

DC Office of the State Superintendent of Education
Office of Compliance and Review
Student Hearing Office

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Confidential

<p>STUDENT¹, by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.</p>	<p>HEARING OFFICER DETERMINATION</p> <p>Date: August 21, 2009</p> <p><u>Hearing Officer: Wanda I. Resto, Esquire</u></p>
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On July 6, 2009, the Petitioner, through counsel, filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter "IDEIA") 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to conduct and review evaluations; develop and implement a appropriate individualized education program ("IEP"), and failing to provide an appropriate educational placement.

The Petitioner requested the Respondent be deemed to have denied the Student a FAPE; ordered to fund independent educational and vocational evaluations and convene a multidisciplinary team ("MDT") meeting to review evaluations, and develop an appropriate IEP for the Student. The Petitioner also requested the Respondent fund a full time special education private placement of her choice.

The Hearing Officer held a pre-hearing conference call with Counsel for both parties on July 23, 2009. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and reiterated the issues as plead. Both Counsels provided a synopsis of their witnesses' testimony. The parties stipulated the Student attends a DCPS.

On July 21, 2009, the DCPS filed a Response to the Parent's Administrative Due Process Complaint. The Respondent asserted that independent evaluations were authorized on July 15, 2009. The Respondent also asserted that a MDT was convened late because the Petitioner failed to respond to multiple meeting invitations. Additionally, the Respondent contends that the Student's IEP is being implemented, is appropriate and can be implemented at the DCPS.

On July 24, 2009, an Order required the Petitioner to demonstrate at the hearing on August 12, 2009 that evaluations were not reviewed; that the Respondent failed to develop and implement an appropriate IEP; to explain how the educational placement is inappropriate; why the Petitioner's choice of placement is appropriate and how the Respondent's placement is not. The Petitioner had to provide details to show the alleged failures have caused the Student or Petitioner harm.

The Respondent was to demonstrate at the hearing that if the evaluations were not reviewed; it was not due to a fault or inaction produced by the Respondent. The Respondent had to show it developed and implemented an appropriate IEP; that the educational placement is appropriate, and that the MDT acted appropriately when it decided to place the Student at the DCPS. The Respondent had to also provide evidence that it did not deny the Student a FAPE.

A hearing was held on August 12, 2009. The Petitioner presented a disclosure letter dated August 5, 2009 to which twenty-two documents were attached, labeled P-1 through 22 and which listed eight witnesses. Four witnesses testified. The Respondent presented a disclosure letter dated August 5, 2009 identifying six witnesses and to which twelve documents were attached, labeled DCPS 1 through 12. Two witnesses testified. The documents

were admitted except Petitioner's document number eight and Respondent's number one. Both documents purported to represent the Student's current IEP, as to which the hearing officer deferred a ruling until offered into evidence. After the examination of all the evidence both documents are accepted as evidence, however for reasons explained in the decision below, neither document will be accepted as the final IEP document.

The hearing was conducted in accordance with the rights established under the IDEA and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

II. ISSUE(S)

1. Did the Respondent fail to conduct and review evaluations?
2. Is the IEP developed inappropriate for the Student?
3. Was the Student's IEP implemented during the 2008-2009 school year?
4. Did the Respondent provide the Student an appropriate educational placement?

III. FINDINGS OF FACT

1. Both the parent and the Student reside within the District of Columbia. The Student was enrolled in a DCPS during 2007-2009 school years.²
2. The Student is a child with disabilities under the IDEA. The Student's most recent IEP is dated April 7, 2009 and provides 1590 minutes weekly of specialized instruction, and 60 minutes of counseling services weekly. The Student's primary disability is speech and language impairment, and indicates there is no need for a dedicated aide.³
3. The Student's February 5, 2008 IEP reflected the Student's coding as Mental Retardation, prescribed 26.5 hours per week of specialized instruction and one hour per week of psychological services, required monthly documented observations of the Student's progress toward her social emotional goals, and called for quarterly tests and reports of her progress toward her reading, writing and math goals.⁴
4. At a February 5, 2008 MDT meeting it was reported that the Student had made no academic progress except in the area of word recognition, and that the Student does not have the cognitive ability to deal with situations she finds difficult. The Petitioner requested that Respondent consider an alternative placement for the Student, and the Student was placed in the "MR program cluster" at the DCPS, with the agreement to review the appropriateness of the program for the Student after 90 days. *The Respondent*

² P# 1

³ DCPS #1 Student's April 7, 2009, IEP.

