District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
State Enforcement and Investigation Division
Student Hearing Office
Van Ness Elementary School
1150 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 698-3825

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STUDENT HEARING OFFICE
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In Re the Matter of :	)	
	)	
Parent on behalf of Student,[1]	)	
	)	
Petitioner,	)	
	)	**Date of Complaint:** January 27, 2009
	)	**Date of Hearing:** February 25, 2009
v.	)	
	)	**Student Case Number:**
	)	
The District of Columbia Public Schools	)	
825 North Capitol Street, N.W.	)	
Washington, D.C. 20002	)	
(DCPS" or "District")	)	
	)	
Respondent.	)	
	)	

HEARING OFFICERS' DECISION

Hearing Officer:	Attorney Ramona M. Justice
Counsel for Parent:	Attorney Domiento C.R. Hill The Law Offices of James E. Brown and Associates 1220 L Street, N.W., Suite 700 Washington, D.C. 20005
Counsel for DCPS:	Attorney Tiffany Puckett, Assistant Attorney General, Office of the Attorney General 825 North Capitol St., N.E., 9th Floor Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution.

INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004 (IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING

I. INTRODUCTION

The student is years of age, and attends a D.C. Public School local educational agency, located in the District of Columbia. The student is a resident of the District of Columbia, and identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Emotionally Disturbed (ED).

On November 19, 2008, a Multidisciplinary Development Team (MDT) meeting convened on behalf of the student. The MDT recommended an Educational Evaluation, Psychological Evaluation, and Speech and Language Evaluation.

On January 21, 2009, parent, through counsel, forwarded a letter to DCPS requesting a copy of the evaluations recommended by the MDT. Petitioner alleges that DCPS failed to respond; and failed to complete the requested evaluation.

On January 27, 2009, Counsel, on behalf of student, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as DCPS, denied the student a Free Appropriate Public Education ("FAPE"), by failing to reevaluate the student.

The due process hearing convened on February 25, 2009, at 1:00 p.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

II. JURISDICTION

This proceeding was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

III. DUE PROCESS RIGHTS

Petitioners' Counsel waived a formal reading of parent's due process rights.

IV. ISSUE

The following issue is identified in the ***January 27, 2009*** due process complaint:

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to reevaluate the student, in violation of 34 C.F.R. §§300.303 (a) (2) and 300.304 (b)(1)(iii) of the Individuals with Disabilities Education Improvement Act of 2004?

V. RELIEF REQUESTED

(1) DCPS shall immediately provide counsel for the parent, Domiento C.R. Hill, via facsimile, a copy of the student's educational, psychological, and speech and language assessments.

(2) DCPS, if the evaluations are not completed, shall complete said assessments on behalf of the student within the next ten (10) school days.

(3) DCPS, within three (3) business days upon completion of the evaluations shall provide a copy to counsel for the parent at the above-provided facsimile number.

(4) DCPS, within twenty (20) calendar days upon production of the evaluations agrees to reconvene the student's MDT meeting to revise and update the student's IEP as appropriate.

(5) All meetings shall be scheduled through counsel for the complainant in writing, via facsimile, at 202-742-2098.

(6) DCPS shall fund the student's compensatory education plan presented by the student's educational advocate.

(7) DCPS shall provide counsel for the parent with copies, pursuant to D.C. MUN. REGDS. Tit. 5, §3021.8 (2003), of all evaluation reports and all educational records on the student no later than sixteen (16) business hours prior t the convening of any meeting.

(8) DCPS send all notices to counsel for the parent with copies of such to the parent in the parent's native language.

(9) DCPS within ten (10) calendar days of the filing of this complaint, pursuant to 34 C.F.R. §300.508(e), shall provide the complainant's representative, through Domiento C.R. Hill, via facsimile, at 202-742-2098, the following: i) an explanation of why DCPS proposed or refused to take the action raised in the complaint; ii) a description of other options that the IEP team considered and the reasons why those options were rejected; iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action, and iv) a description of the other factors that are relevant to the agency's proposed or refused action.

