

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

STUDENT HEARING OFFICE
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In Re the Matter of :)
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)
Parent on behalf of Student,)
)
Petitioner,)
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)
)
)
v.)
)
)
The District of Columbia Public Schools)
825 North Capitol Street, N.W.)
Washington, D.C. 20002)
(DCPS" or "District"))
)
Respondent.)

Date of Complaint: July 7, 2009
Date of Pre-hearing: August 13, 2009
Date of Hearing: August 31, 2009
Case Number:

HEARING OFFICERS' DECISION

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney John Straus
The Law Offices of James E. Brown and Associates
1220 L Street, N.W., Suite 700
Washington, D.C. 20005

Counsel for Respondent: Attorney Daniel McCall, Assistant Attorney General, D.C. 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.

**THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA),
REAUTHORIZED AS THE 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 public school located in the District of Columbia. The student is a resident of the District of Columbia, and has not been 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)”.

On July 7, 2009, Petitioner’s Attorney, 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 timely evaluate the student, determine his eligibility for special education and related services, develop an appropriate IEP, and provide an appropriate placement.

The due process hearing convened on August 31, 2009, at 9:00 a.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. PARENT’S DUE PROCESS RIGHTS

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

IV. ISSUE

The following issue is before the court:

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to complete initial evaluations; and determine the student's eligibility for special education services, in a timely manner?

V. RELIEF REQUESTED

- (1) A finding that DCPS denied this student a FAPE by failing to timely evaluate the student, determine his eligibility for special education and its related services, develop an appropriate IEP, and provide a placement where the IEP may be implemented.
- (2) DCPS shall fund independent evaluations in all areas of suspected disability, including psycho-educational assessment, clinical psychological assessment, functional behavioral assessment, psychiatric assessment, a speech and language assessment and any other assessments warranted by these assessments.
- (3) DCPS shall convene an IEP team meeting within 5 days of receipt of the assessment reports to review the assessments and determine whether the student is a student with a disability under the IDEIA. If the team determines that the student is a student with a disability under the IDEIA, the team must develop an IEP consistent with the assessments.
- (4) DCPS shall develop a compensatory education plan to redress the denial of a free and appropriate public education as a result of failing to evaluate the student in a timely manner.
- (5) DCPS agrees to pay counsel for the complainant reasonable attorney's fees and related costs incurred in this matter.
- (6) All meeting shall be scheduled through counsel for the complainant in writing, via facsimile, at 202-742-2098.
- (7) DCPS shall send all notices to counsel for the parent with copies of such to the parent in the parent's native language.

Note: During the pre-hearing conference, the court determined that issues related to development of an appropriate IEP, and provision of an appropriate placement, were premature. The issues were dismissed "without" prejudice.

VI. PROCEDURAL POSTURE

On July 7, 2009, Petitioner's Attorney, 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 timely evaluate the student, determine his eligibility for special education and related services, develop an appropriate IEP, and provide an appropriate placement. On July 13, 2009, Respondent filed "District of Columbia Public School's Response".

On July 15, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the pre-hearing conference for August 10, 2009, at 4:00 p.m.. On July 30, 2009, Respondent filed "District of Columbia Public School's Motion for an Order Requiring the Parent to Provide Informed Written Consent for the Evaluation". On August 3, 2009, Petitioner filed "Answer to DCPS' Motion for an Order Requiring the Parent to Provide Informed Written Consent for the Evaluation and Petitioner's Motion for Default Judgment".

The pre-hearing conference was held on August 13, 2009, at 3:00 p.m.. At the pre-hearing conference, the court also determined that absent an evidentiary hearing, Respondent's Motion for an Order Requiring Parent to Provide Informed Written Consent for the Evaluation, and Petitioner's Motion for Default Judgment, due to DCPS' alleged failure to respond to the complaint, were denied. The court also ordered parent to appear at _____ on August 17, 2009, at 2:00 p.m., to provide informed written consent for evaluations.

On August 13, 2009, the Hearing Officer issued a Pre-hearing Conference Order confirming the due process hearing for August 31, 2009 at 9:00 a.m..

