

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004
(IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING**

I. INTRODUCTION

The student is _____ years of age, and attends hereinafter referred to as _____ a public school located in the District of Columbia. The student is a resident of the District of Columbia; and identified as disabled, and eligible to receive special education services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The students' disability classification is specific learning disability (SLD).

On March 26, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools ("DCPS"), alleging that DCPS denied the student a free appropriate public education (FAPE); by failing to: (1) provide the student an appropriate individualized education program (IEP); and (2) provide the student an appropriate placement. Petitioner also requested that the court determine whether the student is entitled to compensatory education services.

The due process hearing convened on April 23, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003, as scheduled.

II. JURISDICTION

This proceeding was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

III. DUE PROCESS RIGHTS

Counsel, on behalf of Petitioner, waived a formal reading of parents' due process rights.

IV. ISSUES

The following issues are identified in the *March 19, 2009*, amended due process complaint:

- (1) Whether DCPS denied the student a free appropriate public education (FAPE), by failing to comply provide the student an appropriate individualized education program (IEP)?

- (2) Whether DCPS denied the student a free appropriate public education (FAPE), by failing to provide the student an appropriate placement?
- (2) Whether the student is entitled to compensatory education services?

V. RELIEF REQUESTED

- (1) That DCPS be ordered, or agree, to:
 - a. Fund placement and provide transportation for _____ to attend:
 - i.
 - ii.
 - iii.
 - iv.
 - v. Some other public or non-public school that can provide him with an educational benefit.
 - b. Alternatively, convene an MDT meeting within 10 business days to: review and revise the student's IEP to what it was prior to December 10, 2008, determine appropriate compensatory education, and determine appropriate placement with placement to be made within 5 days if for a public school, or 30 days if for a non-public school;
 - c. Award reasonable compensatory education for the violation committed here;
 - d. That DCPS provide any other relief deemed appropriate and relating to the violations committed here;
 - e. Pay parent's reasonable attorney's fees and costs.
- (2) All meetings shall be scheduled through counsel for the parent, Miguel A. Hull, Esq., in writing, via facsimile, at 202-742-2097 or 202-742-2098.

VI. DISCLOSURES

The Hearing Officer inquired of the parties whether the disclosures from the opposing party were received, and whether there were any objections to the disclosures. Receiving no objections to the disclosures, the disclosures identified herein, were admitted into the record as evidence.

Note: During the hearing, Petitioner withdrew Issue 1 of the complaint, pertaining to the appropriateness of the student's IEP; and clarified that Issue 2 of the complaint, pertains to DCPS' alleged failure to comply with the December 10, 2008 Hearing Officer's Decision (HOD); and Issue 3 only pertains to the manner in which the compensatory education services are provided.

VII. DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF PETITIONER

Petitioner's Exhibits 01 through Petitioner's Exhibits 20, and a witness list dated April 16, 2009.

The Hearing Officer also admits into the record the revised last page of the due process complaint, which includes parent's signature which is an appendage to Exhibit 1.

VIII. DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF RESPONDENT

Respondent's Exhibit 01 through Respondent's Exhibit 02, and a witness list dated April 17, 2009.

IX. PROCEDURAL POSTURE

On March 19, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools ("DCPS"), Student Hearing Office. On March 23, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the pre-hearing conference for April 2, 2009, at 3:30 p.m.. The pre-hearing conference failed to proceed as scheduled due to the parties failure to appear; and a Pre-hearing Conference Order was issued on April 2, 2009.

On April 9, 2009, Respondent filed "District of Columbia Public School's Response to Petitioner's Due Process Complaint"; and on April 17, 2009, the parties submitted written disclosures. The due process hearing convened on April 23, 2009, at 9:00 a.m., as scheduled.

At the hearing, Petitioner withdrew Issue 1 of the complaint pertaining to the appropriateness of the student's IEP, representing that the only issue remaining before the court is DCPS' alleged failure to comply with the HOD, in regard to placement; and whether the student is entitled to compensatory education as a result of the violation.

