District of Columbia
Office of the State Superintendent of Education

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STUDENT, through the legal guardian[1]	)	Complaint Filed: March 24, 2010
	)	
Petitioner,	)	Prehearing Conference: May 17, 2010
	)	
v.	)	Hearing Date: May 26, 2010
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Docket No.
	)	
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

HEARING OFFICER'S DECISION

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[1] Personal identification information is provided in Attachment A.

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.

Introduction

Petitioner is a year-old student attending On March 24, 2010, Petitioner filed a Due Process Compliant Notice ("*Complaint*") alleging that the District of Columbia Public Schools ("DCPS") failed to (1) provide an appropriate disability classification, (2) develop an appropriate Individualized Education Program ("IEP"), (3) provide special education and related services, and (4) provide an appropriate placement. In the Prehearing Order issued on May 13, 2010, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS' alleged failure to develop an appropriate IEP

  Petitioner alleges that Petitioner's 2008 and April 2009 IEPs were inappropriate, because they failed to provide full-time special education services, intensive services, therapeutic services, and failed to include an additional appropriate disability classification, Emotional Disturbance ("ED"). The ED classification was added to Petitioner's November 2009 IEP, but that IEP did not provide the intensive services Petitioner requires.

  DCPS asserts that Petitioner's IEPs were appropriate, because they were calculated to meet Petitioner's needs. The 2008 and April 2009 IEPs prescribed an appropriate level of services, goals and objectives in all core areas, and an intervention behavior plan ("IBP") despite Petitioner's unremarkable behavior prior to the development of the IBP. The IEP developed on November 11, 2009 increased Petitioner's specialized instruction from 10.5 to 20 hours per week and his psychological services from 30 to 60 minutes per week. As for the intensiveness of services, Petitioner's IEP included counseling and IBPs. As for the inappropriate disability classification, DCPS is not obliged to list all disability classifications in the IEP, but is required to prescribe services to address Petitioner's needs.

- DCPS' alleged failure to provide an appropriate placement

  Petitioner alleges that is not appropriate, because Petitioner has not derived educational benefit. The program at is

insufficiently intensive, insufficiently structured, and does not offer the therapeutic setting that Petitioner requires.

DCPS asserts that the combination setting at is adequate to meet Petitioner's educational needs. DCPS has implemented the three IEPs to the extent possible, taking into account Petitioner's absences.

Petitioner requests placement at a program for ED students. DCPS will offer proof as to the appropriateness of as an alternative placement in the event the Hearing Officer concludes that DCPS failed to provide an appropriate placement at

- The *Complaint* also alleges DCPS' failure to provide special education and related services. During the prehearing conference, Petitioner's counsel stated that this allegation was not intended to allege a failure to implement the IEP, but rather was a restatement of the allegation that DCPS failed to develop an appropriate IEP.

The due process hearing was convened on May 26, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

Witnesses for Petitioner

Petitioner's Mother
Admissions Director,
Dr. Derek Marryshow, Child Psychologist

Witnesses for DCPS

Special Education Coordinator,
Benjamin Persett, Project Coordinator, DCPS Office of Special Education

Findings of Fact

1. Petitioner is a year-old student who has attended for the last four years.[2] He is currently in the grade.[3]

2. Petitioner was identified as a child with a disability on December 15, 2004.[4]

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[2] Testimony of Petitioner's mother.
[3] Petitioner's Exhibit ("P.Exh.") No. 11, ¶ II at 1.
[4] P.Exh. No. 7 at 1.

3. Petitioner's 2006 IEP classified Petitioner with mental retardation ("MR") and prescribed 20 hours per week of specialized instruction out of general education, one hour per week of speech-language services, and 30 minutes per week of psychological services.[5] The IEP included goals and objectives in Reading, Written Expression, Math, Communication, and Social/Emotional/Behavioral.[6]

4. DCPS convened a Multidisciplinary Team ("MDT") meeting on May 25, 2007 to develop an annual IEP. The MDT classified Petitioner as learning disabled ("LD") and prescribed 10.5 hours per week of specialized instruction in a combination general and special education setting and 30 minutes per week of psychological services.[7] The IEP included goals and objectives in Reading and Written Expression.[8] Petitioner's mother signed the IEP and indicated her agreement with its contents.[9]

5. DCPS conducted a Woodcock-Johnson educational evaluation of Petitioner on September 15, 2007 when Petitioner was in the sixth grade. His grade equivalency scores included, *inter alia*, 2.1 in Broad Reading, 4.1 in Broad Math, and 1.8 in Broad Written Language.[10]

