

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

**Office of Review and Compliance**

**Student Hearing Office**

**Terry Michael Banks, Due Process Hearing Officer**

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**Confidential**

<b>STUDENT, through the legal guardian<sup>1</sup></b>	)	Complaint Filed: August 22, 2008
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	Hearing Date: September 23, 2008
	)	
<b>THE DISTRICT OF COLUMBIA</b>	)	
<b>PUBLIC SCHOOLS</b>	)	
	)	
<b>Respondent.</b>	)	
	)	
<b>Student Attending:</b>	)	
<b>School</b>	)	

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:** Fatmata Barrie, Esquire  
10 R Street, N.E.  
Washington, D.C. 20002  
(202) 626-0040; Fax: (202) 626-0048

**Counsel for DCPS:** Christal Mims-Williams, Esquire  
Office of the General Counsel, DCPS  
825 North Capitol Street, N.E.; 9<sup>th</sup> Floor  
Washington, D.C. 20002

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<sup>1</sup> Personal identification information is provided in Attachment A.

## **Jurisdiction**

This proceeding was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 (“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 \_\_\_\_\_ School  
On August 22, 2008, Petitioner filed a Due Process Compliant Notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) failed to (1) conduct triennial evaluations, (2) conduct a neuropsychological evaluation, and (3) provide an appropriate placement. The due process hearing was convened on September 23, 2008. The parties’ Five-Day Disclosures were admitted into evidence at the inception of the hearing.

## **Record**

*Due Process Complaint Notice* dated August 22, 2008  
*Due Process Hearing Notice* (undated)  
*District of Columbia Public School’s Response to Parent’s Administrative Due Process Complaint Notice* dated September 22, 2008  
DCPS’ Five-Day Disclosure dated September 19, 2008 (Exhibit Nos. 1-6)  
Petitioner’s Five-Day Disclosure dated September 22, 2008 (Exhibit Nos. 1-20)  
Attendance Sheet for hearing on September 23, 2008  
CD-Rom of Hearing conducted on September 23, 2008

## **Witnesses for Petitioner**

Petitioner’s Mother  
\_\_\_\_\_ Admissions Director, \_\_\_\_\_ Academy  
Annie Pressley, Educational Advocate

## **Witnesses for DCPS**

Former Special Education Coordinator,

## Findings of Fact

1. Petitioner is a \_\_\_\_\_ year-old student attending \_\_\_\_\_
2. On April 30, 2007, Jocelyn Watkins of DCPS completed an Educational Reevaluation. Her findings and recommendations, *inter alia*, include the following:

Results on the BASC-2 completed by his teacher indicated Clinically Significant behaviors in the areas of Externalizing Problems, Aggression, Conduct Problems, Bullying and Negative Emotionality. Within the At Risk range are: Anger Control, Developmental Self-control, Executive Functioning and Hyperactivity. [Petitioner's] Self-Report demonstrated Sensation Seeking, Relations with Parents, Personal Adjustment, Interpersonal Relations and Self-Esteem are within the At-Risk range.

### Recommendations

It is recommended that the team review all relevant data to determine if [Petitioner] continues to meet the criteria of a Learning Disabled student. However, it significant to note that it appears [Petitioner's] excessive absences have severely impacted his learning availability. It also appears that [Petitioner] may be acting out when present in order to mask his abilities in the classroom. Given the severity of school absences, it is recommended that \_\_\_\_\_ seek judicial action. At this juncture, it is recommended that the attendance issue be resolved prior to any change in disability.<sup>3</sup>

3. On June 26, 2007, Dr. James Ballard of Interdynamics, Inc. completed a Clinical Psychological Evaluation of Petitioner. Dr. Ballard diagnosed Petitioner with Attention Deficit Hyperactivity Disorder ("ADHD") NOS, Depressive Disorder NOS, and Learning Disorder.<sup>4</sup> His findings and recommendations, *inter alia*, include the following:

This adolescent is not likely to seek any type or help to resolve his problems. He may be convinced that, if left alone, self-resolutions will suffice. It is important for [Petitioner] to be involved in the special education programs and have a positive attitude about doing well in his classes. It is crucial to his educational receptivity to work with tutors who respect him and understand how to relate to him...

[Petitioner] has problems with attention, concentration, and focusing of attention. He receives special education services in the certain areas of his schoolwork including Math, Written Expression and Reading. Also, he has

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<sup>2</sup> *Complaint* at 1.

<sup>3</sup> DCPS Exh. No. 4 at 3-4.

<sup>4</sup> DCPS Exh. No. 3 at 7.

difficulty with language arts areas. Additionally, he is frequently absent from school which undoubtedly has an effect on academic success. [Petitioner] also has problems relating to people. He is uncomfortable around people, which suggests the need for participation in socialization activities. It is important to find activities of interest to [Petitioner], perhaps an extra-curricular activity that he would enjoy. Small group participation would be helpful; and individual academic refresher tutoring would be helpful.

[Petitioner] has a history of head trauma and other incidents that suggest that he has experienced neuropsychological insult... [Petitioner] has a diagnosis of ADHD for which he receives Concerta. A Neuropsychological Evaluation would be appropriate.<sup>5</sup>

4. DCPS convened a Multidisciplinary Team (“MDT”) meeting on May 2, 2008. The MDT classified Petitioner as Learning Disabled (“LD”) and prescribed 26 hours per week of specialized instruction and one hour per week of psychological counseling.<sup>6</sup> The team agreed to the parent’s request that Petitioner receive full-time special education services.<sup>7</sup> The parent and advocate requested two years of compensatory education and the completion of the neuropsychological evaluation recommended by Dr. Ballard.<sup>8</sup>

5. Petitioner was retained in the \_\_\_\_\_ grade after the 2007-2008 school year. He failed English II, Test-Taking Strategies, and Developmental Reading II, received a D in Carpentry II, and an Unsatisfactory in English Resource. Petitioner was absent 130 days.<sup>9</sup>

6. Petitioner registered for the 2008-2009 school year on September 17, 2008.<sup>10</sup>

## **Conclusions of Law**

### ***Failure to Evaluate***

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.<sup>11</sup> Once a child has been determined to be eligible for services, he or she must be reevaluated at least every three years.<sup>12</sup> An LEA may not terminate services without first conducting reevaluations.<sup>13</sup>

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<sup>5</sup> *Id.* at 6-7.

