

**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**

STUDENT, through the legal guardian<sup>1</sup> ) Complaint Filed: February 17, 2009  
)  
Petitioner, ) Prehearing Order: March 9, 2009  
)  
v. ) Hearing Date: March 18, 2009  
)  
THE DISTRICT OF COLUMBIA ) Docket No.  
PUBLIC SCHOOLS )  
)  
Respondent. )  
)  
Student Attending: )  
Wilson Senior High School )

**HEARING OFFICER'S DECISION**

**Counsel for Petitioner:** Fatmata Barrie, Esquire  
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Washington, D.C. 20002  
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**Counsel for DCPS:** Kendra Berner, Esquire  
Office of the General Counsel, DCPS  
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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 \_\_\_\_\_ School. On February 17, 2009, Petitioner filed a Due Process Compliant Notice ("*Complaint*") alleging that the District of Columbia Public Schools ("DCPS") failed to (1) comply with the terms of a Hearing Officer's Decision ("HOD"), (2) provide an appropriate placement, (3) develop an appropriate Individualized Education Program ("IEP"), (4) provide appropriate special education services, and (5) conduct a vocational assessment and develop a transition services plan. The due process hearing was convened on March 18, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing. Neither party offered testimony at the hearing.

## **Record**

*Due Process Complaint Notice* dated February 17, 2009  
*District of Columbia Public School's Notice of Insufficiency and Response to Petitioner's Due Process Complaint* dated March 2, 2009  
Prehearing Order Dated March 9, 2009  
DCPS' Five-Day Disclosure dated March 9, 2009 (Exhibit Nos. 1-8)  
Petitioner's Five-Day Disclosure dated March 11, 2009 (Exhibit Nos. 1-22)  
Attendance Sheet dated March 18, 2009  
CD-Rom of Hearing conducted on March 18, 2009

## **Findings of Fact**

1. Petitioner is \_\_\_\_\_ year-old student whose placement is \_\_\_\_\_ School

2. On March 17, 2008, an HOD was issued in which the Hearing Officer, Ms. Wanda Resto Torres, concluded that DCPS had failed to develop an appropriate IEP and that Wilson was not an appropriate placement for Petitioner. The HOD required DCPS to convene a Multidisciplinary Team ("MDT") meeting within 15 school days of receiving

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

an independent psychoeducational evaluation from Petitioner to review evaluations, develop an appropriate IEP, and to determine a placement.<sup>3</sup>

3. On July 18, 2008, Petitioner filed another Complaint alleging that DCPS had failed to comply with the March 17, 2008 HOD. The Hearing Officer concluded that DCPS had not violated the HOD, because Petitioner delayed providing DCPS the independent evaluation until the day before the end of the 2007-2008 school year. The Hearing Officer ordered DCPS to “comply with the 3/17/08 HOD and make a determination on placement with the consideration that Wilson is not an appropriate placement as indicated in the 3/17/08 HOD.”<sup>4</sup>

4. DCPS convened an MDT meeting on August 1, 2008. Petitioner’s parent did not participate in the meeting.<sup>5</sup>

### **Conclusions of Law**

In *District of Columbia Public School’s Notice of Insufficiency and Response to Petitioner’s Due Process Complaint*, DCPS responded to the allegation that it had failed to comply with the July 18, 2008 HOD as follows:

After numerous attempts to schedule an MDT meeting through Petitioner’s counsel, the MDT went forward with a meeting on August 1, 2008 and reviewed the evaluation.

In support of this defense, DCPS disclosed “Invitation Notifications” dated July 10 and July 24, 2008.<sup>6</sup> These notifications did not specify the dates or times of the MDT meetings DCPS proposed to convene. DCPS offered no testimony that the notifications or letters of invitation providing times and dates were actually sent to Petitioner’s counsel. The Hearing Officer also notes that the July 18<sup>th</sup> HOD required that “All communications and meetings are to be scheduled through Counsel for the student.”<sup>7</sup> DCPS offered no evidence that any DCPS official ever attempted to contact Petitioner’s counsel to schedule the MDT meeting.

MDT meetings held in the absence of a parent are inherently suspect. The IEP team must include the parents of the child, at least one regular education teacher of the child, at least one special education teacher of the child, a representative of the public agency who is qualified to provide or supervise special education services, is knowledgeable about the general curriculum, and is knowledgeable about the availability

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<sup>3</sup> Petitioner’s Exhibit (“P.Exh.”) No. 18 at 8-11.

<sup>4</sup> P.Exh. No. 3 at 7 and 9.

<sup>5</sup> DCPS Exh. No. 1.

<sup>6</sup> DCPS Exh. Nos. 4 and 6.

<sup>7</sup> P.Exh No. 3 at 11.

of resources of the public agency, and an individual who can interpret the instructional implications of evaluation results.<sup>8</sup>

The LEA has a heavy burden to ensure the presence of the child's parent at each IEP meeting.<sup>9</sup> If neither parent can attend, the LEA should facilitate parental participation by phone.<sup>10</sup> In the case of a parent who is difficult to reach, or who persistently fails to attend meetings, LEA should maintain detailed records of its attempts to encourage a parent to attend a meeting. The regulations suggest that, in the event a school decides to proceed with an IEP meeting without a parent, it should have records of telephone calls made or attempted to the parent, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.<sup>11</sup>

DCPS offered no proof of any of the alleged "numerous attempts to schedule an MDT meeting through Petitioner's counsel." In the Prehearing Order, the Hearing Officer suggested that DCPS introduce the following evidence at the hearing: "in light of the parent's absence from the August 1, 2008 MDT meeting, documentation consistent with the requirements of 34 C.F.R. Section 322(d) and testimony of DCPS' efforts to convene MDT meetings for Petitioner since March 17, 2008 including, but not limited to, letters of invitation and telephone logs." DCPS offered no testimony, no evidence of any effort to comply with Section 322(d), no letters of invitation, and no telephone logs. Even if the two Invitation Notifications constituted compliance with the notice requirements of the July 2008 HOD and Section 322(d), which they do not, the August 2008 MDT did not develop an IEP and did not determine a placement at a facility other than Wilson. Therefore, the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS failed to comply with the July 18, 2008 HOD.

## ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, and the representations of the parties' counsel at the hearing, this 19<sup>th</sup> day of March 2009, it is hereby

**ORDERED**, that on or before March 31, 2009, DCPS shall convene an MDT for Petitioner. The MDT shall review all current evaluations and assessments, develop an IEP, and discuss placement alternatives. Pursuant to the July 18, 2008 HOD, Wilson may not be considered as a placement option for Petitioner. The IEP shall include a transition services plan that meets the requirements of 34 C.F.R. Section 300.320(b). In the event DCPS has not conducted a vocational assessment of Petitioner, the MDT shall refer Petitioner for a Level II assessment or authorize Petitioner to obtain an independent

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<sup>8</sup> 34 C.F.R. §300.321(a).

<sup>9</sup> 34 C.F.R. §300.322(a).

<sup>10</sup> 34 C.F.R. §300.322(c).

<sup>11</sup> 34 C.F.R. §300.322(d).

evaluation. The MDT should then schedule a date to reconvene to develop an appropriate transition services plan.

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

**IT IS FURTHER ORDERED**, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at Wilson, the appropriate DCPS Placement Specialist, and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.

**IT IS FURTHER ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

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

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

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

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

Date: March 19, 2009