DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF COMPLIANCE & REVIEW
STATE ENFORCEMENT & INVESTIGATION DIVISION
STUDENT HEARING OFFICE

CONFIDENTIAL

Jane Dolkart, Due Process Hearing Officer
1150 5th Street, S.E.
Washington, D.C. 20003
202-698-3819; 202-698-3825 (Fax)

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STUDENT HEARING OFFICE
2009 NOV 24 AM 8:38

HEARING OFFICER'S DETERMINATION

IN THE MATTER OF:	)	
[redacted]	)	
	)	DATE OF HEARING
	)	November 23, 2009
	)	
	)	DATE OF COMPLAINT
V.	)	August 21, 2009
	)	
The District of Columbia	)	ATTENDING SCHOOL:
Public Schools,	)	[redacted]
Respondent	)	

COUNSEL FOR PARENT/STUDENT: **Domiento Hill**
James E. Brown & Assoc.
1220 L Street, N.W.
Ste. 700
Washington, D.C. 20005

COUNSEL FOR DCPS: **Laura George**
Office of the General Counsel
825 North Capitol Street, N.E., 9th Fl.
Washington, D.C. 20002-4232

APPENDIX 1

INDEX OF NAMES

In the MATTER OF "Student" V. DCPS

Assistant Superintendent, Special Education (or Director)	
School Psychologist	
Special Education Teacher	
Principal	
Speech/Language Therapist	
DCPS Case Manager	[redacted]
Physical Therapist	
Private Psychologist	
Child and Child's DCPS ID # or SSN (insert ID # or Case Number on each page of the HOD vice child's name)	[redacted]
Child's Parent(s) (specific relationship)	[redacted]
Child/Parent's Representative	[redacted]
School System's Representative	
Educational Advocate	
School	

STUDENT[1], by and through his Parent Petitioners, v. DCPS Respondent.	HEARING OFFICER'S DETERMINATION November 23, 2009 Representatives: Petitioner – Domiento Hill DCPS – Laura George Hearing Officer: Jane Dolkart

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a [redacted] year old student eligible for special education under the classification of Emotional Disturbance (ED). The student's most recent IEP, developed on January 27, 2009, provides that the student receive 10 hours of specialized instruction in a general education setting, 5 hours of specialized instruction in an out of general education setting, and 1 hour of behavioral support services in an out of general education setting, per week.

On May 26, 2009, DCPS and Petitioner entered into a settlement agreement disposing of an earlier due process complaint. The agreement provided that DCPS would issue an Independent Educational Assessment letter (IEE) allowing Petitioner to obtain comprehensive psychological and speech and language evaluations. These evaluations were provided to DCPS on July 16, 2009. Additionally, DCPS obligated itself to conduct a functional behavioral assessment (FBA) and a vocational assessment. The parties agreed that an IEP meeting would be convened within 10 days of receipt of the evaluations. DCPS has not completed the evaluations.

This due process complaint was filed on August 21, 2009, alleging that DCPS violated the May 26, 2009 settlement agreement by failing timely to complete the evaluations and failing to convene an IEP meeting within 10 days of receipt of Petitioner's independent evaluations. The complaint further alleges that the student has an inappropriate IEP and an inappropriate placement.

This case was filed on August 21, 2009. The Student Hearing Office (SHO) failed to process the complaint. On October 20, 2009, Petitioner's attorney contacted the SHO to inquire about the complaint. A second copy of the complaint was filed on October 20, 2009, and the case was assigned to this Hearing Officer. Petitioner's counsel left his law firm on October 21, 2009, and new counsel took over representation of Petitioner. A response to the complaint had apparently been filed some time in September, but the SHO had no record of the response. An amended response was filed on October 30, 2009, by new DCPS counsel who was assigned to the case on October 21, 2009.

A resolution session was scheduled for September 4, 2009. Petitioner was present as scheduled but DCPS failed to appear. A Due Process Disposition Form was never signed by the parties.

Petitioner's counsel filed a motion for a continuance on October 26, 2009, and a 28 day continuance was granted on October 27, 2009.

Three pre-hearing conferences were held in this case. The first conference was held on October 30, 2009, and a pre-hearing order was issued on October 31, 2009. A second pre-hearing conference was held on November 3, 2009, and a pre-hearing conference order

was issued on November 16, 2009. A third pre-hearing conference was held on November 18, 2009, and a pre-hearing order was issued on November 22, 2009. As a result of the first pre-hearing conference, DCPS issued an IEE letter on November 3, 2009, agreeing to fund an independent FBA and a vocational assessment. As a result of the second pre-hearing conference, an IEP meeting was arranged for November 16, 2009 in order to review the student's evaluations, revise his IEP, and discuss placement. This meeting was not successfully convened on November 16th.

At the hearing, the parties reached a settlement which is memorialized in this HOD. DCPS admitted that it had violated the May 26, 2009, settlement agreement by failing timely to complete the FBA and vocational assessments and by failing to convene an IEP meeting to review the evaluations and revise the student's IEP, if warranted, and discuss placement. DCPS has denied the student FAPE in this regard. The parties agreed that an appropriate IEP and placement cannot be determined until the outstanding FBA and vocational assessment are completed. Therefore, the parties agreed to schedule an IEP meeting by which time all the evaluations will be completed.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.,* 34 CFR Part 300 *et seq.,* and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by

1. Violating the May 26, 2009 settlement agreement by failing to convene an IEP meeting within 10 days of receipt of Petitioner's independent comprehensive psychological and speech & language evaluations?

2. Failing timely to review Petitioner's evaluations and to revise the student's IEP?

3. Failing timely to complete an FBA and vocational assessment?

4. Failing to provide an appropriate IEP in that the student requires a full time IEP as a result of his severe emotional problems and poor achievement levels, and requires speech and language therapy?

5. Failing to provide the student with an appropriate placement in that the student requires a full-time therapeutic placement?

VIII. ORDER

It is hereby **ORDERED** that

1. DCPS has denied the student FAPE by failing timely to complete the Functional Behavioral Assessment and the vocational assessment, and by failing to convene an IEP meeting to review the student's evaluations, revise his IEP, and discuss placement.

2. An IEP meeting shall occur at 10 a.m. on December 11, 2009, at [redacted] shall have present at the meeting all personnel necessary to review the student's evaluations, discuss and make decisions concerning the student's IEP, and discuss and make decisions concerning the student's placement. Petitioner shall submit to DCPS no later than 5 p.m. on December 9, 2009, the completed FBA and vocational assessment, as well as a signed copy of the student's clinical psychological evaluation on the letterhead of the psychologist. The student's mother shall attend the meeting along with the student's representative.

3. If the December 11, 2009, IEP meeting does not successfully resolve all of the issues in this complaint and all or part of the complaint is refiled as a new due process complaint, DCPS counsel shall make a good faith effort to persuade DCPS to waive the resolution period in the new complaint so that the case can be heard expeditiously.

4. This complaint is dismissed without prejudice as to all other issues raised in the complaint.

5. Any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, shall extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: November 23, 2009

[redacted]

** NOTE: Please do not modify subject line when replying **
** This email was sent by Jane Dolkart <mailto: jane.dolkart@dc.gov> **

Attached is the HOD in the above case

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