

**District of Columbia**  
**Office of the State Superintendent of Education**  
**Office of Review and Compliance**  
**Student Hearing Office**

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STUDENT HEARING OFFICE  
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**Confidential**

STUDENT, through the legal guardian <sup>1</sup>	)	Complaints Filed: April 9, 2009
	)	June 4, 2009
Petitioner,	)	
	)	Prehearing Orders: May 13, 2009
v.	)	July 20, 2009
	)	
THE DISTRICT OF COLUMBIA	)	Hearing Dates: May 20, 2009
PUBLIC SCHOOLS	)	August 5, 2009
	)	
Respondent.	)	Docket Nos.
	)	
Student Attending:	)	
	)	

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:** Roberta Gambale, Esquire  
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**Counsel for DCPS:** Daniel Kim, Esquire  
Nia Fripp, Esquire  
Office of the General Counsel, DCPS  
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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 an \_\_\_\_\_ year-old student attending \_\_\_\_\_

On April 9, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to identify Petitioner as a child with a disability. On June 4, 2009, Petitioner filed an Amended Complaint ("*Complaint*") alleging that DCPS failed to (1) identify Petitioner with a specific learning disability ("SLD") since 2006, (2) evaluate Petitioner in all areas of suspected disability, (3) develop an appropriate Individualized Education Program ("IEP"), (4) conduct a functional behavior assessment ("FBA") and develop an intervention behavior plan ("IBP"), and (5) provide an appropriate placement. On July 20, 2009, the Hearing Officer issued a Prehearing Order that determined the issues to be adjudicated as follows:

- DCPS' alleged failure to identify Petitioner as a child with a disability

Petitioner, who attended a public charter school during the 2007-2008 school year, alleges that Petitioner's mother provided DCPS with an October 10, 2006 evaluation when Petitioner was enrolled at \_\_\_\_\_ for the 2008-2009 school year. That evaluation allegedly recommended that Petitioner receive special education services. Petitioner alleges that DCPS has been on notice since 2006 that Petitioner is a child with a disability.

DCPS asserts that it first obtained Petitioner's mother's consent to evaluate Petitioner on March 20, 2009, and it agreed that day to conduct comprehensive psychological and speech and language evaluations and a functional behavior assessment.

- DCPS' alleged failure to evaluate Petitioner in all areas of suspected disability

Petitioner alleges that DCPS failed to conduct occupational therapy ("OT), clinical, and speech and language evaluations. DCPS asserts that the Multidisciplinary Team ("MDT") on March 20, 2009 ordered comprehensive psychological and speech and language evaluations to be conducted. DCPS concedes that the comprehensive psychological

evaluation it conducted did not include an analysis of Petitioner's social/emotional problems, and it has issued a letter authorizing an independent evaluation. DCPS asserts that Petitioner's parent agreed at the MDT meeting that Petitioner did not require an OT evaluation.<sup>2</sup>

- DCPS' failure to develop an appropriate IEP

Petitioner alleges that the IEP developed on May 18, 2009 is inappropriate, because (1) there are no social/emotional goals and objectives, and (2) there is an insufficient amount of specialized instruction. DCPS asserts that that the prescribed level of services is appropriate.

- DCPS' failure to conduct an FBA and develop an IBP.

Petitioner alleges that in light of his history of behavioral problems, DCPS was obligated to conduct an FBA and develop an IBP. DCPS asserts that the parent did not authorize an FBA when she provided consent to evaluate on March 20, 2009.

- DCPS' failure to provide an appropriate placement

Petitioner alleges that DCPS conceded at the MDT meeting on May 18, 2009 that Petitioner's needs cannot be met at DCPS asserts that the level of staffing at will be significantly increased for the 2009-2010 and that it will be able to meet Petitioner's educational needs.

The due process hearing was convened on August 5, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

## **Record**

*Due Process Complaint Notice* dated April 9, 2009

*DCPS Resolution Session Waiver* dated April 13, 2009

*Respondent Office of the State Superintendent of Education's Response to the Petitioner's Complaint* dated April 23, 2009

*Prehearing Order* dated May 13, 2009

*DCPS' Five-Day Disclosure* dated May 18, 2009 (Exhibit Nos. 2-10)

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<sup>2</sup> Petitioner's counsel also argued that the speech and language evaluation that DCPS conducted was inadequate. A parent has the right to request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests the local education agency ("LEA") to assume the cost for an independent evaluation, the LEA must either initiate a hearing to show that its evaluation is appropriate, or fund the independent evaluation. 34 C.F.R. §300.502(b)(2). Since the parent did not notify DCPS of her disagreement with the speech and language evaluation prior to filing the *Complaint*, the Hearing Officer advised Petitioner's counsel that this issue was premature for this proceeding.