DCPS stipulated that it offered 110 hours of compensatory education, as tutoring services for the student, at the April 8, 2009 resolution meeting; and offers the same relief at this hearing. The parties agreed that the issue remaining with regard to compensatory education services, is whether the compensatory education services, in the form of tutoring services, will be provided independently or by DCPS.

X. PRELIMINARY MATTERS

The Hearing Officer inquired whether there were any preliminary matters, prior to proceeding with the hearing on the merits, and the parties responded that there were no preliminary matters. As a preliminary matter, the issues in the complaint were clarified. The due process hearing proceeded with a hearing on the merits.

XI. STATEMENT OF THE CASE

1. The student is _____ years of age, and attends hereinafter referred to as _____ a public school located in the District of Columbia. The student is a resident of the District of Columbia; and identified as disabled, and eligible to receive special education services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The students' disability classification is specific learning disability (SLD).

2. On October 22, 2008, Petitioner filed a due process complaint, alleging that the student was denied FAPE, as a results of DCPS' failure to provide counseling or specialized instruction during the 2008/09 school year as called for by his IEP; to place the student in a school that can, or is willing to, implement his IEP; and complete a Psychological-educational Assessment.

3. On December 10, 2008, a Hearing Officer's Decision (HOD) was issued ordering:

- DCPS to fund the student's independent Psychological-educational Assessment;
- No later than January 16, 2009, convene a MDT meeting wherein, Parent will be provided at least two placement options within DCPS where student's IEP can be implemented (unless two such locations are not available, in which case private placement shall be considered);
- DCPS shall issue a Prior Notice within 5 school days of the MDT meeting wherein the location is determined for a public school, and within 30 days if private;
- An MDT meeting will then be held within 30 calendar days of the student's enrollment at the new identified location to discuss how compensatory education services will be provided, review and discuss any and all evaluations that are outstanding and make any necessary changes to the student's IEP; and
- Any delays caused by parent or parent's counsel will extend the above referenced timeline by one day for every day of delay.

4. On December 19, 2008, DCPS convened an IEP team meeting. The IEP team developed an IEP for the student, and the student's disability classification was identified as specific learning disabled. The MDT meeting notes also reflect that the team determined that the student's hours are being increased to address all areas (educationally) of weakness via inclusion; and disagreed with parent's request for a full-time setting and IEP.

The IEP recommended 6.5 hours per week of specialized instruction, outside general education; 13 hours per week, of general education; and 1 hour per week of behavioral support services. The student's hours of specialized instruction were reduced from 10 hours to 6.5 hours per week, in an inclusion setting.

The MDT notes reflect that parent and the Advocate disagreed with the IEP, and requested a full-time IEP and placement. Parent also requested that the compensatory education for missed counseling services, consist of independent counseling services. DCPS disagreed with the independent compensatory education services and stated that DCPS would provide the counseling services. The team developed a Compensatory Education Plan, indicating that DCPS agrees to provide 16 hours missed services (counseling) as student was not provided at the start of school.

5. On March 10, 2009, Interdynamics Inc. completed a "Psycho-educational Evaluation". The student was referred for evaluation to assess his current levels of cognitive and academic functioning, and identify any areas that may impact his ability to function in the classroom.

The evaluator determined that based on cognitive and achievement scores, the student meets the criteria for classification as a student with a learning disability, in the areas of reading, math, written and oral expression, and listening comprehension.

The evaluator recommended that the MDT address compensatory education services to assist the student in improving his academic standing; a Neuropsychological Evaluation, Occupational Evaluation, Vocational Assessment to assess career goals and interest; and specialized instruction in interventions in processing speed, reading comprehension, mathematical operations, and oral expression.

