

BEFORE THE SPECIAL EDUCATION DUE PROCESS HEARING PANEL

DUE PROCESS HEARING FOR THE

DELAWARE COLLEGE PREPARATORY ACADEMY

IN RE THE MATTER OF:)
) DE DP 09-12
[“STUDENT”])

DECISION

The Due Process hearing for [“Student”] was heard by the Hearing Panel consisting of the following individuals: (a) Janell S. Ostroski, Esquire, Chair; (b) Doris Eason, Ph.D.; and (c) Connie Williams. The original complaint was filed with the Department of Education on or about May 11, 2009, and named both the Delaware College Preparatory Academy (herein DCPA) and the Red Clay Consolidated School District (herein RCCSD or Red Clay).

A teleconference took place on May 29, 2009, with the parties and all panel members present and various procedural matters were discussed, including but not limited to RCCSD’s Motion to Dismiss. As Mother and DCPA had not had the opportunity to file a Response, deadlines were set for them to file a Response and for the panel to consider the matter.

The hearing was scheduled for July 8, 2009, from 8:30 a.m. until 2:00 p.m. and July 9, 2009, from 8:30 a.m. until 4:30 p.m. At the request of the panel chair, the parties agreed to submit their closing arguments in writing three (3) business days after receipt of the final transcripts. Closing arguments were due July 21, 2009.

The following individuals were designated as representatives of the respective parties:

For Delaware College Preparatory Academy:

J. Breck Smith, Esquire
Fox Rothschild LLP
Citizens Bank Center
919 N. Market St. Suite 1300
Wilmington DE 19899

For the Red Clay Consolidated School District:

Joseph Sirbak, Esquire
Buchanan, Ingersoll & Rooney
Brandywine Building
1000 West St. Suite 1410
Wilmington DE 19801

For [“Student”]:

Leba Tolpin, Esquire
CLASI, Inc.
100 West 10th St., Suite 801
Wilmington DE 19801

REFERENCES AND DEFINITIONS

Throughout this decision the following references and definitions will be used:

1. For confidentiality reasons, [“mother”] may be referred to as “Mother” or the “parent”. [“Student”] may be referred to as “the student”.
2. The Delaware College Preparatory Academy will be referred to as DCPA.
3. Red Clay Consolidated School District will be referred to as RCCSD.
4. Exhibits will be referred to as PE-1, (Parent Exhibit 1, 2, etc.) or SE-1, (School Exhibit 1, 2, etc.)
5. References to the hearing transcript will be cited as “T-____ (date of hearing)”, e.g., T-1 (1/20/05).
6. After identifying the witnesses, they may be thereafter referred to by last name.
7. Due Process will be referred to as “DP”.
8. Free Appropriate Public Education will be referred to as “FAPE”.
9. Individual Education Plan will be referred to as “IEP”.
10. The State of Delaware Department of Education will be referred to as “DOE”.

SUMMARY OF ISSUES

The issues to be decided are as follows:

- I. Is the RCCSD a proper party in interest to these proceedings?
- II. Did DCPA and/or RCCSD violate its child find duty by failing to locate, identify, and evaluate ["Student"]?
- III. Did DCPA and/or RCCSD violate procedural provisions of the IDEA?
- IV. If DCPA and/or RCCSD failed to identify ["Student"] as a child in need of special education services, what is the appropriate remedy?

EXHIBITS

The Exhibits from both the DCPA and Mother were admitted without objection subject to examination as to the appropriate weight the documents should be given.

STATEMENT OF THE POSITIONS OF THE PARTIES

Red Clay Consolidated School District

The RCCSD asserted that it is not a proper party in interest to these proceedings and should be dismissed.

Delaware College Preparatory Academy

The DCPA agreed that RCCSD is not a proper party in interest to these proceedings and should be dismissed from these proceedings.

