

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

Office of Dispute Resolution  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

---

PETITIONERS,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: February 9, 2015

Petitioners,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Office of Dispute Resolution,  
Washington, D.C.

Respondent.

---

**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioners (the Petitioners or PARENTS), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and District of Columbia Municipal Regulations (DCMR), Title 5-E, Chapter 5-E30 and Title 5-B, Chapter 5-B25. In their Due Process Complaint, Petitioners allege that Student has been denied a free appropriate public education by the failure of PUBLIC CHARTER SCHOOL to evaluate him for special education eligibility. The Petitioners also alleged that PCS violated the IDEA by suspending Student for more than 10 school days this school year, without Student's receiving the protections required for a child with a suspected

---

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

disability. On the motion of DCPS, I dismissed the latter claim, after concluding there was no genuine issue of material fact that Student had not been suspended for more than 10 days in the current school year. *See* Decision and Order on Respondent's Motion to Dismiss in Part Parents' Administrative Due Process Complaint Notice (Dec. 12, 2014).

Student, an AGE youth, is a resident of the District of Columbia. Petitioners' Due Process Complaint, filed on November 19, 2014, named DCPS as respondent. The undersigned Hearing Officer was appointed on November 20, 2014. The parties met for a resolution session on December 3, 2014 but were not able to reach an agreement. On December 2, 2014, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on February 6, 2015 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on a digital audio recording device. The Petitioners appeared in person and were represented by PETITIONERS' COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

At the beginning of the due process hearing, DCPS' Counsel made an oral motion to dismiss the due process complaint on the grounds that since the complaint was filed, DCPS had conducted special education evaluations of Student and an initial eligibility meeting was scheduled for later this month. For reasons explained on the record, I denied DCPS' motion to dismiss.

Petitioners, FATHER and MOTHER, testified and called SCHOOL PSYCHOLOGIST their only other witness. DCPS called PCS SPECIAL EDUCATION COORDINATOR (SEC) as its only witness. Petitioners' Exhibits P-1 through P-21 were admitted into evidence without objection. DCPS' Exhibits R-1 through R-9 were

admitted into evidence, including Exhibit R-2 which was admitted over the Petitioners' objection. Exhibits R-10 and R-11 were not offered. Counsel for the Petitioners made an opening statement. Counsel for the respective parties made closing argument. Neither party requested leave to file a post hearing brief.

### **JURISDICTION**

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

### **ISSUE AND RELIEF SOUGHT**

The issues remaining to be resolved in this case, and relief requested, are:

- Whether DCPS violated the IDEA and denied Student a FAPE by failing to ensure that in the current school year at PCS, he was evaluated in all areas of suspected disabilities and failing to identify Student as a child with a disability;
- Whether DCPS denied the Student FAPE by failing to provide him an appropriate special education placement and appropriate related services.

For relief, Petitioners seek an order for Student to be comprehensively evaluated in all areas of suspected disabilities, for Student to be determined eligible for special education and related services and for an appropriate Individualized Education Program (IEP) to be developed, which will provide Student academic specialized instruction and related services. In addition, Petitioners seek a compensatory education award for the denials of FAPE alleged in the complaint.

### **FINDINGS OF FACT**

After considering all of the evidence, as well as the argument and legal memoranda of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is an AGE resident of the District of Columbia, where he resides with Parents. Testimony of Mother.

2. Student has never been determined eligible for special education and related services. Exhibit P-18.

3. For the 2013-2014 and 2014-2015 school years, Student has been enrolled in PCS. Testimony of Mother. PCS has elected to be treated as a District of Columbia public school for purposes of the IDEA. *See* 5E DCMR § 923.3. Therefore, DCPS is the Local Education Agency (LEA) for PCS. Hearing Officer Notice.

4. Student's final grades for the 2013-2014 school year were all F's, except C- in English, B in Physical Education, C in World History, C- in Algebra and B in Earth and Space Science. Exhibit P-9. Student attended summer school at PCS and was promoted to the next grade. For the first quarter of the current, 2014-2015 school year, Student received F's in all courses, except a B in Math Workshop and a Pass in Advisory. Exhibit P-10.

5. In October 2014, Father spoke with DEAN at PCS, after Dean contacted him about Student's behavior in school. Father told Dean that Student had Oppositional Defiant Disorder (ODD). Dean told Father that he would set up a meeting with SEC about an IEP for Student. Dean never followed up and, prior to the due process complaint's being filed in this case, no steps were taken to evaluate Student for special education eligibility. Testimony of Father. Father did not state which day in October he met with Dean, but from Dean's comments at the Resolution Session Meeting on December 3, 2014, it appears that the meeting would have been soon after an October 9, 2014 discipline incident, when Student received an in-school suspension for "horseplay" (after allegedly smacking another Student.) Exhibit R-2.

6. In its response to the Petitioners' due process complaint, DCPS averred it was unaware of any request that Student be evaluated and affirmed its willingness to

conduct an initial eligibility evaluation to determine if Student qualified as a child with a disability who needed special education and related services. See DCPS Response to Parents' Administrative Due Process Complaint (Nov. 26, 2014).

7. At the Resolution Session Meeting convened for this case on December 3, 2014, DCPS agreed, *inter alia*, to conduct a comprehensive psychological assessment, a Functional Behavior Assessment (FBA) and a Speech-Language (SL) assessment of Student, and to convene an IEP meeting to determine Student's special education eligibility. Exhibit R-2.

8. Mother stated at the December 3, 2014 Resolution Session Meeting that Student had been recently hospitalized for mood disorder and ODD. Exhibit R-2. Subsequent to the meeting, Mother provided Student's medical records to PCS.

Testimony of Mother.