⁴ P# 5 Student's February 5, 2008, IEP.

did not convene a meeting after 90 days to review the Student's progress.⁵ The Respondent did not complete monthly documented observations, quarterly tests, and reports of her progress toward her reading, writing and math goals.⁶

5. The Student attended the current school since the 2007 school year; during that year she was determined eligible for special education services in a combination of regular education and special education program. The Student's grades were mostly Fs and she had problems with attending classes. The Petitioner participated in the development of an IEP during February 2008; the team agreed the Student would be placed in a smaller class in the MR group with job training program. The Student at that time demonstrated improvement only in word recognition and the results of testing pointed to the Student meeting the criteria for Attention Deficit Hyperactivity Disorder. The Petitioner agreed to the MR program for a 90 days trial period, but there has not been a review of the program. The Student's behavior has improved after being placed at the MR program; however she continues to leave her classes. There were approximately five occasions during SY 2008-2009 when the Petitioner was called from school about the Student's behavior problems. The guardian has not seen academic progress in the Student. The Student is working at an elementary level and not at high school. The homework the Student brought home was at a basic elementary level. The Student goes on regular trips to community based organizations where she gets some job training. The Petitioner participated in the April 2009 MDT meeting, the Respondent's team members indicated the Student was progressing, but the Petitioner has not seen academic work or reports. There was no explanation why the Petitioner's choice of placement was being refused.⁷
6. At the April 7, 2009 MDT meeting the Student's program was discussed. The Petitioner expressed her interest for the Student to earn a high school diploma. It was explained that the Student would have a different schedule and would require assistance in the general education population with a dedicated aide. The team expressed that the Student has shown some academic progress and in counseling has met 50 percent of her goals. The Student is programmed to receive during the 2009-2010 school year a dedicated aide and will receive English and Math in the general education population. The Student will continue to receive 60 minutes of counseling service. The MDT determinate that the Student needs could be met at the current school and that a program could be made to fit the needs of the Student and meet the earning diploma program requirements. The notes reflect that educational data and a vocational assessment were requested by the Petitioner. The Petitioner's educational advocate requested copies of the Student's IEP report cards, progress reports, none were available. The Respondent could not tell the Petitioner which of the Student's annual goals had been mastered. The Petitioner's educational advocate requested that Respondent provide any IEP report cards and encounter tracking forms to her via facsimile.⁸

⁵ P# 6 February 5, 2008 IEP meeting notes.

⁶ Testimony of the guardian.

⁷ Testimony of the Legal Guardian and P#16-20 Progress Reports 2007.

⁸ P #9 April 7, 2009 IEP Meeting Notes.

7. On April 8, 2009, the Petitioner's educational advocate requested, in writing, the Respondent provide IEP report cards and encounter tracking forms related to the provision of counseling to the Student and requested the consent to evaluate form.⁹
8. The Respondent reviewed and revised the Student's February 5, 2008 IEP on April 7, 2009. At the April 7, 2009 MDT meeting, the Respondent produced a "draft IEP" which indicated, that:
 - i. "the Student is performing on grade level in Mathematics," and "the Student is functioning on the 3.2 grade level in math calculations;"
 - ii. "the Student is performing on the grade level in Reading," and "the Student is functioning on the 2.4 grade level in reading comprehension;" and
 - iii. "the Student is performing on the grade level in Written Expression" and "the Student is functioning on the 3.9 grade level in the area of written expression;"
 - b. Contains the following academic "annual goals":
 - i. "the Student will demonstrate 6-10 months growth in the areas of Math,"
 - ii. "the Student will demonstrate 6-10 months growth in the area of Reading meeting all short term objectives with 80% accuracy," and
 - iii. "the Student will demonstrate 6-10 months growth in the area of written expression meeting all short term objectives with 80% accuracy;"
 - c. Contains the following "annual goals related to post school goals":
 - i. "the Student will like to become a child care provider,"
 - ii. "the Student will attend weekly community based job development activities,"
 - iii. "the Student will acquire the daily skills needed for independent living," and
 - iv. "the Student will develop time management skills;"
9. On July 15, 2009, the Respondent authorized the Petitioner to obtain independent educational and vocational assessments at the expense of the Respondent.¹⁰
10. July 29, 2009, an Educational Evaluation was conducted on the Student's at her home. The Evaluator saw neither behavioral indications of emotional problems, nor signs of a combative nature or difficulty with anger management as described in the Respondent's reason for referral. The evaluation indicates there are contradictions in the referral reasons, because the referral cites both restlessness and "good concentration, somewhat distracted... follows directions." It also indicates there was "low self esteem" and "limited social skills"; none of which was evidenced during the 3 hours of testing. The Student was administered the Wechsler individual Achievement Test Second Edition WIAT -II and her scores range between the ages of eight and nine. Her scores are roughly between second grade and the fifth grade and the equivalent to an IQ of 50-60, the IQ level of mildly mentally retarded. Which indicates that the Student's achievement overall is consistent with her cognitive abilities. There is some variability

