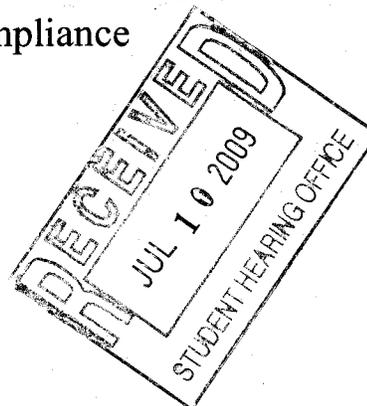


District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

1150 5th Street, SE
Washington, DC 20003
Tel: 202-698-3819
Fax: 202-698-3825



Confidential

<p>STUDENT¹, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools</p> <p>Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>July 10, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Domiento Hill, Esq.</p> <p>Counsel for DCPS: Tanya Chor, Esq.</p> <p><u>Hearing Officer:</u> Kimm H. Massey, Esq.</p>
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. JURISDICTION

The Due Process hearing was convened and this Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. §§ 1400 et. seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

II. PROCEDURAL BACKGROUND

On May 15, 2009, Petitioner filed an Administrative Due Process Complaint Notice ("Complaint") against the District of Columbia Public Schools ("DCPS"), alleging that DCPS either (1) denied Student a free appropriate public education by failing to comply with the IEP team's and Parent's request for a comprehensive psychological reevaluation of Student, or (2) in the alternative, if the reevaluation had already been completed, then DCPS failed to convene the IEP team to review the findings and recommendations of the assessment, determine Student's eligibility for special education and related services, develop an appropriate IEP, and provide a placement for implementation of the IEP.

The Student Hearing Office ("SHO") issued a Due Process Hearing Notice that set a prehearing conference date and provisionally scheduled a due process hearing. However, after the SHO's May 20, 2009 receipt of DCPS's waiver of the resolution session for this case, the hearing officer placed the case on a 45-day timeline and rescheduled the prehearing conference and due process hearing dates to June 5, 2009 and June 23, 2009 at 9:00 am, respectively. The hearing was subsequently rescheduled for June 30, 2009 due to a personal/family emergency on the part of the hearing officer.

DCPS filed District of Columbia Public School's Response to Parent's Administrative Due Process Complaint and District of Columbia Public School's Notice of Insufficiency to Parent's Due Process Complaint. In its Response, DCPS acknowledged that the MDT ordered and agreed to the reevaluation and Parent signed a Consent form, then DCPS indicated that "[m]ore information [would] be forthcoming. In its Notice of Insufficiency, DCPS complained that the Complaint had not been signed by a parent or guardian.

On May 27, 2009, Petitioner filed Petitioner's Opposition to the Respondent's Notice of Insufficiency. In its Opposition, Petitioner asserted that its Complaint satisfied the sufficiency standards set forth in 34 C.F.R. § 300.508, and that the SHO's Standard Operating Procedures ("SOPs") provision requiring a parental signature on a Complaint did not trump the sufficiency requirements of IDEIA.

On June 5, 2009, the hearing officer convened the prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters, including DCPS's Notice of Insufficiency and Petitioner's Opposition thereto. The parties stipulated that DCPS provided Petitioner with a copy of Student's reevaluation report on May 27, 2009, and Petitioner represented that as a result, the only issue to be addressed at the due process hearing was DCPS's failure to convene an IEP meeting to review the reevaluation report. Petitioners' counsel also

indicated his preference that the IEP meeting take place prior to the scheduled due process hearing.

On June 10, 2009, the hearing officer issued a Pre-Hearing Order that summarized the proceedings at the prehearing conference.

On June 10, 2009, the hearing officer also issued an Interim Order Denying DCPS's Notice of Insufficiency, on the ground that Petitioner's failure to comply with the SOPs' signature requirement did not render the Complaint insufficient within the meaning of IDEIA.

By their respective disclosure statements dated June 16, 2009, DCPS disclosed three potential witnesses and eight documents labeled DCPS-01 through DCPS-08, and Petitioner disclosed ten potential witnesses and sixteen documents.

On June 23, 2009, Petitioner filed another disclosure statement, by which Petitioner disclosed eleven potential witnesses and seventeen documents (hereinafter Petitioner's Exhibits 1 – 17).

The hearing officer convened the due process hearing on June 30, 2009, and the parties' disclosed documents were admitted into the record without objection. Upon inquiry by the hearing officer, Petitioner's counsel represented that there had been no meeting to review Student's reevaluation report and no attempts by either party to schedule such a meeting. Petitioner's counsel further represented that Petitioner was not prepared to present the testimonial and documentary evidence necessary to prove what, if any, additional services were indicated for Student as a result of his recent comprehensive psychological reevaluation. Instead, Petitioner was seeking an Order from the hearing officer requiring DCPS to convene an IEP meeting to review the reevaluation report.

III. ISSUE(S)

1. Did DCPS deny Student a FAPE by failing to convene an IEP meeting to review Student's comprehensive psychological reevaluation, make appropriate educational decisions, and revise the IEP as appropriate?

