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 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 442-5556

In Re the Matter of :	
Parent on behalf of Student,[1]	
Petitioner,	
v.	
	Date of Complaint: April 24, 2009
	Pre-Hearing Conference: May 27, 2009
	Date of Hearing: May 28, 2009
The District of Columbia Public Schools	
825 North Capitol Street, N.W.	
Washington, D.C. 20002	**Student Case Number:**
("DCPS" or "District")	**Student Identification Number:**
Respondent.	

2009 JUN -8 AM 8:19
STUDENT HEARING OFFICE

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney Domiento C.R. Hill
The Law Offices of James E. Brown & Associates
1220 L Street, N.W., Suite 700
Washington, D.C. 20005

Counsel for Respondent: Attorney Kendra Berner
Assistant Attorney General
Office of the Attorney General
825 North Capitol St., N.E., 9th 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 for 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 attends a public high school located in the District of Columbia. The student is a resident of the District of Columbia; and identified as disabled, and eligible to receive special education services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The students' disability classification is Multiple Disabilities (MD), including Emotionally Disturbed (ED), and Other Health Impaired (OHI).

On April 24, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools, hereinafter referred to as "DCPS", alleging that DCPS denied the student a free appropriate public education (FAPE); by failing to comply with the December 30, 2008 Hearing Officer's Decision (HOD).

The due process hearing convened on May 28, 2009, at 11:00 a.m.; at Van Ness Elementary School, located at 1150 5th 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

Petitioner's Counsel waived a formal reading of parents' due process rights.

IV. ISSUES

The following issue is identified in the *April 24, 2009*, due process complaint:

Whether DCPS denied the student a free appropriate public education (FAPE), by failing to comply with the December 30, 2008 Hearing Officer's Decision (HOD)?

V. RELIEF REQUESTED

Petitioner requests the following relief:

a) A finding that DCPS failed to comply with the December 30, 2008 Hearing Officer's Decision and order.
b) DCPS shall fund 20 hours of mentoring/self-esteem building with a focus on academic responsibility; 20 hours of individual tutoring in literacy and written expression; and 20 hours of individual tutoring in math.
c) A find that the parent is the prevailing party in this action; and
d) DCPS agrees to reimburse the parent reasonable attorney's fees and costs.

VI. DISCLOSURES

The Hearing Officer inquired of the parties whether the disclosures from the opposing party were received, and whether there were any objections to the disclosures. Receiving no objections to the disclosures, the disclosures identified herein, were admitted into the record as evidence.

VII. DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF PETITIONER

Petitioner's Exhibits 01 through Petitioner's Exhibits 25, and a witness list dated May 20, 2009.

VIII. DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF RESPONDENT

A witness list dated May 20, 2009.

IX. PROCEDURAL POSTURE

On April 24, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools ('DCPS"), Student Hearing Office. On April 29, 2009, Respondent filed a "DCPS Resolution Session Waiver" notice. On May 1, 2009, Respondent filed "District of Columbia Public Schools' Notice of Insufficiency and Response to Petitioner's Due Process Complaint".

On May 1, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the pre-hearing conference for May 28, 2009, at 3:00 p.m.. On May 6, 2009, Petitioner filed "Petitioner's Opposition to Respondent's Notice of Insufficiency"; and included in the Opposition a copy of the April 24, 2009 due process complaint, with parent's signature.

On May 11, 2009, the Hearing Officer issued a decision finding the April 24, 2009 due process complaint insufficient, because it failed to comply with Standard Operating Procedures, §301.2(C)(e). The Hearing Officer dismissed the April 24, 2009 complaint, "without" prejudice. A revised HOD was issued on May 12, 2009, to reflect Petitioner's filing of the opposition to Respondent's Notice of Insufficiency, representing a decision based on representations of both parties.

