

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
State Enforcement and Investigation Division  
Student Hearing Office  
Van Ness Elementary School  
1150 5<sup>th</sup> St., S.E., Washington, D.C. 20003  
Phone: (202) 698-3819      Facsimile: (202) 698-3825

2009 JUL -9 PM 4: 14  
STATE SUPERINTENDENT'S OFFICE

**In Re the Matter of :** )  
) )  
**Parent on behalf of Student,** )  
) )  
**Petitioner,** )  
) )  
) )  
**v.** )  
) )  
**The District of Columbia Public Schools** )  
**825 North Capitol Street, N.W.** )  
**Washington, D.C. 20002** )  
**("DCPS" or "District")** )  
) )  
**Respondent.** )  
) )

**Date of Complaint:** May 14, 2009  
**Date of Pre-hearing:** June 22, 2009  
**Date of Hearing:** June 30, 2009

**HEARING OFFICERS' DECISION (HOD)**

**Hearing Officer:** Attorney Ramona M. Justice

**Counsel for Petitioner:** Attorney Christopher West  
Law Offices of James E. Brown and Associates  
1220 "L" Street, N.W., Suite 700  
Washington, D.C. 20005

**Counsel for Respondent:** Attorney Candace Sandifer, Assistant Attorney  
General, D.C. Office of the Attorney General  
825 North Capitol St., N.E., 9<sup>th</sup> Floor  
Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution.

**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 a \_\_\_\_\_ grade student at \_\_\_\_\_ a public school located within in the District of Columbia. Prior to attending \_\_\_\_\_ the student attended \_\_\_\_\_ also a public school located in the District of Columbia.

The student is a resident of the District of Columbia, and is not identified as disabled and eligible to receive special education and related services, pursuant to “The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)”.

On May 14, 2009, Petitioner, through her Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as “DCPS”, denied the student a free appropriate public education (“FAPE”), by failing to:

- (1) Comply with 34 C.F.R. §300.301 of the Individuals with Disabilities Education Improvement Act (IDEIA) of 2004; and
- (2) that the student is entitled to compensatory education services, due to DCPS’ failure to evaluate, determine eligibility, draft an IEP, provide special education services, and provide an appropriate educational placement for the student, pursuant to 34 C.F.R. §300.301(a) of the IDEIA of 2004, and D.C. Municipal Code §38-2501(a).

The due process hearing was initially scheduled for June 22, 2009, at 9:00 a.m.; however, pursuant to a Motion for Continuance filed by Respondent, the hearing was continued to June 30, 2009. The hearing convened on June 30, 2009, at 11:00 a.m., at Van Ness Elementary School, located at 1150 5<sup>th</sup> 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

Petitioners' Counsel waived a formal reading of parent's due process rights.

### IV. ISSUES

#### The following issues are before the court:

- (1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to conduct full and individual initial evaluations, and determine the student's eligibility for special education services, in violation of 34 C.F.R. §300.301(a) of the IDEIA of 2004?
- (2) Whether the student is entitled to compensatory education services because of DCPS' failure to conduct full and individual initial evaluations, and determine the student's eligibility for special education services, pursuant to 34 C.F.R. §300.301(a) of the IDEIA of 2004; and D.C. Municipal Code §38-2501(a)?

### V. RELIEF REQUESTED

#### Relief Requested:

- a) The Hearing Officer shall find that DCPS violated the 34 C.F.R. §300.301(a) of the Individuals with Disability Education Improvement Act; and the D.C. Municipal Code §38-2501(a);
- b) DCPS shall authorize an independent Comprehensive Psychological Evaluation;
- c) DCPS, within fifteen (15) calendar days of receipt of the independent assessments shall convene an MDT meeting, review all assessments and draft an appropriate IEP;
- d) The court shall determine whether the student is entitled to compensatory education services;
- e) That DCPS shall incur the cost of compensatory education services;
- f) The Hearing Officer shall find that Petitioner is the prevailing party;
- g) Provide counsel for the Parent with copies, pursuant to 5 DCMR 3021.8 of all evaluation reports and educational records on the student, no later than 24 hours prior to convening of any meeting;

*Note: During the pre-hearing conference, Petitioner amended Issue 2 of the complaint, without opposition from Respondent. Specifically, Petitioner limited the issue to DCPS' alleged failure to evaluate and determine the student's eligibility for special education services within 120 days of the student's referral for special education services, and withdrew from the complaint, reference to DCPS' alleged failure to develop an IEP, provide special education services, and provide an appropriate educational placement for the student. At the hearing, Petitioner amended its request for relief, as it pertains to compensatory education services.*

- h) That DCPS, in the event they fail to answer/respond to the issues alleged in the Complainant's administrative due process hearing complaint, within ten (10) calendar days, the arguments and facts as averred by the Parents will be deemed true and accurate and act as a waiver for their desire to have a Resolution Session meeting, and the Complainant's administrative due process hearing will be scheduled pursuant to the applicable timelines contained in the IDEIA; and
- i) All meetings shall be scheduled through counsel for the complainant, Christopher L. West, in writing, via facsimile, at 202-742-2097 or 2098.

## **VI. PROCEDURAL POSTURE**

On May 14, 2009, Petitioner, through her Attorney, filed a due process complaint, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS", denied the student a free appropriate public education ("FAPE"), by failing to conduct a full and individual initial evaluation, and determine the student's eligibility for special education services, in violation of 34 C.F.R. §300.301(a) of the IDEIA of 2004; and the student is entitled to compensatory education services, due to DCPS' failure to evaluate, determine eligibility, draft an IEP, provide special education services, and provide an appropriate educational placement, pursuant to 34 C.F.R. §300.301(a) of the IDEIA of 2004; and D.C. Municipal Code §38-2501(a).

