

### **13. Litigating a Special Education Case**

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### Model State Complaint Form

If you believe that a public agency has failed to comply with the Individuals with Disabilities Education Act (IDEA) or with a requirement of District of Columbia law regarding special education under Part B of IDEA or a public agency or private service provider with regard to early intervention services under Part C of the IDEA, you may file a complaint to initiate an investigation of the matter. Should you need assistance completing this form, please contact the State Complaint Office (SCO) for sources to contact to obtain assistance.

**INSTRUCTIONS:** This form has been developed to assist you in filing a state complaint. You do not need to use this form to request a complaint investigation; however, unless indicated otherwise all of the information in this form must be included in a written request for a complaint investigation. Failure to provide all required information may result in a determination by the SCO that the complaint will not be investigated by the SCO. Requests for complaint investigations **MUST be signed and dated and filed with the SCO and, for IDEA Part B, a copy must be forwarded to the public agency at the same time the complaint is filed with the SCO.**

FOR OFFICE USE	Case No.	Assigned To:	Date Received:	Due Date:
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#### Complainant Information

Name of Complainant:	Date:
	Relationship to child, if alleging violations with respect to specific child <i>(Optional)</i> :
Address (Street, City, State, Zip):	Phone Number:
	Alternate Phone Number, if available <i>(Optional)</i> :
	E-mail, if available:

#### PART B (children 3 through 21) ONLY:

**Child Information**, if alleging violations with respect to a specific child.

Name of Child:	Date of Birth (MM/DD/YYYY, if known <i>(Optional)</i> ):
Address of the residence of the child(Street, City, State, Zip):	If the child is homeless, available contact information of the child:
Name of Parent or Guardian (if other than person filing complaint), if known <i>(Optional)</i> :	



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### STATEMENT OF COMPLAINT

**Directions: Please describe the alleged violation** (Number and list each alleged violation separately. Describe the violation and specific facts that relate to the violation. If possible, include dates, names and locations.) It is suggested, but not required, that you, the complainant, should also attach copies of any relevant documentation that supports the allegation(s) made in the complaint.

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**PROPOSED RESOLUTION (For Part B (children 3 through 21) only) (For Part C (infants and toddlers birth through 2, *Optional*)**

Directions: If alleging violations with respect to a specific child, please describe your proposed resolution of the problem to the extent known and available to you at the time the complaint is filed.

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# Office of the State Superintendent of Education

DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

## Mediation<sup>1</sup>

Would you be interested in mediation to try to resolve the complaint? ☐ Yes ☐ No

Would you like more information about mediation? ☐ Yes ☐ No

## Signature(s)

*By federal regulation, you must sign the request for a complaint investigation.*

Signature of the person(s) filing the complaint: \_\_\_\_\_

Date: \_\_\_\_\_

## Checklist

Before mailing/faxing/e-mailing your request for a complaint investigation, make sure the items below have been completed.

\_\_\_\_\_ You have completed all sections

\_\_\_\_\_ You have provided detailed information in regard to the allegation (attached additional pages if needed).

\_\_\_\_\_ You have provided a proposed resolution of the problem if alleging violations with respect to a specific child and to the extent known and available.

\_\_\_\_\_ You have signed your complaint.

## Please submit complaint to:

### BY MAIL:

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436  
BY FAX: (202) 741-0227

BY E-MAIL ATTACHMENT: [osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

<sup>1</sup> Mediation is a voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement. As an alternative to filing a state complaint or after a complaint is filed, mediation services, are available, at no cost to the complainant, through the OSSE's Student Hearing Office. Mediation is a voluntary process and both the complainant and public agency or private service provider must be willing to participate. Mediation will not delay the issuance of the final decision unless, in complaints alleging a violation of Part B, the complainant and the agency agree to extend the timeline to engage in mediation.



### **State Complaints**

Pursuant to federal (Individuals with Disabilities Educational Act IDEA '04) and local laws, the Office of the State Superintendent of Education (OSSE) receives and investigates written complaints regarding an alleged violation of the special education services provided to children in the District of Columbia. The content of the complaint can include any issue related to compliance with IDEA including, but not limited to: disagreements about the identification of a child with a disability, an evaluation of a child with a disability, the educational placement and/or services of a child with disability, and the provision of a free and appropriate public education (FAPE) to a child with a disability. Upon completion of a thorough investigation, a Letter of Determination is issued explaining whether the local school district is in compliance or is not in compliance with federal and local laws. If the district is not in compliance, then a corrective action plan is issued to ensure compliance.

