

**District of Columbia
Office of the State Superintendent of Education**

**Student Hearing Office
Terry Michael Banks, Due Process Hearing Officer
1150 - 5th Street, S.E.
Washington, D.C. 20003
(202) 698-3819
Facsimile: (202) 698-3825
Tmbanks1303@earthlink.net**

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STUDENT, through the legal guardian¹)	Complaint Filed: June 4, 2010
)	
Petitioner,)	Prehearing Order: July 16, 2010
)	
v.)	Hearing Dates: August 4, 2010 (Room 6A)
)	August 10, 2010 (Room 6B)
)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Docket No.
)	
Respondent.)	
)	
Student Attending:)	
)	

HEARING OFFICER'S DECISION

Counsel for Petitioner:	Michael Eig, Esquire Paula Rosenstock, Esquire Michael Eig & Associates, P.C. 5454 Wisconsin Avenue Suite 760 Chevy Chase, Maryland 20815 (301) 657-1740; Fax: (310) 657-3843
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Counsel for DCPS:	Kendra Berner, Esquire Office of the General Counsel, DCPS 1200 First Street, N.E.; 10 th Floor Washington, D.C. 20002-4232 (202) 442-5178; Fax: (202) 442-5098
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¹ 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 (“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 4, 2010, Petitioner filed a Due Process Complaint Notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) had failed timely to identify Petitioner as a child with a disability. In a Prehearing Order issued on July 16, 2010, the Hearing Officer determined the issues to be adjudicated as follows:

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

Petitioner alleges that Petitioner has evinced signs of a disability since the 2007-08 school year, when his teacher suggested that she be evaluated. Petitioner further alleges that DCPS violated IDEIA by failing to identify Petitioner as a child with a disability (Specific Learning Disability/Other Health Impaired (“ADHD”)) at Multidisciplinary Team (“MDT”) meetings on November 10, 2009 and December 8, 2009. Petitioner requests placement at

DCPS asserts that Petitioner does not qualify for any of the disability classifications recognized by IDEIA, and that Petitioner can succeed as a general education student with accommodations in a Section 504 plan. DCPS further asserts that is too restrictive an environment for Petitioner.

The due process hearing was convened on August 4, 2010 and completed on August 10, 2010. The parties’ Five-Day Disclosures were admitted into evidence at the inception of the hearing.²

² Petitioner’s Disclosure included 38 exhibits, DCPS’ Disclosure included 12.

Witnesses for Petitioner

Stephanie Owens, Educational Consultant
Petitioner's Aunt

Associate Head of School,
Psychologist,

Witnesses for DCPS

School Psychologist,
Special Education Coordinator,
Teacher,
Keri Anne Henderson, Occupational Therapist, RSI Co.

Findings of Fact

1. Petitioner is a _____ year-old student attending _____
2. Petitioner was retained in the _____ grade after the 2008-2009 school year.⁴
3. _____ conducted a Psychological Re-Evaluation of Petitioner on June 11, 2009. On the Wechsler Intelligence Scale for Children ("WISC"), Petitioner received standard scores of 98 in Verbal Comprehension, 90 in Perceptual Reasoning, 74 in Working Memory, 85 in Processing Speed, and 85 in Full Scale IQ. On the Woodcock-Johnson III Tests of Achievement ("WJ-III"), Petitioner received the following standard scores and percentile rankings, respectively, as follows: Letter Word Identification – 84 and 14, Reading Fluency – 83 and 13, Calculation – 86 and 18, Math Fluency – 85 and 15, and Spelling – 87 and 20.⁵ Ms. Jackson's findings and recommendations, *inter alia*, include the following:

Overall, [Petitioner] appears to be a young lady who exhibits average to low average cognitive potential based upon the results of the *Wechsler Intelligence Scale for Children-Fourth Edition* and low average academic abilities as measured by the *Woodcock Johnson Tests of Achievement-III*.⁶

4. On June 26, 2009, Dr. Elliott completed a Psychoeducational Evaluation of Petitioner. Dr. Elliott diagnosed Petitioner with ADHD, Reading Disorder, Disorder of Written Expression, and Mathematics Disorder.⁷ Dr. Elliott's findings and recommendations, *inter alia*, include the following:

³ *Complaint* at 1.

