

District of Columbia  
Office of the State Superintendent of Education  
Office of Review and Compliance  
Student Hearing Office  
Frances Raskin, Due Process Hearing Officer  
1150 – 5th Street, S.E.; Room 3  
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OSSE  
STUDENT HEARING OFFICE  
2009 SEP -8 AM 9: 12

**Confidential**

STUDENT, through the legal guardian<sup>1</sup> )  
 )  
 Petitioner, )  
 )  
 v. ) Hearing Date: August 25, 2009  
 )  
 )  
 THE DISTRICT OF COLUMBIA )  
 PUBLIC SCHOOLS, )  
 )  
 Respondent. )  
 )

**HEARING OFFICER DETERMINATION**

**Counsel for Petitioner:** Domiento Hill, Attorney at Law  
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:** Daniel Kim, Attorney at Law  
Office of the Attorney General  
825 North Capitol Street, N.E.; 9th Floor  
Washington, D.C. 20002  
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<sup>1</sup> Personal identification information is provided in Attachment A.

## **I. 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"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

## **II. BACKGROUND**

Petitioner is the mother of a -year-old student ("Student") at a District of Columbia public charter school. Both Petitioner and the Student reside in the District of Columbia. On July 21, 2009, Petitioner filed a due process complaint ("Complaint") alleging that the District of Columbia Public Schools ("DCPS") failed to (a) reconvene the Student's multidisciplinary team ("MDT") upon Petitioner's request and review the Student's recent independent educational evaluation; (b) provide the Student an individualized educational program ("IEP") that is reasonably calculated to provide the Student a free, appropriate, public education because the Student's IEP fails to incorporate the recommendations of the Student's educational evaluation that the Student receive occupational therapy and vocational evaluations; (c) conduct occupational therapy and vocational evaluations of the Student, thereby failing to evaluate the Student in all suspected areas of disability. Petitioner seeks: (a) independent occupational therapy and vocational therapy evaluations at DCPS expense; (b) an order requiring DCPS to convene the MDT meeting to review the Student's evaluations; (c) placement of the Student at a non-public school; and (c) compensatory education.

On August 11, 2009, counsel for DCPS filed a Response to Parent's Administrative Due Process Complaint Notice ("Response"). The Response was filed more than ten days late, and thus this Hearing Officer will not consider it unless counsel for DCPS shows good cause for the late filing. The Response stated that DCPS provided the Student an IEP for the 2008-2009 school year that provided the Student seven hours of specialized instruction and 1.5 hours of counseling services to be provided weekly. DCPS further asserts that any delay in reviewing the Student's educational evaluation has not harmed the Student because she was not eligible for extended school year services. Further, the Response asserts that DCPS provided the Student a FAPE and that the Student made academic gains during the fourth advisory of the 2008-09 school year. DCPS contends that the MDT makes decisions about which evaluations are warranted, and that it will consider the recommendations of a vocational and occupational therapy evaluation during its review of the educational evaluation. Finally, DCPS asserts that a hearing officer determination issued on July 27, 2009, required only that DCPS convene a meeting to review and revise the Student's IEP as warranted and discuss compensatory education.

The due process hearing convened at 9:00 a.m. on August 25, 2009. Present at the hearing were counsel for Petitioner, counsel for DCPS, Petitioner, the Student, and Petitioner's educational advocate. At the outset of the due process hearing, counsel for DCPS offered to fund occupational therapy and vocational assessments at a cost not to exceed the Chancellor's

guidelines. The parties agreed that DCPS would convene a meeting of the multidisciplinary team to review the Student's evaluations on September 15, 2009.<sup>2</sup> Petitioner agreed to withdraw her remaining claims and they will be dismissed without prejudice.

### ORDER

Upon consideration of the agreement of the parties, it is this 4th day of September 2009 hereby:

**ORDERED** that Petitioner shall obtain independent occupational therapy and vocational assessments at DCPS expense, with the cost not to exceed the Chancellor's guidelines, on or before September 30, 2009;

**IT IS FURTHER ORDERED** that Petitioner shall provide copies of the occupational therapy and vocational assessments to DCPS within five business days of receiving each assessment and final report;

**IT IS FURTHER ORDERED** that DCPS shall convene the a meeting of the multidisciplinary team ("MDT") on September 15, 2009, or within ten business days of receiving the Student's completed occupational therapy and vocational assessments, to revise the Student's individualized educational program ("IEP") as appropriate, develop a transition plan, and discuss the Student's educational placement, i.e., the setting where the IEP will be implemented;

**IT IS FURTHER ORDERED** that DCPS shall ensure that the Parent and the Student are present at the MDT meeting before proceeding;

**IT IS FURTHER ORDERED** that DCPS shall receive one day of delay for every day of delay caused by Petitioner, the Student, Petitioner's educational advocate, or Petitioner's counsel; and

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

*/s/ Frances Raskin*

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Frances Raskin  
Hearing Officer

### NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process

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<sup>2</sup> Considering that the hearing office determination in this case was not due before September 4, 2009, and Petitioner is unable to obtain evaluations without this Order or a letter from DCPS authorizing the evaluations at DCPS expense, which DCPS did not issue in this case, this Hearing Officer believes that the September 15, 2009, meeting date is overly optimistic. Nonetheless, this Order will incorporate the agreement of the parties.

hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).

Issued: September 4, 2009

Distributed to:

Domiento Hill, Attorney at Law  
Daniel Kim, Attorney at Law  
Hearing Office  
DCPS

## **APPENDIX A**