

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

**Student Hearing Office**

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

**1150 - 5<sup>th</sup> Street, S.E.; Room 3**

**Washington, D.C. 20003**

**(202) 698-3819**

**Facsimile: (202) 698-3825**

**terry.banks2@dc.gov**

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**JUL 06 2010**

**Confidential**

**STUDENT, through the legal guardian<sup>1</sup>** ) **Complaint Filed: April 13, 2010**  
 )  
 ) **Petitioner,** ) **Prehearing Order: June 18, 2010**  
 )  
 ) **v.** ) **Hearing Date: June 24, 2010**  
 )  
 ) **THE DISTRICT OF COLUMBIA** ) **Docket No.**  
 ) **PUBLIC SCHOOLS** )  
 )  
 ) **Respondent.** )  
 )  
 ) **Student Attending:** )  
 )

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:**

**Fatmata Barrie, Esquire**  
**10125 Colesville Road**  
**Suite 245**  
**Silver Spring, Maryland 20901**  
**(301) 300-9781; Fax: (301) 622-3463**  
**fbarrielaw@gmail.com**

**Counsel for DCPS:**

**Nia Fripp, Esquire**  
**Office of the General Counsel, DCPS**  
**1200 First Street, N.E.; 10<sup>th</sup> Floor**  
**Washington, D.C. 20002-4232**  
**(202) 442-5178; Fax: (202) 442-5098**  
**nia.fripp@dc.gov**

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

## Jurisdiction

This proceeding was invoked 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 \_\_\_\_\_  
On December 8, 2009, Petitioner filed a Due Process Compliant Notice alleging that the District of Columbia Public Schools (“DCPS”) failed to (1) authorize an independent evaluation, (2) develop an appropriate Individualized Education Program (“IEP”), (3) provide access to Petitioner’s educational records, (4) implement the IEP, and (5) provide an appropriate placement. On January 29, 2010, Petitioner’s counsel filed a *Withdrawal Notice* with the DCPS Student Hearing Office withdrawing the *Complaint*, because “the case has been settled.” On February 10, 2010, this Hearing Officer issued an order dismissing the Complaint with prejudice.<sup>2</sup>

On April 13, 2010, Petitioner filed a Due Process Compliant Notice (“*Complaint*”) alleging that the District of Columbia Public Schools (“DCPS”) failed to (1) develop an appropriate IEP, (2) evaluate Petitioner in all areas of suspected disability, and (3) provide an appropriate placement. In a Prehearing Order issued on June 18, 2010, the Hearing Officer determined the issues to be adjudicated as follows:

- DCPS’ alleged failure to develop an appropriate IEP

Petitioner alleges that Petitioner’s IEP prescribes insufficient specialized instruction in light of Petitioner’s current level of academic achievement – four to eight grades below grade level in math and written language. Petitioner submits that Petitioner requires full-time specialized instruction and intensive services to address his behavior and academic deficiencies. DCPS asserts that Petitioner’s academic problems are due to failing to attend school and that his IEP is reasonably calculated to meet his needs.

- DCPS’ alleged failure to provide an appropriate placement

Petitioner alleges that \_\_\_\_\_ is not appropriate, because Petitioner has not derived educational benefit, because \_\_\_\_\_ cannot provide the services Petitioner needs. DCPS asserts that \_\_\_\_\_ has met and can continue to meet Petitioner’s educational needs.

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<sup>2</sup> Docket No.

- DCPS' alleged failure to evaluate Petitioner in all areas of suspected disability

Petitioner alleges that DCPS has failed to conduct a psychiatric evaluation and a Vineland Adaptive Scale Assessment as recommended in a March 5, 2010 comprehensive psychological evaluation. The psychiatric evaluation was recommended to rule out Attention Deficit Hyperactive Disorder ("ADHD"). Petitioner also alleges that Petitioner requires a functional behavior assessment ("FBA"). DCPS asserts that a psychiatric evaluation is not necessary to rule out ADHD. DCPS further asserts that Petitioner's representatives did not mention the need for an FBA at the Multidisciplinary Team ("MDT") meeting on April 7, 2010.

The due process hearing was convened and completed on June 24, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.

