

**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**

<b>STUDENT, through the legal guardian<sup>1</sup></b>	)	Complaint Filed: June 5, 2009
	)	
<b>Petitioner,</b>	)	Prehearing Order: July 6, 2009
	)	
<b>v.</b>	)	Hearing Dates: July 14, 2009
	)	August 3, 2009
<b>THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS</b>	)	
	)	Interim Order: July 22, 2009
	)	
<b>Respondent.</b>	)	Docket No.
	)	
<b>Student Attending:</b>	)	
	)	

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:**

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James E. Brown & Associates  
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**Counsel for DCPS:**

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

## **Jurisdiction**

This hearing was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act ("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 June 5, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) conduct triennial evaluations, (2) evaluate Petitioner in all areas of suspected disability, (3) develop an appropriate Individualized Education Program ("IEP"), (4) implement the IEP, and (5) provide an appropriate placement. In a Prehearing Order issued on July 6, 2009, the Hearing Officer determined the issues to be adjudicated to be as follows:

- DCPS' alleged failure to conduct triennial evaluations

Petitioner alleges that although he receives speech and language services, he has not been evaluated since April 24, 2006. DCPS asserts that it has authorized Petitioner to obtain an independent speech and language evaluation.

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

Petitioner alleges that despite a June 23, 2008 psychological evaluation recommended that Petitioner receive an occupational therapy ("OT") evaluation, and a January 7, 2009 Vineland Behavior Adaptive Scale Assessment on which Petitioner had low fine and gross motor skills scores, DCPS has not conducted an OT evaluation. DCPS asserts that it has authorized Petitioner to obtain an independent evaluation.

- DCPS' alleged failure to develop an appropriate IEP

Petitioner alleges that Petitioner's current IEP prescribes an insufficient amount of specialized instruction and counseling services to meet his needs, citing recommendations in his psychological and Vineland assessments. DCPS asserts that Petitioner's IEP is adequately designed to provide Petitioner educational benefit.

- DCPS' alleged failure to implement Petitioner's IEP

Petitioner alleges that when he transferred to [redacted] from Prince George's ("P.G.") County, Maryland in October 2008, from that time until April 15, 2009, Petitioner received only ten hours per week of the 25 hours of specialized instruction prescribed in his September 24, 2008 P.G. County IEP. Since DCPS developed a new IEP on April 15, 2009 prescribing 20 hours per week of specialized instruction, DCPS has provided only 12.5 hours per week of specialized instruction. DCPS denies that Petitioner has not received the specialized instruction to which he has been entitled.

- DCPS' alleged failure to provide an appropriate placement

Petitioner alleges that [redacted] does not have the resources to implement Petitioner's IEP, has not provided the services prescribed in Petitioner's IEPs, and Petitioner has not made academic progress at Smothers. DCPS asserts that [redacted] is meeting Petitioner's academic needs.

The due process hearing was convened on August 3, 2009. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. In his opening statement Petitioner's counsel stipulated that the parties had resolved the issue of DCPS' alleged failure to implement Petitioner's IEP; DCPS authorized Petitioner to procure six months of independent tutoring, to be completed by February 1, 2010, at a rate up to \$65/hour.

## **Record**

*Due Process Complaint Notice* dated June 5, 2009  
*DCPS Resolution Session Waiver* dated June 8, 2009  
*District of Columbia Public School's Response to Petitioner's Due Process Complaint* dated June 29, 2009  
*Prehearing Order* dated July 6, 2009  
*DCPS' Five-Day Disclosure* dated July 7, 2009 (Exhibit Nos. 1-9)  
*Petitioner's Five-Day Disclosure* dated July 7, 2009 (Exhibit Nos. 1-10)  
*Motion for Continuance* dated July 14, 2009  
*Interim Order* dated July 22, 2009  
*Interim Order* dated June 26, 2009  
*Petitioner's Supplemental Five-Day Disclosure* dated July 27, 2009 (Exhibit Nos. 11-13)  
*Attendance Sheet* for hearing conducted on August 3, 2009  
*Petitioner's Proposed Findings of Fact and Conclusions of Law* dated August 7, 2009

### Witnesses for Petitioner

Petitioner's Mother  
Petitioner's Grandmother  
Assistant Educational Director,

### Witnesses for DCPS

None

### Findings of Fact

1. Petitioner is a            year-old student attending
2. Petitioner last received a Speech and Language Evaluation on April 24, 2006.<sup>3</sup>
3. On June 23, 2008, Ms. Kathleen Shaw, DCPS Psychologist, completed a Confidential Report of Psychological Evaluation of Petitioner. Ms. Shaw's findings and conclusions, *inter alia*, include the following:

[Petitioner] received speech therapy in the school years, 2007 and 2008. According to his speech pathologist, at the end of the school year, he has not shown any significant growth and will continue to need speech therapy to improve his language. His general education teacher, Ms. Ridgley shared her concerns with me in that for the period she has had him, he has been very slow in developing the necessary skills for his age range and constantly requires one-on-one assistance in the classroom. In addition, his tolerance level is very low, his retaining of information is poor as well as retrieving and his attitude toward learning is poor. Overall he has not made any significant improvement in her classroom.