(10) Pursuant to D.C. MUN. REGS. Tit. 5 §3000 et. seq., DCPS shall ensure that xxx's rights and his complainant's rights are protected, and consistent with the Hearing Officers' preamble to all due process hearing that, "the hearing officer will rule on the evidence as presented at the hearing and will ACT in the BEST INTEREST of the child," and make a ruling consistent with the obligation of DCPS and the hearing officer's responsibility.

(11) The Hearing Officer shall find that the complainant is the prevailing party in this action.

VI. PROCEDURAL POSTURE

On January 27, 2009, Counsel, on behalf of parent, filed a due process complaint. On February 3, 2009, the Hearing Officer issued a Pre-hearing Conference Notice scheduling the pre-hearing conference for February 19, 2009, at 3:00 p.m. The pre-hearing conference failed to convene due to the parties' unavailability.

On February 19, 2009, DCPS filed "Disclosure Statement/Response". At the due process hearing, Petitioner filed with the court the amended last page of the due process complaint to include parent's signature, in accordance with Standard Operating Procedures, §301.2(C)(e). The due process hearing convened on February 25, 2009, at 1:00 p.m., as scheduled.

VII. PRELIMINARY MATTERS

As a preliminary matter, Petitioner requested that the court admit into the record a copy of the due process complaint, signed by parent, consistent with the courts' request; and in accordance with the Standard Operating Procedures.

As a preliminary matter, DCPS advised the court that the Educational Evaluation was completed on February 11, 2009; and the Speech and Language Evaluations was completed on February 12, 2009.

VIII. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties and whether there were any objections to the disclosures. Receiving no objections to the disclosures submitted, the following disclosures were admitted into the record as evidence:

DISCLOSURES SUBMITTED BY PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibits 43; and a witness list dated February 18, 2009.

DISCLOSURES SUBMITTED BY RESPONDENT

- Respondent's Exhibit 01; and a witness list dated February 19, 2009.

IX. STATEMENT OF CASE

1. The student is years of age, and attends a D.C. Public School local educational agency, located in the District of Columbia. The student is a resident of the District of Columbia, and identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Emotionally Disturbed (ED).

Prior to attending , the student attended , located in , Maryland. The student was diagnosed with Depressive Disorder, Attention Deficit Hyperactivity Disorder: Combined Type, Rule Out for Oppositional Defiant Disorder, Problems with primary support, and Educational difficulties.

2. On December 8, 2006, DCPS completed a Comprehensive Psychological Evaluation. The evaluation findings provide that the school history is remarkable for behavior problems; and although the student's teacher reports no academic problems, present anecdotal notes indicate significant and on-going behavioral difficulties. An overall examination of the student's social-emotional functioning revealed defiance of authority, poor adjustment, and hostility.

A teacher rating scale (SAED) indicated emotional and/or behavioral problems at a clinical level. The results of the BASC-2 (parent report) indicated that student displays a significant amount of aggressive behaviors, impulsivity, inattention, and opposition.

3. On July 23, 2008, while attending the student was suspended for nine days because of numerous tantrums, physically assaulting a staff member, banging his head into the wall repeatedly, screaming, pushing furniture and threatening to kill himself. The incident necessitated police intervention on two (2) occasions.

The record reflects that in addition to several reported incidents of problematic behavior, the student was suspended on November 7, 2007, November 28, 2007, December 18, 2007, January 11, 2008, January 29, 2008, February 20, 2008, April 6, 2008, May 6, 2008, May 20, 2008, May 29, 2008, June 2, 2008, July 24, 2008, because of problematic behavior. On May 21, 2008 a manifestation determination meeting was held on the students' behalf.

4. On November 3, 2008, forwarded a letter of invitation to parent and parents' counsel, to attend a MDT meeting.

5. On November 19, 2008, a Multidisciplinary Development Team (MDT) convened to conduct the thirty (30) day review of the students' IEP. The meeting was attended by parent, the Education Advocate, IEP Coordinator, Social Workers, Special Education Teacher, Speech and Language Pathologist, and DCPS LEA Representative.

