

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

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Student Hearing Office  
July 17, 2014

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PETITIONER <sup>1</sup>	)	
On behalf of STUDENT	)	
	)	
Petitioner,	)	
	)	
v.	)	Hearing Officer: Christal E. Edwards, Esq.
	)	
District of Columbia Public Schools (DCPS)	)	
	)	
	)	
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This is a Due Process Complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed May 2, 2014, on behalf of the Student, who resides in the District of Columbia, by Petitioner (MOTHER), the Student's Parent ("Petitioner"), against Respondent, District of Columbia Public Schools ("Respondent"). Petitioner claims that Respondent denied the student a Free Appropriate Public Education ("FAPE") because the February 18, 2014 Individualized Educational Program IEP was not appropriate for the student and the Respondent failed to provide the student with an appropriate program and/or placement following the January 23, 2014 eligibility meeting. And further the student was denied a FAPE because the Respondent failed to timely implement the student's initial IEP.

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<sup>1</sup> Personal identification information is provided in Appendix A

On May 12, 2014, Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a FAPE.

During the Prehearing Conference, on or about June 11, 2014, the parties agreed that five-day disclosures would be filed by July 1, 2014 and that the Due Process Hearing ("DPH") would be held on July 9, 2014.

A Resolution Meeting was held on May 20, 2014, which was not within the 15 calendar days of the filing because of the unavailability of the parties; but it failed to resolve the claims in the DPC. The statutory 30-day resolution period ended on June 1, 2014. The 45-day timeline for this Hearing Officer Determination ("HOD") started to run on June 2, 2014 and will conclude on July 16, 2014.

Petitioner's Disclosure Statement, dated June 25, 2014, consisted of a witness list of six (6) witnesses and documents P-1 through P-52. Respondent objected to Petitioner's disclosures at P-47, P-48, and P-49. However, these objections were untimely because not filed prior to DPH and were admitted over Respondent's objection. The Petitioner's Exhibits: P-1 through P-52 were all admitted. The Petitioner presented the following witnesses in her case in chief:

- (a) Petitioner;
- (b) Petitioner's expert witness – Psychologist;
- (c) Petitioner's expert witness – Occupational Therapist;
- (d) Petitioner's Educational Advocate.

Respondent's Disclosure Statement dated July 1, 2014 consisted of a witness list of six (6) witnesses and documents R-1 through R-15. The Respondent's Exhibits: R-1 through R-15 were all admitted without objections. The Respondent presented the following witnesses:

- (a) Respondent's Special Education Teacher;
- (b) Respondent's School Occupational Therapist.
- (c) Respondent's School Special Education Coordinator.

On July 11, 2014, Petitioner and Respondent submitted a 3-page written closing argument statement. Neither party requested or filed any other post hearing memorandum.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f), and DCMR tit. 5-E, § 3029.

### **ISSUES AND RELIEF SOUGHT**

The issues to be determined in this case, as identified in the Prehearing, are:

1. Whether the February 18, 2014 Individualized Educational Program ("IEP") is appropriate and/or the public agency failed to provide the student with an appropriate program and/or placement following the January 23, 2014 eligibility meeting; and
2. Whether the public agency failed to timely implement the student's February 18, 2014 IEP<sup>2</sup>.

### **RELIEF REQUESTED**

Petitioner requests the following relief:

- (1) A finding that DCPS denied the student a FAPE;
- (2) An Order that DCPS shall revise the student's IEP to include five hours of pull out services in reading, math, and writing; as well as push in services for all other

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<sup>2</sup> In the DPC, Petitioner had also listed as an issue – Whether the public agency failed to provide the student with a Behavior Intervention Plan to address the student's behavior and attention issues in the classroom – however, this issue was withdrawn at the prehearing conference. Therefore, this matter will not be addressed in this Hearing Officer Determination.

- academic subjects, social emotional goals and services including not less than 1 hour of counseling per week, transportation, a sensory diet in the classroom, remediation for organization/impulsivity and appropriate accommodations;
- (3) An Order that DCPS shall provide student with a location of services that can provide the student with small classroom settings with minimal distractions that can implement an IEP containing the services described above or fund a private placement selected by the parent with transportation;
  - (4) An Order for Compensatory Education; and
  - (5) An Order for other relief this Hearing Officer deems appropriate.

### **FINDINGS OF FACTS**

After considering all of the evidence, as well as argument of counsel, this Hearing Officer's findings of facts are as follows:

- 1) Student is a female, current age. (P 20-1)<sup>3</sup>
- 2) Student is a resident of the District of Columbia. *Id.* (P 20-1)
- 3) Since August 2013, the student was diagnosed with Attention Deficit Hyperactive Disorder ("ADHD") and receiving services from the Hillcrest Children and Family center in Washington, DC. (Testimony of Petitioner) As a result, the Parent requested the Student be comprehensively evaluated for special education services on or about September 27, 2013. (Testimony of Petitioner)
- 4) During the Student Support Team meeting ("SST") on or about October 29, 2013, the student's teachers reported that Student was having difficulty staying on task; she often daydreams and appears somewhat disengaged and lost when new information is

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<sup>3</sup> When citing to exhibits, the third range represents the page number within the referenced exhibit, in this instant, page 1.

