

**BEFORE THE  
DUE PROCESS HEARING OFFICER  
EMPOWERED PURSUANT TO  
THE INDIVIDUALS WITH DISABILITY EDUCATION ACT  
(34 CFR ' 303.420)**

|                                 |   |                   |
|---------------------------------|---|-------------------|
| PARENT OF A MINOR CHILD, _____, | ) |                   |
|                                 | ) |                   |
| Petitioner,                     | ) |                   |
|                                 | ) |                   |
| vs.                             | ) | 2007 - DESE - EFW |
|                                 | ) |                   |
| MISSOURI DEPARTMENT             | ) |                   |
| OF ELEMENTARY AND               | ) |                   |
| SECONDARY EDUCATION             | ) |                   |
|                                 | ) |                   |
| Respondent.                     | ) |                   |

**COVER SHEET INFORMATION**

1. The minor child, \_\_\_\_\_ (“Child”), is the son of (“Parent”). The Child was born on \_\_\_\_\_.
2. At all times material hereto, the Child apparently was eligible for and/or was receiving early intervention services from Greene County Board for the Developmentally Disabled.
3. The Department of Elementary and Secondary Education (“DESE”) received Petitioner’s Request for Due Process Hearing on December 14, 2007.
4. On October 14, 2007, DESE assigned Edward F. Walsh to serve as an impartial Hearing Officer in this cause.
5. On January 3, 2008, a due process hearing wad held in Springfield, Missouri. A written transcript of the hearing was produced and provided to both parties.
6. On January 11, 2008, the Hearing Officer issued a Decision in favor of DESE.
7. Petitioner Parent represented herself *pro se* in this cause. Assistant Attorney Generals Ronald Q. Smith and Sarah E. Ledgerwood represented DESE.

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| SECONDARY EDUCATION             | ) |                   |
|                                 | ) |                   |
| Respondent.                     | ) |                   |

**DECISION**

This is the final decision of the Hearing Officer in an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. ' 1439, and 34 CFR § 303.420 through 34 CFR § 303.425. The Hearing Officer, upon consideration of evidence and arguments presented, makes the following findings of fact and conclusions of law and issues the following decision and order:

**SUMMARY OF DECISION**

At issue is whether the Respondent Missouri Department of Elementary and Secondary Education, through its service provider the Greene County Board for the Developmentally Disabled, failed to properly identify, evaluate or place a child for service in performing an evaluation on June 25, 2007, and subsequently address the parent complaints that arose thereafter. The Hearing Officer concludes there is substantial evidence in the record presented to find in favor of Respondent on this issue.

## **FINDINGS OF FACT**

### **The Parties**

1. Petitioner is the mother of the minor child, \_\_\_\_\_ and resides in \_\_\_\_\_ County, Missouri.
2. The minor child \_\_\_\_\_ is a three-year-old male, born on \_\_\_\_\_.
3. Respondent is the Missouri Department of Elementary and Secondary Education (“DESE”). DESE is the lead agency responsible for ensuring the provision of early intervention services to eligible infants and toddlers with disabilities and their families consistent with 20 U.S.C. 1471 et seq., and 34 CFR Part 303.
4. DESE delegates to the Greene County Board for the Developmentally Disabled (“GCBDD”) to serve as the System Point of Entry (“SPOE”) for infants and toddlers in the Greene and Christian county areas.
5. Petitioner appears pro se for purposes of this hearing.
6. Respondent is represented by assistant attorney generals Ronald Q. Smith of Springfield, Missouri and Sarah E. Ledgerwood of Jefferson City.

### **Procedural History**

7. On December 14, 2007, DESE received Petitioner’s Request for a Due Process Hearing. The Request references an evaluation performed by the GCBDD on June 25, 2007, which determined eligibility.
8. On December 14, 2007, the Hearing Officer was empowered to adjudicate this dispute. No party has objected to Hearing Officer presiding over this hearing prior to or during the hearing.

9. The Hearing Officer has 30 days from the date the Request is received by DESE to render a decision pursuant to requirements of 34 CFR § 303.423 and *Missouri State Application Under Part C of IDEA, Requirement IX B Procedural Safeguards*, p. 37 (11/2006).