The parties were unavailable on May 28, 2009 at 3:30 p.m. for the pre-hearing conference, as a result, the pre-hearing conference was rescheduled to May 27, 2009, at 4:30 p.m. On May 20, 2009, Petitioner submitted written disclosures and a witness list; and Respondent submitted a witness list, dated May 20, 2009.

X. PRELIMINARY MATTERS

The Hearing Officer inquired whether there were any preliminary matters, prior to proceeding with a hearing on the merits, and the parties responded that there were no preliminary matters. Therefore, the due process hearing proceeded as scheduled. Prior to closing arguments, DCPS entered on the record a Motion for Directed Finding.

Prior to rendering a decision on the merits of the issues in the April 24, 2009, the Hearing Officer addresses the viability of the April 24, 2009 due process complaint. On May 11, 2009, the Hearing Officer issued a decision finding the April 24, 2009 due process complaint insufficient; and dismissed the complaint "without" prejudice, because it failed to comply with Standard Operating Procedures (SOP), §301.2(C)(e). On May 12, 2009, the Hearing Officer issued a revised HOD, affirming its prior decision dismissing the April 24, 2009 due process complaint "without" prejudice, and finding that Petitioner's inclusion of a copy of the complaint, with parent's signature in its Opposition to the Notice of Insufficiency, was insufficient to satisfy the SOP's requirements for submitting an amended complaint; thus rendering the April 24, 2009 due process complaint null and void.

The due process hearing convened on May 28, 2000, and evidence was admitted into the record, based on the issue presented in the April 24, 2009 due process complaint, although the complaint was previously dismissed. The record reflects that Petitioner disregarded the courts' May 12, 2009 decision dismissing the April 24, 2009 due process complaint "without" prejudice; and failed to file a new complaint, consistent with SOP, §301.2(C)(e); or an amended complaint, consistent with the court's May 12, 2009 decision. However, the court inadvertently failed to determine whether a new or amended due process complaint was filed; and proceed with a hearing on the merits of the issue in the April 24, 2009 complaint.

The Hearing Officer finds that although a decision was issued on May 12, 2009, dismissing the April 24, 2009 complaint, "without" prejudice, the record in this matter was not officially closed; and on May 28, 2009, the Hearing Officer accepted evidence on the issue in the April 24, 2009 due process complaint, inadvertently. Therefore, in the interest of judicial-

economy; and the best interests of the student, the court will proceed with rendering a decision on the issue presented in the April 24, 2009 due process complaint, and the evidence presented; and not require Petitioner at this juncture in the proceeding to file a new complaint, or amended complaint, consistent with the May 12, 2009 decision.

XI. STATEMENT OF THE CASE

1. The student is years of age, and attends located in the District of Columbia. The student is a resident of the District of Columbia and identified as disabled and eligible to receive special education and related services, pursuant to the "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 student's disability classification is Multiple Disabilities (MD), including Emotionally Disturbed (ED), and Other Health Impaired (OHI).

2. On November 24, 2008, Counsel, on behalf of student, filed a due process complaint alleging that the District of Columbia Public Schools ("DCPS"), denied the student a Free Appropriate Public Education ("FAPE"), by failing to: (1) comply with the May 13, 2008 Settlement Agreement; (2) convene a Multidisciplinary Development Team (MDT)/Individualized Education Program (IEP) team meeting to review the student's outstanding evaluations; (3) convene an IEP team meeting upon parent's request; and (4) provide the student an appropriate IEP.

A due process hearing convened on December 22, 2008 at 11:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003; and on December 30, 2008, a Hearing Officer's Decision (HOD) was issued, granting the following relief:

- DCPS shall convene an MDT/IEP team meeting within ten (10) school days. After the date of the Hearing Officer's decision; to review the findings of the evaluations, revise and update the student's IEP, as appropriate; include the recommendations included in the independent evaluations; and adopt the proposed behavior intervention program.

- The IEP Team shall discuss and determine the amount of compensatory education services the student is entitled to receive from October 15, 2008 until the date of the MDT/IEP team meeting.

