

STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA
STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)
SPECIAL EDUCATION PROGRAMS

STUDENT,¹ by and through his Parent,

Petitioners,

Case No.

Bruce Ryan, Hearing Officer

v.

Hearing: August 24, 2009

Decided: September 3, 2009

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

OSSE
STUDENT IDENTIFICATION OFFICE
2009 SEP -4 AM 10: 06

HEARING OFFICER DECISION

I. PROCEDURAL BACKGROUND

The due process complaint in this matter was filed July 10, 2009, pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations. The complaint concerns a _____ year old student who resides in the District of Columbia and attended _____ a private school located in _____ during the 2008-2009 school year.

The complaint alleges that Respondent District of Columbia Public School ("DCPS") denied the student a free appropriate public education ("FAPE") and/or otherwise violated the IDEA when it made an eligibility determination and developed an initial individualized education program ("IEP") for the Student based on a prior eligibility determination from the State of Virginia, without (a) conducting any new evaluations, (b) contacting current teachers or staff at _____, (c) observing the Student in his regular classroom, and/or (d) having any participant at the MDT/IEP team meeting who was familiar with the Student other than the parent. The initial MDT/IEP meeting took place on or about July 9, 2009, the day before the complaint was filed.

On July 20, 2009, DCPS agreed to waive resolution and requested that the case proceed to a due process hearing on the merits. A Prehearing Conference ("PHC") was held on July 24, 2009. Following the PHC, DCPS filed a Response asserting (*inter alia*) that the complaint is without merit, that the Student has not been denied a FAPE, and that the relief requested should be denied. A Prehearing Order was issued July 28, 2009. Petitioners elected for the hearing to be closed. Five-day disclosures were filed by both parties as directed, on or about August 17, 2009. DCPS also filed a motion to dismiss on the same date as the five-day disclosures.

¹ Personally identifiable information is attached as an Appendix to this decision and must be removed prior to public distribution.

The Due Process Hearing was held on August 24, 2009. At the hearing, three documentary exhibits submitted by Petitioners (identified as "P-1" through "P-3") and 13 documentary exhibits submitted by DCPS (identified as "R-1" through "R-13") were admitted into evidence without objection. Testifying at the hearing on behalf of Petitioners were the Parent-Petitioner; and [REDACTED] Head of School at [REDACTED]. Testifying on behalf of DCPS was [REDACTED] DCPS School Psychologist.

This decision constitutes the Hearing Officer's determination pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). .

II. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioners, along with the pleadings filed by both parties, has resulted in the following issues being presented for determination at hearing:

- a. *Whether DCPS has denied the Student a FAPE by failing to provide the Student with an appropriate IEP and placement;*
- b. *Whether DCPS has denied the Student a FAPE and/or otherwise violated the IDEA by:*
 - (i) *failing to conduct an observation pursuant to 34 C.F.R. 300.310,*
 - (ii) *failing to include the Student's teacher in the development of the IEP pursuant to 34 CFR 300.308(a)(1) and 300.321(a)(2), and/or*
 - (iii) *failing to conduct a full and individual initial evaluation pursuant to 34 CFR 300.301(a), 300.305, and 300.306.*

Petitioners contend that the appropriate remedy for these violations is to place and fund the Student at [REDACTED] for the 2009-2010 school year.

III. FINDINGS OF FACT

1. The Student is a [REDACTED]-year old resident of the District of Columbia who has attended the [REDACTED] grade at [REDACTED] during the 2008-2009 school year. [REDACTED] is a private school located in [REDACTED] which provides a college preparatory program for SLD and ADHD students. The Student has been attending [REDACTED] at the parent's expense. *See P-1; Parent Testimony; [REDACTED] Testimony..*

2. In late March 2009, the Student was referred by [REDACTED] teachers for testing by [REDACTED] because he was struggling in school, especially in math. *See R-10 (Social History).* [REDACTED] conducted a psycho-educational evaluation with a social history in April 2009. *R-10.*

3. On or about May 6, 2009, ACPS convened a meeting to review the evaluations and determine eligibility for special education services. *R-12.* ACPS determined that the Student was eligible as a child with an educational disability, specifically Emotional Disturbance ("ED") and Specific Learning Disability ("SLD") in mathematics. [REDACTED] determined that the

Student needed support with behavioral issues and possible depression, in addition to educational support to address his weaknesses in math. *Id.*, pp. 5-6.