6. Petitioner was suspended for 25 days on or about November 13, 2007 as a result of a confrontation with another student in which both threatened to kill each other.[11]

7. DCPS convened an MDT meeting on April 2, 2008 to develop an annual IEP. The MDT classified Petitioner as LD and prescribed 10.5 hours per week of specialized instruction in a combination general and special education setting and 30 minutes per week of psychological services.[12] The IEP included goals and objectives in Math, Reading, Written Expression, and Social/Emotional/Behavioral.[13] The IEP also included an Intervention Behavior Plan ("IBP").[14]

8. Petitioner was suspended for 13 days on December 1, 2008 for being combative with staff members, disrupting his class yelling out the window, using strong profanity, threatening staff members, and for going "on a rampage destroying the school. He broke the phone in the Choice room, and threw baskets of books around and out of the window."[15]

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[5] P.Exh. No. 11, ¶ IV at 1 and ¶ XIII at 8.
[6] *Id.*, ¶ VIII at 3-7.
[7] P.Exh. No. 10, ¶ IV at 1 and ¶ XIII at 5.
[8] *Id.*, ¶ VIII at 3-4.
[9] *Id.* at 1.
[10] P.Exh. No. 31.
[11] P.Exh. No. 15 at 1.
[12] DCPS Exh. No. 10, ¶ IV at 1 and ¶ XIII at 5.
[13] *Id.*, ¶ VIII at 3, 5-7.
[14] *Id.* at 4.
[15] P.Exh. No. 15 at 4.

9. Petitioner was suspended for 45 days on January 9, 2009 for throwing books out of the windows, pushing the Assistant Principal, and throwing punches at a security officer.[16]

10. DCPS convened an MDT meeting on April 1, 2009 to develop an annual IEP. The MDT classified Petitioner with a specific learning disability ("SLD") and prescribed 10.5 hours per week of specialized instruction in a general education setting and 30 minutes per week of psychological services.[17] The IEP included goals and objectives in Math, Reading, Written Expression, and Emotional/Social/Behavioral Development.[18]

11. Petitioner was suspended on April 15, 2009 for 40 days for refusing to follow directions, being disruptive, being combative with the staff, using inappropriate sexual language, yelling racial slurs, fighting with the Principal and security officials, and threatening to bring a gun to school to kill staff members.[19]

12. For the 2008-2009 school year, Petitioner failed five courses, had a D in Art, C- in Music, and B in Health and Physical Education.[20]

13. Dr. Denise White-Jennings, DCPS School Psychologist, completed a Psychological Re-Evaluation of Petitioner on October 23, 2009. Dr. Jennings' findings and recommendations, *inter alia*, include the following:

> [Petitioner] is a previously identified learning disabled student who is presenting with increasingly out of control behaviors. [Petitioner] has a documented history of significant behavior problems which have resulted in one 25 day and two 45 day long term suspensions, multiple short term out of school suspensions, and multiple in school suspensions and disciplinary referrals. [Petitioner] also has significant problems with attendance (tardiness and absenteeism). [Petitioner] has been referred several times for medical evaluation to address suspected symptoms of ADHD and to consider a trial of medication if warranted. [Petitioner] has also been referred previously to community mental health agencies for counseling to address possible depression and oppositional defiant behaviors. It is unclear if any of these recommendations were implemented by the parent. [Petitioner] is presenting with symptoms of ADHD, Depression and Oppositional Defiant Disorder. His behaviors are seriously impacting his functioning in the school environment and his availability for learning.

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[16] *Id.* at 6.
[17] P.Exh. No. 9 at 1 and 5.
[18] *Id.* at 2-4.
[19] P.Exh. No. 15 at 8.
[20] P.Exh. No. 30.

> [Petitioner] is a -year-old student whose general cognitive ability, as estimated by the WASI, is in the borderline range. His overall score was negatively impacted by his poorer performance on the Verbal subtests which was in the Borderline range as compared to his Low Average performance on the Nonverbal subtests. [Petitioner] continues to have significant academic deficits in all academic areas. He continues to present with a learning disability; however, [Petitioner's] academic performance is being negatively impacted by his significant behavioral issues which are interfering with his availability for learning. [Petitioner] should be considered for a change in eligibility classification to include Emotional Disturbance. [Petitioner] is presenting with an inability to build or maintain satisfactory interpersonal relationships with peers and teachers as well as inappropriate types of behavior or feelings under normal circumstances. [Petitioner] also presents with symptoms of depression which may be reflected in his poor school attendance as well as his agitated behaviors in the school setting. [Petitioner] is in need of intensive educational services which can address his significant behavioral needs as well as significant academic deficits.[21]