Results from the Wechsler Scale of Intelligence indicate that is present abilities are in the Extremely Low range based on his composite score of a Full Scale IQ or 66 at the 1% percentile. His Verbal abilities are in the Borderline range, composite score, 75 at the 5% percentile and his Nonverbal abilities at the Extremely Low range, composite score, 63 at the 1% percentile. Based on his performance on the Verbal Scale, his abilities are higher than his Nonverbal abilities, suggesting more development in this area. However, [Petitioner] is still performing below his peers. From a more in-depth look at his abilities on the subtests related to both these Scales, they are relatively consistent, ranging from deficient to borderline.

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<sup>2</sup> *Complaint* at 1.

<sup>3</sup> Petitioner's Exhibit ("P.Exh.") No. 4.

The results from academic testing based on both the Woodcock Johnson and Informal testing suggest that his skills range from the Pre-Kindergarten level to the Kindergarten level. There are several areas of serious weaknesses, especially in his ability to count higher than one through fourteen, recognize and write his letters, identify colors and shapes accurately. Further, he has difficulty following directions, retaining information and learning from previously taught skills.

Perceptually, his visual-motor integration skills may need further evaluation at a later time...

Based on the overall results, [Petitioner's] development is very slow and is behind in many basic skills. He requires more one-on-one assistance to improve his learning ability. He needs a great deal of patience to work with him to develop his skills because he sees tasks as always difficult and displays very poor tolerance toward them. His tolerance level makes him unavailable for learning and will present a problem for him in the classroom. In addition, he tends to become frustrated when pressured and shuts down to learning. Most tasks to [Petitioner] are presumed to be difficult for him, even when they are not. Given these findings, [Petitioner] is behind his peers and is eligible for a smaller class outside of regular education that has a basic curriculum for developing basic skills starting from the pre-kindergarten level...

#### Recommendations:

Smaller class size to address more basic skills before moving on to skills required for his age range. He needs to start with phonics to counting, recognizing and writing basic letters of the alphabet, learning his colors and shapes, addition and subtracting one digit numbers...<sup>4</sup>

4. On September 24, 2008, when Petitioner attended School in Prince George's County, Maryland, that school developed an IEP. Petitioner was classified with mental retardation ("MR").<sup>5</sup> The Multidisciplinary Team ("MDT") prescribed 25 hours per week of specialized instruction outside general education, 3 hours and 45 minutes of instruction in general education, one hour per week of counseling, and one hour per week of speech and language therapy.<sup>6</sup>

5. Petitioner enrolled at Smothers in October 2008.<sup>7</sup>

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<sup>4</sup> P.Exh. No. 5 at 5-6.

<sup>5</sup> P.Exh. No. 8 at 1. Petitioner's mother testified that Petitioner attended identified Seat Pleasant as the "Residence School," but Arrowhead as the "Service School."

<sup>6</sup> P.Exh. No. 8, ¶ V. Services.

<sup>7</sup> Testimony of Petitioner's mother.

6. DCPS convened an MDT meeting on October 31, 2008. The MDT classified Petitioner with a Speech or Language Impairment (“SLI”)<sup>8</sup> and prescribed 20 hours per week of specialized instruction, one hour per week of speech and language therapy, and 30 minutes per week of behavioral support services.<sup>9</sup> Petitioner’s mother agreed to the IEP, because she did not believe Petitioner “was as far behind as tests were showing.”<sup>10</sup>

7. On January 7, 2009, Ms. Carleen Smith of DCPS completed a Vineland II Adaptive Behavior Scales report. Her findings and conclusions, inter alia, include the following:

[Petitioner’s] Adaptive Behavior Composite standard score of 61 summarizes his overall level of adaptive functioning... [Petitioner’s] Adaptive Behavior Composite classifies his general adaptive functioning as low; he scores higher than only less than 1% of similarly aged individuals in the Vineland-II norm sample.