IV. FINDINGS OF FACT

1. Student currently attends a private full-time special education day school at DCPS's expense. The IEP introduced into the record by the parties, which is dated November 3, 2008, includes a behavior intervention plan and requires Student to receive 29 hours per week of specialized instruction and 1 hour per week of behavioral support services.²
2. By letter dated January 27, 2009, Petitioner's counsel provided DCPS with a copy of Student's independent speech and language evaluation and requested a letter of invitation

² Petitioner's Exhibit 12; DCPS-06.
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to reconvene Student's MDT meeting.³

3. On or about February 24, 2009, Student's current school convened an MDT meeting. DCPS's LEA representative participated in the meeting. The undated Meeting Notes indicate that the team reviewed Student's independent speech and language evaluation, agreed that Student would begin receiving 60 minutes of speech and language services per week, reviewed new speech and language goals for Student, and determined to request cognitive, educational, and comprehensive psychological evaluations for Student. Parent signed a Consent for Evaluation form, and the team developed an undated SEP, which provided that Student was to receive cognitive and psychological testing, and indicated the following concerns: behavioral outbursts, anxiety and depression interfere with learning and academic progress.⁴
4. Petitioner provided DCPS with a copy of Student's May 1, 2009 Psychological Re-evaluation report on May 27, 2009.⁵
5. Petitioner's disclosure lists a psychologist among its potential witness and includes the psychologist's curriculum vitae as an exhibit. Nevertheless, Petitioner did not present any expert testimony about the substance of Student's psychological reevaluation.
6. As of the date of the due process hearing in this matter, Student's educational advocate had not sent any letters or made any phone calls to request an IEP meeting to review Student's independent psychological reevaluation, nor had the advocate, or the advocate's office to her knowledge, received any correspondence concerning the scheduling of an IEP meeting for Student.⁶
7. As of the date of the due process hearing in this matter, no IEP meeting had been held to review Student's independent psychological reevaluation.
8. DCPS's LEA representative for Student's school did not receive Student's comprehensive psychological reevaluation report until June 30, 2009, the date of the due process hearing in this matter, and although DCPS's database indicates that the report was entered into the system on June 3, 2009, the LEA representative was of the opinion that the report probably had not yet reached Student's school. Nevertheless, upon her receipt of the report, the LEA representative had a Letter of Invitation to an IEP meeting sent out by email. The Letter of Invitation was sent to the LEA representative and to Petitioner's counsel on Parent's behalf, and the Letter suggested July 14, 15, and 16 at 11:00 am as possible meeting dates.⁷

³ Petitioner's Exhibit 16.

⁴ Petitioner's Exhibits 8, 9, 10; DCPS-03, DCPS-07, DCPS-08.

⁵ Parties' stipulation at prehearing conference. See Pre-Hearing Order at 2.

⁶ Testimony of advocate.

⁷ Testimony of DCPS Placement Specialist Monitor.

V. CONCLUSIONS OF LAW

The sole issue to be determined in this case is whether DCPS denied Student a FAPE by failing to convene an IEP meeting to review Student's recent comprehensive psychological reevaluation report. As the party seeking relief in this action, Petitioner bears the burden of proof. *See* 5 D.C.M.R. § 3030.3; *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

At the due process hearing in this case, Petitioner asserted that DCPS was required, pursuant to 34 C.F.R. § 300.306, to reconvene Student's IEP team to review his comprehensive psychological reevaluation report. DCPS did not dispute its obligation to convene a meeting to review Student's reevaluation report. Instead, DCPS asserted that it has at least 45 to 60 days from the date the evaluation report is produced to convene such a meeting, especially during summer when school is closed.

The evidence in this case reveals, *inter alia*, that (1) Petitioner provided Student's independent evaluation report to DCPS approximately one and one-half months prior to the due process hearing in this case, and (2) on June 30, 2009, the date of the due process hearing, DCPS sent Petitioner's counsel a Letter of Invitation to an IEP meeting on either July 14, 15, or 16. There is no evidence or indication in the record that DCPS was unwilling to convene an IEP meeting for Student. Moreover, there is no evidence proving specifically how and to what extent Student may have suffered harm as a result of any delay in convening the IEP meeting to review Student's independent psychological reevaluation report. Under these circumstances, the hearing officer concludes that Petitioner failed to meet its burden of proving DCPS denied Student a FAPE by failing to convene an IEP meeting to review Student's independent psychological reevaluation report.

On the other hand, the record is clear that, as of the date of the due process hearing in this case, DCPS had not yet convened the required IEP meeting to review Student's reevaluation report. Hence, the hearing officer strongly encourages DCPS to promptly convene an IEP meeting for Student to review the reevaluation report and determine whether and to what extent Student may require additional services.

VI. SUMMARY OF DECISION

The hearing officer determined that Petitioner failed to meet its burden of proof, but the hearing officer strongly encouraged DCPS to promptly convene an IEP meeting for Student.

VII. ORDER

1. Petitioner's May 15, 2009 Complaint is hereby **DISMISSED**, and the requests for relief therein are hereby **DENIED**.

/s/ Kimm H. Massey

Kimm H. Massey, Esq.
Impartial Due Process Hearing Officer

Dated this 10th day of July, 2009.

NOTICE OF APPEAL RIGHTS

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision may appeal to a State court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. § 1415(i)(2).