10. On January 3, 2008, a due process hearing was held at the Missouri State Office Building, 149 Park Central Square, Suite 1017, in Springfield, Missouri. Petitioner and Respondent did not file or otherwise raise any objections to the time, date or place for the hearing. A written transcript of the hearing was subsequently produced and provided to both parties.

### **Evidence and Witnesses**

11. Petitioner called no witnesses to testify except for herself.

12. Respondent called one witness to testify, Diana Patton, Director of the First Steps program for GCBDD.

13. Petitioner offered the following exhibits:

- a) **Petitioner's Exhibit 1** – An Excerpt from the June 25, 2007, Evaluation Report detailing the parent report for the Hearing/Attention/Behavior section. (Tr. 16, 19, 108-09).
- b) **Petitioner's Exhibit 2** – An Excerpt from the First Steps Program Parent Handbook containing pages 18 and 19 (Tr. 16-17, 19).
- c) **Petitioner's Exhibit 3** – An Excerpt from a chapter on Children's Rights (Tr. 16, 19).

14. Respondent offered the following exhibits:

- a) **Respondent's Exhibit 1** – The June 25, 2007 First Steps Evaluation Report for \_\_\_\_\_ (Tr. 48-49).
- b) **Respondent's Exhibit 2** – The June 25, 2007 First Steps Evaluation Report for \_\_\_\_\_ containing redactions (or white-outs) of information Petitioner contested (Tr. 61).
- c) **Respondent's Exhibit 3** – The Notice of Consent for \_\_\_\_\_ to be evaluated to determine First Steps eligibility, dated May 30, 2007 (Tr. 65-66).

- d) **Respondent's Exhibit 4** – A Record Amendment to the First Steps Evaluation for \_\_\_\_\_, dated July 13, 2007 (Tr. 111).
- e) **Respondent's Exhibit 5** – The First Steps Child Complaint received DESE on October 15, 2007 (Tr. 111-12).

15. **Petitioner=s Exhibit 1** was admitted into the record without objection. **Petitioner's Exhibit 2 –3** were objected to as to relevance (Tr. 19-20). Respondent's objection is overruled.

16. **Respondent=s Exhibit 1-5** were admitted into the record without objection.

### **Findings of Fact**

- 17. The minor child \_\_\_\_\_ was born on \_\_\_\_\_, 2004 (Tr. 29-30; R. Ex.1).
- 18. The minor child has two older half-brothers, (May 29, 2000) and (November 13, 1995) (Tr. 29-30).
- 19. Petitioner is the mother of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_
- 20. On May 30, 2007, the minor child \_\_\_\_\_ was first referred to the Missouri First Steps Early Intervention Program when \_\_\_\_\_'s father, , signed a Notice of Consent.
- 21. \_\_\_\_\_ is not the father of \_\_\_\_\_ or \_\_\_\_\_ and he has no legal rights regarding these two children (Tr. 22, 26).
- 22. GCBDD serves as the System Point of Entry (SPOE) for the Missouri First Steps Early Intervention Program for 12 counties in south central Missouri (Tr. 40-41, 87).
- 23. GCBDD is the responsible entity for evaluating \_\_\_\_\_ to determine his eligibility for services.

24. On June 25, 2007, GBCDD performed an evaluation on \_\_\_\_\_ at the residence of his father.<sup>1</sup> The purpose of the evaluation is to determine \_\_\_\_\_'s current level of functioning (Tr. 88).

25. In order for a child to qualify for speech and language service, the child would have to be functioning at 50 percent of what would be expected for the child's chronological age (Tr. 88-89).

26. Based on the June 25<sup>th</sup> evaluation, \_\_\_\_\_ met the necessary criteria for speech and language delay and was deemed eligible for service (Tr. 88-89).

27. \_\_\_\_\_ was unaware at the time of the evaluation that \_\_\_\_\_ had given consent for an evaluation or that he believed there was a need for an evaluation.

28. During the course of the evaluation, \_\_\_\_\_ reported that \_\_\_\_\_ "has not had a recent hearing evaluation, however [] has possible concern due to older brother having a hearing a hearing loss." \_\_\_\_\_ also reported seeing the child experience tantrums in the past due to an "inability to communicate" (P. Ex. 1; R. Ex. 1).