- That DCPS shall provide a day for day extension for any delay caused by the parent, student, Counsel for the parent, or the parent's educational advocate.

- In the event of DCPS' failure to comply with the terms of this Order, Petitioner's Counsel will contact the Special Education Coordinator at School, 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.

4. On January 6, 2009, DCPS issued a Letter of Invitation to parent and the Education Advocate proposing January 12, 2009, at 9:30 a.m., January 13, 2009, at 9:30 a.m., or 11:00 a.m., for a MDT meeting, to develop/review the student's IEP, review evaluation or reevaluation information, review records to support completion of services, discuss placement and compensatory education services, consider transition services needs of the student, and conduct a behavior plan review.

5. On January 12, 2009, Petitioner forwarded a letter to the Special Education Coordinator at indicating that due to such short notice of the dates proposed in DCPS' letter and previously scheduled MDT meetings, it will be necessary to consider additional dates and times to convene the meeting; and proposed January 21st, 22nd, or 23rd, at 10:00 a.m.., for the MDT meeting.

6. On January 16, 2009, the District of Columbia Public Schools, issued a "Report to Parents on Student Progress", which reflects that the student received a final grade of "A" in Algebra, "D+ in Biology 1A, "D" in Extended Literacy 10, "C" in Human Sexuality and Reproduction, and "B" in General Music. Attendance Summaries from August 18, 2008 through February, 2009, reflect significant absences, truancy, and lateness.

7. On January 19, 2009, Petitioner forwarded a letter to the Special Education Legal Unit/Office of Mediation and Compliance, as a follow-up to the December 30, 2008 HOD; and to provide notice regarding DCPS' failure to comply with the HOD; and Petitioner's intent to file a complaint.

8. On January 27, 2009, DCPS issued parent a Letter of Invitation, proposing February 9, 2009 at 1:00 p.m., February 10, 2009, at 11:00 a.m., and February 13, 2009, at 11:00 a.m., to convene a MDT meeting, for the purpose of developing/reviewing the student's IEP, reviewing evaluation or reevaluation information, reviewing records to support the completion of services, discussing placement and compensatory education services, and considering transition services needs of the student.

9. On January 28, 2009, Petitioner forwarded a letter to the Special Education Coordinator at in response to DCPS' January 27, 2009 Letter of Invitation indicating that after a review of the dates and times proposed, the proposed date and time of February 9, 2009, at 1:00 p.m., was acceptable to reconvene the meeting.

10. On February 9, 2009, DCPS convened the MDT meeting. Participants included the Education Advocate, General Education Teacher, Special Education Teacher, and Special Education Coordinator.

According to the MDT meeting notes, the Functional Behavior Plan was reviewed by the Social Worker, and the Behavior Intervention Plan was read. The team discussed the student's tardiness, and inattentiveness; and a recommendation was made for mentoring the student. The team decided that a copy of the Behavior Intervention Plan would be reviewed with the student's Counselor. The Education Advocate agreed to discuss the student's needs with parent, and provide DCPS a proposed compensatory education plan within five (5) days; and the team agreed to reconvene in 30 days to discuss the student's progress and compensatory education services.

11. On February 25, 2009, the D.C. Public Schools, Office of the Chancellor Compliance Case Manager, forwarded to Petitioner's Attorney a proposed compensatory education plan for services the student failed to receive from October 15, 2008 through February 9, 2009, including 16 hours of psychological counseling; and two weeks at an independent Therapeutic Camp of - the parent's choice not to exceed to address the students' behavioral issues and the management techniques he will lean when applied in the classroom setting. The email also indicated that bombarding the student with hours of tutoring may be counterproductive.

12. On March 4, 2009, DCPS forwarded to parent a Letter of Invitation for a meeting, for the purpose of developing the initial or revising the student's IEP. The Letter of Invitation proposed March 16, 2009, at 9:00 a.m., for the meeting.

