

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

OSSE  
Office of Dispute Resolution  
October 04, 2015

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	Case No: 2015-0245
v.	)	
	)	<b>Date Issued:</b> October 4, 2015
District of Columbia Public Schools,	)	
<i>Respondent.</i>	)	

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**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 July 21, 2015 by Petitioner (Student’s mother), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On July 31, 2015, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) in this matter on August 21, 2015. The parties did not reach an agreement during the RSM; however, they 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 August 21, 2015, and the 45-day period concludes on October 4, 2015.

The undersigned Impartial Hearing Officer (“Hearing Officer”) held a Pre-hearing Conference (“PHC”) on August 10, 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 September 2, 2015 and that the DPH would be held on September 9, 2015. The PHC

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<sup>1</sup> Personal identification information is provided in Appendix A.

was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on August 10, 2015.

The DPH was held on September 9, 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 Jocelyn Franklin, Esq. and DCPS was represented by Linda Smalls, Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-32 were admitted without objection. Respondent’s exhibits R-1 through R-14 were admitted without objection. Respondent’s exhibits R-9 and R-10 were admitted into evidence over Petitioner’s objection.

Petitioner called the following witnesses at the DPH:

- (a) Parent
- (b) Educational Advocate
- (c) Compensatory Education Expert

Respondent rested on the evidence and did not call witnesses.

Petitioner and Respondent gave oral closing arguments.

### **ISSUES**

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

- (a) Whether DCPS denied Student a FAPE by failing to comprehensively reevaluate Student during the 2014-2015 school year, after Parent’s request on May 5, 2015. Petitioner asserts that the reevaluations should have been completed by June 7, 2015 (due to Student’s triennial being due), or in the alternate by July 7, 2015 (due to Parent’s May 2015 request).
- (b) Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP for Student, as of October 30, 2014.
- (c) Whether DCPS denied Student a FAPE by failing to update and revise Student’s May 14, 2015 IEP.
- (d) Whether DCPS denied Student a FAPE by failing to provide Parent access to Student’s educational records (including IEP progress reports, service trackers, report cards, and attendance records from the 2013-2014 school year) from Parent’s May 5, 2015 request through the present time.

### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) a finding that Respondent denied Student a FAPE and a finding in Petitioner’s favor on all issues in the DPC;
- (b) an Order that DCPS fund an independent comprehensive psychological evaluation, speech and language evaluation;

- (c) an Order that DCPS convene a meeting to review the completed evaluations within fifteen calendar days of their completion;
- (d) an Order that DCPS immediately revise and update Student's IEP to include an increase in specialized instruction outside the general education setting;
- (e) a recognition that Petitioner intends to reserve the claim for compensatory education resulting from evaluations that have not yet been completed;
- (f) an Order awarding compensatory education for the denials of FAPE alleged in the DPC.

### **FINDINGS OF FACT**

1. Student is [AGE] years old, resides with his mother ("Parent"/"Petitioner") in Washington, D.C., and is eligible for special education and related services under the disability classification "Speech or Language Impairment."<sup>2</sup>

2. Student attends District Elementary School, and during the 2014-2015 school year he was in the [GRADE] grade.<sup>3</sup>

3. At the beginning of the 2014-2015 school year (as of October 2014), Student got easily frustrated when he had difficulty with his school work. He had difficulty remaining still, and he is easily distracted.<sup>4</sup> Toward the end of the 2014-2015 school year (as of May 2015), Student was not displaying off task behaviors and was not a behavior problem.<sup>5</sup>

#### ***IEPs***

4. Student's most recent IEP is from October 30, 2014, and calls for him to receive 15 hours of special education services outside the general education setting in reading, mathematics and written expression and 240 minutes per month in speech and language services outside of the general education setting. It does not provide for him to receive extended school year services ("ESY").<sup>6</sup>

5. Student's next most recent IEP was from January 7, 2013, and provided Student 15 hours of special education services outside the general education setting in reading, mathematics and written expression and 240 minutes per month in speech and language services outside of the general education setting.<sup>7</sup>

6. The goals and baselines in Student's October 30, 2014 IEP are substantially similar to the goals and baselines in his January 7, 2013 IEP.<sup>8</sup>

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<sup>2</sup> Testimony of Parent; P-12-1.

