

DC Office of the State Superintendent of Education
 Office of Review & Compliance
 Student Hearing Office
 1150 5th Street, SE
 Washington, D.C. 20003
 CONFIDENTIAL

<p>[Parent]¹, on behalf of [Student],</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools,</p> <p style="text-align: center;">Respondent.</p>	<p>Case:</p> <p style="text-align: center;">HEARING OFFICER'S DETERMINATION</p> <p>August 6, 2009</p> <p><u>Representatives:</u></p> <p>Fatmata Barrie, Petitioner</p> <p>Tanya Chor, Respondent</p> <p><u>Independent Hearing Officer:</u></p> <p>Jim Mortenson</p>
--	--

2009 AUG -6 PM 12:03

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

I. PROCEDURAL BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 1:00 p.m. on July 27, 2009. The hearing concluded and the record closed on that date. The due date for the Hearing Officer's Determination (HOD) is August 6, 2009. This HOD is issued on August 6, 2009.

The hearing in this matter was conducted and this decision is written pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30.

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

Present at the due process hearing were Petitioner's Counsel, Fatmata Barrie, Esq., and Respondent's Counsel, Tanya Chor, Esq.

Two witnesses testified at the hearing:

Petitioner, the Student's Mother (P)

Dr. Carola Jobe, Psychologist/Expert (C.J.)

A prior HOD concerning this Student was issued on January 13, 2009, by this IHO.

See, Case That HOD determined that an evaluation of the Student for eligibility for special education and related services had been delayed and that no denial of a free appropriate public education (FAPE) resulted from the delay.

The complaint in this matter concerns the results of the aforementioned evaluation and was filed on June 16, 2009. The resolution period was waived on June 22, 2009. An untimely response to the Complaint was filed by the Respondent on June 29, 2009. A prehearing conference was held on July 6, 2009, and a prehearing order was issued on July 7, 2009. A supplemental response and motion for summary judgment was filed by the Respondent on July 9, 2009. The Petitioner filed a response to the motion to dismiss on July 15, 2009. The IHO issued an order on the Respondent's motion to dismiss on July 20, 2009, granting the motion in part. One of the two issues in the complaint was dismissed.

The hearing was to proceed on July 22, 2009, and the Respondent requested a continuance due to sudden the unavailability of a witness. The continuance was granted for good cause and the hearing was re-scheduled to proceed on July 27, 2009.

Ten documents were disclosed by the Petitioner on July 16, 2009. (P 1 – P 10) All the disclosed documents were admitted into evidence as exhibits. The exhibits are:

- P 1 - Administrative Due Process Complaint Notice, June 16, 2009
- P 2 - Comprehensive Psychological Evaluation report, Interdynamics, January 20, 2009
- P 3 - Psychiatric Evaluation, Interdynamics, February 9, 2009
- P 4 - Speech and Language Evaluation, Interdynamics, January 15, 2009
- P 5 - Eligibility Meeting Report/Meeting notes, June 4, 2009
- P 6 - Letter from Pressley to Moss, June 24, 2008
- P 7 - Student's 3rd Grade Report Card, SY 2007-2008
- P 8 - Student Disciplinary Referral Forms, March 18, 2008, November 8, 2007
- P 9 - Behavior Form, November, 2007 (Third grade teacher's class)
- P 10 - Curricula Vitae for Carola Jobe, Belton Wilder, and James Ballard

Three documents were disclosed by the Respondent on July 16, 2009. (R 1 – R 3) All were admitted into evidence as exhibits. The exhibits are:

- R 1 - DCPS Response with attachments, July 9, 2009
- R 2 - Eligibility Meeting Report, June 4, 2009
- R 3 - Meeting Notes, June 4, 2009

II. ISSUE

Whether the Respondent failed to identify the Student as child with a disability? Specifically, whether DCPS staff at a meeting on June 4, 2009, incorrectly determined the Student is not eligible for special education and related services?

III. FINDINGS OF FACT

1. The Student is a year old learner who completed grade, school year (SY) 2008-2009, at one of Respondent's elementary schools.²
2. Several independent assessments were completed of the Student in January 2009 by Interdynamics, Inc.³ These included a comprehensive psychological

² Testimony (T) of P, P 2, P 3, P 4.

assessment, psychiatric assessment, and a speech and language assessment.⁴ The psychological assessment report includes anecdotal data collected from the Petitioner, including reports of the Student's behaviors during her third grade year.⁵ The data provided by the Parent also notes that during the Student's fourth grade year the Student's teacher "helps" and that the "classroom is less 'noisy' and that previous behaviors would probably continue if it was not for this teacher."⁶ C.J., one of the authors of the report, testified that she did not know the Student's grades for fourth grade, did not make a classroom observation of the Student, and that she did not want to see a drop in the Student's performance.⁷ A Wechsler Individual Achievement Test-2nd Edition (WAIT-II) was administered as part of the comprehensive psychological assessment.⁸ The scores on that test provided the following grade equivalents on the various subtests:

Word Reading	3:6
Reading Comprehension	3:5
Pseudoword Decoding	2:1
Numerical Operations	4:2
Math Reasoning	2:2

³ P 2, P 3, P 4.

