

**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

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Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: August 6, 2009
)	
Petitioner,)	Hearing Date: October 9, 2009
)	
v.)	Docket No. 2009-1147
)	
THE DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

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STUDENT HEARING OFFICE

HEARING OFFICER'S DECISION

Counsel for Petitioner:

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Counsel for DCPS:

Candace Sandifer, Esquire
Office of the General Counsel, DCPS
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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.

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Introduction

Petitioner is a [REDACTED] year-old student attending [REDACTED] Educational Center [REDACTED]. On August 6, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed timely to complete childfind procedures. In lieu of a due process hearing, the parties agreed to submit cross motions to the Hearing Officer for a final determination. On October 7, 2009, Petitioner filed *Petitioner's Motion for Adjudication on the Pleadings* and DCPS filed *District of Columbia Public School's Motion to Dismiss Petitioner's Due Process Complaint*.

Record

Due Process Complaint Notice dated August 6, 2009
District of Columbia Public School's Response to Petitioner's Due Process Complaint dated September 9, 2009
Prehearing Order (Hearing Officer Frederick Woods) dated September 13, 2009
Petitioner's Motion for Adjudication on the Pleadings dated October 7, 2009
District of Columbia Public School's Motion to Dismiss Petitioner's Due Process Complaint dated October 7, 2009

Findings of Fact

1. Petitioner is a [REDACTED] year-old resident of the District of Columbia.²
2. Petitioner experienced significant behavior problems during the 2008-2009 school year while attending the [REDACTED] Public Charter School [REDACTED], which led to his expulsion in April 2009.³
3. Following his expulsion from [REDACTED] the Petitioner's mother enrolled Petitioner at his neighborhood school, [REDACTED] ([REDACTED]).⁴

² Petitioner's Exhibit ("P.Exh.") No. 1.

³ P.Exh. No. 2.

⁴ P.Exh. No. 1.

4. Shortly after Petitioner's enrollment at [REDACTED] DCPS initiated expulsion procedures against Petitioner.⁵

5. On June 4, 2009, during the pendency of the disciplinary action against Petitioner, Petitioner's counsel requested that DCPS evaluate Petitioner to determine his eligibility for specialized instruction and related services.⁶

6. At an expulsion hearing on June 10, 2009, the expulsion was overturned and Petitioner was allowed to return to [REDACTED]

7. On August 18, 2009, DCPS authorized Petitioner to obtain an independent comprehensive psychological evaluation.⁸

Conclusions of Law

Childfind Violation

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.⁹ 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.¹⁰ 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.¹¹ 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."¹²

Petitioner's counsel argued that DCPS was obligated to evaluate Petitioner on an expedited basis following the June 4th request for evaluations pursuant to D.C. Code Section 5-2510.23. The D.C. Code contains no such provision. However, District regulations extend IDEIA protection to unidentified students "if DCPS had knowledge ... that the child was a child with a disability before the behavior that precipitated the

⁵ *Id.*

⁶ P.Exh. No. 3.

⁷ DCPS' *Motion to Dismiss* at 3. DCPS did not disclose a copy of the disciplinary hearing decision. Thus, the Hearing Officer is relying on counsel for DCPS for the accuracy of her assertion. If the rescission of the expulsion is in dispute, the Hearing Officer encourages Petitioner to file a Motion for Reconsideration.

⁸ Prehearing Order, ¶ 9. "The parent accepted the authorization and will select an independent evaluator to perform the Comprehensive Psychological Assessment."

⁹ 34 C.F.R. §300.304(c)(4).

¹⁰ 34 C.F.R. §300.304(b)(2).

¹¹ 34 C.F.R. §300.305(a).

¹² 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.

disciplinary action occurred.”¹³ DCPS is deemed to have knowledge that a child is a child with a disability if the parent expressed concern in writing to DCPS personnel.¹⁴ DCPS is obligated to conduct an expedited evaluation if the request for evaluation is made while a child is subject to disciplinary measures.¹⁵

Here, Petitioner, an unidentified child, was entitled to IDEIA protection provided in D.C.M.R. Section 2510.22, because Petitioner’s counsel requested an evaluation while disciplinary procedures were pending. D.C.M.R. Section 2510.26 provides for an expedited hearing, the obvious purpose of which is to provide special education services in the event of an eligibility determination and to ensure that “the child must remain in the educational placement determined by school authorities.” However, as a result of Petitioner’s disciplinary hearing, the proposed expulsion was rescinded six days after the request for evaluations. Thus, Petitioner was no longer subject to disciplinary measures and his educational placement was unaffected.

The regulations provide no guidance as to how soon “expedited” evaluations must be completed. Moreover, the justification for expedited evaluations was eliminated with the prompt termination of disciplinary measures. Since there was no further threat of a change in Petitioner’s educational placement as of June 10th, expedited evaluations were no longer necessary, particularly with the school year ending two days later.

Under D.C. Code §38-2561.02(a), DCPS has 120 days from June 4th to complete childfind proceedings.¹⁶ Thus, the *Complaint*, filed on August 6th, was premature. DCPS authorized an independent comprehensive psychological evaluation on August 18th.¹⁷ In the event Petitioner is found eligible after the evaluation is reviewed at the eligibility meeting, and assuming the timely completion and disclosure of the independent evaluation, the Multidisciplinary Team would be obligated to consider whether Petitioner requires additional services if the eligibility determination was not completed within the 120-day deadline.¹⁸ However, in light of the circumstances as of the date the *Complaint* was filed, Petitioner has failed to meet his burden of proving that DCPS failed timely to complete childfind procedures.

¹³ 5 D.C.M.R. §2510.22.

¹⁴ 5 D.C.M.R. §2510.23.

¹⁵ “If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by DCPS and information provided by parents, DCPS must provide special education and related services in accordance with the relevant provisions of the Individuals with Disabilities Education Improvement Act, as amended, except that, pending the results of the evaluation, the child must remain in the educational placement determined by school authorities.” 5 D.C.M.R. §2510.26.

¹⁶ 5 D.C.M.R. §3004 (a) and (b)(1) provides that a referral for evaluations may be initiated in writing by the parent. Thus, the referral was made on June 4th when Petitioner’s counsel requested DCPS to conduct initial evaluations.

¹⁷ Petitioner’s counsel’s June 4th request for evaluations also requested a speech and language evaluation and vision and hearing screenings. However, the parent’s affidavit alleges no facts that would warrant these evaluations.

¹⁸ The Hearing Officer notes that the parent’s undated statement (P.Exh. No. 1) was silent as to the status of the independent evaluation.

ORDER

Upon consideration of Petitioner's request for a due process hearing and the record as identified above, this 19th day of October 2009, it is hereby

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

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

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: June 21, 2009

APPENDIX A

[REDACTED]

Docket No. 2009-1147

Attending: [REDACTED]

Child	[REDACTED]
Date of Birth	[REDACTED]
Student ID No.	[REDACTED]
Child's Parent(s) (specific relationship)	[REDACTED]
Child/Parent's Representative	[REDACTED]
School System's Representative	[REDACTED]

⚠ Attachments can contain viruses that may harm your computer. Attachments may not display correctly.



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