DC Office of the State Superintendent of Education
Office of Compliance and Review
Student Hearing Office

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STUDENT HEARING OFFICE
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Confidential

STUDENT[1], by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.	**HEARING OFFICER'S DETERMINATION** Date: June 3, 2009 **Hearing Officer: Wanda I. Resto, Esquire**

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. PROCEDURAL BACKGROUND

On April 22, 2009 , parent's counsel filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter "IDEIA"), 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to identify the Student as a student with a disability in need of special education services.

The Petitioner requests the Respondent be ordered to complete cognitive, academic and clinical testing of the Student or authorize Petitioner to obtain independent evaluations to be paid for by the Respondent; convene a multidisciplinary team meeting ("MDT") and determine the Student qualified under the Other Health Impairment ("OHI") as a result of the District of Columbia - Department of Mental Health ("DC DMH") diagnosis of attention deficit hyperactivity disorder ("ADHD"), develop an independent education program ("IEP") to address the Student's needs and provide with appropriate special education and related services. The Petitioner further requested that the Respondent be ordered to fund a full time special education private placement of Petitioner's choice. Additionally, the Petitioner requested that the Respondent provide a compensatory education plan.

On April 24, 2009, the Respondent filed a Motion pursuant to 34 C.F. R. §300.510 agreeing to waive the resolution session and requesting that the case proceed to a due process hearing on the merits.

On May 5, 2009, the DCPS filed a Response to the Parent's Administrative Due Process Complaint. [2] The Respondent alleged that the comprehensive psychological evaluation was conducted and that the Respondent may perform additional testing. The Respondent further alleged that based on the Student's assessment there was some behavioral concerns, however there was no relevant disability academically. The Student was referred to the Student Support Team ("SST") and a plan was developed to assess the Student's behavior in the school and classroom. The Respondent asserted the Student was assigned a dedicated aide. The Respondent further asserted that the strategies implemented by the SST have resulted in the Student making progress. Additionally, the Respondent asserted a meeting will reconvene in May 2009 to discuss the Student's evaluations. The Respondent claims the Student has not been denied a FAPE.

The Hearing Officer held a pre-hearing conference call for the above reference matter with both counsels on May 13, 2009 at 3:30 PM. The Petitioner reiterated her claims as plead. The Respondent was not prepared for the discussion.

A May 13, 2009 Order required the Petitioner to demonstrate at the May 27, 2009 hearing that the Respondent had knowledge or should have had that the Student required special education services, that the Respondent failed to provide services and that the Student or the Petitioner were harmed. The Petitioner had to provide evidence that the placement offered by the Respondent is not

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[2] The document was not in the file during the pre-hearing conference and Counsel was not prepared to discuss the Response at the Prehearing Conference call.

appropriate and how the Petitioner's proposed placement is appropriate.

The Respondent was ordered to demonstrate that it acted appropriately when it decided to maintain the Student Support Team ("SST") process instead of referring the Student for special education services. The Respondent must also provide evidence that the Student has been provided a FAPE.

The Petitioner was reminded that to sustain the request for a compensatory education award the Petitioner must prove (1) that as a result of Respondent' violation of the IDEIA, Petitioner suffered an educational deficiency, (2) that but for the violation, the Student would have progressed to a certain academic level, and (3) that there exists a type and amount of compensatory education services that could bring the Student to the level the Student would have been but for the Respondent's violation. The Petitioner has an obligation to establish the need and reasonableness of the amount of compensatory education requested and how the hours will be integrated into the Student's current educational program.

A hearing was held on May 27, 2009. The Petitioner presented a disclosure letter dated May 20, 2009 to which ten documents were attached, labeled P-1 through 10 and which listed five witnesses. Five witnesses testified –the foster parent, social worker, tutor, teacher and representative of the private school. The Respondent presented a disclosure letter dated May 20, 2009 identifying twelve witnesses and to which seven documents were attached, labeled DCPS 1 through 7. Two witnesses testified – the special education coordinator and the school psychologist. The documents were admitted without objection, with exception of P-11 which was objected by the Respondent because it was not timely. The Hearing Officer overruled the objection and allowed the document into evidence because the writer was at the hearing and available for questioning.

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

II. ISSUE(S)

1. Did the Respondent fail to identify the Student as a student with a disability in need of special education services?
2. Has the Respondent denied the Student a FAPE?
3. Is the Student entitled to a full-time special education private placement?
4. Is the Student entitled to a compensatory education award?