#### **Witnesses for Petitioner**

Petitioner  
Petitioner's Mother  
Associate Director,  
  
Dr. Derek Marryshow, Child Psychologist  
Dr. Patricia Jenkins, Developmental Psychologist

#### **Witnesses for DCPS**

Special Education Teacher,  
Special Education Teacher,  
Dr. Marquita Elmore, School Psychologist  
Special Education Coordinator,

#### **Findings of Fact**

1. Petitioner is a            year-old student attending
2. DCPS convened a Multidisciplinary Team ("MDT") meeting on February 3, 2006 and developed Petitioner's annual IEP. Petitioner was eleven years old and in the fifth grade. The MDT classified Petitioner with a Specific Learning Disability ("SLD") and prescribed 25.5 hours per week of specialized instruction outside of general

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<sup>3</sup> Testimony of Petitioner.

education, one hour per week of occupational therapy (“OT”), and one hour per week of psychological counseling.<sup>4</sup>

3. DCPS convened an MDT meeting on October 19, 2007 and developed an annual IEP. Petitioner was twelve years old and in the seventh grade. The MDT prescribed twenty hours per week of specialized instruction in a combination of general and special education settings, one hour per week of OT services, and one hour per week of social work services.<sup>5</sup>

4. Petitioner’s services on his October 8, 2008 IEP were identical to those on his October 19, 2007 IEP.<sup>6</sup>

5. For the 2008-2009 school year, Petitioner received a B in Health and Physical Education, Cs in Math, Computer Applications, and Science, and Ds in Social Studies and English. He was absent 12 days during the school year.<sup>7</sup>

6. On September 16, 2009, DCPS completed a Comprehensive Psychological Evaluation of Petitioner. The findings, *inter alia*, include the following:

Based on cognitive assessment completed, [Petitioner] earned a Full Scale IQ score in the Low Average range (FSIQ-84) as measured by a cognitive assessment, WASI. Moreover, based on a current educational assessment, [Petitioner’s] academic functioning was in the Low Average to Very Low Average ranges. [Petitioner’s] academic strength was demonstrated in the area of math. However, [Petitioner] demonstrated weaknesses in the areas of reading and written expression. On the test of visual motor, [Petitioner] earned a score in the Low Average range (VMI-86). On the CAB Rating Scales completed by classroom teacher, [Petitioner’s] overall Clinical Behavioral Index (t-53) score was within the Normal range in his classroom/school setting. [Petitioner’s mother] reported [Petitioner’s] overall Clinical Behavioral Index (CBI-64) within the Mild Clinical range...<sup>8</sup>

7. DCPS convened an MDT meeting on November 12, 2009 and developed an annual IEP. Petitioner was \_\_\_\_\_ years old and in the \_\_\_\_\_ grade. The MDT prescribed seven hours per week outside general education, 30 minutes per week of OT services, and 30 minutes per week of behavioral support services.<sup>9</sup>

8. On November 16, 2009, Petitioner’s counsel requested authorization for an independent comprehensive psychological assessment.<sup>10</sup>

<sup>4</sup> Petitioner’s Exhibit (“P.Exh.”) No. 7, ¶ IV at 1 and ¶ XIII at 10.

<sup>5</sup> P.Exh. No. 6, No. 7, ¶ IV at 1 and ¶ XIII at 2.

<sup>6</sup> P.Exh. No. 5.

<sup>7</sup> DCPS Exh. No. 12.

<sup>8</sup> P.Exh. No. 9 at 6.

<sup>9</sup> P.Exh. No. 2 at 5.

<sup>10</sup> P.Exh. No. 16.