⁴ Testimony of Petitioner's aunt.

⁵ Petitioner's Exhibit ("P.Exh.") No. 2 at 7.

⁶ P.Exh. No. 2 at 4.

⁷ P.Exh. No. 3 at 17.

A weakness in processing speed was apparent during the present testing, as well as when [Petitioner] was tested by DCPS personnel. On the WISC-IV, she earned a Low Average WISC-IV Processing Speed Index of 85. She scored in the Low Average to Low range on supplemental tests of processing speed administered during the present testing. Such slow processing speed is common in individuals with attentional difficulties.

The present test results, as well as [Petitioner's] history, strongly indicate the presence of an attentional disorder. Both her mother and her aunt report significant inattention, distractibility, restlessness, and impulsivity within the home setting. Although [Petitioner] was somewhat more focused during the present one-on-one testing, a variety of attention-related weaknesses were still apparent. Specifically, she was somewhat restless and distractible, and she struggled to work efficiently across a broad range of tasks. [Petitioner] also struggled to review options thoroughly and carefully on multiple-choice tests, which is a frequent weakness in individuals with ADHD. Furthermore, she had extreme difficulty remaining focused during a lengthy, uninteresting task, when she was not allowed to move about or interact with another person. Like many individuals with ADHD, [Petitioner] may sometimes attempt to stir up excitement as a way to keep herself engaged, as she seems to lapse into a very inattentive state without such stimulation. Her significant comorbid emotional distress undoubtedly exacerbates her attentional difficulties and reduces her self-control. However, her longstanding history of attentional issues indicates that a biologically-based attentional disorder is present. At this time, a diagnosis of Attention-Deficit/Hyperactivity Disorder: Combined Type is clearly warranted...

The present test results raise serious concerns about [Petitioner's] visual-spatial and visual-motor processing. It is difficult to reconcile her generally low scores in this area during the present testing with the Average score she earned on the untimed VMI that was administered and scored by DCPS personnel. Notably, [Petitioner] scored at the fifth percentile on a timed test of graphomotor skill that was also administered by DCPS, and she scored below the fifth percentile on tests of fine motor speed administered during the present testing. Taken together, these findings imply that visual-spatial and visual-motor weaknesses may be contributing to [Petitioner's] longstanding academic difficulties, particularly when she is under time pressure. Thus, a more thorough occupational therapy evaluation appears warranted.

During the present testing, [Petitioner] displayed significant weaknesses in phonological processing and naming speed. Deficits in these areas make it hard to decode and spell accurately and to read and write fluently. [Petitioner] also displayed a marked weakness in memory for symbolic

information. In addition, she does not have a solid mental representation of the correct orientation of letters. These cognitive deficiencies no doubt contribute to weaknesses in other symbolic tasks such as reading, writing, and math. [Petitioner] also displayed significant difficulty in sequential processing, which undoubtedly makes mathematical work particularly challenging.

A screening of [Petitioner's] academic skills was conducted by DCPS and more extensive testing was included as part of the present assessment. Her scores during the current testing were generally lower than those reported by DCPS. This contrast is difficult to understand given that [Petitioner] appeared to put forth solid effort during both assessments. However, individuals with attentional and emotional problems often perform better on some days than others, due to fluctuations in their concentration, impulsive control, and organization. In addition, [Petitioner] may have struggled to sustain focus an effort during the present testing because it was much more extensive than administered by DCPS. As such, the present testing is likely to be more representative of her functioning over the course of a full school day.

