

# ***DISTRICT OF COLUMBIA***

Office of the State Superintendent of Education  
Office of Review & Compliance  
Student Hearing Office

1150 Fifth Street, SE  
Washington, D.C. 20003  
Telephone: (202) 698-3819  
Facsimile: (202) 698-3825

OSSE  
STUDENT HEARING OFFICE  
2009 APR 20 PM 12:48

**Confidential**

---

STUDENT<sup>1</sup>, by and through parent,

Petitioner,

us.

District of Columbia Public Schools,

Respondent.

**HEARING OFFICER'S  
DETERMINATION**

Counsel for Petitioner/Parent:  
Chike A. Ijeabuonwu, Esq.

Asst. Attorney General for DCPS:  
Harsharen Bhuller, Esq.

**Impartial Hearing Officer**  
H. St. Clair, Esq.

---

1 of 6 pages

<sup>1</sup> Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

## BACKGROUND

On March 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). Counsel for the Parent's allegations are specified under ISSUES, below. For relief, independent evaluations, an MDT meeting and a private placement were requested.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Friday, April 10, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 7B, 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. **Did DCPS fail to assess the student in all areas related to a suspected disability?**
3. **Did DCPS fail to complete a functional behavior assessment (FBA) and a behavior intervention plan (BIP) for the student?**
4. **Did DCPS fail to convene an appropriate MDT/IEP meeting for the student?**
5. **Did DCPS fail to provide an appropriate placement for the student?**
6. **Did DCPS fail to complete an appropriate IEP for the student?**

OSSE  
STUDENT HEARING OFFICE  
2009 APR 20 PM 12: 48

## **FINDINGS of FACT**

By facsimile dated April 3, 2009, the parent disclosed 4 witnesses and 4 documents.

By facsimile dated April 3, 2009, DCPS disclosed 3 witnesses and 6 documents.

Counsel for the Parent offered for the record a copy of the March 11, 2009 Disciplinary Report. DCPS objected pointing to the 5-Day Disclosure Rule and, in addition, claimed surprise. The hearing officer noted that the document did not exist when the herein Complaint was filed on March 6, 2009 and SUSTAINED the DCPS objection.

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

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

1. The February 19, 2009 IEP disability coded the student Multiply Disabled with 15 hours of special education services Outside General Education; the subsumed disabilities could not be found in the IEP.<sup>2</sup>
2. From the May 17, 2006 IEP, it was presumed that the student was Emotionally Disturbed (ED), Other Health Impaired (OHI) and Learning Disabled (LD).<sup>3</sup>
3. DCPS completed the March 29, 2007 Educational Evaluation.<sup>4</sup>
4. The November 30, 2005 Report of Psychological Evaluation diagnosed the student with ED, LD and OHI<sup>5</sup> and became three years old on December 1, 2008.
5. The Grandmother testified to the student misbehavior in school, fighting and quarrels, generally.<sup>6</sup>
6. The Special Educational Coordinator described the student's behavior as occasionally disruptive, but not to the point to merit a major suspension or to suggest the inappropriateness of his current educational placement; that the student had made educational progress at his existing placement.

3 of 6 pages

---

<sup>2</sup> DCPS Document No 1

<sup>3</sup> Parent Doc. No 3

<sup>4</sup> DCPS Doc. No 5

<sup>5</sup> Par. Doc. No 4, page 8

<sup>6</sup> -testimony of Grandmother

7. During the hearing, no facts were adduced to the effect the student was not assessed in for any suspected disability.
8. During the hearing, no facts were adduced to the effect DCPS inappropriately failed to complete an FBA or a BIP.
9. During the hearing, no facts were adduced to the effect a specified MDT/IEP team composition was inappropriate.
10. No private placement was offered as a potential educational placement.

## **CONCLUSIONS of LAW**

*IDEIA 2004* requires DCPS to evaluate fully 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.

The hearing in this matter was convened under the *IDEIA 2004* implementing regulation, 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by the preponderance.

### **ONE, FIVE & SIX**

#### **The March 29, 2007 Educational Evaluation was not a triennial reevaluation DCPS failed to complete a triennial reevaluation of the student.**

The student was disability coded ED/OHI/LD, serious codings that necessarily spring from clinical psychological and psycho-educational evaluations. 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 set out. They read:

- (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
  - (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. Further, because the evaluation that initially identified the student's three

abovementioned disabilities was completed more than three years ago, DCPS violated the limitation at paragraph (b)(2) of the rule.

The purpose of a reevaluation is to reestablish the existence of the student's disabilities and any resulting and/or continuing need for special education services. The student could no longer be ED, OHI or LD, more so in either, or less so in either.

Evaluations support the disability coding(s) which in turn determines the IEP; the latter supports or determines the appropriateness of the educational placement which implements the IEP. As the February 19, 2009 IEP was based on a psychological evaluation more than three-year-old, it was inappropriate and cannot support an appropriate placement: An inappropriate IEP cannot support an appropriate educational placement.

## **TWO**

**Nothing in the record established any failure on the part of DCPS to assess for any suspected disability.**

## **THREE**

**Nothing in the record established the inappropriateness of any DCPS decision regarding an FBA or BIP for the student.**

## **FOUR**

**Nothing in the record established the inappropriateness of any specified MDT/IEP meeting or team composition.**

## **SUMMARY of the DECISION**

As to issues 1, 5 and 6, Petitioner met the respective burdens and was the prevailing party in this matter.

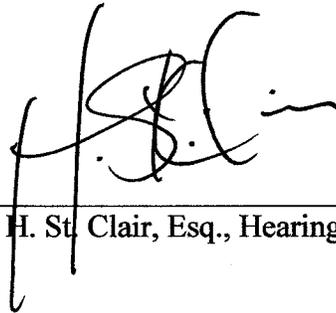
In consideration of the foregoing, the hearing officer made the following

## **ORDER**

1. Within 40 days hereof, DCPS will have completed a triennial reevaluation of the student, to include minimally a clinical psychological evaluation to assess for ED, OHI and LD disability codings. 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 15 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.

Dated this 20<sup>th</sup> day of April, 2009



A handwritten signature in black ink, appearing to read 'H. St. Clair', written over a horizontal line.

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.**