

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

1150 Fifth Street, SE
Washington, D.C. 20003
Telephone: (202) 698-3819
Facsimile: (202) 698-3825

Confidential

<p>STUDENT¹, by and through parent, Petitioner, us. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Christopher West, Esq.</p> <p>Asst. Attorney General for DCPS: Daniel McCall, Esq.</p> <p><u>Impartial Hearing Officer</u> H. St. Clair, Esq.</p>
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OSSE
STUDENT HEARING OFFICE
2009 JUN -4 AM 9:13

¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On January 16, 2009, a Hearing Officer's Determination/Decision (HOD) was issued in this matter wherein DCPS was ordered to convene an MDT meeting for the student. The MDT met and referred the student for a social/emotional evaluation.

On April 22, 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 complete the MDT recommended evaluation of the student and, for relief, requested compensatory education and a private placement at the
of Washington, D.C.

On May 4, 2009 DCPS filed a Response, Notice of Insufficiency and Motion to Dismiss.

A Disposition of Notice of Insufficiency denying the Notice of Insufficiency was filed May 11, 2009.

The Motion to Dismiss was taken under advisement and, for the reasons set out below in CONCLUSIONS of LAW, is GRANTED,

Sua sponte, A Pre-hearing Conference Order was issued in this matter on May 18, 2009. The Order determined the issue as set out the below.

A hearing in this matter was scheduled for 9:00 A.M., Thursday, May 28, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 7B, 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.

ISSUE:²

Did DCPS fail to complete a timely social/emotional evaluation of the student?

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² The Complaint listed inappropriateness of IEP and placement and failure to convene the MDT as additional issues; compensatory education and a private placement were requested as relief. All of the issues center on the alleged failure to complete the social/emotional evaluation and are formulated into the one above set out issue.

FINDINGS of FACT

By facsimile dated May 20, 2009, the parent disclosed 7 witnesses and 18 documents.

By facsimile dated May 22, 2009, DCPS disclosed 5 witnesses and 3 documents.

Counsel for the Parent objected to DCPS Document 3, the April 17, 2009 draft IEP; the objection was that the IEP was not being the best evidence of the current IEP, the April 22, 2009 IEP. The hearing officer determined that each document was the best evidence of itself and OVERRULED the objection.

The documents were admitted into the record and are referenced/footnoted herein where relevant.

DCPS requested the Rule on Witnesses. The Rule on Witnesses was applied.

The Parent WITHDREW issues C and D in the Complaint.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The April 18, 2008 IEP disability coded the student Learning Disabled with 17.5 hours of special education services in 7% Out of General Education; it did not indicate ESY services.³
2. An HOD was issued in this matter on January 16, 2009 wherein DCPS was ordered to convene an MDT meeting for the student within 30 days or by February 16, 2009.⁴
3. The MDT convened on February 11, 2009 and referred the student for a social/emotional evaluation.⁵ Recommendations were made that the student receive 25 hours of specialized instruction and 1 hour of speech/language services. It was agreed that placement for the 2009-10 School Year would be decided at the next MDT meeting and that the student would remain at the current placement until completion of the evaluation.⁶
4. The February 11, 2009 MDT did not then decide that the student needed 25 hours of specialized instruction.
5. The student had two Educational Advocates during the period in question. The First Educational Advocate attended the February 11, 2009 and March 25, 2009 MDT meetings for the student. During the February 11, 2009 meeting, the student's teacher recommended 25 hours

³ Parent Document No 16

⁴ Par. Doc. No 3

⁵ Par. Doc. No 14, page 2

⁶ *ibid*

of specialized instruction for the student, but the IEP was not completed to reflect the recommendation. The MDT referred the student for a social/emotional evaluation and agreed the student would remain at the current placement pending completion of the evaluation; that completion of the IEP and placement decision would be made at the next MDT meeting.⁷

6. The April 3, 2009 Evaluation noted the student as having ADHD.⁸

7. The Second Educational Advocate began in April 2009 and scheduled an MDT meeting for the student before April 22, 2009, the date of the herein Complaint; the Second Advocate cancelled the meeting because the February 11, 2009 referred evaluation had not been completed; the Second Advocate could not recall the meeting date.⁹