CD-ROM of Hearing Conducted on May 20, 2009  
Attendance Sheet for Hearing Conducted on May 20, 2009  
Interim Order dated May 25, 2009  
*Due Process Complaint Notice* dated June 4, 2009  
*District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice* dated June 15, 2009  
Prehearing Order dated July 20, 2009  
*Petitioner's Five-Day Disclosure* dated July 28, 2009 (Exhibit Nos. 1-27)  
Attendance Sheet for Hearing Conducted on August 5, 2009

### **Witnesses for Petitioner**

Lore Rodriguez, Educational Advocate, James E. Brown & Associates  
Assistant Educational Director,  
Petitioner's Mother

### **Witnesses for DCPS**

Special Education Coordinator,

### **Findings of Fact**

1. Petitioner is an \_\_\_\_\_ year-old student attending \_\_\_\_\_ Petitioner began attending \_\_\_\_\_ for kindergarten. He transferred to \_\_\_\_\_ in the second grade (2004-2005 school year).<sup>4</sup> Petitioner's mother initiated childfind procedures at \_\_\_\_\_ but no eligibility determination was made.<sup>5</sup>

2. On October 10, 2006, Dr. Keisha Mack of Maria Cohn, Ph.D & Associates completed a Psychoeducational Evaluation of Petitioner. Dr. Mack diagnosed Petitioner with a Learning Disorder, NOS, Developmental Coordination Disorder, and Rule-out Mixed Receptive-Expressive Language Disorder (with deficits in auditory processing).<sup>6</sup> Dr. Mack's findings and recommendations, *inter alia*, include the following:

Based upon the results of the current assessment, [Petitioner] should be classified as a learning disabled student. Although his cognitive functioning and academic achievement levels are generally commensurate, it is not necessary to base the diagnosis solely on the discrepancy model. [Petitioner's] test scores suggest he may be experiencing some language processing/auditory processing difficulties which may be affecting his

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<sup>3</sup> *Complaint* at 1.

<sup>4</sup> Petitioner's Exhibit ("P.Exh.") No. 12 at 1.

<sup>5</sup> Testimony of Petitioner's mother.

<sup>6</sup> P.Exh. No. 23 at 7.

acquisition of language-based skills. This is consistent with his history of difficulty in reading. Additionally, [Petitioner] is experiencing visual-motor integration deficits that also impact his classroom performance. Much of the day is spent performing writing activities which may be frustrating and laborious for [Petitioner]. Finally, [Petitioner's mother] and Mr. Nicholes [Petitioner's fourth grade teacher at Roots] both expressed significant concern regarding [Petitioner's] behavior and the impact that it may have on his academic performance.

## RECOMMENDATIONS

The MDT should consider providing [Petitioner] special education services as a student with a Specific Learning Disability to address his weakness in reading and written language.

A speech-language evaluation is recommended to assist with determining if [Petitioner] is experiencing speech-language deficits that may be negatively impacting his ability to learn. It is especially important that measures of auditory processing be performed to determine if deficits in this area are the causal factor of [Petitioner's] academic difficulties.

An occupational therapy evaluation is recommended to determine the extent of [Petitioner's] visual-motor integration deficits and to determine if intervention is warranted at this time.

A clinical evaluation is recommended to examine [Petitioner's] social-emotional functioning and to determine the need for counseling services.

[Petitioner] would benefit from specialized instruction in the areas of reading and written language. This may be performed individually or in a small group setting. He would learn most effectively with a phonetically based reading/writing program that utilizes a multi-sensory format.

A behavior plan should be developed to assist with helping [Petitioner] with his behavior at school...<sup>7</sup>

3. Petitioner reenrolled at \_\_\_\_\_ for the 2008-2009 school year.<sup>8</sup>

4. On March 20, 2009, DCPS convened a Multidisciplinary Team meeting to determine Petitioner's eligibility for special education services. The team acknowledged the 2006 psychoeducational evaluation, but determined that a new evaluation should be conducted. Petitioner's advocate argued that Petitioner should be determined to be eligible on the basis of the 2006 evaluation. The MDT agreed that "If [Petitioner] is found eligible to receive Sp. Ed. Services, he will receive compensatory education

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<sup>7</sup> *Id.* at 6-7.