29. The father's comments were noted in the parent report portion of the Hearing/Attention/Behavior section of the evaluation report.

30. As a result of \_\_\_\_\_'s report, \_\_\_\_\_ was referred for an audiological evaluation (Tr. 47).

31. On July 5, 2007, Petitioner \_\_\_\_\_ was provided a copy of the report by \_\_\_\_\_<sup>2</sup>

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<sup>1</sup> The evaluation focused on the areas of special instruction and/or speech language. Marsha Holder, special instructor, and Adrienne Nelson, speech pathologist, performed the evaluation (Tr. 85-87).

<sup>2</sup> \_\_\_\_\_ was provided 2 copies of the evaluation by GCBDD so he could forward one copy to the Petitioner. At the time of the evaluation, GCBDD did not possess contact information for the Petitioner.

32. On July 5, 2007, contacted GCBDD via telephone to discuss the contents of the evaluation at which time she spoke to Diana Patton, director of the First Steps program. Ms. Patton has 19 years of experience with the First Steps program (Tr. 40-41, 93-94).

33. During the July 5<sup>th</sup> telephone call, voiced concerns about the evaluation and information provided, including her concern about the validity of the parent report about \_\_\_\_\_'s hearing loss. In response, Ms. Patton proposed meeting her on July 6<sup>th</sup> to further discuss the matter (Tr. 27, 52).

34. On July 6, 2007, Ms. Patton met at her residence. At this meeting, Ms. Patton was told that was not the father of and , and that did not have right to provide information about their medical status or history.

35. stated that the statements of were false, that all of her children were seen regularly by a physician and that she knew of no report from any source that any of her children suffered from a hearing loss.<sup>3</sup>

36. On July 6, 2007, requested that GCBDD remove the incorrect information about the hearing loss from \_\_\_\_\_'s record. GCBDD considered this request as an amendment of record at the parent's request pursuant to the *Missouri State Application Under Part C of IDEA, Requirement IX B Procedural Safeguards* (Tr. 96).

37. In response to this request, Ms. Patton made a handwritten written notation to the June 25<sup>th</sup> evaluation noting the mother's statement that her other children did not have a hearing loss and were regularly seen by a physician (Tr. 96-97; R. Ex. 1).

38. Ms. Patton later spoke to Adrienne Nelson, the speech pathologist who prepared the evaluation, and informed her of the discrepancy in the information contained in the parent report (Tr. 97).

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<sup>3</sup> testified the minor child may be less communicative when he is with his father, but it was unrelated to a hearing loss.

39. On July 13, 2007, Ms. Nelson prepared an amendment to \_\_\_\_\_'s record reflecting the fact that the father's parent report was inaccurate. The amendment appears as an additional document in the file (Tr. 97-99; R. Ex. 4).

40. A copy of the amendment was provided to (Tr. 99).

41. , however, continued to have objections to the record because the original June 25<sup>th</sup> evaluation report still actually contained the disputed statement about the other child's hearing loss.

42. On October 4, 2007, GCBDD received permission from DESE to redact the original June 25<sup>th</sup> evaluation to physically remove the statements of about hearing loss and Ms. Patton's notations from July 6.

43. The redaction was performed by Ms. Patton and resulted in the "redacted June 25<sup>th</sup> evaluation report" (Tr. 100-01; R. Ex.2).

44. objected to the redaction. In her opinion, the proper resolution would be for the June 25<sup>th</sup> evaluation to be rewritten in its entirety without the disputed statements.

45. On October 10, 2007, filed a First Steps Child Complaint with DESE wherein she again raised her objection to the June 25<sup>th</sup> evaluation report, the parent report statement of , and GCBDD's subsequent actions (Tr. 106; R. Ex. 5).

46. The child complaint alleged that GCBDD violated its responsibilities with respect to the evaluation and the confidentiality of or access to records (R. Ex. 5).

