

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**  
**MAY 12 2011**  
Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

L.R.L., a minor by his mother and )  
next friend )  
**Shantel Lomax** )  
1307 Columbia Road, NW, Apt 301 )  
Apartment 301 )  
Washington, DC 20009 )  
202-361-2364 )  
)  
)  
)  
)  
)  
Plaintiff, )  
)  
)  
v. )  
)  
)  
**THE DISTRICT OF COLUMBIA,** )  
A Municipal Corporation )  
One Judiciary Square )  
441 Fourth Street, N.W. )  
Washington, D.C. 20001 )  
)  
Defendant )  
)  
)

Case: 1:11-cv-00883  
Assigned To : Howell, Beryl A.  
Assign. Date : 5/12/2011  
Description: Civil Rights-Non-Employ.

COMPLAINT

(for declaratory and injunctive relief, reversal of administrative order, attorneys' fees and costs)

PRELIMINARY STATEMENT

This is an action under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. § 1400 *et. seq.* and 20 U.S.C. § 1415 (i) (2) (a), seeking relief from an administrative Hearing Officer's Determination ("HOD") issued on February 14, 2011 dismissing the Parent's due process complaint. The Parent filed a Due Process Complaint against District of Columbia Public School System ("DCPS") requesting an Administrative Due Process

**RECEIVED**  
APR 29 2011  
Clerk, U.S. District and  
Bankruptcy Court

Hearing on January 28, 2011. No resolution session was convened. After a Pre-Hearing Conference held on February 11, 2011, the Hearing Officer erroneously issued a final order granting DCPS' Motion to Dismiss the Parent's due process complaint against DCPS for compensatory education. The order dismissed the Parent's claim against DCPS, the Local Education Agency ("LEA") for the child before the child was enrolled in his current LEA, although the Parent's complaint specifically and only requested compensatory education services from DCPS while they were the child's LEA, and within the two-year statute of limitations. Therefore, the Parent is appealing the Hearing Officer's February 14, 2011 final dismissal order.

### **JURISDICTION**

1. Jurisdiction of this Court is founded in the IDEIA, 20 U.S.C. § 1415 *et. seq.*
2. Plaintiffs have exhausted their administrative remedies and appeal to this Court for relief from a final order contained in an HOD dismissing the Plaintiff's January 28, 2011 Due Process Complaint.

### **PARTIES**

1. Plaintiff L.R.L. is a disabled child, as defined by the IDEIA, and is eligible to receive special education and related services.
2. Plaintiff Shantel Lomax is L.R.L.'s mother. Shantel Lomax brings this action on L.R.L.'s behalf, and in her own right.
3. At all times relevant to this action, both Plaintiffs have resided in the District of Columbia.
4. Defendant the District of Columbia Public Schools was the Local Education Agency under the IDEIA for special education purposes for this student during through the 2009-

2010 School Year, the time period for which compensatory education is requested. DCPS was also the LEA responsible for Child Find, including locating, timely identifying and determining eligibility for L.R.L., and DCPS as the LEA completed the initial eligibility process and drafted the initial Individualized Education Program (“IEP”) for L.R.L., and proposed the first special education school placement for L.R.L.

### FACTS

1. L.R.L. is a five year old child who has been diagnosed with Attention-Deficit Hyperactivity Disorder, Disruptive Behavior Disorder and low cognitive functioning. He is severely delayed in the areas of speech and language, fine and gross motor skills and in his academic functioning. His articulation is also delayed, and he is often unintelligible in his speech. L.R.L.’s most recent Speech and Language, Psychological and Occupational Therapy Evaluations show L.R.L. is severely delayed in all areas, and academically is functioning well below the Kindergarten level.
2. L.R.L. has been impacted by his multiple disabilities from an early age. The Parent reports evaluations completed as early as 2007 showed he had severe speech and language impairments. In addition, since L.R.L. began receiving educational services in 2009 at Eagle Child Daycare, he demonstrated trouble attending to tasks and trouble listening or following directions, was unable to communicate verbally with peers, and exhibited behavioral problems that included frequent temper tantrums, hitting himself, peers and teachers, banging his head and throwing things.
3. L.R.L. was referred to DCPS’ Early S.T.A.G.E.S. in March of 2009, seven months after L.R.L.’s third birthday. Prior to this referral, L.R.L. had not received any special

education services and had not been identified, located or evaluated by DCPS as required by IDEIA and the DCMR.