13. On March 6, 2009, Petitioner's Attorney forwarded a letter to the Special Education Case Manager at in response to a March 4, 2009 Letter of Invitation for a MDT meeting, indicating that due to such short notice and previously scheduled MDT meetings, it will be necessary to consider additional dates and times to reconvene; and proposed March 25, 2009, March 27, 2009, at 2:00 p.m., for the meeting.

14. On March 11, 2009, DCPS forwarded a Letter of Invitation for a meeting to parent, for the purpose of developing the initial or revising the student's IEP. The letter proposed March 31, 2009, at 9:30 a.m..

15. On March 31, 2009, a MDT convened, for the purpose of discussing and reviewing the student's IEP. Participants included the parent, School Counselor, Special Education Teacher, General Education Teacher, Special Education Coordinator, School Psychologist, Education Advocate, Student, and a DCPS Representative.

The team decided that the student would attend Summer School for Geometry and Career Training, to facilitate promotion and placement in the appropriate grade level. The team also decided that the 15 hours of specialized instruction would continue, in addition to 1 hour of counseling services, for a total of 16 hours per week.

The Education Advocate's notes reflect that parent requested 20 hours of mentoring/self-esteem services in literacy and written expression; 20 hours of individual tutoring in mathematics (Algebra 1B). The team agreed that DCPS would respond within 5 business days to parent's request for compensatory education services.

The team developed an IEP for the student, providing for 900 minutes per week of specialized instruction, and 60 minutes per week of behavioral support services, effective February 20, 2009. The IEP indicates that compensatory education services were not discussed at the IEP team meeting.

16. On March 31, 2009, DCPS forwarded an email to Petitioner's Attorney proposing a compensatory education services plan for the student, in response to its counterproposal to a proposed plan from the Special Education Coordinator.

17. On April 17, 2009, DCPS forwarded to Petitioner's Attorney the proposed compensatory education services plan, previously forwarded on February 11, 2009, indicating that it failed to receive a response to the proposed plan, and requested the same.

18. On April 22, 2009, DCPS forwarded an email to Petitioner's Counsel proposing to offer the student 16 hours of individual counseling services, because the student failed to receive 4 months of 1 hour per week of counseling services; and 16 hours of specialized instruction.

Petitioner's Attorney responded that at the March 31, 2009 MDT meeting parent and the Education Advocate failed to agree with DCPS' proposal; and offered a counterproposal of 20 hours of individual counseling, 20 hours of individual tutoring in literacy and written expression, and 20 hours of individual tutoring in mathematics.

19. On April 24, 2009, Petitioner filed a "Due Process Complaint Notice" with the D.C. Public Schools ('DCPS"), alleging that DCPS denied the student a free appropriate public education (FAPE); by failing to comply with the December 30, 2008 Hearing Officer's Decision (HOD).

20. On April 30, 2009, DCPS issued a Letter of Invitation to parent, requesting a MDT meeting to develop/review the student's IEP, review evaluation or reevaluation information, review records to support the completion of services, discuss compensatory education services, consider transition services needs, and discuss placement. The Letter of Invitation proposed two dates and three times for the meeting.

21. On May 7, 2009, Petitioner's Attorney responded that after review of the dates and times offered by DCPS to reconvene the meeting, due to previously scheduled meetings, it will be necessary to consider additional dates and times to reconvene the meeting; and proposed May 25th, 27th, or 28th at 10:00 a.m..

XII. WITNESSES

Petitioner's Witnesses

Education Advocate

Respondent's Witnesses

Respondent presented no witnesses.

Witness Testimony

Education Advocate

The Education Advocate testified that the student presents with multiple disabilities, and is repeating the 9th grade. The Advocate also testified that according to the December 30, 2009 HOD DCPS was required to convene a MDT/IEP team meeting within 10 school days of the HOD; and discuss and determine the amount of compensatory education services the student is entitled to receive.

