

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
APR -2 PM 4: 10

Confidential

<p>STUDENT¹, by and through parent, Petitioner, <i>vs.</i> District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Tracy Riller Givens, Esq.</p> <p>Asst. Attorney General for DCPS: Kendra Berner, Esq.</p> <p><u>Impartial 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

On January 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) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to complete a triennial reevaluation of the student and failed to provide an appropriate IEP and educational placement for the student. For relief, a triennial reevaluation and an MDT meeting were requested.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for March 2, 2009 that, on Petitioner's unopposed motion, was rescheduled for 9:00 A.M., Thursday, March 26, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 6B, Washington, D.C. 20003. The hearing convened as rescheduled.

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 complete a triennial reevaluation of the student?**
 - 2. Was the April 14, 2008 IEP appropriate for the student?**
 - 3. Was _____ School an appropriate educational placement for the student?**

FINDINGS of FACT

By facsimile dated February 23, 2009, the parent disclosed 1 witness and 6 documents.

By facsimile dated March 17, 2009, DCPS disclosed 8 witnesses and 4 documents.

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

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

1. The April 10, 2008 IEP disability coded the student Learning Disabled (LD)/ Emotionally Disturbed (ED) with 8.5 hours of special education services in a 27% Out of General Education Setting.²
2. The student's July 1, 2004 Confidential Psycho-educational Evaluation³ diagnosed three Axis I Mental Disorders and became 3 years old on July 2, 2007.
3. DCPS completed an educational evaluation⁴ of the student on December 7, 2006 and a speech/language⁵ evaluation on January 5, 2007.
4. To date, DCPS had not completed a triennial reevaluation of the student specifically directed to the student's ED disability coding.

CONCLUSIONS of LAW

ONE

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.

The student was disability coded LD/ED. While DCPS reevaluated the student's achievement and speech, in a period just less than 5 years, they did not reevaluate his social/emotional being.

At regulation 34 CFR 300.303(a)(2), a student's teacher or parent can request a reevaluation. At paragraph (b) of the same regulation, limitations on paragraph (a) are setout. The second limitation reads:

(b) *Limitations.* A reevaluation conducted under paragraph (a) of this section –

(2) Must occur at least once every three years, unless the parent and the public agency agreed that a reevaluation is unnecessary.

Because this regulation contains its limitations, it's limited only by the

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² Parent Document No 3

³ Par. Doc. No 2

⁴ DCPS Doc. No 2

⁵ DCPS Doc. No 1

limitations, and the general proscription at 34 CFR 300.513(a)(2) is immaterial to their applicability. Still, applying 34 CFR 300.513(a)(2), because evaluations support the student's disability coding and IEP, evaluations more than three years old impede a student's right to a FAPE: the student could no longer be ED, more so, or less so.

TWO

The April 10, 2008 IEP was inappropriate as it did not include an update of the student's ED disability coding since July 1, 2004, more than 3 years past.

THREE

After a triennial reevaluation, the MDT may determine that _____ is an appropriate educational placement for the student. Issue 3 is mooted.

SUMMARY of the DECISION

DCPS failed to maintain a current status of the student's ED disability coding. The parent was the prevailing party in this matter.

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

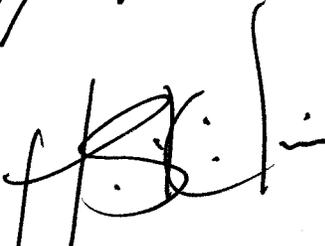
ORDER

1. According to Superintendent's Directive 530.6, DCPS will fund an independent functional behavior assessment (FBA) along with a comprehensive psychological evaluation to include a social/emotional component. Any supplemental evaluation recommended in the above must be further recommended by the MDT. Within 15 school/business days of receipt of the last assessment/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 school/business days 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 2nd day of April, 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.