47. The First Steps Child Complaint resulted in a determination from DESE that was unsatisfactory to (Tr. 113).

48. GCBDD subsequently advised that she could file a Request for Due Process (Tr. 113).

49. On December 14, 2007, DESE received Petitioner's Request for a Due Process Hearing ("Request"). The Request was filled out on DESE's model form and describes the nature of the problem as:

First Steps did a[n] evaluation on [\_\_\_\_\_] and wrote out sa[y]ing 1 of his older brother[s] has a hearing loss. I am the only 1 who can give them permission to write that and I didn't give it to them. I also asked for the consent I gave them to write it out and they still have not gave it to me. I never gave them the consent but they wrote it and I have a copy of it, saying 1 of [\_\_\_\_\_]’s older brothers has a hearing loss. [\_\_\_\_\_]’s dad gave First Steps consent to do the evaluation but he can't give consent for my 2 older boys. I have also asked for copies of [\_\_\_\_\_]’s folder with First Steps and they will not give it to me.

## **CONCLUSIONS OF LAW**

### **I. Jurisdiction**

This matter arises under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. § 431 to ' 1445, (AIDEA@) and the Federal Regulations implementing its requirements as codified in the Early Intervention Program for Infants and Toddlers with Disabilities at 34 C.F.R. Part 303 (2004). Jurisdiction also exists under Missouri State Regulation 5 C.S.R. § 70-742.141, which incorporates by reference the *Missouri State Application Under Part C of Individuals with Disabilities Education Act* (11/2006). These regulations provide Petitioner with the right to initiate a due process hearing when a dispute arises and empowers an impartial hearing officer to adjudicate the dispute. *Missouri State Application, Requirement IX B Procedural Safeguards*, p. 36-37; 34 C.F.R. §§ 303.420 and 303.421.

### **II. IDEA**

In exchange for federal dollars, IDEA requires Missouri to identify, locate, and evaluate all children residing in the State who are disabled and who are in need of special education and related services. IDEA is often described as a model of "cooperative federalism." The individual State has primary responsibility for the development and execution of educational programs, but

it must adhere to federal requirements in discharging that responsibility. *Schaffer ex rel. Schaffer v. Weast*, 125 S.Ct. 528, 532 (2005), citing *Little Rock School District v. Maurney*, 183 F.3d 816, 830 (C.A.8 1999); *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 102 S.Ct. 3034 (1982).

IDEA originally only provided for children ages five to 21, in what is today commonly referred to as the Part B Program. In 1986, Congress amended the Act to provide for children from birth to age three by adding the Part C Program.<sup>4</sup> 20 U.S.C. §§ 1431-1445. Part C of the IDEA encourages each State to implement and maintain a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families -- including appropriate procedural safeguards. 20 U.S.C. §§ 1434, 1435, 1439; 34 C.F.R. § 303.1(a).

The Missouri statewide system for Part C is known as the *Missouri State Application Under Part C of Individuals with Disabilities Education Act* (11/2006).<sup>5</sup> Under the Missouri Plan, parents of children for whom Part C services are provided have certain procedural safeguards including, but not limited to: the right to mediation, the right to a due process hearing, and the right to request the amendment of records. *Missouri State Application, Requirement IX B Procedural Safeguards*, p. 32-40.

### **III. Issues Raised at the Due Process Hearing**

Petitioner does not question the determination made by GCBDD that \_\_\_\_\_ is eligible for services (Tr.33). Petitioner challenges information obtained by GCBDD during the June 25<sup>th</sup> evaluation. This information arises from the evaluation process to determine \_\_\_\_\_'s eligibility. Therefore, the Hearing officer finds the Request sufficiently related to a matter

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<sup>4</sup> Congress also added the Part B Preschool Program for children age three to five.

<sup>5</sup> The Missouri Part C State Plan is codified at 5 CSR 70-742.141.

involving identifying, evaluation or placing a child for service as provided for under 34 CFR 303.403(a).<sup>6</sup>

Petitioner instead challenges the validity of the information contained in the parent report regarding the father's concern of \_\_\_\_\_'s possible hearing loss. Specifically, Petitioner disputes the father's statement as recorded by GCBDD on the June 25<sup>th</sup> evaluation report that he "has concerns due to [an] older having a hearing loss" (P. Ex. 1). Petitioner believes the statement is: (a) false, (b) a violation of the brother's right to privacy, and (c) a violation of Petitioner's parental rights because \_\_\_\_\_ is not the father of \_\_\_\_\_'s brothers. Additionally, Petitioner contends that GCBDD denied her access to \_\_\_\_\_'s file.