III. FINDINGS OF FACTS

1. Both the Petitioner and the Student reside within the District of Columbia. The Student is enrolled in a DCPS for the 2008/2009 school year.[3]

2. The Student has been living with the Petitioner for the past two years. The Student does not have behavior problems at home. The Petitioner received calls at the beginning of the school year approximately once or twice a week because the Student was acting out in school and recently he does not receive calls. The Student has a tutor who goes with him to school and helps him manage his behavior. The Foster parent believes the Student needs smaller classes, he needs more attention and seems like it can handled the Student.[4]

3. The mentor gets the Student from home at approximately at 7:50 AM and accompanies him to school until the end of the class day. During the day the Student has science, writing, or library assignments. The Student requires redirection to get work done, and does not participate in the class. The Student receives Math worksheets, however, a class has not been taught. The Student rarely completes his work and must be taken out of the classroom to get some work done. The Student has a short attention span; he usually needs to step out of the classroom 10 minutes of every hour, within a 7 hour school day the Student is approximately 2 to 3 hours in class. The Student's current placement is not working he is disruptive, and not willing to do what he's told. He cannot work with other students around. The Student does not fit with other students in the class and has low self esteem. The mentor is assigned to help students progress educationally and with behavior problems at school. [5]

4. At the beginning of the school year the Student was having problems adjusting. He engaged in attention seeking behavior like lying and sleeping in class. The Student was completing less than 35- 50% of his work. The curriculum for fourth grade is math, fractions, adding and subtractions. The Student was transferred from another school and the teacher did not have much information available about the pass classroom performance.[6]

5. The social worker has worked with the Student since September of 2008. She visited the school once per month early in the morning. She has seen the Student angry, defiant, hyperactive, with low frustration tolerance, and acting out throughout the school year. At times of her visit, staff at the front desk commented that the Student is not having a good day because he had been removed from class, the lunchroom or because his behavior was out of control. Between September of 2008 and February of 2009 there were calls once or twice a week, to pick up the Student from school given that he was acting out. Since February 2009 there have been only one or two calls. On November 26, 2008, she wrote a letter to Mr. DelJuna a Mental Health professional at school expressing concerns with the Student's behavior and the school's ability to handle the Student's emotional and educational needs. The letter requested a psychological and psycho-educational testing.[7] In January of 2009 a Judge ordered a Student Support Team meeting no later than February 13, 2009 to determine what evaluations are necessary and ordered a psychological testing of the Student. The Order indicated that the

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[3] P#1 Due Process Complaint dated April 15, 2009

[4] Testimony of the Foster father.

[5] Testimony of the mentor.

[6] Testimony of the general education fourth grade teacher.

[7] P 11 November 26, 2008, Letter requesting evaluation from the Social Worker.

requests for evaluations were previously made to the school without avail.[8] In March of 2009 the psychiatric evaluation was given to the school and it has not been discussed. She did not ask at the April 17, 2009 to discuss the psychiatric evaluation because the Respondent wanted to wait until the psychological evaluation was completed. The parties discussed the Student's progress with his one –to- one tutoring and agreed that another meeting would take place in May 2009.[9]

6. The Student was assessed by the Psychologist in February 2009. The Student was administered the Connors rating scale to determine if a characteristic for attention deficit hyperactivity disorder ("ADHD") was present and it reflected that the Student's behavior was more severe in class than at home. The Student's ratings supported attention deficit disorder ("ADD"). The Student functions at low average cognitive level, his visual and motor skills are consistent with his cognitive development. She reviewed the March 2009 psychiatric evaluation, the 2004 psychological evaluation, and the April 2009 educational report. The Student lacks focus, has an inability to complete work, is aggressive, distracted, uses profane language, and is oppositional defiant. There were classroom interventions prior to the student support team ("SST") meeting the Student was provided with a daily behavior chart, contracts, proximity sitting and conferences with the Petitioner for six months. The Student is in a new school and he needs to prove who he is. Before the Student can be referred for evaluations it was important to see the intensity and the frequency with which the Student required services. She would have asked for a functional behavior assessment to determine what the behavior was, and why the behavior was occurring prior to referring the Student for special education assessments. There were ongoing meetings because of behavioral concerns. The Psychologist acknowledged that a Student with severe frequent temper tantrums, not doing his work, definite and refusing to comply with teachers and other adults should have been referred. The educational evaluation took several months because she was waiting for information from the teacher or from the Foster parent and sometimes the rating scales provided information that required that another assessment be performed. The Student's behavior is consistent with ADHD and he recently started taking medication; she was waiting to see if the medication worked before moving into another strategy. She observed the Student three or four times in a classroom; he was ignoring his aide and name calling the teacher. She also observed the one–to-one intervention with the designated aide appears to have made an impact on the Student's aggressive social interactions, but his attention seeking behaviors and off task behaviors continue. The Psychologist indicated in her report that "the fact that the Student requires a one-to-one aide daily further suggests the need for structured intervention with a lower student-teacher ratio during a part of his instructional day. It further stated that the Student may be at risk for meeting the criteria for characteristics associated with Emotional Disturbance. It recommends a social-history assessment, a behavior management plan and a highly structured classroom with a low student-teacher ratio and psychological counseling twice a week for 30 minutes. [10]

