DISTRICT OF COLUMBIA

Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

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OSSE
STUDENT HEARING OFFICE
2019 FEB 12 PM 3:03

Confidential

STUDENT[1], by and through parent, Petitioner, *vs.* District of Columbia Public Schools, Respondent.	**HEARING OFFICER'S DETERMINATION** Counsel for Petitioner/Parent: Domiento C.R. Hill, Esq. Asst. Attorney General for DCPS: Candace Sandifer, Esq. Hearing Officer H. St. Clair, Esq.

[1] Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

On October 1, 2008, a Hearing Officer's Determination/Decision (HOD) was issued in this matter wherein DCPS was ordered to complete a classroom observation of the student, fund certain independent evaluations and reconvene the MDT within 15 schooldays of receipt of the last evaluation; compensatory education, *inter alia*, was to considered at the said MDT meeting.

On January 6, 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) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to assess the student in all areas of suspected disability, violated the October 1, 2008 HOD and, for relief, requested a neuropsychological evaluation and an MDT meeting.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 1:00 P.M., Tuesday, February 3, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4A, Washington, D.C. 20003. The hearing convened as scheduled.

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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. **Did DCPS fail to assess the student in all areas of suspected disability?**
2. **Did DCPS fail to review independent evaluations of the student?**
3. **Did DCPS violated the HOD issued in this matter October 1, 2008?**

FINDINGS of FACT

By facsimile dated January 27, 2009, the parent disclosed 9 witnesses and 20 documents.

By facsimile dated January 27, 2009, DCPS disclosed 9 witnesses and 4 documents.

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

Counsel for the Parent WITHDREW issue 2.

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

1. On October 1, 2008, an HOD issued in this matter wherein DCPS was ordered to complete a formal classroom observation of the student, to fund a comprehensive psychological evaluation and a social history of the student and to reconvene the MDT within 15 schooldays of receipt of the last evaluation. At the MDT meeting, the team was to review evaluations, the IEP and placement; compensatory education, *inter alia*, was also to be considered at meeting.

2. The independent October 14, 2008 Social History recommended a psychiatric evaluation of the student and either a neurological or neuropsychological evaluation and was delivered to DCPS on November 2, 2008.[2]

3. DCPS failed to complete the formal classroom observation; the independent observation was delivered to DCPS December 3, 2008.[3]

4. The last evaluation was delivered to DCPS on December 3, 2008.[4]

5. The ordered MDT meeting should have convened on or before December 24, 2008, the 15th school day, not charging the delay caused by the DCPS failure to complete the formal classroom observation.

6. The MDT was scheduled to meet on December 22, 2008 but was cancelled by DCPS on December 22, 2008.

7. The MDT did convene on January 13, 2009 but did not review the IEP nor discuss and determine compensatory education or resolve the recommended neurological or neuropsychological evaluation issue for the student. The MDT recommended a psychiatric evaluation and a functional behavioral assessment of the student. At the hearing, DCPS was unable to address that status of either of the evaluations/ assessments mentioned in this paragraph.

8. At the hearing, Counsel for the Parent, between the neurological

[2] Parent Document No 5
[3] Par. Doc. No 7
[4] *ibid*

or neuropsychological evaluations, elected the neuropsychological evaluation.

CONCLUSIONS of LAW

ONE & THREE

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 fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement.

Moreover, DCPS is required to perform as ordered in HODs and as agreed in Settlement Agreements. See *Blackman/Jones Consent Decree*, C.A. 97-1629 (PLF) consol'd with C.A. 97-2402 (PLF).

DCPS violated the October 1, 2008 HOD. DCPS did not convene the MDT within allotted 15 schooldays, or on or before December 24, 2008. Admittedly, DCPS tried to convene the MDT meeting before December 24, 2008 and did convene the team on January 13, 2009, but the timeline was extended as DCPS failed to complete the formal classroom observation as provided in paragraph 1 of the October 1, 2008 Order. Moreover, at the January 13, 2009 meeting, the issue between the neurological or neuropsychological evaluations was not resolved.

SUMMARY of the DECISION

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

ORDER

1. Within 30 days hereof, DCPS will have completed psychiatric and neuropsychological evaluations of the student along with a functional behavioral assessment. DCPS failing the said evaluation schedule, the parent is authorized to arrange independent evaluations for which DCPS will pay according to Superintendent's Directive 530.6. Within 20 schooldays of completion/receipt of the last evaluation report, DCPS will convene an MDT/IEP/Placement meeting during which evaluations will be reviewed, the IEP

reviewed and revised as appropriate and placement discussed and determined. If a DCPS placement is recommended, a Notice of Placement will be issued within 5 schooldays of the said meeting; if a non-public placement is recommended, a Notice of Placement will be issued within 30 days of the said meeting.

2. At the said MDT/IEP/Placement meeting, the form, amount and delivery of compensatory education, if any, will be discussed and determined. For disputes under this paragraph, either party may request a hearing.

3. For the said MDT/IEP/Placement meeting, scheduling is to be through and notices are to be sent to Counsel for the Parent except that, for everyday of unavailability of parent/ educational advocate/Counsel for the Parent, the deadline herein will be extended one day. In the event of independent evaluation(s) sent to DCPS, Counsel for the Parent will verify by telephone the receipt of the evaluation report copy(ies) by the DCPS person addressee. For disputes under this paragraph, documentation of the parties will be relied upon to determine the good faith of each party.

Dated this 12th day of February, 2009

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.