On May 14, 2009, Respondent filed "DCPS Resolution Session Waiver", agreeing to waive the resolution session; and requesting that the matter proceed to a due process hearing on the merits. On May 20, 2009, the Hearing Officer issued a Pre-hearing Conference Notice scheduling the pre-hearing conference for June 16, 2009, at 3:00 p.m... On May 27, 2009, Respondent filed "District of Columbia Public School's Response to Petitioner's Due Process Complaint".

The due process hearing was scheduled for June 22, 2009, at 9:00 a.m., however, failed to proceed due to Respondents unavailability. On June 22, 2009, Respondent, on behalf of both parties, filed a "Consent Motion to Continue Due Process Hearing", requesting continuation of the due process hearing to June 30, 2009, at 11:00 a.m... The pre-hearing conference initially scheduled for June 16, 2009, was held on June 22, 2009 at 2:40 p.m., with all parties in attendance. On June 22, 2009, the Hearing Officer issued a Pre-hearing Conference Order confirming the due process hearing for June 30, 2009, at 11:00 a.m...

On June 23, 2009, the Hearing Officer issued an "Interim Order on Continuance Motion", granting Respondent's motion for continuation of the due process hearing from June 22, 2009, to June 30, 2009, at 11:00 a.m.. The due process hearing convened on June 30, 2009 at 11:00 a.m., as scheduled.

## VII. PRELIMINARY MATTERS

As a preliminary matter, Petitioner advised the court that a MDT meeting was held on June 29, 2009, with parent's participation; however, concluded with a decision by DCPS that further evaluations were not warranted. Petitioner also advised the court that although the Conners' Teacher Rating Scale, and Educational Evaluation were completed, parent is dissatisfied with the evaluations, and requests an independent Comprehensive Psychological Evaluation.

As a preliminary matter, Respondent stipulated that it failed to complete initial evaluations and determine the student's eligibility for special education services within 120 days from the date the student was referred for initial evaluations; however, it is prepared to grant Petitioner's request for an independent Comprehensive Psychological Evaluation; and that the student has not been harmed as a result of any delay.

In addressing compensatory education services, Petitioner modified Issue 2 of the complaint, by requesting that the court merely decide the student's entitlement to compensatory education services from April 6, 2008 through the present, and request no decision regarding the nature and amount of compensatory education services the student may be entitled. Respondent entered on the record a Motion to Dismiss Issue 2 of the complaint, indicating that the issue of compensatory education services is premature, and lacks "ripeness" for review by the court.

Finally, prior to presenting its case, and after the conclusion of Petitioner's case, Respondent entered on the record a Motion for Directed Finding, representing that Petitioner failed to satisfy its burden of proof; failed to present evidence that the student was harmed as a result of its delay in evaluating and determining the student's eligibility for special education services, and denied a FAPE.

Petitioner opposed Respondent's Motion for Directed Finding arguing that although the student improved academically and behaviorally, parent testified that there remains opportunity for improvement. Petitioner also represents that although failure to evaluate the student and determine his eligibility for special education services within 120 days represents a procedural violation, such delay has also impeded parent's decision making and ability to determine whether the student is disabled; or incurred further harm, which cannot be determined without comprehensive evaluations. The court deferred its ruling on the motion pending a review of all evidence presented.

### **Stipulation of Fact**

As indicated supra, Respondent stipulated that it failed to evaluate and determine the student's eligibility for special education and related services, within 120 days from the date the student was referred for initial evaluation.

### **Standard for Decision**

Where a party stipulates to facts upon which they intend to rely, the court will, absent persuasive reason to the contrary, deem the material facts claimed and adequately supported by the moving party to be established except to the extent that such material facts are disputed by affidavit or other written or oral evidence. By stipulating to this fact, Respondent decided that this issue would be decided by the court, on the basis of the stipulated fact, and the record. The parties agree that it is appropriate for the court to treat the case as a trial on stipulated facts, [this court] of necessity draws – and bases legal conclusions on factual inferences.” Saab Cars USA, Inc. v. United States, 434 F.3d 1359, 1372 (Fed. Cir. 2006).

### **Motion to Dismiss**

After hearing argument from both parties, the court decided to grant Respondent’s motion to dismiss Issue 2 of the complaint, in part; and deny in part, finding that a determination regarding the nature and amount of compensatory education services the student may be entitled, is premature and not ripe for review, because such relief, which is equitable, cannot be determined until evaluations are completed, an eligibility determination rendered, and a determination rendered regarding the services the student failed to receive, although entitled to receive under the IDEIA.

The court also determined that the portion of this issue which remains “ripe” for review by the court, is whether the student and/or parent was harmed as a result of DCPS’ failure to evaluate and determine the student’s eligibility for special education services within 120 days from the student’s referral for evaluation, resulting in denial of a FAPE, and entitling the student to compensatory education services.

### **IIX. DISCLOSURES**

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. Receiving no objections to the disclosures, all disclosures submitted by the parties and identified herein were admitted into the record as evidence.

#### **DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER**

- Petitioner’s Exhibits 01 through Petitioner’s Exhibit 10; and a witness list dated June 25, 2009.

#### **DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF RESPONDENT**

- Respondent’s Exhibits 01 through Respondent’s Exhibit 11; and a witness list dated June 24, 2009.

## IX. STATEMENT OF CASE

1. The student is \_\_\_\_\_ years of age, and a \_\_\_\_\_ grade student at \_\_\_\_\_ a public school located within in the District of Columbia. Prior to attending \_\_\_\_\_ the student attended \_\_\_\_\_ also a public school located in the District of Columbia.

2. The student is a resident of the District of Columbia, and is not identified as disabled and eligible to receive special education and related services, pursuant to “The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)”.

3. The student attended \_\_\_\_\_ during the 2007-2008 school years, where he was identified as exhibiting problematic behavior, impacting his academics.