7. The court ordered in January 2009 the Respondent to conduct a psychological evaluation of the Student. A student support team ("SST") meeting was convened in February of 2009 to discuss the concerns and a psychological evaluation was ordered. The Student was receiving services from other public agencies as a ward of the District and recently received a dedicated aide from the Lutheran Social Services. Before the Respondent can provide the same services the Student was required to have an IEP. She became aware of the Student's needs when the court ordered

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[8] P 8 January 27, 2009, Permanency Hearing Order, Superior Court of the District of Columbia (redacted).

[9] P-11 and the testimony of the social worker from the community based organization

[10] P 10 April 20, 2009, Comprehensive Psychological Evaluation Report and testimony of the School Psychologist.

the evaluation. Counsel for the Student was invited to a meeting in May 2009 to discuss the Student's eligibility . [11]

8. The Student's educational evaluation dated April 27, 2009 indicates that when compared to others in his grade, the Student's academic achievement is in the average range in Written Expression (fluency of production and quality of expression in writing) and Broad Written language (production of written text, including spelling ability, writing fluency, and quality of written expression). In Broad Reading the Student's overall standard score is within the low average range, his performance is limited to average on task requiring efficient operation of reading processes. His performance is very limited on tasks requiring reading decoding and the ability to identify words. Broad Math is within the low average range for his grade. His overall mathematics ability is limited; math tasks and calculation above grade 4.3 levels will be quite difficult for the Student. The Student's academic skills are limited. His academic skills and his ability of to apply those skills are both within the low average range. When compared to others at his grade level, the Student's performance is average in written language and written expression; and low average in broad reading, mathematics, and math calculation skills.[12]

9. The private school is a full time special education day program. The March 6, 2009, Psychiatric, the April 6, 2009 Psychological evaluation, the Student's educational record were reviewed and the Student was interviewed on May 20, 2009, he was accepted into the full time program. The Student was accepted although he does not have an IEP; the decision was based on the evaluations. The Student seems to fit with the program and the school would provide within 30 days a review to update the Student's program and create an IEP. The primary school serves emotionally disturbed, attention deficit hyperactivity disorder or oppositional defiant disorder diagnosed students. The classroom chosen has 8 students, one special education teacher and an assistant, each student has a cubicle to help them concentrate and focus. There are three licensed social workers on staff and counseling can be provided. The cost is approximately a year.[13]

10. The Petitioner did not provide any evidence that the District of Columbia Department of Mental Health ("DC DMH") diagnosis the Student with an attention deficit hyperactivity disorder ("ADHD").

IV. CONCLUSIONS OF LAW

FAPE Determination

The Respondent is required to make a FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)."

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[11] Testimony of the special education coordinator.

[12] Hearing Officer Exhibit 1, April 27, 2009, Educational Evaluation -The document was not available at the time of the hearing and the parties agreed that the document would be sent to the Hearing Officer after the conclusion of the hearing.

[13] Testimony of the private school representative.

Burden of Proof

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

The Respondent has not met its legal obligation under the IDEIA. Here is why.

The IDEIA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) requires the DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living.

Child find

The IDEIA at 20 U.S.C. 1412(a)(3), and its regulations at § 300.111, require that the Respondent have in effect policies and procedures to ensure that, among other things, all children with disabilities residing in the District of Columbia, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

The IDEIA regulations at 34 C.F.R. §300.301(a)(b) provides in pertinent part:

(a) General. Each public agency must conduct a full and individual **initial** evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for **initial** evaluation. Consistent with the consent requirements in §300.300, **either a parent of a child or a public agency may initiate a request for an initial evaluation** (emphasis supplied) to determine if the child is a child with a disability.

