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STUDENT HEARING OFFICE
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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,[1] through the Parent,	)	
	)	Date Issued: July 30, 2012
Petitioner,	)	
	)	Hearing Officer: Virginia A. Dietrich
v.	)	
District of Columbia Public Schools	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of year old Student, filed a due process complaint notice on May 24, 2012, alleging that the District of Columbia Public Schools ("DCPS") had denied Student a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Act ("IDEA").

Petitioner alleged that during the 2010-2011 and the 2011-2012 school years, DCPS had failed to provide Student with all the special education services required by her IEP; that DCPS had failed to review an independent speech-language evaluation and failed to timely review an independent comprehensive psychological evaluation and incorporate the results of the evaluations into Student's IEP and increase the level of services to full-time; and that DCPS had failed to complete an occupational therapy evaluation, a psychiatric evaluation, a Functional Behavioral Assessment and Behavior Intervention Plan as was recommended in the independent comprehensive psychological evaluation; all of which resulted in Student being denied a FAPE.

DCPS asserted that it had not violated the IDEA, that it had not denied Student a FAPE, and that Petitioner could not meet her burden of proof.

[1] Personal identification information is provided in Appendix A.

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; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

The due process complaint was filed on 05/24/12. This Hearing Officer was assigned to the case on 05/29/12.

Petitioner waived the resolution meeting, but DCPS did not. The resolution meeting took place on 06/07/12 at which time parties agreed to let the 30-day resolution period expire prior to proceeding to a due process hearing. The resolution period ended on 06/23/12, the 45-day timeline to issue a final decision began on 06/24/12 and the final decision was due on 08/07/12.

The due process hearing was a closed hearing that took place on 07/19/12 and 07/23/12.

Parties did not object to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

Petitioner presented eight witnesses: Student; Petitioner; First Home Care case manager; an expert in clinical and school psychology; mental health therapist at Mary's Center for Maternal and Child Care; the owner of Parker Diagnostic Solutions; educational advocate; and Assistant Director of Education at Accotink Academy.

DCPS elected not to present any witnesses.

Petitioner's disclosures dated 07/12/12, containing a witness list and Exhibits P-1 through P-29, were admitted into evidence without objection.

DCPS' disclosures dated 07/12/12, containing a witness list and Exhibits R-01 through R-08, were admitted into evidence without objection.

The seven issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied Student a FAPE by failing to implement Student's Individualized Education Program ("IEP") during the 2010-2011 school year when DCPS failed to provide Student with all of the specialized instruction and behavioral support services required by Student's March 4, 2010 IEP and February 9, 2011 IEP.

Whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2011-2012 school year when DCPS failed to provide Student with all of the specialized

instruction and behavioral support services required by Student's February 9, 2011 IEP and October 26, 2011 IEP.

Whether DCPS denied Student a FAPE by failing to conduct a reevaluation of Student that included (a) a review of an independent speech-language evaluation provided to DCPS in June 2011, and (b) a timely review of an independent comprehensive psychological evaluation that was provided to DCPS in July 2011, but not reviewed by DCPS until October 26, 2011.

Whether DCPS denied Student a FAPE by failing to develop an IEP on October 26, 2011 with goals and functional needs that were based on evaluative data from the independent speech-language evaluation provided to DCPS in June 2011 and from the independent comprehensive psychological evaluation that was provided to DCPS in July 2011.[2]

Whether DCPS denied Student a FAPE by failing to develop an IEP at the start of the 2011-2012 school year that included full-time specialized instruction outside of general education, behavioral support services, speech-language services, and a school placement based on a full-time IEP.

Whether DCPS denied Student a FAPE by failing to develop an IEP at the start of the 2011-2012 school year that included a Behavior Intervention Plan to address Student's behavioral problems that resulted in suspension and negatively affected her academic performance, as was recommended in the independent comprehensive psychological evaluation that was provided to DCPS in July 2011.

Whether DCPS denied Student a FAPE by failing to evaluate Student in all areas of suspected disability when DCPS failed to conduct an occupational therapy evaluation, a psychiatric evaluation and a Functional Behavioral Assessment, as was recommended in the independent comprehensive psychological evaluation provided to DCPS in July 2011.