In the reading domain, DCPS testing yielded Low Average sight-word recognition skill and fluency when reading short, simple material. During the present testing, [Petitioner] scored in the Low range on a measure of letter word identification and in the Very Low range on a measure of reading fluency. She earned a Low Average score on a test of her word attack skills. The efficiency of [Petitioner's] sight word reading was Below Average and he phonemic decoding efficiency was Poor. Her literal comprehension of brief text measured in the Low range. Supplemental tests confirmed these weaknesses, as [Petitioner] was both slow and inaccurate on more extended reading tasks. Of most concern, she scored in the Below Average range on a measure of her comprehension of passage length material and in the Very Poor range for her fluency on this same task. This lengthier reading task is far more representative of real-world academic demands than are the brief, simple tests administered by DCPS. Furthermore, [Petitioner's] scores at he first to ninth percentile on this task fall far below the level we would expect base on her Verbal Comprehension Index score, at the forty-fifth percentile. These findings, together with [Petitioner's] longstanding, marked difficulty meeting academic reading demands, clearly indicate the presence of a Reading Disorder.

In terms of written expression, [Petitioner] displayed Average ability to compose short, simple material within a structured context and without time pressure. This finding underscores her potential when given ample time and a high level of structure. In contrast, [Petitioner] scored in the Low Average range for her speed when composing simple material. She

earned Low Average scores when asked to spell familiar words, both during the present testing and when tested by DCPS. However, she scored in the Very Low range when required to spell unfamiliar words, indicating a marked weakness in her grasp of phonics. Although [Petitioner] may be able to compensate for this weakness to some extent when given ample time, it likely contributes to her slow speed in written expression, as well as her resistance to writing tasks. This overall pattern, together with [Petitioner's] longstanding, marked difficulty meeting academic writing demands, indicates the presence of a Disorder of Written Expression.

In regards to math, the DCPS testing reported Low Average calculation skills and fluency with simple computation. [Petitioner's] scores on these measures fall ten to eleven standard score points below her Verbal Comprehension Index. During the present testing, she earned lower scores on these same measures (in the Low to Very Low range), while scoring in the Low Average range on a measure of applied problem solving skill. [Petitioner's] scores on the present measures of calculation and math fluency are significantly discrepant from her Verbal Comprehension Index. This overall profile, together with her longstanding difficulty meeting academic mathematics demands, indicates the presence of a Mathematics Disorder.

In the social emotional realm, [Petitioner] displays marked emotional turmoil at this time. Her internal distress, together with the impulsivity associated with her ADHD, interferes significantly with her ability to meet behavioral expectations in the classroom, which substantially reduces the amount of time she is able to participate and learn effectively. Even when [Petitioner] is behaving appropriately, her emotional distress undoubtedly distracts her and contributes to her low tolerance for novelty. Thus, she clearly meets the DCPS criteria for a student with emotional disturbance...

Recommendations

[Petitioner] will clearly require high levels of school-provided individualized support, on the basis of her learning disorders in reading, writing, and math, her ADHD, and her marked emotional disorders. This pattern of multiple, significant weaknesses indicates the need for an IEP with a classification of multiply disabled and placement in a highly specialized academic environment. Specifically, [Petitioner] should be routinely placed in very small classes (no more than eight to ten students) with similar challenges. Instruction should involve hands-on, multi-modal methods suitable for an individual with ADHD and apparent language weaknesses... Regular individual therapy targeting emotional coping will also be essential, as well as group therapy targeting social skills...⁸

⁸ P.Exh. No. 3 at 12-18.

5. Petitioner's grade equivalent scores and percentile rankings on the WJ-III, respectively, were as follows: Academic Skills – 4.2 and 5; Academic Fluency – 3.5 and 2; Academic Applications – 4.2 and 9, Broad Reading – 3.4 and 3; Letter-Word Identification – 4.0 and 8, Reading Fluency - 2.4 and 1; Passage Comprehension – 2.9 and 4; Word Attack – 3.0 and 12, Broad Written Language – 5.0 and 15; Spelling – 4.4 and 14; Writing Fluency – 5.2 and 18; Writing Samples – 5.8 and 30; Spelling of Sounds – 1.8 and 1; Phoneme/Grapheme Knowledge – 2.6 and 5; Broad Math – 4.2 and 4; Calculation – 4.4 and 5; Math Fluency – 2.7 and 1; Applied Problems – 4.5 and 18.⁹ On the Gray oral Reading Tests, Petitioner's scores were as follows: Rate – 4.2 and 5; Accuracy – 4.2 and 9; Fluency – 4.0 and 1; and Comprehension – 4.0 and 9.¹⁰ On the Behavior Assessment System for Children (“BASC”) and the Connors Parent Rating Scale, Petitioner scored in the 98-99th percentile in all but two of thirteen categories.¹¹

