

**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
1150 - 5th Street, S.E.
Washington, D.C. 20003
(202) 698-3819
Facsimile: (202) 698-3825
Tmbanks1303@earthlink.net**

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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: March 24, 2009
)	
Petitioner,)	Prehearing Order: April 27, 2009
)	
v.)	Hearing Date: April 28, 2009
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
Academy)	

HEARING OFFICER'S DECISION

Counsel for Petitioner: Domiento C.R. Hill, Esquire
James E. Brown & Associates
1220 L Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202) 742-2098

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 a _____ year-old student attending _____ Academy. On March 24, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed timely to conduct reevaluations of Petitioner. The due process hearing was convened on April 28, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.²

Record

Due Process Complaint Notice dated March 24, 2009
District of Columbia Public School's Response to Parent's Administrative Due Process Complaint dated April 6, 2009
District of Columbia Public School's Notice of Insufficiency to Parent's Due Process Complaint dated April 6, 2009
Petitioner's Opposition to the Respondent's Notice of Insufficiency dated April 8, 2009
DCPS' Five-Day Disclosure dated April 21, 2009 (Exhibits 1-7)
Petitioner's Five-Day Disclosure dated April 21, 2009 (Exhibits 1-8, 11-16)
Prehearing Order dated April 27, 2009
Attendance Sheet dated April 28, 2009
CD-Rom of Hearing conducted on April 28, 2009

Witnesses for Petitioner

Petitioner's Mother

Witnesses for DCPS

Jocelyn Tate, DCPS Placement Specialist

² DCPS objected to the admission of Petitioner's Exhibit ("P.Exh.") Nos. 9-14. The Hearing Officer sustained the objection as to P.Exh. Nos. 9 and 10 on grounds of relevancy, but overruled the objection to the remaining exhibits.

Findings of Fact

1. Petitioner is a _____ year-old student attending _____.
2. On September 28, 2008, a Hearing Officer's Decision was issued in which Hearing Officer Tonya Butler-Truesdale concluded that DCPS had failed to provide Petitioner an appropriate placement. The Hearing Officer ordered, *inter alia*, that DCPS place and fund Petitioner at _____.
3. On November 21, 2008, a Multidisciplinary Team ("MDT") meeting was convened at _____. The MDT determined that Petitioner required the following evaluations and assessments to be conducted: speech and language, clinical psychological, functional behavior ("FBA"), and an adaptive scale. The adaptive scale assessment was ordered because of uncertainty as to the appropriateness of Petitioner's classification of mental retardation. _____ agreed to conduct the FBA.⁵
4. DCPS completed a Speech and Language Evaluation of Petitioner on March 24, 2009.⁶

Conclusions of Law

The LEA must evaluate a child suspected of a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.⁷ No single procedure should be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.⁸

DCPS offered the documentation that the MDT on November 21, 2008 determined that Petitioner required a speech and language evaluation, a clinical evaluation, and an adaptive scale assessment.⁹ The additional testing was ordered, in part, due to a concern as to the validity of Petitioner's disability classification. DCPS has not completed the clinical evaluation or the adaptive scale assessment, and offered no assurance at the hearing as to when the testing would be completed. The Hearing Officer concludes, by a preponderance of the evidence, that DCPS failed to evaluate Petitioner in all areas of suspected disability.

³ *Complaint* at 1.

⁴ P.Exh. No. 3 at 2.

⁵ DCPS Exh. No. 5. A Student Evaluation Plan ("SEP") was developed that did not include the adaptive scale assessment.

⁶ P.Exh. No. 8.

⁷ 34 C.F.R. §300.304(c)(4).

⁸ 34 C.F.R. §300.304(b)(2).

⁹ Petitioner offered only the SEP to make her case. However, the SEP offered no explanation of the need for the evaluations. Moreover, the SEP did not reflect DCPS' presence at the MDT meeting. But for DCPS Exh. No. 5, Petitioner's burden would not have been met in this case.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearings, and the representations of the parties' counsel at the hearing, this 7th day of May 2009, it is hereby

ORDERED, that Petitioner is authorized to obtain an independent Vineland Adaptive Behavior Scale assessment and an independent comprehensive psychological evaluation *and is not constrained by 5 D.C.M.R. Section 3027.5*. Petitioner's counsel shall provide copies of the completed assessment to the Special Education Coordinator at the appropriate DCPS Placement Specialist, and the DCPS Office of Special Education ("OSE") Legal Unit by facsimile transmission and first-class mail along with a written request to schedule the MDT meeting described below.

IT IS FURTHER ORDERED, that within fifteen (15) school days of its receipt of the independent evaluations, DCPS shall convene an MDT meeting at ¹⁰ DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Domiento C.R. Hill, Esquire. The MDT shall review all current evaluations and assessments, reconsider the appropriateness of Petitioner's disability classification, and update Petitioner's IEP as necessary.

IT IS FURTHER ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at the appropriate DCPS Placement Specialist, and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.¹¹

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

¹⁰ For purposes of this HOD, a school day means a day when regular classes are held at Accotink. If one of Petitioner's teachers is not available due to summer vacation, the MDT meeting shall be scheduled for a date at the beginning of the 2009-2010 school year.

¹¹ If DCPS fails to contact Petitioner's counsel to coordinate scheduling the MDT meeting by a date that would make compliance with this Order feasible, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.

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 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: May 7, 2009