9. A DCPS school psychologist conducted a Comprehensive Psychological Evaluation of Student on January 12, 13, 15 and 16, 2015. A DCPS SL pathologist conducted a Comprehensive Speech and Language Assessment of Student on January 8, 2015. SEC conducted an FBA of Student in January 2015. She drafted a Behavior Intervention Plan (BIP) for Student on January 16, 2015. Exhibits R-3, R-4, R-6 and R-7.

10. Beginning December 17, 2014, SEC attempted to schedule a multidisciplinary team (MDT) meeting at PCS to determine Student's eligibility for special education services. Petitioners' Counsel was not available on any of the original dates offered. Petitioners' Counsel confirmed her availability for an eligibility meeting on February 17, 2015. On January 7, 2015, PCS issued a Letter of Invitation to Mother for the eligibility meeting on February 17, 2015. Exhibit R-8.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument 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

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioners in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

### Analysis

- Did DCPS violate the IDEA and deny Student a FAPE by failing to ensure that in the current school year at PCS, he was evaluated in all areas of suspected disabilities and by failing to identify him as a child with a disability?
- Did DCPS deny Student FAPE by failing to provide him an appropriate special education placement and appropriate related services?

Student has never been determined to be eligible for special education services.

Since the Petitioners' due process complaint was filed on November 19, 2014, DCPS and PCS have conducted initial eligibility evaluations of Student, including a comprehensive psychological evaluation, a comprehensive speech and language assessment and a functional behavior assessment (FBA). An MDT meeting to determine Student's eligibility for special education services is scheduled for February 17, 2015. The remaining issue to be determined in this case is whether DCPS failed to comply with the IDEA's "child-find" requirement by not conducting an initial eligibility evaluation, and determining Student eligible, earlier in the school year.

Under the IDEA, states, as well as the District of Columbia, that receive federal

educational assistance must establish policies and procedures to ensure that a FAPE is made available to disabled children. *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005). Under the Act’s child-find requirement, the District must “ensure that ‘[a]ll children with disabilities residing in the [District] . . . who are in need of special education and related services are identified, located, and evaluated.’” *Scott v. District of Columbia*, 2006 WL 1102839, at 8 (D.D.C. Mar. 31, 2006) (quoting *Reid*); 20 U.S.C. § 1412(a)(3). “As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process.” *Long v. District of Columbia*, 780 F.Supp.2d 49, 56 (D.D.C.2011). The District must conduct initial evaluations to determine the student’s eligibility for special education services “within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment.” *Id.* (quoting D.C. Code § 38–2561.02(a)). Once the eligibility determination has been made, the District must conduct a meeting to develop an IEP within 30 days. 34 CFR § 300.323(c)(1); *G.G. ex rel. Gersten v. District of Columbia*, 924 F.Supp.2d 273, 279 (D.D.C.2013).

In this case, Father’s testimony was un rebutted that on or about October 9, 2014, Father informed Dean at PCS that Student had ODD and Dean undertook to set up a meeting with the special education coordinator about an IEP for Student. Until the due process complaint was filed in this case, no steps were taken to evaluate Student for special education eligibility. Under D.C. Code § 38–2561.02(a), DCPS was required to ensure that Student’s initial evaluations were completed by approximately February 6, 2015 (120 days from October 9, 2014). DCPS did complete its evaluations by January 20, 2015. Only the MDT eligibility meeting was delayed until February 17, 2015 to accommodate the schedule of Petitioners’ Counsel. I find, therefore, that Petitioners

have not established that DCPS' failed to ensure that the initial eligibility evaluation of Student was completed in the time period mandated by District law.<sup>2</sup>

At the due process hearing, Petitioners' Counsel argued that the evaluations of Student conducted by DCPS and PCS in January 2015 were not sufficiently comprehensive. Specifically, counsel argued that Student needed an Occupational Therapy (OT) assessment because his handwriting is poor. However, in their due process complaint, Student's only special education needs identified by the Petitioners were academic and behavioral. *See* Due Process Complaint, p. 3 (Child has been failing in school. Child has received numerous in-school detentions and five suspensions totaling over 10 days. Child is diagnosed with depression. Child is struggling to maintain relationships with peers.) Neither was there any evidence from a qualified professional at the due process hearing that Student has a suspected OT related disability. I find that the Petitioners have not established that with respect to the January 2015 initial eligibility assessments of Student, DCPS failed to ensure that Student was evaluated in all areas of suspected disabilities.

Finally, Petitioners allege that DCPS has denied Student FAPE by failing to provide him an appropriate special education placement and appropriate related services. However, the development of an IEP for Student and determination of an appropriate educational placement may happen until Student is determined to be a child

---

<sup>2</sup> A failure by DCPS to timely perform an initial eligibility evaluation would be a procedural violation of the IDEA. Procedural violations of the IDEA do not necessarily lead to a denial of FAPE. *Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 78 (D.D.C.2004). Such violations are only actionable if they compromise the student's educational opportunities or seriously infringe parents' participation in their child's education. *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C.Cir.2006); *see* 20 U.S.C. § 1415(f)(3)(E)(ii). Here, even if DCPS' evaluation of Student had been untimely, Petitioners have not shown that Student suffered any education harm as a result. *See Cooper v. District of Columbia*, 2014 WL 7411862, 3 (D.D.C. Dec. 30, 2014).

with a disability in need of special education services. *See G.G., supra.* The initial eligibility committee meeting for Student is scheduled for February 17, 2015. It is premature for the Petitioners to claim that DCPS has failed to provide appropriate services or a suitable placement.

ORDER

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

ORDERED:

All relief requested by the Petitioners herein is denied, without prejudice to their rights to seek relief for the determination hereafter, of the MDT eligibility team, pursuant to 34 CFR § 300.306, of whether Student is a child with a disability who needs special education and related services.

Date: February 9, 2015

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**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).