

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
July 1, 2015

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
)	
<i>Petitioner,</i>)	
)	Case No: 2015-0060
v.)	
)	Date Issued: June 30, 2015
District of Columbia Public Schools,)	
)	
<i>Respondent.</i>)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 et seq.

The DPC was filed on February 19, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On March 2, 2015,² Respondent filed its Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) on March 30, 2015. The parties did not reach an agreement during the RSM, but agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the parties agree that the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on March 22, 2015. On April 22, 2015, Petitioner filed an unopposed motion for a continuance.

¹ Personal identification information is provided in Appendix A.

² The Response had been due on March 1, 2015, which fell on a Sunday. During PHC, counsel for Petitioner indicated that Petitioner makes no objection to the Response having been filed on March 2, 2015.

The motion for continuance was granted on April 24, 2015, extending the HOD deadline to June 30, 2015.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) held a Pre-hearing Conference (“PHC”) on March 3, 2015, during which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by April 13, 2015 and that the DPH would be held on April 21, 2015. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on March 3, 2015.

The DPH was originally scheduled to convene on April 21, 2015; however, the matter was continued and rescheduled for June 12, 2015. Subsequently the DPH was rescheduled again, and ultimately convened on May 7, 2015 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by Elizabeth Jester, Esq. and DCPS was represented by Tanya Chor, Esq.

On April 28, 2015, Respondent filed a motion to dismiss the DPC. Petitioner filed an opposition to the motion to dismiss on May 1, 2015. On May 6, 2015, Respondent filed a supplemental motion to dismiss, which Petitioner opposed orally on the record at the start of the DPH. Respondent replied orally on the record to Petitioner’s opposition. Finding that there remained material facts in dispute between the parties, the hearing officer denied the motion to dismiss and the supplemental motion to dismiss on the record.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-5 were admitted into evidence, without objection. Petitioner’s exhibit P-6 was not admitted. Respondent’s exhibits R-1, R-3, R-4 and R-7 were admitted into evidence without objection. Respondent’s exhibits R-2, R-5, R-6 and R-8 through R-10 were not offered into evidence.

Petitioner called the following witness at the DPH:

- (a) Petitioner/Parent

Respondent called the following witness at the DPH:

- (a) Resolution Specialist

Petitioner and Respondent each gave an oral closing argument.

ISSUE

As discussed at the PHC and reflected in the PHO, the following issue was presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE by failing to provide a copy of, or access to, Student’s complete educational records, thereby significantly impeding Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to Student, and causing a deprivation of educational benefit to

Student, pursuant to 34 C.F.R. § 300.613; 34 C.F.R. § 513; DCMR tit. 5-E § 3021.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) an Order that within five days of a final decision in this matter, DCPS provide a complete copy or access to a complete copy of Student's educational records at a time and date that is convenient for the guardian and guardian's counsel;
- (b) an Order that the records provided include all Student's files maintained by DCPS, including but not limited to report cards, reports from evaluations, requests for evaluations, standardized testing, IEPs, eligibility determinations, MDT/IEP meeting notes, suspension/disciplinary records, attendance records, all records contained in the SEDS system including a copy of the document index and parent contact log, encounter tracker logs for all related services, correspondence regarding Student, including email, and any other records of any type regarding Student that are contained in DCPS' files.

FINDINGS OF FACT

1. Student is ■ years old, resides with his mother ("Parent"/"Petitioner") in Washington, D.C., is a fifth grader at District Elementary School and is eligible for special education and related services.³

2. Student is struggling in school academically and behaviorally, and Parent wants him to be in the educational setting that will best suit his needs.

3. On December 10, 2014, counsel for Petitioner submitted to the principal of District Elementary School a written request for "a complete copy of . . . or access to a complete of [Student's] educational records . . . [including, but not limited to] registration paperwork, disciplinary records, attendance records, standardized testing scores/results, IEPs reports from evaluations, requests for evaluations, SEDS document index, SEDS contact log, report cards, progress reports, and any other records of any type that are maintained by D.C. Public Schools concerning [Student]." Counsel's request included a copy of a records release from Petitioner.⁴

4. On December 18, 2014, January 7, 2015 and January 9, 2015, counsel for Petitioner submitted written follow up requests for records.⁵

5. On January 12, 2015, the special education coordinator of District Elementary School forwarded some of Student's documents to counsel for Petitioner.⁶

6. An IEP meeting was convened for Student on January 22, 2015.⁷ On January 21, 2015, counsel for Parent forward an additional written request for Student's records to the special education coordinator, so that she could review them prior to the IEP meeting.⁸

³ Testimony of Parent; R-3-1.

⁴ P-1.

⁵ P-2.

⁶ P-2-3.