6. On March 9, 2009, the student was accepted into the _____ of Prince George's County.

7. On March 26, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools ("DCPS"), alleging that DCPS denied the student a free appropriate public education (FAPE); by failing to: (1) provide the student an appropriate individualized education program (IEP); and (2) provide the student an appropriate placement. Petitioner also requested that the court determine whether the student is entitled to compensatory education services.

XII. WITNESSES

Petitioner's Witnesses

Parent
Education Advocate

Respondent's Witnesses

Special Education Coordinator, Anacostia High School

XIII. DISCUSSION AND CONCLUSIONS OF LAW

ISSUE 1

Whether DCPS denied the student a free appropriate public education (FAPE), by failing to comply with the December 10, 2008 Hearing Officers' Decision (HOD)?

Petitioner's Attorney represents that a student's placement is to be in the least restrictive environment and in a school that is capable of meeting the student's special education needs. See Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1402 (9) (D).

Petitioner's Attorney further represents that the December 10, 2008 HOD determined that [redacted] School is an inappropriate placement for the student; and ordered DCPS to convene an MDT meeting before January 16, 2009, to identify an alternative placement for the student.

Petitioner's Attorney represents that moreover, the HOD also ordered that at the placement meeting, DCPS was to offer parent at least two (2) alternative placements where the student's IEP could be implemented, including private placement if necessary. Petitioner's Attorney further represents that DCPS failed to comply with this order; and instead of offering parent the two alternative placements where the student's IEP could be implemented, DCPS arbitrarily changed the IEP, which now does not match the student's needs. Petitioner's Attorney concludes that DCPS denied the student a FAPE by failing to issue the two alternative placements as ordered in the HOD dated December 10, 2008.

Petitioner's Attorney also argues that the Blackman/Jones Consent Decree creates a rebuttable presumption of harm to the student, if a public agency fails to comply with or implement an HOD, which is applicable in this matter.

Petitioner's Attorney represented that on April 8, 2009, after the complaint was filed, a Resolution Meeting convened to determine the student's entitlement to compensatory education services; however, the parties were unable to reach agreement. Petitioner's Attorney also represented that on April 9, 2009, DCPS convened a placement meeting, offered parent two (2) placement options, and parent agreed to place the student at [redacted] School, and a Notice of Placement was issued.

DCPS represents that at the December 19, 2009 IEP meeting, DCPS reviewed and revised the student's IEP, however, requested the results of the funded independent Psycho-educational Evaluation provided for in the student's HOD. DCPS also represents that it requested the status of the Psycho-educational Evaluation in March, 2009; and to date, the results of the independent evaluation have not been provided by Petitioner. DCPS represents that results of the evaluation would provide the team present levels of performance data as well as information necessary to determine appropriate placement options for the student.

DCPS also represents that notwithstanding the independent evaluation which remains outstanding, DCPS forwarded a letter of invitation to parent's counsel on April 1, 2009 proposing three dates to convene a meeting for the purpose of reviewing evaluations and discussing placement options for the student. DCPS also represents that on April 3, 2009, it requested that parent attend a Resolution Session for the student, on April 8, 2009. DCPS concludes that it will conduct an MDT meeting to discuss placement options with the parent upon receipt of confirmation of a meeting date and time.

ANALYSIS

Although IDEA and governing regulations fail to provide Hearing Officer's enforcement authority in addressing an alleged failure to comply with a HOD or SA; it is clear that IDEA, at 34 C.F. R Section 300.507(a) and 300.503(a); and 20 U.S.C. Section 1400 et seq., grants Hearing Officers specific authority to hear complaints and decide *any* matters relating to the identification, evaluation, or educational placement of a child, or the provision of a free and appropriate public education to such child.