The MDT developed an IEP for the student, providing for 26.5 hours of specialized instruction; and 1 hour of psychological services, for a total of 27.5 hours of specialized instruction and related services, each week.

The MDT notes indicate that the team agreed to reconvene the first week of December, 2008, to discuss transportation. The MDT notes also reflect that DCPS agrees that the student will receive a Psychological Evaluation to complete the three (3) year reevaluation process. On November 19, 2008, parent signed the "Consent for Evaluation-Initial or Reevaluation" authorizing completion of the Speech and Language and Psychological reevaluations, as part of the three (3) year reevaluation.

The MDT also developed a Student Evaluation Plan (SEP) which indicates that the student has difficulties with semantics, and the need for prompting to speak to others. The SEP also provides that DCPS agrees that the student will receive a (cognitive, social/emotional) Psychological Evaluation; and Speech Pathologist will complete the Speech and Language Evaluation, and the Woodcock Johnson III portion of the Psychological Evaluation. The MDT agreed to reconvene once assessments are completed.

6. On November 20, 2008, forwarded a letter to Petitioner's counsel proposing three (3) dates to reconvene the MDT meeting to discuss transportation. The school proposed December 2, 2008at 9:00 a.m., December 3, 2008 at 9:00 a.m., December 5, 2008 at 9:00 a.m..

7. On November 21, 2008, Petitioner's counsel forwarded to the IEP Coordinator at the a letter in response to its proposed date of December 3, 2008, to reconvene the MDT.

8. On January 21, 2009, Petitioner's counsel forwarded a letter to the Placement Specialist at Office of Special Education, District of Columbia Public Schools, as a follow-up to the MDT meeting held on behalf of the student. The letter included a request for a copy of the student's comprehensive psychological and speech and language reevaluations, by close of business on January 22, 2009.

9. On January 27, 2009, Petitioners' Counsel, initiated a due process complaint on behalf of parent and the student alleging that the District of Columbia Public Schools, hereinafter referred to as DCPS, denied the student a Free Appropriate Public Education ("FAPE"), by failing to reevaluate the student, in violation of 34 C.F.R.§§300.303 (a)(2) and 300.304 (b)(1)-(c)(1)(iii) of the IDEIA of 2004.

10. On February 2, 2009 completed a Speech and Language Assessment Summary. The evaluator concluded that the student exhibited a mild to moderate disorder in expressive and receptive language skills characterized by needs in syntax, semantics, and auditory and visual processing. The evaluation recommended that due to the scattered responses that indicate a weak foundation for learning new information, therapy was recommended. It was also recommended that the student be assessed in one year even if therapy was not approved at that time.

11. On February 4, 2009, DCPS completed a Comprehensive Psychological Evaluation, to evaluate the students' current cognitive, academic, and socio-emotional functioning and to assist the multidisciplinary development team in making decisions regarding the students' education.

The evaluator indicated that the student has a history of inattention, hyperactivity, aggression, and opposition. The evaluator also indicated that current teacher report indicates that the student continue to present with problems with attention, hyperactivity, poor mood regulation, attention and controlling his emotions. The evaluator concluded that test results indicate that the student continue to require special education services. The evaluation forwarded to Petitioner's counsel on February 11, 2009.

12. On February 12, 2009, Petitioner's counsel forwarded a letter to the Placement Specialist/Monitor for acknowledging receipt of the Comprehensive Psychological Reevaluation on February 12, 2009; and requesting an independent Comprehensive Psychological Evaluation.

13. On February 25, 2009, DCPS forwarded to Petitioner's counsel and the Hearing Officer a copy of the Woodcock Johnson III, tests of achievement test results and report. Test results reflect that the student's oral language skills are average when compared to others at his grade level; he performed in the high average range in the story recall task and in the average range in the understanding directions task.

The student's performance is average in mathematics; he performed in the average range in the calculation task and the applied problems task. He performed in the low average range in the math fluency task. The student's performance is average in reading, letter word identification task, in the reading fluency task and the passage comprehension task.

