

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], 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>July 1, 2009</p> <p><u>Representatives:</u></p> <p>Chike Ijeabunwu, Petitioner</p> <p>Linda Smalls, Respondent</p> <p><u>Independent Hearing Officer:</u></p> <p>Jim Mortenson</p>
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I. PROCEDURAL BACKGROUND

The complaint in this matter was filed on May 19, 2009. A response to the complaint, including a motion to dismiss, was filed on June 2, 2009. A prehearing conference was convened on June 8, 2009. During the prehearing conference the parties agreed that there were no disputed facts, that the sole question was one of law, and that no evidentiary hearing was required. The Independent Hearing Officer (IHO) ordered the parties to brief the question. This Hearing Officer's Determination (HOD) is the result and has been issued on the 41st day following the agreement to waive the resolution period¹.

¹ The waiver agreement occurred on May 21, 2009, and this HOD is issued on July 1, 2009.

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 OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

This HOD is written under the authority of the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap.

30.

II. ISSUE

Whether the Respondent was required to complete the transition of the Student from an individualized family service plan (IFSP) to an individualized education program (IEP), based on comprehensive evaluation, by the Student's third birthday on

FINDINGS OF FACT²

1. The Student was born on
2. The Student is currently enrolled at _____ He has been diagnosed with pervasive developmental delay.
3. An IFSP was put in place on October 27, 2008³. The IFSP includes present levels of physical development, cognitive development, communication development, social development, and adaptive development. The IFSP includes a statement of the family's resources, priorities, and concerns relating to enhancing the development of the Student. It includes five outcomes expected to be achieved for

² At the time of the prehearing the IHO was in possession of the complaint and the response. Based on those two documents and attachments the IHO asked the parties if there were any material facts in dispute. The parties agreed there were not any. These findings are based on those stipulations as of June 8, 2009.

³ A copy of the IFSP was included in the response to the complaint and its relevant contents are summarized here.

the Student and the criteria, procedures, and timelines to be used to determine progress, covering physical and motor skills, speech, reading, and eating. The IFSP includes speech and language and occupational therapy services, including the frequency, intensity, and method of delivering the services. The IFSP does not include a statement of the natural environments in which early intervention services will be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment. The IFSP includes the projected dates for initiation of services and frequency of the services (starting October 27, 2008, two times per week, one hour per session for speech and two times per month, one hour per session for occupational therapy). The IFSP does not state the anticipated duration of the services. The IFSP does identify who the service coordinator is. It also states the steps for the transition of the Student to preschool and other appropriate activities.

4. The Petitioner signed the IFSP indicating her consent to it.
5. Additional assessments in the areas of psychoeducational, speech and language, occupational, and physical therapy were consented to by the Petitioner on March 4, 2009.

IV. CONCLUSIONS OF LAW

1. Federal Regulations at 34 C.F.R. § 300.124(b) require that:

By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with § 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with § 300.101(b)[.]

2. Federal Regulations at 34 C.F.R. § 300.323(b) require:

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- (i) Consistent with State policy; and
- (ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

- (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

3. The Individuals with Disabilities Education Improvement Act (IDEA) at 20

U.S.C. 1436 § 636(d) requires that the IFSP shall:

be in writing and contain--

- (1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
- (2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;
- (3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;
- (4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
- (5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
- (6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;
- (7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and
- (8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

APPENDIX A

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

Student:

DOB:

ID#:

School:

Petitioner:

, Student's Parent