The Hearing Officer finds that issues which are the subject of a due process complaint and a Hearing Officer's Decision (HOD), are matters relating to the identification, evaluation, or educational placement of a child; and the provision of a free and appropriate public education to such child. Therefore, a public agency's *failure to comply* with a HOD, falls within the category of "*any matter*" relating to the identification, evaluation, or educational placement of the child, *or* the provision of a free and appropriate public education to such child," and according to IDEA, a Hearing Officers has the specific authority to decide such matters. *See, IDEA, 34 C.F.R. Sections 300.507(a) and 300.503(a); and 20 U.S.C. Section 1400 et seq.*

Accordingly, the Hearing Officer finds that there exists a legally recognized theory under the IDEIA, upon which a Hearing Officer can grant relief through the administrative process, in addressing an alleged failure to comply with a HOD. Therefore, the issue regarding DCPS' alleged failure to comply with the December 10, 2008 HOD, is a matter properly before the court.

In this matter, the record reflects that on December 10, 2008, a Hearing Officers' Decision (HOD) was issued, requiring in part, that no later than January 16, 2009, DCPS shall convene a MDT meeting wherein, parent would be provided at least two placement options within DCPS where student's IEP can be implemented, unless two such locations are not available, in which case private placement must be considered. The HOD also provides that DCPS shall issue a Prior Notice within 5 school days of the MDT meeting wherein the location is determined for a public school, and within 30 days if private.

The record reflects that consistent with the HOD, DCPS convened a MDT meeting on December 19, 2008, no later than January 16, 2009; the team developed an IEP; and discussed placement. The MDT notes reflect that parent and the Advocate disagreed with the IEP, and requested a full time IEP and placement in a full time setting. The MDT disagreed with parent's request for a full-time setting and IEP; and maintained the student's placement at Anacostia.

The Hearing Officer finds that DCPS convened a MDT meeting on December 19, 2008, within the timeframe established in the HOD, however, failed to provide parent at least two placement options within DCPS, where student's IEP can be implemented. In addition, because two such locations were not available at the time of the MDT meeting, the team was required to consider private placement, which also failed to occur. Finally, DCPS failed to issue a Prior Notice within 5 school days of the MDT meeting wherein the location is determined for a public school, and within 30 days if private.

In fact, the record reflects that on April 9, 2009, after the complaint was filed and nearly three (3) months after the January 16, 2009 due date, DCPS convened a MDT meeting and offered parent two (2) placement options within DCPS, specifically H.D. Woodson Senior High School and Spingarn High School. The record also reflects that parent agreed to place the student at H.D. Woodson High School; and on April 9, 2009, DCPS issued a Prior to Action Notice, placing the student at H.D. Woodson Senior High School. However, DCPS' compliance with the HOD, after the complaint was filed, fails to relieve it of its obligation to comply with the HOD, in a timely manner; or cure the violation which has already occurred.

The Blackman/Jones Consent Decree consists of two subclasses. The first subclass referred to as the "Blackman class" refers to that part of the class addressing a public agency's failure to timely conduct due process hearings; and the "Jones" subclass refers to that portion of the class addressing the public agency's failure to timely implement Hearing Officer Determinations and Settlement Agreements. The "Jones" portion of the consent decree is applicable in this matter.

The Blackman/Jones Consent Decree requires full and timely implementation of Hearing Officer Determinations; and agreements concerning a child's identification, evaluation, educational placement, or provision of a FAPE. Timely implementation of a HOD is significant in ensuring the provision of a FAPE to a student; and that the student receives the services he/she is entitled to receive under the IDEA; and any delay in fully and timely implementing a HOD compromises that entitlement, and harms the student.

The Blackman/Jones Consent Decree creates a *rebuttable presumption of harm to the student*; therefore, harm to the student is presumed, and a showing of harm to the student by Petitioner at the hearing, is not required. The rebuttable presumption of harm is created when there is an untimely HOD or untimely implementation of an HOD or SA; and the burden is then placed upon DCPS to present evidence rebutting the presumption of harm to the student.