[Petitioner’s] level of adaptive functioning within the Communication domain is low for his age group. His standard score of 67 ... percentile rank is 1... He had an adaptive level of moderately low for the Receptive subdomain, low for the Expressive subdomain, and moderately low for the Written subdomain. [Petitioner’s] age equivalents for the Communication subdomains are 3:11 for the Receptive subdomain, 1:2 for the Expressive subdomain, and 5:6 for the Written subdomain...

[Petitioner’s] standard score for the Daily Living Skills domain is 71... This score represents a moderately low level of adaptive functioning in this area for an individual of his age. His percentile rank for the Daily Living Skills domain is 3. He had an adaptive level of low for the Personal subdomain, moderately low for the Domestic subdomain, and moderately low for the Community subdomain. [Petitioner’s] age equivalents for the Daily Living Skills subdomains are 2:5 for the Personal subdomain, 3:11 for the Domestic subdomain, and 4:10 for the Community subdomain.

...His Personal skills represent a weakness compared to his other Daily Living skills.

[Petitioner’s] level of adaptive functioning within the Socialization domain is low for his age group. His standard score is 61... His percentile rank is less than 1...

[Petitioner’s] standard score for the Motor Skills domain is 54... His percentile rank for this domain is less than 1. [Petitioner’s] adaptive level is low for both the Gross and Fine subdomains. [Petitioner’s] age equivalents

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<sup>8</sup> DCPS Exh. No. 1 at 1.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> Testimony of Petitioner’s mother.

for the Motor Skills subdomains are 1:1 for the Gross Motor Skills subdomain and 1:8 for the Fine Motor Skills subdomain...

[Petitioner's] standard score for the Motor Skills domain is significantly lower than the median score for all of the Vineland-II domains. Such a difference indicates that his motor abilities are a weakness for [Petitioner] relative to his skills in the other areas. Activities that target the development of motor abilities may therefore be useful...

According to professional guidelines... [Petitioner's] Vineland-II results and his reported IQ score suggest a classification of mild mental retardation.<sup>11</sup>

8. DCPS convened a Multidisciplinary Team ("MDT") meeting on April 15, 2009. The MDT developed an IEP in which it classified Petitioner with Mental Retardation ("MR")<sup>12</sup> and prescribed 20 hours per week of specialized instruction outside general education, one hour per week of speech-language pathology, and 30 minutes per week of behavioral support services.<sup>13</sup> Classroom Accommodations included small group work, written and verbal instructions, praise for effort, extra time for completion of tasks, breaks between work periods, and repetition of directions.<sup>14</sup> The MDT also prescribed extended year services ("ESY") including speech-language services.<sup>15</sup> Petitioner's mother disapproved of the IEP, because it did not prescribe full-time specialized instruction.<sup>16</sup>

9. Petitioner received services out of general education between 9:00-9:30 a.m. and 1:00-3:00 p.m. daily.<sup>17</sup>

10. On June 18, 2009, DCPS authorized Petitioner to obtain independent OT and speech and language evaluations at DCPS expense.<sup>18</sup>

11. Petitioner has been accepted at \_\_\_\_\_ 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. Accotink employs ten speech therapists, three occupational therapists, and seven behavioral counselors.<sup>19</sup>

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<sup>11</sup> P.Exh. No.6 at 6-8.

<sup>12</sup> P.Exh. No. 9 at 1.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> Testimony of Petitioner's mother.

<sup>17</sup> *Id.*

<sup>18</sup> DCPS Exh. No. 8.

<sup>19</sup> Testimony of Dr. Warnke.

## Conclusions of Law

### *Failure to Conduct a Triennial Evaluation*

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>20</sup> Once a child has been determined to be eligible for services, he or she must be reevaluated at least every three years.<sup>21</sup> In this case, Petitioner's last speech and language evaluation was conducted on April 24, 2006. Thus, he was due for a reevaluation by April 24, 2009.

