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**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003

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[Parent], on behalf of,  
[Student],<sup>1</sup>

Petitioner,

v

District of Columbia Public Schools (DPCS),

Respondent.

Date Issued: September 9, 2010

Hearing Officer: Jim Mortenson

Case No:

Hearing Date: August 31, 2010 Room: 6b

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**HEARING OFFICER DETERMINATION**

**I. BACKGROUND**

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 9:00 a.m. on August 31, 2010, in hearing room 6b, and concluded on that date. The due date for the Hearing Officer's Determination (HOD) is September 10, 2010, pursuant to 34 C.F.R. § 300.515(a). This HOD is issued on September 9, 2010.

The hearing in this matter was conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30. The hearing was closed to the public.

Present at the due process hearing were:

Domiento Hill, Esq., Petitioner's Counsel

Laura George, Esq., Respondent's Counsel

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<sup>1</sup> Personal identification information is provided in Appendix B which is to be removed prior to public dissemination.

Four witnesses testified at the hearing:

For Petitioner:

Acting Head of

Educational Advocate.

Petitioner. (P)

For Respondent:

Special Education Coordinator.

The complaint in this matter was filed on July 6, 2010. The Respondent filed a response on July 15, 2010. A prehearing conference was held on July 20, 2010, and a prehearing order was issued on that date. A resolution meeting was held on July 29, 2010, and the matter was not resolved.

As part of the first prehearing order, the IHO requested briefs on the following questions: 1) Whether, because the issue in this case involves compliance with an HOD, the Student is a member of the "Jones" class under the Blackman/Jones Consent Decree; and 2) If the Student is a class member, whether there is a rebuttable presumption of harm in this case, where a non-public placement is being sought, as opposed to self-help compensatory education under the Blackman/Jones Consent Decree? Briefs were filed and a second prehearing order was issued on August 6, 2010. The Student is a member of the "Jones" class and there is not a rebuttable presumption of harm. The reasons for these answers are detailed in the August 6, 2010, prehearing order.<sup>2</sup>

The Petitioner is seeking placement at \_\_\_\_\_ for the 2010-2011 school year as compensatory education for the alleged failures to comply with the Hearing Officer Determinations (HODs) in question.

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<sup>2</sup> A redacted copy of that order is attached as Appendix A.

48 documents were disclosed and offered by the Petitioner (P 1 – P 48). P 1 through P 3 and P 5 through P 8 were rejected by the IHO as redundant because they were already part of the record. There were no objections to the remaining disclosed documents and they were entered as evidence into the record. Petitioner's exhibits are:

- P 4 - Due Process Complaint Disposition, July 29, 2010
- P 9 - Email from to Hill, July 20, 2010
- P 10 - Email chain ending from Hill to July 20, 2010
- P 11 - Case HOD, May 26, 2009
- P 12 - Case HOD, November 29, 2009
- P 13 - Case HOD, June 25, 2010
- P 14 - (Richards notes on Student), June 15, 2010
- P 15 - Occupational Therapy Evaluation, January 26, 2010
- P 16 - Educational Evaluation, May 20, 2010
- P 17 - Educational Evaluation Report, July 14, 2009
- P 18 - Clinical/Psycho-Educational Evaluation, August 29, 2009
- P 19 - Individual Education Program (IEP), April 13, 2010
- P 20 - IEP Extended School Year (ESY) page, April 13, 2010
- P 21 - (Handwritten meeting notes), April 13, 2010; MDT Meeting Notes, April 13, 2010; Multidisciplinary Team (MDT) Meeting Notes, April 13, 2010
- P 22 - Resolution Meeting Notes, May 12, 2010; (Handwritten meeting notes), May 12, 2010; MDT Meeting Notes, May 12, 2010
- P 23 - IEP, July 13, 2010
- P 24 - (Handwritten meeting notes), July 13, 2010; MDT Meeting notes, July 13, 2010
- P 25 - IEP (draft), July 13, 2010; MDT Meeting Notes, July 21, 2010
- P 26 - Letter from to Hill, July 28, 2010
- P 27 - Letter from Hill to December 2, 2009
- P 28 - Letter from to Hill, July 13, 2010
- P 29 - Email from Hill to July 14, 2010
- P 30 - Letter from to Hill, July 16, 2010
- P 31 - Email from Hill to July 16, 2010
- P 32 - Letter from Hill to July 16, 2010
- P 33 - Letter from Hill to June 23, 2010; Letter from to Hill, June 22, 2010
- P 34 - Letter from to Hill, June 25, 2010
- P 35 - Letter from Hill to June 25, 2010
- P 36 - Letter from to Hill, June 25, 2010
- P 37 - Letter from Hill to June 25, 2010
- P 38 - Email from Hill to Resolution Team, June 16, 2010; Letter from Hill to Resolution Team, June 16, 2010
- P 39 - IEP Progress Report – Annual Goals, November 9, 2009
- P 40 - IEP Progress Report – Annual Goals, February 3, 2010