The DCPA further asserted that it did not fail to timely identify the student as a child in need of special education services, it did not violate procedural provisions of the IDEA, and that,

as there was no violation of child find or the IDEA's procedural provisions, the complaint should be dismissed.

Mother

Mother asserted that RCCSD is a proper party in interest to these proceedings and should not be dismissed.

Mother further asserted that the District failed to identify the student as a child with a disability and that DCPA violated procedural provisions of the IDEA. Mother asserted that the appropriate remedy is for DCPA to reimburse her for the cost of the independent evaluation, for the panel to identify ["Student"] as a child in need of special education services without further evaluation, and for DCPA to provide compensatory services for the period of time that ["Student"] was denied FAPE.

FINDINGS OF FACT

1. RCCSD authorized the charter for DCPA.
2. DCPA has its own board, legal counsel, real property, and contracts separate from RCCSD.
3. The 2008-2009 school year was the first school year that DCPA was open to students and enrolled kindergarten and first grade students only.
4. DCPA was founded upon a structured, disciplined, and academically rigorous environment where students have daily access to multiple instructors.
5. Mother applied to DCPA for ["Student"] on or about August 24, 2007.
6. Mother submitted a student data sheet to DCPA on or about March 15, 2008.

7. On the student data sheet Mother indicated that [“Student”] had been diagnosed with ADHD (attention deficit hyperactive disorder), ODD (oppositional defiant disorder), and mood disorder. Mother also indicated that [“Student”] did not have an IEP, a 504 Plan, a learning disability, or physical disability.
8. According to DCPA’s attendance records, the 2008-2009 school year started on August 25, 2008.
9. According to school records, [“Student’s”] behavior problems began on or about August 26, 2008, the second day of school, when [“Student”] became frustrated and destructive after being repeatedly asked to do his class work. He was running around the classroom and throwing stuffed animals. When he was removed from the classroom for this behavior, he became violent and started to hit and kick his teacher. He also bit her on the wrist and leg, breaking the skin. DCPA called Mother in for a conference and [“Student”] was sent home early that day.
10. Mrs. [“Dean”] testified that she called Mother on a daily basis regarding [“Student’s”] behavior and that she had Mother’s number on speed dial by the end of the first week of school.
11. On September 16, 2008, school records indicated that [“Student”] was displaying extremely aggressive and destructive behavior. When being removed from the classroom, he was hitting and kicking the teacher. He was sent to the Dean’s office to calm down. When he returned to the class room, he became disruptive again after a very short period of time and had to be removed again. When being removed the second time, he became very frustrated and started screaming and kicking and tried to bite the teacher. Mother was called. [“Student”] was sent home early that day and suspended for the next

day.

12. On September 24, 2008, ["Student"] refused to sit and do his work, was very loud, and was disruptive to the class. He was removed from the class to calm down and he became destructive and violent taking objects in the supply room and throwing them. He kicked and hit the teacher and bit her arm, breaking the skin. Mother was called and a conference was held with Mother, Mother's fiancé, ["Student's"] aunt, ["Student's"] two teachers, a Dean and the Executive Director of DCPA. According to school records, they discussed releasing him from DCPA to seek an alternative placement to better meet his needs for a smaller and less stimulating school environment. ["Student"] was suspended for two days for this behavior.
13. Despite the discussion of alternative placement, there was no evidence presented that, at this time, the school discussed having ["Student"] evaluated for special education services or provided Mother with Prior Notices or Procedural Safeguards.
14. After the aforementioned incidents, ["Student's"] violent behavior continued. He once bit a teacher so badly that she was treated medically and may need hand surgery to repair the damage. He punched another teacher in the pelvic area and she was required to have medical treatment. He ran from Dean ["Dean"] who tried to catch him, Dean ["Dean"] fell, and needed to medical treatment for bruised ribs. At times, he would be put in a secluded room with no furniture and just one teacher watching him to keep him safe for hours at a time. He hit, kicked, and bit teachers. He ran and hid from teachers and staff. He threw chairs and other objects. His behavior was uncontrollable and he was unresponsive to direction. His mood varied from over-the-top happy to almost depression like.