4. On or about June 16, 2009, Petitioners' counsel provided copies of the [REDACTED] psycho-educational evaluation, social history, and eligibility determination to DCPS' Liaison for Private and Religious Schools. *See R-9*. Petitioners' letter noted their D.C. residence and stated that "parent is requesting that DCPS review the evaluations and conduct whatever evaluations it deems necessary and fund the student's placement at [REDACTED] for the 2009-2010 school year." *Id.* On June 19, 2009, DCPS confirmed receipt of the referral, and stated that it had been forwarded to the DCPS High School Cluster Site at [REDACTED] for consideration of special education services. *R-8*.

5. On or about July 9, 2009, DCPS convened an MDT meeting to review the evaluations and other information submitted by Petitioners. *See R-1; DCPS Testimony*. The meeting was attended by the parent, the parent's attorney, DCPS/LEA representative, DCPS school psychologist, and a special education teacher. *Id.*

6. The psycho-educational evaluation conducted by ACPS and reviewed by DCPS on 7/9/09 included the following findings and recommendations for the Student:

Cognitive testing indicates an Average range of ability, as measured by the General Abilities Index. His processing speed skills were within the Borderline range, indicating that he will need extra time to complete tasks. Academic achievement scores ranged from Average to Very Low. [The Student's] decoding, reading comprehension, writing and reading fluency, as well as written expression, fell within the Average range. He struggled with math fluency, calculation, and spelling....Concerns were noted in the areas of depression, anxiety, aggression, withdrawal, attention problems, and adaptive skills....Because [the Student's] processing speed is likely impacting his ability to achieve academic success, he will need to be given additional time to complete tasks. In addition, it may be beneficial to seek outside, as well as school based counseling support to discuss potential feelings of depression and low self-esteem." *R-10, Psycho/ed Report, pp. 8-9.*

7. Based on its review of the evaluations and other information provided by the parent, DCPS determined that the Student was eligible for special education services as a child with SLD/Math and Emotional Disturbance. *See R-1, pp. 1-2. See also Parent Testimony; DCPS Testimony.*

8. DCPS developed an initial IEP for the Student, dated July 9, 2009. *R-4*. The IEP provides for five (5) hours per week of specialized instruction in a general education setting and one hour per week of psychological counseling in a special education setting. *Id.*, p. 1. The percentage of time NOT in a regular education setting was determined to be 0-20%. *Id.* The Student's Least Restrictive Environment ("LRE") was determined to be in a general education classroom setting with consultation from special education staff. *Id.*, pp. 4-5. The IEP also provided modifications and/or accommodations for testing, including extended time which addressed the processing speed concern cited in the psycho-educational evaluation. *Id.*, p. 4.

9. DCPS also issued a Prior Notice of Placement on July 9, 2009, proposing to place the Student at his Neighborhood School in a General Education Class. R-5. According to the Notice: "Documentation demonstrated that student can access the general education curriculum in a general education setting." *Id.* The MDT placement meeting notes indicate that "Parent wants [the Student] to continue at the _____ which is a full time special education school," but that "DCPS does not recommend a full time setting because the evaluation does not support that setting." R-6. DCPS recommended a "comprehensive high school setting with specialized instruction and psychological counseling." *Id.*, p. 2. *See also DCPS Testimony* (noting that Student's needs do not require a full-time special education program at this time)

10. In making its eligibility determination and developing the initial IEP and placement for the Student, DCPS reviewed and considered the psycho-educational evaluation and social history from ACPS, along with the ACPS meeting minutes, transcripts, and attorney's letter. *DCPS Testimony*. DCPS did not conduct any additional evaluations, did not contact teachers or staff of _____ and did not conduct any additional classroom observations. *See P-1; Parent Testimony*. DCPS determined that it had sufficient information to decide eligibility and develop an educational program for the Student based on the package of information provided by the parent and ACPS. *See DCPS Testimony*.