The OSSE seeks to resolve issues and/disputes **early** that arise in the delivery of special education services to children with disabilities through various Alternative Dispute Resolution (ADR) mechanisms such as mediation, state complaints, and early intervention strategies of staff. The goal is to assist parents and school system staff in working collaboratively together to resolve their concerns early. In this manner children with disabilities can receive a free and appropriate education without interruption. Some of the ways in which staff achieves this goal include the following:

- Provide training/workshops for school district personnel regarding the benefits of early dispute resolution like mediation and state complaints
- Provide information to school district staff to ensure that they are up to date with legal mandates, compliance issues and best practices in other jurisdictions
- Provide orientation and technical assistance to school districts on effective ways to resolve disputes through early intervention strategies
- Assist school districts in complying with mandated legal responsibilities to ensure that they are in compliance with all of the provisions necessary to provide children with disabilities a FAPE
- Effectively investigate and process disputes and written complaints to ensure that parents and children with disabilities receive what they are entitled to under federal and local laws

For additional information regarding the State complaint process, please contact:

Office of the State Superintendent of Education  
Division of Special Education  
810 First Street, N.E. – 5<sup>th</sup> Floor  
Washington, D.C. 20002  
Phone: 202-727-6436 Fax: 202-741-0227



Office of the State Superintendent of Education



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

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# **DISTRICT OF COLUMBIA**

## **FORMAL STATE COMPLAINT**

### **POLICY & PROCEDURES**

**Revised November 2009**

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

## INTRODUCTION

The Individuals with Disabilities Education Act (IDEA), 34 CFR §300.151 through §300.153 require the State Education Agency, the Office of the State Superintendent of Education (OSSE)<sup>1</sup>, to adopt written procedures for the investigation and resolution of any complaint alleging that a public agency has violated a requirement of the IDEA.

The State Complaint Office (SCO) of the OSSE will investigate and resolve complaints that allege a violation of Part B of IDEA or the District of Columbia's laws and policies regarding special education. The IDEA, 34 CFR § 303.510 through § 303.512 also require the lead agency for Part C of the IDEA to adopt written procedures for resolving any complaint that alleges a violation of Part C of the IDEA by a public agency or private service provider. The OSSE is the lead agency for Part C in the District of Columbia. This policy and procedures is intended to govern complaints alleging violations of both Part B and Part C of the IDEA, unless indicated otherwise.

As required by IDEA regulations, 34 CFR § 300.151(a)(2) and 34 CFR § 303.510(a)(2), this document will be distributed to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures will also be available on the OSSE website (<http://www.osse.dc.gov>). In addition, the SCO will mail or e-mail a copy of these procedures to individuals and organizations upon request.

### **Complaints filed with the SCO should be directed to:**

#### **BY MAIL:**

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436

#### **BY FAX:**

Fax: (202) 741-0227

#### **BY E-MAIL ATTACHMENT**

**(See Section I of this policy for the procedures for e-mailed complaints):**

[osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

***NOTICE: All complaints must be signed and dated.*** Any questions regarding the State Complaint Policy and Procedures or requests for copies of this document should also be directed to the SCO by mail or fax as indicated above.

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<sup>1</sup> In compliance with federal law, including but not limited to the provisions of Title IX of the Education Amendment of 1972 (20 U.S.C. § 1681 et seq.), Titles VI and VII of the Civil Rights Acts of 1964 (42 U.S.C. § 2000d et seq., 2000e et seq.), the Age Discrimination Act of 1967 (29 U.S.C. § 621 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), the OSSE administers all state-operated programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color age, military service, disability or gender, except where exemption is appropriate and allowed by law.

**District of Columbia Office of the State Superintendent of Education**  
**State Complaint Office**  
**Procedures for Complaints Regarding Special Education**

Any individual or organization (“complainant”) may submit to the State Complaint Office (SCO) a written complaint that claims that any District of Columbia public agency, as defined in the glossary of this policy and procedure, has failed to comply with a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or the District’s laws and regulations regarding special education, including the identification, evaluation, educational placement of the child or the provision of a Free and Appropriate Public Education (FAPE) to such child. With respect to Part C of the IDEA, an individual or organization may file a written complaint that a public agency, as well as a private service provider, has not met the requirements of the IDEA or District of Columbia law regarding Part C.

A complaint alleging that a public agency in Part B matters, or a public agency or private service provider in Part C matters, has failed to implement a special education due process hearing officer decision resolving a due process hearing request will be reviewed and resolved by the SCO. Additionally, complaints alleging a failure to implement a settlement agreement resolving a due process hearing request may be reviewed and resolved through the State Complaint process but nothing herein shall delay or deny a party the right to seek enforcement of a settlement agreement in a court of competent jurisdiction.

**I. FILING A STATE COMPLAINT**

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Any individual or organization (including but not limited to individuals or organizations outside of the District of Columbia) may file a signed, written complaint with the SCO.<sup>2</sup> A model complaint form is attached to these procedures; however, this form does not have to be used to submit a complaint. The SCO will accept complaints submitted by mail or fax. A faxed complaint received for filing by 5:00 p.m. (Eastern Time) will be accepted for filing on that day. A faxed complaint received after 5:00 p.m. (Eastern Time) will be accepted for filing on the next business day. The SCO will also accept complaints submitted by e-mail. However, a complaint submitted by e-mail must be signed, scanned, and attached to an e-mail to enable receipt of a signed complaint. **(Electronic or digital signatures are NOT accepted at this time.)** A complaint submitted by e-mail will be deemed filed/received when it arrives at the SCO, except that e-mailed complaints that arrive at the SCO after 5:00 p.m. will be deemed filed/received on the next business day.

