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

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STUDENT HEARING OFFICE
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STUDENT[1], by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.	HEARING OFFICER'S DETERMINATION Date: February 26, 2009 Representatives: Counsel for Petitioners: Kimberly Glassman Counsel for Respondent: Candace Sandifer **Hearing Officer: Wanda I. Resto, Esquire**

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On January 16, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("DCPS") alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to complete the Student's triennial reevaluation and evaluations requested by the parent, failing to evaluate the Student in all areas of suspected disability, inappropriately reducing the hours in the Student's Individualized Education Program ("IEP"), and failing to develop an appropriate IEP. The Petitioner requests the Respondent be deemed to have denied the Student a FAPE and as a relief ordered to fund the Student's independent Comprehensive Psychological to include educational, behavioral and emotional measures, an Autism Rating Scale, a Vineland Adaptive Assessment, and a Functional Behavioral Assessment, and within ten (10) days of receipt of the independent evaluations, convene a multidisciplinary team ("MDT") meeting to review the evaluations and revise the IEP.

The Hearing Officer held a pre-hearing conference call with Counsel for both parties on February 13, 2009. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and reiterated the issues as plead. The Petitioner offered two witnesses; the Respondent offered two witnesses and both Counsels provided a synopsis of their witnesses' testimony. The parties stipulated the Student attends School.

The DCPS' Response to Petitioner's Due Process Complaint Notice was filed on January 30, 2009. The Respondent asserts that the Student has a current comprehensive psychological that was conducted in April 2008. Furthermore the Respondent asserts that on December 19, 2008, the special education coordinator sent to the Petitioner through Counsel, the Student's records, and attached a cover letter indicating the school would begin that rest of the Student's evaluations immediately.

A hearing was held on February 18, 2009. The Petitioner presented a disclosure letter dated February 10, 2009 to which eighteen documents were attached, labeled P-1 through 18 and which listed four witnesses. One witness testified –the mother. The Respondent presented a disclosure letter dated February 10, 2009 identifying six witnesses and to which four documents were attached, labeled DCPS 1 through four. One witness testified –the SEC. The documents were admitted without objections.

The hearing was conducted in accordance with the rights established under the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S.C. § 1400 et seq. and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

II. ISSUE(S)

1. Whether the Respondent denied the Student a FAPE by failing to complete the Student's triennial reevaluation and evaluations requested by the parent?

2. Did the Respondent fail to evaluate the Student in all areas of suspected disability?

3. Has the Respondent inappropriately reduced the hours in the Student's IEP and fail to develop an appropriate IEP?

III. FINDINGS OF FACT

1. The Student's disability classification is listed as learning disabled. His current IEP is dated April 14, 2008 and requires 10 hours of specialized instruction weekly. The document is not signed by the parent. The Student previously received 15 hours of specialized instruction through an IEP dated May 16, 2006.[2]

2. The Student's 2005 recent Academic skills assessment report indicates that the Student "suffers from a clinically significant amount of anxiety", perceives life as becoming progressively worse, and sometimes hears voices telling him to do bad things. According to this report, the Student experienced excessive anxiety and worry over the last two years and his clinically significant distress impairs most domains of his life and interferes with his academic functioning and general well being. [3]

3. The parent was concern about the Student's academic performance and behavioral problems. She requested evaluations on December 19, 2007, including a "holistic evaluation: psychological, social, academic, and behavioral"[4] and did not receive a response. The Student was entitled to receive 15 hours a week of specialized instruction and it was reduced to 10 hours a week without explanation in 2007. [5]The parent again requested evaluations on April 14, 2008, including behavioral, academic and a psychological. The Student is in a classroom with approximately 20 other students, does not receive services in the resource classroom and does not receive counseling. The Student has been suspended more than ten times since January 2009 for fighting and is placed in a classroom alone without work.

4. An April 2008 evaluation report found the Student to have a Full Scale IQ of 89, Working Memory Index of 80, Verbal Comprehension Index of 91, Perceptual Reasoning Index of 108, and Processing Speed of 85. In the Scale for Assessing Emotional Disturbance (ED), "the Student received a Quotient of 70, indicating he was unlikely to have ED, but a standard score of 18 making it likely that the Student has emotional disturbance on the inability to learn." The evaluation states that it is likely that the Student has a severity in his learning, and sadness from his lack of success in the classroom setting. The evaluation recommended academic instruction in a classroom setting with a small student to teacher ratio and social emotional counseling to address self-esteem, anxiety, feelings of sadness, hopelessness and coping skills. The evaluation also indicates the Student may benefit from more specialized

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[2] P#6 IEP dated 4/14/08 and P#12 IEP dated 5/16/06.

[3] P#16 *Academic Skills Assessment report dated 4/28/05.*

[4] P#8 MDT meeting notes 12/19/07.