4. DCPS conducted a Speech and Language evaluation of L.R.L. in April of 2009. The evaluation was conducted by Ms. C. Angie Pope. The evaluation showed L.R.L.'s expressive language and auditory comprehension were delayed. The evaluator was unable to assess L.R.L.'s articulation because his speech was limited, and the evaluator noted that L.R.L. exhibited speech errors that were inappropriate given his age.
5. DCPS' Developmental Assessment of L.R.L. was completed on July 10, 2009 and was completed by Ms. Irene Taguian. The evaluation showed L.R.L. was functioning at the level of a one to two year old in all domains, or two to three years below his age at the time of the evaluation. The Developmental Assessment reported that based on these scores L.R.L. demonstrated delayed skills across all domains.
6. DCPS' Occupational Therapy Evaluation of L.R.L. was conducted on July 10, 2009 by Ms. Shanea Hale. Only one instrument was used, the Peabody Developmental Motor Scales-2, Fine Motor Subtest. L.R.L. scored in the bottom fifth to first percentile, with grasping and visual motor integration skills being a comparative weakness.
7. DCPS convened an IEP and eligibility meeting for L.R.L. on July 20, 2009, weeks before L.R.L.'s fourth birthday. DCPS found L.R.L. eligible for special education services only as a student with a Developmental Delay. Despite L.R.L.'s multiple and severe disabilities, DCPS' July 20, 2009 IEP for L.R.L. only provides him with five hours of specialized instruction in the general education setting, one hour a week of speech and language services outside of the general education setting, one hour of occupational

therapy a week outside of the general education setting, and half an hour a week of counseling services inside the general education setting.

8. DCPS issued a Prior Notice of Placement for L.R.L. to attend L.R.L.'s neighborhood school, which was Emery Elementary School. The Parent attempted to enroll L.R.L. at Emery ES but was informed that it was full. The Parent contacted Early S.T.A.G.E.S to inform them that Emery ES was full, and she needed assistance or another placement. She spoke with someone at Early S.T.A.G.E.S, and they informed her they would be in touch with another placement. They never got back to the Parent.
9. With no school placement for L.R.L. for the 2009-2010 School Year, the Parent enrolled L.R.L. at Community Academy Public Charter School ("CAPCS"), a public charter school that serves as its own LEA. The only information CAPCS had regarding L.R.L.'s special education needs were his evaluations and IEP from Early S.T.A.G.E.S.
10. L.R.L. began regularly attending CAPCS during the 2010-2011 School Year, when he was a Kindergarten aged student.
11. Immediately after L.R.L. began attending CAPCS, the Special Education Coordinator ("SEC") and his teachers noted that L.R.L. presented as severely delayed across all areas, and could not be served by the Early S.T.A.G.E.S. IEP. L.R.L.'s problems in class included academic delays, an inability to verbally respond to his peers and teachers, and violent and dangerous behavior which often was prompted by L.R.L. not being able to complete or begin academic tasks because of his delays. The Early S.T.A.G.E.S. IEP was not reasonably calculated to provide L.R.L. with educational benefit as he presented at CAPCS, and additionally the SEC noted that the hours on the Early S.T.A.G.E.S. IEP were not even sufficient to address the many goals and objectives listed on the limited

Early S.T.A.G.E.S. IEP. CAPCS also noted that the IEP goals on the Early S.T.A.G.E.S. IEP were “unattainable” for L.R.L., although they had been developed over a year earlier.

12. CAPCS convened an IEP meeting in October 1, 2010 to revise the inappropriate Early S.T.A.G.E.S. IEP to address L.R.L.’s actual needs. The CAPCS team noted that they were not sure DCPS’ disability classification of L.R.L. was appropriate, and the Early S.T.A.G.E.S. IEP’s goals were not achievable or appropriate for L.R.L. The CAPCS IEP team reported that L.R.L. was unable to complete any activity on his own, was unable to write his own name, was unable to verbally communicate at his age level, and was unable to use the toilet without assistance. The CAPCS Team increased L.R.L.’s services from seven to twenty hours a week of specialized instruction in the general education setting, and maintained the related services from the Early S.T.A.G.E.S. IEP. CAPCS revised the goals, and also noted that it was considering adding a dedicated aide for L.R.L. in addition to moving L.R.L. to another classroom where he could receive more adult supervision.
13. CAPCS reconvened on December 16, 2010 to discuss L.R.L.’s behavior and the Parent’s request for L.R.L. to be re-evaluated. CAPCS agreed to complete a Psychological, Occupational Therapy and Speech and Language Assessment, given the discrepancies between L.R.L.’s needs as assessed by Early S.T.A.G.E.S. and his needs at CAPCS.
14. During December of 2010 and January of 2011, L.R.L. continued to struggle academically and behaviorally, and was suspended out of school in early January for attacking his peers and a teacher who attempted to intervene.
15. On January 4, 2011 L.R.L. was suspended for three days due to an incident that involved him refusing to go with a teacher, and subsequently barricading himself under a desk

attacking his peers, and attempting to destroy the classroom. L.R.L. also attacked the teacher who attempted to address his behavior, scratching her and pulling her hair and cursing at her. Upon L.R.L.'s return to CAPCS, a dedicated aide was added to L.R.L.'s IEP, and CAPCS agreed to refer L.R.L. to the Office of the State Superintendent of Education for a full-time special education placement out of the general education setting in a non-public program. This referral was made on February 8, 2011.