The standard of proof for deciding these questions is a preponderance of the credible evidence. See, *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992). Missouri case law recognizes that the "credibility of witnesses and inconsistencies in testimony are for the [fact finder] to consider." *State v. Maynard*, 954 S.W.2d 624, 631 (Mo.App. W.D. 1997). The Hearing Officer must judge the credibility of witnesses, and has the discretion to believe all, part, or none of the testimony of any witness. *Harrington*, at 19. When there is a direct conflict in the testimony, the Hearing Officer must make a choice between the conflicting testimonies. *Id.*

#### IV. The Parent Report

Based on the evidence presented, \_\_\_\_\_ was referred to GCBDD for a child evaluation pursuant to 34 CFR §303.322. GCBDD obtained the necessary consent from \_\_\_\_\_'s father to perform the evaluation on May 30, 2007 (R. Ex. 3). The evaluation occurred on June 25, 2007, and took place at \_\_\_\_\_'s residence (R. Ex. 1). Because this was GCBDD's first contact with \_\_\_\_\_, they were unaware that \_\_\_\_\_ parents were not married and were apparently unaware of

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<sup>6</sup> The Hearing Officer also notes that the complaint as written appears to contest GCBDD's reliance on the disputed information in its determination. Statements Petitioner made during a prehearing conference call in December also supported this position. At the hearing, however, Petitioner indicated that she was not raising this issue as a remedy (Tr. 35-37).

\_\_\_\_\_’s custodial status. During the course of the evaluation, the evaluator for speech language obtained a parent report relating to Hearing/Attention/Behavior wherein \_\_\_\_\_ made the now disputed statement about the siblings’ hearing loss.

Petitioner contends that it was inappropriate for \_\_\_\_\_ to make this statement and for GCBDD to record the statement within the evaluation report (Tr.13). Petitioner correctly notes that \_\_\_\_\_ is not the father of \_\_\_\_\_’s siblings. She also correctly notes that at the time of the evaluation she had not given consent herself. However, these facts do not mean GCBDD acted inappropriately. The evidence shows that it is customary to inquire into family background when performing a child evaluation. Such information is useful because it provides GCBDD as the SPOE with insight into the child’s environment and history, which may assist in determining the kind of programming and services needed (Tr. 79). Further, an evaluation by definition “evaluates” a variety of information with respect to the child to assess what is valid or not valid as to present level of functioning.

Under 34 CFR § 303.322(c)(3)(ii)(B), GCBDD has a duty to evaluate physical development, including vision and hearing. Petitioner asserts that because information pertained to A.W’s siblings and because \_\_\_\_\_ is not the father, he was without legal right to give GCBDD the information. The Hearing Officer is unaware of any legal authority to support this position. Petitioner provided the Hearing Officer with an excerpt on Children’s Rights.<sup>7</sup> However, this authority is not germane to this issue. The excerpt discusses generally developments within the spectrum of Children’s Rights from welfare rights, to the right to an education, to the constitutionally protected interest in one’s physical freedom. However, this discussion is not relevant to the narrow issue presented here. While mindful that \_\_\_\_\_ is not the siblings’ father, the Hearing Officer believes the IDEA interest in a thorough and proper evaluation outweighs any

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<sup>7</sup> The excerpt is from an unknown source and of an unknown publication date.

issue of consent or privacy in this instance. The statement here was offered for antidotal purposes to aid in the evaluation of \_\_\_\_\_. Petitioner concedes \_\_\_\_\_ had the legal right to obtain an evaluation. It was not offered for the purpose of evaluating \_\_\_\_\_ or \_\_\_\_\_. Therefore, Petitioner's legal authority is not persuasive or binding in this matter.

#### **V. Amendment of the Record**

However, the mere fact GCBDD acted appropriately in obtaining the statement does not mean the Petitioner is without recourse if she believes the statement is inaccurate. A parent has the right to request an amendment of the record if she believes information therein is inaccurate or misleading pursuant to the provisions of 34 CFR §§ 300.618—300.621.<sup>8</sup> See also, Missouri State Application, Requirement IX B Procedural Safeguards, p. 39. Here, the evidence shows that on July 6, 2007, \_\_\_\_\_ requested that GCBDD remove the incorrect information about hearing loss from the record. GCBDD considered this request as an amendment of record at the parent's request (Tr. 96).