⁴ *Id.*

⁵ P 2.

⁶ *Id.* at 3.

⁷ T of C.J.

⁸ P 2.

Spelling 3:2

Written Expression 3:7

Listening Comprehension 3:2

3. The psychiatric assessment report concludes that the Student's "inability to attend to tasks and her difficulty with emotional regulation impairs her ability to succeed academically without specialized reports."⁹ The report only notes "significant school history" that was provided anecdotally by the Parent, and included no confirmation from teacher reports or review of academic records.¹⁰ Thus, the psychiatric assessment report lacks meaningful evidentiary weight in terms of its recommendation for special education services for the Student.
4. The Student did have a challenging third grade year functionally.¹¹ Academically, the evidence is mixed (e.g. report cards indicate "secure" or "developing," as opposed to "beginning" in the core academic areas of reading, writing, and math, while teacher narrative reports indicate her behavior negatively impacts her academically).¹²
5. The evidence for academic and functional performance for fourth grade, her most recent year is sparse.¹³ The Student did fairly well academically her fourth grade year, based on the limited evidence provided, the most convincing being the

⁹ P 3 at 4.

¹⁰ P 3.

¹¹ T of P, P 2, P 7, P 8, P 9.

¹² P 7.

¹³ T of P, P 2, P 5, R 2, R 3.

reports of the teachers from the June 2009 IEP team meeting.¹⁴ The IHO's findings of fact in case included the following relevant findings concerning the Student's educational performance during fourth grade¹⁵:

6. The Respondent measures the Student's academic performance in the fourth grade using three descriptive categories: S for secure; D for developing, and B for beginning. R 4. The Student's first quarter report card indicates the Student is "developing" in all academic and functional areas, and that she is not lagging behind. R 4. Her teacher believes that while the Student is progressing, "[h]er skills in both reading and math need improvement. She needs to read nightly for 30 minutes and practice math skills." R 5. The teacher also believes the Student is a fairly good student. T of S.M.
7. Functional skills are measured using four descriptive categories: I for independently, LP for limited prompting, FP for frequent prompting, and R for rarely. The Student's functional skills are rated mostly at independently, and the rest with limited prompting. R 4.

Based on the evidence provided and the findings of fact in the prior HOD, any impact her disability has on her education currently appears to keep her from reaching her full potential. It is not keeping her from being involved in and progressing in the general education curriculum.¹⁶

IV. CONCLUSIONS OF LAW

1. An assessment is a component of an evaluation of a child with a disability. *See*, D.C. Mun. Regs. tit. 5, § 3006 (2003).
2. District of Columbia Municipal Regulations at Title 5, Section 3006.5 provides:

¹⁴ R 3, P 5 ("[Student's] standard test scores were between basic and proficient, she completes class work as assigned and most of the time it is average." "The ADHD is not impacting her academically.")

¹⁵ Case FF 6 & 7, January 13, 2009.

¹⁶ T of C.J., T of P, P 2, P 5, R 3.

As the result of any evaluation or reevaluation, whether or not the procedures in addition to those already available are conducted, the IEP team will prepare a written evaluation (reevaluation) report, including the following:

- (a) information provided by the parent(s);
- (b) results of assessment procedures considered and used as a basis for making an eligibility determination;
- (c) a statement whether the assessment procedures were valid for the purposes intended and valid for the child;
- (d) whether the child is a child with a disability;
- (e) whether the child needs special education and related services; and
- (g) if the child was suspected of having SLD, in addition to (a)-(f):
 - (1) a statement of whether the child has SLD;
 - (2) the basis for making the determination;
 - (3) the relevant behaviors noted during the observation of the child;
 - (4) the relationship of the behaviors to the child's educational performance;
 - (5) educationally relevant medical findings, if any;
 - (6) a statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
 - (7) the determination of the IEP team concerning the effects of environmental, economic, or cultural disadvantage; and
 - (8) the written certification of each IEP team member as to whether the written report reflects the member's conclusions. If the written report does not reflect a member's conclusion, the team member shall submit a separate statement presenting the team member's conclusion. This separate statement will be included as part of the evaluation report.