16. A Comprehensive Psychological Evaluation was completed for L.R.L. by Dr. Johnathan Vital on January 10 and 17, 2011. As part of his assessment, Dr. Vital reviewed the Early S.T.A.G.E.S. Assessments, and conducted several tests of his own, including the Drawing a Person Test, the Children's Apperception Test (CAT), the Conner's Rating Scales-Revised (CRS-R), the Scale for Assessing Emotional Disturbance (SAED), the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), the Weschler Preschool and Primary Scale of Intelligence (WPPSI-III), and the Wide Range Achievement Test (WRAT 4). None of these tests had been administered during L.R.L.'s initial assessment for special education services by DCPS.
17. Dr. Vital found during the course of his testing that L.R.L.'s speech was often unintelligible, and his attention was also severely limited to the extent that he needed one on one assistance to complete testing.
18. Dr. Vital found that L.R.L.'s attention was severely limited and left him unavailable for learning. He also found that L.R.L. demonstrated behavioral issues and issues with aggression, that Dr. Vital postulated were at least partially related to L.R.L.'s frustration with his cognitive and academic limitations.

19. Dr. Vital's testing showed L.R.L.'s cognitive abilities were in the extremely low range, and his academic abilities were below the first percentile. Based on his testing, Dr. Vital diagnosed L.R.L. with Attention Deficit Hyperactivity Disorder and Disruptive Behavior Disorder, NOS. Dr. Vital recommended L.R.L. be placed in a small classroom setting with a dedicated aide. Nothing in Dr. Vital's evaluation indicated that any of L.R.L.'s impairments were recent, and presumably they were present during Early S.T.A.G.E.S. assessment of L.R.L., but not discovered because Early S.T.A.G.E.S. failed to comprehensively assess L.R.L. in all areas of his disability.
20. A Comprehensive Occupational Therapy Evaluation was completed by Ms. Erika M. Campbell on January 11, 2011. She administered the Beery-Buktenica Test of Visual-Motor Integration (VMI) and the Peabody Developmental Motor Scales (PDMS-2). The Early S.T.A.G.E.S. Occupational Therapy Evaluation did not include a VMI Test. Ms. Campbell found his fine motor skills were in the very poor range, his overall integration and motor skills were in the low range. Nothing in Ms. Campbell's evaluation indicated that any of L.R.L.'s impairments were recent, and presumably they were present during Early S.T.A.G.E.S. assessment of L.R.L., but not discovered because Early S.T.A.G.E.S. failed to comprehensively assess L.R.L. in all areas of his disability.
21. A Speech and Language Evaluation was conducted by Ms. Evelyn V. Freeman on February 3, 2011. Ms. Freeman administered the Clinical Evaluations of Language Fundamentals (CELF-4), Receptive One Word Picture Vocabulary Test-4 (ROWPVT-4), Expressive One-Word Picture Vocabulary Test-4 (EOWPVT-4), and the Goldman-Friscoe-2 Articulation Test (GFTA-2). None of these instruments were used in



conducting the Early S.T.A.G.E.S. evaluation, which only used the Preschool Language Scale-4<sup>th</sup> edition.

22. Ms. Freeman found that L.R.L. was significantly deficient in his expressive/receptive language, pragmatic language and articulation skills. Nothing in Ms. Freeman's evaluation indicated that any of L.R.L.'s impairments were recent, and presumably they were present during Early S.T.A.G.E.S. assessment of L.R.L., but not discovered because Early S.T.A.G.E.S. failed to comprehensively assess L.R.L. in all areas of his disability.
23. On January 27, 2011, the Parent filed a due process complaint against only DCPS requesting compensatory education as relief, and alleging as CAPCS had found that DCPS had failed to timely locate, identify, or evaluate L.R.L. pursuant to its Child Find obligations prior to his third birthday, that when DCPS finally identified L.R.L. DCPS failed to comprehensively and adequately evaluate L.R.L. in all areas of his disability, that the Early S.T.A.G.E.S. IEP was not reasonably calculated to provide L.R.L. with educational benefit, and that DCPS had also failed to provide L.R.L. with an appropriate educational placement. The complaint contained detailed information regarding L.R.L.'s issues at CAPCS and why the Parent believed they were in part due to DCPS' failure to provide L.R.L. with the initial assessments, IEP and placement he needed to receive educational benefit.
24. The Complaint was assigned to Impartial Hearing Officer James Mortenson after it was filed. Opposing counsel for DCPS was Ms. Linda Smalls.
25. On February 7, 2011, DCPS filed a Motion to Dismiss the Complaint. The Motion to Dismiss was two pages long, and only stated that DCPS was no longer the LEA for L.R.L. and all relief should be denied. DCPS did not present argument as to why DCPS

should not be held liable for compensatory education services as a result of DCPS' denial of a FAPE to L.R.L. prior to his enrollment at CAPCS.