For relief, Petitioner requested a finding of a denial of a FAPE on the issues presented; DCPS to fund an independent occupational therapy evaluation, independent psychiatric evaluation and independent Functional Behavioral Assessment, all at market rate; DCPS to fund Student at Accotink Academy, and if a nonpublic placement is not awarded, DCPS to convene a meeting to review the aforementioned independent evaluations along with the independent speech-language and independent comprehensive psychological evaluations that were previously provided to DCPS, review and revise Student's IEP as appropriate, and develop a Behavior Intervention Plan; and an award of compensatory education in the form of tutoring for DCPS' failure to provide Student with full-time specialized instruction outside of general education and speech-language services, since the beginning of the 2011-2012 school year.

Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

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[2] Petitioner withdrew, with prejudice, the allegation that the present levels of performance in the 10/26/11 IEP were not based on the evaluative data contained in the independent speech-language evaluation dated 06/04/11 and the independent comprehensive psychological evaluation dated 06/20/11.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

#1. Student, age is a resident of the District of Columbia who has received special education services pursuant to an IEP since elementary school.[3]

#2. The two following IEPs were in effect during the 2010-2011 school year: an IEP dated 03/04/10 that prescribed 10 hours/week of specialized instruction outside of general education and 30 minutes/week of behavioral support services outside of general education, with IEP goals in the areas of mathematics, reading and emotional/social/behavioral development;[4] and an IEP dated 02/09/11 that prescribed 6.5 hours/week of specialized instruction within the general education setting, 6.5 hours/week of specialized instruction in mathematics outside of general education, and 30 minutes/week of behavioral support services outside of general education, with IEP goals in the areas of mathematics, reading and emotional/social/behavioral development. The justification for the specialized instruction in mathematics outside of general education was that Student was not on grade level.[5]

#3. The two following IEPs were in effect during the 2011-2012 school year: the IEP dated 02/09/11 and an IEP dated 10/26/11, both of which prescribed 6.5 hours/week of specialized instruction within the general education setting, 6.5 hours/week of specialized instruction in mathematics outside of general education, and 30 minutes/week of behavioral support services outside of general education, with IEP goals in the areas of mathematics, reading and emotional/social/behavioral development.[6]

#4. On 06/17/11, Petitioner provided DCPS with a copy of an independent speech-language evaluation dated 06/04/11, with a written request to convene a meeting to review the evaluation.[7] It wasn't until 10/25/11, approximately four months later, that a DCPS speech-language pathologist completed a written review of the independent speech-language evaluation[8] and then presented the results of the independent speech-language evaluation to the IEP Team on the following day, i.e., 10/26/11.[9] Both Petitioner and Student participated in the IEP Team meeting.[10] Despite the review of the 06/04/11 independent speech-language evaluation at the IEP Team meeting on 10/26/11, DCPS failed to update its Evaluation Summary Report and Analysis of Existing Data forms on 10/26/11 to reflect the review; rather, DCPS included speech-language data from a speech-language reevaluation completed by DCPS in 2009.[11]

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[3] Petitioner.
[4] P-6.
[5] P-7.
[6] P-7, P-11.
[7] P-9-1.
[8] P-25-6.
[9] P-12-1.
[10] P-11-1, P-14-4,
[11] P-14-6, P-14-12, P-24.

#5. In October 2009, Student had been exited out of direct speech-language services based on (a) her mastery of IEP goals of improving receptive and expressive language skills to appropriate levels,[12] and (b) a speech-language reevaluation report completed by DCPS on 10/12/09 that did not recommend direct speech-language services, but indicated that Student had low-average to slightly below average speech-language skills characterized by moderately impaired receptive vocabulary skills, mildly impaired pragmatic judgment and low-average expressive vocabulary skills.[13]

#6. The independent speech-language evaluation completed on 06/04/11 indicated that Student had vocabulary skills mildly below her developmentally appropriate range, linguistic deficits within her comprehension and verbalization of language, and no deficiencies within her speech sound production.[14] This level of functioning was not so different from her speech-language level of functioning in 2009 when she was exited from direct speech-language special education services.[15] And, without direct speech-language services from 10/16/09 forward, Student was able to pass all of her classes except mathematics and make progress towards or master all of her IEP goals in mathematics and reading.[16] Based on all of this data, which was available and reviewed by the IEP Team on 10/26/11, Student did not have a speech-language disability and was not in need of direct speech-language services on 10/26/11.[17]

