

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

**Office of Review and Compliance  
Student Hearing Office**

**Terry Michael Banks, Due Process Hearing Officer**  
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STUDENT HEARING OFFICE  
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**Confidential**

<b>STUDENT, through the legal guardian<sup>1</sup></b>	)	Complaint Filed: March 27, 2009
	)	
<b>Petitioner,</b>	)	Prehearing Order: April 17, 2009
	)	
<b>v.</b>	)	Hearing Date: April 28, 2009
	)	
<b>THE DISTRICT OF COLUMBIA</b>	)	Docket No.
<b>PUBLIC SCHOOLS</b>	)	
	)	
<b>Respondent.</b>	)	
	)	
<b>Student Attending:</b>	)	
<b>School</b>	)	

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:** Christopher L. West, Esquire  
James E. Brown & Associates  
1220 L Street, N.W.  
Suite 700  
Washington, D.C. 20005  
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**Counsel for DCPS:** Harsharen Bhuller, Esquire  
Office of the General Counsel, DCPS  
825 North Capitol Street, N.E.; 9<sup>th</sup> Floor  
Washington, D.C. 20002

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

## **Jurisdiction**

This proceeding was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

## **Background**

Petitioner is a            year-old student attending            School  
On March 27, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to (1) identify Petitioner as a child with a disability, (2) develop an appropriate Individualized Education Program ("IEP"), (3) provide special education services, and (4) evaluate Petitioner in all areas of suspected disability.<sup>2</sup> The due process hearing was convened on April 28, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.

## **Record**

*Due Process Complaint Notice* dated March 27, 2009  
*District of Columbia Public School's Response to Parent's Administrative Due Process Complaint* dated April 7, 2009  
*Prehearing Order* dated April 17, 2009  
*Petitioner's Five-Day Disclosure* dated April 20, 2009 (Exhibits 1-15)  
*DCPS' Five-Day Disclosure* dated April 21, 2009 (Exhibits 1-6)  
*Attendance Sheet* dated April 28, 2009  
*CD-Rom of Hearing* conducted on April 28, 2009

## **Witnesses for Petitioner**

Petitioner's Mother  
Dr. Ida Holman, Educational Advocate, James E. Brown & Associates

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<sup>2</sup> Since Petitioner has not yet been identified as a child with a disability, DCPS was not obligated to develop an IEP or provide special education services to Petitioner at the time the Complaint was filed. 34 C.F.R. §300.101(a)(1); 34 C.F.R. §300.107(a) and (b). The Hearing Officer excluded these issues from adjudication in the Prehearing Order.

## Witnesses for DCPS

Special Education Coordinator,  
School Psychologist,

### Findings of Fact

1. Petitioner is a      year-old student attending

2. On September 10, 2008, a Hearing Officer's Decision was issued in which Hearing Officer Wanda Resto concluded that "DCPS, based on the student's poor academics, lack of mastery following retention, poor behavior and parent's requests for evaluation should have suspected the student had a disability and evaluated him; their failure to do is a clear breach of their duty under child find and a denial of FAPE." The Hearing Officer ordered DCPS to fund the following independent evaluations: comprehensive psychological, functional behavior assessment ("FBA"), and speech and language. Upon receipt of the independent evaluations, DCPS was ordered to contact Petitioner within five days to arrange a meeting to discuss the evaluations.<sup>4</sup>

3. Ms. Amy Brown of Interdynamics, Inc. completed a Comprehensive Psychological Evaluation. Ms. Brown diagnosed Petitioner with Mixed Receptive-Expressive Language Disorder, Reading Disorder, Enuresis, Attention Deficit Hyperactive Disorder ("ADHD"), and Anxiety Disorder.<sup>5</sup> Ms. Brown's findings and recommendations, *inter alia*, include the following:

[Petitioner's] academic achievement is significantly lower than what is expected of a student his age and school experience, which indicate a learning disability in the areas of reading and writing. Although his achievement on mathematics was low on this evaluation, [Petitioner's] teacher reported that he is making progress and improving in this area. These learning difficulties may also be associated with underlying abnormalities in cognitive processing, possibly as a result of developmental delays in language or motor skills development. [Petitioner] exhibits extensive difficulty with maintaining attention and concentration on tasks. His difficulty in visual-perceptual integration, which includes his ability to interpret and process information, impacts his learning of new material. This finding is supported by the VMI and Processing Speed Index of the WISC-IV...