The Advocate testified that on February 9, 2009, DCPS convened a MDT meeting; and the SEC provided a summary of the student's progress, problems with literacy and writing, and reviewed the FBA and BIP. The Advocate also testified that the team discussed compensatory education services, and he agreed to discuss with parent the student's needs, and present a compensatory education plan, within five (5) days of the meeting. The Advocate testified that he discussed the student's needs with parent, and submitted a compensatory education plan to the Special Education Coordinator; and the parties agreed to reconvene on March 31, 2009.

The Advocate also testified that the MDT reconvened on March 31, 2009; and parent and the student attended the meeting. According to the Advocate the team reviewed the student's progress report, which reflects that he failed literacy and writing, and obtained a grade of "D"; and the student expressed difficulty with Algebra and that he requires assistance.

The Advocate testified that the team reviewed the compensatory education plan proposed by parent, with the DCPS Compliance Specialist. The Advocate testified that the proposed plan included 20 hours of mentoring to address the student's academic responsibilities; 20 hours of individual math tutorial, because the student failed Geometry; and 20 hours of tutoring in literacy and writing, because the student received a grade of "D", during the 1st and 2nd quarters of school. The Advocate testified that DCPS advised the team that it was unable to render a decision regarding the compensatory education plan proposed by Petitioner; and as a result a determination regarding compensatory education services for the student, was not rendered.

The Advocate concluded by testifying that there has been no further discussion or efforts made by DCPS to reconvene the MDT, since the March 31, 2009 meeting. The Advocate also testified that on April 30, 2009 DCPS proposed to convene a meeting, however, the meeting has not been held. The Advocate also testified that a DCPS Compliance Specialist attended the March 31, 2009 meeting, although his signature is not included on the attendance sheet.

XIII. DISCUSSION AND CONCLUSIONS OF LAW

ISSUE 1

Whether DCPS denied the student a free appropriate public education (FAPE), by failing to comply with the December 30, 2008 Hearing Officers' Decision (HOD)?

Petitioner represents that according to the December 30, 2008 Hearing Officer's Decision, DCPS was required to do, inter alia, reconvene the student's MDT/IEP team meeting within ten (10) school days and develop a compensatory education plan for the four month period the student failed to receive services. Petitioner further represents that as of this date, DCPS failed to comply with the HOD; by developing an appropriate compensatory education plan for the student.

Petitioner represents that there is a presumption of a denial of a free appropriate public education under the Blackman/Jones Consent Decree where DCPS failed to comply with "settlement agreements". *See also Hawkins v. District of Columbia*, Civil Action No. 07-0278 (JDB)(March 7, 2008) (In *Hawkins* the Court found that the Hearing Officer's determination was in error when he failed to find that DCPS had violated the findings of a previous Hearing Officer's determination).

Petitioner concluded that that the student was denied a FAPE, due to DCPS' failure to comply with the HOD; the student was retained in the 9th grade, struggles academically, and his behavior impacts his education. Petitioner also concludes that DCPS failed to render a decision regarding the student's compensatory education services at the March 31, 2008 MDT meeting, and advised the team that the information would be forwarded to the downtown office for a determination regarding compensatory education services, although the HOD ordered the team to determine the services.

Respondent represents that a MDT meeting convened on February 9, 2009, at which time the team agreed that the Education Advocate would discuss the student's needs with parent and submit a proposed compensatory education plan to DCPS within five (5) days of the meeting. Respondent also represents that on February 25, 2009, DCPS proposed a compensatory education plan, for the student; on March 31, 2009 the team discussed Petitioner's proposed plan; and on April 22, 2009, DCPS offered a counterproposal to Petitioner's proposed compensatory education plan.

Respondent also represents that a compensatory education plan must focus on the needs of the student, and Petitioner failed to present evidence that the student requires compensatory education services, in addition to the services included in the counterproposal.