9. On January 26, 2010, the parties entered into a settlement agreement in which Petitioner was authorized to obtain an independent comprehensive psychological evaluation and was to be provided with a laptop computer, educational software, and 40 hours of individual tutoring. Upon receipt of the independent evaluation, DCPS agreed to convene an MDT meeting to review the evaluation, revise the IEP, discuss placement, and discuss compensatory education services.<sup>11</sup> The parent waived all claims in the pending Complaint including those that she “could have asserted within the statute of limitations...”<sup>12</sup>

10. On March 5, 2010, Dr. Jenkins completed the independent evaluation. Her findings and recommendations, *inter alia*, include the following:

[Petitioner] is a -year-old grade student who is currently demonstrating extremely low global intellectual ability. Working memory is low average, perceptual reasoning and processing speed are borderline, and verbal comprehension is extremely low. Visual-motor integration skills are low average. Academic achievement is seriously deficient for reading and written language, with skills falling around the 1<sup>st</sup> to 2<sup>nd</sup> grade levels. Mathematics achievement is low, but relatively higher than reading and written expression. Mathematics skills for calculations fall at the 5<sup>th</sup> grade level. There are significant discrepancies across cognitive ability, achievement and age, with skills in all areas far more than two years below chronological levels.

It must be noted that the FSIQ, at first glance, would suggest Intellectually Disabled, by three of the four intellectual components were borderline to low average. Often adolescents with severe learning disabilities show lower test scores, as they get older, particularly when there is substance abuse and increasingly more emotional and behavioral issues. Nevertheless, an adaptive assessment is warranted to aid in clarifying the appropriate primary disability classification.

Social-emotional functioning shows self-esteem, inadequacy, inferiority, and insecurity, as well as feelings of powerlessness and helplessness; all of which contribute to irritability and depressed mood. Defiance, limit-testing, and aggressive tendencies are also indicated... Some hyperactivity and impulsive behaviors are reported, as well as variable levels of inattention and distractibility, but these could be attributed to emotional interference and processing problems. At this time, there are serious emotional and behavioral issues that adversely impact availability and receptivity to learning. Emotional Disturbance (ED) is indicated in addition to the classification, pending the adaptive assessment...

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<sup>11</sup> P.Exh. No. 18, ¶ 4.

<sup>12</sup> *Id.*, ¶ 10.

## Recommendations

An adaptive assessment is recommended to clarify the primary disability.

Nonverbal intelligence testing is recommended to further aid in determining the disability...

Given the severity of the academic deficiencies and emotional-behavior problems, educational placement in a separate full-time therapeutic program is recommended.

The program should afford classes of not more than eight students, low teacher-student ratio, remedial instruction, certified special education teachers, behavior intervention, on-site behavior support staff and therapists, individual counseling, focused group counseling, and daily therapeutic support services.

Individual counseling is recommended for one hour weekly to address self-esteem, negative self-perceptions, anger management, and coping strategies.

Group counseling is recommended for conflict resolution, social functioning, and anger management.

Daily implementation of a structured Behavior Intervention Plan with predetermined reinforcements and consequences. The Plan should include a behavior contract with the school therapist...

Psychiatric consultation to obtain further clarification of possible ADHD...<sup>13</sup>

11. DCPS convened an MDT on April 7, 2010. The MDT reviewed Dr. Jenkins' evaluation and discussed Petitioner's classroom performance. The school psychologist disagreed with Dr. Jenkins' recommendation that Petitioner be classified with an emotional disturbance ("ED"). The school psychologist also said that Petitioner's IEP did not require goals and objectives in math, despite Petitioner scoring 4-5 grades below his grade level, because math was an area of relative strength for him.<sup>14</sup> The math teacher reported that Petitioner "is a quick learner and picks up on things quickly," but has poor attendance and does not consistently complete assignments. "He is not disruptive in the class and keeps to himself."<sup>15</sup> The general education teacher reported that Petitioner's attendance is a "major" issue and that he "is more productive when he is pulled out in a smaller group setting." The MDT concluded that "he is making progress and that the IEP will remain the same. No revisions are necessary and review is

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<sup>13</sup> P.Exh. No. 8 at 8-9.

<sup>14</sup> P.Exh. No. 3 at 2.