15. According to school records, ["Student"] was suspended for a total of 25 days from August 25, 2008, through December 2, 2008, when attendance records ended inexplicably. In addition to the days ["Student"] was suspended, he was sent home early an additional 11 days because of his behavior.
16. Teachers and administrative staff feared for their safety and the safety of other children.
17. ["Student"] was not the only student who had behavior problems at DCPA.
18. DCPA staff testified that they were trying interventions to control ["Student's"] behavior. The evidence indicates that the interventions appear to have included more 1:1 time with teachers, removing ["Student"] from the class room, allowing Mother to come to school and sit with the child, and meeting with Mother to discuss options. DCPA also frequently suspended ["Student"] but denies that this course of action was an intervention. There is no written documentation of the interventions that DCPA was using or ["Student's"] responses to such interventions. There is no documentation of team meetings to design the interventions.
19. There was no nurse on staff at DCPA for the months of August and September. There are nurse's notes in school records indicating that ["Student"] saw the nurse from October 1-6, 2008, and October 20, 2008, through November 5, 2008. However, ["Student"] needed medication every day.
20. Dean ["Dean"] testified that DCPA had no special education teacher on staff, never provided ["Student"] with a functional behavior assessment, never implemented a behavior intervention plan, and did not have an educational diagnostician, school counselor, school psychologist, or behavior specialist on staff or retainer while she was employed by DCPA. Dean ["Dean"] Ray gave her notice on or about October 8, 2008,

and left employment at the school on November 7, 2008, because she felt completely physically and mentally exhausted and abused.

21. The testimony was that Mother was cooperative with DCPA, responded when they called her, and offered suggestions on how to deal with her son's behavior including giving the school pamphlets from Delaware Guidance Services, Inc. where he son was receiving services.
22. Mother's testimony was that by the end of September, 2008, she was exploring other schools for ["Student"] because she thought that DCPA might not be the right school for him. This testimony coincided with the school's records on September 24, 2008, that there was a conference where it was discussed that an alternative placement might better meet his needs.
23. Mother contacted the Christina School District, which is the school district where ["Student"] would attend if he were not in a charter school, but Christina told her that they would not accept ["Student"] for one school year because he was enrolled in a charter school for one school year.
24. Mother advised DCPA that Christina would not accept ["Student"].
25. ["DCPA Administrator"] told Mother that she would explore options for ["Student"].
26. ["DCPA Administrator"] later advised Mother that there was an alternative school in the RCCSD that might be a good fit for ["Student"] and gave Mother the contact information.
27. Mother testified that she called the alternative school and was advised that they didn't know ["DCPA Administrator"] or anything about ["Student"].
28. Mother called ["DCPA Administrator"] back and advised her that the alternative school

did not know anything about her son and asked for more help. [“DCPA Administrator”] testified that she told Mother that Mother needed to sign a consent for [“DCPA Administrator”] to release information to the school.

29. Mother testified that [“DCPA Administrator”] called her about 6:00 p.m. on a Friday night in November and was told that [“Student”]’s suspension was being extended and that the Board of Directors of DCPA was considering expelling [“Student”]. DCPA denied saying that [“Student”] was going to be expelled. Mother’s testimony is consistent with school records in that records included a letter from DCPA to Mother dated November 7, 2008¹. The letter indicated that [“Student’s”] suspension was being extended pending further review of his file. However, said letter does not say he was being expelled.
30. [“Student’s”] attendance records end on December 2, 2008.
31. [“DCPA Administrator”] testified that she believed that Mother had enrolled [“Student”] in another school. DCPA never received notice from another school requesting [“Student’s”] records. DCPA did not confirm that [“Student”] was enrolled in another school and did not file a truancy action against Mother for failing to bring [“Student”] to school.
32. Mother testified that she tried to call DCPA after [“Student”] stopped attending school but she never received a return phone call. Mother admitted that she voluntarily stopped sending [“Student”] to school after December 2, 2008, without receiving a Notice of Expulsion.
33. [“Student”] is Mother’s oldest child and Mother has never had any experience with IDEA

and a school's requirement to provide FAPE.