4. On December 6, 2007, Petitioner’s Attorney forwarded a letter to the Principal at \_\_\_\_\_ requesting comprehensive initial evaluations of the student for special education and related services, to include: psycho-educational evaluation, speech and language evaluation, social history report, formal classroom observation, and vision and hearing screenings.

The letter also included a request for the following evaluations, if warranted: Psychiatric evaluation, neuropsychological evaluation, occupational therapy evaluation, physical therapy evaluation, and a medical assessment. The letter was accompanied by a “Consent for Evaluation-Initial or Reevaluation”, form signed by parent, authorizing the requested evaluations.

5. On January 17, 2008, Petitioner’s Attorney forwarded a letter to the Principal and Special Education Coordinator at \_\_\_\_\_, responding to a Letter of Invitation for a Multidisciplinary Development Team (MDT) meeting, indicating unavailability on the dates and times proposed, and proposing two (2) alternate dates and three (3) alternate times for the meeting. Petitioner’s Attorney requested a response by close of business on January 18, 2008, in writing, via facsimile.

6. On January 24, 2008, Petitioner’s Attorney forwarded a follow-up letter to the Principal at \_\_\_\_\_ regarding Petitioner’s December 6, 2007 request for initial evaluations and records; and failure to receive the same.

7. On March 5, 2008, DCPS convened a Student Evaluation Plan (SEP) meeting at \_\_\_\_\_ to discuss the student’s problematic behavior and its impact upon his learning; specifically, reading comprehension and retention, failure to complete homework, decoding, and social skills. The team recommended tutorials in reading, resource skills, pull-out, and after care; Connors, Functional Behavioral Assessment, and a Behavioral Intervention Plan,

if needed. The team also agreed to reconvene on April 15, 2008, to review the findings of the evaluations.

8. During April, 2008, while attending DCPS completed a Functional Behavioral Assessment (FBA), and Intervention Behavioral Plan (IBP).

9. On May 5, 2008, DCPS completed an Educational Evaluation. The evaluation findings provide that the student's academic skills are within the average range of others at his age level, his ability to apply academic skills is low average; and his fluency with academic tasks is low. The evaluation also included findings that when compared to others at his age level, the student's performance is average in mathematics, math calculation skills, and written language; and low average in broad reading and written expression.

10. On May 6, 2008, Petitioner's Attorney forwarded a letter to the Principal at regarding its appearance for a meeting scheduled for April 15, 2008, to review the Conner's Teachers Rating Scale and Functional Behavioral Assessment; which failed to occur; and requested the status of evaluations. The letter also included a request for a meeting to review the evaluations.

11. On June 2, 2008, while attending DCPS completed the Conners' Teacher Rating Scale, which included the following areas of assessment: Oppositional, Cognitive/Inattention, Hyperactivity; and Conners' ADHD Index. The evaluator concluded that the results of this rating scale should be used in conjunction with other assessments to determine eligibility for any special education and/or intervention services.

The Conners' Teacher Rating Scale test results included scores that were incomprehensible and inconclusive, and not determinative of the student's status in each of the areas tested. The Woodcock Johnson III Tests of Achievement reflects a grade equivalent of 1.1 in reading, 1.0 in mathematics, 1.3 in written language, 2.3 in math calculation skills, 1.0 in written expression, 1.5 in academic skills, <K.8 in reading fluency, 1.2 in calculation, K.9 in math fluency, 1.7 in spelling, 1.2 in writing fluency, K.8 in passage comprehension, K.7 in applied problems, and K.9 in writing samples.

12. On July 9, 2008, Petitioner's Attorney forwarded a letter to the Principal at regarding the student's impending enrollment at the school for the 2008/09 school years. The letter also advised the school of its representation of parent and student, and that while attending the referral for evaluation process was initiated; and on December 6, 2007, initial evaluations requested by parent.

13. Parent enrolled the student at for the 2008/09 school year. On May 7, 2009, Petitioner's Attorney forwarded a letter to the Principal at to inquire regarding the status of the requested evaluations to determine the student's eligibility for special education services. The letter also included a request for the completed evaluations, prior to May 11, 2009; and notification of intent to file a due process complaint, should DCPS fail to provide the requested evaluations.

14. On May 14, 2009, Counsel, on behalf of Petitioner, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS", denied the student a free appropriate public education ("FAPE"), by failing to comply with 34 C.F.R. §300.301 of the IDEIA; and that the student is entitled to compensatory education services, due to DCPS' failure to evaluate, determine eligibility, draft an IEP, provide special education services, and provide an appropriate educational placement for the student, pursuant to 34 C.F.R. §300.301(a) of the IDEIA, and D.C. Municipal Code §38-2501(a).

15. On May 20, 2009, DCPS forwarded to parent a Letter of Invitation for a Multidisciplinary Development Team (MDT) meeting to develop/review IEP, review evaluation or reevaluation information, and discuss the Student Evaluation Plan. The letter proposed May 27, 2009 at 10:00 a.m., June 3, 2009, at 1:00 p.m., or 3:00 p.m., for the MDT meeting.

16. On May 16, 2009, DCPS forward to Parent/Guardian a "Resolution Meeting Confirmation", for May 28, 2009, at 2:00 p.m..

17. On May 18, 2009, DCPS prepared an Attendance Summary for the student reflecting that the student attended school 152 days out of a total of 161 school days. The student's Grade Report Card reflects academic and behavioral progression from the 1<sup>st</sup> through the 3<sup>rd</sup> Advisory of the 2008/09 school years.

18. On June 1, 2009, Petitioner's Attorney forwarded a letter to the Special Education Coordinator at \_\_\_\_\_ confirming receipt of its letter proposing to convene the student's MDT/Eligibility meeting on June 3, 2009; and indicating its unavailability on the dates proposed. Petitioner's Attorney proposed three (3) alternate dates and times for the meeting; and requested copies of all evaluations completed by DCPS.

