District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
Student Hearing Office

1150 5th Street, SE
Washington, DC 20003
Tel: 202-698-3819
Fax: 202-698-3825

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STUDENT HEARING OFFICE
2009 FEB 13 AM 10: 19

Confidential

STUDENT[1], by and through his Parent Petitioners, v. DCPS Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Date: February 2, 2009 <u>Representatives:</u> Counsel for Petitioners: Chike Ijeabuonwu, Esq. 6495 New Hampshire Avenue Suite 211 Hyattsville, MD 20783 Counsel for DCPS: Laura George, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened February 2, 2009, at the Vann Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on December 12, 2008, alleging the issues outlined below.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibit 1 and DCPS 01-3 which were admitted into the record.

ISSUE(S): [2]

Did DCPS fail to provide the student with a free and appropriate public education by failing to fully comply with the Hearing Officer Determination (HOD) dated 6/24/08?

FINDINGS OF FACT [3]:

1. The student is a year-old resident of the District of Columbia who has been determined to be eligible for specialized instruction and related services with a disability classification of mental retardation (MR). The student current attends School A. [4] (Petitioner's Exhibit 9)

2. The student's most recent individualized educational program (IEP) was developed November 19, 2007, and prescribes the following weekly services: 28.5 hours of specialized instruction and 1.5 hours of psychological counseling. (DCPS 8)

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[2] The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint were withdrawn.

[3] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding.

[4] The student's current school is listed in Appendix B and is referred to in this HOD as "School A."

3. On May 23, 2008, Petitioner filed a due process complaint that resulted in a Hearing Officer Determination (HOD) issued June 24, 2008. The HOD concluded that DCPS had failed to conduct the student's triennial evaluations and authorized the parent to obtain independent evaluations. DCPS was directed to conduct a multidisciplinary team (MDT) meeting within fifteen (15) business days of its receipt of the independent evaluations to review the evaluations, develop an appropriate IEP. At the MDT meeting DCPS was to provide encounter tracking forms for the student occupational therapy and counseling services.

4. Petitioner provided DCPS the independent evaluations on October 9, 2008. (Petitioner's Exhibit 4)

5. On November 12, 2008, Petitioner notified DCPS of its failure to convene the MDT meeting pursuant to the HOD. (Petitioner's Exhibit 3)

6. Petitioner filed the current due process complaint on December 12, 2008, alleging DCPS non compliance with the HOD. (Complaint)

7. On January 15, 2009, DCPS convened a MDT meeting at School A. The parent and her educational advocate participated in the meeting. The MDT reviewed the evaluations and determined the student's adaptive assessment was inconclusive. The MDT agreed the student's disability classification should be amended to include Other Health Impaired (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). The DCPS members of the MDT, however, concluded the student's IEP was appropriate and did not revise the student's IEP even to include the new disability classification. The MDT concluded the student's placement at School A was appropriate. The MDT notes also do not indicate whether DCPS provided the tracking forms it was directed to present. (Petitioner's Exhibit 10)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. [5] In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

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[5] Based solely upon the 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

Did DCPS fail to provide the student with a free and appropriate public education by failing to conduct the evaluations required by the Hearing Officer Determination (HOD) dated 6/24/08? Conclusion: Petitioner's counsel sustained the burden of proof.

Although DCPS convened the MDT meeting to review the student's evaluations the MDT did not comply with the provision that an appropriate IEP be developed. In fact the DCPS members of the MDT concluded the IEP was appropriate and the IEP was not revised despite the fact that the MDT concluded the student's disability classification should be amended. The Hearing Officer concludes based on this evidence that DCPS did not fully comply with the HOD by not amending the student's IEP consistent with its own determination at the MDT meeting. In addition, the MDT concluded the student's adaptive assessment was inconclusive which is important in determining whether the student's existing disability classification of MR is still appropriate.

There is a rebuttable presumption under the Blackman/Jones consent decree that a failure to comply with an HOD harms to the student. The Hearing Officer has concluded the HOD was not fully complied with and that DCPS should reconvene the MDT to revise the student's IEP.

ORDER:

1. DCPS shall fund and the parent shall obtain an adaptive assessment of the assessment.

2. DCPS shall provide the parent's counsel encounter tracking forms for occupational therapy services and counseling services provided the student during SY 2007-08 so that they may be reviewed by the MDT if it did not do so at the January 15, 2009, MDT meeting.

3. DCPS shall convene an MDT/IEP meeting within fifteen (15) business days of its receipt of the adaptive assessment, determine the student's appropriate disability classification, revise the student's IEP consistent with the MDT conclusions and adjust services and goals and objectives as appropriate. The MDT shall also review the encounter tracking forms for related services provided the student during SY 2007-08, if it did not do so at the previous meeting.

4. The MDT shall also determine the student's placement and consider the placement option(s) proposed by the parent.

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and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

APPEAL PROCESS:

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Coles B. Ruff, Esquire

Coles B. Ruff, Esq.
Hearing Officer
Date: February 12, 2009