

**District of Columbia
Office of the State Superintendent of Education**

Office of Review and Compliance

Student Hearing Office

Terry Michael Banks, Due Process Hearing Officer

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Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: May 13, 2009
)	
Petitioner,)	Prehearing Order: May 29, 2009
)	
v.)	Hearing Date: June 30, 2009
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

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HEARING OFFICER'S DECISION

Counsel for Petitioner: Domiento C.R. Hill, Esquire
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Counsel for DCPS: Tanya Chor, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

¹ Personal identification information is provided in Attachment A.

Jurisdiction

This hearing was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Introduction

Petitioner is an _____ year-old student attending _____

On May 13, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed timely to conduct evaluations of Petitioner, failed to convene a Multidisciplinary Team ("MDT") meeting to review a psychiatric evaluation, and failed to develop an appropriate Individualized Education Program ("IEP"). In a Prehearing Order issued on May 29, 2009, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' failure to conduct reevaluations

Petitioner alleges that on March 4, 2008, a Multidisciplinary Team ("MDT") developed a Student Evaluation Plan ("SEP") that referred Petitioner for psychiatric and psychoeducational evaluations. Petitioner alleges that DCPS has not conducted the psychoeducational evaluation. DCPS asserted in its response to the *Complaint* that it was frustrated in its attempts to conduct the evaluation by Petitioner's truancy. At the prehearing conference, counsel for DCPS asserted that the evaluation had been completed.

- DCPS' alleged failure to develop an appropriate IEP

Petitioner alleges that DCPS has not reviewed the recently completed psychiatric evaluation that recommends additional services for Petitioner. Consequently, Petitioner alleges that DCPS has not developed an appropriate IEP. DCPS asserts that it was reasonable to delay reconvening the MDT until the completion of the psychoeducational evaluation. At the prehearing conference, counsel for DCPS asserted that DCPS had issued an invitation to Petitioner to reconvene the MDT.

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STUDENT SERVICES OFFICE

The due process hearing was convened and completed on June 30, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

Record

Due Process Complaint Notice dated May 13, 2009
DCPS Resolution Session Waiver dated May 13, 2009
District of Columbia Public School's Response to Parent's Administrative Due Process Complaint dated May 22, 2009
Prehearing Order dated May 29, 2009
DCPS' Five-Day Disclosure dated June 5, 2009 (Exhibit Nos. 1-16)
Petitioner's Five-Day Disclosure dated June 23, 2009 (Exhibit Nos. 1-16)
Attendance Sheets for hearing conducted on June 30, 2009
E-mail from Petitioner's Counsel dated July 1, 2009
E-mail from Counsel for DCPS dated July 1, 2009
Documents Filed Post-Hearing by DCPS dated July 1, 2009

Witnesses for Petitioner

Dori Cook, Educational Advocate, James E. Brown & Associates
Petitioner

Witnesses for DCPS

Jocelyn Tate, Placement Specialist, DCPS

Findings of Fact

1. Petitioner is a _____ year old student attending _____
2. On March 4, 2009, DCPS convened a Multidisciplinary Team ("MDT") meeting. The MDT developed a Student Evaluation Plan ("SEP") that required DCPS to conduct psychoeducational and psychiatric evaluations.³
3. DCPS completed the Psychiatric Evaluation on April 1, 2009⁴ and a Comprehensive Psychological Evaluation on May 21, 2009.⁵

² *Complaint* at 1.

³ Petitioner's Exhibit ("P.Exh.") No. 7.

⁴ DCPS Exh. No. 15.

⁵ DCPS Exh. No. 16.

Conclusions of Law

Failure to Conduct a Timely Reevaluation

Petitioner alleged that DCPS failed to conduct a psychoeducational reevaluation pursuant to a SEP developed on March 4, 2009. DCPS completed a comprehensive psychoeducational evaluation on May 21, 2009. Thus, the issue is whether the reevaluation was completed timely. Neither IDEIA nor District law prescribe a time limit for post-eligibility evaluation referrals. However, District law on initial evaluations is instructive: "DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment."⁶ In this case, both evaluations ordered on the SEP were completed within ten weeks of the development of the SEP. There was no evidence that exigent circumstances required the evaluations to be expedited. Therefore, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS failed timely to conduct the psychoeducational evaluation.⁷

Failure to Develop an Appropriate IEP

This allegation is premised on DCPS' failure to incorporate changes into a new IEP based upon recommendations in the psychiatric and psychoeducational reevaluations. In light of the Hearing Officer's conclusion that the evaluations were timely completed, it follows that at the time the *Complaint* was filed, DCPS was not yet obligated to have completed a revised IEP.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 10th day of July 2009, it is hereby

ORDERED, that the *Complaint* is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in

⁶ D.C. Code §38-2561.01(a).

⁷ The Hearing Officer also notes that Petitioner's counsel made no effort to contact his client or Ms Tate by telephone to determine if the evaluations had been scheduled or completed.

controversy within ninety (90) days of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

_____/s/_____
Terry Michael Banks
Hearing Officer

Date: July 10, 2009