34. Mother contacted CLASI, Inc, in December, 2008, for assistance.
35. Mother attempted to obtain ["Student's"] records from DCPA but did not receive them until late March, 2009.
36. Mother, through her counsel, requested DCPA perform an evaluation of ["Student"] through a letter dated April 2, 2009.
37. Mother, through her counsel, filed for due process on or about May 11, 2009.
38. DCPA filed an answer to the due process complaint indicating its willingness to perform an evaluation of ["Student"].
39. As of the start of the due process hearing on July 8, 2009, DCPA had not performed an evaluation of ["Student"] nor had they provided Mother a Permission to Evaluate showing their intent to perform such an evaluation.
40. There is no evidence that DCPA ever provided Mother with Prior Notices or Procedural Safeguards.
41. Mother had an independent psychological evaluation of ["Student"] done by Abraham J. Mensch, Ph.D., on July 3, 2009. Dr. Mensch is a Delaware licensed psychologist, is not a certified school psychologist, and testified that he does not have experience in education other than advising school teams on highly restrictive placements for children who have neurological impairment and emotional disturbance. Dr. Mensch testified that in his opinion ["Student"] would qualify for special education services under the category of either emotional disturbance or other health impairment. Dr. Mensch's report did not include information on academic skills or readiness skills and did not provide a

1 After reviewing a 2008 calendar, the panel confirmed that November 7, 2008, was a Friday.

functional behavior assessment or behavior plan targeting the most serious behaviors.

No recommendations for the school were found in the report.

DISCUSSION

1. Is RCCSD a proper party in interest to these proceedings?

Before the panel was Red Clay Consolidated School District's (RCCSD) Motion to Dismiss alleging that RCCSD was not a proper party in interest to the above captioned proceeding. Counsel on behalf of ["Student"] filed a Response in opposition to the Motion. Counsel for RCCSD then filed a Reply to Petitioner's Response. Finally, DCPA filed a Response to the Motion indicating that DCPA did not oppose RCCSD's motion to be dismissed.

The panel reviewed the above pleadings and convened on June 17, 2009, to discuss the matter. The panel decided that it wanted to review a copy of the charter agreement between RCCSD and DCPA, requested a copy of the agreement, reviewed the information provided by RCCSD, and reconvened on June 24, 2009, to discuss the matter.

In this case, DCPA's charter was authorized by the RCCSD and, therefore, RCCSD oversees DCPA. It is undisputed that other than authorizing the charter, RCCSD has no control over DCPA. DCPA has its own Board, legal counsel, real property, and contracts. Having the authority to oversee a charter is different than having liability for DCPA's actions. Delaware law is clear that "...the approving authority of a charter school shall have no liability for the actions or inactions of a charter school." 14 Del. C. §504(d). In this instance, DCPA is acting as its own Local Education Agency (LEA) and not an LEA of RCCSD. 34 C.F.R. 300.209. 14 DE Admin Code 924.9.0.

Furthermore, by its own charter application, DCPA agreed to be responsible for identifying, evaluating, accommodating, and reevaluating students with special needs. RCCSD approved the charter application in its final format which included DCPA having this responsibility.

Therefore, RCCSD and DCPA have agreed that DCPA has this responsibility and not RCCSD.

For the foregoing reasons, the panel finds that RCCSD is not a correct party in interest to these proceedings and was dismissed from the proceedings on or about June 25, 2009.

