

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

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Confidential

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STUDENT HEARING OFFICE

<p>STUDENT¹, by and through parent, Petitioner, vs. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Ellen Douglass Dalton, Esq.</p> <p>Asst. Attorney General for DCPS: Blair Matusmoto, Esq.</p> <p><u>Hearing Officer</u> H. St. Clair, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

The student attended a District of Columbia Public Schools public charter school. The public charter school evaluated the student in May and June 2008 but did not review the completed evaluations until sometime in June 2009.

On June 29, 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) and a DCPS public charter school, denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS/ failed to review evaluations of the student timely and, for relief, requested compensatory education.

A Pre-hearing Conference Order was issued in this matter on July 17, 2009. The Order determined the issues as set out below.

A hearing in this matter was scheduled for 9:00 A.M., Tuesday, August 4, 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.

- ISSUES:**
- 1. Were the failure to review the May and June 2008 evaluations and the failure to review the student's IEP before the beginning of the 2008-09 School Year Denials of FAPE?**
 - 2. Was the February 12, 2009 IEP appropriate in light of the May and June 2008 evaluations?**
 - 3. Were the failure to review the May and June 2008 evaluations and the failure to review the student's IEP before the 2008-09 School Year Denials of FAPE that resulted in the student's retention in the 10th grade?**

FINDINGS of FACT

By facsimile dated July 28, 2009, the parent disclosed 3 witnesses and 35 documents.

By facsimile dated July 28, 2009, DCPS disclosed 5 witnesses and 11 documents.

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

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

1. The student started at _____ in the _____ grade at the beginning of the 2007-08 School Year and came to the academy with an IEP; the student passed the 9th grade but was retained in the 10th grade at the end of the 2008-09 School Year.²
2. _____ completed the January 14, 2008 IEP that disability coded student Speech/Language Impaired with 12 hours of specialized instruction and 1 hour of speech/language services in a 22% Out of General Education setting.³ Also on January 14, 2008, the MDT referred the student for speech/language and psycho-educational evaluations; the parent signed authorization for the evaluations at the MDT meeting.⁴
3. _____ completed a psycho-educational report of the student on May 6, 2008.⁵ At page 27 of the evaluation, the evaluator mentioned the student's deficits in "Passage Comprehension"⁶ and wrote, "This evaluator recommends that [the student] continue receiving special education services under the SLI category while addressing academic goals more intensively through his IEP."
4. _____ completed a psycho-educational evaluation of the student on May 6, 2008;⁷ the speech/language re-evaluation of the student was completed on June 16, 2008.⁸

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² -testimony of the parent

³ Parent Document No 3

⁴ Par. Doc. No 1

⁵ Par. Doc. No 5

⁶ "Passage Comprehension:" a subtest of the Woodcock-Johnson III Tests of Achievement

⁷ Par. Doc. No 5

⁸ Par. Doc. No 6

5. On June 18, 2008, [redacted] promoted the student to the [redacted] grade with "Bs" and "Cs" on his report card.⁹

6. [redacted] completed the February 12, 2009 IEP that disability coded the student Speech/Language Impaired with 6 hours of specialized instruction and 1 hour of speech/language services;¹⁰ the May 6, 2008 Psycho-educational Evaluation and the June 16, 2008 Speech/Language Evaluation were not reviewed at the February 12, 2009 MDT/IEP meeting.

7. [redacted] completed the June 2, 2009 IEP that disability coded the student Specific Learning Disabled with 20 hours of specialized instruction and 1 hour of speech/language services.¹¹ The May 6, 2008 Psycho-educational Evaluation and the June 16, 2008 Speech/Language Evaluation were reviewed at the February 12, 2009 MDT/IEP meeting.

