

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

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Confidential

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STUDENT HEARING OFFICE
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| STUDENT ¹ , by and through his Parent Petitioners, v. DCPS Respondent. Case # | HEARING OFFICER'S DETERMINATION Hearing Date: February 18, 2009 <u>Representatives:</u> Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street NW Suite 700 Washington, DC 20002 Counsel for DCPS: Daniel Kim, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002 <u>Hearing Officer:</u> Coles B. Ruff, Esq. |
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened February 18, 2009, at the Vann Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on January 15, 2008, alleging the issues outlined below.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-23 and DCPS Exhibits 1-? which were admitted into the record.

ISSUE(S): 2

Did DCPS fail to provide the student with a free and appropriate public education by failing to comply with the December 18, 2008 Order?

FINDINGS OF FACT ³:

1. The student is _____ years old, currently attends School A and resides in the District of Columbia with the student's parent(s), (hereinafter "Petitioner" or "Parent"). (Petitioner's Exhibit 2)
2. The student, prior to the start of the current school year, attended School B in the District of Columbia. His most recent parentally involved IEP, is dated May 23, 2007, and provides for 7.5 hours per week of specialized instruction in math and reading. (DCPS Exhibit 1)
3. On April 30, 2008, an administrative due process complaint notice hearing was filed convened on behalf of the student. Prior to the commencement of the hearing, the parent

² The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn.

³ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding.

and DCPS agreed to settle the matter regarding the student's special education needs. The parties requested the hearing officer incorporate the terms of the settlement agreement into an order. As a result a Hearing Officer's Determination (HOD) was issued May 13, 2008, in which DCPS agreed to do, inter alia, on or before May 30, 2008, provide the parent, through counsel copies of the student's psychological, educational, and functional behavior assessment. (DCPS Exhibit 1)

4. The HOD also required DCPS to, on or before June 10, 2008, convene a multidisciplinary team (MDT) meeting to review the student's evaluations and revise and update the student's IEP as appropriate. (DCPS Exhibit 1)
5. On May 23, 2008 and June 3, DCPS, convened the student's MDT meeting without the parent present. As a result the parent, through counsel, filed an administrative due process complaint which resulting in a HOD issued December 18, 2008. The HOD ordered DCPS to convene the student's MDT Meeting within fifteen (15) business days of the issuance of the order, to review the student's evaluations, determine if additional evaluations are necessary, and revise and update the student's IEP as appropriate. See Order dated December 18, 2008. (DCPS 1)
6. By January 15, 2009, DCPS had not yet convened the MDT meeting pursuant to the December 18, 2008, HOD. Consequently, Petitioner's counsel filed the current due process complaint on January 15, 2009. (Petitioner's Exhibit 2)
7. DCPS sent the first letter of invitation to the parent for the MDT meeting on January 15, 2009. Subsequent to the January 15, 2009, there were several correspondences between the parties in attempts to arrive at a mutually convenient date for the parties for the MDT to be conducted. The parties did not agree on a date for the meeting prior to the due process hearing. However, at the due process hearing the parties agreed on a date for the meeting. (DCPS Exhibit 2, 3, 4, 5)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief.⁴ In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

⁴ Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine

Did DCPS fail to provide the student with a free and appropriate public education by failing to comply with the December 18, 2008 Order? Conclusion: Petitioner's counsel did not sustain the burden of proof by a preponderance of the evidence.

Although the Hearing Officer stated in the HOD DCPS was to convene the MDT meeting within 15 business days of the issuance of the HOD, the Hearing Officer anticipated the counting of the days would be business days for the school in which the school staff would have been at school rather than days when the school staff were not available. The Hearing Officer takes administrative notice that the student's school was closed during the Christmas holiday in December and school resumed on January 5, 2009, and prior to that date the school staff would not have been available to convene and attend a MDT meeting within that time frame. The due process complaint was thus filed prematurely.

DCPS sent letters of invitation to Petitioner's counsel. The parties were not able to agree upon a date for the meeting despite the back and forth correspondence. However, there was no evidence that DCPS was at fault for the meeting not yet being convened. The Hearing Officer concludes the due process complaint was filed prematurely and DCPS has made good faith efforts to convene the MDT meeting. Therefore, the Hearing Officer concludes there was no denial of FAPE in this case.

The parties agreed during the due process hearing the MDT meeting would be convened on March 3, 2009. The Hearing Officer is hopeful the meeting will be convened on that date and the parties will promptly fulfill the requirements of the December 18, 2008, HOD.

ORDER:

The due process complaint in this matter is hereby dismissed.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the 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. § 415(i)(2).

/s/ Coles B. Ruff, Esquire

Coles B. Ruff, Esq.

Hearing Officer

Date: February 28, 2009

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 FAPE.