<sup>3</sup> P-12-2.

<sup>4</sup> Testimony of Parent.

<sup>5</sup> P-8-3.

<sup>6</sup> P-12-9 and P-12-10.

<sup>7</sup> P-10.

<sup>8</sup> Testimony of Compensatory Education Advocate.

7. Student's initial IEP was from June 7, 2012 and provided Student 1 hour per week of specialized education inside the general education setting in reading and 240 minutes per month of speech-language pathology per month.<sup>9</sup>

8. Student's IEP team met on May 14, 2015 to determine his continued eligibility for special education and related services.<sup>10</sup> Student was determined to remain eligible.<sup>11</sup> During this meeting, Parent requested that Student's hours be increased to full-time or near full-time hours; however the school-based team members indicated that Student's attendance needed to improve before an increase in hours could be considered.<sup>12</sup>

9. On May 14, 2015, Student's IEP team discussed the fact that Student receives an extra 45 minutes per week of phonics support that were not included on his IEP.<sup>13</sup>

***Evaluations and Records***

10. Student's most recent psychoeducational evaluation is from December 30, 2012.<sup>14</sup>

11. Student's most recent speech and language evaluation is from June 1, 2012.<sup>15</sup>

12. On May 5, 2015, Parent requested in writing that the school reevaluate Student, including but not limited to a comprehensive psychological evaluation, speech and language evaluation, occupational therapy evaluation, physical therapy evaluation and a test to screen for ADHD.<sup>16</sup> On May 14, 2015, Parent provided written consent for the school to evaluate Student.<sup>17</sup>

13. On May 5, 2015, Parent requested Student's records in writing through a letter to the principal of District Elementary School.<sup>18</sup> At least some of the requested records were provided to Parent at the May 14, 2015 IEP meeting.<sup>19</sup>

14. During a May 14, 2015 IEP meeting, the team learned that Student had been diagnosed with attention deficit hyperactivity disorder,<sup>20</sup> and that he had been prescribed medication and was not taking it. However, the team reported that Student's behavior was compliant and not problematic, even though he was not taking medication. The school team

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<sup>9</sup> P-9.

<sup>10</sup> R-4.

<sup>11</sup> R-5.

<sup>12</sup> R-4-5.

<sup>13</sup> P-8-5.

<sup>14</sup> P-22.

<sup>15</sup> P-23.

<sup>16</sup> P-7.

<sup>17</sup> R-2.

<sup>18</sup> P-7-3.

<sup>19</sup> R-4-1.

<sup>20</sup> Parent testified that she had informed the school nurse that Student had been diagnosed with ADH. However, the Hearing Officer is not able to conclude the extent to which the information Parent remembers sharing was in fact clearly communicated to the school.

members requested certain documents from Parent as a result of the new information.<sup>21</sup> The team agreed to conduct additional evaluations on Student once Parent returned the requested forms, including the consent form.<sup>22</sup>

15. As of June 7, 2015 and July 7, 2015, the reevaluations Parent requested had not been completed.

***Academic Progress***

16. While Student's May 6, 2015 report card indicated that Student was meeting or approaching expectations in several subjects, he remained at the below basic level in Reading; Writing & Language; Speaking & Listening; and Mathematics.<sup>23</sup>

17. Student's 2013 DIBELS scores from the 2012-2013 and beginning of the 2013-2014 school year show him below grade level.<sup>24</sup> Student's 2013-2014 Paced Interim Assessments show him testing far below the class average in mathematics for Unit 2 and Language Arts for Unit 3.<sup>25</sup>

18. Student mastered or made progress on most of his IEP goals during the 2014-2015, 2013-2014 and 2012-2013 school years.<sup>26</sup> For example, he mastered in the 2014-2015 school year one of the math goals that had repeated from him January 2013 IEP.<sup>27</sup>

