

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

1150 Fifth Street, SE
Washington, D.C. 20003
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Confidential

OSSE
STUDENT HEARING OFFICE
2009 APR 23 AM 10:57

STUDENT,¹ by and through Parent,

Petitioner,

VS.

the District of Columbia Public Schools,

Respondent.

**HEARING OFFICER'S
PRE-HEARING ORDER**

Counsel for Petitioner/Parent:
Fatmata Barrie, Esq.

Assist. Attorney General for DCPS:
Nia Fripp, Esq.

Impartial Hearing Officer
H. St. Clair, Esq.

1 of 4 pages

¹ Identifying personal information is attached to this Pre-hearing ORDER as Appendix A and must be detached before public distribution.

1. Pre-Hearing Conference Participants: The Pre-Hearing Conference (PHC) was completed telephonically during the afternoon of Wednesday, April 15, 2009. Counsel for the Parent, the assigned Asst. Attorney General and the undersigned participated.

2. JURISDICTION: The PHC convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

3. INTRODUCTION: On March 31, 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), on behalf of the parent and student complaining the District of Columbia Public Schools (DCPS) denied a Free Appropriate Public Education (FAPE) to the student. Allegations are formulated into issues as set out below in paragraph 11. For relief, independent evaluations, an MDT meeting and a private placement were requested.

4. The Parties waive the resolution session.

5. RESPONSE: On April 9, 2009, the LEA filed a Response in this matter DENYING the allegations.

6. A Notice of Insufficiency was not filed.

7. MOTIONS: A motion for Expedited Hearing was filed but was withdrawn April 17, 2009. As of the PHC the student had been returned to his educational placement.

8. Amendments to the Complaint were not filed and must be authorized by the undersigned.

9. Student Discipline was an issue in this matter.

10. Settlement and Mediation were discussed with the parties; while each had a position for settlement, each was convinced that the other's was unjustifiable and unfounded in the law.

11. The ISSUES for hearing are:

1. Did DCPS fail to convene a manifestation determination

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review(MDR) after initiating the January 27, 2009 suspension?

2. Did DCPS fully assess the student for the Other Health Impaired (OHI) and Emotional Disturbance (ED) disability codings?
3. Does the student have a current IEP?
4. Were the IEPs over the past two years appropriate?

12. WITNESSES will be as disclosed. If a party contemplates additional witnesses after disclosure, that party will immediately notify the opposing party and the hearing officer of each additional witness and the anticipated scope of the their respective testimonies.

13. DISCLOSURES will comply with the 5-Day Disclosure Rule setout at 34 CFR 300.512(a)(3). Disclosures will be tabbed and in chronological order, either forward or reverse. Counsel will not be allowed to put on a case if their disclosure is neither in the Student Hearing Office file nor delivered to the hearing officer at the time of hearing. To introduce undisclosed documents during the hearing, the offering party shall have copies for the opposing party and the hearing officer. Stipulations not setout herein will be stated at the hearing.

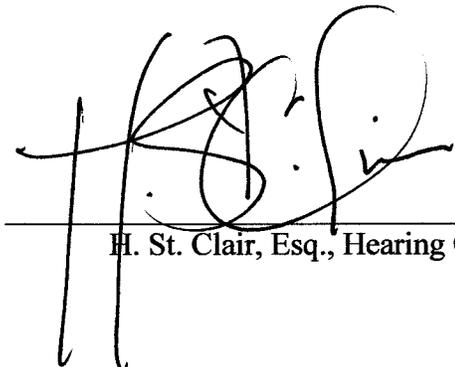
14. MOTIONS for CONTINUANCES will be disposed in accordance with the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures (SOP), Sec. 402 and Paragraphs 31 & 32 of the *Blackman/Jones Consent Decree*. In addition and regardless of opposition, a party moving for a continuance shall first obtain from opposing counsel(s) two (2) agreed upon dates and times for the continuation and file a written motion for continuance with the SHO containing the two agreed upon dates and times. The SHO will forward a copy of the motion via the OSSE docketing system to the hearing officer who, in the case of the unopposed motion, will issue an Interim Order on Continuance Motion selecting one of the agreed upon two dates and times. In the event of opposition from opposing counsel(s), the hearing officer will decide the motion and, provided the motion is granted, issue an Interim Order on Continuance Motion selecting one of the two agreed upon dates and times.

15. The hearing: The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Tuesday, May 5, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Washington, D.C. 20003. During the PHC, Counsel for the Parent indicated a preference for a closed hearing; still, at the hearing the parent can chose an open hearing. Four hours are allotted for the hearing. Petitioner will have the burden of proof as to each of the above setout issues; the burden is by the preponderance.

16. ORDER: The hearing will convene as scheduled in Paragraph 15.

17. Revision of this ORDER: Counsel will be held to the matters agreed upon, ordered or otherwise set forth herein. If either party believes the hearing officer in this ORDER has overlooked or misstated any item, that counsel is directed to advise the hearing officer in writing of same within three (3) business days of the date of his ORDER with a copy to opposing counsel.

Dated this 23rd day of April, 2009



H. St. Clair, Esq., Hearing Officer

This is an INTERIM ORDER.