14. DCPS convened an MDT meeting on November 9, 2009 to develop an annual IEP. The MDT classified Petitioner with an emotional disturbance ("ED") and prescribed 15 hours per week of specialized instruction in a general education setting, five hours outside of general education, and one hour per week of behavioral support services.[22] The IEP included goals and objectives in Math, Reading, Written Expression, and Emotional/Social/Behavioral Development.[23] Petitioner's mother signed the IEP and indicated her agreement with its contents.[24] Petitioner was not making progress toward his Math goals due, in part, to his absences 28 out of 55 days.[25] In Reading, "[Petitioner] is reading at the 2nd grade reading level independently. [Petitioner] has difficulty understanding some grade level text that is read to him. [Petitioner] does not finish assignments because of reading difficulties and he fails to recognize words on grade level. At times [Petitioner] understands what is read to him but often he does not understand what is read silently."[26] In Written Expression, "[Petitioner] fails to use spelling rules and has difficulty with phonetic approaches to spelling. At times he omits, substitutes, adds and rearranges letters in a given word. [Petitioner] becomes frustrated or overwhelmed academically."[27] In Emotional/Social/Behavioral Development:

> Behavioral data collected on [Petitioner] indicates that since September 2009, he has had 16 infractions that have resulted in being removed from class, in-school suspension, or suspension. This behavior includes extreme disrespect to adults and peers, excessive class disruptions, physical aggression and fighting with peers, and

[21] P.Exh. No. 12 at 15-16.
[22] P.Exh. No. 5 at 1 and 7.
[23] *Id.* at 3-6.
[24] *Id.* at 1.
[25] P.Exh. No. 7 at 3.
[26] *Id.* at 4.
[27] *Id.*

> inappropriate language. To date, [Petitioner] has bee suspended for 8 days this year due to physical aggression and fighting at school. One of the suspensions led to [Petitioner] being arrested on campus.
>
> On September 29, 2009 [Petitioner] was arrested and suspended from school for 5 days because he physically assaulted a 6th grade student by attempting to place the student's head in the toilet. The student victim's parents pressed charges against [Petitioner] with the Metropolitan Police Department...
>
> [Petitioner] makes inappropriate comments or unnecessary noises in the classroom and frequently fights with other students. [Petitioner] struggles to establish and maintain healthy age appropriate relationships with his peers. [Petitioner] has become physically aggressive with teachers and often makes inappropriate comments to teachers. He does not respond appropriately to praise or recognition from unfamiliar adults and becomes easily annoyed.[28]

In Math, "[Petitioner] has difficulty computing multi-step problems and often becomes frustrated easily. His tolerance for unfamiliar work is very low and regularly withdraws from unfamiliar work. [Petitioner] fails to correctly solve math problems requiring division."[29]

15. Petitioner was incarcerated in January 2010 for two weeks for simple assault. Petitioner was arrested in March 2010 for theft of an automobile and incarcerated for two weeks. He remains on parole.[30]

16. Through March 10, 2010, Petitioner was failing all of his courses except Art. He had been absent over 50 times in most of his classes.[31]

17. DCPS convened an MDT meeting on March 22, 2010 to develop an annual IEP. The MDT classified Petitioner with an emotional disturbance ("ED") and prescribed 27.5 hours per week of specialized instruction in a general education setting and two hours per week of behavioral support services.[32] In Math, "[Petitioner] struggles with multi-step problems. [Petitioner] is easily frustrated. [Petitioner's] frequent suspensions and abscondance from his classroom, severely impact his academic progress."[33] In Reading, "[Petitioner's] frequent suspensions and abscondance from his classroom severely impact his academic progress."[34] In Written Expression, "[Petitioner] becomes frustrated and will shut down when writing assignments are tool long. If he is unable to spell the words he has chosen to express himself he will become frustrated. [Petitioner's] frequent suspensions and abscondance from his classroom severely impact

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[28] *Id.* at 5.
[29] P.Exh. No. 8 at 1.
[30] Testimony of Petitioner's mother.
[31] DCPS Exh. Nos. 18-19.
[32] P.Exh. No. 2 at 6.
[33] *Id.* at 2.
[34] *Id.* at 3.

