

<p>STUDENT¹, by and through his Parent Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent. Case # 2009-1389 ²</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>Scheduled Date of Hearing: December 11, 2009</p> <p>Date of Complaint: October 9, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street, NW Suite 700 Washington, DC 20005</p> <p>Counsel for DCPS: Kendra Berner, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002</p> <p><u>Hearing Officer:</u> Coles B. Ruff, Esq.</p>
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STUDENT'S OFFICE

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

² The case has been consolidated with Case # 2009-1448, which was dismissed administratively, as a result of the incorporation of the issue(s) alleged in that case/complaint into the Case # 2009-1389.

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 to be convened December 11, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003.³ This matter was decided pursuant to a due process complaint submitted by the counsel for the parent and student filed on October 9, 2009, alleging the issues outlined below.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits P 1-37 and DCPS Exhibits 1-3) which were admitted into the record.

ISSUE(S):

Did DCPS deny the student a FAPE by failing to comply with the July 3, 2009, HOD, by failing to convene the MDT to review the student's FBA?

³ Prior to the due process hearing being convened Petitioner's counsel and DCPS counsel agreed to forgo a formal due process hearing and reached an agreement on the sole issue the HOD violation (alleged in case # 2009-1448) and agreed to the sole remedy contained this Order. As a result Petitioner withdrew the issues alleged in the complaint filed October 9, 2009. The issues in the October 9, 2009, complaint which were withdrawn were as follows:

1. Did DCPS deny the student a free and appropriate public education by failing to conduct a psychiatric evaluation which was recommended in the student's social history and which the parent requested? (Petitioner asserted DCPS was provided the social history, comprehensive psychological and FBA on August 13, 2009, September 4, 2009, and October 7, 2009, respectively)
2. In the alternative, in the event DCPS completed the student's psychiatric evaluation, did DCPS deny the student a FAPE by failing to reconvene the student's MDT to allow the IEP team to review the findings of the psychiatric evaluation, and allow the parent and the rest of the IEP team to make appropriate educational decisions on behalf of the student and to make the appropriate modifications and changes to his educational program?
3. Did DCPS deny the student a FAPE by failing to provide the student an appropriate IEP because the IEP does not include recommendations of the evaluations provided to DCPS: the comprehensive psychological and social history?
4. Whether DCPS deny the student a FAPE by failing to provide the student recommended assistive technology?

FINDINGS OF FACT 4:

1. The student is a [REDACTED] attending School A, a District of Columbia Public School. The student is eligible to receive special education and has an individualized educational program ("IEP"). (DCPS Exhibit 2)
2. On July 3, 2009, a Hearing Officer's Determination ("HOD") was issued which authorized Petitioner to obtain an independent functional behavior assessment ("FBA") and required DCPS to convene a multidisciplinary team ("MDT") meeting to review the student's FBA. (Petitioner's Exhibit 4)
3. On October 7, 2009, Petitioner's counsel provided DCPS a copy of the independent FBA and requested DCPS issue a letter of invitation to convene the MDT meeting to review the FBA. (Petitioner's Exhibit 14)
4. On October 9, 2009, Petitioner (the student's mother) filed a Due Process Complaint Notice ("*Complaint*") alleging the District of Columbia Public Schools ("DCPS") failed to provide the student a free and appropriate public education ("FAPE") by, inter alia, failing to conduct a psychiatric evaluation of the student. (Petitioner's Exhibit 2)
5. On October 26, 2009, Petitioner filed a second complaint alleging (5) DCPS denied the student a FAPE by failing to comply with a July 3, 2009, HOD. (Petitioner's Exhibit 3)
6. DCPS acknowledged that the MDT meeting to review the FBA was not convened and the HOD was violated. (Stipulation)

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.

⁴ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. When citing an Exhibit that is the same for both parties but submitted separately, the Hearing Officer will cite only one party's Exhibit.

Did DCPS deny the student a FAPE by failing to comply with the July 3, 2009, HOD, by failing to convene the MDT to review the student's FBA? Conclusion: DCPS denied the student a FAPE by failing to comply with the July 3, 2009, HOD.

DCPS acknowledged that the MDT meeting to review the FBA was not convened and the HOD was violated.

According to the *Blackman/Jones* Consent Decree a rebuttable presumption of harm is created whenever DCPS fails to do, inter alia, comply with hearing officer determinations. The presumption of harm was not rebutted.

ORDER:

1. If has not already done so since the scheduled December 11, 2009, due process hearing date in this matter, DCPS shall convene a multidisciplinary team (MDT) meeting within fifteen (15) business days of the issuance of this Order to review the student's FBA and review and revise the student's individualized education program ("IEP") as appropriate.
2. The MDT meeting shall be scheduled through counsel for the student and parent.
3. DCPS will be given a day for a day extension of any of the prescribed time frames in this Order for any delay caused by the student, the parent(s) and/or their representative(s).

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: December 21, 2009

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