⁹ P#21 April 21m 2009 Letter from EA to SEC.

¹⁰ P#21 July 15, 2009 letter authorizing independent evaluations.

among test scores that suggest the Student may be capable of learning more in some subjects. The Student scores in Basic Reading is 3.8 grade equivalent, Mathematics Reasoning is 2.7, Spelling is 2.4, Reading Comprehension is 3.3, Numerical Operations is 2.7, Listening Comprehension is 3.5, Oral Expression is 5.7; all within the age equivalent range of eight to nine years of age. The evaluator suggests that the Student skills in Oral Expression and Listening Comprehension have contributed to her frustration with some of the situations in which she expressed her anger. The scores show she performs much better than might be expected of an adolescent of her special needs category and she could be resentful about teachers' and peers' behaviors toward her and their lower expectations in interpreting her behavior. The report also indicates that it would be useful to put the scores together with the WISC scores in order to fully understand the behavioral dynamics of this student. The evaluator commented that the behaviors observed were completely contrary to those described on the Student's referral packet.¹¹

11. The Student thought her Math Class was easy, she finished her daily work easily; would become bored and leaves the class. She thinks her English and Reading classes are more challenging and she remained in those classes more often.¹²
12. The Student's Special Education Teacher taught the Student for 2 years, the Student is a leader, polite, follows direction, does her work and is high functioning. The Student was in a class with 8 other students with a focus on social skills and job development. Prior to the IEP meeting the goals and objectives were drafted and later discussed at the MDT meeting.¹³
13. The Student was placed in the MR Cluster in a group of 12 students with a Special Education Teacher, and a Teacher Assistant. The Student is receiving transitional life skills services in accordance with her goals. During the IEP meeting placement was discussed and it was recommended for the Student to continue in the MR program at the DCPS. The MDT determined that to provide the Student with the opportunity to obtain a high school diploma as requested by the guardian; the Student will attend a LD class with teachers that can provide both general education and special education academic curriculum.¹⁴
14. The Phillips school provides services to children ranging in the ages of eight through 22 years with multiple disabilities, behavioral problems, emotional difficulties, learning disabilities, mental retardation, and autism in a non categorical program. The Admission Team reviewed the Student's history provided in the referral file including the IEP, assessments; and the Parent and the student were interviewed. The school offers individual and group counseling services. The school can provide occupational therapy, speech/language and other related services. The school program is a structured program with less distractions and behavioral supports within students

¹¹ Testimony of the clinical psychologist and P#13 July 29, 2009, Educational Evaluation.

¹² Testimony of the Student.

¹³ Testimony of Special Education Teacher-

¹⁴ Testimony Special Education Coordinator

reach. The class sizes are approximately nine students, one special education teacher and a teacher assistant. The upper school provides career counseling; the program assesses the Students skills and program with activities for life after high school. The Students in the high school diploma track have three options which incorporate behavior and program modifications. A class has not been chosen for the Student.¹⁵

IV. CONCLUSIONS OF LAW

FAPE Determination

The Respondent is required to make a FAPE available to all children with disabilities within the jurisdiction of the District of Columbia. The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as “special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP).”

Burden of Proof

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a FAPE.

The Respondent has not met its legal obligation under the IDEA. Here is why.

Failure to conduct and review evaluations

The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the Respondent to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living.

The IDEA further requires the Respondent, as the local education agency to ensure there are evaluations in all areas of suspected disability, of each child with a disability, occur at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. The local educational agency shall ensure that a re-evaluation is done upon the request of the parent and/or the recommendations of teachers or service providers and/or not less than once every three years.¹⁶

¹⁵ Testimony of the Coordinator of Admission of the Phillips School.