#7. On 07/06/11, Petitioner provided DCPS with a copy of an independent comprehensive psychological evaluation dated 06/20/11, with a written request to convene a meeting to discuss the evaluation.[18] The independent comprehensive psychological evaluation was not reviewed by DCPS until the IEP Team meeting on 10/26/11, when the results of the independent evaluation were presented to the IEP Team by a DCPS representative.[19] Review of the comprehensive independent psychological evaluation by the IEP Team did not result in any change in the level or type of special education services that Student needed or received.[20] On 10/26/11, the IEP Team agreed that Student would receive her specialized instruction in mathematics in a mathematics lab to further assist Student with her difficulties in mathematics; however, Student still received the same quantity, type and setting for specialized instruction in mathematics as she received per her previous IEP.[21]

#8. The IEP Team met on 10/26/11, reviewed and discussed the independent speech-language evaluation and the independent comprehensive psychological evaluation and determined Student's current needs based on the data included within those two evaluations. The IEP Team reviewed and discussed the goals and functional needs of Student and included that information in Student's 10/26/11 IEP. The IEP Team also discussed and determined the type and level of support services that Student required both inside and outside of the general

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[12] P-18-2.
[13] P-24.
[14] P-25-4.
[15] Two different testing instruments were used for the 2009 and 2011 speech-language evaluations.
[16] P-16-2, P-18.
[17] P-12-1, P-14.
[18] P-10-1, P-23.
[19] P-12-1, P-14-5, P-14-9.
[20] P-7,P-11.
[21] P-12-1.

education setting and developed an IEP that was appropriate for Student. The IEP determination was based on current and past evaluations and based on input from Petitioner, Student's general education teacher, Student's special education teacher, an individual who interpreted and presented the results of the 06/20/11 independent psychological evaluation, an individual who interpreted and presented the results of the 06/04/11 independent speech-language evaluation, and Student's social worker who provided behavioral support services to Student. There was no disagreement from Petitioner or any other members of the IEP team about the contents of the IEP or the services that Student needed.[22]

#9. Although the 06/20/11 independent comprehensive psychological evaluation stated that Student's visual-motor functioning was in the Low Average range with a showing of some visual-motor integration difficulties, and recommended an occupational therapy evaluation to determine if services were needed in the school setting, there was no factual basis for DCPS to suspect or conclude that Student had a disability that required direct occupational therapy services. A psychological reevaluation report completed by DCPS in October 2009 did not reveal that Student had any observed or measured visual-motor difficulties; her pincer grip was appropriate, her pencil control was average, and the pressure point was normal.[23] Student had not received any direct occupational therapy services as far back as her 03/08/10 IEP.[24] No visual-motor difficulties were recorded as observed by the evaluator of the 06/20/11 independent comprehensive psychological evaluation, no information had been provided to the evaluator by Student's special education teacher to suggest that Student had visual-motor difficulties in class, and neither the independent comprehensive psychological evaluation report nor the testimony of the evaluator provided any elucidating information on subtests or scoring used by the evaluator to come to the conclusion that Student evidenced perceptual or visual-motor integration difficulties that warranted an occupational therapy evaluation.[25]

#10. In the school environment, Student was sullen and withdrawn, or angry and irritable in the classroom 2 out of 5 days per week; struggled with peer relationships; had trouble paying attention in the classroom; and had difficulty retaining information.[26] Student did not have an attendance problem although she had missed two months of school at the end of the 2011-2012 school year due to a hospitalization,[27] and the suspensions from school that Student incurred were for fighting that took place off school grounds.[28] Student's difficulty with paying attention in class was attributable to difficulties with mood regulation and Student's learning difficulties, but Student's variable moods could be addressed in her counseling sessions at school.[29] The independent comprehensive psychological evaluation recommended individual counseling to address Student's variable moods in school and a psychiatric evaluation to determine the appropriateness of psychotropic medications.[30]

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[22] P-11, P-12-1, P-14.
[23] P-21-4.
[24] P-6, P-7.
[25] P-23-8, P-23-12, expert in clinical and school psychology.
[26] Petitioner, P-23-13.
[27] Petitioner, P-17, P-20.
[28] Petitioner, P-17.
[29] P-23-13, P-23-14.
[30] P-23-14.

Hearing Officer Determination

#11. The purpose of a Functional Behavioral Assessment ("FBA") is to analyze Student's off task behaviors and determine the environmental antecedents of those behaviors. The purpose of a Behavior Intervention Plan ("BIP") is to formalize how Student's problem behaviors will be handled in the school setting.[31] Although the 06/20/11 independent comprehensive psychological evaluation recommended that a FBA be completed to analyze Student's off task behaviors,[32] Student's off task behaviors of appearing sullen or angry and irritable in class were already being addressed through the provision of behavior support/counseling services and Student's off task behavior of being inattentive in class was already being addressed through the provision of specialized instruction and behavioral support services, per Student's 02/09/11 IEP and 10/26/11 IEP. Student also had the benefit of extra counseling services when she made very frequent impromptu appearances at her social worker's office.[33] A FBA and BIP were not necessary to address Student's problem behaviors in the classroom.