The issue is whether the failure to conduct the reevaluation by April 24<sup>th</sup> constituted a denial of a free appropriate public education ("FAPE"). Petitioner has received speech and language services for at least the last three years. There was no testimony or any references in the exhibits to any deterioration in Petitioner's speech or hearing. Neither Petitioner's mother nor his grandmother testified that they raised Petitioner's speech and language functioning as a concern at any of the MDT meetings. Petitioner's annual IEP was completed shortly before the evaluation became overdue. Thus, that IEP was not tainted by the lack of a current evaluation. Two weeks after the *Complaint* was filed, DCPS authorized Petitioner to obtain an independent evaluation. In the event that evaluation reveals new information that would warrant additional services, a meeting can be convened early in the new school year. Under these circumstances, there is no evidence that Petitioner has suffered any educational harm as a result of DCPS' failure to complete a timely reevaluation.<sup>22</sup>

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

Petitioner alleges that despite a June 23, 2008 psychological evaluation recommended that Petitioner receive an OT evaluation, and a January 7, 2009 Vineland Assessment on which Petitioner had low fine and gross motor skills scores, DCPS has not conducted an OT evaluation. In fact, the psychological evaluation did not recommend that Petitioner receive an OT evaluation: "his visual-motor integration skills *may* need further evaluation *at a later time...*"<sup>23</sup> However, the Vineland assessment conducted shortly before the last MDT meeting revealed significant deficits in Petitioner's motor skills: "His percentile rank for this domain is less than 1." DCPS offered no explanation for failing to evaluate in this area of obvious weakness. However, two weeks after the filing of the *Complaint*, two weeks before the prehearing conference, and six weeks before the hearing, DCPS authorized Petitioner to obtain an independent OT evaluation. The Hearing Officer concludes that the authorization moots the issue of the failure to evaluate for OT services.

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<sup>20</sup> 34 C.F.R. §300.304(c)(4).

<sup>21</sup> 34 C.F.R. §300.303(b)(2).

<sup>22</sup> *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006); *Catalan v. District of Columbia*, 478 F.Supp. 2d 73, 75-6 (D.D.C. 2007).

<sup>23</sup> Emphasis added.

## ***Failure to Develop an Appropriate IEP<sup>24</sup>***

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (“*Rowley*”),<sup>25</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 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>26</sup>

Petitioner’s counsel did not address the allegation that DCPS failed to develop an appropriate IEP in either his opening statement or in his *Proposed Findings of Fact and Conclusions of Law*. At the prehearing conference, counsel alleged that Petitioner’s current IEP prescribes an insufficient amount of specialized instruction and counseling services to meet his needs, citing recommendations in Petitioner’s psychological evaluation and Vineland assessment. Petitioner’s mother testified that she did not agree with the April 15, 2009 IEP because it did not prescribe full-time special education services.

In her Psychological Evaluation, Ms. Shaw recommended as follows: “He requires more one-on-one assistance to improve his learning ability. He needs a great deal of patience to work with him to develop his skills because he sees tasks as always difficult and displays very poor tolerance toward them... [Petitioner] is behind his peers and is eligible for a smaller class outside of regular education that has a basic curriculum for developing basic skills starting from the pre-kindergarten level... Recommendations:

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<sup>24</sup> Although this allegation was made in the *Complaint* and was included in the Prehearing Order as an issue to be adjudicated, it was ignored by Petitioner’s counsel in his *Proposed Findings of Fact and Conclusions of Law*.

<sup>25</sup> 458 U.S. 176 (1982).

<sup>26</sup> *Id.* at 181-82.

Smaller class size to address more basic skills before moving on to skills required for his age range. He needs to start with phonics to counting, recognizing and writing basic letters of the alphabet, learning his colors and shapes, addition and subtracting one digit numbers..." In her Vineland assessment, Ms. Smith recommended that "Activities that target the development of motor abilities may therefore be useful..." Petitioner's April 15, 2009 IEP prescribed 20 hours per week of specialized instruction outside general education. Classroom accommodations included "Small group work." The IEP included no reference to the development of motor skills.

Although the IEP did not prescribe full-time specialized instruction, neither of Petitioner's evaluations recommended full-time services. And although the IEP included no goals and objectives related to Petitioner's motor abilities, Petitioner offered no evidence of Petitioner's classroom performance in this area. The only reference to motor skills in the IEP is at page 4: "He is able to write most letters independently. He does require daily models/visual supports to help remind him of letter formation." The Hearing Officer concludes that Petitioner has failed to meet his burden of proving that the IEP is inappropriate.

#### ***Failure to Implement the IEP***

Petitioner's mother offered uncontroverted testimony that Petitioner did not receive the specialized instruction prescribed in the IEP. Petitioner's mother testified that Petitioner's general education teacher said that Petitioner is with his special education teacher from 9:00-9:30 a.m. and 1:00-3:00 p.m. This amounts to 12.5 hours per week, well short of the 20 hours per week prescribed in the IEP. Petitioner offered no testimony as to the size or composition of the class when Petitioner is out of general education. Therefore, the Hearing Officer is unable to determine if Petitioner actually received services "out of general education" in a small class environment. Nevertheless, Petitioner's mother's uncontroverted testimony that Petitioner received less than two-thirds of the specialized instruction to which he was entitled established that DCPS failed to implement Petitioner's IEP.