Pursuant to D.C. Code § 38-2501, initial evaluations are to be completed "within 120 days from the date that the student was referred for an evaluation." In conformity with *Scott v. District of Columbia, CA No.: 03-1672 (DAR) (D.D.C. 2006)* DCPS is required to identify and evaluate students in need of special education services and related services, whether or not the parents have made a request.

The credible evidence is that the Student was referred for evaluation as early as November 26, 2008 and should have been evaluated by March 26, 2009. The core of the IDEIA is not intended to make the Student in need of services wait until the timelines have expired before services are provided. School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead, school systems must ensure that "all children with disabilities residing in the State ... regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." *Reid v. District*

of Columbia, 365 U.S. App. D.C. 234, 401 F.3d 516, 519 (D.C. Cir. 2005) (internal citations omitted) (emphasis omitted); Branham v. District of Columbia, 427 F.3d 7, (D.C. Cir. 2005).

The Respondent had notice since mid 2008 that the Student required evaluations when the teachers and other witnesses recognized the behavior the Student was demonstrating as behavior that warranted a referral. The evidence is the Student was defiant, hyperactive, had behavior problems and was acting out in school and it took an Order from the Court for the Student to be evaluated. Under the current circumstances where the teacher, social worker, tutors all agreed the Student has behavioral problems, the Respondent should have acted without delay to evaluate. The SST process and subsequent delay in providing any services is an inappropriate way of addressing the Student's behavior and academic needs.

Once a child has been referred to an IEP team for an eligibility determination, to determine the educational needs of such child." 20 U.S.C. § 1414(a)(1)(C)(i). The Act requires the local educational agency to:

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents, that may assist in determining -- whether the child is a child with a disability . . . ;

(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability . . . ; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The IDEIA also requires, as part of the initial evaluation, an IEP team shall "review existing evaluation data on the child" and that, "on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine" whether the child is disabled. 20 U.S.C. § 1414(c)(1). Upon completion of the initial evaluation and determination of eligibility for special education, the team either indicates the reasons a student is ineligible or, if eligibility is found, provides a recommendation for an IEP to the parent. D.C. Mun. Regs. tit. 5, §§ 3006, 3007.

D.C. Mun. Regs. tit. 5, §3005.5 (2006) requires that "qualified evaluators [administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. tit. 5, §3005.5 (2006). All areas "related to the suspected disability" should be assessed, including: academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. tit. 5, § 3005.9(g) (2006). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. tit. 5, § 3005.9(h) (2006).

The School Psychologist suggested that the Student may meet the criteria associated with Emotional Disturbance and she recommended social-history and functional behavior assessments. These assessments must be done must be completed along any pending cognitive, clinical or academic evaluations necessary to identify the Student's special education needs.

Educational Placement

According to the IDEIA at 20 U.S.C. 1412(a)(5) the determination of the educational placement of a child with a disability should be done annually and must be based on a child's IEP. The IDEIA and its regulation at 34 C.F.R. § 300.17 requires the Respondent as the local state education agency,

to make certain that the educational placement, for the child with a disability within its jurisdiction, is able to implement the student's individualized educational program.

Additionally in an accordance with 34 C.F.R. § 300.116 of the IDEIA regulations when determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Also pursuant to 5 D.C.M.R. § 3013.1(e), Placement, "[t]he LEA shall ensure that the educational placement decision for a child with a disability is ...based on the child's IEP." This Student does not have an IEP; the determination of the placement must be based on the Student's unique needs, there pending evaluations and clarification on what if any is the specific disability classification of the Student.

Furthermore, the Petitioner choice of placement for the Student is a private full time special education program. Doubts were raised by the testimony of the Director that the placement at HRA is appropriate; the admission was made based on evaluations and without an IEP. The Student would be placed in the most restrictive environment and in a school which primary focus of services is directed to learning disabled students, which is not the Student's current disability classification. This is contrary to the IDEIA 20 U.S.C. 1412(a)(5) and it's regulation at Sections 300.114 through 300.118, consistent with the preference for educating children with disabilities in regular classes with appropriate aids and supports. The placement should be as close as possible to the child's home and made in conformity with the least restrictive environment provisions. With the information and the evidence in the current Complaint the Hearing Officer cannot determine that is an appropriate placement for the Student. A MDT must meet to discuss the updated evaluation, include the Petitioner, tutors and social worker in the discussion.