Respondent concluded that although it failed to reach a conclusion regarding compensatory education services the student would receive, it attempted to reconvene a MDT meeting to decide the matter. Respondent also concluded that Petitioner failed to present evidence of harm to the student; DCPS proposed a counter plan to Petitioner's proposed compensatory education plan.

ANALYSIS

Although IDEA and governing regulations fail to provide Hearing Officer's enforcement authority in addressing an alleged failure to comply with a HOD or SA; it is clear that IDEA, at 34 C.F. R Section 300.507(a) and 300.503(a); and 20 U.S.C. Section 1400 et seq., grants Hearing Officers specific authority to hear complaints and decide ***any*** matters relating to the identification, evaluation, or educational placement of a child, or the provision of a free and appropriate public education to such child.

The Hearing Officer finds that issues which are the subject of a due process complaint and a Hearing Officer's Decision (HOD), are matters relating to the identification, evaluation, or educational placement of a child; and the provision of a free and appropriate public education to such child. Therefore, a public agency's *failure to comply* with a HOD, falls within the category of *"any matter"* relating to the identification, evaluation, or educational placement of the child, ***or*** the provision of a free and appropriate public education to such child," and as indicated, IDEA grants Hearing Officers specific authority to decide such matters. *See, IDEA, 34 C.F.R. Sections 300.507(a) and 300.503(a); and 20 U.S.C. Section 1400 et seq..*

Accordingly, the Hearing Officer finds that there exists a legally recognized theory under the IDEIA, upon which a Hearing Officer can grant relief through the administrative process, and address an alleged failure to comply with a HOD. Therefore, the issue regarding DCPS' alleged failure to comply with the December 30, 2008 HOD is a matter properly before this court, and appropriate for decision.

The record reflects that on May 13, 2008, the parties executed a Settlement Agreement (SA); and on November 24, 2008, Petitioner filed a due process complaint alleging that DCPS failed to comply with the SA.

On December 22, 2008 a due process hearing was held; and on December 30, 2008, the Hearing Officer issued a decision, ordering in part, the following relief:

(1) DCPS shall convene an MDT/IEP team meeting within ten (10) school days after the date of the Hearing Officer's decision, to review the findings of the evaluations, revise and update the student's IEP, as appropriate; in developing the IEP, include recommendations from the independent evaluations; and adopt the proposed behavior intervention program; and

(2) The IEP team shall discuss and determine the amount of compensatory education services the student is entitled to receive from October 15, 2008 until the date of the MDT/IEP team meeting.

According to the HOD, DCPS was required to convene a MDT/IEP team meeting no later than January 16, 2009, to review the findings of the evaluations, revise and update the student's IEP, as appropriate; in developing the IEP, include recommendations from the independent evaluations; adopt the proposed behavior intervention program; discuss and determine the amount of compensatory education services the student is entitled to receive from October 15, 2008 until the date of the MDT/IEP team meeting.

The record reflects that on January 6, 2009, DCPS issued a Letter of Invitation to parent and the Education Advocate proposing January 12, 2009 at 9:30 a.m., January 13, 2009, at 9:30 a.m., and January 13, 2009, at 11:00 a.m., for a MDT meeting to develop/review the student's IEP; review evaluation or reevaluation information; review records to support completion of services; discuss placement and compensatory education services; consider transition services needs of the student; and conduct a behavior plan review.

The record reflects that on January 12, 2009, Petitioner forwarded a letter to the Special Education Coordinator at indicating that due to such short notice of the dates proposed in DCPS' letter and previously scheduled MDT meetings, it will be necessary to consider additional dates and times to convene the meeting; and proposed January 21st, 22nd, or 23rd, at 10:00 a.m.., for the MDT meeting.

On January 27, 2009, DCPS issued parent a Letter of Invitation, proposing February 9, 2009 at 1:00 p.m., February 10, 2009, at 11:00 a.m., and February 13, 2009, at 11:00 a.m., to convene a MDT meeting, for the purpose of developing/reviewing the student's IEP, reviewing evaluation or reevaluation information, reviewing records to support the completion of services, discussing placement and compensatory education services, and considering transition services needs of the student.