The student's performance is high average in written language and written expression. The student performed in the high average range in the spelling task and the writing samples task; and performed in the average range in the writing fluency task.

The evaluator concluded that when compared to others at his age level, the student's academic skills are within the high average range; his fluency with academic tasks and his ability to apply academic skills are both within the average range. The evaluator also concluded that when achievement areas are compared, the student demonstrated a significant strength in written language.

X. WITNESSES

Witnesses for Petitioner
Education Advocate

Witnesses for Respondent
No witnesses.

XI. WITNESS TESTIMONY

Education Advocate

The Education Advocate testified that she participated in the November 19, 2008 IEP team meeting; attending by parent, the Speech and Language Therapist, and the DCPS representative. The advocate testified that the student failed to receive the speech and language services recommended in the February 2, 2009 Speech and Language Evaluation; the Speech and Language and Comprehensive Psychological Evaluations are complete; however, Petitioner failed to receive the Woodcock Johnson III evaluation. The advocate also testified that the MDT failed to reconvene to review the evaluations.

The advocate testified further that the MDT recommended a Psychological, Speech and Language, and WJ III evaluations because the student's Social/Emotional Evaluation was outdated; and because of the student's continued problematic behavior in class and on the school bus; and difficulty interacting with his peers. The advocate also testified that the MDT agreed to reconvene on December 3, 2008 at 9:00 a.m., to discuss compensatory education; and on January 21, 2009, Petitioner requested a copy of the recommended evaluations, however, DCPS failed to respond.

On cross-examination the advocate testified that on December 3, 2008, the MDT discussed compensatory education; however, failed to review the recommended evaluations. The advocate also testified that as of the date of hearing, the evaluations completed in the year 2006 have not expired.

XII. DISCUSSION AND CONCLUSIONS OF LAW

ISSUE

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to reevaluate the student, in violation of 34 C.F.R.§§300.303 (a)(2) and 300.304 (b)(1)-(c)(1)(iii) of The Individuals with Disabilities Education Improvement Act of 2004?

Petitioner represents that "according to 34 C.F.R. §300.303(a)(2) of the IDEIA "a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304-300.311 if the public agency determines that the emotional or related services needs, including improved academic achievements and functional performance, of the child warrant a reevaluation, **or child's parent or teacher requests a reevaluation, but at least once every three years**. See also Cartwright v. District of Columbia, 267 F. Supp. 2d 83 (D.D.C. 2003) (the court held that given the plain language of the regulations and the absence of a condition precedent to be met by a parent requesting reevaluation, [the school's] failure to comply with [that parent's] request clearly violates the language of the regulation."

Petitioner further represents that "upon receipt of...the] request, [the school] should have reevaluated [the student]." Id. *At 87; Edwards-White v. District of Columbia*, 785 F.Supp. 1022, 1024 (D.D.C. 1992) ("Because DCPS was on notice that plaintiffs wanted a reevaluation of [the child's] placement, DCPS was obligated under [the predecessor statute to the IDEIA] to review and possibly revise her IEP. Consequently, the determination was erroneous since implicit in his holding was the notion that DCPS was under no such obligation."); that any requests for a reevaluation is conducted in a timely manner, *See Herbin v. District of Columbia*, Civil Action No. 02-1185 (2005) (all requests for evaluations/reevaluations are conducted in a timely manner); Office of Special Education Programs Policy Letter in Response to Inquiry from Anonymous, 21 Individuals with Disabilities Education Law Report 998, 1000 (19095); Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone, 21 Individuals with Disabilities Education Law Report 1127, 1129 (1995);); that all requests for evaluations/reevaluations are complied with; and that any disputes regarding a parent's desire to have their request for reevaluation is timely resolved. *See Herbin v. District of Columbia*, Civil Action No. 01-1185 (2005)(and that any disputes regarding a student's educational programming, which necessarily includes the need for evaluations or reevaluations, are timely resolved); *see also Spiegler v. Dist. of Columbia*, 866 F.2d 461, 466-67 (D.D. Cir. 1989)("[D]elay in resolving matters regarding that education program of a handicapped child is extremely detrimental to his development."