"Although the IDEA guarantees a Free Appropriate Public Education, it does not, however, provide that this education will be designed according to the parent's desires. The primary responsibility for formulating the education to be accorded a [child with a disability] and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parent or guardian of the child. Thus proof alone that loving parents can draft a better program than a state offers does not, alone, entitle them to prevail under the Act." *Shaw v. The District of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002).

The Petitioner did not prove that which offers a full time special education program is the appropriate placement for the Student. There are evaluations pending and the IEP must be created. The Student may meet the characteristics associated with Emotional Disturbance and requires a program to address ADHD. The elements required to make the placement decision based on the unique needs of this Student are still uncertain for a determination of a full time private placement to be awarded.

Compensatory education

The Respondent has denied the Student a FAPE. The Respondent's violation entitles the Petitioner to a compensatory education award determination to be made by the Hearing Officer. When there is a denial of FAPE a compensatory award should be granted. [14]

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14 *Mary McLeod Bethune Day Academy Public Charter School v. Bland Civil* Action No. 07-1223 (D.D.C. February 20, 2008)

The law requires the Petitioner to demonstrate the Student's specific educational deficits resulting from a loss of FAPE and the specific compensatory measures needed to best correct those deficits, if any.

This jurisdiction requires a compensatory award that would place the student in the same position he/she would have occupied but for the LEA's violation of the IDEA. *Reid v. District of Columbia, 401 F. 3d 516* (D.C. Cir. 2005) "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." Id. at 524.

Whichever path the court chooses, the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits. It rejected arbitrary approaches to the award of compensatory education.

At the hearing for purposes of establishing whether compensatory education is warranted, and if so, what type and amount of compensatory education is most appropriate. The Petitioner had also an obligation *inter alia* to argue the need and reasonableness of the amount of compensatory education requested and how the hours would be integrated into the Student's current educational program.

The Petitioner had the burden of showing (1) that as a result of Respondent' violation of IDEIA, Petitioner would have progressed to a certain academic level, and (2) that there exists a type and amount of compensatory education services that would bring Petitioner to the level Petitioner would have been but for the Respondent's violation.

The Reid decision demands substantial evidence of a link between the compensatory education sought and the expected educational benefit. The Petitioner had to offer an informed and reasonable exercise of discretion regarding what services the Student needs to elevate him to the position he would have occupied absent the school district's failures." The Petitioner failed to provide the hearing officer with the fact specific requirements establish in the pre-hearing order and *Reid*.

A Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides her/him with "insight about the precise types of education services [the student] needs to progress." *Branham v. D.C.*, 427 F.3d 7, 12 (D.C. Cir. 2005).

V. SUMMARY OF DECISION

The Petitioner proved the Student was not located and evaluated in a timely manner and was denied a FAPE. The Respondent will fund all pending cognitive, academic and clinical testing of the Student, including a social-history assessment and a functional behavior assessment. The Respondent will convene a MDT by July 31, 2009, along with the qualified MDT the invitees will include the Student's Social Worker, and Tutors to discuss the Student's special education needs, disability classification, discuss the pros and cons of a highly structured classroom with a low student-teacher ratio and the need for psychological counseling for the Student. At the MDT meeting the Respondent will create a behavior management plan for the Student and an IEP will be crafted if warranted. the Petitioner did not prove that is the appropriate placement for the Student or what compensatory education award the Student should be provided.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the Respondent has denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, The Respondent will fund independent all pending cognitive, academic and clinical testing of the Student, including a social-history assessment and a functional behavior assessment. The Respondent will convene a MDT by July 31, 2009, to discuss the Student's special education needs, disability classification, discuss the pros and cons of a highly structured classroom with a low student-teacher ratio and psychological counseling for the Student. At the MDT meeting, the Petitioner must be given an opportunity to present evidence towards the appropriateness of the placement she has chosen. The MDT will discuss the options in the DCPS system and non public options and document the pros and cons in the MDT notes.

IT IS FURTHER ORDERED, following the MDT/IEP meeting, the Respondent shall have five school days to issue a prior notice of placement to a DCPS school, and 20 school days to issue a prior notice of placement to a non public or private school.

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, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

This order resolves all issues raised in the Petitioner's April 22, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)

/s/WIRestorres **Date: June 3, 2009**
Wanda Iris Resto - Hearing Officer