

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

1150 Fifth Street, SE  
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OSSE  
STUDENT HEARING OFFICE  
2009 APR 10 AM 8:52

Confidential

<p>STUDENT<sup>1</sup>, by and through parent,  Petitioner,  us.  District of Columbia Public Schools,  Respondent.</p>	<p><b><u>HEARING OFFICER'S DETERMINATION</u></b></p> <p>Counsel for Petitioner/Parent: Fatmata Barrie, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel Kim, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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1 of 5 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 September 16, 2008, DCPS convened an SST<sup>2</sup> meeting for the student. Since then, nothing further was accomplished. On February 26, 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 find” the student and to make FAPE available to the student within 120 days of the September 16, 2008 SST meeting. For relief, independent evaluations and an MDT/Eligibility meeting were requested.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Wednesday, April 1, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6A, 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 find the student in violation of 34 CFR 300.111?**
- 2. Did DCPS fail to make FAPE available to the student within the legally mandated 120-day timeline?**
- 3. Did DCPS fail to convene another meeting after the September 16, 2008 SST meeting?**

## **FINDINGS of FACT**

By facsimile dated March 26, 2009, the parent disclosed 6 witnesses and 7 documents.

By facsimiles dated March 25, 2009 and March 31, 2009, DCPS disclosed 10 witnesses and 4 documents.

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<sup>2</sup> SST: Student Support Team

an appropriate IEP and Placement.

In the District of Columbia, DCPS has 120 days to make FAPE available to a student who has been referred for evaluation for special education services. DCPS must find and assess fully all the suspected disabilities a student may have, complete an IEP and offer an educational placement, all within 120 days of the referral for evaluation, in this case, September 16, 2008; that did not occur in this matter. *See* D.C. Code 38-2561.02.

Issue 3 was subsumed into issue 2. Other than send the January 8, 2009 Letter of Invitation, DCPS did nothing to complete the evaluation of the student for special education services before January 17, 2009, the 120 day deadline.

## **SUMMARY of the DECISION**

The parent had the burden proof in this matter and met it for issue 2, violation of the 120 day legally mandated timeline for the availability of FAPE. The parent was the prevailing party.

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

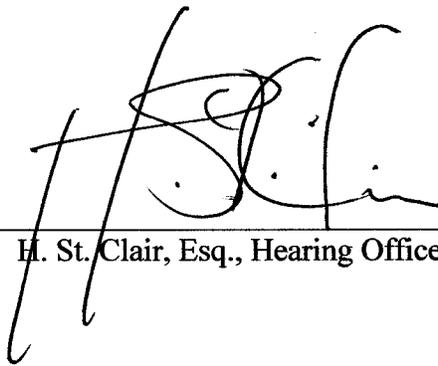
### **ORDER**

1. Within 20 days of receipt of the last independent evaluation report, DCPS will convene an MDT/Eligibility/IEP/Placement meeting during which evaluations will be reviewed and the student's eligibility for special education services discussed and determined. If the student is determined ineligible, a Notice of Ineligibility will be issued at the said meeting. If the student is determine eligible, an IEP will be completed and a Notice of Placement issued within 5 schooldays of the said meeting if a DCPS placement is recommended; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.

3. For the said MDT/Eligibility/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 10<sup>th</sup> day of April, 2009



A handwritten signature in black ink, appearing to read 'H. St. Clair', is 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.**