In establishing a rebuttable presumption of harm to the student, as a result of any delay or failure to timely implement an HOD, the courts not only consider the period of time associated with the delay or failure to timely implement the HOD, however, the courts also consider the total amount of time involved since the initial violation; and the services the student is entitled to receive under the IDEA, however failed to receive during this period.

According to paragraph 78 of the Blackman/Jones Consent Decree, in order to rebut the presumption of harm; at the hearing, DCPS *will* have the *burden of proving* one of the following situations:

- (1) DCPS has already provided or agreed to provide compensatory education to the class member for Blackman/Jones delays;
- (2) the issue of compensatory education has already been determined by a Hearing Officer and the Hearing Officer has either ordered compensatory education or has determined that the child is not entitled to compensatory education for Blackman/Jones delays;
- (3) the class member has been found ineligible for special education services;
- (4) the student graduated with a regular diploma;
- (5) the student no longer is a resident of the District of Columbia;
- (6) the student graduated with a certificate of IEP completion;
- (7) the student has been in general education on a full-time basis for at least one academic year because the student met his/her IEP goals;
- (8) the student has been in a non-public general education school for at least three consecutive grading periods or (27) weeks, whichever is greater; or
- (9) the sole unimplemented HOD or SA provision pertained to reimbursement for services the parent obtained privately.

In addition, paragraph 78 of the Consent Decree further provides that *“if the defendants introduce evidence at a hearing to rebut the presumption, the student shall have the opportunity, at the same hearing, to present evidence to show that he/she has been harmed.”*

According to the Consent Decree, parent is not required to present evidence that the student has been harmed, until after DCPS introduces evidence at the hearing to rebut the presumption of harm to the student. In such case, DCPS may then present evidence, at the same hearing, to defend against the claim of harm.”

The Hearing Officer finds that DCPS failed to introduce evidence that any of the criteria identified above apply in this matter, which is necessary to rebut the presumption of harm to the student, created under the Blackman/Jones Consent Decree; as a result of DCPS’ failure to comply with the January 6, 2009 HOD. Therefore, harm to the student is presumed. See, paragraph 78, of the Blackman/Jones Consent Decree.

Based on the aforementioned, it is the Hearing Officers’ decision that Petitioner satisfied its burden of proof by presenting evidence sufficient for a finding that DCPS failed to comply with the December 10, 2008 Hearing Officer’s Decision.

It is also the Hearing Officer’s Decision that DCPS’ failure to comply with the December 10, 2008 HOD, represents a procedural and substantive violation of IDEA; and a continued denial of a FAPE to the student; in violation of “The Individuals with Disabilities Education Act (“IDEA””, Public Law 101-476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”); and the Blackman/Jones Consent Decree.

ISSUE 2

Whether the student is entitled to compensatory education services, as a result of DCPS' failure to comply with the December 10, 2008 Hearing Officer's Decision (HOD)?

ANALYSIS

The purpose of compensatory education is to help the child make the progress that he/she would have made if an appropriate program had been available. The specific services provided must be tailored to the child's needs. Compensatory education can mean extra instruction or related services (such as therapies) provided during the school year or summer.

A child with disabilities may be able to obtain "compensatory education" – makeup services – if he/she went without an appropriate program for some period of time. Compensatory education may also be available if there was an illegal delay in evaluating the child for special education and if, as a result, the child did not receive needed service.

Sometimes special materials or other special services tailored to the child's needs are appropriate. The amount of compensatory services provided should reflect the student's specific learning needs, and should relate to the amount of services the student has missed, and therefore, a day for each day of services missed, may not be appropriate.

First, in the prior complaint, the Hearing Officer decided the issue of compensatory education as it relates to the issues in the October 22, 2008 due process complaint, and ordered in part, that an MDT meeting would be held within **30 calendar days of the student's enrollment at the newly identified school** to discuss how compensatory education services would be provided. The time period in which DCPS is required to comply with this provision of the HOD has not yet expired.