7. Parent had not received all of Student's records by the January 22, 2015 IEP meeting, nor did Parent receive all of Student's records at the meeting.⁹

8. On February 5, 2015, counsel for Petitioner again followed up in writing with the special education coordinator at District Elementary School requesting Student's records, and stating that counsel and the special education coordinator had mutually agreed that counsel could pick up the records from the school at a particular day following the January 22, 2015 meeting; yet, when counsel went to the school at the appointed time, the records were not ready for pick up.¹⁰

9. In the February 5, 2015 correspondence with the special education coordinator, counsel for the Petitioner also indicated that she needed to receive Student's records because District Elementary School was waiting for Parent's signature/approval on a revised IEP for Student, and counsel was not able to advise her client on whether to approve the revised IEP without first reviewing Student's documents.¹¹

10. SEDS is an internal DCPS electronic database where student records are maintained. Only DCPS employees have access to SEDS, which is password controlled. The SEDS system includes an index for each student of all documents in the system pertaining to each student.¹²

11. DCPS maintains a log of all contacts with a Parent.¹³

12. An RSM was convened for Student on March 30, 2015. At the RSM, Resolution Specialist provided Parent and her counsel a significant number of documents. Resolution Specialist stated that "SEDS isn't the educational record but [I] personally went through and printed the documents in SEDS that are a part of the student's file," and that the "documents that have been given are all of the documents from the student's file in SEDS."¹⁴ However, Parent and counsel were not provided a copy of Student's SEDS index.

13. Potentially, there are documents in the SEDS system that relate to Student that Parent may not be aware of;¹⁵ however, DCPS' position is that Parent has all of Student's educational records.

⁷ P-2-5.

⁸ P-2-13.

⁹ P-2-6.

¹⁰ P-2-6.

¹¹ P-2-7.

¹² Testimony of Resolution Specialist.

¹³ Testimony of Resolution Specialist.

¹⁴ R-7-2; R-1.

¹⁵ Stipulation between the parties.

CONCLUSIONS OF LAW

“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-E 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*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also*, *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

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 student’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).

- (a) **Whether DCPS denied Student a FAPE by failing to provide a copy of, or access to, Student’s complete educational records, thereby significantly impeding Parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to Student, and causing a deprivation of educational benefit to Student, pursuant to 34 C.F.R. § 300.613; 34 C.F.R. 513; DCMR tit. 5-E § 3021.**

Under the IDEA, DCPS must permit parents to inspect and review any education records that are collected, maintained or used by the agency, with respect to the identification, evaluation, and educational placement of their child, and the provision of a FAPE to the child. *See* 34 CFR §§ 300.501 (a), 300.613(a); *see, also*, *Jalloh ex rel. R.H. v. District of Columbia*, 535 F.Supp.2d 13, 21 (D.D.C.2008) (Parents have the right to examine records and DCPS must give parents the opportunity to inspect, review, and copy records) and *Friendship Edison Public Charter School Collegiate Campus v. Murphy* 2006 WL 2711524, 4 (D.D.C.2006). The right to inspect and review records includes the right to have a representative of the parent inspect and review the records. 34 C.F.R. § 613(b)(3). An LEA must comply with a request for records “without unnecessary delay and before any meeting regarding an IEP, or any hearing . . . or resolution session, and in no case more than 45 days after the request has been made.” 34 C.F.R. § 613(a). In this case, Parent made the initial request for records on December 10, 2014. Petitioner did not receive the bulk of Student’s records prior to the January 22, 2015 IEP meeting or prior to the March 30, 2015 resolution session meeting. By the time Petitioner received the bulk of Student’s records on March 30, 2015, approximately 110 days had passed since Petitioner’s initial request on December 10, 2015.

The failure to timely comply with a records request is a procedural violation of IDEA. In this instance, it also rises to a denial of FAPE because it significantly impeded Parent’s ability to fully participate in the January 22, 2015 IEP meeting, to know whether to consent to the resulting draft IEP, and to fully participate in the March 30, 2015 RSM. Parent was not able to give informed input on Student’s needs without access to the records. Petitioner met the burden of

proving that DCPS denied Student a FAPE by failing to provide a copy of, or access to, Student's complete educational records until March 30, 2015.

An LEA "must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency." 34 C.F.R. § 616. In this instances, Parent has requested a copy of Student's SEDS index file. DCPS argues that the SEDS index is not a student record. Resolution Specialist provided Parent a lengthy list of Student's records, and the hearing officer does not doubt the veracity of her testimony that those documents represent all of Student's educational records in SEDS. However, the record indicates that reasonable minds can differ on what is or is not a student's educational record,¹⁶ and the parties stipulated that it is possible that there are documents in the SEDS system that may pertain to Student that Parent may not be aware of. For these reasons, given the delay in providing the records Parent has now obtained, the harm caused in impeding Parent's ability to fully participate in the January IEP meeting and March RSM, and the language of 34 C.F.R. § 616, the hearing officer finds providing Parent access to Student's SEDS index to be an appropriate remedy in this case. The evidence does not sufficiently establish that Parent was harmed by not receiving the parent contact log, or that any of the other documents listed in the request for relief are known to be outstanding at this time; therefore, the hearing officer will not order that relief.

ORDER

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

- A. Within seven business days of this Order, DCPS shall Parent a copy of Student's SEDS index.

All other relief Petitioner requested in the complaint is **DENIED**.

IT IS SO ORDERED.

Date: June 30, 2015

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:
Petitioner (by U.S. mail)
Petitioner's Attorney: Elizabeth Jester, Esq. (electronically)
DCPS' Attorney: Tanya Chor, Esq. (electronically)
Chief Hearing Officer Virginia Dietrich, Esq. (electronically)
OSSE-SPED (electronically)
ODR (electronically)

¹⁶ For example, Resolution Specialist testified that a parent is given access to the "relevant" documents in a Student's file, which would be determined by the DCPS personnel pulling the records; although, Resolution Specialist also testified that she provided all of Student's educational documents to Parent.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination, in accordance with 20 U.S.C. §1415(i).