<sup>15</sup> *Id.*

completed but no changes. He is doing well especially coming from a self-contained program to an inclusion setting. He is not a behavior issue in school at all.”<sup>16</sup>

12. Petitioner’s mother disagreed with the MDT and agreed with Dr. Jenkins’ recommendations regarding the ED classification, full-time specialized instruction out of general education, the continued placement at \_\_\_\_\_ and Petitioner receiving a psychiatric evaluation. The school psychologist argued that an ED classification is unwarranted, because Petitioner’s behavior in the classroom is not representative of an ED student.<sup>17</sup>

13. For the 2009-2010 school year, Petitioner was absent 17 school days.<sup>18</sup>

14. Petitioner has been accepted at \_\_\_\_\_ is a private school that offers full-time special education services to children with learning disabilities and emotional disturbances. All of the teachers at \_\_\_\_\_ are certified in special education. Each class has a teacher and a teacher’s assistant. The maximum class size is ten. Students are governed by individualized behavior modification plans in which the students are rewarded for positive behaviors. \_\_\_\_\_ employs five licensed social workers and contracts for services of occupational and speech therapists.<sup>19</sup>

15. DCPS proposes to place Petitioner at \_\_\_\_\_ for the 2010-2011 school year. Woodson has 130 disabled students and eleven certified special education teachers. It employs one speech therapist, two licensed social workers, one occupational therapist, and one adaptive physical therapist. It employs behavioral modification plans on an individual basis. Woodson can provide up to 27.5 hours per week of specialized instruction, but “special” classes – Art, Music, Physical Education, etc. – cannot be provided out of general education.<sup>20</sup>

## Conclusions of Law

### *Failure to Develop an Appropriate IEP*

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (“Rowley”),<sup>21</sup> the Supreme Court set forth the requirements for IEPs:

The “free appropriate public education” required by the Act is tailored to the unique needs of the handicapped child by means of an “individualized educational program” (IEP). § 1401(18). The IEP, which is prepared at a

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<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> DCPS Exh. No. 13.

<sup>19</sup> Testimony of \_\_\_\_\_

<sup>20</sup> Testimony of Mr. Leonard.

<sup>21</sup> 458 U.S. 176 (1982).

meeting between a qualified representative of the local educational agency, the child's teacher, the child's parents or guardian, and, where appropriate, the child, consists of a written document containing

“(A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.” § 1401(19).

Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. § 1414(a)(5). See also § 1413(a)(11).<sup>22</sup>

The regulations require the MDT to consider (1) the strengths of the child, (2) the concerns of the parents for enhancing the education of their child, (3) the results of the initial or most recent evaluation, and (4) the academic, developmental, and functional needs of the child.<sup>23</sup> For children whose behavior adversely affects their performance or interferes with the ability of their classmates to learn, the MDT must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.<sup>24</sup>

DCPS prescribed Petitioner 25.5 hours per week of specialized instruction outside of general education in 2006. In 2007, DCPS reduced the level of services by five hours and reduced the classroom restrictiveness to a combination general/special education setting. For the 2008-2009 school year, Petitioner received Cs and Ds in all of his core subjects. After a September 2009 evaluation which offered no recommendation as to an appropriate educational program for Petitioner, on November 12, 2009, DCPS reduced Petitioner's specialized instruction to seven hours per week outside general education setting. The MDT prescribed no goals and objectives in math, even though Petitioner was performing four grades below his grade level, because he was relatively stronger in math than in reading and written expression.

Petitioner, who is nominally in the \_\_\_\_\_ grade, performs on achievement tests at the first to second grade level in language arts and at the fifth grade level in math. DCPS offered no explanation for continually reducing the services and setting restrictiveness for a student who has consistently performed well below grade level. The general education teacher at the April 7<sup>th</sup> MDT meeting reported that Petitioner performs much better in smaller environments. Mr. Beare offered the same testimony at the hearing. Nevertheless,

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<sup>22</sup> *Id.* at 181-82.

<sup>23</sup> 34 C.F.R. §300.324(a)(1).

<sup>24</sup> 34 C.F.R. §300.324(a)(2)(ii).

the MDT determined that the November 2009 IEP, which reduced Petitioner's specialized instruction from 20 hours to seven hours, did not require modification.