The parties represented that the student began attending School during the week of the hearing. Therefore, it is anticipated that within 30 calendar days of the student's enrollment at School, DCPS will convene a MDT meeting, to discuss how the 110 hours of compensatory education services offered by DCPS, will be provided to the student.

DCPS stipulated at this hearing, that it offered 110 hours of compensatory education services, as tutoring services for the student, at the December 19, 2008 MDT meeting; and at the April 8, 2009 resolution meeting; and offers the same relief at this hearing. In addition, Petitioner represented that the only issue remaining is whether the compensatory education services, in the form of tutoring services, should be provided independently or by DCPS.

The Hearing Officer finds that DCPS' stipulations and representations of Petitioner's Attorney regarding the parties disagreement whether the 110 hours of compensatory education services, as tutoring services, should be provided by DCPS or independently, are matters related to the prior complaint; and will more appropriately be addressed at the MDT meeting to be held-

at _____ School, as this matter pertains to the issues in the prior complaint, and as ordered in the prior HOD. This is not an issue in this complaint, and therefore, not a matter properly before the court. In addition, the issue is not ripe for review, and is premature.

Second, in this matter, the Hearing Officer determined that DCPS failed to comply with provisions of the December 10, 2008 HOD, pertaining to placement; representing a procedural and substantive violation of IDEA; and a continued denial of a FAPE to the student; in violation of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")"; and the Blackman/Jones Consent Decree.

The record reflects that no later than *January 16, 2009*, DCPS was ordered to convene a MDT meeting wherein, parent would be provided at least two placement options within DCPS where student's IEP can be implemented, unless two such locations are not available, in which case private placement must be considered. The HOD also provided that DCPS shall issue a Prior Notice within 5 school days of the MDT meeting wherein the location is determined for a public school, and within 30 days if private, which failed to occur.

On *April 9, 2009*, after the complaint was filed, and nearly three (3) months after the January 16, 2009 due date, DCPS convened a MDT meeting and offered parent two (2) placement options within DCPS, specifically _____ School and _____

School. The record also reflects that on April 9, 2009, DCPS issued a Prior to Action Notice, placing the student at _____ School.

Based on the evidence and testimony presented, it is the Hearing Officer's decision that Petitioner satisfied its burden by presenting evidence sufficient for a finding that DCPS failed to comply with the December 10, 2008 HOD, in a timely manner; and that such failure represents a continued denial of a FAPE, and an entitlement of compensatory education services for the student. The student is entitled to compensatory education services from January 16, 2009 through April 9, 2009, to compensate the student for the period of time he remained at Anacostia, and without an appropriate alternate placement.

However, it is also the Hearing Officer's decision that although Petitioner requests compensatory education services, in for nature of tutoring services, it failed to satisfy its burden by presenting evidence sufficient for a determination regarding the nature and amount of services the student failed to receive during this period; and are necessary to place the student in the position he would have been, had he received an alternate and appropriate placement in a timely manner.

Specifically, Petitioner failed to present evidence of the nature of services necessary for the student to receive educational benefit; and that would assist the student in making the progress that he would have made, if he received the placement and services he was entitled to receive under IDEIA. Therefore, the court is unable to decide the nature and amount of compensatory education services, appropriate for the student, at this time.

XIV. ORDER

Based on the aforementioned it is on this 2nd day of May, 2009, hereby:

1. **ORDERED**, that an MDT meeting will be held within 30 calendar days of the student's enrollment at _____ School, to discuss and determine compensatory education services, consistent with the findings in this decision and order; and it is further
2. **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 _____ School, and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further
3. **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 representative. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further
4. **ORDERED**, that all meetings shall be scheduled through counsel for the parent, Miguel Hull, Esquire, in writing via facsimile at 202-742-2098; and it is further
5. **ORDERED**, that this decision and order are effective immediately.

XV. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date this decision was issued.

Ramona M. Justice

5-2-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Linda Smalls, Office of the Attorney General
Attorney Miguel Hull: Fax: 202-742-2098