6. On September 28, 2009, Ms. Kristen Masci, an occupational therapist at Skills on the Hill, LLC, completed an Occupational Therapy Evaluation of Petitioner. findings and recommendations, *inter alia*, include the following:

[Petitioner's] writing speed is considered to be within normal limits for a student her age. However, when she writes, her legibility often decreases, as some of the letter formations are incomplete or incorrect. In addition, her ability to use adequate space between words while writing, poor use of capitalization, and difficulty with spelling also contribute to writing challenges. Also contributing to writing inefficiency, [Petitioner] utilizes a very awkward pencil grasp that causes all movement to come from her entire hand rather than her fingers. She reports fatigue while writing and it is likely that variations in the legibility of her writing are impacted by her inefficient pencil grasp. [Petitioner's] performance on fine and visual motor tasks was below average in all areas. This is likely due to decreased processing speed and a lack of control and precision when drawing and when handling and manipulating small objects with her hands while being timed. These issues with fine and visual motor skills may also be impacted by low muscle tone within her hands. When children have low tone and instability within their hands, they often develop inefficient grasp patterns, including poor pencil grasps, in an effort to compensate for decreased stability. Over time, such inefficient grasp patterns become habitual and are very difficult to “undo.”

Overall, [Petitioner's] difficulties with visual perception are a major area of concern and they are contributing to her difficulties with learning and completing academic work. Specifically, these problems impact skills such as understanding math concepts (an academic area that she experiences issues with), drawing and copying diagrams, using adequate spacing in written work, recalling the spelling of words, identifying errors when

⁹ P.Exh. No. 3, Disclosure at 38-39.

¹⁰ *Id.* at 40.

¹¹ *Id.* at 41-42.

copying or when proofreading, scanning text for information, and even understanding visually presented information. It is also possible that she experiences visual challenges from not wearing her glasses while doing her school work.

Responses from the Sensory Profile suggest that [Petitioner] is having trouble with self-regulation skills needed for maintaining her attention in the presence of distractions and with modulating her behavioral responses. She has a lot of trouble with tuning out auditory distractions and with controlling herself when she becomes frustrated or upset. Consequently, these issues seem to be impacting her image of herself and her social behavior.

Recommendations

It is recommended that [Petitioner] receive school-based occupational therapy for at least 1½ hours a week to address the above mentioned areas... [Petitioner] may benefit from experimenting with a rubberized pencil grip to facilitate a more dynamic grasp on the pencil... As [Petitioner's] writing legibility seems to be impacted by the way she forms some letters, she would benefit from exposure to a structured writing program to "undo" some of her bad habits.¹²

7. On October 1, 2009, Ms. Megan Moore, a Pediatric Speech-Language Pathologist at Capitol Kids Therapy, LLC, completed a Speech-Language Evaluation of Petitioner. findings and recommendations, *inter alia*, include the following:

Results of today's testing on the *Clinical Evaluation of Language Fundamentals-4* indicate her expressive language (Standard Score = 71) and receptive language (Standard Score = 68) skills are significantly lower than her cognitive functioning and are well below average for a child her age.

[Petitioner's] language disorder is characterized by: significant problems with word recall, grammatical and syntactical errors that result in her inability to organize her ideas in a logical manner, problems with identifying and relating semantic relationships (characteristics of objects that can be categorized by similarities or differences), and problems with working and short term memory. Results of the *Goldman Fristoe Test of Articulation-2* (standard score of 84; 1st percentile) indicates a moderate to severe articulation disorder characterized by a lateral lisp. [Petitioner's] speech errors greatly impacted her conversational speech causing poor intelligibility for words, in known and unknown contexts. Furthermore, [Petitioner] appears to be self-conscious about her lisp and expressed a desire to change her way of speaking due to ridicule from her classmates.