On January 28, 2009, Petitioner forwarded a letter to the Special Education Coordinator at in response to DCPS' January 27, 2009 Letter of Invitation indicating that after a review of the dates and times proposed, the proposed date and time of February 9, 2009, at 1:00 p.m., was acceptable to reconvene the meeting.

On February 9, 2009, DCPS convened the MDT meeting. Participants included the Education Advocate, General Education Teacher, Special Education Teacher, and Special Education Coordinator. According to the MDT meeting notes, the Functional Behavior Plan was reviewed by the Social Worker, and the Behavior Intervention Plan was read.

The team discussed the student's tardiness, and inattentiveness; and the Education Advocate recommend a mentoring program for the student. The team decided that a copy of the Behavior Intervention Plan would be reviewed with the student's Counselor. The team agreed that the Education Advocate would discuss the student's needs with parent, and propose a compensatory education plan, within five (5) days of the meeting. The team also agreed to reconvene in 30 days to discuss the student's progress and compensatory education services.

On February 25, 2009, DCPS proposed a compensatory education plan, for the student; and at a March 31, 2009 MDT meeting, the team discussed Petitioner's proposed plan; and DCPS offered a counter proposal to Petitioner's plan on April 22, 2009.

The Hearing Officer finds that on January 6, 2009, exactly two (2) school days after school resumed from the winter break, and issuance of the HOD, DCPS issued a Letter of Invitation to parent and the Education Advocate; and Petitioner was unavailable, and proposed dates beyond the January 16, 2009 due date for convening the meeting.

The December 30, 2008 HOD also provides that DCPS shall provide a day for day extension for any delay caused by the parent, student, Counsel for the parent, or the parent's Education Advocate. The Hearing Officer finds that after January 6, 2009, DCPS made several attempts to reconvene the MDT meeting; and that any delay in reconvening the meeting was attributed to Petitioner, Petitioner's Attorney, and/or the Education Advocate. Therefore, DCPS is entitled to a day for day extension for any delay caused. It disingenuous for Petitioner to delay convening the meeting, and thereafter, file a due process complaint alleging that DCPS failed to convene the meeting, consistent with the December 30, 2008 HOD.

The record also reflects that DCPS proposed a compensatory education plan for the student on February 11, 2009, February 25, 2009, March 31, 2009, and April 17, 2009. The fact the Petitioner disagreed with DCPS' proposed compensatory education plan is not a basis for finding that DCPS failed to comply with the HOD, and failed to develop a compensatory education plan for the student.

In addition, Petitioner presented no evidence that at the February 9, 2009, or March 31, 2009 MDT meeting, the team failed to review the findings of the evaluations, revise and update the student's IEP, as appropriate, include in the IEP recommendations from the independent evaluations, or adopt the proposed intervention plan.

Based on the aforementioned, it is the Hearing Officers' decision that Petitioner failed to satisfy its burden by presenting evidence sufficient for a finding that DCPS failed to comply with the December 30, 2008 Hearing Officer's Decision.

Motion 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.

The court finds that Respondent's Motion for Directed Verdict is appropriate, because Petitioner failed to offer the minimum amount of evidence to prove their case; although DCPS presented no witnesses or evidence. The court concludes that as a matter of law, no reasonable jury could decide in Petitioner's favor.

XIV. ORDER

Based on the aforementioned it is on this 5th day of June, 2009, hereby:

1. **ORDERED**, that DCPS' Motion for Directed Verdict is **GRANTED**, and it is further

2. **ORDERED,** that this decision and order are effective immediately.

XV. APPEAL RIGHTS

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

Ramona M. Justice

Attorney Ramona M. Justice
Hearing Officer

Date Filed: *6-5-09*

cc: Attorney Kendra Berner, Office of the Attorney General
Attorney Domiento C.R. Hill: Fax: 202-742-2098