19. Student made progress in speech and language during the 2014-2015 school year.<sup>28</sup>

***Attendance***

20. During the 2014-2015 school year, Student missed a great deal of instructional time. As of the May 14, 2015 IEP meeting, he had accrued approximately 30 absences and 17 tardies.<sup>29</sup> He missed approximately 1/6 of the school year, some of which was due to his asthma.<sup>30</sup> The significant missed class time adversely impacted the amount of progress Student was able to make during the 2014-2015 school year.<sup>31</sup>

21. During the 2013-2014 school year, Student was absent 13 days and tardy 6 days.

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<sup>21</sup> R-4-4.

<sup>22</sup> R-4-5.

<sup>23</sup> P-17-1.

<sup>24</sup> P-15.

<sup>25</sup> P-13 and P-14.

<sup>26</sup> P-27, P-28 and P-29,

<sup>27</sup> P-27-11.

<sup>28</sup> R-4-4.

<sup>29</sup> P-5.

<sup>30</sup> Testimony of Educational Advocate.

<sup>31</sup> P-5; R-4-5.

22. The 2014-2015 school year ended on or around June 16, 2015.<sup>32</sup>

### 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 D.C.M.R. E-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 comprehensively reevaluate him during the 2014-2015 school year, after Parent’s request on May 5, 2015. Petitioner asserts that the reevaluations should have been completed by June 7, 2015 (due to Student’s triennial being due), or in the alternate by July 7, 2015 (due to Parent’s May 2015 request).**

Petitioner asserts that DCPS failed to timely reevaluate Student, and that Student should have been evaluated by at least June 7, 2015 due to his triennial evaluation being due, or by July 7, 2015 due to Parent’s May 2015 request. An LEA is required to reevaluate a student at least once every three years, and sooner than every three years if the child’s parent requests a reevaluation. 34 CFR § 300.303(b)(2). Student’s most recent psychoeducational evaluation is from December 30, 2012. Three years had not yet passed by June 7, 2015, which is the date Petitioner asserts that Student’s triennial was due. Thus, this evaluation was not overdue as of June 7, 2015. Student’s most recent speech and language evaluation is from June 1, 2012. It was six days overdue by June 7, 2012. A failure to timely reevaluate is a procedural violation of IDEA. *See Smith v. District of Columbia*, 2010 WL 4861757, 3 (D.D.C. Nov. 30, 2010). Given that school was in recess after June 16, 2015, the Hearing Officer does not find the failure of the school to have conducted Student’s speech and language evaluation by June 1, 2015 to rise to the level of a substantive violation, because the brief delay did not impede the Student’s right to a FAPE, significantly impede Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or cause a deprivation of educational benefit. 34 C.F.R. 300.513(a).

Petitioner further asserts that the evaluations Petitioner requested on May 5, 2015 (comprehensive psychological evaluation, speech and language evaluation, occupational therapy

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<sup>32</sup> P-17.

evaluation, physical therapy evaluation and a test to screen for ADHD) should have been completed by July 7, 2015. The IDEA does not set a time frame within which an LEA must conduct a reevaluation after receiving a request from a student's parent. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). Rather, "[r]evaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." *Id.* (quoting *Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995)). Parent only provided written consent for DCPS to reevaluate Student on May 14, 2015, and DCPS must have a Parent's consent in order to reevaluate a student. *See* 34 CFR § 300.300(c). Given the number and scope of evaluations Parent requested, the fact that the request came toward the end of the school year and that school was in recess after June 16, 2015, and the fact the Student made progress on his IEP goals despite missing approximately 1/6 of the 2014-2015 school year, the Hearing Officer does not find the failure of DCPS to have conduct evaluations by July 7, 2015 to have been an unreasonable delay or a denial of FAPE.

Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to comprehensively reevaluate him during the 2014-2015 school year, after Parent's request on May 5, 2015.