¹⁶ See: 20 USC. §§ 1414(2)(a)(b), 1414(b)(1)(3), 1412 (a)(6)(B) and § 1414(b)(3)(B).

Accordingly, D.C. Municipal Regulations place the obligation to conduct re-evaluations of the student upon the LEA. (30 DCMR Sec 3005.7).

In this case, at an April 7, 2009 MDT meeting, the Petitioner requested that Respondent conduct educational and vocational evaluations of the Student, and the Respondent agreed to complete the requested evaluations, however, did not provide the consent to evaluate form with the IEP.

The parent requested reevaluations on April 7, 2009. The Respondent did not give the parent an explanation of the refusal to provide the evaluation and failed to include the consent form with the IEP. The Respondent has infringed its obligation to provide the parent with a written notice consistent with 34 C.F.R. § 300.503, which requires the Respondent provide a detailed explanation within a reasonable time as to why it is refusing to conduct the reevaluations requested.

It is in July 2009 after the current Complaint was filed that the Respondent authorized evaluations be performed independently. The Student's educational programming is lacking warranted evaluations. The Respondent failed to perform a procedural requirement of the IDEIA.

Failure to implement the IEP

The IDEIA requires once a student is determined eligible for special education and related services, the special education and related services be provide through an appropriate IEP and Placement.¹⁷

The February 5, 2008 IEP demanded monthly documented observations of the Student's progress toward her social emotional goals, and quarterly tests and reports of her progress toward her reading, writing and math goals. The Respondent did not produce any of the evaluative reports called for by the February 5, 2008 IEP, and at the April 7, 2009 meeting, the Respondent could not provide any meaningful insight into what progress if any the Student had made toward her previous annual goals.

Appropriateness of the IEP

The IDEIA defines the IEP as a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to

- aa. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

¹⁷ See: 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2

bb. Meet each of the child's other educational needs that results from the child's disability."¹⁸

Current law requires that the local education agency, make certain that the Student's IEP be in effect at the beginning of each school year, contain a statement of the Student's present level of academic achievement and functional performance. It must contain a statement of the student's measurable annual goals, a description of how the Student's progress toward meeting the annual goals will be measured, and any statement of the special education needs and related services and supplementary aids for a student to advance properly toward attaining the annual goals.¹⁹

The Student's IEP does not contain a statement of the Student's present levels of academic achievement and functional performance, a statement of measurable annual goals, a description of how the Student's progress toward meeting her annual goals will be measured, or the appropriate measurable postsecondary goals related to training, education employment and independent living skills.

Additionally, the IDEIA, requires that the IEP for a student 16 years old, or younger if determined appropriate by the IEP Team, to include, appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals.²⁰

The IDEIA and its regulation at 34 C.F.R §300.43 are clear that transition services are a coordinated set of activities for a child with a disability that: Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes--

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.²¹

In the present case the undisputed evidence was that the transition plan was not formulated based on the unique needs of the Student. The Student is sixteen years of age; her IEP must include a transitional services plan. Consistent with the IDEIA regulations at 34

¹⁸ 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), § 1414 (d)(2)(A),

¹⁹ See: 20 U.S.C 1412 (a)(1), 1412 (a)(12)(A)(i), 1414(d)(3), (4)(B) and (7) and 1414(e)

²⁰ See: 34 CFR § 300.320(b), consistent with section 614(d)(1)(A)(i)(VIII)

²¹ See: 20 U.S.C 1401

C.F.R. §300.320(b) that plan must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services need to assist the child in reaching those goals.

While pursuant to 34 C.F.R. § 300.324 during the development of the IEP, certain factors must be taken into account; "The IEP team must consider:

- (i) The strengths of the child;
- (ii) The concerns of the parent for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental and functional needs of the child."

The Respondent reviewed the Student's February 2008 IEP on April 7, 2009. The Respondent produced a document that does not contain a meaningful statement of the Student's present levels of academic achievement and functional performance, a statement of measurable annual goals, or a description of how the Student's progress toward meeting her annual goals will be measured. It does not include goals toward which an instructor could work, or a way to measure the Student's progress toward those goals. The Student herself testified that the work was easy and boring, it is apparent that the program was not prepared considering her unique academic, developmental and functional needs. Furthermore, the IEP indicates there will not be a dedicated aide, however, the testimony of several of the witnesses was that a dedicated aide will be provided during school year 2009-2010. The Student's IEP must clearly explain all modifications and reflect the review of all current evaluations; there are too many missing elements in the Student's IEP which leads to the conclusion that it is an inappropriate IEP.