19. On June 23, 2009, DCPS, \_\_\_\_\_ Principal, forwarded a letter to Petitioner's Attorney acknowledging receipt of its June 16, 2009 letter requesting to meet with the school to discuss the student, and indicating its availability on June 29, 2009, at 2:00 p.m.. The letter also indicated that it represented the fourth attempt to meet with Petitioner's Attorney and parent; and requested a response to the Letter of Invitation via facsimile. On June 23, 2009, via email, Respondent's Attorney forwarded to Petitioner's Attorney DCPS' completed evaluations, of the student.

20. On June 25, 2009, Petitioner's Attorney forwarded a letter to the Special Education Coordinator at \_\_\_\_\_ E.S. confirming parent and the educational advocate's participation in the eligibility meeting proposed for June 29, 2009; and receipt of a copy of the Educational Evaluation and Conner's Rating Scale conducting during the 2007-2008 school year. The letter also included a request for an independent Comprehensive Psychological Evaluation, due to the assessment's lacks of determining whether the student is a child with a disability.

## X. ISSUE 1

**Whether DCPS denied the student a free appropriate public education (FAPE); by failing to conduct full and individual initial evaluations, and determine the student's eligibility for special education services, in violation of 34 C.F.R. §300.301 (a) of the IDEIA of 2004?**

### DISCUSSION AND CONCLUSIONS OF LAW

Petitioner represents that according to 34 C.F.R. §300.301(a) of the Individuals with Disabilities Education Improvement Act (IDEIA) of 2004, the public school system shall conduct a full and individual initial evaluation; and according to D.C. Municipal Code, §38-2501(a), the school system, upon its referral for special education eligibility shall review the assessments, develop an appropriate IEP, and place the student in an appropriate educational program/school.

Petitioner represents that on December 6, 2007, the parent, through counsel, submitted written correspondence requesting student evaluations for special education services; and provided written consent authorizing DCPS to complete the evaluations. Petitioner represents that on March 5, 2008, DCPS convened a Student Evaluation Plan (SEP) meeting, recommending testing to determine the student's eligibility for special education services; and to date, and to the best of the parent's knowledge, DCPS failed to complete evaluations, and determine the student's eligibility for special education services.

Petitioner concludes that the student continue to exhibit academic and behavior deficits in the school setting; and in violation of the IDEIA of 2004, and D.C. Municipal Regulations, the school system has failed to evaluate, and determine the student's eligibility for special education services.

Respondent represents that the evaluations, specifically the Functional Behavioral Assessment (FBA) and the Conners' Teacher Rating Scale were both completed at \_\_\_\_\_ however, were not reviewed prior to the end of the 2007/08 school year. Respondent further represents that parent subsequently enrolled the student at \_\_\_\_\_ and upon arrival advised the SEC at the school of concerns regarding the student's problematic behavior at his prior school.

Respondent represents that \_\_\_\_\_ convened a Student Support Team (SST) meeting, however, parent failed to attend the meeting; and that the team initiated a second attempt to meet with parent, to no avail. Respondent also represents that the team noted that the structured environment at \_\_\_\_\_ is having a positive effect on the student, noting that the student fail to exhibit such problematic behavior during the 2008/09 school years, and progressed academically, throughout the school year.

Respondent represents that \_\_\_\_\_ received the student's prior evaluations and forwarded the evaluations to Petitioner's Attorney, and that although no meeting date was confirmed by counsel, the team convened on May 27, 2009 at 10:00 a.m., in anticipation of parent and her Attorney appearing for the meeting, which failed to occur. Respondent represents that a resolution meeting was scheduled for May 28, 2009, to review the SEP evaluations and render an eligibility determination; and efforts will be made to reschedule the MDT/Eligibility determination meeting.

Respondent concludes that any delay in reviewing the evaluations has not harmed the student, as he has received adequate support in his general education environment; is progressing well in his setting; and was not denied a FAPE.

### ANALYSIS

According to IDEIA, 34 C.F.R. §300.15 evaluations are procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. A full evaluation of a child is an integral part of developing an IEP for a student, which is the reason IDEIA at 34 C.F.R. §300.301(a) requires public education providers to conduct a full and individual initial evaluation of a child. See, T.X. ex rel. Skrine v. District of Columbia, 2007 WL 915227 (D.D.C.)

IDEA, 34 C.F.R. §300.301(a) provides that each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

In requesting initial evaluations, **Subparagraph (b)** provides that consistent with the consent requirements in §300.300, ***either a parent of a child or a public agency may initiate a request for an initial evaluation*** (emphasis supplied) to determine if the child is a child with a disability.

**Subparagraph (c)** provides that the initial evaluation must be conducted- within 60 days of receiving parental consent for the evaluation; ***or*** if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; ..."; as in this instance, where the District of Columbia establishes a timeframe within which initial evaluations must be conducted; which shall govern in this matter.

It is also the reason that IDEA, 34 C.F.R. §300.304(c) (4) and (6) provides that in evaluating a child, the public agency must ensure that the child is assessed in ***all*** areas related to the ***suspected*** disability; and that the evaluations are ***sufficiently comprehensive*** to identify ***all*** of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified; which Petitioner allege, failed to occur in this matter.

**D.C. Code, Chapter 25, §38-2501 provides that:**

“Notwithstanding any other provision of law, not later than *120 days* after the date that a District of Columbia Public Schools (DCPS) student is *referred* for evaluation or assessment-

“(1) the District of Columbia Board of Education, or its successor, and DCPS shall assess or evaluate a student who may have a disability and who may require special education services; and...”

The record reflects that on December 6, 2007, Petitioner’s Attorney forwarded a letter to the Principal at Elementary School, requesting comprehensive initial evaluations of the student for special education and related services, to include: psycho-educational evaluation, speech and language evaluation, social history report, formal classroom observation, and vision and hearing screenings.