[H]is poor self-esteem and ability to comfortably connect with others in his life affect his daily functioning both at home and at school. His lack of self-control and worrisome thoughts likely impact his ability to interact with his

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<sup>3</sup> *Complaint* at 1.

<sup>4</sup> P.Exh. No. 3 at 5.

<sup>5</sup> P.Exh. N. 12 at 16.

peers. Consequently, lead him to feel threatened or inadequate. This low self-esteem and inaccurate perceptions of the intentions of others perpetuates his angry and aggressive behavior.

[Petitioner] exhibits impairment in his development of both receptive and expressive abilities... [Petitioner's] receptive language symptoms include difficulty understanding words, sentences, or specific types of words (e.g. spatial terms, complex if-then statements) which renders a diagnosis of Mixed Receptive-Expressive Disorder. Furthermore, his inability to understand and utilize words to create appropriate language, as well as comprehend or read basic words inhibits his ability to develop his verbal skills. His inability to achieve academically at both age and grade appropriate levels in reading renders a diagnosis of Reading Disorder. These overall difficulties with receptive-expressive language and reading inevitably affect [Petitioner's] ability to succeed academically...

#### RECOMMENDATIONS

[B]ased on current and historical information, [Petitioner] would benefit from special education services or classroom accommodations.

Small classroom size, one-to-one instruction, or to be seated in the front of the classroom next to the teacher in order to decrease distractions...

Tutoring services or other accommodations determined by the school are recommended to assist in academic achievement. [Petitioner] would benefit from remedial reading and mathematics tutoring...<sup>6</sup>

4. Petitioner's counsel forwarded copies of the three independent evaluations to DCPS on December 17, 2008.<sup>7</sup>

5. DCPS convened a Multidisciplinary Team ("MDT") meeting two days later, December 19, 2008, to discuss the independent evaluations. The MDT determined that additional testing was necessary to make a determination as to Petitioner's eligibility for special education services.<sup>8</sup> Petitioner's mother signed a letter consenting to further evaluations at the MDT meeting.<sup>9</sup>

6. Ms. Mori, the DCPS School Psychologist at Stanton, insisted on the additional testing for Petitioner. She recommended that Petitioner receive an adaptive scale assessment to rule out mental retardation as a disability classification. Ms. Mori also

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<sup>6</sup> P.Exh. No. 12 at 17-18.

<sup>7</sup> P.Exh. No. 5.

<sup>8</sup> P.Exh. No. 11.

<sup>9</sup> P.Exh. No. 10.

requested that Petitioner secure and provide the raw test data from the evaluation conducted by Ms. Brown. Ms. Mori wanted the WISC Digit Span subtest data to analyze Petitioner's working memory and to determine the presence of ADHD. Ms. Mori also criticized Ms. Brown's comparison of Petitioner's scores to those in his age group rather than by grade. Since Petitioner has been retained, Ms. Brown's method compared his scores to students who were at least one grade ahead of him and, therefore, have been exposed to material that Petitioner has not. Ms. Mori also wanted to review the raw data from Ms. Brown's evaluation to examine Petitioner's memory, oral motor skills, and verbal skills. Subsequent to the December 19, 2008 MDT meeting, Ms. Mori sent three e-mails to Petitioner's counsel at that time, Ms. Keeshea Turner Roberts, requesting WISC-IV Digit Span data, raw scores from the WIAT-II, error analysis of performance on the WIAT-II. Ms. Mori received no response to her requests.<sup>10</sup>