¹² P.Exh. No. 12, Disclosure at 71-72.

Speech therapy is recommended to address articulation and receptive and expressive language skills.

Recommendations

It is recommended that [Petitioner] receive speech therapy for one hour per week at school to address articulation errors and expressive and receptive language skills...¹³

8. completed a Psychological Re-evaluation Addendum on October 26, 2009. Petitioner's scores on the BASC and Conners tests were not as high as those she received in Dr. Elliott's evaluation. Unlike Dr. Elliott, did not address the issues of emotional disturbance or ADHD in the evaluation.¹⁴

9. DCPS convened a Multidisciplinary Team ("MDT") meeting on December 8, 2009. The MDT concluded that Petitioner "remains ineligible for special education services." Petitioner's representatives "strongly" objected to the MDT's decision.¹⁵ The MDT developed a Section 504 Plan to address Petitioner's ADHD.¹⁶

10. For the 2009-2010 school year, Petitioner received the following grades: D's in French 1, English 1, and Computer Applications; C's in Mathematics, World History, and Health and Physical Education 7; and B's in Art and Science.¹⁷

11. Petitioner has been accepted by is a private school that offers full-time specialized instruction to disabled students. If Petitioner were to attend she would be in a class of ten students. The class is taught by a masters level teacher who is certified in special education. The teacher has an assistant who is a masters level, special education intern from George Washington University. employs full-time therapists in speech and language, occupational therapy, and psychological therapy whose services are integrated into the classroom as well as provided individually. If Petitioner were to attend would develop a program to address Petitioner's ADHD, learning disabilities, speech and language disabilities, fine and visual motor deficiencies, and her coping skills.¹⁸

¹³ P.Exh. No. 13, Disclosure at 79-80.

¹⁴ P.Exh. No. 17, Disclosure at 89-94.

¹⁵ P.Exh. No. 30, Disclosure at 130; DCPS Exh. No.10.

¹⁶ P.Exh. No. 31.

¹⁷ P.Exh. No. 34.

¹⁸ Testimony of

Conclusions of Law

Failure to Identify Petitioner as a Child with a Disability

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.¹⁹ No single procedure should be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.²⁰ The results of the evaluations must be given considerable weight in determining the child's eligibility for services and in the development of the child's IEP.²¹

Petitioner alleges that she is eligible for special education services with multiple disabilities: other health impairment ("OHI") as a result of her ADHD and specific learning disability ("SLD"). The requirements for these classifications are as follows:

- An Other Health Impairment

Having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that –

- Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and
- Adversely affects a child's educational performance.²²

- Specific Learning Disability

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of

¹⁹ 34 C.F.R. §300.304(c)(4).

²⁰ 34 C.F.R. §300.304(b)(2).

²¹ 34 C.F.R. §300.305(a).

²² 34 C.F.R. §300.8(c)(9).

emotional disturbance, or of environmental, cultural, or economic disadvantage.²³

Dr. Elliott's evaluation and testimony supported Petitioner's position. Dr. Elliott diagnosed Petitioner with ADHD, Reading Disorder, Disorder of Written Expression, and Mathematics Disorder. In her testimony, Dr. Elliott discussed her evaluation in detail and explained why she believed that Petitioner's disorders constituted disabilities under IDEIA. [redacted] was DCPS' primary witness to refute Dr. Elliott's diagnoses and recommendations. [redacted] also conducted two evaluations of Petitioner. However, in neither of her evaluations did [redacted] draw any conclusions as to the test data.

During the hearing, [redacted] conceded that Dr. Elliott had diagnosed Petitioner with ADHD. [redacted] testified that the diagnosis, alone, did not qualify Petitioner for a classification as OHI. [redacted] testified, "The team did not accept [Dr. Elliott's] recommendations," and "The team did not believe ADHD was having a significant effect on her in the classroom." Dr. Elliott offered several reasons why Petitioner should be classified OHI as a result of her ADHD: she performs better with individual attention, she is very impulsive on multiple choice tests, she needed frequent breaks during the evaluation, and she evinced attentional difficulties during the evaluation.