<sup>8</sup> Testimony of Petitioner's mother.

services since this process began back in 2006. The MDT, including the parent, agreed that Petitioner did not require an occupational therapy (“OT”) evaluation.<sup>9</sup> Petitioner’s mother signed a Consent for Evaluation form, and the MDT developed a Student Evaluation Plan (“SEP”) ordering comprehensive psychological and speech and language evaluations for Petitioner.<sup>10</sup>

5. On April 22, 2009, Kenneth Henshaw, DCPS Speech and Language Pathologist, completed a Speech and Language Therapy Services Speech and Language Evaluation Summary Report. Mr. Henshaw concluded that Petitioner did not require speech and language services:

[Petitioner] is an      year old African-American male presenting with receptive and expressive language skills within the average range. Articulation, social language, oral motor and voice skills were also found within the average range. Analysis of the assessment data in conjunction with DCPS Speech-Language Eligibility Criteria; results are not consistent with a diagnosis of speech language impairment.<sup>11</sup>

6. On May 12, 2009, Terrance Beason, DCPS School Psychologist, completed a Comprehensive Psychological Evaluation. His findings and recommendations, *inter alia*, include the following:

[Petitioner] is an      -year-old child who completed the WIAT-II and the RIAS. Cognitively, [he] earned a *Composite Intelligence Index* or CIX of 80. On the RIAS, this level of performance falls within the range of scores designated as Below Average. [Petitioner’s] VIX [Verbal Intelligence Index] of 82 and NIX [Nonverbal Intelligence Index] of 81 are consistent with his CIX noted above and indicate that [Petitioner’s] verbal and nonverbal abilities are similarly developed...

His visual-perceptual abilities, as measured by the Beery Developmental Test of Visual-Motor Integration, were found to be in the Below Average range. The examiner feels that his performance was perhaps compromised by his waning motivation on the later geometric replications.

Academically, [Petitioner] appears to be achieving in approximately the upper-second to the upper-third grade range in reading, with his spelling skills falling in the upper-fourth grade range. In arithmetic, [Petitioner’s] abilities range from the beginning fourth to the early parts of the fifth grade. Heretofore, [Petitioner] is functioning almost two to three grade levels below grade expectancy in reading, with the rest of his skill areas falling relatively higher. And, as mentioned in Dr. Mack’s October 26<sup>th</sup>

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<sup>9</sup> P.Exh. No. 12.

<sup>10</sup> P.Exh. No. 13. The SEP actually authorized psychological, social history, and educational evaluations, all of which are encompassed in a comprehensive psychological evaluation.

<sup>11</sup> DCPS Exh. No. 5.

2006 report, while [Petitioner] [Petitioner's] cognitive functioning and academic achievement levels are generally commensurate, it is not necessary to base eligibility solely on the "discrepancy model." Therefore, [Petitioner] appears to meet the DCPS criteria for special education intervention and merit remediation that would effectively/properly address his deficits.<sup>12</sup>

7. DCPS convened an MDT on May 18, 2009 to determine Petitioner's eligibility for special education services. The MDT determined that Petitioner was eligible and classified Petitioner with a Specific Learning Disability.<sup>13</sup> The MDT prescribed 15 hours per week of specialized education services in an out of general education environment, 30 minutes per week of behavioral support services, and one hour per month of speech and language consultation services.<sup>14</sup> The MDT determined that Petitioner was not entitled to compensatory education services and did not require extended year services ("ESY").<sup>15</sup> The MDT notes indicate that "This team will have to reconvene to discuss change of placement. School is unable to implement IEP."<sup>16</sup> The IEP included a Prior Notice that placed Petitioner at \_\_\_\_\_ Petitioner's mother requested "another placement because she doesn't feel that he is getting what he needs."<sup>18</sup>

8. The MDT had the following discussion regarding Petitioner's behavior:

Ms. Hudson stated that [Petitioner] is capable and very bright. He works when he feels like it. His behavior spirals. He acts out and distracts others. He knows what he's doing. He's very mature. He has the ability to control his behavior... Mrs. Hudson feels that his behavior has declined since the DC CAS testing... Ms. Looper read the (2) statements from his teachers. [Petitioner] has been in several fights. The majority of the fights he's had are over girls. Mrs. Barnett stated that, initially, [Petitioner] did no work... [Petitioner] is busy and girl crazy... Ms. Williams states that she has seen improvement in his hallway behavior. Ms. Looper stated [Petitioner] has age appropriate manners. He has never been disrespectful to me."<sup>19</sup>