VII. PRELIMINARY MATTERS

As a preliminary matter, Respondent invoked the rule on witnesses; and entered on the record a Motion to Dismiss the complaint. Respondent alleges that the D.C. Code of Municipal Regulations ("DCMR") provides 120 days to complete initial evaluations, and the time period has not lapsed therefore, the issue is not "ripe" for review; and Respondent issued an Independent Educational Evaluation (IEE) letter authorizing independent evaluations, therefore there is no viable claim, and the complaint should be dismissed.

Respondent also cited several cases arguably supporting its position; and argued that in the complaint, Petitioner referenced §38-2501 of the DCMR, in support of its position; as current, and not repealed.

Petitioner challenged the timeliness of Respondent's Motion to Dismiss and failure to respond to the complaint; and argued that §38-2501 of the DCMR as referenced by Respondent was repealed and therefore IDEA, §300.301(c) imposing a sixty (60) day time limit to complete initial evaluations, governs.

After hearing argument from both parties, the court denied Respondent's Motion to Dismiss the complaint, as untimely; and required the parties to submit written memorandums of law by 5:00 p.m., on September 2, 2009, addressing the timeline to complete initial evaluations.

IIX. 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. Respondent objected to the introduction of Petitioner's Exhibit #10, as irrelevant. The court overruled the objection, finding the exhibit relevant to the issue in the complaint. Receiving no further objections, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE, ON BEHALF OF PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibit 9; and a witness list dated August 24, 2009.

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE, ON BEHALF OF RESPONDENT

- A witness list dated August 24, 2009.

IX. STATEMENT OF CASE

1. The student is _____ years of age, and attends _____ a public school located in the District of Columbia. The student is a resident of the District of Columbia, and has not been 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)".

2. On May 5, 2009, Petitioner's Attorney forwarded a written request for comprehensive initial evaluations, to the Principal at _____ to include, but not limited to: Psycho-educational Evaluation, Clinical Evaluation, Functional Behavioral Assessment, Psychiatric Evaluation, and a Speech and Language Evaluation. The request for evaluations was accompanied by a "Parental/Guardian Consent to Evaluate" form completed by parent on January 12, 2009, at her Attorney's office.

3. On July 7, 2009, Petitioner's Attorney, 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 timely evaluate the student, determine his eligibility for special education and related services, develop an appropriate IEP, and provide an appropriate placement.

4. On August 17, 2009, parent participated via conference call in a meeting with and DCPS to discuss the May 5, 2009 request for initial evaluations. At the meeting, the Special Education Coordinator, with parent's consent, executed a Consent to Evaluate form, on parent's behalf, authorizing DCPS to complete the initial evaluations.

5. The due process hearing convened on August 31, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

X. DISCUSSION AND CONCLUSIONS OF LAW

ISSUE 1

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to complete initial evaluations; and determine the student's eligibility for special education services, in a timely manner?

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Discussion

Petitioner represents that D.C. Mun. Regs. Tit. 5, §3002.1(d)(2003) requires that the local education authority ensure procedures are implemented to identify, locate, and evaluate children with disabilities residing in the District of Columbia. "Additionally, pursuant to D.C. Mun. Regs. Tit. 5, §3005.1 (2003), DCPS "shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine if the child is a 'child with a disability' ...; and the educational needs of the child. Further, pursuant to D.C. Mun. Regs. Tit. 5, §3005.2 (2003), "the IEP team shall conduct an initial evaluation of a child within a reasonable time of receiving a written referral and parental consent to proceed and within timelines consistent with Federal law and D.C. Code §38-2501(a)."

Petitioner also represents that pursuant to D.C. Mun. Regs. Tit. 30, §3005.7, DCPS shall ensure that "the child is assessed 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 [and] in evaluating each child with a disability...the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs..." "Failure to act on a request for an...evaluation is certainly not a mere procedural inadequacy; indeed, such inaction jeopardizes the whole of Congress' objectives in enacting the IDEA." See *Harris v. District of Columbia*, Civil Action No. 07-1422 (RCL).

Petitioner referenced 34 C.F.R. §300.111(a) arguing that the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State ...who are in need of special education and related services, are identified, located, and evaluated.

Petitioner concludes that the student was admitted to the hospital due to threatening the school Principal and violent outbursts; and suspended for the remainder of the 2007-08 school year. Petitioner also concludes that the student was evaluated as a student with a Mood-Disorder; and on May 5, 2009, parent requested an evaluation to determine whether the student is a student with a disability under the IFEA; and as of this date, DCPS failed to complete the evaluations.