The letter also included a request for the following evaluations, *if warranted*: Psychiatric evaluation, neuropsychological evaluation, occupational therapy evaluation, physical therapy evaluation, and a medical assessment. The letter was accompanied by a “Consent for Evaluation-Initial or Reevaluation”, form signed by parent, authorizing DCPS to complete the requested evaluations. According to D.C. Code, Chapter 25, §38-2501, DCPS must complete the requested evaluations not later than April 6, 2008; which is 120 days from the date of parent’s request and consent for initial evaluations.

The record also reflects that on March 5, 2008, while attending School, DCPS convened a Student Evaluation Plan (SEP) meeting to discuss the student’s problematic behavior, and its impact upon his learning; specifically, reading comprehension and retention, failure to complete homework, decoding, and social skills. The team recommended tutorials in reading, resource skills, pull-out, and after care; low frustration tolerance with the Social Worker; and referred the student for the *Connors’ Teacher Rating Scale, Functional Behavioral Assessment (FBA); and a Behavioral Intervention Plan (BIP), if needed*. According to D.C. Code, Chapter 25, §38-2501, DCPS must complete the Connors’ Teacher Rating Scale and FBA, as recommended by the SEP team, not later than July 5, 2008.

The record reflects that DCPS completed a FBA and BIP in April, 2008, in a timely manner, and consistent with the SEP team’s referral of the student for evaluation and assessment. In addressing parent’s request for initial evaluations, DCPS completed an Educational Evaluation on May 5, 2008; the Connors’ Teacher Rating Scale on June 2, 2008; and no additional evaluations.

The Hearing Officer finds that DCPS completed the FBA, BIP, and Conner’s Teachers Rating Scale by June 5, 2008, within 120 days of the date the SEP team referred the student for evaluation and assessment. DCPS also completed the Conner’s Teachers Rating Scale by April 6, 2008; within 120 days of parent’s request for initial evaluations; and an Educational-

Evaluation, beyond the 120 day timeline. However, completing the Conner's Teachers Rating Scale and Educational Evaluation, fail to satisfy the requirements of IDEIA, and the D.C. Code, in conducting full and individual initial evaluations; and evaluations sufficiently comprehensive to identify all of the child's special education and related service needs.

It is the Hearing Officer decision that Petitioner satisfied its burden of proof by presenting evidence sufficient for a finding that DCPS failed to comply with the procedural requirements of IDEIA, 34 C.F.R. §§300.301(a); in conducting full and individual initial evaluations, and determining the student's eligibility for special education services.

### **Free Appropriate Public Education (FAPE)**

According to IDEA, 34 C.F.R. §300.17 a free appropriate public education (FAPE) means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an Individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, ...in section 300.530(d). In addition, according to 20 U.S.C. 1412(a)(1)(A), a State participating in IDIEA 2004 is required "...to ensure...[that]...a free appropriate public education is available to all children-with disabilities residing in the State..." DCPS must make FAPE available to every student eligible to attend DCPS on a tuition free basis. See, 5 DCMR 2000.2(a).

### **Procedural FAPE (Compliance with Procedural Requirements of IDEA)**

The *procedural* prong of the FAPE analysis, and the *first* prong of *Rowley*, in *The Board of Education of the Hendrick Hudson Sch. Dist. v. Rowley*, 459 U.S. 176 (1982), assesses whether DCPS complied with the procedural requirements of the IDEA, including the creation of an IEP that conforms to the requirements of the Act. See, *Rowley*, and *Doe, 915 F.2d at 658*.

In this matter, the court determined that DCPS failed to comply with the procedural requirements of IDEA. However, a procedural violation of the IDEA, is not a per se denial of a FAPE. The courts have held that even if we find that DCPS failed to comply with the procedural requirements of IDEA, such a finding does not necessarily mean that the Petitioners are entitled to relief; nor does it end our analysis. Rather, we must inquire as to whether the procedural violations result in a denial of FAPE, causing substantive harm to the student, or his parents.

The 2004 amendments to IDEA, at Section 615(f)(ii) limits the jurisdiction of administrative Hearing Officers to make findings that a child did not receive FAPE due to procedural violations, unless there is a finding that the procedural inadequacies:

- (I) impeded the child's right to a free and appropriate public education;
- (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
- (III) caused a deprivation of educational benefit."

Petitioner allege that although it is unable to demonstrate educational harm to the student, the procedural violation in this matter, impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the student, and render decisions regarding the student's eligibility for special education services. Respondent allege that the student was not harmed as a result of any delay in completing initial evaluations; and determining the student's eligibility for special education services.

The record reflects that the student began attending \_\_\_\_\_ during the 2008/09 school years, and previously attended \_\_\_\_\_ where he exhibited problematic behavior, impacting his learning. Parent testified that although she fails to recall completion of evaluations for the student, in December, 2007, she requested evaluation of the student because of the students' grades, and teacher complaints regarding the student's behavior. Parent also testified that the eligibility determination process was not completed while the student attended \_\_\_\_\_ or within 120 days.

Parent testified that the student was in an open space classroom at \_\_\_\_\_ she was dissatisfied with the instruction, students were not tested, and as a result, she transferred the student to \_\_\_\_\_ which provides a more structured classroom environment. Parent testified that since the student began attending \_\_\_\_\_ the student has progressed academically and behaviorally, and his grades have improved, although there remains room for improvement.

Parent testified that the student remains deficient in reading comprehension; may require a smaller classroom; and is not on grade level, which may result from the student's need for special education services, while acknowledging that she is unfamiliar with special education services. Parent testified that she has not reviewed the completed evaluations, nor was she aware that her Attorney has the evaluations. Parent testified that she would like the student evaluated to determine whether he is eligible for special education services; and address his deficits.