7. On January 5, 2009, Ms. de Torres sent a Letter of Invitation to Petitioner's counsel for an MDT meeting on January 9, 2009 to review the data from Ms. Brown's evaluation.<sup>11</sup> Petitioner's mother initially agreed to meet on that date, but then declined on advice from her attorney. Ms. de Torres sent another invitation on January 12<sup>th</sup> to Dr. Holman for a meeting on January 23<sup>rd</sup> with the following request:

[o]ur school psychologist strongly believes that we need the data she requested from the independent evaluator. Based on her analysis, we will not be able to finalize the eligibility determination unless we have those data. Consequently, please request those data and send it to our office before confirming a meeting schedule. She already emailed you what she needs but if you have any questions, please feel free to contact us.<sup>12</sup>

Petitioner's counsel responded and declined to meet on January 23<sup>rd</sup> and proposed meeting in early February.<sup>13</sup>

8. The parties eventually agreed to reconvene an MDT meeting on February 19, 2009. DCPS declined to make an eligibility determination because it had not been provided the additional data that Ms. Mori had requested:

- (1) The evaluating clinician has given the student a DSM-UV diagnosis of Reading Disorder without assessing the area of adaptive functioning... Adaptive functioning is needed to rule out Mental Retardation.
- (2) Moreover, the evaluator uses the age-based norm to obtain the student's Performance level on the academic measure, when he has been retained once (his same-age peers are for the most part one grade ahead of him). As a result, the standard scores are most likely deflated.
- (3) We need the requested scores to interpret the additional testing done on which included the Wechsler Intelligence Scale for Children – Fourth

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<sup>10</sup> Testimony of Ms. Mori.

<sup>11</sup> DCPS Exh. No. 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Testimony of Ms. de Torres.

Edition Integrated (WISC-IV Integrated). The interpretation of the WISC-IV Integrated requires a breakdown of certain WISC-IV subtests. In order for the school to not only make an eligibility determination but also to develop an effective educational goal, error analysis of an academic measure is undoubtedly necessary.<sup>14</sup>

9. Ms. Mori never received the raw data from Ms. Brown's evaluation. After the February meeting, Ms. Mori completed additional testing of Petitioner on February 26, 2009.<sup>15</sup> On February 27<sup>th</sup>, Ms. de Torres faxed a letter of invitation to Dr. Holman for an MDT on March 5<sup>th</sup> or 6<sup>th</sup> to review Ms. Mori's evaluations.<sup>16</sup> The parties eventually agreed to reconvene an MDT meeting a week before the hearing. The MDT determined that Petitioner was eligible for special education services.<sup>17</sup>

## **Conclusions of Law**

### ***Failure to Complete Timely Childfind Procedures***

Since Petitioner has now been determined to be eligible for special education services, the only issues in dispute are (1) whether DCPS unjustifiably delayed the eligibility determination, and if it did (2) Petitioner's entitlement to compensatory education services.

The September 10, 2008 HOD required DCPS to contact Petitioner within five days of receipt of the independent evaluations to arrange a meeting to discuss the evaluations. DCPS convened the MDT meeting on December 19, 2008, two days after receiving the independent evaluations. Therefore, DCPS complied with the timeline set forth in the HOD.

At the MDT meeting, the parties agreed that Petitioner required additional testing. Petitioner's mother signed a form consenting to further evaluations. Ms. Mori requested data compiled by Ms. Brown in her evaluation of Petitioner. Having access to the preexisting data would preclude the necessity of repeating certain subtests. Petitioner's representatives offered no credible or persuasive reason for failing to provide the requested data. Dr. Holman stated that such data is not normally provided, but she gave no reason for this practice. Dr. Holman also did not testify that she ever requested the data from Ms. Brown. Thus, there is no reason to believe that Ms. Brown would not have provided the data.

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<sup>14</sup> P.Exh. No. 7

<sup>15</sup> Testimony of Ms. de Torres.