Respondent represents that it has no record of a request for initial evaluation being received on the student's behalf. Respondent also represents that IDEA is clear that upon a public school system's referral of a student for evaluation, the school must obtain from parent informed written consent; which includes a discussion with parent regarding the evaluations requested, provision of the Procedural Safeguards Manual, the purpose of the evaluations, etc., and thereafter determine whether parent consents to the evaluations. Respondent represents that it obtained parent's informed written consent on August 17, 2009.

Post-Hearing Memorandums of Law

In the Post-Hearing Memorandum of Law, Petitioner represents that District of Columbia Code, Chapter 25B, §38-2501 states "Assessment and Placement of Special Education Students. [Repealed]." Petitioner also represents that District of Columbia Code, Chapter 25B, §38-2561.02 entitled "Placement of Students with Disabilities in Nonpublic Schools", requires completion of initial evaluations and assessments within 120 days after the date the student is referred for evaluation or assessment, however, the student in this matter was not placed in a nonpublic school; the student attends a public school; and this Chapter only applies to students in non-public schools; therefore, the 120 day timeframe is inapplicable.

Petitioner represents that DCPS must complete evaluations within a *reasonable* time; which is a 60 day timeframe, adopted by most states. Petitioner represents that Respondent's reference to a few selected Hearing Officer Decisions (HODs), are not binding on this Hearing Officer. Petitioner also represents that DCPS' reliance on cases cited in its memorandum are without merit and inapplicable in this instance, because §38-2501 of the D.C. Code was repealed after the operative facts in each case.

Respondent represents that the District of Columbia established a timeframe of 120 days for conducting initial evaluations. *D.C. Code §38-2561.02 (a)*. Respondent further represents that the statutory provision setting forth the 120 day timeframe previously appeared at D.C. Code Chapter 25, §38-2501; was entitled "Special Education and Assessment"; and was recently repealed. Respondent also argues that the exact language of the prior chapter, however, was reenacted as early as November, 2007, at §38-2561.02, part of Chapter 25B; and since the repeal and reenactment of this section, courts in the District of Columbia have continued to apply 120 days as the appropriate timeline for initial evaluations of both public and nonpublic students alike.

Respondent also references another Hearing Officer's decision wherein the Hearing Officer held that the title of Chapter 25B, §38-2501 is most unfortunate, however it is clear from reading the language in Chapter 25B that it applies to the process of child find and placement for all D.C. students, regardless of whether they are in public or private school. The Hearing Officer also held that another interpretation would produce the "absurd" and unfair result of treating children in public schools differently from children in private schools in the determination of whether they are eligible for special education. This court finds that although persuasive, a prior Hearing Officer's decision is not binding upon this court, and therefore, no controlling in this matter.

In further support of its position, Respondent cites *Dorros v. District of Columbia*, 510 F. Supp. 2d 97 (U.S. Dist. Ct. D.C. 2007); *T.P. v. Friendship Edison Public Charter School*, 577 F. Supp. 2d 68, 74 (D.D.C. 2008); and *A.H. v. District of Columbia* 579 F. Supp. 2d 22, 28 (D.D.C. 2008).

Respondent argues that the title of the Chapter, "Placement of Students with Disabilities in Nonpublic Schools", does not mean that its provisions apply only to students already in nonpublic schools; however, announces that the sections within deal with the process of placing student with disabilities in nonpublic schools—regardless of where they attend school when the process is initiated.

"Child Find"

IDEA, at **34 C.F.R. Section 300.111**, entitled "**Child Find**", requires that the LEA must have in effect policies and procedures to ensure that all children with disabilities residing in the State, and who are in need of special education and related services, are **identified, located, and evaluated**. In addition, subparagraph (c) of the "**Child Find**" provisions provide that "**Child find**" must also include children who are **suspected** of being a child with a disability under Section 300.8, ("**Other Health Impairment**"), and in need of special education, even though they are advancing from grade to grade.

Before the initial provision of special education to a child the agency must conduct full and individual initial evaluations. Evaluations are procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. See, IDEIA, 34 C.F.R. §300.15.