11. The parent disagrees with DCPS' placement determination "because the present environment _____ is working for [the Student] and a general education setting will not work for him." R-6, p. 2. *See also Parent Testimony*.

12. The Student has attended many different schools prior to attending _____ His school history includes: Nursery and kindergarten at the _____ in D.C.; _____ at the _____ D.C.; _____ at the _____ at _____ the first half of _____ at _____ in D.C., then "home-schooled" at the _____ in _____ D.C.; first semester of _____ at _____ and then completion of 8th Grade at _____ during the 2008-2009 school year. *See R-10, Social History*, pp. 1-2.

13. Prior to June 2009, the Student had not been evaluated, or referred for any evaluation or assessment, by DCPS for special education services.

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. DCPS Motion to Dismiss

1. While DCPS did not include this legal defense in its original response to the complaint, it nevertheless filed a motion to dismiss with its five-day disclosures asserting that the complaint fails to state a claim on which relief can be granted. The motion argues that the complaint should be dismissed as a matter of law because (a) the LEA where the child attends private school (ACPS), not the LEA where the child resides (DCPS), is responsible for conducting "child find" including initial evaluations, *see* 34 CFR 300.131(f); and (b) DCPS "need not make a FAPE available to this student when the parent made clear her intention to [keep] the student enrolled in a private school in Virginia." *DCPS' Motion to Dismiss*, filed Aug.

17, 2009, p. 3. The Hearing Officer denied the motion prior to the due process hearing, without prejudice to considering the legal issues raised by DCPS in the HOD. This discussion explains the basis for that denial.

2. As the U.S. District Court for the District of Columbia made clear in *District of Columbia v. Abramson*, 493 F. Supp. 2d 80 (D.D.C. 2007), “just because [another State] may have child find responsibilities of its own and just because [a student] is currently enrolled in school in [another State] does not relieve DCPS from having to fulfill its own responsibilities as the LEA of residence to evaluate the student and make FAPE available.” The U.S. Department of Education comments to the 2006 IDEA regulations, cited by DCPS, do not establish otherwise. They merely suggest that “repeated testing by separate LEAs in close proximity of time” may not be in the child’s best interests. 71 *Fed.Reg.* 46593 (Aug. 14, 2006). However, under IDEA, the resident LEA “is still required to offer FAPE to any resident when there is a parent request for the student to be evaluated for services.” *Abramson, supra, slip op. at 7*. “The LEA must offer FAPE by evaluating the student, convening an eligibility meeting, determining eligibility, developing an IEP if the student is eligible and determining and offering an appropriate placement.” *Id.*

3. Nor is there merit in this case to DCPS’ second point – *i.e.*, the so-called “exception to this general rule,” where the parent “makes clear his or her intention to keep the child enrolled” in the private school (Motion to Dismiss, p. 3). The quoted comment appears to concern a situation where the resident LEA determines eligibility and offers FAPE, but then the parent declines the offer and decides to maintain the student in the private school located in another LEA. In these circumstances (like others where the parent declines a valid offer of FAPE), “the LEA where the child resides need not make FAPE available to the child.” 71 *Fed.Reg.* 46,593. That is not this case. Instead, Petitioners’ complaint challenges the appropriateness of the IEP and proposed placement, *i.e.*, whether DCPS has made a lawfully proper “offer of FAPE” to the Student. Whatever the Department of Education comments may mean, IDEA entitles Petitioners to file such a complaint.