9. Petitioner's advocate and mother disagreed with the level of counseling prescribed in the IEP; they proposed one hour per week. Petitioner's advocate also proposed a compensatory education plan including (1) two hours per week of independently provided tutoring, (2) one hour per week of independently provided speech and language therapy, (3) summer camp to address social-emotional behaviors, and (4) a

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<sup>12</sup> DCPS Exh. No. 7 at 8-9. Mr. Beason offered five pages of detailed program recommendations (at 9-14), but he offered no specific recommendation as to an appropriate educational setting.

<sup>13</sup> P.Exh. No. 19 at 1.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> P.Exh. No. 20 at 5.

<sup>16</sup> *Id.*

<sup>17</sup> P.Exh. No. 19.

<sup>18</sup> P.Exh. No. 20 at 1.

<sup>19</sup> *Id.* at 1-3.

Lindamood Bell assessment. The MDT declined to accept the advocates plan. Petitioner's advocate made no request for a functional behavior assessment.<sup>20</sup>

10. Petitioner has been accepted at \_\_\_\_\_ Academy. \_\_\_\_\_ is a private school that offers full-time special education services. Each class is led by a certified special education teacher who is assisted by a teacher's assistant. If Petitioner were to attend \_\_\_\_\_ he would be the fifth student in the class. All students at \_\_\_\_\_ are on a behavior modification plan at rewards students for positive behavior throughout the day. \_\_\_\_\_ employs clinical therapists, social workers, art therapists, and behavioral counselors. The annual tuition is approximately \_\_\_\_\_ not including related services. Counseling services are \_\_\_\_\_ per hour.<sup>21</sup>

## **Conclusions of Law**

### ***Childfind***

The LEA must evaluate a child suspected of a disability in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.<sup>22</sup> Once a child has been determined to be eligible for services, he or she must be reevaluated at least every three years.<sup>23</sup> Under local law, DCPS has 120 days to conduct initial evaluations and determine a child's eligibility for special education services ("childfind").<sup>24</sup>

Petitioner's counsel argued that DCPS has been on notice since 2006, when Petitioner was evaluated by Dr. Mack, that Petitioner required special education services. However, the evidence is uncontroverted that Petitioner was enrolled in Roots, a public charter school from 2004 until the beginning of the 2008-2009 school year. Petitioner offered no evidence that DCPS was put on notice of Dr. Mack's evaluation prior to the MDT meeting on March 20, 2009. At that meeting, the MDT developed a SEP, ordering the completion of a new comprehensive psychological evaluation and a speech and language evaluation. These evaluations were completed and the MDT reconvened to determine Petitioner's eligibility on May 18, 2009, well within the 120-day deadline. The Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS failed timely to conclude childfind proceedings.

### ***Failure to Evaluate Petitioner in All Areas of Suspected Disability***

Petitioner alleges that DCPS failed to conduct occupational therapy ("OT"), clinical, and speech and language evaluations, and a functional behavior assessment. The

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<sup>20</sup> P.Exh. No. 21.

<sup>21</sup> Testimony of Dr. Warnke.

<sup>22</sup> 34 C.F.R. §300.304(c)(4).

<sup>23</sup> 34 C.F.R. §300.303(b)(2).

<sup>24</sup> D.C. Code §38-2561.01(a).

MDT on March 20, 2009 ordered comprehensive psychological and speech and language evaluations to be conducted. DCPS concedes that the comprehensive psychological evaluation it conducted did not include an analysis of Petitioner's social/emotional problems, and it authorized an independent evaluation.<sup>25</sup> A referral for independent comprehensive psychological and speech and language evaluations was issued the same day as the amended *Complaint* was filed. Therefore, these evaluations were not reviewed by the Hearing Officer since they were not available to the May 18<sup>th</sup> MDT when its eligibility and placement determinations were made.