A full evaluation of a child is an integral part of developing an IEP for a student, which is the reason IDEIA at 34 C.F.R. §300.301(a) requires public education providers to conduct a full and individual initial evaluation of a child. See, T.X. ex rel. Skrine v. District of Columbia, 2007 WL 915227 (D.D.C.). It is also the reason that IDEA, 34 C.F.R. §300.304(c) (4) and (6) provides that in evaluating a child, the public agency must ensure that the child is assessed in **all** areas related to the **suspected** disability; and that the evaluations are **sufficiently comprehensive** to identify **all** of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; which Petitioner alleges failed to occur in this matter.

In requesting initial evaluations, *IDEA, 34 C.F.R. §300.301 (b)* provides that consistent with the consent requirements in §300.300, ***either a parent of a child or a public agency may initiate a request for an initial evaluation*** (emphasis supplied) to determine if the child is a child with a disability.

IDEA, 34 C.F.R. §300.300 provides that the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8, must, after providing notice consistent with §300.503 and 300.504, obtain *informed consent*, consistent with §300.9, from the parent of the child before conducting the evaluation.

Subparagraph (a)(1)(iii) provides that the public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

According to IDEA, 34 C.F.R. §300.9 consent means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom; and
- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

Timeline for Initial Evaluations

The IDEA, §300.301(c)(1)(i) provides that the initial evaluation must be conducted ***within sixty (60) days of receiving parental consent*** for the evaluation; *or* if the State establishes a timeframe within which the evaluation must be conducted. The 60 day timeframe established by IDEA in completing initial evaluations, only applies if the State fails to establish a timeframe within which an initial evaluation must be conducted.

In the District of Columbia, the District of Columbia Code, Chapter 25, §38-2501 (a), entitled “Special Education and Assessment”, established a 120 day timeframe within which initial evaluations and assessments must be completed for students who may have a disability and may require special education services; applicable to all students, without distinguishing between students in *public or non-public schools*; however, was repealed.

District of Columbia Code, Chapter 25B, is entitled “Placement of Students with Disabilities in *Nonpublic Schools*”, however, §38-2561.02 of this Chapter is entitled “Assessment and placement of a student with a disability—General”, stating that 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.

The D.C. Municipal Regulation, Title 5, Chapter 30, §3005.2 provides that the IEP team shall conduct an initial evaluation of a child *within a reasonable period of time of receiving a written referral and parental consent* to proceed and within the timelines consistent with Federal law and D.C. Code §38-2501 (2006).

Findings of Fact

1. On May 5, 2009, Petitioner's Attorney forwarded a written request for comprehensive initial evaluations, to the Principal at _____ accompanied by a "Parental/Guardian Consent to Evaluate" form completed by parent on January 12, 2009, at her Attorney's office. Respondent failed to respond to Petitioner's written request for initial evaluations; or exercise any efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
2. On July 30, 2009, after filing of the due process complaint, Respondent filed with the court, "District of Columbia Public School's Motion for an Order Requiring the Parent to Provide Informed Written Consent for the Evaluation"; and on August 3, 2009, Petitioner filed "Answer to DCPS' Motion for an Order Requiring the Parent to Provide Informed Written Consent for the Evaluation and Petitioner's Motion for Default Judgment".

The pre-hearing conference convened on August 13, 2009; and after discussion of the Motion, the Hearing Officer issued a Pre-hearing Conference Order, requiring among others, that parent appear at _____ on August 17, 2009, at 2:00 p.m., to provide informed written consent for the initial evaluations.

3. On August 17, 2009, parent participated via conference call in a meeting with _____ the Education Advocate, and DCPS to discuss the May 5, 2009 request for initial evaluations; and provide informed written consent to the initial evaluations. Parent was fully informed of all information relevant to the initial evaluations, received the Procedural Safeguards Manual; and provided *informed* written consent, consistent with the IDEA, 34 C.F.R. §300.300 and §300.9.

Conclusions of Law

1. DCPS failed to comply with the "Child Find" requirements of the IDEA, at 34 C.F.R. §300.311; and IDEA, §§300.301 and 300.304, in conducting a full and individual initial evaluation of the student.
2. The District of Columbia Code, Chapter 25, §38-2501 (a), entitled "Special Education and Assessment", established a 120 day timeframe within which initial evaluations and assessments must be completed for students who may have a disability and may require special education services; applicable to all students, without distinguishing between students in *public or non-public schools*; however, was repealed.