- P 41 - IEP Progress Report – Annual Goals, April 13, 2010
- P 42 - IEP Progress Report – Annual Goals, April 20, 2010
- P 43 - IEP Progress Report – Annual Goals, June 6, 2010
- P 44 - IEP Report Card, (March 17, 2010)
- P 45 - IEP Report Card, (December 17, 2009)
- P 46 - MDT Meeting Notes, July 21, 2010
- P 47 - DCPS 2009-2010 School Calendar
- P 48 - Curricula Vitae,

Nine documents were disclosed and offered by the Respondent. (R 1 – R 9) There were no objections to any of the offered documents and all were entered into the record. Respondent's exhibits are:

- R 1 - IEP Progress Report – Annual Goals, November 9, 2009; IEP Report Card, (December 17, 2009); IEP Progress Report – Annual Goals, February 3, 2010; IEP Report Card, (March 17, 2010); IEP Progress Report – Annual Goals, April 20, 2010; IEP Progress Report – Annual Goals, June 1, 2010
- R 2 - Report to Parents on Student Progress, June 18, 2010; Report to Parents on Student Progress, June 15, 2009
- R 3 - (Fax cover pages and confirmation sheets: December 17 & 18, 2009; February 4 & 5, 2010; March 17, 2010; June 16 & 17, 2010
- R 4 - Email from George to Hill, July 19, 2010; Email from to Hill, July 20, 2010; Letter from to Hill, July 22, 2010
- R 5 - IEP (draft), July 13, 2010; MDT Meeting Notes, July 21, 2010
- R 6 - IEP, December 14, 2009
- R 7 - Case HOD, May 26, 2009
- R 8 - Case HOD, November 29, 2009
- R 9 - Letter from to Hill, September 3, 2009

## II. ISSUE

Whether the Respondent failed to comply with the HODs of May and November, 2009, by: a) failing to provide the Petitioner with written progress reports on the annual goals in the middle of and at the end of each advisory; and b) failing to include in the Student's IEP measurable annual goals that address her executive functioning and social/emotional needs that affect her involvement in and progress in the general education curriculum?

### III. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student attended \_\_\_\_\_ from \_\_\_\_\_ grade through \_\_\_\_\_ grade (the 2009-2010 school year).<sup>3</sup> She recently began attending \_\_\_\_\_ grade at \_\_\_\_\_ School for the 2010-2011 school year.<sup>4</sup> The Student has multiple disabilities including: dysthymic disorder (depression), learning disorder, expressive language disorder, and attention deficit hyperactivity disorder (ADHD).<sup>5</sup>
2. An HOD was issued following a due process hearing involving the parties on May 26, 2009.<sup>6</sup> The HOD required the Respondent to report the Student's progress toward annual goals "at a minimum, in writing in the middle of each advisory and at the end of each advisory. The written progress reports must be provided to the Petitioner and, unless she directs otherwise, her educational advocate, within one week of the end of the reporting period."<sup>7</sup>
3. The following dates, beginning with the first mid-point of the first advisory, were the mid points (M) and last days (L) of the advisories for the 2009-2010 school year: September 25, 2009 (M) ; October 29, 2009 (L); December 4, 2009 (M); January 22, 2010 (L); February 23, 2010 (M); March 26, 2010 (L); May 11, 2010 (M); June 22, 2010 (L).<sup>8</sup> Progress reports were provided to the Petitioner and her advocate for the first time during the 2009-2010 school year in December 2009, and sporadically thereafter.<sup>9</sup>

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<sup>3</sup> Testimony (T) of P.