Parent also testified that except for two (2) meetings attended by the student's father, she attended all meetings convened by DCPS, to discuss the student's educational program. Parent testified that she was not aware of a Letter of Invitation for a meeting held the end of May, 2009; however, was aware of the Letter of Invitation for the June 29, 2009 meeting.

The SEC at \_\_\_\_\_ testified that on June 29, 2009, the MDT, including parent and the Education Advocate reviewed the Educational Evaluation, Connors' Teachers Rating Scale, and Behavioral Improvement Plan (BIP). The SEC testified that the team agreed that the problematic behavior and academic deficits exhibited by the student at his prior school, are not evident at \_\_\_\_\_ which provides a more structured environment.

The SEC also testified that because the student has progressed academically and behaviorally since attending \_\_\_\_\_ the student's teachers expressed no concerns in these areas, and the student exhibits no problematic behavior or academic deficits, and additional evaluations are not warranted. The SEC also testified that the student's teacher advised the team that a BIP is not warranted for the student, he is placed in close proximity to the teacher, and the classroom accommodation is successful, and the student has had no suspensions or behavior incidents.

The SEC also testified that at the June 29, 2009 MDT meeting, according to parent, the student is on grade level academically; parent supported the student's academic program; was pleased with the student's performance; and agreed with the team's determination that additional evaluations were not warranted. The SEC testified that parent was not available for the final five minutes of the meeting, there were no further requests from parent, or the Advocate for additional evaluations; and the meeting concluded with no questions from student's Advocate.

In addition, on May 18, 2009, DCPS prepared an Attendance Summary for the student reflecting that the student attended school 152 days out of a total of 161 school days. The student's 2<sup>nd</sup> Grade Report Card reflects that the student demonstrated steady progress academically and behaviorally, throughout the 2008/09 school years.

### Disposition

Petitioner has the Burden of Proof to demonstrate that DCPS' failure to conduct full and individual initial evaluations, and determine the student's eligibility for special education services, within 120 days of the student's referral for evaluation, resulted in harm to the student and/or his parents. The United States Supreme Court has held such in *Schaffer v. Weast, 546 U.S. .... (2005)*. It further identified that the "default rule" which is that the burden of persuasion also belongs to the party seeking relief:

The burdens of pleading and proof with regard to most facts have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure or proof or persuasion."

"Quoting C. Mueller & L. Kirkpatrick, Evidence §3.1, p. 104 (3d ed. 2003) ("Perhaps the broadest and most accepted idea is that the person who seeks court action should justify the request, which means that the *plaintiffs bear the burdens on the elements in their claims*")." (emphasis added)

“The Court further identified its long-standing application of the Petitioner’s rightfully bearing this burden as the moving party in various other actions brought under a variety of other state and federal statutes dating back more than thirty years. *Id.* citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (standing); *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 806 (1999) (Americans with Disabilities Act); *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999) (equal protection); *Wharf (Holdings) Ltd. V. United Int’l. Holdings Inc.*, 532 U.S. 588, 593 (2001) (securities fraud); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (preliminary injunctions); *Mt. Healthy City Bd. of Ed. V. Doyle*, 4289 U.S. 274, 287 (1977) (First Amendment).”

“Congress has not made any correction or alteration to the Supreme Court’s determination that these burdens rest with plaintiffs. In fact, the Court further noted in *Schaffer* that Congress “expressed its approval of the general rule when it chose to apply it to administrative proceedings under the Administrative Procedure Act.” citing Administrative Procedure Act, 5 USC §556(d) and *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 271 (1994). “Decisions that place the *entire* burden of persuasion on the opposing party at the *outset* of a proceeding...are extremely rare.” emphasis in original, *Schaffer* at .... Without express Congressional intent stating the opposite, the burdens fall upon Plaintiff. *Id.*”

In this matter, Petitioner failed to demonstrate that DCPS’ delay in conducting full and individual initial evaluations, and determining the student’s eligibility for special education services, within 120 days from the date of the student’s referral for evaluation, resulted in educational harm to the student, and denial of a FAPE. Not only did testimony from the parent and SEC at \_\_\_\_\_ reflect that the student progressed academically over the course of the 2008/09 school year, and since attending \_\_\_\_\_ (as compared to the 2007/08 school year while attending \_\_\_\_\_ but that his behavior at school has also improved, and is not problematic.

Additionally, although parent testified that the student could improve, particularly in the area of reading comprehension, and she would prefer that DCPS complete evaluations, there is no evidence of educational harm to the student. Petitioner failed to present evidence establishing a nexus between DCPS’ failure to timely evaluate the student, and determine the student’s eligibility for special education services; and any resulting harm to the student.

The Hearing Officer finds that although Petitioner failed to demonstrate that the procedural violation resulted in educational harm to the student, or caused a deprivation of educational benefit, the court cannot disregard the fact that approximately one (1) year and seven (7) months has lapsed since parent initially requested full and individual initial evaluations of the student, and an eligibility determination for special education services; and its impact upon parent and the student.

Additionally, the court cannot disregard the fact that the procedural violation in this matter continues, because as of the date of hearing DCPS failed to complete full individual initial evaluations, pursuant to parent’s request, or determine the student’s eligibility for special education services.

The court must acknowledge that absent a showing of direct educational harm to the student, it is difficult to find that the procedural inadequacy in this matter denied the student a FAPE. However, the fact that the procedural violation in this matter lingered for such a significant period of time, and continues, it is heightened in significance; and its overriding impact upon the parent and student must be considered.

The court finds that DCPS' failure to comprehensively evaluate the student and determine his eligibility for special education services for such a significant period of time is so egregious; that it not only represents a procedural violation of the IDEIA, but it also affects the parent's substantive rights under the IDEIA, and the D.C. Code, which is the right to comprehensive evaluations, and an eligibility determination, within a reasonable period of time.