3. The Respondent has again failed to provide proper notice to the Petitioner, this time of its refusal to identify the Student as a child with a disability under IDEA.¹⁷

In this case, there is no evaluation report. There is an "Eligibility Meeting Report" and "Meeting Notes" (P 5, R 2, R 3). But these documents do not contain all the

¹⁷ The Respondent was found to have violated notice requirements in Case

required components of an evaluation report. There is no documentation of information provided by the Parent, other than meeting notes indicating the Parent is not in agreement with the rest of the team. There are conclusory statements about assessment results (e.g. "Overall mathematics is slightly below average range. Overall reading skills are in the average range. Overall written expression is in the average range." Etc.). However, the assessment procedures these conclusions come from are not referenced.¹⁸ There are no statements whether the assessment procedures were valid for the purposes intended and valid for the child. The documents do include statements that the Student has a disability and that it does not "impact academic performance" and so no special education and related services are required. The meeting notes indicate the Student "does not appear to meet the criteria for a student with a Learning Disability." However, there is no documentation of the Specific Learning Disability (SLD) analysis required by D.C. Mun. Regs. tit. 5, § 3006.5(g).

4. An emotional disturbance is defined as:

A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (a) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (c) Inappropriate types of behavior or feelings under normal circumstances;
- (d) A general, pervasive mood of unhappiness or depression; or

¹⁸ In fact, the form used by the Respondent includes data fields to list the assessments and this was not completed and the assessments are not attached to the meeting report.

(e) A tendency to develop physical symptoms or fears associated with personal or school problems.

“Emotional disturbance” includes schizophrenia.

“Emotional disturbance” does not include a child who is socially maladjusted, unless it is determined that the child has an emotional disturbance.

D.C. Mun. Regs. tit. 5, § 3001.1 (2003).

5. The definition for “Other Health Impairment” also states that a health problem, such as attention deficit hyperactivity disorder, “adversely affect[s] a child’s educational performance[.]”D.C. Mun. Regs. tit. 5, § 3001.1 (2003).

6. While the evidence shows the Student’s educational performance struggled during third grade, the same evidence does not exist for the most recent grade completed, fourth grade. The preponderance of the evidence is that the Student was doing well, academically and functionally, this past school year, better than the prior year. Other than Wechsler Individual Achievement Test-2nd Edition (WAIT-II) scores showing the Student was performing at largely the third grade level early in her fourth grade year, and the Petitioner’s assertions about the Student’s performance, all the other evidence provided points to the Student being involved in and progressing in the general education curriculum, even if she is not doing as well as she otherwise could absent her disability. Likewise, while much evidence was put on showing functional problems during third grade, the Student was not having the same year in fourth grade. This was acknowledged by the Petitioner. The independent educational evaluation (IEE) reports made conclusions about the Student’s functional performance largely based on reports from the Parent and those reports were about the Student’s behavior in second and third grade. The

evidence from fourth grade shows a student who is not having significant problems functioning at a fourth grade social or behavioral level, even though her disability keeps her from reaching her full potential. Thus, it cannot be concluded, based on the evidence presented, that the Student is a child with a disability in need of special education and related services under D.C. Mun. Regs. tit. 5, § 3001.1 (2003).

V. DECISION

1. The Respondent did not fail to identify the Student as a child with a disability.
2. The Respondent did fail to provide proper notice of its eligibility determination, including a failure to provide a proper evaluation report.

VI. ORDER

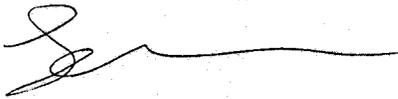
1. The Respondent must provide proper written notice, including a properly documented evaluation report, to the Petitioner, with a copy to her Counsel, no later than August 19, 2009, in compliance with 34 C.F.R. § 300.503 and D.C. Mun. Regs. tit. 5, § 3006.5.
2. This Order does not preclude the Respondent from making a new eligibility determination based on a proper analysis of the definitions of SLD, OHI, ED, or any other suspected disability category¹⁹. Furthermore, a negative eligibility determination *based on evidence not provided by the Respondent as part of this*

¹⁹ Because the team had considered SLD, OHI, and ED, these categories, at a minimum, must be analyzed.

due process hearing should not preclude a future challenge to said determination,
because that evidence was not considered here.

IT IS SO ORDERED.

Dated this 6th day of August, 2009.

A handwritten signature in black ink, appearing to be 'Jim Mortenson', written over a horizontal line.

Jim Mortenson, Esq.
Independent Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Independent Hearing Officer is final, except that any party aggrieved by the findings and decision of the Independent 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. § 1415(i)(2).