**(b) Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP for Student, as of October 30, 2014.**

An LEA must ensure that an eligible student's IEP is reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). When determining whether an IEP meets this standard, one must consider whether the IEP was adequate as of the time it is offered to the student. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008). Petitioner argues that Student's October 2014 IEP was not appropriate for his needs because it essentially repeated the goals from his previous IEP and his hours of specialized instruction remained the same. However, the areas in which Student receives specialized instruction correlate with the areas where he received the lowest grades on his report card. In many other areas Student's report card grades are better. This suggests that the hours of specialized instruction Student is receiving are based on and targeted toward his areas of greatest need. Additionally, while the goals repeat, Student mastered at least one of the goals the second time around. Student missed more days of instruction in 2014-2015; however, he also missed a significant amount of instructional time in 2013-2014, which could have impacted the team's decision to maintain his goals for another year. The Hearing Officer does not find sufficient basis for concluding that the October 2014 IEP was not reasonably calculated to enable Student to receive educational benefit, and Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to provide an appropriate IEP for Student as of October 30, 2014.

**(c) Whether DCPS denied Student a FAPE by failing to update and revise Student's May 14, 2015 IEP.**

An IEP must be “tailored to the unique needs” of each child. 458 U.S. 176, 181 (1982). It must be regularly revised in response to new information regarding the child’s performance, behavior, and disabilities. *D.S. v. District of Columbia*, 699 F.Supp.2d 229, 234 (D.D.C.2010). The May 14, 2015 meeting was an eligibility meeting, not an annual review meeting (which occurred in October 2014). Petitioner alleges, however, Student’s IEP should have nonetheless been revised in May 2015, based on new information. As of May 14, 2015, Student had an uneven showing of progress. He was making progress on his IEP goals and had some really weak and other relatively strong report card grades. The team agreed to Parent’s request for new evaluations, and on that date Parent signed a written consent for the school to conduct the evaluations. Moreover Student had missed a great deal of instructional time during the 2014-2015 school year, which undoubtedly slowed the progress he otherwise would have made. In light of these factors, the Hearing Officer concludes that it would not have been prudent to revise Student’s IEP on that date. Rather, the team’s decision to wait until the new evaluations were completed was reasonable. Further, no evidence was introduced that Student would experience the type of regression over the summer that would make it necessary for him to receive ESY services as Petitioner’s proposed compensatory education plan asserts the team should have provided.

The evidence is that Student was receiving an additional 45 minutes of services per week that were not reflected on his IEP. It is not always the case that when a school provides additional services to a student the services need to be included on a student’s IEP. In this instance, however, given Student’s particular areas of deficit, it is more likely than not that the additional phonics services were necessary for Student’s progress. Student’s IEP should have been updated to reflect these services. The failure to update Student’s IEP to reflect these services, however, did not in this instance constitute a substantive violation, because it did not impede Student’s right to a FAPE, significantly impede Parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or cause a deprivation of educational benefit. Student was receiving the services, even though they were not reflected on his IEP. Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to update and revise Student’s IEP as of May 14, 2015.

**(d) Whether DCPS denied Student a FAPE by failing to provide Parent access to Student’s education records (including IEP progress reports, service trackers, report cards, and attendance records from the 2013-2014 school year) from Parent’s May 5, 2015 request through the present time.**

The evidence is that Parent received at least some of the records she requested on May 14, 2015. No testimony or record evidence clearly establishes what if any records remain outstanding. Petitioner did not meet the burden of proving that DCPS denied Student a FAPE by failing to provide Parent access to Student’s educational records.

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**ORDER**

As no denial of FAPE was found on the issues alleged, Petitioner's requested relief must be **DENIED**. The complaint is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

Date: October 4, 2015

**/s/ NaKeisha Sylver Blount**  
Impartial Hearing Officer

Copies to:

Petitioner (by U.S. mail)

Petitioner's Attorney: Jocelyn Franklin, Esq. (electronically)

DCPS' Attorney: Linda Smalls, Esq. (electronically)

Chief Hearing Officer Virginia Dietrich, Esq. (electronically)

OSSE-SPED (electronically)

ODR (electronically)

**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).