[5] Testimony of the Mother.

instruction than he is currently receiving. [6] This evaluation has not been reviewed or discussed with parent. There are no educational measures in the evaluation.

5. The Student is receiving 10 hours of specialized instruction without related services. The resources services are provided in English/language arts and Math in a resource classroom. The MDT made the determination to reduce the hours of specialized instruction by reviewing the prior IEPs and progress. The Respondent acknowledged receipt of the request for the Student's records and evaluations on December 19, 2008. The vision and hearing screening and educational assessments are done; the social history assessment is pending. The Student has a comprehensive psychological report dated 4/24/08 and speech and language dated 2/17/09. [7]

6. On 4/14/08 the SET recommended in an MDT meeting that the Student be provided 15 hours of specialized instruction.[8]

7. In June 2008 the MDT team determined that the Student should receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he is currently receiving based on his academic levels of performing and social emotional needs. The team also agreed that the Student may benefit from carrying a conduct sheet as a gauge of measuring his work and productivity in the classroom, behavior, and completion of homework assignments. It further stated that the Student should participate in psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills. Student is placed in the mild clinical risk range of measures of the anxiety, depression, autistic spectrum behaviors, learning disability, mental retardation, and executive function.[9] The parent was not present at the meeting and the psychological report has not been discussed with the parent.[10]

IV. CONCLUSIONS OF LAW

FAPE Determination

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

The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education,

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[6] P#14 *Comprehensive Psychological Evaluation dated 4/24/08.*

[7] DCPS#1 correspondence date 12/29/08 and testimony of the SEC.

[8] DCPS#4 MDT meeting notes dated 4/14/08.

[9] P#4 MDT meeting notes dated 6/05/08.

[10] Testimony of the SEC and of the Mother.

employment, and independent living. *See id.* § 1400(d)(1)(A). The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)."

Burden of Proof

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the 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 a FAPE.

The DCPS did not meet its legal obligation under the IDEA. Here is why.

Evaluations

According to the IDEIA 20 USC 1414(2)(a)(b) Respondent, as the local education agency, is responsible for ensuring that every evaluation, of each child with a disability, shall occur "at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary." The local education agency must ensure that a student is evaluated so as to "gather relevant functional, developmental and academic information .... to assist in developing the content of the child's individualized education program." Accordingly, D.C. Municipal Regulations place the obligation to conduct re-evaluations of the student upon the LEA. (30 DCMR Sec 3005.7)

While there is not a timeline by which reevaluations should be performed there is an expectation of reasonableness, and waiting four months for a reevaluation is not reasonable. The parent requested evaluations on December 19, 2007, and did not receive a response until December 2008. The testimony was that an Educational Assessment was last performed in 2005 and one was in the process of completion on February 19, 2009. A comprehensive psychological was performed in April 2008 but never discussed with the parent.

There is an obligation to ensure that a child is "assessed in all areas of suspected disability" Furthermore, the public Agency has an obligation to re-evaluation upon the request of the parent and/or the recommendations of teachers or service providers. See 20 U.S.C. 1414(b)(1)-(3), 1412 (a)(6)(B).

The DCPS was aware that the Student was due for an educational evaluation, and a comprehensive psychological evaluation in the fall of the 2007/2008 school year. A new IEP was developed in April 2008 but there was no indication that the educational evaluation was conducted. In the instant matter, it is clear the DCPS failed to comply with the requirements of the IDEA.

Suspected disability

The IDEA regulations at 34 C.F.R. § 300.304(c)(4),(6)-(7) provides that the student be "assessed in all areas related to the suspected disability", that the "evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs", and that the public agency use "assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child." *See also* 20 U.S.C. § 1414(b)(1)-(3), 1412(a)(6)(B).
&D.C. MUN. REGS. tit. 5, § 3005.1 (2003) requires that DCPS "shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine if the child is a 'child with a disability'. Evaluation means "procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs."

In the present case, the parent requested in December 2007 holistic evaluations of the Student because she had academic and behavioral concerns. The only evidence of the status of that request is a December 29, 2008, letter from the SEC indicating that evaluations would be conducted.

A comprehensive psychological dated 4/24/08 places the Student in the mild clinical risk range of measures of the anxiety, depression, autistic spectrum behaviors, learning disability, mental retardation, and executive function. Furthermore, the MDT in June agreed that the Student may have behavior problems that are interfering with the completion of homework assignments. The Respondent did not order or complete an Autism Rating Scale or an Adaptive Assessment to address these areas of concern. In addition, DCPS has not completed a Functional Behavior Assessment for this child, which in *Harris v. District of Columbia, Civil Action No. 07-1422 (D.D.C. 2008),* was found to be essential in addressing a child's behavior and plays an integral role in the development of the IEP.