26. The Parent filed an Opposition to DCPS' Motion to Dismiss on February 9, 2011, further elaborating on the legal foundation for the Parent's compensatory education claims against DCPS, and arguing that DCPS had not met the standard for a Motion to Dismiss.
27. Hearing Officer James Mortenson convened a telephonic prehearing conference on February 11, 2011 to discuss the parties' motion and opposition. Ms. Smalls was in attendance for DCPS, and Ms. Sarah Tomkins from the Law Office of Donna L. Wulkan was in attendance for the Parent. Per order of the Hearing Officer, Mrs. Lauren Baum, counsel for CAPCS, also attended the prehearing conference.
28. At the prehearing conference, the Hearing Officer found that IDEIA did not allow the Parent to seek relief in the form of compensatory education against a prior LEA, and found that the Parent *only* had the right to file a due process complaint against the current LEA. The Hearing Officer refused further briefing of this issue.
29. The Hearing Officer issued a dismissal order on February 14, 2011, granting DCPS' Motion to Dismiss. The dismissal order notes that it is a final and appealable order.
30. The Hearing Officer's Dismissal Order contains palpable errors of fact and law.
31. The Hearing Officer misapplied and misinterpreted IDEIA, and ruled against legal precedent in dismissing the Parent's Due Process Complaint.
32. The Hearing Officer also misstates and misinterprets the record prior to the prehearing conference in his dismissal order.
33. The Plaintiffs are aggrieved by the Hearing Officer's Dismissal Order.
34. The Plaintiffs have exhausted their administrative remedies.

35. Subsequently, CAPCS convened a Location of Assignment meeting with the Office of the State Superintendent of Education. The entire CAPCS team, including the Parent, recommended L.R.L.'s educational placement be changed to a full-time special education placement, and OSSE accepted this recommendation. This meeting was convened only seven months after L.R.L. began attending CAPCS. Presumably, if he had been appropriately assessed in July of 2009, he could have begun receiving this level of service almost two school years ago.

### **COUNT I**

(Violation of 20 U.S.C. § 1400 *et. seq.*, 5 DCMR 3000 *et. seq.*)

36. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 34.

37. The IDEIA, 20 U.S.C. § 1415, mandates that Defendant provide Plaintiff with a FAPE, including an appropriate Individualized Educational Program (“IEP”) and placement.

38. Defendant failed to provide L.R.L. with a FAPE when Defendant acted as L.R.L.'s LEA. This failure further denied L.R.L. a FAPE even after L.R.L. enrolled in a different LEA, because it further delayed the provision of appropriate special education services to L.R.L., by failing to provide him with an appropriate educational placement and failing to provide him with an appropriate IEP, which left his subsequent placement without the information and programming needed to provide L.R.L. with a FAPE.

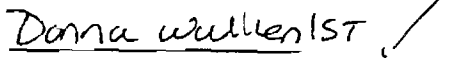
39. Defendant's failure to provide a FAPE and Due Process of Law constitutes a violation of his rights under the IDEIA.

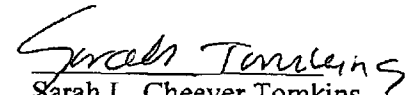
**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs pray that this court:

1. Enter declaratory judgment reversing the Hearing Officer's Dismissal Order of the Parent's Due Process Complaint;
2. Enter declaratory judgment reversing the Dismissal Order, and remand allowing the Parent to go forward with her due process complaint;
3. Award any attorneys' fees and costs for the administrative due process hearing as well as all attorneys' fees and costs for the instant action; and
4. Grant such other relief as the Court deems appropriate.

Respectfully Submitted,

  
Donna L. Wulkan  
D.C. Bar No. 370961  
Law Office of Donna L. Wulkan  
1020 16<sup>th</sup> Street, NW, Ste. 602  
Washington, D.C. 20036  
P: 202-682-3909  
F: 202-955-1015

  
Sarah L. Cheever Tomkins  
D.C. Bar No. 981590  
Law Office of Donna L. Wulkan  
1020 16<sup>th</sup> Street, NW, Ste. 602  
Washington, D.C. 20036  
P: 202-682-3909  
F: 202-955-1015