The regulations require the MDT to consider the results of the most recent evaluation, and the academic, developmental, and functional needs of the child.

testified that Petitioner showed 1.8 years of "growth" on an examination this year. However, the examination was not offered into evidence, which precluded the Hearing Officer from comparing the examination results to other test results in the record. Therefore, the most recent evaluation was Dr. Jenkins', in which Petitioner performed at the first and second grade level in language arts and at the fifth grade level in math. DCPS also offered testimony and evidence that Petitioner's absences adversely affected his performance. testified that Petitioner arrives late to his 8:45 am class every day, and not at all at least once per week. The math and general education teacher at the April 7<sup>th</sup> MDT meeting highlighted Petitioner's attendance as an issue. Petitioner admitted that he skips classes because he is ashamed when asked to read in front of his classmates. He missed 12 days of classes during the 2008-2009 school year and 17 days during the 2009-2010 school year. Nevertheless, the April 7<sup>th</sup> MDT determined that "he is making progress and that the IEP will remain the same. No revisions are necessary and review is completed but no changes. He is doing well especially coming from a self-contained program to an inclusion setting. He is not a behavior issue in school at all."<sup>25</sup> Thus, DCPS concluded that despite his absences, Petitioner was making sufficient progress that it was appropriate to reduce the level of his.

Petitioner is performing four to eight years below grade level in all of his core subjects. DCPS offered no explanation for the continual reduction in services despite Petitioner's consistently low achievement test scores. The MDT offered no explanation for dismissing all of Dr. Jenkins' findings and recommendations. In fact, other than listing some of Petitioner's test scores, the MDT referred to Dr. Jenkins' evaluation only when the school psychologist rejected the suggestions that Petitioner be classified ED and receive a psychiatric evaluation to rule out ADHD. Although the April 7<sup>th</sup> MDT proclaimed that Petitioner was making progress, their conclusion is clearly refuted by Petitioner's achievement scores. The Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to provide an appropriate IEP.

### ***Failure Provide an Appropriate Placement***

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* ("Rowley"),<sup>26</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

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<sup>25</sup> P.Exh. No. 3 at 3.

<sup>26</sup> 458 U.S. 176 (1982).

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>27</sup>

Thus, Petitioner's burden is to show that DCPS has not, and is incapable of providing an environment in which Petitioner can derive educational benefit.

The Hearing Officer has already concluded that DCPS' perception of Petitioner's academic progress in a general education environment is at odds with Petitioner's test data. It is also at odds with the testimony of \_\_\_\_\_ and with the general education teacher at the April 7<sup>th</sup> MDT meeting; both of whom reported that Petitioner performs and focuses much better when he is removed to a smaller class environment, as recommended Dr. Jenkins' evaluation. DCPS now proposes to place Petitioner at \_\_\_\_\_ S.H.S. and implement the November 12, 2009 IEP, which prescribes but seven hours of specialized instruction.

The Hearing Officer concludes that Petitioner has met his burden of proving that DCPS has failed to provide an appropriate placement. The Hearing Officer is persuaded that Petitioner's severe delays require full-time specialized instruction in a small class environment, with a low student-to-teacher ratio, as recommended by Dr. Jenkins. DCPS offered no evidence that such a program is available at \_\_\_\_\_ even if it were willing to provide it to Petitioner.

\_\_\_\_\_ would be an appropriate placement for Petitioner. It offers the full-time, small-class, low student to teacher ratio recommended by Dr. Jenkins. The Hearing Officer's only reservation is that Petitioner will be taught in a class that will include ED students. The evidence before the Hearing Officer suggests that Petitioner's behavior in the classroom is not indicative of an ED student. The Hearing Officer will order the MDT to reconvene during the fall to determine whether Petitioner would be better served in an environment of LD-only classmates. The Hearing Officer will also condition Petitioner's continued placement at High Roads on meeting minimum attendance criteria.

Under *Florence County School District Four v. Carter*,<sup>28</sup> when a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably

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<sup>27</sup> *Rowley, supra*, at 200-01.