his academic progress."[35] In Emotional/Social/Behavioral Development, "[Petitioner's] frequent suspensions and abscondance from his classroom severely impact his academic progress."[36] The MDT authorized Petitioner to attend extended school year during the summer of 2010.[37]

18. DCPS convened another MDT meeting on May 10, 2010 and revised the IEP by changing the setting to outside general education[38] and conducting a Behavior Intervention Plan ("BIP") Review.[39] The current BIP "is not working because [Petitioner] is unresponsive to incentive plans. He refuses to reflect on his behavior and does not take ownership of his actions…"[40]

19. Petitioner has been accepted at
is a private school that offers full-time special education services to students whose primary disability classification is ED. The average class size is 8-12 students. Each class is taught by a certified special education teacher and each class has one or two teacher's assistants. employs three licensed social workers, three occupational therapists, and three speech and language therapists. All students are on individual behavior modification plans that reward the students for positive behaviors.[42]

20. "Non-disabled children are expected to progress one grade level each school year. However, due to [Petitioner's] cognitive, academic and social emotional challenges, he would not be expected to progress at such a rate. [Petitioner's] cognitive functioning falls in the borderline to low average range and his expected academic progress when receiving appropriate special education services would be less than that of non-disabled children. [Petitioner's] rate of progress in an appropriate educational setting is impacted by his cognitive ability and academic functioning. [Petitioner] earned cognitive scores 1 to 1.5 standard deviations below the mean cognitive standardized score. Thus, [Petitioner] would be expected to progress approximately half the rate of his non-disabled peers."[43]

21. DCPS proposes placing Petitioner at
has two ED Cluster Programs, one for primary students, one for middle school students. The middle school class is led by a certified teacher who has two paraprofessional assistants. A social worker and a behavioral technician are assigned to the class. There are seven students in the class. Students in the program have 2.25 hours per week of classes, with 2.5 hours per week of lunch, and 1.5 hours per week of recess

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[35] *Id.* at 4.
[36] *Id.*
[37] *Id.* at 10.
[38] P.Exh. No. 3 at 6.
[39] *Id.* at 12.
[40] *Id.*
[41]
[42] Testimony of
[43] P.Exh. No. 34 at 1-2.

with general education students. The school day is 8:45 to 3:15. The middle school program ends at the end of the grade.[44]

Conclusions of Law

Failure to Develop an Appropriate IEP

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[45] the Supreme Court set forth the requirements for IEPs:

> The "free appropriate public education" required by the Act is tailored to the unique needs of the handicapped child by means of an "individualized educational program" (IEP). § 1401(18). The IEP, which is prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child's parents or guardian, and, where appropriate, the child, consists of a written document containing
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> "(A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved." § 1401(19).
>
> Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. § 1414(a)(5). See also § 1413(a)(11).[46]

Petitioner's September 15, 2007 educational evaluation revealed that he was performing four grades below his peers in Written Expression and Reading, and two grades below his peers in Math. On November 13, 2007 Petitioner was suspended for 25 days as a result of a confrontation with another student in which both threatened to kill each other. Nevertheless, when the MDT met on April 2, 2008, it made no meaningful changes to Petitioner's IEP, and again prescribed 10.5 hours of specialized instruction in a combination setting. His 2007 IEP had reduced the level and intensity of services from 20 hours out of general education to 10.5 hours in a combination setting. In October 2009, Dr. White-Jennings recommended that "[Petitioner] is in need of intensive educational services which can address his significant behavioral needs as well as significant academic deficits." The MDT on November 9, 2009 increased Petitioner's

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[44] Testimony of Ms. Scroggins.
[45] 458 U.S. 176 (1982).
[46] *Id.* at 181-82.

specialized instruction to 20 hours, but 15 of those hours were to be in general education. By this time, Petitioner had been suspended several times for extraordinarily anti-social behavior, and his classroom performance was poor. Although he had a serious attendance problem, Dr. White-Jennings linked his truancy to his disability. An MDT increased Petitioner's specialized instruction to full-time on March 22, 2010, but maintained the setting in general education. DCPS did not prescribe an out of general education setting until May 10. 2010, well after the filing of the *Complaint*. The Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to develop an appropriate IEP as of the MDT meeting on April 2, 2008.

Failure Provide an Appropriate Placement

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("*Rowley*"),[47] the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

> The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to *benefit* from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[48]

Thus, Petitioner's burden is to show that DCPS has not, and is incapable of providing an environment in which Petitioner can derive educational benefit.

