District of Columbia
Office of the State Superintendent of Education

Student Hearing Office
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Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: March 18, 2010
	)	
Petitioner,	)	Prehearing Order: April 27, 2010
	)	
v.	)	Hearing Date: May 19, 2010
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Docket No.
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

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HEARING OFFICER'S DECISION

Counsel for Petitioner:
Zachary Nahass, Esquire
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Counsel for DCPS:
Tanya Chor, Esquire
Office of the General Counsel, DCPS
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[1] Personal identification information is provided in Appendix A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("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.

Background

Petitioner is a year-old student attending
On March 18, 2010, Petitioner filed a Due Process Complaint Notice ("*Complaint*") alleging that the District of Columbia Public Schools ("DCPS") had failed timely to complete childfind procedures. In a Prehearing Order on April 27, 2010, the Hearing Officer determined the issue to be adjudicated as follows:

- DCPS' alleged failure timely to complete childfind procedures

  Petitioner alleges that her representatives made a written request on September 18, 2009 for evaluations to determine her eligibility for special education services, but DCPS has failed to initiate evaluations. DCPS asserts that on October 14, 2009, it sent a written invitation to Petitioner's counsel for a Multidisciplinary Team ("MDT") meeting, but received no response.

The due process hearing was convened and completed on May 19, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

Witnesses for Petitioner

Petitioner's Mother

Witnesses for DCPS

None

Findings of Fact

1. Petitioner is a year-old student who has attended for the last three years.[2]

[2] Testimony of Petitioner's mother.

2. On September 18, 2009, Petitioner's counsel at that time, Chike Ijeabuonwu, filed a letter with the Principal of requesting that Petitioner be evaluated to determine her eligibility for special education services.[3]

3. On October 14, 2009, the Special Education Coordinator at Miner responded to Mr. Ijeabuonwu's letter by inviting Petitioner's representatives to a meeting "to hear parent's concerns and have her complete necessary documents for the consent for the evaluation process. I am proposing the following meeting dates: October 26 at 10 am or pm, October 28 at 10 am. Please let me know if you and the parent are available for any of the proposed days and times."[4]

4. Petitioner's mother subsequently replaced Mr. Ijeabuonwu with Mr. Nahass. On November 18, 2009, Mr. Nahass filed a request for Petitioner's records. The letter did not renew the previous request for evaluations, and the attached General Authorization for Information specifically cancelled all prior authorizations.[5]

Conclusions of Law

Failure to Identify Petitioner as a Child with a Disability

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.[6] 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.[7] The results of the evaluations must be given considerable weight in determining the child's eligibility for services and in the development of the child's IEP.[8]

Under local law, "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."[9] 5 D.C.M.R. §3004 (a) and (b)(1) provides that a referral for evaluations may be initiated in writing by the parent. Here, the only written request for evaluations was made by Petitioner's previous counsel on September 18, 2009. On October 14th, DCPS invited Petitioner's representatives to a meeting to discuss their request, but Petitioner offered no evidence of a response to DCPS' invitation. When Mr. Nahass replaced Mr. Ijeabuonwu as counsel for Petitioner, he made a request for records on November 18, 2009, but did not renew the request for

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[3] DCPS Exh. No. 2.
[4] DCPS Exh. No. 1.
[5] Petitioner's Exhibit ("P.Exh.") No. 3.
[6] 34 C.F.R. §300.304(c)(4).
[7] 34 C.F.R. §300.304(b)(2).
[8] 34 C.F.R. §300.305(a).
[9] D.C. Code §38-2561.02(a). 5 D.C.M.R. §3004 (a) and (b)(1) provides that a referral for evaluations may be initiated in writing by the parent.

evaluations. The Hearing Officer concludes that DCPS responded timely to Petitioner's previous counsel's September 18, 2009 request for evaluations by inviting Petitioner's to a meeting to discuss the request. Petitioner's failure to respond to the invitation vitiated DCPS' obligation to complete childfind procedures within 120 days of the September 18th referral.

Petitioner's mother offered testimony to prove that due to Petitioner's poor academic performance, DCPS should have been on notice that Petitioner was a child with a disability.[10] Petitioner's mother's testimony was not persuasive that Petitioner was performing so poorly that DCPS should have suspected a disability. Petitioner's mother testified that Petitioner was "having difficulty paying attention, keeping up... can't keep up with spelling... only passed three spelling tests." These anecdotal observations do not even remotely establish the likelihood of a disability. Because litigants often submit unpersuasive anecdotal testimony about students' performance, this Hearing Officer suggests that petitioners' counsel submit documentation of petitioners' performance. The Amended Prehearing Hearing Order suggested that the following documentation be offered into evidence: "Petitioner's report cards, MDT meeting notes, teachers' reports, progress reports, disciplinary records, current assessments and evaluations, and attendance records for the last two years." Petitioner's counsel offered a Behavior Chart into evidence, but elicited no testimony relative to the exhibit. Moreover, counsel offered no other documentation of Petitioner's academic performance. The Hearing Officer concludes that Petitioner has failed to meet her burden of proving that DCPS was on notice that Petitioner suffered from a disability.

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 28th day of May 2010, it is hereby

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

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

[10] The Amended Prehearing Order did not authorize this alternative theory, and Petitioner's counsel did not request a modification of the Order. Nevertheless, over DCPS' objection, the Hearing Officer permitted Petitioner's counsel to introduce evidence to prove that DCPS should have been on notice of Petitioner's disability.

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 28, 2010