DC Office of the State Superintendent of Education
Office of Compliance & Review
State Enforcement & Investigation Division
STUDENT HEARING OFFICE
Van Ness Elementary School
1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003
Phone: (202) 698-3819
Facsimile: (202) 442-5556

Virginia A. Dietrich, Esq.
Impartial Due Process Hearing Officer

CONFIDENTIAL

OSSE
STUDENT HEARING OFFICE
2009 APR 17 PM 2: 24

In Re the Matter of:	*	
	*	**CASE NO.**
Parent on behalf of Student *	*	
	*	
Petitioner,	*	**Complaint Date: 03/02/09**
	*	**Hearing Date: 04/06/09**
vs.	*	
	*	**Hearing Site:**
	*	**Van Ness Elementary School**
The District of Columbia Public Schools	*	**1150 5th Street, S.E., 1st Floor**
	*	**Washington, D.C. 20003**
Respondent.	*	
	*	

HEARING OFFICER DETERMINATION

Petitioner's Attorney:

Domiento Hill, Esq.
James E. Brown & Associates, PLLC
1220 L Street, N.W., Suite 700
Washington, D.C. 20005

Respondent's Attorney:

Candace Sandifer, Esq.
Assistant Attorney General
Office of the Attorney General as Counsel
for D.C. Public Schools
825 North Capitol Street, N.E., 9th Floor
Washington, D.C. 20002

*Personally identifiable information is attached as an Index to this decision and must be removed prior to public distribution.

JURISDICTION

The Due Process Hearing was convened and this Hearing Officer Determination ("HOD") and Order written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. Section 1400 et. seq., the implementing regulations for IDEIA; 34 C.F.R. Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations (D.C.M.R.).

INTRODUCTION

On 03/02/09, a Due Process Complaint Notice ("Complaint") was filed by the parent ("Parent" or "Petitioner") on behalf of the [redacted] year old student ("Student") alleging that the District of Columbia Public Schools ("DCPS") denied Student a Free Appropriate Public Education ("FAPE") in violation of IDEIA when DCPS failed to provide Student a FAPE by failing to conduct an agreed upon reading evaluation to determine Student's need for a reading program.

The parties did not engage in mediation or the resolution process prior to the due process hearing.

THE DUE PROCESS HEARING

The due process hearing convened on 04/06/09 at the Van Ness Elementary School located at 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003.

Petitioner was represented by Domiento Hill, Esq. ("Petitioner's Attorney") and DCPS was represented by Candace, Esq. ("DCPS' Attorney"). Petitioner attended the due process hearing.

Parties chose not to engage in settlement discussions.

Disclosures:

Petitioner's Five-Day Disclosure letter dated 03/30/09 contained Exhibits #1-28. Petitioner's Exhibits #1-13 were admitted into evidence without objection, Exhibit #14 was admitted into evidence over objection, Petitioner withdrew Exhibits #15-18, and Exhibits #19-28 were admitted into evidence without objection.

DCPS' Disclosure Statement dated 03/26/09, containing Exhibit #1, was admitted into evidence without objection.

Witnesses:

Witnesses for Petitioner included: (1) Petitioner, and (2) Dori Cook, educational advocate.

DCPS presented no witnesses.

Stipulations:

#1 – On 03/13/09, Petitioner received a letter from DCPS authorizing funding for a LindaMood Bell Evaluation.

Relief requested:

Petitioner requests relief in the form of a (1) finding of a denial of FAPE; (2) an Order for DCPS to convene an IEP Team meeting within 10 school or business days of receipt of the LindaMood Bell Evaluation to review the findings of the LindaMood Bell Evaluation and incorporate the findings into Student's IEP if the LindaMood Bell Reading Program is recommended in the evaluation; and (3) an Order for DCPS to fund the LindaMood Bell Reading Program and provide transportation if Student is recommended for reading services through the LindaMood Bell Evaluation.

FINDINGS OF FACT

#1. Student is years old, attends and has a disability classification of Multiple Disability, Specific Learning Disability, Other Health Impairment, and Speech/Language Impairment. *(Petitioner's Exhibit #9, IEP dated 01/16/09).*

#2. On 02/25/08, the Multidisciplinary Team ("MDT") recognized that Student's reading level was at the grade equivalent of 2.3, and as a result, provided supportive services in the form of 1:1 tutoring with a reading specialist for 2 thirty minutes sessions per week as part of Student's special education services. *(Petitioner's Exhibit #11, MDT Meeting Notes dated 12/18/08).*

#3. On 01/16/09, the MDT met to review an educational evaluation dated 01/13/09 and to review Student's Individualized Education Program ("IEP'). Based on Student's documented low reading score of 2.3 grade level equivalency, Petitioner requested that DCPS authorize funding for a LindaMood Bell Evaluation to determine if the LindaMood Bell Reading Program was appropriate for Student, and DCPS agreed to provide written authorization for a LindaMood Bell Evaluation within 10 school days. *((Petitioner's Exhibit #9, IEP dated 01/16/09); Petitioner's Exhibit #10, IEP Meeting Notes dated 01/16/09).* Student's 01/16/09 IEP prescribed 1 hour/week of supplemental reading services with a reading specialist. *(Petitioner's Exhibit #9, IEP dated 01/16/09).*