<sup>4</sup> T of P.

<sup>5</sup> P 18.

<sup>6</sup> P 11/R 7.

<sup>7</sup> P 11/R 7.

<sup>8</sup> P 47.

<sup>9</sup> T of P, T of D.C., R 3.

4. Another complaint was filed September 9, 2009, and following a due process hearing this IHO concluded in an HOD issued November 29, 2009:<sup>10</sup>

The IEP lacks statements of present levels of functional performance that describe how the Student's ADHD and depression affects her involvement and progress in the general education curriculum (the same curriculum as for non-disabled children). This information is necessary to ensure the necessary services and supports are in place to help the Student reach her annual goals. It may be prudent to include functional goals designed to address skills dealing with the Student's social and emotional functioning and these will be required by this order. This failure represents a shortsighted approach to educational programming for the Student. It appears that academics are addressed only in the context of the Student's learning disabilities, and not with her social and emotional functioning in mind (although this is on the minds of some of her teachers). These errors must be corrected in order for the Student to be provided a free appropriate public education pursuant to 34 C.F.R. § 300.17.

The order in the HOD required, in relevant part:<sup>11</sup>

The IEP team must revise the IEP consistent with the findings and conclusions of this Hearing Officer's Decision (HOD) including but not limited to: 1) statements of present levels of academic achievement and functional performance including how the Student's disability affects her involvement and progress in the general education curriculum (the same curriculum as for nondisabled children) with regard to her executive functioning and emotional skills deficits, as reported in recent assessment reports; 2) measurable annual academic goals designed to meet her needs that result from her disability to enable her to be involved in and make progress in the general education curriculum and meet each of her other educational needs that result from her disability, specifically executive functioning and emotional needs that impact her involvement and progress in the general curriculum; and 3) the special education and related services necessary to enable the Student to reach those goals *by the end of the current school year*. Any recommended services and supports in the 2009 clinical/psycho-educational evaluation and the 2009 educational evaluation that are not being used should be considered if the Student is not making adequate progress to reach any of her goals by the end of the 2009-2010 school year. All other items ordered in the HOD for Case #2009-0597 remain in effect and must be complied with, to the extent not modified by this decision. All IEP requirements not specifically mentioned here must be adhered to.

5. Petitioner's Counsel sent a letter to the Special Education Coordinator at the Student's school , advising, among other things, that both of the HODs that had been issued needed to be complied with.<sup>12</sup>
6. The Student's IEP was revised on December 14, 2009.<sup>13</sup> The statement of present levels of functional performance in the IEP did not include how the Student's executive functioning and emotional skills deficits, as reported in then recent assessment reports,

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<sup>10</sup> P 12/R 8. (Conclusion #4)

<sup>11</sup> P 12/R 8. (Order #2)

<sup>12</sup> P 27.

<sup>13</sup> R 6.

affected her involvement in and progress in the general education curriculum.<sup>14</sup> The IEP also includes only one goal, of 14, that deals with executive functioning (improving organization) and no goals dealing with her emotional needs.<sup>15</sup>

7. The IEP was never revised to include the required information and goals during the 2009-2010 school year.<sup>16</sup>
8. The Student experienced some academic progress during the 2009-2010 school year and is not yet performing at grade level.<sup>17</sup> It is not clear how the Student's functional skills progressed, if at all.<sup>18</sup>
9. The Student has been accepted at \_\_\_\_\_ is a non-public school in Washington, D.C., that serves students with learning disabilities and other health impairments.<sup>20</sup> The School includes children from 11 to 21 years of age.<sup>21</sup> The student to teacher ratio in most of the classes is five to one or five to two.<sup>22</sup> Related service providers are present or available at the school, including: psychologist and therapists; speech and language pathologist; and occupational therapist.<sup>23</sup> The District of Columbia education standards are followed at the School.<sup>24</sup>

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<sup>14</sup> R 6.

<sup>15</sup> R 6.

<sup>16</sup> P 19, R 5/P 23, P 9. R 4.

<sup>17</sup> P 14, P 16, P 17, P 18, P 19, P 23, P 39, P 40, P 41, P 42, P 43, P 44, P 45, R 1, R 2, R 5.

<sup>18</sup> T of P, T of D.C.

<sup>19</sup> T of R.L., P 26.