B. Burden of Proof

4. The burden of proof in a special education due process hearing is on the party seeking relief. *See Weast v. Schaffer*, 126 S. Ct. 528 (2005) (burden of persuasion in due process hearing under IDEA is on party challenging IEP); *L.E. v. Ramsey Board of Education*, 44 IDELR (3d Cir. 2006). This burden applies to any challenged action and/or inaction, including failures to provide an appropriate IEP and/or placement.

5. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See DCMR 5-3030.3*. The standard generally applied is preponderance of the evidence. *E.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); *see also* 20 U.S.C. §1415(i)(2)(C)(iii).

C. Issues/Alleged Denials of FAPE

6. For the reasons discussed below, the Hearing Officer concludes that Petitioners have failed to carry their burden of proof under Issue (a), and Petitioners have failed to carry their burden of proof under Issue (b) except to the limited extent set forth below regarding alleged procedural violations.

Issue (a): Whether DCPS has denied the Student a FAPE by failing to provide the Student with an appropriate IEP and placement

7. Under IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.'" *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982). See also *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988); *J.G. v. Abington School*, 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit."). The issue of whether an IEP is appropriate is a question of fact. See, e.g., *S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003).

8. With respect to placement, DCPS "must ensure that the placement decision is made (1) by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) in conformity with the LRE provisions of [IDEA]. 34 CFR 300.116 (a). The placement must also be (3) "based on the child's IEP, and (4) "as close as possible to the child's home." *Id.* § 300.116 (b). Other relevant considerations, in the case of a private school placement, include: "the nature and severity of the student's disability, the student's specialized educational needs, the link between these needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment." *Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005), citing *Board of Education v. Rowley*, 458 U.S. 176, 202 (1982). See also DCMR 5-3013.1. The team including the parent is the right entity to make this determination, unless a complainant proves that the team got it wrong.

9. In this case, the complaint did not specifically allege that the five hours per week of specialized instruction and one hour per week of psychological counseling were inadequate in amount to address the impact of the Student's SLD/Math and ED disabilities. Instead, Petitioners allege various procedural violations relating to DCPS' initial evaluation and eligibility determination (*i.e.*, identity of meeting participants and failure to conduct new evaluations, conduct classroom observations, and contact teachers or and staff at Commonwealth), and Petitioners argue that the Student "requires the small structured setting of the Commonwealth Academy where she believes that he is able to receive the academic and behavioral supports he requires." *P-1*, p. 4. See also *Parent Testimony*.

10. DCPS contends that the IEP and placement are appropriate, as they provide the least restrictive environment and the neighborhood school can implement the IEP. DCPS also responds that "the Student should be observed for 30 days with this level of services to determine whether they are appropriate for him, and if not, his level of services can be adjusted." *DCPS Response*, p. 2.

11. Petitioners have not shown on this record that the 7/9/09 IEP and placement at the Student's neighborhood school in accordance with the IEP would be inappropriate and would not provide meaningful educational benefit to the Student. The IEP is reasonably calculated to address the identified needs of the Student, including his math fluency and processing speed issues. *DCPS Testimony*. Moreover, the evaluations provided to the team by Petitioners do not appear to support placement in a full-time, special education school environment (*id.*; R-10), and Petitioners have not shown how such placement would comply with LEA requirements under IDEA. There is no showing that the Student is unable to function or interact with non-disabled students at this time, given appropriate educational support. *DCPS Testimony; Findings*, ¶¶ 8-9.

12. In addition, _____ is a non-public school, located outside the District of Columbia, and requires a bus ride or other transportation from Petitioners' home in the District. Petitioners did not demonstrate how this proposed placement, rather than the neighborhood school, would comport with the placement priorities under IDEA and D.C. law. *See, e.g., Roark v. District of Columbia*, 460 F. Supp. 2d 32, n. 11 (D.D.C. 2006); 34 CFR 300.116(b)(3) (child's placement should be "as close as possible to the child's home"); DCMR 5-3013.1(f) (same); DC Code 38-2561.02 (c) (private facilities outside the District of Columbia assigned lowest priority for special education placements, assuming the placements are appropriate).

