DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF REVIEW AND COMPLIANCE
STUDENT HEARING OFFICE

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STUDENT[1], by and through Parent Petitioners, v. DISTRICT OF COLUMBIA PUBIC SCHOOLS Respondents.	HEARING OFFICER'S DETERMINATION Case No. February 25, , 2009 Representatives: Counsel for Petitioners: FATMATA BARRIE, ESQ. Counsel for DCPS: TIFFANY PUCKETT, ESQ. Hearing Officer: CHERYLEN LONG

Confidential

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

I. PROCEDURAL BACKGROUND

The Complaint in this matter was filed January 28, 2009. The hearing then set for February 25, 2009 at 9:00 am at 1150 5th Street, SE, Washington, D.C . The hearing was conducted and this decision was written pursuant to the *Indiv. With Disab. Act* (IDEA) (P.L. 101-476), reauthorized as the *IDEA Improvement Act of 1997*(IDEIA) (P.L. 105-17) 20 U.S.C. 1400 Et. Seq.; and their current regulations, specifically the Code of Federal Regulations at 34 CFR Part 300; further reauthorized as the *IDEA Improvement Act of 2004* (P.L. 108-446) and Title 5 of the DCMR and section 145 of the D.C Appropriations Act, effective October 21, 1998.

Parties were represented by counsel. Petitioner timely filed initial disclosures on February 19, 2009 which included Exhibits 1-13 (hereinafter PE 1-13). All of Petitioner's exhibits were admitted without objection. DCPS timely filed disclosures as well which included exhibits 1-3 (hereinafter DCPS 1-3). However, Petitioner objected to DCPS 3 based on lack of authentication. DCPS 3 was excluded, and DCPS 1, 2 were admitted without objection. Witnesses were sworn and testimony was received. A list of all participants is attached.

II. ISSUE(S)

1. Whether Student was denied FAPE as a result of DCPS' failure to comply with the terms of an HOD issued for him on June 18, 2007;

2. Whether Student was denied FAPE as a result of DCPS' failure to provide an appropriate IEP with all appropriate related and special education services; and

3. Whether Student was denied FAPE as a result of DCPS' failure to afford Parent a placement meeting or provide the Student with an appropriate placement.

III. FINDINGS OF FACT

1. Student is -years old and is presently in residential treatment at where he has been since February 9, 2009, per Order of the Court. (Parent)

2. Prior to Student was in for several weeks. (Parent)

3. Prior to Student lived in a group home, but did not adhere to the rules there. (Parent)

4. On June 14, 2007, a Due Process Hearing was convened to determine whether he was denied FAPE by DCPS' failure to conduct triennial evaluations. (PE 5).

5. An HOD was issued on June 18, 2007 as a result of the June 14, 2007 hearing, wherein DCPS was Ordered, *inter alia*, to convene an MDT meeting within 10 business days of receiving independent evaluations from Petitioner. (PE 5).

6. On October 13, 2008, evaluations reports were provided to DCPS by Parent's counsel. (PE 12).
7. As of the hearing date, no meeting had been convened. (Parent).
8. Student's most recent IEP is dated August 27, 2007 and indicates his classification as LD/ED, and providing for 23 hours of specialized instruction in addition to S/L services, O/T services and psychological services. (PE 3).
9. The evaluation reports suggest that Student has been regressing, and needs residential treatment to address his behavioral issues and his educational challenges. (Ballard).
10. Further, Student needs some neurological exams which can be performed while he is in residential placement. (Ballard).
11. The student's current location, is able to meet his needs. (Bonboy, Parent).

IV. CONCLUSIONS OF LAW

There is no dispute that an MDT meeting has not been convened to review the student's most recent evaluations and update his IEP. The student's evaluation results were provided in October. There has been plenty of time to convene the meeting, although DCPS asserts that the student has been moving around so much that it is difficult to arrange a meeting. However, had the meeting been timely scheduled, this may have been avoided. DCPS failed to comply with the HOD, and as a result, the student's evaluations were not reviewed his IEP expired, and was not updated to reflect residential placement. On July 26, 2006, DCPS entered into a Consent Decree in *Blackman v. District of Columbia.*[2] This Consent Decree establishes a rebuttable presumption of harm for students for students who failed to receive timely implementation of HODs and SAs.[3]

As to Petitioner's assertion that DCPS' failed to allow Parent an opportunity to participate in the Student's placement, undersigned finds that there has been no FAPE denial in that regard. Parents are entitled to meaningful input into all decisions that affect their child's education. Hoing v. Doe, 484 U.S. 305, 311-312 (1988); *See* 34 C.F.R. 300.116(a)(1). However, in this

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[2] Civil Action No. 97-1629 (D.D.C. Aug. 24, 2006).
[3] Decree, ¶ 74 at 39.

case, Parent testified that she is happy with the student's current placement at and Dr. Ballard testified that that placement is able to meet his needs. Student was not placed in residential treatment by DCPS, but by the Court. The student's placement with DCPS has not changed, nor has his IEP. Since no changes were made to his DCPS placement or site, this argument does not stand.

V. SUMMARY OF DECISION

Undersigned finds the student was denied FAPE as a result of DCPS' failure to comply with the June 18, 2007 HOD, and update his IEP. Petitioner seeks funding for Student's placement at as relief. The student is already being treated at and his needs are being met according to all testimony presented. Undersigned is not inclined to Order the student to be placed at a site where he is already undergoing treatment, in essence, to change the funding of his placement from one DC entity to another. In light of this, undersigned issues the following Order:

VI. ORDER

It is hereby ORDERED:

DCPS shall convene an MDT meeting within 15 school days, wherein the student's IEP will be updated to reflect the appropriate disability, and to reflect his residential placement status.

/s/ Cherylen Long, Esq.
Hearing Officer

Dated this 7th day of MARCH, 2009.

NOTICE OF APPEAL RIGHTS

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.