Failure to comprehensively evaluate and determine the student's eligibility for special education services, for more than one (1) year and a half, deprives parent the information necessary to make informed decisions regarding the student's education; and the provision of a FAPE. In addition, parent is unable to determine whether the student requires, however fail to receive services necessary for his academic progression; and services that he is entitled to receive under the IDEIA. Absent comprehensive evaluations, parent is unable to make decisions on the student's behalf, regarding his educational needs; which significantly impedes her opportunity to participate in the decision making process regarding the provision of a FAPE to her child.

The court finds that such delay also jeopardizes Congress' intent and objectives in enacting the IDEA; and DCPS' failure to respond to parent's request for initial evaluations, without haste, has certainly compromised the effectiveness of the IDEA as applied to the student. Such inaction for such a lengthy period of time must certainly have an adverse impact upon the parent, and ultimately the student; if for no other reason, as indicated supra, that it denies parent the information necessary to make informed decisions regarding the student's education and the provision of a FAPE; resulting in substantive harm to the parent, and ultimately, the student. *Lesesne ex rel. B.G. v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006).*

It is the Hearing Officer's decision that Petitioner satisfied its burden by presenting evidence sufficient for the court to determine that the student failed to receive a FAPE due to the procedural violation, and that the procedural inadequacy significantly impedes the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the student.

## XI. ISSUE 2

**Whether the student is entitled to compensatory education services because of DCPS' failure to conduct full and individual initial evaluations, and determine the student's eligibility for special education services, pursuant to 34 C.F.R. §300.301(a) of the IDEIA of 2004; and D.C. Municipal Code §38-2501(a)?**

### DISCUSSION AND CONCLUSIONS OF LAW

Petitioner represents that in *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir 2005), the Court stated the "courts and hearing officers may award 'educational services...to be provided prospectively to compensate for a past deficient program.'" *Id.* citing *G. ex. Rel. RG v. Fort Brag Dependent Schs.*, 343 F.3d 295, 309 (4<sup>th</sup> Cir. 2003). Petitioner further represents that compensatory education is an equitable remedy crafted to remedy educational deficit created by "an educational agency's failure over a given period of time to provide FAPE to a student" *Id.* "Appropriate compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have provided in the first place." *Id.*

Petitioner represents that the student's right to receive compensatory education is reasonable in light of DCPS continued failure to provide FAPE to this student. Petitioner also represents that in *Mary McLeod Bethune Day Academy Public Charter School v. Bland*, *Civil Action No. 07-1223*, the U.S. District Court for the District of Columbia found that, "if a parent presents evidence that the child has been denied FAPE, she has met the burden of proving that he is entitled to compensatory education."

Petitioner concludes that as previously alleged, DCPS denied the student with a FAPE, when it failed to conduct individual initial evaluations, review the assessments, develop an appropriate IEP, provide special education services, and place the student in an appropriate educational program, within the statutory time frame.

DCPS represents that Petitioner's claim for compensatory education services should be dismissed as premature and not ripe for review by the court. DCPS further represents that the student was not harmed as a result of its delay in completing the evaluations, therefore, the student was not denied a FAPE, and is not entitled to compensatory education services.

DCPS also represents that a procedural error fail to rise to the level of a substantive violation or level of harm to the student, or denial of parent's participation in the process. DCPS also concludes that parent requested an independent evaluation, and that it agrees to issue an Independent Educational Evaluation letter authorizing the evaluation, which is the relief requested by Petitioner. DCPS also concludes that Petitioner failed to satisfy its burden of proof that the student is entitled to compensatory education services.

## ANALYSIS

"Compensatory education is 'a legal term used to describe future educational services' which courts award to a disabled student under the IDEA 'for the school district's failure to provide a FAPE in the past.' Compensatory education services are one form of relief under IDEA, which requires a LEA to provide a child with appropriate educational services, to compensate for its past failure to provide the student a FAPE.

A *child with disabilities* may be able to obtain "compensatory education" –makeup services – if she went without an appropriate program for some period of time. This could be because the child's Individualized Education Program (IEP) was inappropriate to her needs, or because the IEP, though appropriate, was not fully carried out by the school or a new school district in which the child was enrolling.

The courts have also held that compensatory education services may be available to a student if the court finds that there was an illegal delay in evaluating the child for special education services, *and if*, as a result of such delay, the child failed to receive needed services. The Third Circuit has adopted the position that this remedy, that is, an entitlement to compensatory education services, accrues from the point the district actually knew of, or alternatively, should have known of, the requisite denial of a free appropriate public education. See M.C. v. Central Reg'l Sch. Dist., 81 F.3d 389 (3d Cir. 1996). However, other courts have adopted the more general rule the remedy accrues when the parents knew or should have known of the violation. See, e.g., Everett v. Santa Barbara High Sch. Dist., 32 IDELR ¶ 175 (C.D. Cal. 2000); K.P. v. Juzwick, 891 F. Supp. 703 (D. Conn. 1995).

In this matter, Petitioner presented evidence that the procedural violation significantly impeded her opportunity to participate in the decision making process regarding the student's education and the provision of a FAPE, and as a result the student was denied a FAPE, satisfying its burden of proving that the student is entitled to compensatory education services.

Additionally, compensatory education services is an equitable remedy, and equity dictates that parent is entitled to compensatory education services because of the significant period of time which lapsed since her request for initial evaluations on December 6, 2007, and an eligibility determination; and the period of time she is denied the information necessary to make informed decisions regarding the student's education, and the provision of a FAPE.

The court finds that the procedural violation in this matter represents an illegal delay in evaluating the child for special education services, which also entitles the student to compensatory education services. The student's entitlement to compensatory education services accrued from April 6, 2008, which is the date DCPS actually knew of, or alternatively, should have known of, the requisite denial of a FAPE.