#12. Student made progress towards achieving or mastering her IEP goals in mathematics and reading since October 2009 while receiving specialized instruction both inside and outside of the general education setting.[34] Student received all passing grades during the 2010-2011 and 2011-2012 school years, with the exception of mathematics during the 2010-2011 school year.[35]

#13. DCPS provided Student with a substantial amount of behavior support services during the 2010-2011 and 2011-2012 school years when school was open and when Student was available to receive services. Only one 30-minute counseling session was missed due to the unavailability of the service provider in December 2010.[36]

Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

"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

[31] P-23-14, expert in clinical and school psychology.
[32] P-23-13.
[33] Petitioner.
[34] P-18, R-3, R-4, R-5.
[35] P-16-2.
[36] P-19-23 through P-19-37, R-2.

hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

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 child'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).

The first issue to be determined is whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2010-2011 school year when DCPS failed to provide Student with all of the specialized instruction and behavioral support services required by Student's March 4, 2010 IEP and February 9, 2011 IEP.

Each public agency must ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. 34 C.F.R. 300.323(c)(2).

Petitioner failed to meet her burden of proof on this issue. There was no reliable evidence in the record that DCPS had failed to provide Student with the specialized instruction and behavioral support services required by her IEP during the 2010-2011 school year. The overall testimony of Student was inconsistent and unreliable; her memory of recent and past events was very poor. Student, age 16, could not remember any of her classes or the names of any of her teachers for the past two years. Student's testimony about how much instruction she received both inside and outside of the general education setting was vague, inconsistent and unconvincing. Likewise, Student's testimony about how much behavioral support services she received was unreliable and not credible. Student's testimony was given no weight.

Petitioner's testimony on this issue was also unreliable; the foundation of her knowledge was statements made to her by Student, and Student was not a reliable conveyor of information due to her extreme difficulty in retaining information. Petitioner's testimony about the type and quantity of special education services that Student received was also vague and unconvincing.

The testimony of the educational advocate also was not given any weight. The educational advocate relied on information provided to her by Student who was an extremely unreliable reporter of events. The educational advocate performed a very intricate analysis of Student's transcript and service record trackers to offer the conclusion that Student had not been provided with the services prescribed by her IEP. The problem with the educational advocate's analysis of documents was that she had no recent knowledge of what the codes on the transcript meant and had not talked with anyone at Student's school about Student's transcript, she had never talked with any of Student's teachers or Student's social worker or the special education coordinator, and she had no direct, reliable knowledge of what services Student actually received. The educational advocate's testimony that Student did not receive all of her special education services was actually a surmise based on a review of documents in the record; i.e., the educational advocate imagined or inferred something without conclusive evidence.

The documentary evidence in the record revealed that only one 30-minute session in behavioral support services was missed due to the unavailability of the service provider in December 2010. It is well established that not every failure to provide services according to a student's IEP amounts to an IDEA violation, but a material failure to implement an IEP violates the IDEA. *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J,* 502 F.3d 811, 822 (9th Cir. 2007). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. A showing of educational harm is not required for a material failure. *See Department of Education, State of Hawaii v. R.F. by Pauline F.,* 57 IDELR 197 (2011), *Catalan et al., v. District of Columbia,* 478 F Supp 2d 73 (2007), 47 IDELR 223.

The Hearing Officer concludes one missed 30-minute session of behavioral support services does not constitute a material failure to implement Student's IEP. Moreover, Petitioner failed to show any harm or loss of educational benefit from the missed service. The evidence in the record was insufficient for the Hearing Officer to conclude that Student had been denied a FAPE as a result of DCPS' failure to implement Student's IEP during the 2010-2011 school year.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to implement Student's IEP during the 2011-2012 school year when DCPS failed to provide Student with all of the specialized instruction and behavioral support services required by Student's February 9, 2011 IEP and October 26, 2011 IEP.

Petitioner failed to meet her burden of proof on this issue for the same reasons articulated in the preceding issue. There was no reliable evidence in the record that Student had missed any specialized instruction or behavioral support services during the 2011-2012 school year.

