

**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

1150 - 5th Street, S.E.; Room 3

Washington, D.C. 20003

(202) 698-3819

Facsimile: (202) 698-3825

Tmbanks1303@earthlink.net

Confidential

STUDENT, through the legal guardian¹)	Complaint Filed: June 12, 2009
)	
Petitioner,)	Prehearing Order: July 6, 2009
)	
v.)	Hearing Date: July 15, 2009
)	
THE DISTRICT OF COLUMBIA)	Docket No.
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	
Student Attending:)	
)	

2009 JUL 27 PM 12:12
STUDENT HEARING OFFICE

HEARING OFFICER'S DECISION

Counsel for Petitioner: Christopher L. West, Esquire
James E. Brown & Associates
1220 L Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202) 742-2098

Counsel for DCPS: Tanya Chor, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

¹ Personal identification information is provided in Appendix A.

Jurisdiction

This proceeding was conducted 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 an _____ year-old student attending _____

On March 27, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) identify Petitioner as a child with a disability, (2) develop an appropriate Individualized Education Program ("IEP"), (3) provide special education services, and (4) evaluate Petitioner in all areas of suspected disability. The due process hearing was conducted on April 28, 2009. On May 8, 2009, this Hearing Officer issued a Hearing Officer's Decision ("hereinafter referred to as the HOD") dismissing the Complaint with prejudice and concluding that the *Complaint* was frivolous, unreasonable, and without foundation. On May 18, 2009, Petitioner filed a *Request for Reconsideration* ("*Motion*"). On May 26, 2009, the Hearing Officer issued an Order on Motion for Reconsideration denying the *Motion*.

On June 12, 2009, Petitioner filed a Due Process Complaint Notice ("*Complaint*") alleging that DCPS had failed to authorize Petitioner to obtain an independent evaluation and failed to develop an appropriate Individualized Education Program ("IEP"). In a Prehearing Order issued on July 6, 2009, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' alleged failure to authorize an independent evaluation

Petitioner alleges that DCPS conducted a neuropsychological evaluation on April 21, 2009 to which Petitioner's counsel objected in a letter on April 30th, and requested authorization for an independent evaluation; DCPS has not responded to the letter. DCPS asserts that it did not conduct a neuropsychological evaluation of Petitioner.

In the event DCPS fails to issue authorization for an independent evaluation prior to the hearing, the Hearing Officer will adjudicate the sufficiency of the disputed evaluation.

- DCPS' failure to develop an appropriate IEP

Petitioner alleges that Petitioner's initial IEP, developed on April 23, 2009, prescribed an insufficient amount of services based on _____

Petitioner's grades, performance level, and behavior. DCPS asserts that the IEP provides an appropriate level of services to meet Petitioner's needs.

The due process hearing was convened on July 15, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. Neither party offered testimony at the hearing.

Record

Due Process Complaint Notice dated June 12, 2009
DCPS Resolution Session Waiver dated June 15, 2009
District of Columbia Public School's Response to Parent's Administrative Due Process Complaint dated June 29, 2009
Prehearing Order dated July 6, 2009
DCPS' Five-Day Disclosure dated July 7, 2009 (Exhibit Nos. 1-3)
Petitioner's Five-Day Disclosure dated July 8, 2009 (Exhibit Nos. 1-9)
Attendance Sheet for hearing conducted on July 15, 2009

Findings of Fact

1. Petitioner is an _____ year old student attending _____
2. On February 26, 2009, Dr. Meiko Mori, DCPS School Psychologist, completed a Report of Additional (School-Based Neuropsychological) Testing.³
3. On April 30, 2009, Petitioner's counsel notified the Special Education Coordinator at _____ that Petitioner contested the validity of the February 26th evaluation and requested authorization for an independent evaluation.⁴

Conclusions of Law

A parent has the right to request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests the local education agency ("LEA") to assume the cost for an independent evaluation, the LEA must either initiate a hearing to show that its evaluation is appropriate, or fund the independent evaluation.⁵ In this case, although Petitioner requested authorization for an independent evaluation on April 30, 2009, DCPS did not authorize an independent evaluation and did not initiate a due process proceeding.

² *Complaint* at 1.

³ DCPS Exh. No. 3.

⁴ Petitioner's Exhibit ("P.Exh.") No. 3.

⁵ 34 C.F.R. §300.502(b)(2).

Therefore, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to respond to the request for an independent evaluation.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, and the representations of the parties' counsel at the hearing, this 25th day of July 2009, it is hereby

ORDERED, that Petitioner shall obtain the following independent evaluations in accordance with 5 D.C.M.R. Section 3027.5: Developmental Neuropsychological Assessment – Second Edition; Thematic Apperception Test; and an Adaptive Behavior Assessment System – Second Edition. Petitioner's counsel shall provide copies of the completed evaluations to the Special Education Coordinator at Stanton and the DCPS Office of Special Education ("OSE") Legal Unit by facsimile transmission and first-class mail along with a written request to schedule the MDT meeting described below.

IT IS FURTHER ORDERED, that within fifteen (15) school days of its receipt of the independent evaluations, DCPS shall convene an MDT meeting. DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Christopher L. West, Esquire. The MDT shall review all current evaluations and assessments and update Petitioner's IEP as necessary.

IT IS FURTHER ORDERED, that 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, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at Stanton and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.⁶

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

⁶ If DCPS fails to contact Petitioner's counsel to coordinate scheduling the MDT meeting by a date that would make compliance with this Order feasible, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.

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: July 25, 2009