In *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982) a two-part test to determine whether a school has fulfilled its duty to provide a FAPE was established: (1) has the school district complied with the procedures provided by the IDEA; and (2) is the student's IEP reasonably calculated to provide educational benefits. If the school district fails either part of the Rowley test, the student's right to a FAPE has been denied.

The evidence was that the Respondent violated its procedural obligation under the IDEA by not performing and reviewing evaluations in a timely manner. The evidence also was that the Student's IEP team had very limited information regarding the Student's progress toward the goals in her February 5, 2008 IEP. The IEP developed at the April 7, 2009 meeting lacked the details that the notes product of monitoring the Student and current evaluations could have provided. Consequently, the IEP created in April 2009 was not calculated to provide an educational benefit to the Student because it failed to address her transition goals, how goals are to be achieved and how the discrepancies between what she appears to be able to achieve and her true capacity.

Education Placement

In accordance with 34 C.F.R. § 300.116 of the IDEA regulations when determining the educational placement of a child with a disability, including a preschool child with a

disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It also states that the determination of the educational placement of a child with a disability must be based on a child's IEP and in conformity with the LRE provisions in 34 C.F.R. § 300.114.²²

Specifically, Section 300.114, requires each public agency to ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. The placement should be as close as possible to the child's home and made in conformity with the least LRE provisions. A student or parent must have an opportunity to demonstrate that a disability requires some other arrangement, the child is educated in the school that he or she would attend if non-disabled; and in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the students needs.

The IDEIA further provides that States must have in place procedures assuring that, "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

It's the position of the Petitioner that the Student's IEP is inappropriate because the Student's attention deficits and lack of focus have not been successfully addressed at the current placement. The Petitioner argued the school work provided at the DCPS is not challenging or individualized. Further the Petitioner claimed the School does not have the ability simultaneously to implement the Student IEP and to allow her to earn credits toward a high school diploma, and that the Student has not received an educational benefits at the DCPS.

The evidence was the Student is in the "MR cluster" at a DCPS; the Petitioner requested the Student be included in a program working towards a high school diploma. At the April 7, 2009 meeting, the Respondent agreed to put the Student on a diploma track, and indicated that to do so would require modifications. The testimony was that one of the changes is a dedicated aide and a different special education setting.

There was insufficient evidence for the undersigned Hearing Officer to make a determination that the current placement with a dedicated aide and modifications is inappropriate. There are educational and vocational evaluations; and transitional goals that must be developed. The Student's evaluations must be reviewed and the IEP revised to reflect the discrepancies in achievement, the Student's input, and how the diploma program will be integrated with the Student's special education needs.

²² See: 20 U.S.C. 1412(a)(5).

V. SUMMARY OF DECISION

The Petitioner proved that the Respondent failed to perform and review evaluations in a timely manner. The Petitioner demonstrated that the 2008-2009 IEP was not implemented. The Petitioner also proved the IEP created in April 2009 was not calculated to provide an educational benefit to the Student. The MDT after reviewing the evaluations, revise and update the IEP and make a placement determination for the 2009-2010 school year.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, the Respondent will fund by September 18, 2009 an independent educational and vocational evaluation. The Petitioner must make efforts to have the evaluations completed by October 15, 2009 and will document efforts to secure the evaluations are timely. ²³

IT IS FURTHER ORDERED, the Petitioner shall within 5 school days of the receipt of the evaluations provide copies of the reports and propose three dates to the SEC/Respondent to schedule a MDT/IEP meeting, for the purpose:

- a. To review and discuss the Student assessment report and;
- b. Prepare with the Petitioner and the Student's input an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming;
- c. Make a placement determination for the 2009-2010 school year

IT IS FURTHER ORDERED, following the MDT/IEP meeting, the Respondent shall have five business days to issue a prior notice of placement to a DCPS school, and 20 school days to issue a prior notice of placement to a non public or private school.

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. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

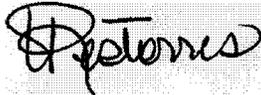
IT IS FURTHER ORDERED, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20

²³ Petitioner's counsel shall keep a log of telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.

This order resolves all matters presented in the Petitioner's July 6, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



Wanda Iris Resto - Hearing Officer

Signed: August 21, 2009