8. The Second Advocate scheduled and attended the April 27, 2009 MDT meeting, the day the Advocate received April 3, 2009 Evaluation via facsimile; the meeting was to review the evaluation, revise and update the IEP and decide the placement. The April 17, 2009 draft IEP¹⁰ was reviewed and DCPS proposed the OHI¹¹ disability coding. During the meeting, the April 3, 2009 Evaluation was reviewed and the Second Advocate requested an psycho-educational evaluation; the MDT agreed to the requested psycho-educational evaluation and postponed the completion of the IEP and placement decision. The grade student's reading was at the 1st grade level, math was 2nd grade level.¹²

9. The Parent thought the student did not make progress at the current educational placement and further thought the student should be placed at the Washington, D.C.¹³

10. The Special Education Coordinator at the current placement did not attend the February 11, 2009 MDT meeting but did attend the MDT meetings on March 25 and April 27, 2009. During the April MDT meeting, the Second Advocate requested a psycho-educational evaluation; the MDT referred the requested evaluation and postponed the IEP/Placement process until completion of the psycho-educational evaluation.¹⁴

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⁷ -testimony of the First Educational Advocate

⁸ Par. Doc. No 18, page 4

⁹ -testimony of the Second Educational Advocate

¹⁰ DCPS Doc. No 3

¹¹ OHI: Other Health Impaired

¹² *ibid*, 9 above

¹³ -testimony of the Parent

¹⁴ -testimony of the Special Education Coordinator

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. *IDEIA 2004* requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

The hearing in this matter was convened under *IDEIA 2004* implementing regulation 34 CFR 300.507(a).

District of Columbia Municipal Regulation 5 DCMR 3030.3 placed the burden of proof upon the petitioner/parent in this matter, and that burden was by preponderance.

At regulation 34 CFR 300.324(b), an LEA/MDT is required to review every IEP at least once a year and, at 34 CFR 300.305, an LEA/MDT is authorized to complete evaluation or reevaluation for additional data, if considered appropriate. At regulation 23 CFR 300.304(c)(4), an LEA is required to assess a student in all areas related to the suspected disability. The social/emotional evaluation and, later the psycho-educational evaluation, were required.

The record in this matter did not reveal a violation of any of the *IDEIA 2004* implementing regulations.

SUMMARY of the DECISION

The April 18, 2008 IEP that disability coded the student Learning Disabled expired April 18, 2009.

The January 16, 2009 HOD ordered DCPS to reconvene the MDT within 30 days and DCPS did that on February 11, 2009.

At the February 11, 2009 MDT meeting, various factors were considered and the student was referred for a social/ emotional evaluation. The meeting notes read: "There is a recommendation for 25 hours of specialized instruction."¹⁵ The Parent understood this to have been an irrevocable DCPS commitment for a full-time educational placement; the hearing officer was not persuaded. Had it been a commitment, it was necessarily conditioned on the outcome of social/emotional evaluation recommended at the same meeting. As it turned out, the evaluation supported the OHI disability coding for the student. The MDT understood and agreed at the February 11, 2009 MDT meeting that completion of the IEP and placement decision were postponed until completion and review of the recommended evaluation.

Did the time between the recommendation for the social/emotional evaluation on February 11, 2009 and its completion on April 3, 2009 and review on April 27, 2009 constitute a denial of FAPE? As the record showed that DCPS tried to convene the MDT in the first part of April, the hearing officer was not persuaded. DCPS did not forget the student.

¹⁵ *ibid*, 5 above

As of April 22, 2009, the date of the herein Complaint, DCPS had not denied the student a FAPE.

Lastly, it should be mentioned that, at the suggestion of the Advocate, the April 27, 2009 MDT correctly referred the student for a psycho-educational evaluation and, again correctly, postponed the completion of the EP and placement decision.

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

ORDER

WITH PREJUDICE, the herein
Complaint is DISMISSED.

Dated this *3rd* day of *June*, 2009

/s/ H. St. Clair

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.