<sup>6</sup> DCPS Exh. No. 1 at 1.

<sup>7</sup> *Id.* at ¶XIII, Meeting Notes.

<sup>8</sup> *Id.*, Meeting Notes.

<sup>9</sup> P.Exh. No. 4.

<sup>10</sup> DCPS Exh. No. 5

<sup>11</sup> 34 C.F.R. §300.304(c)(4).

<sup>12</sup> 34 C.F.R. §300.303(b)(2).

<sup>13</sup> 34 C.F.R. §300.305(e).

Petitioner's counsel argued that Petitioner required a social history reevaluation. Dr. Ballard's evaluation contained a thorough social history of Petitioner. The Hearing Officer concludes that Petitioner has failed to meet his burden of proving the need for a social history evaluation.

The MDT on May 2<sup>nd</sup> recognized that DCPS had not completed the neuropsychological evaluation recommended by Dr. Ballard. Dr. Ballard diagnosed Petitioner with ADHD and depression, as well as learning disorder. His evaluation, along with Ms. Watkins' evaluation, strongly suggest the presence of emotional disturbance. Nevertheless the MDT classified Petitioner only as LD. Since the Hearing Officer has serious reservations about the appropriateness of Petitioner's classification, an issue not raised in the *Complaint*, the Hearing Officer will authorize Petitioner to obtain an independent neuropsychological evaluation.

### ***Inappropriate Placement***

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("Rowley"),<sup>14</sup> the Supreme Court held that the local education agency ("LEA") must provide an environment in which the student can derive educational benefit.

The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon the States which receive funding under the Act...The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specifically designed instruction," expressly requires the provision of "such... supportive services... as may be required to assist a handicapped child to *benefit* from special education"...We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.<sup>15</sup>

Petitioner's counsel argued that \_\_\_\_\_ was an inappropriate placement because it could not provide the full-time special education curriculum prescribed in his IEP. However, Petitioner failed to produce credible evidence to meet his burden as to this allegation. Petitioner offered testimony from Ms. Pressley, who testified that she has been his educational advocate for three years. However, during this three year period, she has never observed Petitioner in his classroom. Thus, she offered no first-hand testimony that Petitioner is not receiving full-time services. When asked if \_\_\_\_\_ could provide a full-time program, Ms. Pressley responded, "Not to my knowledge." \_\_\_\_\_ the Special Education Coordinator at \_\_\_\_\_ during the 2007-2008 school year, testified that \_\_\_\_\_ can provide a full-time special education program for Petitioner.

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<sup>14</sup> 458 U.S. 176 (1982).

<sup>15</sup> *Rowley, supra*, at 200-01.

Petitioner also produced evidence that he has not derived educational benefit at  
He received poor grades in all of his courses was retained in the tenth grade  
after the 2007-2008 school year. However, Petitioner was absent for 130 of the 180  
school days. He did not register for the 2008-2009 school year until the fourth week of  
the school year. Petitioner's chronic truancy negates any presumption that his poor grades  
evinced failure to provide an environment in which Petitioner could derive  
educational benefit. The Hearing Officer concludes that Petitioner has failed to meet his  
burden of proving that DCPS failed to provide an appropriate placement.

### ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony of presented at the hearing, and the representations of the parties' counsel at the hearing, this 2<sup>nd</sup> day of October 2008, it is hereby

**ORDERED**, that on or before October 31, 2008, Petitioner is authorized is authorized to obtain an independent neuropsychological evaluation *and is not constrained by 5 D.C.M.R. Section 3027.5*. Petitioner's counsel shall provide copies of the completed evaluations to the Special Education Coordinator at and the DCPS Office of Special Education ("OSE") Legal Unit<sup>16</sup> by e-mail or facsimile transmission and first-class mail.

**IT IS FURTHER ORDERED**, that within five (5) school days of its receipt of the independent evaluations, DCPS shall coordinate scheduling an MDT meeting with Petitioner's counsel. The meeting shall be convened within fifteen (15) business days of DCPS' receipt of the evaluation. The MDT shall review all current evaluations, reconsider Petitioner's classification, develop an updated IEP, and discuss placement alternatives.

**IT IS FURTHER ORDERED**, DCPS shall afford Petitioner's parent an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parent of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parent. DCPS shall provide Petitioner's parent an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes. DCPS shall issue a Prior Notice within seven days if Petitioner is placed in a public facility or within 30 days if Petitioner is placed in a private facility.

**IT IS FURTHER ORDERED**, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education

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<sup>16</sup> [ose.legalunit@dc.gov](mailto:ose.legalunit@dc.gov); fax: (202) 645-8828.

Coordinator at \_\_\_\_\_ and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.<sup>17</sup>

**IT IS FURTHER 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 representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

**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: October 2, 2008

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<sup>17</sup> If DCPS fails timely to contact counsel for Petitioner to coordinate scheduling the MDT, Petitioner's counsel shall initiate telephone calls and electronic correspondence to attempt to effect compliance within the timelines set out herein.