II. Did DCPA and/or RCCSD violate its child find duty by failing to locate, identify, and evaluate [“Student”]?

The IDEA requires a local public school district to develop an Individualized Education Program (“IEP”) that is designed to ensure FAPE for every child identified as eligible for special education due to a disability,. *S.H. v. State-Operated Sch. Dist. of Newark*, 336 F.3d 260, 264 (3d Cir. 2003). But first, in order to be eligible for an IEP, a child must qualify for services as a child with a disability as defined by state law. 20 U.S.C.A. § 1414(d)(1)(A). “The IDEA’s ‘child find’ provision requires a school district to have a system in place for the identification, location, and evaluation of all disabled children in the district, who regardless of the severity of their disabilities,...are in need of special education and related services.” 20 U.S.C § 1412(a)(3); 14 Del. C. §3122; *Anello v. Indian River Sch. Dist.*, 52 IDELR 11 (Del. Fam. Ct., February 6, 2009). In this case, DCPA has the responsibility of identifying children who are in need of special education services in its school as this panel found that DCPA was its own LEA. The school has a duty to identify a child once they have a suspicion that the student has a disability and to identify the child within a reasonable amount of time. *W. B. v. Matula*, 67 F.3d 484 (3d Cir. 1995). The duty to “child find” a student who is in need of special education services falls

squarely upon the district – not the parents. The duty to timely identify a disabled child is, therefore, not discharged merely because the child’s parents do not explicitly request special education services. *Hicks v. Purchase Line School Dist.*, 251 F. Supp. 2d 1250 (W. D. Pa. 2003).

The Delaware Department of Education has issued the *Administrative Manual for Special Education Services* (“*AMSES*”), as a means to satisfy the state’s responsibilities under the IDEA. *AMSES* at Preface. Pursuant to *AMSES*, a “child with a disability” means:

[A] child evaluated in accordance with [the provisions of *AMSES*] as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment, including blindness, serious emotional disturbance..., an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

AMSES, at 25; *see also*, 20 U.S.C. § 1401(3)(A).

In the case at bar, the child entered DCPA on the first day the school opened on August 25, 2008. By August 26, 2008, the second day of school, DCPA had called Mother to discuss [“Student’s”] disruptive behavior and sent [“Student”] home for the day. This practice continued as the school year progressed. Mrs. [“Dean”] and Mother both testified that Mother was called every day regarding [“Student’s”] behavior and was often asked to pick [“Student”] up from school early.

The attendance records were somewhat confusing but it was clear that DCPA began suspending [“Student”] on or about September 15, 2008, approximately three weeks into the school year. He was suspended again on September 23, 2009, for two days. The suspensions continued almost weekly until the child had been suspended a total of 25 days and sent home early an additional 11 days. Furthermore, there was testimony that on the days that [“Student”]

was not sent home, his behavior was so disruptive that he had to be removed from the classroom and placed in a secluded room for him to work out his temper tantrums. Sometimes, these tantrums could last for hours at a time. The tantrums included violent behavior such as throwing chairs and other things within the child's reach; hitting, kicking and biting teachers; screaming; and running and hiding from teachers and staff. On three separate occasions, a teacher or staff member was sent for medical treatment after being injured by ["Student"]. The teachers and staff were afraid for their safety and the safety of the other children. DCPA had no nurse on staff for the beginning of the school year, did not have a special education teacher on staff, did not have an educational diagnostician, and did not have a school counselor, school psychologist, or behavior specialist on staff or retainer.

DCPA argues that because Mother did not supply them with copies of records from ["Services"], Inc. and the ["Psychiatric"] Center, they had no way of knowing the extent of this child's problems at this early stage of the school year. DCPA's argument is simply not reasonable. Without the records, it might have been reasonable to believe that the school might not have known the extent of ["Student's"] problems in the first few weeks of school. However, once the child started throwing temper tantrums, exhibiting severe mood swings, and having behavior problems that caused injury to staff and required him to be repeatedly removed from the class room and suspended from school, it should have been obvious to the school that this child could have been suffering from more than simple behavior or transition issues. At this point, DCPA should have recommended that he be evaluated based on their own observations.