<sup>16</sup> DCPS Exh. No. 3. Ms. de Torres faxed another invitation on March 12<sup>th</sup> proposing meeting dates on March 19<sup>th</sup> and 20<sup>th</sup>.

<sup>17</sup> Testimony of Ms. Mori. The Hearing Officer sustained Petitioner's counsel's objection to the admission of Ms. Mori's evaluations into evidence.

Ms. de Torres attempted to reschedule the MDT meeting as early as January 5, 2009 under the assumption that the requested data would be available. Petitioner's mother agreed to meet on January 9<sup>th</sup>, but was advised by counsel to rescind her agreement to meet on that date.

When the February 19<sup>th</sup> MDT was finally convened, and Petitioner's representatives had still made no effort to secure the requested test data, Ms. Mori finally determined that the only solution was to repeat the evaluations. Ms. Mori completed her evaluations on February 26<sup>th</sup>, within a week of the February 19<sup>th</sup> MDT meeting. Ms. de Torres began faxing letters of invitation to Dr. Holman the next day, February 27<sup>th</sup>, to attempt to reschedule an MDT meeting.

The Hearing Officer concludes that Ms. Mori's request to review the raw data from Ms. Brown's evaluation was made in good faith in an effort to conduct a thorough and complete analysis of Petitioner's cognitive and educational capabilities. Petitioner's representatives' failure to cooperate in securing and providing the data, or to affirmatively reject the request, was the reason for the delay in rescheduling the MDT after the initial meeting on December 19, 2008. Petitioner's representatives' failure to cooperate in securing the data was also the reason DCPS remained unprepared to make an eligibility determination on February 19<sup>th</sup>. Within eight days of that meeting, Ms. Mori had completed her evaluations and Ms. de Torres had issued a letter of invitation to reschedule the MDT meeting.

The Hearing Officer concludes that Petitioner has failed to meet her burden of proving that DCPS unnecessarily delayed completing the eligibility determination. In fact, the delays were occasioned by recalcitrance and uncooperativeness by Petitioner's representatives. As discussed above, Petitioner's representatives should have either provided Ms. Mori the raw data she requested on December 19<sup>th</sup> or told her that the data would not be provided. Ms. Mori conducted her evaluation promptly once it became apparent that Petitioner's representatives would not provide the data. The day after Ms. Mori completed her evaluation, Ms. de Torres faxed Dr. Holman a letter of invitation proposing meeting dates of March 5<sup>th</sup> and 6<sup>th</sup>. Apparently, Petitioner's representatives rejected those proposed dates, because Ms. de Torres faxed another invitation on March 12<sup>th</sup> proposing meetings on March 19<sup>th</sup> and 20<sup>th</sup>. Petitioner offered no evidence that DCPS was responsible for the failure of the MDT meeting to be convened before the *Complaint* was filed on March 27<sup>th</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>18</sup> No single procedure should be used as the sole criterion for determining

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<sup>18</sup> 34 C.F.R. §300.304(c)(4).

whether a child is a child with a disability and for determining an appropriate educational program for the child.<sup>19</sup>

Petitioner alleges that Ms. Brown's evaluation recommended the completion of the following evaluations: Vineland Adaptive Behavior Scale ("Vineland"), neuropsychological, and neurological. However, Petitioner's representatives did not press for these evaluations at the MDT meetings on December 19<sup>th</sup> or February 19<sup>th</sup>. Moreover, Petitioner's counsel ignored this issue in his opening statement and offered no testimony as to the educational need for the neuropsychological and neurological evaluations. As for the Vineland, Ms. Mori agreed that Petitioner required adaptive testing and recommended the same at the December 19<sup>th</sup> MDT meeting. Ms. Mori conducted evaluations of Petitioner and Petitioner's counsel offered them into evidence at the hearing, but Petitioner's counsel objected to the admission. The Hearing Officer sustained the objection on the grounds that the evaluation was not timely disclosed. Petitioner's counsel offered no testimony as to any communication with Stanton concerning the completion of a Vineland assessment. In light of Ms. Mori's testimony that she believed that adaptive testing was necessary, it is apparent that DCPS is not reluctant to complete such testing and may have, in fact, conducted the testing. At any rate, Petitioner's counsel did not pursue this issue in his opening or closing statement or through testimony. The Hearing Officer concludes that Petitioner has failed to meet her burden of proving that DCPS has failed to evaluate Petitioner in all areas of suspected disability.