Petitioner argues that Dr. Mack's 2006 evaluation recommended an OT evaluation and an FBA. In fact, Dr. Mack recommended a behavior intervention plan, which would require the completion of an FBA. DCPS asserts that Petitioner's parent agreed at the MDT meeting that Petitioner did not require an OT evaluation. Petitioner's parent was represented at the March 20, 2009 MDT by Ms. Rodriguez, and the MDT developed a SEP that did not include an OT evaluation or an FBA. Ms. Rodriguez did not request an FBA at either the March 20<sup>th</sup> or the May 18<sup>th</sup> MDT meeting. During the hearing, Petitioner offered no testimony in support of Petitioner's need for an OT evaluation. Nor was testimony offered to show that Petitioner's behavior during the 2008-2009 school year had an adverse impact on his academic performance. As noted in the Findings of Fact above, the MDT on May 18<sup>th</sup> had a thorough discussion of Petitioner's behavior. The MDT's decision not to recommend an FBA does not constitute an omission that constitutes a violation of IDEIA. The Hearing Officer also concludes that Petitioner has failed to meet his burden of proving, by a preponderance of the evidence, that his current level of motor functioning is such as would suggest the need for an OT evaluation.

### ***Failure to Develop an Appropriate IEP***

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("Rowley"),<sup>26</sup> 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

"(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

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<sup>25</sup> P.Exh. No. 7.

<sup>26</sup> 458 U.S. 176 (1982).

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).<sup>27</sup>

Petitioner alleges that the IEP developed on May 18, 2009 is inappropriate, because (1) there are no social/emotional goals and objectives, and (2) there is an insufficient amount of specialized instruction. During the hearing, over Petitioner's objection, DCPS offered into evidence page 5 of the May 18, 2009 IEP, missing from Petitioner's Exhibit 19, that included social/emotional goals. The Hearing Officer overruled Petitioner's objection. Petitioner's advocate's notes of the meeting also confirm that social emotional goals were discussed at the MDT meeting and were included in the IEP.<sup>28</sup>

As for the alleged insufficiency of specialized instruction in the IEP, Petitioner offered nothing more than the parent's and the educational advocate's opinions that fifteen hours per week is insufficient to meet Petitioner's needs. However, neither Dr. Mack nor Mr. Beason recommended full-time specialized instruction in their evaluations. Petitioner's advocate asserted that Dr. Mack's evaluation was sufficient to determine Petitioner's eligibility at the March 20, 2009 MDT. Dr. Mack concluded that Petitioner required specialized instruction only in reading and written language. This falls well short of a recommendation of full-time specialized instruction. Moreover, both Dr. Mack and Mr. Beason noted that there was no discrepancy between Petitioner's cognitive and achievement scores. Thus, while Petitioner may have a learning disability, it has not been shown to be severe enough to require a full-time, restrictive setting. The Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS failed to develop an appropriate IEP.

#### ***Failure to Provide an Appropriate Placement***

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (“*Rowley*”),<sup>29</sup> 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

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<sup>27</sup> *Id.* at 181-82.

<sup>28</sup> P.Exh. No. 21, top of last page.

<sup>29</sup> 458 U.S. 176 (1982).

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.<sup>30</sup>

Thus, Petitioner’s burden is to show that DCPS has failed to provide an environment in which Petitioner can derive educational benefit. The Hearing Officer has already concluded that the record does not support Petitioner’s contention that he requires a full-time special education program. Petitioner’s counsel’s *only* evidence that cannot meet Petitioner’s needs is the following entry in the May 18<sup>th</sup> MDT meeting notes: “This team will have to reconvene to discuss change in placement. School is unable to implement IEP.” Ms. Looper testified at the hearing that she was the author of the meeting notes. However, she testified emphatically that *can* implement Petitioner’s IEP and that she could not explain why she wrote that the school could not implement the IEP.

Ms. Looper also testified that it would be up to Petitioner’s special education teacher’s discretion to determine how much of Petitioner’s special education services would be provided in a resource room and how much would be provided in the general education environment. On this point, Ms. Looper is clearly mistaken. Petitioner’s IEP calls for fifteen hours per week of specialized instruction out of general education. Thus, Petitioner must be “pulled-out” of his general education class for 15 hours of specialized instruction by a special education teacher each week. Since Ms. Looper categorically refuted the statement in the meeting notes that *could not implement* Petitioner’s IEP, Petitioner has not shown, by a preponderance of the evidence, that *cannot provide* fifteen hours of specialized instruction per week in an out of general education environment. Therefore, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving that DCPS has failed to provide an appropriate placement.

## 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 15<sup>th</sup> day of August 2009, it is hereby

**ORDERED**, that the *Complaint* is **DISMISSED WITH PREJUDICE**.

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

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<sup>30</sup> Rowley, *supra*, at 200-01.

**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: August 15, 2009