

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

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Confidential

OSSE
STUDENT HEARING OFFICE
2009 MAR 20 PM 1:50

<p>STUDENT¹, by and through parent, Petitioner, vs. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Donovan Anderson, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel McCall, Esq.</p> <p><u>Hearing Officer</u> H. St. Clair, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On February 6, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to complete a reevaluation of the student as recommended at the last MDT meeting for the student and, for relief, requested an ORDER to DCPS to complete the reevaluation, an MDT meeting and compensatory education.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Tuesday, March 10, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6A, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

- ISSUES:**
- 1. Did DCPS inappropriately fail to complete a timely reevaluation of the student ?**
 - 2. If DCPS failed to complete a timely reevaluation of the student, did the failure render the current IEP inappropriate?**

FINDINGS of FACT

By facsimile dated March 1, 2009, the parent disclosed 1 witness and 4 documents.

By facsimile dated March 3, 2009, DCPS disclosed 7 witness and 7 documents.

The documents were placed into the record and are referenced/footnoted herein where relevant.

In consideration of the documents and arguments herein, the hearing officer found the following facts:

- 1. The September 26, 2008 IEP disability coded the student Speech/**

Language Impaired with 4 hours of special education services.²

2. The November 22, 2004 psychological evaluation of the student became three years old on November 23, 2007.³

3. The March 2005 Speech/Language Progress Report on the student became three years old on March 31, 2008.⁴

4. The September 26, 2008 MDT recommended a triennial reevaluation of the student.⁵

5. As of the herein February 6, 2009 Complaint, DCPS as not administered either a psychological or a speech/language reevaluation to the student.

CONCLUSIONS of LAW

ONE & TWO

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

IDEIA 2004 requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement. Included in the requirement is the maintenance of current evaluation of the student.

At regulation 34 CFR 300.303(a)(2), a student's teacher or parent can request a reevaluation. At paragraph (b) of the same regulation, limitations on paragraph (a) are setout. They read:

(b) *Limitations.* A reevaluation conducted under paragraph (a) of this section –

(2) Must occur at least once every three years, unless the parent and the public agency agreed that a reevaluation is unnecessary.

Because this regulation contains its limitations, it's limited only by the limitations, and the general proscription at 34 CFR 300.513(a)(2) is immaterial to their

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² Parent Document No 4

³ Par. Doc. No 2

⁴ Par. Doc. No 3

⁵ DCPS Doc. No 2

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applicability. Still, applying 34 CFR 300.513(a)(2), because evaluations support the student's disability coding and IEP, evaluations more than three years old impede a student's right to a FAPE: the student could no longer be Speech/Language Impaired or more or less so. Moreover, the September 26, 2008 MDT recommended the triennial reevaluation.

As to the September 26, 2008 IEP, incorporating educational data more than three years old when completed, when completed, it was inappropriate.

SUMMARY of the DECISION

The parent met her burden in this matter.

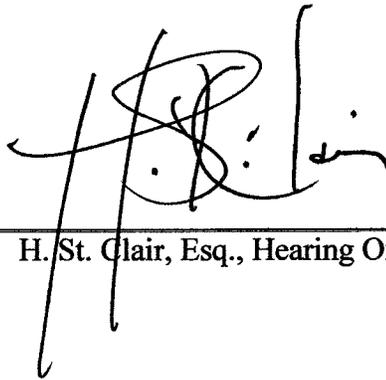
In consideration of the foregoing, the hearing officer made the following

ORDER

1. Within 30 days hereof, DCPS will have completed comprehensive psychological and speech/language evaluations. DCPS failing the said evaluation schedule, the parent is authorized to arrange independent evaluations for which DCPS will pay according to Superintendent's Directive 530.6. Within 20 schooldays of completion/ receipt of the last evaluation report, DCPS will convene an MDT/IEP/Placement meeting during which evaluations will be reviewed, the IEP reviewed and revised as appropriate and placement discussed and determined. If a DCPS placement is recommended, a Notice of Placement will be issued within 5 schooldays of the said meeting; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.
2. At the said MDT/IEP/Placement meeting, the form, amount and delivery of compensatory education, if any, will be discussed and determined. For disputes under this paragraph, either party may request a hearing.
3. For the said MDT/IEP/Placement meeting, scheduling is to be through and notices are to be sent to Counsel for the Parent except that, for everyday of unavailability of parent/educational advocate/Counsel for the Parent, the

deadline herein will be extended one day. In the event of independent evaluation(s) sent to DCPS, Counsel for the Parent will verify by telephone the receipt of the evaluation report copy(ies) by the DCPS person addressee. For disputes under this paragraph, documentation of the parties will be relied upon to determine the good faith of each party.

Dated this 20th day of 12/ Dec, 2009



H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.