13. Accordingly, the Hearing Officer concludes that the evidence does not support a finding that the proposed DCPS placement is inappropriate, or that Petitioners' requested private placement relief should be granted. The alleged procedural violations with regard to the IEP are discussed separately under Issue (b) below.

Issue (b): Whether DCPS has denied the Student a FAPE and/or otherwise violated the IDEA with respect to certain required procedures —

(i) failing to conduct an observation pursuant to 34 C.F.R. 300.310

14. With respect to the first issue (classroom observation), DCPS responds that the eligibility meeting was conducted in July, when the Student was not attending school; and the referral was not even received until mid-June. Therefore, prior to the meeting, DCPS had no opportunity to observe the student in the classroom setting. Nor did the parent ever request DCPS to conduct a classroom observation. *See DCPS Testimony*. DCPS argues that the appropriate remedy, if any, would be for DCPS to observe the student when he is in class this month and then reconvene the IEP team to discuss whether the observation warrants a change in the IEP. *See DCPS Response*, p. 2.

15. In any event, DCPS does not appear to have violated the IDEA in this respect. The rule cited by Petitioners, Section 300.310, expressly provides that in determining whether a child has a specific learning disability, the team may decide *either* to (1) "use information from an observation in routine classroom instruction and monitoring of the child's performance that was *done before the child was referred for an evaluation*, or (2) have at least one member of the group...conduct an observation of the child's academic performance in the regular classroom...." 34 CFR 300.310 (emphasis added). Here, DCPS essentially chose the former path, *i.e.*, to use the information from the prior ACPS evaluations and observations.

(ii) failing to include the Student's teacher in the development of the IEP pursuant to 34 CFR 300.308(a)(1) and 300.321(a)(2)

16. With respect to the second issue (meeting participants), DCPS responds that it did consider input from individuals who were familiar with the Student. Petitioners requested DCPS to review the ACPS evaluations they provided, and DCPS did so. The evaluation reports were completed by individuals who were familiar with the Student, and the ACPS meeting minutes also included teacher input. *See R-12; Parent Testimony* (cross examination). Moreover, Petitioners were aware when they asked DCPS to evaluate the Student that he had not been attending DC public schools, so the DCPS team members would likely have had no prior interaction with the Student. *See DCPS Response*, p. 2. Under IDEA, the parent had the right to invite other individuals who had knowledge of the Student (including teachers at
to participate as part of the IEP team, 34 CFR 300.321(a)(6), but chose not to do so. Finally, "to the extent the Hearing Officer believes that DCPS should have invited the Student's current teacher to the meeting, DCPS responds that an appropriate remedy for that is to order DCPS to invite the teacher to a [subsequent] meeting." *DCPS Response*, p. 2.

17. Under the particular circumstances of DCPS' review of the out-of-state LEA's initial, child-find evaluation (*see* discussion under Issue (b)(iii) below), the Hearing Officer concludes that the failure of DCPS to include the Student's teacher at Commonwealth as part of the IEP team was, at most, a procedural violation. The Hearing Officer further concludes that this procedural violation has not been shown by Petitioners to have (i) impeded the Student's right to a FAPE, (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or (iii) caused a deprivation of educational benefit. 34 CFR 300.513(a)(2). The parent fully participated with her attorney, never requested the teacher's participation, and had the opportunity to invite the teacher on her own but chose not to do so. Moreover, the Student has not been deprived of educational benefit because DCPS has determined him eligible for special education services, developed an appropriate IEP, and offered an appropriate placement prior to the beginning of the 2009-2010 school year.

(iii) failing to conduct a full and individual initial evaluation pursuant to 34 CFR 300.301(a), 300.305, and 300.306.