8. The parent testified that the student did very well in special education until attending [redacted]. The parent thought that [redacted] did not cooperate with efforts to improve the [redacted] grade education provided to the student during the 2008-09 School Year; the parent would not agree to have the student evaluated for emotional disturbance and thought [redacted] had no basis to report the student to CFSA.¹² The parent thought the student failed the 10th grade because [redacted] did not provided the proper special education services to the student.¹³

9. The student testified that he thought [redacted] did not demand class work from him during the [redacted] grade; that he received more help during the [redacted] grade and was "setup to fail" the [redacted] grade.¹⁴

10. The student's 2008-09 Special Education Teacher at [redacted] testified via telephone that he taught the student and that he participated in February 12, 2009 MDT/IEP meeting at which the May and June 2008 evaluations were not considered; that it was a mistake for the IEP to show 7 hours of special education services. The IEP should have shown 13 hours of services, the amount of services indicated on the

⁹ Par. Doc. No 7

¹⁰ Par. Doc. No 12

¹¹ Par. Doc. No 20

¹² CFSA: District of Columbia Child and Family Services Agency

¹³ -testimony of the parent

¹⁴ -testimony of the student

January 1, 2008 IEP.¹⁵ The Teacher thought the February 12, 2009 IEP would not have been different had the evaluations been considered at the February 12, 2009 meeting; that the student was capable of during the class work assigned to him but completed only about 15% of assignments. The Teacher thought the student's home life worried him to the point of distraction at school; that the parent thought the did not provide adequate special education services to the student. At the February 12, 2009 MDT/IEP meeting, the Teacher knew the student was failing all of his class. The Teacher was not a certified special education teacher.¹⁶

11. retained a special education Compliance Specialist. The Specialist testified that she was familiar with the student and attended the February 12, 2009 MDT/IEP meeting; that not reviewing the May and June 2008 evaluations at the February 12, 2009 MDT/IEP meeting was an "oversight." The Specialist testified that the February 12, 2009 MDT/IEP knew of the evaluations but did not review them because evaluators were unavailable for the meeting; that it was a mistake for the IEP to show 7 hours of special education services, it should have shown 13 hours of services. When questioned about the notes of the February 12, 2009 MDT/IEP meeting where she wrote the student was to receive 7 hours of special education services, the Specialist replied that too was a mistake.

12. The testimonies of the Teacher and Compliance Specialist were not credited. The February 12, 2009 MDT/IEP meeting notes stated clearly that the student was to receive 7 hours of special education services.

13. should have reviewed the May 6, 2008 Psycho-educational Evaluation and the June 16, 2008 Speech/Language Evaluation within a reasonable period of time after their completion. reviewed the evaluations on June 2, 2009, an unreasonably long period of time after June 16, 2008. Without the benefit of the evaluations, the February 12, 2009 MDT/IEP meeting reduced services for the student when the May 6, 2008 Psycho-educational Evaluation recommended an increase in services.

14. The Educational Consultant testified that he met with the student and parent for about 90 minutes on July 28, 2009 and that he reviewed the parent's herein disclosure; the Consultant had participated in the

¹⁵ Par Doc. No 2

¹⁶ -testimony of the Special Education Teacher,

formulation of approximately a 100 compensatory education plans, some for DCPS, and qualified as an expert in the preparation of reading programs. The Consultant pointed out that the student had not been evaluated for phonetic awareness nor for phonological processing and that the student suffered both academically and in reading skill development during the 2008-09 School because he received 7 hours of special education services during the school year when evaluations recommended more services. The student tested at the 2.5th to 4th grade level in reading. To recover the lost reading skill, the Consultant recommended compensatory reading services for the student in the amount of 250-300 hours.

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 locate, identify, evaluate and determine eligibility for special education services every child in the District of Columbia, ages 3 thru 21, who maybe in need of special education services, and for every child of a District of Columbia resident or resident child who is eligible for special education services, DCPS must make a Free Appropriate Public Education available.

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.

ONE & THREE

The failure to review the May and June 2008 evaluations before the beginning of the 2008-09 School Year was not inappropriate and did not amount to a Denial of FAPE; it did contribute to the student's retention in the 10th grade.