In response to this request, a handwritten written notation was made to the June 25<sup>th</sup> evaluation noting Petitioner's contention that \_\_\_\_\_'s statement about hearing loss was false (Tr. 96-97; R. Ex. 1). Additionally, on July 13, 2007, the speech pathologist who prepared the original report prepared an amendment to \_\_\_\_\_'s record reflecting the fact that \_\_\_\_\_'s parent report was false. The amendment appears as an additional document in the file (Tr. 97-99; R. Ex. 4). Based on the evidence presented these action complied with the requirements of 34 CFR §§ 300.618.

Petitioner believed the amendment was insufficient because the original statement still remained in the record. Thereafter, in October 2007, GCBDD received permission from DESE to redact the original June 25<sup>th</sup> evaluation report (R. Ex. 2). Still not satisfied, Petitioner then filed a formal First Steps Child Complaint with DESE (R. Ex. 5). While the record is unclear as

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<sup>8</sup> Formerly codified at 34 CFR §§ 300.567–300.570.

to the specifics of the DESE determination, the evidence presented shows Petitioner remained unsatisfied at which time she was advised by GCBDD of her right to file a Request for Due Process (Tr. 113). The Hearing Officer’s review of these events finds that GCBDD and DESE properly complied with its responsibilities under 34 CFR §§ 300.618— 300.621 and under the *Missouri State Application, Requirement IX B Procedural Safeguards*, p. 39.

## **VI. Procedural Safe Guards of a Due Process Hearing And an Amendment of the Record**

Under the Missouri Plan, a parent has certain specific procedural safeguards including, but not limited to: the right to mediation, the right to a due process hearing, and the right to request the amendment of records. *Missouri State Application, Requirement IX B Procedural Safeguards*, p. 32-40. A parent may initiate a due process hearing “concerning any matters in 34 CFR 303.403 (a).” *Missouri State Application, Requirement IX - Procedural Safeguards*, p. 36. Section 303.403 provides notice requirements afforded to parents before a public agency may take certain actions for Part C services. Those actions pertain to “the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.” Therefore, a due process hearing is limited to such matters. A due process hearing process must also comply with the provisions of 34 CFR §§ 303.419 - 303.425.

The right to request an amendment of record, on the other hand, provides a recourse for a parent “who believes that information in the Early intervention records . . . is inaccurate, misleading, or violates the privacy or other rights of the child.” *Missouri State Application, Requirement IX - Procedural Safeguards*, p. 39. The procedure for amendment requires the parent to first make a request of the SPOE to amend the record in question. The SPOE has 45 days to consider the request to amend. If the SPOE denies the request, the SPOE must notify the

parent of the denial and advise the parent of the right to request a hearing from DESE to review the situation.

In a previous decision, this Hearing Officer concluded that these procedural rights tend to be separate and distinct in their application and function. The issue presented here is essentially a record amendment question. The Hearing Officer can find no legal authority expressly granting him the authority to use a due process hearing to resolve a record amendment question. Petitioner seeks to have \_\_\_\_\_'s evaluation amended to remove disputed information. However, for the reasons now stated, the Hearing Officer is of the opinion that a due process hearing is appropriate in this specific context because:

- (a) On July 6, 2007, GCBDD received a request to amend the record and, on July 13, 2007, did actually prepare an amendment (R. Ex. 4).
- (b) Thereafter, Petitioner still objected to the record and GCBDD again amended the record on October 4, 2007 (R. Ex. 2).
- (c) Thereafter, Petitioner filed a First Step Child Complaint because she was still unsatisfied with the outcome (R. Ex. 5).
- (d) DESE reviewed the complaint and issued a determination that was unsatisfactory to the Petitioner (Tr. 112-13).
- (e) Thereafter, GCBDD advised Petitioner that her only remaining recourse was to file a Request for Due Process (Tr. 113).
- (f) The disputed information pertains to the evaluation of the child for purposes of determining his eligibility for appropriate early intervention services.

