

**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  
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**Confidential**

<b>STUDENT, through the legal guardian<sup>1</sup></b>	)	Complaint Filed: June 22, 2009
	)	
<b>Petitioner,</b>	)	Prehearing Order: July 24, 2009
	)	
<b>v.</b>	)	Hearing Date: August 18, 2009
	)	
<b>THE DISTRICT OF COLUMBIA</b>	)	Docket No.
<b>PUBLIC SCHOOLS</b>	)	
	)	
<b>Respondent.</b>	)	
	)	
<b>Student Attending:</b>	)	
	)	

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:** Miguel A. Hull, 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:** Nia Fripp, Esquire  
Office of the General Counsel, DCPS  
825 North Capitol Street, N.E.; 9<sup>th</sup> Floor  
Washington, D.C. 20002

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<sup>1</sup> Personal identification information is provided in Appendix 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.

## **Background**

Petitioner is a \_\_\_\_\_ year-old student attending \_\_\_\_\_

. On August 14, 2008, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools (“DCPS”) had failed to (1) conduct a vocational assessment and develop transition goals and objectives, and (2) provide an appropriate placement. The due process hearing was convened on October 7, 2008. On October 17, 2008, this Hearing Officer issued a Hearing Officer’s Decision (“HOD”) concluding that Petitioner had met his burden of proving that DCPS had failed to develop appropriate transition goals and objectives, but Petitioner had failed to meet his burden of proving that DCPS had failed to provide an appropriate placement. The HOD authorized an independent vocational assessment and, upon its completion, ordered DCPS to convene a Multidisciplinary Team (“MDT”) meeting to review all current evaluations and assessments and develop an updated IEP, including a transition plan that met regulatory requirements.<sup>2</sup>

On March 9, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools (“DCPS”) had failed to (1) develop an appropriate transition services plan, and (2) provide an appropriate placement. The due process hearing was convened on June 11, 2009. Upon the Petitioner’s parent’s failure to appear for the hearing, Petitioner’s counsel moved for a continuance, but offered no explanation for the parent’s absence. DCPS opposed the continuance. On June 21, 2009, this Hearing Officer dismissed the Complaint without prejudice for failure to prosecute.<sup>3</sup>

On June 22, 2009, Petitioner filed a Due Process Complaint Notice (“*Complaint*”) alleging that DCPS failed to develop an appropriate transition services plan and failed to provide an appropriate placement. The due process hearing was convened on August 18, 2009. The parties’ Five-Day Disclosures were admitted into evidence at the inception of the hearing. Neither party offered testimonial evidence. The parties agreed to relief for Petitioner as is described in the Findings of Fact below.

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<sup>2</sup> Docket No.

<sup>3</sup> Docket No.

## Record

*Due Process Complaint Notice* dated June 22, 2009  
*District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice* dated July 29, 2009  
Prehearing Order July 24, 2009  
DCPS' Five-Day Disclosure dated August 11, 2009 (Exhibit Nos. 1-6)  
Petitioner's Five-Day Disclosure dated July 28, 2009 (Exhibit Nos. 1-12)  
Attendance Sheet for hearing on August 18, 2009

## Findings of Fact

1. Petitioner is a                      year-old student attending
2. During the hearing, the parties agreed to the following relief for Petitioner:
  - a. Within fifteen (15) school days of the beginning of the 2009-2010 school year, DCPS shall convene a Multidisciplinary Team ("MDT") meeting to discuss (1) transition services for Petitioner, and (2) compensatory education for speech and language services missed from January 2009 through the end of the 2008-2009 school year and transition services missed throughout the 2008-2009 school year. The MDT shall also develop a transition services plan and discuss placement alternatives.
  - b. DCPS shall issue a Prior Notice within 5 school 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.
  - c. DCPS shall coordinate scheduling all meetings through Petitioner's counsel.
  - d. Any delay in meeting any of the deadlines attributable to Petitioner will extend DCPS' deadlines on a day-for-day basis.

## Conclusions of Law

The parties' agreement is in Petitioner's best interests and its terms will be substantially incorporated into the order below.<sup>5</sup>

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<sup>4</sup> *Complaint* at 1.

<sup>5</sup> The Order will not include a requirement for the MDT to discuss compensatory education services. "Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a give period of time to provide a FAPE to a student..." *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). "[C]ourts and hearing officers may award "educational services . . . to be provided prospectively to compensate for a past deficient program." *Id.* at 522. Thus, compensatory education services constitute relief to be awarded upon a finding of a violation of IDEA. In the absence of an agreement between the parties that a certain amount of such services are warranted, compensatory education services is not an appropriate subject of discussion for an MDT. In fact, the Court in *Reid* held that a hearing officer "may not

## ORDER

Upon consideration of Petitioner's request for a due process hearing, Petitioner's Five-Day Disclosure Notices, and the representations of the parties' counsel at the hearing, this 21<sup>st</sup> day of August 2008, it is hereby

**ORDERED**, that on or before September 15, 2009, DCPS shall convene a MDT meeting to develop a transition services plan for Petitioner, update Petitioner's Individualized Education Program ("IEP"), and discuss placement alternatives. DCPS shall coordinate scheduling an MDT meeting, and any meeting in which Petitioner's placement is discussed or determined, with Petitioner's counsel, Miguel A. Hull, Esquire. The MDT shall take into account speech and language services missed from January 2009 through the end of the 2008-2009 school year and transition services missed throughout the 2008-2009 school year.

**IT IS FURTHER ORDERED**, that DCPS shall afford Petitioner's parent an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parent of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parent. DCPS shall provide Petitioner's parent in an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes. DCPS shall issue a Prior Notice within seven days 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 the Special Education Coordinator at Woodson and the DCPS Office Special Education Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.<sup>6</sup>

**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

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delegate his authority to a group that includes an individual specifically barred from performing the hearing officer's functions." *Id.* at 526. Since the hearing officer is required to be independent of DCPS, the hearing officer may not delegate his authority to award compensatory education services to a team that includes an employee of DCPS. Nevertheless, this Decision documents DCPS' agreement to discuss Petitioner's entitlement to compensatory education services. DCPS' failure to honor this request would be actionable. The MDT should determine an educational plan that meets Petitioner's unique needs. If the MDT is aware that Petitioner was deprived of services to which Petitioner was entitled for a finite period of time, an appropriate program may require services designed to address this deprivation.

<sup>6</sup> If DCPS fails 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.

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/

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Terry Michael Banks  
Hearing Officer

Date: August 21, 2009