- presented. (P-35 – 1) Further, Student ended kindergarten one level below benchmark for comprehension at level B, student’s letter naming fluency (LNF) decreased from the end of the year from 69 to 43 for the beginning of the 1<sup>st</sup> grade, the student’s phoneme segmentation dropped from 60 to 39, and student’s nonsense word fluency (NWF) also decreased from 28 to 13. (P-35-1)
- 5) Respondent completed the student's comprehensive speech and language evaluation on November 27, 2013. P -29.
  - 6) Respondent completed the student's comprehensive occupational therapy evaluation on December 30, 2013. P -30.
  - 7) Respondent completed the student's comprehensive functional behavior evaluation on December 12, 2013. P -31.
  - 8) Respondent completed the student's comprehensive psychological evaluation on December 10, 2013. P -32.
  - 9) In December of 2013, the Student was determined eligible for special education and its related services under the IDEA as a child with other health impaired and an initial IEP was discussed on January 23, 2014 at the student's Multi-Disciplinary Team (“MDT”) Meeting, which was held at School A. (P-20, Petitioner’s educational advocate and Petitioner). The MDT team did not review the Speech and Language evaluation during this meeting. (Testimony of Petitioner, Petitioner’s educational advocate, and Testimony of Respondent’s Special Education Coordinator). At this MDT meeting, parents requested transportation services and an independent educational evaluation (“IEE”) to address her concerns with the services described in

- the student's current IEP. (Testimony of Petitioner, Petitioner's Education Advocate, P-9).
- 10) On or about February 25, 2014, the parent signed the Consent form to allow the student to receive the services described in the IEP. (Testimony of Petitioner, Testimony of Respondent's Special Education Coordinator). However, student did not begin services described in IEP until the end of March, 2014. (Testimony of Petitioner, Testimony of Respondent's Special Education Coordinator).
- 11) On or about May 20, 2014, the student's IEP review meeting was convened and found the student required the same time for special education services for reading, mathematics, and written expression, but increased the amount of time for related services for occupational therapy outside the general education setting from 60 minutes to 120 minutes per month and added a behavioral support service for 120 minutes per month as well. (P-3, R-3).
- 12) Furthermore, the student's DIBELS assessment show that student has progressed in the area math and reading fluency, and made progress towards her IEP goals. (R-9, Testimony of Respondent's special education teacher). By the end of the school year, the student's report card shows the student had progressed from beginning (B) to developing (D) or secure (S) in most skills outlined in her IEP. (R-8)

## **CONCLUSIONS OF LAW**

### **Purpose of the IDEA**

1. The IDEA is intended "(A) 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 [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. §1400(d)(1); *accord*, DCMR §5-E3000.1.

### FAPE

2. The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

special education and related services that -

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

### Procedural Violations of IDEA

#### 3. Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

20 U.S.C. §1414(f)(3)(E). *See also*, 34 C.F.R. §300.513(a); *accord*, *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (B.C. Cir. 2006).

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

### **BURDEN OF PROOF**

In a Special Education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S.49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *See also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

### **Analysis**

- (1) Whether the February 18, 2014 Individualized Educational Program ("IEP") is appropriate and/or the public agency failed to provide the student with an appropriate program and/or placement following the January 23, 2014 eligibility meeting.

Petitioner claims that DCPS has denied Student a FAPE by failing to provide the student with an appropriate IEP. I find that Petitioner has not met her burden of proof on this issue.

The IDEA requires that to provide a FAPE, "[t]he IEP must, at a minimum, 'provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia* 839

F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). At issue here is the second prong.

Further, 34 C.F.R. §300.324 require that in the development of the IEP, the IEP team must consider:

- (1) The strengths of the child;
- (2) The concerns of the parent for enhancing the education of their child;
- (3) The results of the initial or most recent evaluation of the child; and
- (4) The academic, developmental, and functional needs of the child.

The parent made a request to have her child evaluated for special education services on or about September 27, 2013. Respondent timely evaluated student and developed an appropriate IEP based on all information provided at the time of the MDT meeting conducted on or about January 23, 2014 and the review IEP team meeting in May of 2014. The parent's concerns were addressed as evidenced by the team reviewing the independent educational evaluation, discussing the transportation concerns, and reviewing the addition of a sensory diet to the occupational therapy services. The student's IEP team did not have the IEE at the initial MDT meeting in January and the occupational therapy services for the student had not been implemented previously. The MDT team disagreed with most of the IEE, mainly because the student had already begun making progress. With regards to the sensory diet of occupational therapy services being added to the IEP, respondent's occupational therapy testified credibly that the sensory diet plan is not included within the IEP because it is a living document which means it changes as the needs of the student changes. (Testimony of Respondent's Occupational Therapist). If the sensory diet was included in the IEP, any changes would require convening an IEP team to review, which would take time. Furthermore, as discussed previously, the student is

showing progress toward her IEP goals as noted during the annual IEP review meeting conducted in May of 2014. I conclude therefore that DCPS did not deny Student a FAPE by failing to develop an appropriate IEP following the January 23, 2014 eligibility meeting.

(2) Whether the public agency failed to timely implement the student's February 18, 2014 IEP.

The parent further contends that the student was denied a FAPE because Respondent failed to timely implement the student's February 18, 2014 IEP. I find that Petitioner has not met her burden of proof on this issue.

To constitute a denial of FAPE, a material failure to implement a student's IEP must be shown. *Banks ex rel. D.B. v. District of Columbia*, 720 F. Supp. 2d 83, 88 (D.D.C. 2010). In the case at bar, Respondent received the signed consent from petitioner on or about February 25, 2014 and the IEP was implemented within one month. One month does not constitute a material failure and the student showed progress once the IEP services were implemented. I conclude therefore that DCPS did not deny Student a FAPE by failing to timely implement the student's February 18, 2014 IEP for one month.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

(1) All requested relief by Petitioner in this matter is DENIED.

**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).

07/16/14

Dated

**Christal E. Edwards /s/**

Christal E. Edwards, Esq.

Hearing Officer