The Missouri Plan is clear that the process for requesting a record amendment must comply with the provisions of 34 CFR §§ 300.567–300.570 – not the provisions of 34 CFR §§ 303.419 - 303.425. Section 300.570 states that a hearing to appeal the decision of the SPOE must be conducted according to the procedures of 34 CFR § 99.22, which pertains to the Family Educational Rights and Privacy Act (“FERPA”). A review of that provision reveals minimum hearing requirements that appear compatible to the due process hearing requirements in 34 CFR

§§ 303.419 -- 303.425. The Hearing Officer also finds persuasive the testimony of the GCBDD First Steps Director, who stated that she believed due process was appropriate at this stage of the procedural safeguards (Tr. 113). The record is unclear if the Child Complaint resulted in a FERPA hearing as contemplated under the Missouri Plan. If it did, then a due process hearing would still be appropriate because the Petitioner has exhausted her rights under the amendment of record rights and now would be entitled to due process because this matter relates to a § 303.403 matter. If not, then this due process hearing would satisfy that requirement.

### **VII. Remedy Provided Here Is Adequate**

Regardless of whether this matter is being reviewed under a due process hearing or an amendment of record analysis, the Hearing Officer concludes that the remedies provided to Petitioner were more than adequate. GCBDD immediately filed an amendment to the original June 25<sup>th</sup> evaluation once notified of the issue. GCBDD later prepared a redacted June 25<sup>th</sup> evaluation because of the Petitioner's concern that the statement still actually appeared in the record. Petitioner now complains as to the manner of the redaction and urges the Hearing Officer to direct GCBDD to rewrite the evaluation in its entirety. The Hearing Officer knows of no basis for the Petitioner to make this demand if the remedy already selected substantively addresses the problem. Here, the redacted record substantively addresses the problem of the father's inaccurate statement. No further remedy is warranted.

### **VIII. Miscellaneous**

Respondent moved to have this proceeding sealed for privacy reasons. Petitioner did not object so this matter is sealed except as otherwise provided by law. Defendant's objections during the hearing to questions posed by Petitioner to Ms. Patton are overruled. Those questions were considered. Petitioner also asserted that she had been denied access to her child's file. There is insufficient evidence to find any basis for this claim at this time. Additionally, the

Hearing Officer is unaware of any legal authority for DESE to take action against the father for his statements to GCBDD.

**CONCLUSION**

For the foregoing reasons, the Hearing Officer finds that DESE and its SPOE administrator, GCBDD, complied in all relevant respects with the applicable IDEA requirements for preparing the June 25, 2007 evaluation. Further, DESE and GCBDD were compliant in reviewing and resolving Petitioner’s subsequent dispute over statements in the parent history that were shown to be inaccurate.

**SO ORDERED** this 11TH Day of January 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
EDWARD F. WALSH  
HEARING OFFICER

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**NOTICE OF RIGHT TO APPEAL**

Any party aggrieved by the Hearing Officer’s decision may bring an appeal to a court of proper jurisdiction. Pursuant to 34 C.F.R. § 303.424 an aggrieved party may file a civil action in State or Federal court. To the extent this action is governed by Chapter 536, RSMo, the aggrieved party may file a “Petition for Judicial Review” in State court. Section 536.110, RSMo, provides that such an appeal must be filed within 30 days of the mailing or delivery of the decision. An aggrieved party may also file an appeal in federal court by filing a complaint in a district court of the United States, without regard to the amount in controversy.

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**CERTIFICATION OF IMPARTIALITY**

I, **Edward F. Walsh**, certify that I am an **impartial person** as provided for in 34 C.F.R. 303.421 (2006). I am not an employee of the Missouri Department of Elementary and Secondary Education, the Office of Missouri Attorney General or the Greene County

Board for the Developmentally Disabled. I have no personal or professional interests that would conflict or interfere with, or otherwise impair my ability to act impartially or objectively in the determination of this dispute. I was an appointed hearing officer and am paid for hearing officer services under contract.

Given this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
EDWARD F. WALSH  
HEARING OFFICER

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CERTIFICATION OF TIMELINES

I, **Edward F. Walsh**, as the Hearing Officer certify that the applicable timelines in this Request for Due Process Hearing were adhered to as provided for in 34 C.F.R. 303.423 (2006). Petitioner's complaint was first received on December 14, 2007. As result, the due process proceeding had to be completed no later than January 11, 2008.

Given this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
EDWARD F. WALSH  
HEARING OFFICER

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Copies to:  
All Parties  
Margaret Strecker, DESE