### *Compensatory Education Services*

Petitioner's counsel argued that DCPS had enough information at the February 19<sup>th</sup> MDT meeting to make an eligibility determination. Because it did not do so, Petitioner should be awarded compensatory education services for the period beginning on February 19<sup>th</sup> and until Petitioner began receiving services.

However, since Petitioner failed to establish that DCPS violated IDEIA, Petitioner is not eligible for an award of compensatory education services.<sup>20</sup> Even if Petitioner had established a violation, the evidence submitted to justify an award of compensatory education services was insufficient. Under *Reid*, Petitioner had the burden of showing that (1) as a result of DCPS' failure to determine her eligibility by February 19, 2009, she suffered an educational deficiency, (2) but for the violation, she would have either maintained her current level of academic performance or progressed to a higher level, and (3) that there exists a type and amount of compensatory education services that would bring her to the level he would have been but for DCPS' violation.

Dr. Holman testified that Petitioner was entitled to 240 hours of one-on-one tutoring services and enrollment in a summer program at \_\_\_\_\_ to "bolster his self-esteem" and to provide discipline as compensatory education services. Her recommendation was based on the amount of tutoring Petitioner could "tolerate" in a

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<sup>19</sup> 34 C.F.R. §300.304(b)(2).

<sup>20</sup> *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

week (two to three hours) and her belief that Petitioner should have received services for the previous two years. Dr. Holman testified that these services would “get him to the level he should be – on or near grade level – to get him to where he should be had he not missed the services.”

Hearing Officers may not award compensatory education services based solely on the amount of services a local education agency (“LEA”) failed to provide.

[W]e part company with the Reids regarding how such awards are calculated. They urge us to adopt a presumption that each hour without FAPE entitles the student to one hour of compensatory instruction, a standard apparently embraced by several courts... In our view, this cookie-cutter approach runs counter to both the “broad discretion” afforded by IDEA’s remedial provision and the substantive FAPE standard that provision is meant to enforce.

More specifically, as the Fourth Circuit has explained, “compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a give period of time to provide a FAPE to a student... Overlooking this equitable focus, the Reids’ hour-for-hour formula in effect treats compensatory education as a form of damages – a charge on school districts equal to expenditures they should have made previously. Yet “the essence of equity jurisdiction” is “to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it...” In keeping with that principle of case-specific flexibility, we agree with the Ninth Circuit that “there is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of IDEA...”<sup>21</sup>

Thus, Petitioner has the burden of establishing the type and amount of compensatory services that will compensate the student for the services that were denied. Absent such a showing, any award by the Hearing Officer would be arbitrary.

Accordingly, just as IEPs focus on disabled students’ individual needs, so must awards compensating past violations rely on individualized assessments... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA’s purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.<sup>22</sup>

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<sup>21</sup> *Id.*, 401 F.3d at 523-24, citations omitted.

<sup>22</sup> *Id.*, 401 F.3d at 524.

In this case, Petitioner's counsel failed to offer the necessary evidence, pursuant to the standard set forth in *Reid*, to establish that compensatory education services are warranted. First, Petitioner's counsel failed to disclose Petitioner's Individualized Education Program ("IEP"). Therefore, the Hearing Officer is unaware of the level of services Petitioner is receiving. Without this information, the Hearing Officer can make no determination of the services Petitioner was denied by DCPS.

