

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

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**Confidential**

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STUDENT HEARING OFFICE  
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<p>STUDENT<sup>1</sup>, 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>March 20, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Olekanma Ekekwe, Esq.</p> <p>Counsel for DCPS: Candace Sandifer, Esq.</p> <p><u>Hearing Officer:</u> Kimm H. Massey, Esq.</p>
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<sup>1</sup> 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 February 6, 2009, counsel for Parent and Student (“Petitioner’s counsel”) filed a Due Process Complaint Notice (“Complaint”) against the District of Columbia Public Schools (“DCPS”), alleging that DCPS (1) denied Student a free appropriate public education (“FAPE”) by failing to identify Student as a child in need of special education; (2) failed to provide Student with appropriate services; (3) denied Student a FAPE by failing to complete a comprehensive evaluation of Student as requested by Parent; (4) denied Student a FAPE by failing to take into consideration Parent’s wishes in regard to selecting a placement for Student; and (5) denied Parent the right to inspect, review, and receive copies of Student’s educational records.

The Student Hearing Office (“SHO”) set February 19, 2009 as the prehearing conference date and provisionally scheduled the due process hearing for March 10, 2009 at 11:00 a.m. However, after consultation with the parties, the hearing officer rescheduled the prehearing conference for Monday, February 23, 2009.

On February 18, 2009, DCPS filed District of Columbia Public School’s Response to Petitioner’s Due Process Complaint. In its Response, DCPS asserted that Student was expelled from her home school and placed in an alternative school due to her involvement in gang-related activity during the 2008/09 school year (“SY”), and that Student did not have many behavioral issues and maintained above failing grades in most of her classes prior to the 2008/09 school year. DCPS further asserted that it had not received any requests to evaluate Student, but stated that it would nevertheless issue a letter authorizing independent comprehensive psychological and speech/language evaluations for Student and conduct an eligibility meeting subsequent to the evaluations. Finally, DCPS stated that its special education coordinator had responded to a request for records by indicating the office hours when Parent or her counsel would be allowed to view and inspect Student’s records.

The hearing officer convened the prehearing conference on February 23, 2009, as scheduled, and led the parties through a discussion of the issues, defenses, relief sought, and related matters. Based on the allegations of the Complaint, the hearing officer determined that the following three claims were at issue: (1) an alleged failure to evaluate for special education and provide appropriate services, despite multiple requests by Parent, (2) an alleged denial of FAPE by assigning Student to an alternative school instead of evaluating her; and (3) an alleged failure to allow parental access to Student’s academic records. The hearing officer also reviewed DCPS’s defenses, as asserted in DCPS’s Response, as well as the relief requested by Petitioner in the Complaint.

Petitioner indicated that on the previous business day, Friday, February 20, 2009, it received from DCPS a letter authorizing independent evaluations for Student, but although the evaluations listed included speech/language, social history, and psychological evaluations, to include a cognitive component, no clinical component was authorized. Counsel for DCPS agreed to look into the matter. Counsel for DCPS also agreed to make an arrangement to allow Petitioner's counsel's assistant access to Student's records and stipulated that Student is no longer at her home school but is attending an alternative school. The hearing officer then reviewed the Five-Day disclosure deadline and had each party state the number and identities of its anticipated witnesses prior to concluding the prehearing conference.

By their respective disclosure statements filed on March 4, 2009, DCPS disclosed seven potential witnesses and four documents labeled DCPS-1 through DCPS-4, and Petitioner disclosed three potential witnesses and four documents (hereinafter Petitioner's Exhibits 1 through 4).

The hearing officer convened the due process hearing on March 10, 2009, as scheduled, but the hearing could not go forward due to Parent's failure to attend. Petitioner's counsel indicated that she attempted to pick up Parent that morning, but Parent did not come to the hearing because she had a migraine headache, and as a result, Parent would not be able to participate by phone either. Petitioner's counsel moved for a continuance to allow Parent an opportunity to appear for the hearing. DCPS opposed the continuance request, noting that it was ready to proceed on all claims. DCPS also moved to dismiss the matter with prejudice, arguing that a letter authorizing independent evaluations had been issued and parent could file another Complaint if issues arose concerning the evaluations. The hearing officer declined to grant a continuance in light of the lack of a parental signature on the Complaint and Parent's failure to appear for the hearing either in person or by phone. The hearing officer then granted DCPS's motion in part, by dismissing the action without prejudice for failure to prosecute.

### III. ORDER

IN ACCORDANCE WITH THE FOREGOING,

1. This matter is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

/s/ Kimm H. Massey, Esq.

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

Dated this 20th day of March, 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).