DCPA further argues that it was applying the Response to Intervention (RTI) method and that's why it had not referred ["Student"] for an evaluation. The interventions that DCPA indicated it had used were more 1:1 time with a teacher, removing him from large classes,

secluding him to allow him to work out his tantrums, and meeting with Mother to discuss options and medications.

Again, DCPA's argument is simply not reasonable. RTI requires a written plan for a child with meetings to discuss the interventions and the child's progress with respect to the interventions. Once a child fails to respond to one tier of interventions, additional meetings are held and new interventions are created. DCPA had no record of such a plan for ["Student"].

["Student's"] behavior alone should have been sufficient to prompt DCPA to refer ["Student"] for an evaluation as early as September 23, 2008. In fact, school records indicated that on this date the staff and family met and discussed the possibility of an alternative school that might be better able to meet ["Student's"] needs but they never offered an evaluation.

III. Did DCPA and/or RCCSD violate procedural provisions of the IDEA?

The evidence was undisputed that DCPA never gave Mother Prior Notices or Procedural Safeguards pursuant to 14 DE Admin. Code §§925 and 926. Regardless of when DCPA should have had reason to suspect ["Student's"] disability, it is clear that there can be no dispute that DCPA knew Mother was requesting a special education evaluation after receiving Mother's counsel's letter of April 2, 2009. While counsel for DCPA responded to said letter, DCPA never provided an appropriate response including the Prior Notices and the Procedural Safeguards and never provided a Permission to Evaluate. As such, DCPA violated these procedural provisions of the IDEA.

IV. If DCPA and/or RCCSD failed to identify ["Student"] as a child in need of special education services what is the appropriate remedy?

The panel has found that the DCPA failed to identify the student in a timely manner when it failed to conduct an evaluation after observing the severity of [“Student’s”] behavior in the first month of school and has further found that DCPA committed procedural violations of the IDEA by failing to give Prior Notices and Procedural Safeguards and Permission to Evaluate forms at any time during these proceedings.

Mother requests that this panel identify [“Student”] as a child in need of special education services based on Dr. Mensch’s evaluation, report, and testimony. Without addressing the issue as to whether Dr. Mensch is qualified to conduct such evaluations, the panel finds that it would not serve any purpose to identify this child solely on the basis of Dr. Mensch’s evaluation, report, and testimony. While the panel respects Dr. Mensch and all of his credentials, it finds that the report is incomplete for the purposes of educational planning in that it does not contain a functional behavior assessment and additional academic testing that would be useful to an IEP team. Furthermore, it references the needs for a speech and language evaluation. As such, even if this panel were to identify this child as one in need of special education services, more evaluations are required that a certified school psychologist will need to conduct in order for the IEP team to appropriately draft an IEP.

Therefore, the panel is declining to identify this child but is ordering DCPA to pay for a certified school psychologist from the district where [“Student”] will be attending for the 2009-2010 school year to review Dr. Mensch’s report and all records from DCPA and supplement the report with additional testing as needed. This review shall take place within thirty (30) days of this decision and all expense, if any, shall be born by DCPA. DCPA shall make its best efforts to retain the certified school psychologist who will be sitting on [“Student’s”] IEP team. If

DCPA is unable to retain the certified school psychologist who is employed by the district where [“Student”] will be attending, DCPA shall bear all expense of retaining another certified school psychologist who can perform this review prior to the start of the school year and will bear the expense of the certified school psychologist participating in the IEP meeting/s which will draft the IEP.

Furthermore, DCPA shall reimburse Mother for the cost of Dr. Mensch’s evaluation as much of it will be useful in the drafting of the IEP and would have been avoided had DCPA properly evaluated [“Student”] within a reasonable time frame. Mother’s counsel shall provide DCPA’s counsel with a copy of Dr. Mensch’s bill within thirty (30) days of the date of this Order and DCPA shall make payment therefore within thirty (30) days thereafter.