"The interruption or lack of the required special education and related services can result in a substantial setback to the child's development." *Id.* At 467 (quoting 121 Cong. Rec. 37, 416 (1975)(statement of Sen. Williams)); *Blackman v. Dist. of Columbia,* 277 F.Supp. 2d 71, 83 (D.D.C. 2003) (finding that the failure to provide a timely due process hearing within 45 days denied the student a free appropriate public education). 34 C.F.R. §300.304(b)(1) states "...that in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child..." Moreover, the public agency must ensure that the assessment and other evaluation materials used are reliable and valid. *See* 34 C.F.R. §300.304 (c)(1)(iii). In the instant matter it is clear DCPS failed to comply with the requirements of the regulations."

Petitioner represents that academically the student performs well; however his academic progression is hampered by his problematic behavior. Petitioner represents that as of the date of hearing, the Speech and Language Evaluation is complete, however, DCPS failed to provide the student speech and language services, as recommended in the evaluation. Petitioner also represents that the Psychological Evaluation is complete; however, the Woodcock Johnson portion of the evaluation has not been made available to Petitioner.

Petitioner concludes that according to evaluation test results, the student experienced a 13 point drop in his IQ score; the reevaluations are necessary to develop an IEP for the student; and DCPS was nonresponsive to Petitioners' request for reevaluations, and failed to indicate the status of the evaluations, as a result, the parent had no alternative except to file a due process complaint.

DCPS represents that the Psychological Evaluation was completed and the MDT is prepared to proceed with review of the evaluation; and is in the process of completing the Speech and Language Evaluation.

DCPS further represents that the student's IEP is currently being implemented in a full-time placement; and the student is receiving educational benefit. DCPS represents that the Speech and Language and Psychological, including the Woodcock Johnson III evaluations are completed; however, failed to complete the Woodcock Johnson III report. DCPS also represents that the results of the Woodcock Johnson III evaluation, completed on November 20, 2008, are included in the Psychological Evaluation.

DCPS concludes that the evaluations are complete; and the MDT is prepared for proceed with a meeting to review the evaluations. DCPS also concludes that the student's evaluations of record are current and have not expired; reevaluations were recommended by the MDT as part of the triennial evaluations, and the MDT failed to identify a date certain to complete the reevaluations.

DCPS also represents that three (3) months is not an unreasonable period of time to reevaluate the student; and the student was not harmed as a result of any delay in reevaluating the student.

ANALYSIS

Reevaluations

As a preliminary matter, the Hearing Officer finds that Petitioner's reference to 34 C.F.R. §300.303 (a)(2) is misapplied, and inapplicable to the issue in the complaint, because this provision of the statute pertains to *a parent or teachers' request* for student reevaluations; and the issue in the complaint pertains to an MDT' recommendation for reevaluation.

The issue in the complaint is whether DCPS failed to complete triennial reevaluations, as recommended by the Multidisciplinary Development Team (MDT); and not whether DCPS failed to reevaluate the student as requested by parent or the student's teacher. The record reflects that on February 12, 2009, after the complaint was filed, parent forwarded a written request to DCPS for an independent Comprehensive Psychological Evaluation; however, as indicated, there is no evidence that prior to filing of the complaint, parent or the student's teacher requested reevaluation of the student, and DCPS failed to reevaluate the student pursuant to such request. Therefore, §300.303(a)(2) is inapplicable.

According to IDEA, at **34 C.F.R. §300.303 (a) (1)**, a public agency ***must*** ensure ***reevaluation*** of each child with a disability is conducted in accordance with Sections 300.304 through 300.311—

(1) If the public agency determines that educational or related services needs, including improved ***academic achievement and functional performance***, of the child warrant a reevaluation; ***or***

(2) If the ***child's parent or teacher requests a reevaluation***.