18. Petitioners also have not shown that DCPS violated IDEA when it failed to conduct additional evaluations of its own before determining eligibility and developing an initial IEP based primarily on the ACPS evaluations submitted by Petitioners. Notably, there is no evidence that Petitioners requested DCPS to conduct any of its own assessments of the Student. Petitioners only requested that "DCPS review the evaluations and conduct whatever evaluations it deems necessary." *R-9*. DCPS reviewed all information provided by the parent, including all existing evaluation data from ACPS. *R-1; R-9*. The DCPS Review of Independent Assessment also found that the ACPS evaluations used valid and reliable testing and assessment procedures. *R-2*. And no other areas of suspected disability were identified.² On the basis of that review, and input from the parent, DCPS properly did not identify any additional evaluations or data needed

² Both the DCPS and _____ witnesses agreed that ACPS had fully evaluated the Student in all areas sufficient to determine his educational program. *See* _____ *DCPS Testimony*.

to determine eligibility and the educational needs of the Student. *See, e.g.*, 34 CFR 300.304 (b)(1), (3); 300.305(a)(1),(2); 300.305(d).

19. In fact, IDEA specifically authorizes the “review of existing evaluation data... [a]s part of **an initial evaluation (if appropriate)**...including [e]valuations and information provided by the parents of the child.” 34 CFR 300.305(a)(1)(i) (emphasis added). It also expressly provides that if the IEP team decides “that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs,” the parents may request an additional assessment, but that the LEA “is not required to conduct the assessment...unless requested to do so by the child’s parents.” *Id.* §300.305(d)(1),(2).

20. Moreover, in the case of a resident LEA evaluation following an initial evaluation by the LEA where the private school is located, as DCPS notes, the U.S. Department of Education has commented as follows:

“We do not believe that the child’s best interests would be well served if the parents requested evaluations of their child by the resident school district and the LEA where the private school is located, even though the evaluations are conducted for different purposes. A practice of *subjecting a child to repeated testing by separate LEAs in close proximity in time* may not be the most effective or desirable way of ensuring that the evaluation is a meaningful measure of whether a child has a disability or of providing an appropriate assessment of the child’s educational needs.” (71 *Fed.Reg.* 46593 (Aug. 14, 2006) (emphasis added).)

Thus, DCPS argues persuasively that it should not have conducted its own set of evaluations on top of the very recently completed ACPS evaluations that the parent asked DCPS to consider, given the risk of rendering test results unreliable. *See DCPS Response*, p. 2.

D. Appropriate Relief

21. The IDEA authorizes district courts and hearing officers to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In this case, the Hearing Officer has found no denials of FAPE, and has found that Petitioners are not entitled to their requested relief of placement and funding of the Student at Thus, no relief is deemed appropriate at this time.³

22. The Hearing Officer notes, however, that DCPS represented in its pleadings and at hearing that DCPS would, *inter alia*, (a) observe the Student in his proposed placement for approximately 30 days, (b) convene a further MDT/IEP team after the 30-day period to

³ Even if DCPS’ failure to invite the Student’s regular education teacher at _____ to the MDT/IEP team meeting constituted a violation of procedural requirements under IDEA for which some relief potentially is available (*see* 34 CFR 300.513(a)(3)), Petitioners have not requested any relief other than the private placement.

determine whether the level of services remains appropriate and, if not, adjust the level of services, and (c) invite the Student's teacher from _____ to any further MDT meeting. "In considering the equities, courts [and hearing officers] should generally presume that public-school officials are properly performing their obligations under IDEA." *Forest Grove School District v. T.A.*, No. 08-305, __U.S.__ (June 22, 2009), slip op. at 16. Similarly, Petitioners should now expect DCPS to act in accordance with its representations in this proceeding.

V. ORDER

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

1. Petitioner's requests for relief shall be, and hereby are, **DENIED**.
2. Petitioner's Due Process Complaint shall be, and hereby is, **DISMISSED, With Prejudice**; and
3. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: September 3, 2009



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).