The Hearing Officer finds that a request for evaluations was made in December 2007 and the evidence is that the Student requires an Autism Rating Scale, Vineland Adaptive Assessment, Functional Behavioral Assessment, and Comprehensive Psychological evaluations that includes educational, behavioral and emotional measures.

Multidisciplinary Team Meeting Review

The public agency has an obligation to convene an MDT for the purpose of reviewing the results of any new evaluations. According to 34 C.F.R. Section 300.324(b): "Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-

a. Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

b. Revises the IEP, as appropriate, to address—
    i. Any lack of expected progress toward the annual goals described in Sections 300.320(a)(2) and in the general education curriculum if appropriate;

ii. The results of any re-evaluation conducted under 300.303;
iii. Information about the child provided to, or by, the parents, as described under 300.305(a)(2);
iv. The child's anticipated needs...

In the instant matter, there was an April 2008 comprehensive psychological evaluation that in June 2008 the MDT allegedly discussed without the parent present and then the Student was assigned only 10 hours a week of specialized instruction and no related services.

As indicated above, the Respondent violated its procedural obligations by failing to timely evaluate the Student even though the parent requested and there are other disabilities that should have been ruled out. The evaluations were delayed until April 2008 and they were not addressing all of the parents concerns. The Respondent has failed to convene the MDT to review evaluations.

Individualized Education Program

In accordance with 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Program or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

aa. Meet the child's needs that result from the child's disability and to enable the child to be involved in and make progress in the general education curriculum; and

bb. Meet each of the child's other educational needs that results from the child's disability."

It is the position of the Petitioner that the Student's IEP is inappropriate because s the Student hours were reduced without an explanation.

Pursuant to 34 C.F.R. § 300.508(e), the Respondent shall provide the Petitioner i) an explanation of why the Respondent proposed or refused to take the action raised in the complaint; ii) a description of other options that the IEP team considered and the reasons why those options were rejected, iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action, and iv) a description of the other factors that are relevant to the agency's proposed or refused action.

The regulations require, at 34 CFR §300.503(a), that written notice that meets the requirements of 34 CFR §300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

A thorough review of the IEPs in the record reveal that Petitioner's specialized instruction hours were reduced from 15 to 10 hours weekly in 2008. The evidence is that existing evaluations are inconsistent on the Student's disability classification. The Student is placed in

the mild clinical risk range of measures of the anxiety, depression, autistic spectrum behaviors, learning disability, mental retardation, and executive function. There is also evidence of concerns with the Student's work and productivity in the classroom, behavior, and completion of homework assignments. A team agreed that the Student should receive psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills. In June 2008 the MDT team determined that the Student should receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he is currently receiving based on his academic levels of performing and social emotional needs. Also during June 2008 the SET recommended 15 hours of specialized instruction. There was no evidence of what services the Student was receiving or that a new IEP was created to reflect the MDT determination and SET recommendation of June 2008 or the recommendations for counseling and additional hours. There was no evidence of what happened with the recommendations. The Petitioner demonstrated that accumulative violations by the DCPS have denied the Student a FAPE.

V. SUMMARY OF DECISION

The Petitioner proved the Respondent denied the Student a FAPE by failing to complete the Student's triennial reevaluation and evaluations requested by the parent, failing to evaluate in all areas of suspected disability, inappropriately reducing the hours in the Student's IEP and failing to develop an appropriate IEP. The Respondent is ordered to fund the Student's independent evaluations to include a Comprehensive Psychological with educational, behavioral and emotional measures, an Autism Rating Scale, a Vineland Adaptive Assessment, and a Functional Behavioral Assessment, within ten (10) school days of receipt of the independent evaluations, the Respondent must convene a multidisciplinary team ("MDT") meeting to review the evaluations and revise the IEP.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the Respondent has denied Student a FAPE and issues the following:

VI. ORDER

ORDERED, that the Respondent shall convene an MDT meeting to review completed evaluations, revise the Student's program and discuss whether the Student requires additional specialized instruction hours and counseling services; at the aforementioned meeting, the Respondent shall secure the participation of all necessary IEP team members to include but not limited to the appropriate personnel required to review assessments and develop an appropriate program for this child;

IT IS FURTHER ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

IT IS FURTHER ORDERED, the DCPS shall send all notices to counsel for the parent with copies of such to the parent and in the parent's native language.

IT IS FURTHER ORDERED that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the appropriate DCPS Placement Specialist and the DCPS Office of Mediation & Compliance to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply. [11]

This order resolves all issues raised in the Petitioner's January 16, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. Final decisions of special education Hearing Officer may be appealed to a state or federal district court of competent jurisdiction. (20 U.S.C. §1415(i)(2) and 34 C.F.R. §300.516)

/s/WIRestorres **Date: February 27, 2009**
Wanda I. Resto - Hearing Officer

[11] If DCPS fails to contact Petitioner's counsel to coordinate scheduling the MDT meeting by a date that would make compliance with this Order feasible, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.