The third issue to be determined is whether DCPS denied Student a FAPE by failing to conduct a reevaluation of Student that included (a) a review of an independent speech-language evaluation provided to DCPS in June 2011, and (b) a timely review of an independent comprehensive psychological evaluation that was provided to DCPS in July 2011, but not reviewed by DCPS until October 26, 2011.

As part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers; and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine whether the child continues to have such a disability, and the educational needs of the child, the present levels of academic achievement and related developmental needs of the child, and whether the child continues to need special education and related services. 34 C.F.R. 300.305(a).

Hearing Officer Determination

The IDEA includes no specific deadline for conducting a reevaluation. In the absence of an applicable state deadline, the issue comes down to what is reasonable under the circumstances. *Smith v. District of Columbia,* 55 IDELR 291 (D.D.C. 2010).

Petitioner failed to meet her burden of proof on this issue. Although DCPS failed to review the independent speech-language evaluation from 06/17/11 until 10/26/11, the Hearing Officer concludes that the four-month delay was not an unreasonable amount of time in view of the determination that Student did not require direct speech-language services. There was no harm to Student as a result of the delay. Student was not deprived of an educational benefit and Student was not denied a FAPE.

Even though review of the independent comprehensive psychological evaluation by DCPS was delayed from 07/06/11 until 10/26/11, Student did not incur the loss of an educational benefit as a result of this almost four-month delay. There were no changes in the quantity or type of services that Student received as a result of the information provided in the independent evaluation. Student was making progress towards attainment of her IEP goals in mathematics and reading with the specialized instruction that was being provided and Student was passing all of her classes except for mathematics. Specialized instruction in mathematics was changed to a math lab, but this change was not a change in the quantity or type of instruction, it was only a change in the location of the instruction. Moreover, Petitioner failed to show that a two-month delay from the time school started until Student began receiving math lab instruction resulted in harm to Student. No mathematics grades for the 2011-2012 school year were made part of the record. Additionally, Student had a lengthy, two-month absence from school at the end of the 2011-2012 school year that arguably would have affected her progress in mathematics and her grades. Petitioner failed to prove that Student was denied a FAPE.

The fourth issue to be determined is whether DCPS denied Student a FAPE by failing to develop an IEP on October 26, 2011 with goals and functional needs that were based on evaluative data from the independent speech-language evaluation provided to DCPS in June 2011 and from the independent comprehensive psychological evaluation that was provided to DCPS in July 2011.

The IEP must include a statement of the child's present levels of academic achievement and functional performance. 34 C.F.R. 300.320(a)(1).

Petitioner failed to meet her burden of proof on this issue. A comprehensive reevaluation of Student's needs occurred at the IEP Team meeting on 10/26/11. At that time, both the independent speech-language evaluation and the independent comprehensive psychological evaluation were reviewed by the IEP Team and the information contained in the evaluations was taken into consideration in the development of all aspects of the IEP, including Student's functional needs and goals. Petitioner failed to present any evidence to the contrary. Student was not denied a FAPE.

The fifth issue to be determined is whether DCPS denied Student a FAPE by failing to develop an IEP at the start of the 2011-2012 school year that included full-time specialized

instruction outside of general education, behavioral support services, speech-language services, and a school placement based on a full-time IEP.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark,* 336 F.3d 260, 264 (3d Cir. 2003). At a minimum, the IEP must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Chambers v. Philadelphia Bd. of Educ.,* 587 F.3d 176, 182 (3d Cir. 2009)).

The term IEP means a written statement for each child with a disability that must include a statement of the special education and related services and supplementary aids and services, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals and to be involved in and make progress in the general education curriculum. 34 C.F.R. 300.320(a)(4).

Petitioner failed to meet her burden of proof on this issue. The evidence presented established that Student did not require direct speech-language services, that Student was receiving a level of behavioral support services that met her needs, that Student had made progress towards or mastered her IEP goals in reading and mathematics since 2009, and that Student was passing all of her courses with the exception of mathematics; all with a level of special education services that included instruction both inside and outside of the general education setting. In fact, the only instruction Student required outside of the general education setting was in the area of mathematics because she was not on grade level. The evidence revealed that Student was receiving educational benefit without a full-time IEP.

To the maximum extent appropriate, children with disabilities are to be educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114(a)(2).