On January 1, 2008 and consistent with regulation 34 CFR 300.303(a)(1), authorized reevaluation of the student. The student was referred for psycho-educational and speech/language evaluations. The psycho-educational was completed on May 6, 2008 and the speech/language evaluation was completed on June 16, 2008; the last evaluation was completed during the 2008 summer recess. The evaluations were not

reviewed before the beginning of the 2008-09 School Year; this was not a Denial of FAPE as the student's the current IEP, the January 14, 2009 IEP, did not indicate ESY services for the summer of 2008.

While the failure to review the May and June 2008 evaluations before the beginning of the 2008-09 School Year was not a Denial of FAPE, the hearing officer was persuaded that the evaluations should have been reviewed within a reasonable time after the beginning of the 2008-09 School Year, 30 days or so into the school year. The student was educationally harmed because the evaluator in the May 2008 psycho-educational evaluation recommended an increase in services, services that the student did not receive at all during the 2008-09 School Year. The failure to review the May and June 2008 evaluations contributed the reduction of services in the student's February 12, 2009 IEP, to the student's poor educational performance during the 2008-09 School Year and to his eventual retention in the 10th grade.

TWO

The February 12, 2009 IEP was inappropriate.

Well after the expiration of the January 14, 2008 IEP, convened the MDT/IEP team on February 12, 2009 and completed an IEP for the student that did not incorporate the results of the May 6, 2008 Confidential Psycho-educational Evaluation nor the results of the June 16, 2009 Speech/Language Reevaluation. This failure or "oversight" was a violation of regulation 34 CFR 300.305(a)(1)(i); the regulation requires the review of existing evaluations. The January 14, 2008 IEP indicated 13 hours of special education services. The evaluator in the May 6, 2008 Confidential Psycho-educational Evaluation recommended an increase in services. On February 12, 2009, the MDT completed an IEP for the student that reduced his special education services to 7 hours of services, 6 hours of specialized instruction and 1 hour of speech/language services, even though the student's then current report card indicated that he was then failing all of his classes. The failure of TMA to review the May and June 2008 evaluations during the February 12, 2009 MDT/IEP meeting also violated regulation 34 CFR 300.324(b)(1)(i)(B); this regulation also requires the review of exiting evaluations.

The reduced special education services for the student directly contributed to the student's poor academic performance during the 2008-09 School Year and eventual retention.

To address the educational harm done to the student, the parent's reading expert proposed 250-300 hours of reading tutoring and speech/language services. In *Reid vs the District of Columbia* 401 F3rd 516 (D.C. Cir. 2005), the Court amplified compensatory education in the District of Columbia.

Accordingly, just as IEPs focus on disabled students' individual needs, so must awards compensating past violations rely on individual assessments.

Some students may only require short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.

In every case, however, the inquiry must be fact specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefit that likely would have accrued from the special education services the school district should have supplied in the first place.

The parent's proposed compensatory education plan met the *Reid* standard.

SUMMARY of the DECISION

During the hearing, suggested that the 7 hours of special education services indicated on the February 12, 2009 IEP was a clerical mistake; that the MDT intended the student to receive 12 or 13 hours of services. The suggestion was simply unacceptable – especially as the February 12, 2009 MDT meeting notes clearly stated that 7 hours was the MDT's recommendation and decision.

Also during the hearing, pointed to what they perceived as problems in the student's home life and suggested that those problems were the cause of the student's poor educational performance for the 2008-09 School Year. This would have merited some consideration, had convened the MDT early in the 2008-09 School Year and increased the special education services for the student as was recommended in the May 6, 2009 Confidential Psycho-educational Evaluation. As the current psycho-educational evaluation recommended an increase in special education services before the 2008-09 School Year began, and the services were not increased, indeed, were reduced, it is possible that the insufficient services contributed the problems or supposed problems in the student's home life.

The parent met his burden on issues 2 and 3, and compensatory education was warranted.

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

ORDER

As compensatory education for the Denial of FAPE during the 2008-09 School Year, the student is awarded 250 hours of tutoring in reading and speech/language services at a cost

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not to exceed \$65 an hour. In consultation with TMA and the provider, the parent is to select the professionally qualified provider and the course of delivery.

Dated this 12th day of August, 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.

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