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

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("Rowley"),<sup>27</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 Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically

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<sup>27</sup> 458 U.S. 176 (1982).

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>28</sup>

Thus, Petitioner’s burden is to show that DCPS has failed to provide an environment in which Petitioner can derive educational benefit. The parties offered minimal objective evidence of Petitioner’s classroom performance. Petitioner offered two pages of an educational evaluation conducted on March 17, 2009 that revealed that Petitioner was performing at no higher than a kindergarten level in all academic areas except Math Calculation, in which he performed at the first grade level.<sup>29</sup> DCPS offered an April 3, 2009 Report Card in which Petitioner’s special education teacher reported that he was making progress in all areas as to which he had been introduced.

Petitioner meets his burden if he can show by a preponderance of the evidence that DCPS has not provided an environment in which Petitioner can derive educational benefit. Here, Petitioner’s evaluations reveal that he is performing at a level well below his peers, has significant gross motor, adaptive functioning, communication, and socialization deficits, and is not receiving the specialized instruction at Smothers that is prescribed in his IEP. Although Petitioner’s April 2009 Report Card indicated he was “progressing” in a number of areas, there was no testimony or objective documentation to corroborate the Report. Therefore, the Hearing Officer concludes that, by a preponderance of the evidence, Petitioner has proven that DCPS has failed to provide an appropriate placement.

#### *Accotink Academy*

Petitioner has been accepted and requests placement at . The Hearing Officer is concerned that Petitioner’s representatives have determined that a year-old mentally retarded student, who resides in northeast of Washington, D.C., should commute daily to a school in Springfield, Virginia, one of the most congested areas in the metropolitan area. This could result in commuting times of two to three hours daily. And from the *W.G. v. DCPS*<sup>30</sup> case, Petitioner’s counsel is well aware that, to the extent possible, placements should be made to facilities in the District:

(c) Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:

(1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;

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<sup>28</sup> *Rowley, supra*, at 200-01.

<sup>29</sup> P.Exh. No. 7.

<sup>30</sup> Docket No. 2009-674 (June 21, 2009).

- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.<sup>31</sup>

However, DCPS made no showing that there is a public or private facility in the District that can meet Petitioner's educational needs. Therefore, the Hearing Officer's only placement alternatives are \_\_\_\_\_ which he has found to be inappropriate, and

The Hearing Officer's only reservation as to \_\_\_\_\_ is the commute that will be imposed on Petitioner. Since that is primarily a parent's concern, the Hearing Officer concludes that \_\_\_\_\_ would be an appropriate placement for Petitioner. It offers full-time special education services in a small-class environment. \_\_\_\_\_ teachers are certified in special education. With teachers' assistants in each class, Petitioner would receive the individualized attention Ms. Shaw and Ms. Smith recommended. \_\_\_\_\_ also employs the necessary related service providers to provide the related services Petitioner requires.

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."<sup>32</sup> "[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."<sup>33</sup>

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

**ORDERED**, that DCPS shall immediately issue a Prior Notice placing and funding Petitioner at \_\_\_\_\_ including transportation and all other appropriate related services.

**IT IS FURTHER ORDERED**, that Petitioner's counsel shall provide copies of the completed independent evaluations to the appropriate DCPS Placement Specialist, the Special Education Coordinator at \_\_\_\_\_ and the DCPS Office of Special Education ("OSE") Resolution Team<sup>34</sup> by facsimile transmission and first-class mail along with a written request to schedule the MDT meeting described below.

<sup>31</sup> D.C. Code Section 38-2561.02(c).

<sup>32</sup> *Florence County School District Four v. Carter*, 510 U.S. 7, 11 (1993).

<sup>33</sup> *Id.*, 510 U.S. at 15-16.

<sup>34</sup> Fax: (202) 645-8828.

**IT IS FURTHER ORDERED**, that at least thirty days after Petitioner's enrollment at \_\_\_\_\_ but no later than October 30, 2009, DCPS shall convene an MDT meeting at \_\_\_\_\_ to review Petitioner's progress at \_\_\_\_\_ review all current evaluations, and update Petitioner's IEP as necessary. DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Zachary Nahass, Esquire.

**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 in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at \_\_\_\_\_ the appropriate DCPS Placement Specialist, and the DCPS OSE Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.<sup>35</sup>

**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: August 12, 2009

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<sup>35</sup> If DCPS fails to contact Petitioner's counsel 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.