

District of Columbia  
Office of the State Superintendent of Education  
Office of Review and Compliance  
Student Hearing Office  
Frances Raskin, Due Process Hearing Officer  
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STUDENT HEARING OFFICE  
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**Confidential**

STUDENT, through the legal guardian <sup>1</sup>	)	
	)	
Petitioner,	)	
	)	
v.	)	Complaint Filed: March 30, 2009
	)	
	)	Hearing Dates: June 10, 2009
	)	June 18, 2009
	)	
Respondent.	)	

**HEARING OFFICER DETERMINATION**

**Counsel for Petitioner:** Domiento C.R. Hill, Esquire  
James E. Brown & Associates  
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**Counsel for DCPS:** Ellen Douglass Dalton, Attorney at Law  
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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”); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

## II. BACKGROUND

Petitioner is a     year-old student attending a charter school (“School”) that functions as its own local educational agency. On March 30, 2009, Petitioner filed a Due Process Complaint Notice (“*Complaint*”) alleging that the School had failed to timely evaluate the Student to in response to Petitioner’s requests for neurological and neuropsychological evaluations of the Student.

The Complaint alleged that the School on March 17, 2009, convened the multidisciplinary team (“MDT”) to review the findings and recommendations of the Student’s psychological and speech and language evaluations and determine the Student’s eligibility for special education and related services. The Complaint alleged that the MDT found the Student was not eligible for special education and related services. It further alleged that the School denied Petitioner’s request for the neurological and neuropsychological evaluations on the grounds that Petitioner had withheld evaluations conducted by the District of Columbia Public Schools (“DCPS”) and that the evaluator who prepared the psychological evaluation found that these evaluations were not necessary.

The relief sought by Petitioner that this Hearing Officer has jurisdiction to order included an order requiring the School to:

1. Fund independent neurological and neuropsychological evaluations of the Student; and
2. Convene an MDT meeting to review all evaluation data on the Student and determine whether the Student is a student with a disability under the IDEIA and, if the team determines the Student is eligible for special education, develop an individualized educational program consistent with the Student’s evaluations.

Counsel for Respondent filed a timely Answer on April 6, 2009. The Response was a detailed response, admitting or denying every allegation in the Complaint. The Response asserted that the School conducted psycho-educational, clinical, social history, and speech and language evaluations of the Student. It further asserted that the psychologist who supervised and reviewed the Student’s psycho-educational, clinical, and social history evaluations did not see the need for or recommend further testing. The Answer further asserted that the speech-language pathologist who conducted the Student’s speech-language evaluation also did not see the need for

or recommend further testing. The Answer further asserted that the School did not refuse to conduct a neurological or neuropsychological evaluation but only insisted that Petitioner provide evaluations previously conducted by DCPS and provide the School an opportunity to review those evaluations before responding to Petitioners' request for further evaluations. It further asserted that counsel for Petitioner failed to provide the DCPS evaluations to the School until April 1, 2009. Finally, the Answer asserted that the Student has made significant and measurable academic progress at the School had suffered no educational harm.

The parties engaged in a resolution session that failed to produce an agreement. A prehearing conference was held on April 30, 2009. This Hearing Officer issued a prehearing order on May 10, 2009.

The due process hearing was scheduled to be heard on June 10, 16, and 24, 2009. The hearing was convened on June 10 and 16, 2009. This hearing entailed two and three-quarter days of testimony by witnesses including:

1. Petitioner, who explained that she believed the evaluations are necessary because the Student had a seizure at age two that delayed her early childhood development, was below grade level in academic functioning, especially in mathematic, after she finished the third grade at a DCPS elementary school; has memory deficits and attention problems. Petitioner also testified that she does not believe the Student actually made the progress reflected on standardized test scores that over the 2008-2009 school year she progressed to above grade level in math and reading;

2. The Student's classroom teacher, who testified to the remarkable academic progress of the Student over the 2008-2009 school year, including that she progressed from performing at a third-grade, third-month grade level upon her enrollment at the School to a fifth-grade level in math by May 2009. She also testified that the Student progressed and from a third-grade, fourth-month grade level in reading at the time of enrollment at the School to a fifth-grade, fifth-month level in reading by May 2009. The teacher further testified that the Student has no unusual memory or attention problems; and

3. Petitioner's neuropsychological expert, who testified that the Student did not need a neurological or neuropsychological evaluation.

After Petitioner's neuropsychological expert testified that the Student did not need a neurological or neuropsychological evaluation, and that she exhibited no problems that would warrant this evaluation, but rather had been fully evaluated and perhaps over-evaluated, counsel for Petitioner requested that this case be dismissed with prejudice. Therefore, this Hearing Officer will dismiss this case with prejudice.

**ORDER**

Upon consideration of Petitioner's request for a due process hearing, Respondent's Answer, and Petitioner's request on June 18, 2009, that this case be dismissed with prejudice, this 28th day of June 2009, it is hereby

**ORDERED**, that this case is **DISMISSED WITH PREJUDICE**; and

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

/s/

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Frances Raskin  
Hearing Officer

**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).

Copies to:

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Student Hearing Office