[redacted] also conceded that Dr. Elliott had diagnosed Petitioner with Reading, Written Expression, and Mathematics Disorders. She testified that Petitioner has no learning disorders; her poor grades were due, instead, to her failure to complete and turn in assignments. Dr. Elliott's test data placed Petitioner two to five grade levels below her peers in the various subject-matter subtests. Her grade level performance and percentile rankings were consistently well below average: Academic Skills – 4.2 and 5; Academic Fluency – 3.5 and 2; Academic Applications – 4.2 and 9, Broad Reading – 3.4 and 3; Broad Written Language – 5.0 and 15; Broad Math – 4.2 and 4.²⁴

This issue turns on the credibility of the parties' experts. [redacted] did not dispute Dr. Elliott's diagnosis of ADHD, but concluded that ADHD did not adversely affect Petitioner in the classroom. [redacted] did dispute Dr. Elliott's conclusions as to learning disabilities, but offered no criticism of Dr. Elliott's testing methodology. On the other hand Dr. Elliott offered thinly veiled criticism of [redacted] evaluation: "DCPS performed only a short, simple battery" of examinations, and DCPS developed the data to support diagnoses of learning disorders, but did not follow through with the analysis. In at least three instances in her evaluation, Dr. Elliott was critical of the brevity and simplicity of the DCPS evaluations. Dr. Elliott selected evaluations that were more challenging to Petitioner, specifically to examine Petitioner's ability to perform in "real-world" conditions and her distractibility.

The Hearing Officer found Dr. Elliott's evaluation and testimony significantly more credible than [redacted] Psychological Re-Evaluation and testimony. Dr.

²³ 34 C.F.R. §300.8(c)(10).

²⁴ P.Exh. No. 3, Disclosure at 38-39.

Elliott's evaluation was more extensive, provided all of the standard scores, grade equivalents, and percentile rankings, and drew well-reasoned conclusions based on the test data. evaluation was narrowly focused and provided no analysis of the test data. The only teacher to testify,

corroborated Dr. Elliott's conclusions. testified that Petitioner has the following difficulties in the classroom: paying attention, understanding the meaning of words, answering questions quickly, asking for help, using a variety of vocabulary words, getting to the point when talking, and understanding what was read.

The Hearing Officer concludes that Petitioner has met her burden of proving that DCPS failed to provide a free appropriate public education by failing to identify Petitioner with the following disabilities: OHI (ADHD) and SLD (Reading, Written Expression, and Mathematics. Petitioner's poor grades, substandard achievement scores, and the testimony of establish that Petitioner's disabilities, including her ADHD, have an adverse effect on her classroom performance.

Under *Florence County School District Four v. Carter*,²⁵ 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."²⁶ "[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."²⁷ While the Hearing Officer is not compelled to mandate a private school placement, one is warranted in this case. The testimony of DCPS' witness revealed a stubborn refusal to concede the existence of Petitioner's disabilities despite her retention in seventh grade, her indifferent performance during her second attempt at seventh grade, and the clear test data showing her performing several years below her peers. the Special Education Coordinator, attributed Petitioner's poor grades to Petitioner's absences. However, the only documentation of attendance in the record, Petitioner's final progress report for the 2009-2010 school year, revealed that she had no absences in most of her classes.²⁸

would be an appropriate placement for Petitioner. It offers the small-class environment recommended by Dr. Elliott as well as the related services recommended by and

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

²⁵ 510 U.S. 7 (1993).

²⁶ *Id.*, 510 U.S. at 11.

²⁷ *Id.*, 510 U.S. at 15-16.

²⁸ P.Exh. No. 34.

representations of the parties' counsel at the hearing, this 20th day of August 2010, it is hereby

ORDERED, that DCPS shall immediately issue a Prior Notice placing Petitioner at Kingsbury Center for the 2010-2011 school year, including transportation and all other appropriate related services.

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 20, 2010