Implicit in this order is that DCPA cooperate with the school in Christina School District in all respects to assist it with quickly drafting an appropriate IEP, a Functional Behavior Assessment, and a Behavior Intervention Plan so that [“Student”] is able to receive the appropriate services as soon as possible in the upcoming school year.

Finally, we must address the issue of compensatory services. The panel found that based on [“Student’s”] behavior alone, DCPA should have recommended an evaluation as of September 24, 2008. If DCPA had acted in a timely manner from this point, it would have had forty-five (45) school days or ninety (90) calendar days to complete the evaluation or until approximately December 2, 2008, if using school days, or December 23, 2008, if using calendar days. Once eligibility had been established, pursuant to the DOE’s regulations, DCPA would have had to meet within thirty (30) calendar days of determining eligibility or by January 2, 2009, to draft an IEP. Therefore, if DCPA had acted in a reasonable manner, the panel finds that [“Student”] could have been receiving services as early as January 5, 2009, the first school day

following the expiration of the thirty (30) days. The evidence was that DCPA was in session from 7:30 a.m. until 4:00 p.m. each school day. The panel had no evidence as to how much of this time was class room instruction versus lunch, recess, and other breaks. Therefore, the panel will estimate that the child would have received seven (7) hours of instruction each day. As such, the panel finds that [“Student”] is entitled to compensatory education services in the amount of seven (7) hours per day for each school day beginning January 5, 2009, through the end of the 2008-2009 school year. The panel was given no evidence of when the school year ended for DCPA and what holidays it had since the Christmas break. Within two (2) weeks of this Order, DCPA, through counsel, shall give Mother a copy of the school year calendar so that both parties can calculate the number of school days from January 5, 2009, through the end of the school year. This number of days times seven (7) hours is the amount of hours of compensatory services DCPA shall provide to [“Student”]. If DCPA fails to provide the school calendar within two (2) weeks of this Order, the number of hours of compensatory services shall be set at 800.

Compensatory services will be in the form of Huntington Learning Center or Sylvan Learning Center, whichever is most convenient and available to the child. If neither of these centers can accommodate [“Student’s”] special needs, compensatory services shall be in the form of a state certified special education teacher who can deliver the service either at home or on the school premises where [“Student”] is attending. Services shall continue until the hours have been met or the center/tutor determines that [“Student”] is on par with his age appropriate peers and ready to enter first grade in the 2010-2011 school year. If he is on par prior to exhausting the number of hours, the compensatory services may cease. If [“Student”] is not on

par with his peers prior to the start of the 2009-2010 school year, compensatory services shall continue until the hours are exhausted.

DECISION AND RELIEF

1. For the reasons set forth above, RCCSD is not a proper party in interest and was dismissed from these proceedings.
2. For the reasons set forth above, DCPA failed to identify the student as a student in need of special education services.
3. For the reasons set forth above, DCPA violated procedural provisions of the IDEA.
4. The remedy for these findings are as follows:
 - a. DCPA shall pay for Dr. Mensch's report.
 - b. DCPA shall pay for a certified school psychologist to perform a review within thirty (30) days as set forth above.
 - c. DCPA shall cooperate with the school where ["Student"] will be attending school in the fall of 2009-2010 to assure that services are put in place as soon as possible.
 - d. DCPA shall pay for compensatory services as set forth above.

RIGHT TO APPEAL

The decision of the Due Process Hearing Panel is final. An appeal of this decision may be made by any party by filing a civil action in the Family Court of the State of Delaware or United States District Court within ninety (90) days of the receipt of this decision. 20 U.S.C. 1415 (i) (2) (A). 14 *Del. C.* Sec. 3142 (a).

Dated: 7/30/09

Janell S. Ostroski
Janell S. Ostroski, Esquire,
Chairperson

Dated: 7/30/09

Doris Eason
Doris Eason, Ph.D.

Dated: 7/30/09

Connie Williams
Connie Williams