<sup>20</sup> T of R.L.

<sup>21</sup> T of R.L.

<sup>22</sup> T of R.L.

<sup>23</sup> T of R.L.

<sup>24</sup> T or R.L.

#### IV. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. "A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513. . . is final, except that any party involved in the hearing may appeal the decision. . . ." 34 C.F.R. § 300.514(a).
2. Two HODs are in question in this case: Case \_\_\_\_\_ and Case \_\_\_\_\_ These cases were not appealed by either party and are final.
3. The Respondent failed to implement the order in Case \_\_\_\_\_ requiring it to provide the Petitioner reports on the Student's progress "toward the annual goals. . . , at a minimum, in writing in the middle of each advisory and at the end of each advisory." The order was very specific in requiring these written progress reports to "be provided to the Petitioner and, unless she directs otherwise, her educational advocate, within one week of the end of the reporting period." This clear and specific procedure was not followed, and necessarily impacted the Petitioner's ability to stay informed about the Student and participate meaningfully in her education program, violating her right to notice and to be heard.
4. The Respondent failed to implement the order in Case \_\_\_\_\_ specifically requiring it to revise the Student's IEP, no later than December 15, 2009, to include measurable annual goals to "meet each of her other educational needs that result from her disability, specifically executive functioning and emotional needs that impact her involvement and progress in the general curriculum[.]" The only apparent attempt to address this requirement was a goal to "maintain a neat and organized notebook, desk and locker

through out all of her academics with increasing independence 80% of the time.” HOD was clear that the Student’s IEP lacked a statement of the Student’s “present levels of functional performance that describe how her ADHD and depression affects her involvement and progress in the general education curriculum.” This was to be included in the IEP, based on what was reported in (then) recent assessment reports. Because this requirement was not complied with, it is not surprising the IEP failed to include goals to address those needs. The District’s late attempts to comply with the order does not address its failure to adhere to very clear and simple instructions that were based on what it was already required to do under the IDEA.

5. 34 C.F.R. § 300.17 provides:

Free appropriate public education or FAPE means special education and related services that —  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part;  
(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and  
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

6. Because the orders of the HODs were not followed, the special education and related services provided to the Student during the 2009-2010 school year did not meet the standards of the SEA and were not provided in conformity with an IEP that met the requirements of §§ 300.320 through 300.324 (which the prior HODs addressed). As a result, the Student was denied a FAPE.
7. Because this matter involves repeated refusals or an inability by the Respondent to follow clear legal requirements that have impacted both the Student’s right to a FAPE and the Petitioner’s due process rights, the Petitioner’s proposed remedy is adopted. School can meet the needs of the Student and is an appropriate equitable remedy for the violations in this case, regardless of the educational harm suffered by the Student.

## V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. The Petitioner prevails because the Respondent failed to comply with the HODs of May and November, 2009, by failing to provide the Petitioner with written progress reports on the annual goals in the middle of and at the end of each advisory, and by failing to include in the Student's IEP measurable annual goals that address her executive functioning and social/emotional needs that affect her involvement in and progress in the general education curriculum.
2. The Student will be immediately placed at \_\_\_\_\_ School at the Respondent's expense. While the Respondent remains responsible for the cost of the Student's educational programming, including related services, the Petitioner may work directly with the \_\_\_\_\_ School to determine the appropriate services for the Student. The Respondent has the right to challenge any services billed for in a due process hearing, but shall not have the right to dictate what services will or will not be provided. This remedy is appropriate for the Student in this case because the Respondent repeatedly failed to adhere to the requirements of the law and the orders of the IHO. This demonstrated either a disregard for or ignorance of the law and, consequently, the rights the Student and Petitioner. Thus, to ensure the Student obtains a FAPE, and to fairly remedy the violations of Petitioner's due process rights, the Respondent is effectively removed from the role of serving the Student.
3. If the Student is, for any reason but for graduation or aging out, no longer able to attend \_\_\_\_\_ School, the Student will again become the direct responsibility of the Respondent and all of the procedures and obligations under IDEA will become

applicable. Nothing in this order requires placement at another non-public placement, unless the IEP team determines that such a placement is necessary for the Student.

**IT IS SO ORDERED.**

Date: September 9, 2010



\_\_\_\_\_  
Independent Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).