Second, Dr. Holman's recommendation of 240 hours of tutoring services was based on her belief that DCPS should have provided Petitioner services for the past two years. Petitioner offered no evidence that she was denied services for two years other than the HOD issued on September 10, 2008. That HOD offered no conclusion as to the date DCPS should have completed childfind proceedings. Petitioner's counsel argued that Petitioner was entitled to compensatory education services dating back to February 19, 2009, the date of the first rescheduled MDT meeting. Dr. Holman's recommendation for two years of compensation is inconsistent with Petitioner's counsel's theory of the case.

Third, Petitioner's representatives offered no showing as to the academic deficit Petitioner suffered as a result of DCPS' failure to offer services between February 19<sup>th</sup> and the unspecified date when services began. Fourth, there was no showing that the program proposed by Dr. Holman was designed to compensate Petitioner for the unproven deficit caused by DCPS' failure to provide services between February 19<sup>th</sup> and the unspecified date when services began. In fact, the summer program proposed by Dr. Holman was for purposes that were not otherwise discussed during the hearing: to "bolster his self-esteem" and to provide discipline. While these problems were discussed in Dr. Brown's evaluation, there was no showing that Petitioner suffered a lack of self-esteem or evinced a lack of discipline after February 19<sup>th</sup> that would warrant placement in a summer program at \_\_\_\_\_ There was also no description of the program at \_\_\_\_\_ and its likelihood of enhancing Petitioner's self-esteem or curing his lack of discipline.

In sum, Petitioner's counsel offered no showing that Petitioner suffered any educational deficit as a result of DCPS' failure to provide services after February 19<sup>th</sup> and no showing of the level of services Petitioner currently requires. Thus, there could be no showing of the level of proficiency Petitioner would have reached but for DCPS' alleged violation, or the type and amount of services that would allow her to reach that level of proficiency. Therefore, Petitioner failed to establish the prerequisite for an award of compensatory education services, a violation of IDEIA, and failed to meet the standard of proof set forth in *Reid* to justify an award of compensatory education services.

### ***Attorneys' Fees***

The Court may award a local education agency ("LEA") attorneys' fees against a parent's attorney if the attorney files a complaint or civil action that is frivolous, unreasonable, or without foundation, or for litigation maintained after it became groundless.<sup>23</sup> As discussed above, the *Complaint* was filed on March 27, 2009 alleging

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<sup>23</sup> 20 U.S.C. §1415(i)(3)(B)(i)(II).

that DCPS failed timely to complete childfind procedures. The evidence established that after its scolding in the September 10<sup>th</sup> HOD, DCPS acted promptly and in good faith in its attempt to complete childfind procedures for Petitioner. It convened the December 19<sup>th</sup> meeting two days after receiving Petitioner's independent evaluations. Over the next two months, Ms. de Torres attempted on numerous occasions to reconvene the MDT meeting under the mistaken impression that Petitioner's representatives would facilitate a prompt meeting by providing the data from Ms. Brown's report. When the discussion at the February 19<sup>th</sup> MDT clarified Petitioner's representatives' recalcitrance on this issue, Ms. Mori completed her evaluation within a week and Ms. de Torres issued a letter of invitation the next day. When her proposed dates proved inconvenient, Ms. de Torres sent another invitation on March 12<sup>th</sup>. Petitioner's representatives offered no testimony as to the reasons that DCPS' proposed meeting dates of March 5<sup>th</sup>, 6<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> were not convenient. The Hearing Officer concludes that the *Complaint* filed on March 27<sup>th</sup> was frivolous, unreasonable, and without foundation.

### ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearings, and the representations of the parties' counsel at the hearing, this 8<sup>th</sup> day of May 2009, it is hereby

**ORDERED**, that the *Complaint* is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED**, that this Order is effective immediately.

#### **Notice of Right to Appeal Hearing Officer's Decision and Order**

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety (90) days of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/  
\_\_\_\_\_  
Terry Michael Banks  
Hearing Officer

Date: May 8, 2009