In addition, as a limitation, subparagraph (b)(1)(2) of this provision provides that a reevaluation conducted under paragraph (a) of this section: (1) ***may*** occur not more than once a year, unless parent and the public agency agree otherwise; and (2) ***must*** occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. Furthermore, IDEA is replete with provisions emphasizing the necessity of monitoring the IEP for revision purposes. E.g., 20 U.S.C. §1414 (stating- reevaluations ***shall*** occur at ***request of parents provided they do not total more than one per year***). The Supreme Court forcefully declared that continual evaluations are necessary, and parents must have the ability to seek redress for a school's failure to sufficiently monitor a child's progress under the IEP.

The record reflects that on November 19, 2008, DCPS agreed that the student would receive a Psychological Evaluation to complete the three (3) year reevaluation process; and the ECC would complete the WJ III. The record also reflects that on November 19, 2008, parent completed a "Consent for Evaluation-Initial or Reevaluation" form, authorizing a Speech and Language Evaluation, and Psychological Evaluation, as part of the student's triennial evaluations.

The record reflects that DCPS completed the Comprehensive Report of Comprehensive Psychological Reevaluation on February 4, 2009; and
completed the Speech and Language Reevaluation on February 2, 2009. The record also reflects that the completed the WJ III portion of the Psychological Evaluation on November 20, 2008, prior to filing of the complaint, however the evaluation report was not made available and provided to Petitioner's counsel until February 25, 2009.

Based on the aforementioned, the Hearing Officer finds that on November 19, 2008, as part of the 30 day review of the student's IEP, the MDT determined that additional evaluations were warranted to complete triennial reevaluations; recommended the student for a Psychological, Speech and Language, and WJ III evaluation; and parent consented to completion of the recommended evaluations.

The Hearing Officer also finds that the evidence is insufficient for the court to determine whether DCPS failed to complete the recommended triennial evaluations, at least once every three (3) years, in violation of IDEIA. Petitioner presented no evidence of the prior evaluations, therefore, the court was unable to determine whether the evaluations completed by DCPS were completed in a timely manner, within three (3) years from the date the prior evaluations were completed.

It is the Hearing Officer's decision that Petitioner failed to satisfy its burden of proof by failing to present evidence that DCPS failed to complete triennial evaluations, at least once every three (3) years, in violation of IDEA, §300.303(b)(2).

Free Appropriate Public Education (FAPE)

In regard to procedural violations, the 2004 amendments to IDEA, at Section 615(f)(ii) limits the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to ***procedural violations***, if the inadequacies:

(1) impedes the child's right to a FAPE; or
(2) significantly impede the parent's opportunity to participate in the decision making process;
(3) deprives the student educational benefit.

The Education Advocate testified; and both counsel represented that prior evaluations were completed in the year 2006. However, the parties failed to present evidence of the prior evaluations, the dates the evaluations were completed, and its relevance in determining whether DCPS completed the triennial evaluations in a timely manner.

DCPS represents that the students' 2006 evaluations are current, the triennial evaluations are not yet due, and therefore, the student was not harmed as a result of DCPS' delay in reevaluating the student. However, DCPS presented no evidence of the 2006 evaluations, or evidence to substantiate its representations.

Petitioner also represents that there was a 13 point drop in the student's IQ score; however, failed to present any evidence regarding the significance of the decline in the student's IQ score, and its relationship to the student's educational program and the provision of a FAPE.

It is the Hearing Officers' decision that Petitioner failed to satisfy its burden by failing to present evidence a procedural violation; and that if the evidence was sufficient to support a finding that DCPS failed to complete the triennial evaluations, in a timely manner, that the procedural violation: (1) impeded the child's right to FAPE; (2) significantly impeded the parent's opportunity for "meaningful" participation in all decisions regarding the student's educational program; and (3) deprived the student educational benefit; causing substantive harm to the student and his parent, resulting in denial of a FAPE.

XIII. ORDER

Based on the aforementioned, it is hereby:

(1) **ORDERED**, that the relief requested by Petitioner is **DENIED**; and it is further

(2) **ORDERED**, that this decision and order are effective immediately.

XIV. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date this decision was issued.

Ramona M. Justice /s/ *3-2-09*

Date Filed:

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Tiffany Puckett, Office of the Attorney General
Attorney Domiento C.R. Hill: Fax: 202-742-2098