

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

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OSSE
STUDENT HEARING OFFICE

Confidential

<p>STUDENT¹, by and through parent, Petitioner, <i>vs.</i> District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Shahidah Hamlett, Esq.</p> <p>Asst. Attorney General for DCPS: Tiffany Puckett, 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

The student attended the _____ Center, a DCPS special education day school for Learning Disabled students.

On January 28, 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 triennial reevaluation and an appropriate IEP and, for relief, requested independent evaluations, a private placement and an MDT meeting.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Monday, February 23, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, 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 fail to complete a triennial reevaluation of the student?**
 - 2. Was the June 3, 2008 IEP appropriate for the student?**
 - 3. Was _____ Center, a 100% Out of General Education setting for Learning Disabled students, an appropriate educational placement for the student?**

FINDINGS of FACT

By facsimile dated February 13, 2009, the parent disclosed 5 witnesses and 7 documents.

By facsimile dated February 13, 2009, DCPS disclosed 16 witnesses and 2 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 Learning Disabled student attended the _____ Center; his June 3, 2008 IEP was 100% Out of General Education and was complete but for an indication of the number of hours of special education services on the IEP cover page.²
2. The student's social history was dated April 10, 2005 and expired – more than 3 years old- on April 11, 2008.³ The evaluation recommended services for the student.
3. The student's speech/language evaluation was dated September 28, 2005 and expired on September 29, 2008.⁴
4. The student's psycho-educational evaluation was dated December 20, 2005 and expired on December 21, 2008.⁵

CONCLUSIONS of LAW

ONE

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. This includes the maintenance of current evaluations of the student; the evaluations herein were more than three years old.

At regulation 34 CFR 300.303, the LEA responsibility to complete reevaluations is set out and at subsection (b) of the regulation, the limitations on the section are further set out.

- (b) *Limitations.* A reevaluation conducted under paragraph (a) of this section –
- (1) May occur not more than once a year, unless the parent and public agency agree otherwise; and

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² Parent Document No 2

³ Par. Doc. No 4

⁴ Par. Doc. No 5

⁵ Par. Doc. No 3

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

As regulation 34 CFR 300.303 has its own limitation, the parent was not required to meet one of the three burdens set out at 34 CFR 300.513(a)(2). Still, the undersigned was convinced that the parent met one of the burdens, 34 CFR 300.513(a)(2)(i) or impeding the student's right to a FAPE: a FAPE cannot be provided when the IEP and goals are based on Present Educational Performance Levels that are more than three years old.

TWO

The June 3, 2008 IEP was inappropriate for the student.

The June 3, 2008 IEP did not indicate the number of hours of special education services the student was to receive, neither specialized instruction nor related services; the IEP indicated that the student was to receive specialized instruction, psychological counseling and speech/language services but did not specify the hours for either. Had the IEP indicated a 100% Out of General Education setting for the student at the

Center with only specialized instruction, possibly, it would have been appropriate. For this IEP, the failure to indicate the hours of special education services violated 34 CFR 300.320(a)(4).

THREE

The inappropriateness of the Center for the student was not established.

At the hearing, there was not evidence that the Center was an inappropriate educational placement for the Learning Disabled student.

SUMMARY of the DECISION

The parent met the burdens on issues ONE and TWO. The parent did not meet the burden on issue THREE.

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

ORDER

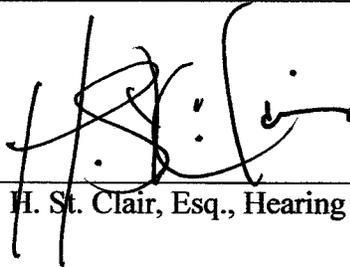
1. In addition to the independent evaluations now

authorized by DCPS,⁶ DCPS will fund an independent social history of the student according to Superintendent's Directive 530.6. Within 15 schooldays of 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 14th day of MARCH, 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.

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⁶ DCPS Doc. No 2, the IEE letter for comprehensive psychological and speech/language evaluations