3. D.C. Code, Chapter 25B, which is entitled “Placement of Students with Disabilities in Nonpublic Schools” is ambiguous. The *title* of the Chapter 25B leaves readers unclear whether the Chapter and its underlying provisions, only apply to students in nonpublic schools; or whether Chapter 25B, §38-2561.02 (a) establishes the timeline for DCPS to complete initial evaluations for all students, regardless of whether the students attend public or non-public schools. However, a review of recent Federal District Court decisions, provides the court the necessary clarification.

It is clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a), as establishing the timeline for DCPS to complete initial evaluations for all students, regardless of whether the students attend public or non-public schools.

It is equally clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a); as requiring DCPS to 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 is referred for an evaluation or assessment. *See, Dorros v. District of Columbia, 510 F.Supp.2d 97 (2007); Integrated Design and Electronics Academy Public Charter School v. McKinley, 570 F.Supp.2d 28 (2008); Jones ex rel. A.J. v. District of Columbia, 109 LRP 52722 (2009).*

4. Parent’s completion of the January 12, 2009 “Parental/Guardian Consent to Evaluate” form failed to satisfy the informed consent requirements of IDEA, 34 C.F.R. §300.300 and §300.9. However, the May 5, 2009 request to evaluate the student, accompanied by the January 12, 2009 “Parental/Guardian Consent to Evaluate” completed by parent, constituted referral of the student for evaluation; and placed Respondent on notice that parent requested initial evaluations to determine whether the student was disabled and eligible for special education services; and triggered the DCPS’ “Child Find” obligations, under the IDEA.

The defectiveness in the informed consent requirement under the IDEA, fail to toll the start of the 120 day period, as a meeting with the LEA to ensure that the parent provides informed written consent, is not required to proceed with an initial evaluation of a student, once the parent has made clear the decision to evaluate the child for special education services.

An LEA’s duty to locate and complete the evaluation of a student starts “as soon as a student is identified as a potential candidate for special education services.” *Id.* See, e.g., *Hawkins, 539 F.Supp.2d 108; Abramson, 493 F.Supp.2d at 85* (explaining that once a child is identified, the LEA “is then obligated to move forward with the requirement of [IDEA] *35 §1414(a)(1) and determine whether the student is in fact a child with a disability”); which failed to occur in this matter. *See, Integrated Design and Electronics Academy Public Charter School, v. McKinley, 570 F.Supp.2d 28 (2008).*

According to Chapter 25B, §38-2561.02(a), the 120 day timeline for DCPS to complete initial evaluation of the student began on May 5, 2009, the date the student was referred for evaluation by parent; and expires on September 5, 2009. The due process complaint was filed on July 7, 2009, prior to September 5, 2009; and expiration of the 120 day timeline for DCPS to complete the initial evaluations.

5. After review of the evidence, Attorneys Memorandums of Law; and relevant case law, the court reconsiders its preliminary decision to deny Respondent's Motion to Dismiss the complaint; finding that the due process complaint is not ripe for review by the court, is premature, is dismissal is appropriate.

Decision

It is the Hearing Officers' decision that Petitioner failed to satisfy its burden of proof by failing to present evidence that DCPS denied the student a free appropriate public education (FAPE); by failing to complete initial evaluations, and determine the student's eligibility for special education and related services; in violation of IDEA, 34 C.F.R. §300.301(c)(1)(i).

XI. ORDER

Based on the aforementioned, it is hereby:

- (1) **ORDERED**, that Respondent's Motion to Dismiss the July 7, 2007 due process complaint, as premature, is **GRANTED**; and it is further
- (2) **ORDERED**, that the due process complaint filed on July 7, 2009, is dismissed "with" prejudice; and it is further
- (3) **ORDERED**, that this decision and order are effective immediately.

XII. 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 of this decision.

Ramona M. Justice

Attorney Ramona M. Justice
Hearing Officer

Date Filed: _____

9-6-09

cc: Attorney Daniel McCall, Office of the Attorney General
Attorney John Straus: Fax: 202-742-2098