#4. On 01/23/09, Petitioner's Attorney's office sent a letter to DCPS requesting that the letter authorizing funding for the independent LindaMood Bell Diagnostic Evaluation be provided no later than January 30, 2009. *(Petitioner's Exhibit #20, Correspondence from the Law Offices of James E. Brown to DCPS dated 01/23/09, with facsimile confirmation).*

#5. On 03/02/09, Petitioner filed an administrative due process complaint notice alleging that Student was denied a FAPE due to DCPS' failure to provide funding authorization for the LindaMood Evaluation. *(Petitioner's Exhibit #3, Petitioner's Administrative Due Process Complaint Notice dated 03/02/09).*

#6. On 03/13/09, Petitioner received a letter from DCPS authorizing funding for an independent LindaMood Bell Evaluation. *(DCPS' Exhibit #1, IEE Authorization Letter dated 03/13/09).*

DISCUSSION AND CONCLUSIONS OF LAW

"The burden of proof shall be the responsibility of the party seeking relief. Based solely upon 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 with a FAPE." *5 D.C.M.R. 3030.3.* "The burden of proof in an administrative hearing...is properly placed upon the party seeking relief." *Schaffer v. Weast, 44 IDELR 150 (2005).*

Issue #1 – Whether DCPS failed to provide Student a FAPE by failing to provide funding authorization for Student's independent LindaMood Bell Evaluation?

Petitioner alleges that Student has a substantive right to be evaluated pursuant to 34 C.F.R. 300.304(c)(4) and (6), i.e., "DCPS shall ensure that Student is evaluated in all areas of suspected disability...and that the evaluation is sufficiently comprehensive to identify all of the child's special education needs and related services..."

On 01/16/09, Petitioner requested that DCPS authorize funding for an independent reading evaluation, and DCPS agreed to provide an authorization letter within 10 days. *(Finding of Fact #3).* However, despite a written request from Petitioner's representative *(Finding of Fact #4),* DCPS did not provide the authorization letter until 03/13/09 *(Finding of Fact #6),* after Petitioner had filed a due process complaint *(Finding of Fact #5).*

The hearing record revealed that on 01/16/09, the MDT reviewed a recent educational evaluation dated 01/13/09, and the evaluation indicated that Student's reading scores were at a 2.3 grade level equivalency. 1:1 reading services for 1 hour/week with a reading specialist were continued. *(Finding of Fact #3).*

34 C.F.R. 300.303 Comments, page 46641, Federal Register Rules and Regulations makes it clear that "An IEE (independent educational evaluation) would be considered as a potential source of additional information that the public agency and parent could consider in determining whether the educational or related services needs of the child warrant a reevaluation, but it would not be considered a reevaluation. There is no restriction on when a parent can request an IEE."

The Hearing Officer determines that under the provisions of IDEIA, the LindaMood Bell Evaluation is considered to be an independent educational evaluation and not a reevaluation, as it was requested to provide additional information regarding Student's reading abilities and needs for a private reading program. Student's low scores in reading were already known and documented on the 02/25/08 IEP and the 01/16/09 IEP *(Finding of Fact #2, #3)*. Under the provisions of IDEIA, there is no timeline applicable for DCPS to provide authorization for this independent LindaMood Bell reading evaluation since this evaluation is not a reevaluation subject to the requirements of 34 C.F.R. 300.303. Therefore, Petitioner has not alleged any procedural violations of IDEIA.

Student has a documented history of reading deficiencies. Beginning on 02/25/08, the MDT began providing Student with 1 hour/week of 1:1 reading services to address Student's low reading scores evidencing a 2.3 grade level equivalency *(Finding of Fact #2)*, and these remedial reading services were in existence at the time of the filing of the Complaint *(Finding of Fact #3)*.

Under IDEIA, Student, with a disability classification recognized by IDEIA *(Finding of Fact #1)*, is entitled to a FAPE. *See 34 C.F.R. 300.17.* There is no evidence in the record that Student's IEP was not being implemented or that Student's reading deficiencies were not being addressed by DCPS.

Simply, Petitioner seeks a finding of a denial of a FAPE because DCPS did not deliver a letter authorizing funding for an independent educational evaluation to determine Student's eligibility for a private reading program in the time frame promised.

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. *34 C.F.R. 300.513(a).*

Petitioner failed to allege or prove any procedural or substantive violations of IDEIA in this case, and without either of these, a showing of harm is irrelevant.

Petitioner did not meet its burden of proof on Issue #1.

ORDER

WHEREFORE, this Complaint having been fully litigated and there being no basis in fact and law to support Petitioner's allegations that Student was denied a FAPE, it is

ORDERED that this Complaint be and hereby is **DISMISSED** with prejudice.

IT IS SO ORDERED.

This is the FINAL ADMINISTRATIVE DECISION in this matter. Any party aggrieved by the findings and decision may APPEAL to a state court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. Section 1415(i)(2).

Virginia A. Dietrich /s/ 04/16/09

Virginia A. Dietrich, Esq. Date
Impartial Due Process Hearing Officer