to Parents, Petitioner's requests for relief are moot. However, as Petitioner had not yet received evaluation reports as of the DPH, and since no eligibility meeting had yet been convened, the undersigned cannot conclude that Petitioner's requests for relief are moot.

One of Petitioner's requests for relief was for an Order that DCPS fund all necessary evaluations, including a comprehensive psychological. At the DPH, Petitioner argued for evaluations in all areas of suspected disability. However, Special Education Coordinator testified that students are further assessed as necessary after an initial eligibility determination is made; therefore, the initial evaluation(s) may or may not be in each area of suspected disability. For this reason, the hearing officer concludes that ordering DCPS to evaluate Student in all areas of suspected disability would be premature.

### **Order**

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

- A. Within 15 calendar days from the issuance of this decision, DCPS shall complete any and all evaluations necessary to make an initial determination of Student's eligibility for special education and related services.
- B. Within 21 calendar days from the issuance of this decision, DCPS shall convene an eligibility meeting to determine whether Student is eligible for special education and related services.
- C. If Student is determined eligible for special education and related services, within 30 calendar days from that date of this decision, Student's IEP team shall have developed and finalized an IEP for Student.

All other relief requested by the Petitioner herein is **DENIED**.

**IT IS SO ORDERED**

Hearing Officer Determination

Date: September 23, 2014

/s/ NaKeisha Sylvester Blount  
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).