DCPS made no effort to prove that Petitioner derived educational benefit at Wheatley. In light of Petitioner's persistent anti-social behavior and poor academic performance, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS has failed to provide an appropriate placement. DCPS proposes to place Petitioner at Backus. Backus provides a small class environment and the classroom in which Petitioner would be placed is supported by a social worker, behavioral technician, and paraprofessional assistants. However, the ED program at Backus ends at the end of the school year, and DCPS offered no testimony as to a placement for the 2010-20011 school year. Ms. Scroggins testified that she was "informed of the possibility" that Petitioner would be retained in the eighth grade, but provided no documentation of that

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[47] 458 U.S. 176 (1982).
[48] *Rowley, supra,* at 200-01.

possibility. The Hearing Officer concludes that DCPS has failed to provide a viable placement for the 2010-2011 school year.

Petitioner could derive educational benefit at It offers a small class environment with behavioral and emotional supports. It also has a school-wide behavioral modification plan that may prove beneficial for Petitioner. When a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits."[49] "[O]nce a court holds that the public placement violated IDEA, it is authorized to 'grant such relief as the court determines is appropriate.' '...[E]quitable considerations are relevant in fashioning relief'... and the court enjoys 'broad discretion' in so doing."[50]

The Hearing Officer is not convinced that Petitioner will thrive at due to his extraordinarily antisocial history. The Hearing Officer will place Petitioner at for the summer of 2010. If Petitioner fails to attend regularly or if his behavior does not show a dramatic improvement in the more intensive environment, the Hearing Officer will order DCPS to reconvene an MDT to consider a residential placement.

Compensatory Education

In *Reid v. District of Columbia*,[51] the D. C. Circuit held that in determining awards of compensatory education services, Hearing Officers could no longer simply award services on an hour-for- hour basis, or by use of a standard formula.

> We reject... appellants'... mechanical hour-per-hour calculation and instead adopt a qualitative standard: compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.[52]

Thus, Petitioner had the burden of showing that (1) as a result of DCPS' failure to provide appropriate IEPs since April 2008, he suffered an educational deficiency, (2) but for the violation, he would have either maintained his current level of academic performance or progressed to a higher level, and (3) that there exists a type and amount of compensatory education services that would bring him to the level he would have been but for DCPS' violation. Petitioner's expert offered convincing testimony that Petitioner should have progress at least one grade level since April 2008. However, his proposed Compensatory Education Plan proposed 650 hours of individual tutoring, but offered no showing that the proposal was likely to compensate for the deficiency. The Plan did not identify a proposed service provider or any evidence that the proposed service provider had a history of successfully increasing student performance. Therefore, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that there exists

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[49] *Florence County School District Four v. Carter,* 510 U.S. 7, 11 (1993).
[50] *Id.*, 510 U.S. at 15-16.
[51] *Reid v. District of Columbia,* 401 F.3d 516 (D.C. Cir. 2005).
[52] *Id.* at 18

a type and amount of compensatory education services that would bring him to the level he would have been but for DCPS' violation. The Hearing Officer will order the parties to meet at the end of the summer to assess Petitioner's progress at and to revise his IEP. If the new IEP fails to address the deficiency caused by DCPS' inadequate IEPs for the last two years, Petitioner may file a Complaint to address this issue, and it will be assigned to this Hearing Officer.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 5th day of June 2010, it is hereby

ORDERED, that DCPS shall immediately issue a Prior Notice placing and funding Petitioner at for the 2010 summer program and the 2010-2011 school year, including transportation and all other appropriate related services.

IT IS FURTHER ORDERED, that no later than August 28, 2010, DCPS shall convene an MDT meeting at HRMS to review Petitioner's progress at HRMS, review all current evaluations, and update Petitioner's IEP. DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Fatmata Barrie, Esquire. In the event Petitioner fails to attend at least 90 percent of her classes during summer program, and in the event Petitioner exhibits antisocial behavior during the summer program, DCPS is authorized to rescind the Prior Notice placing Petitioner at and the MDT shall consider placement alternatives, including residential placement alternatives.

IT IS FURTHER ORDERED, that DCPS shall afford Petitioner's parents an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parents of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parents. DCPS shall provide Petitioner's parents an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes or Prior Notice. DCPS shall issue a Prior Notice within seven days of the MDT meeting if Petitioner is placed in a public facility or within 30 days if Petitioner is placed in a private facility.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact counsel for DCPS and the DCPS Office of Special Education Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.

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 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 5, 2010