The court also finds that although it determined that the procedural violation in this matter represents an illegal delay in evaluating the child for special education services, absent completion of full and individual initial evaluations; and an eligibility determination, the court is unable to determine whether as a result of the delay, the student failed to receive special education services he is entitled to receive under the IDEA. Therefore, any decision regarding the nature and amount of compensatory education services the student is entitled to receive under the IDEA; is premature.

### **MOTION FOR DIRECTED VERDICT**

As indicated supra, DCPS entered on the record a Motion for Directed Finding, representing that Petitioner failed to satisfy its burden of proof; failed to present evidence that the student was harmed as a result of its delay in evaluating and determining the student's eligibility for special education services; and therefore, there is no denial of a FAPE.

Petitioner objected to the Motion for Directed Verdict representing that although there is no evidence of educational harm to the student; and failure to evaluate the student and determine his eligibility for special education services within 120 days represents a procedural violation, such delay has also impeded parent's decision making and ability to determine whether the student is disabled; or incurred further harm, which cannot be determined without comprehensive evaluations.

### **Burden of Proof**

When a party has the burden of proof, the party must present, through testimony and exhibits, enough evidence to support the claim; and in civil actions the evidentiary standard is preponderance of the evidence. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

Preponderance of the evidence is also that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it or evidence which as a whole shows the fact to be proved to be more probable than not.

According to 5 D.C.M.R. §3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the Petitioner. It requires that based solely upon the evidence presented at the hearing, an impartial Hearing Officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction is inadequate or adequate to provide the student a FAPE.

In regard to the Motion for Directed Verdict, the moving party always bears the initial responsibility of informing the court of the basis for its motion, and a motion for directed verdict is appropriate against only those parties who fail to make a showing sufficient to establish the existence of an element essential to their case, and on which they will bear the burden of proof at trial.

## Standard for Directed Verdict

In law, a **directed verdict** is a ruling by a judge presiding over a jury trial typically made *after* the prosecution or *plaintiff has presented all of their evidence* but before the defendant puts on their case that awards judgment to the defendant.

A directed verdict is usually made because the judge concludes the plaintiff has failed to offer the minimum amount of evidence to prove their case even if there were no opposition. Typically, the judge orders a directed verdict after finding that no reasonable jury could reach a decision to the contrary. After a directed verdict, there is no longer any need for the jury to decide the case. In other words, the judge rules that, as a matter of law, no reasonable jury could decide in the plaintiff's favor. A judge may order a directed verdict as to an entire case or only to certain issues. While the motion is not often granted, it is routinely made as a means of preserving appeal rights later.

## CONCLUSION

The Hearing Officer finds that Petitioner satisfied its burden of proof, by presenting the minimum amount of evidence to prove their case. Although Petitioner failed to present evidence of educational harm to the student as a result of the procedural violation, this is merely one criteria that a Hearing Officers may consider, in determining whether a student was denied a FAPE, due to a procedural violation.

The evidence clearly supports a finding that the one (1) year and seven (7) month delay in completing comprehensive evaluations and determining the student's eligibility for services, from the date of parent's request, and the MDT's referral of the student for evaluations; and DCPS' continued failure to comprehensively evaluate the student and determine his eligibility for special education services, represents not only a procedural violation, however impacts parent's substantive rights under the IDEA.

Additionally, as indicated supra, failure to comprehensively evaluate the student and determine his eligibility for special education services, significantly impacts her ability to participate in the decision making process, regarding the student's education and the provision of a FAPE to her child. Therefore, as a matter of law, it is likely that a reasonable jury could decide in the Petitioner's favor.

The Hearing Officer also finds that Respondent, as the moving party in this matter, failed to meet the standard for a directed verdict, by making a showing sufficient to establish the existence of the essential elements of a motion for directed verdict; and on which they bear the burden of proof at the hearing. In summary, Respondent failed to demonstrate that a motion for directed verdict is warranted in this matter. Therefore, the motion is denied.

## XII. ORDER

Based on the aforementioned, it is hereby:

- (1) **ORDERED**, that DCPS' Motion for Directed Verdict is denied; and it is further
- (2) **ORDERED**, that DCPS' Motion to Dismiss is granted in part, and denied in part; and it is further
- (3) **ORDERED**, that no later than July 13, 2009, DCPS shall issue an Independent Educational Evaluation (IEE) letter, authorizing parent to obtain an independent Comprehensive Psychological Evaluation, and all other evaluations requested by Petitioner on December 6, 2007; and it is further
- (4) **ORDERED**, that DCPS, within fifteen (15) calendar days of receipt of the independent assessments shall convene an MDT meeting, review all assessments and develop an IEP, as appropriate; and consistent with the findings and recommendations in the evaluations; and refer the student for all other recommended evaluations; and it is further
- (5) **ORDERED**, that at said MDT meeting, DCPS shall discuss the student's entitlement to compensatory education services; and it is further
- (6) **ORDERED**, DCPS shall incur the cost of any compensatory education services, which may be due the student;
- (7) **ORDERED**, that DCPS shall provide counsel for the Parent with copies, pursuant to 5 DCMR 3021.8 of all evaluation reports and educational records on the student, no later than 24 hours prior to convening of any meeting; and it is further
- (8) **ORDERED**, that in the event of DCPS' failure to comply with the terms of this decision and order, Petitioner's Counsel will contact the Special Education Coordinator at \_\_\_\_\_ 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
- (9) **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; and it is further
- (10) **ORDERED**, that this decision and order are effective immediately.

### XIII. APPEAL RIGHTS

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

*Ramona M. Justice*

*7-9-09*

Date Filed: \_\_\_\_\_

\_\_\_\_\_  
Attorney Ramona M. Justice  
Hearing Officer

cc: Attorney Candace Sandifer, Office of the Attorney General  
Attorney Christopher West: Fax: 202-742-2098