The record did not support a determination that Student required full-time services outside of general education at the beginning of the 2011-2012 school year. During the 2010-2011 and 2011-2012 school years, Student passed all of her classes except mathematics and the IEPs that Student had were enabling her to make progress towards or master all of her IEP goals in mathematics and reading. The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). DCPS had provided Student with IEPs that allowed her to benefit from the instruction. Petitioner failed to establish a factual basis for removing Student completely from the general education environment and DCPS' failure to do so at the beginning of the 2011-2012 school year did not amount to a denial of a FAPE.

Hearing Officer Determination

The sixth issue to be determined is whether DCPS denied Student a FAPE by failing to develop an IEP at the start of the 2011-2012 school year that included a Behavior Intervention Plan to address Student's behavioral problems that resulted in suspension and negatively affected her academic performance, as was recommended in the independent comprehensive psychological evaluation that was provided to DCPS in July 2011.

The IEP Team must in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. 34 C.F.R. 30.324(a)(2)(i).

Petitioner failed to meet her burden of proof on this issue. There was no evidence in the record that Student's problem behaviors in school impeded her learning during the 2011-2012 school year. Student made progress towards all of her IEP goals and Student passed all of her classes for the first half of the 2011-2012 school year. Student's grade report for the second half of the school year was not in the record. Moreover, Student's behavior problems that consisted of inattentiveness, sullenness and irritability would not be resolved or ameliorated through the use of a Behavior Intervention Plan. The mood variability could be addressed through the counseling services prescribed by Student's IEP and the inattentiveness associated with learning difficulties was being addressed through specialized instruction prescribed by Student's IEP. And, according to the evidence in the record, Student's suspension occurred as a result of her behavior outside of the classroom.

The Hearing Officer concludes that a Behavior Intervention Plan was not necessary to address Student's behavior problems of inattentiveness, withdrawal or irritability in the classroom. DCPS did not violate the IDEA by failing to have a Behavior Intervention Plan in place at the start of the 2011-2012 school year. Student was not denied a FAPE.

The seventh issue to be determined is whether DCPS denied Student a FAPE by failing to evaluate Student in all areas of suspected disability when DCPS failed to conduct an occupational therapy evaluation, a psychiatric evaluation and a Functional Behavioral Assessment, as was recommended in the independent comprehensive psychological evaluation provided to DCPS in July 2011.

Each public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. 304(c)(4).

Petitioner failed to meet her burden of proof on all aspects of this issue. There actually was no evidence in the record, either testimonial or documentary, that DCPS failed to complete an occupational therapy evaluation, a psychiatric evaluation and a Functional Behavioral Assessment. Even if there was, the evidence in the record was insufficient for the Hearing Officer to conclude that Student needed an occupational therapy evaluation. Student had no history of visual-motor difficulties, either observed or measured, as far back as October 2009. The 06/20/11 independent comprehensive psychological evaluation contained no subtest

information or scores or observations of visual-motor difficulties by the evaluator, and Student's level of visual-motor functioning was in the Low Average range. There was virtually no factual evidence that Student had a visual-motor impairment that affected her performance in the classroom; there was merely a conclusion by the evaluator that Student needed an occupational therapy evaluation to determine if direct services were necessary. The Hearing Officer concludes that DCPS did not deny Student a FAPE by failing to conduct an occupational therapy evaluation.

There also was insufficient evidence in the record to establish that a psychiatric evaluation was necessary to determine Student's special education needs and services. The purpose of the psychiatric evaluation is to determine whether or not Student required psychotropic medication. The evidence revealed that Student's problem behaviors of inattentiveness and withdrawal or irritability in the classroom could be addressed through counseling, a service that was available at the school and that was already included as part of Student's IEP. Additionally, Student took herself to the counselor's office on many a day to talk, outside of her direct service sessions. Student was not denied a FAPE by DCPS' failure to conduct a psychiatric evaluation.

Thirdly, there was insufficient evidence in the record for the Hearing Officer to conclude that Student required a Functional Behavioral Assessment to address her behaviors of inattentiveness, withdrawal and irritability that occurred 2 out of 5 days in the classroom. These behaviors could be addressed through counseling, Student received counseling as part of her IEP services and Student sought out the counselor on a very frequent, unscheduled basis. Student was not a behavior problem in the classroom or school and the fights that led to her suspension occurred outside of the school environment. Student was not denied a FAPE by DCPS' failure to conduct a Functional Behavioral Assessment.

ORDER

Petitioner failed to meet her burden of proof on all of the issues presented. All relief requested by Petitioner is **DENIED.**

The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

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).

Date: July 30, 2012

/s/ Virginia A. Dietrich
Hearing Officer