<sup>28</sup> 510 U.S. 7 (1993).

calculated to enable the child to receive educational benefits.”<sup>29</sup> “[O]nce a court holds that the public placement violated IDEA, it is authorized to ‘grant such relief as the court determines is appropriate.’ ‘[E]quitable considerations are relevant in fashioning relief’ ... and the court enjoys ‘broad discretion’ in so doing.”<sup>30</sup>

### ***Failure to Evaluate in all Areas of Suspected Disability***

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>31</sup> Once a child has been determined to be eligible for services, he or she must be reevaluated at least every three years.<sup>32</sup>

Petitioner argues that DCPS was derelict in failing to conduct psychiatric and adaptive behavior assessments as recommended by Dr. Jenkins, as well as a functional behavior assessment (“FBA”). Petitioner offered no evidence that would indicate that Petitioner exhibited any behavior that warrants a psychiatric evaluation or an FBA. As discussed above, the reports from Petitioner’s teacher did not include references to misconduct, disruptions, inattentiveness, or an inability to focus. In addition, the Hearing Officer is not persuaded that Petitioner requires a Vineland assessment. Evaluations are required to determine the existence and extent of a student’s disability. Petitioner’s learning disability has been apparent at least since his eligibility was determined in 2004. Dr. Jenkins recommended that ED also be added as a disability. However, Petitioner’s teachers report that he shows none of the indicia of an ED student in the classroom. As discussed above, the Hearing Officer will order that Petitioner be placed at \_\_\_\_\_ where he will be in a class with ED students, primarily because the proposed program at Woodson is inappropriate and the program at \_\_\_\_\_ is the only alternative available at this time. However, the parties should revisit this issue in the fall and consider placing Petitioner in a class of SLD-only students if his performance suggests that this would be more appropriate for him.

## **ORDER**

Upon consideration of Petitioner’s request for a due process hearing, the parties’ Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties’ counsel at the hearing, this 3<sup>rd</sup> day of July 2010, it is hereby

**ORDERED**, that DCPS shall immediately issue a Prior Notice placing Petitioner at \_\_\_\_\_ for the 2010-2011 school year, including transportation and all other appropriate related services.

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<sup>29</sup> *Id.*, 510 U.S. at 11.

<sup>30</sup> *Id.*, 510 U.S. at 15-16.

<sup>31</sup> 34 C.F.R. §300.304(c)(4).

<sup>32</sup> 34 C.F.R. §300.303(b)(2).

**IT IS FURTHER ORDERED**, that Petitioner is authorized to obtain an evaluation of Petitioner from the Lindamood-Bell Learning Center,<sup>33</sup> at DCPS expense, to determine if Petitioner would benefit from supplemental academic services in math and reading, and *Petitioner is not limited by 5 D.C.M.R. Section 3027.5*. Petitioner is authorized to obtain the services recommended in the evaluation, up to a maximum of 200 hours of services to be completed during the summer of 2010, at DCPS expense, and *Petitioner is not limited by 5 D.C.M.R. Section 3027.5*. DCPS shall provide transportation for Petitioner to receive services during the summer of 2010 at Petitioner shall forward documentation of completion of the recommended services to counsel for DCPS and to the Hearing Officer.

**IT IS FURTHER ORDERED**, that no later than October 29, 2010, DCPS shall convene an MDT meeting at to review Petitioner's progress at review all current evaluations, update Petitioner's IEP, and discuss the feasibility of placing Petitioner in an LD-only environment. DCPS shall coordinate scheduling the MDT meeting with Petitioner's counsel, Fatmata Barrie, Esquire. In the event Petitioner fails to complete the recommended program at during the summer of 2010, and if Petitioner fails to attend at least 90 percent of his classes at prior to the MDT meeting ordered above, DCPS is authorized to rescind the Prior Notice placing Petitioner at

**IT IS FURTHER ORDERED**, that DCPS shall afford Petitioner's parents an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parents of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parents. DCPS shall provide Petitioner's parents an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes or Prior Notice. DCPS shall issue a Prior Notice within seven days of the MDT meeting 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 DCPS shall afford Petitioner's parents an opportunity to participate in any meeting in which Petitioner's placement is discussed or determined. The DCPS placement representative shall advise Petitioner's parents of the advantages and disadvantages for Petitioner with respect to each school that is discussed, including any schools proposed by the parents. DCPS shall provide Petitioner's parents an explanation for the placement DCPS proposes, and the reasons for the proposal shall be provided in the Meeting Notes or Prior Notice. DCPS shall issue a Prior Notice within seven days of the MDT meeting 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 counsel for DCPS and the DCPS Office of Special Education Resolution Team to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.

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**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).

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/s/  
Terry Michael Banks  
Hearing Officer

Date: July 3, 2010