**BY MAIL:**

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002

Telephone: (202) 727-6436

**BY FAX:**

Fax: (202) 741-0227

**BY E-MAIL ATTACHMENT:**

[osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

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<sup>2</sup> Complaint(s) submitted by an organization must be signed by an individual authorized to represent the organization.

An individual who is unable to file a written complaint by mail, fax, or e-mail may contact the SCO for further assistance. The SCO has a maximum of 60 days after a complaint is filed to investigate the allegation(s) and issue a final written decision.

1. Under Part B of IDEA, the complainant filing a complaint must forward a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the SCO. The SCO will not investigate complaints alleging violations that occurred more than one (1) year prior to the date that the complaint is received by the SCO.
  - a. For complaints involving a District of Columbia Public School (DCPS), a copy of the complaint should be submitted to the DCPS Central Office.
  - b. For complaints involving charter schools, contact the respective charter school or SCO to determine where to submit a copy of the complaint.
  - c. For complaints involving any other education agencies, contact the respective agency for further information.
2. Under Part C of IDEA, the complainant filing a complaint must forward a copy of the complaint to the public agency or private service provider serving the child. The one year limitations period for complaints regarding Part B is not applicable to Part C. For complaints alleging a violation of Part C, the SCO will investigate complaints alleging violations that occurred more than one (1) year prior to the date the complaint is received by the SCO if a longer period is reasonable because the alleged violation continues for that child or other children, or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

A complaint regarding Part B must include:

- a. A statement that a public agency has violated a requirement of Part B of the IDEA and/or a requirement of District of Columbia law regarding special education;
- b. The facts on which the statement is based;
- c. The signature and contact information for the complainant; and
- d. If alleging violations with respect to a specific child,<sup>3</sup> the complaint must include:
  - i. the name and address of the residence of the child;
  - ii. the name of the school the child is attending;
  - iii. in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;
  - iv. a description of the nature of the problem affecting the child, including facts relating to the problem; and
  - v. a proposed resolution to the problem to the extent known and available to the party at the time the complaint is filed.

A complaint regarding Part C must include:

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<sup>3</sup> If a complaint regarding a specific child is filed by someone other than the child's parent or an eligible adult student to whom rights under Part B of the IDEA have transferred pursuant to the IDEA and District of Columbia law, the SCO will notify and provide copies of the complaint and any relevant correspondence to the parent of the child or eligible adult student.

- a. A statement that a public agency, or private service provider has violated a requirement of Part C of the IDEA and/or a requirement of District of Columbia law regarding early intervention services;
- b. The facts on which the statement is based; and
- c. The signature and contact information for the complainant.

It is encouraged, but not required, that the complainant attach copies of any relevant documentation that supports the allegation(s) made in the complaint.

## **II. COMPLAINT PROCEDURES/RESOLUTIONS**

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### Initiation of a Complaint Investigation

1. Upon the filing of a complaint, the SCO will assign an investigator to take responsibility for the complaint.
2. If the SCO determines that the complaint does not meet the requirements in Section I, the SCO will not investigate the complaint but will notify the complainant of the basis for the SCO's determination. The complainant may re-file, if desired. Re-submitted complaints will be treated as a new complaint.
3. If a complaint is received that is the subject of a due process complaint or contains multiple issues of which one or more are currently the subject of a due process complaint, the SCO will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. The SCO will notify the complainant and the relevant public agency or private service provider of any issues that will be set aside until the conclusion of the hearing. The SCO will investigate those issues that are not the subject of a due process complaint using the timeline and procedures in this policy.
4. If an issue raised in the complaint has previously been decided through a due process hearing involving the same parties:
  - i. The due process hearing decision is binding on that issue; and
  - ii. The SEA will inform the complainant to that effect.
5. If the SCO determines that an investigation will **NOT** be conducted:
  - a. The SCO will send a notification to the complainant; and
  - b. A copy of the notice will be forwarded to the relevant public agency or private service provider.
6. If the investigator determines that an investigation is warranted, the SCO will take the following action:
  - a. The SCO will send a written notification of receipt of the complaint to the complainant, along with copies of the Procedural Safeguards Notices for Part B and/or Part C. The written notification will include the date that the complaint was filed with the SCO, the individual or organization that filed the complaint, and the issue(s) raised in the complaint that will be investigated. See Section V regarding the process and procedures for the investigation.

- b. The SCO will send a notice as described below, along with a copy of the complaint, to the public agency or private service provider involved, with a request for a written response to the alleged violation(s) and supporting documentation. The notice will:
  - i. include the date that the complaint was filed with the SCO, the individual or organization that filed the complaint, and the issue(s) being addressed;
  - ii. provide an opportunity for the public agency or private service provider to include in its response to the complaint, at the discretion of the public agency or private service provider, a proposal to resolve the complaint;
  - iii. provide an opportunity for the public agency or private service provider to include in its response to the complaint a statement that the public agency or private service provider will voluntarily engage in mediation consistent with 34 C.F.R. § 300.506 with the complainant;
  - iv. request the public agency or private service provider to review the issue(s) and determine action(s) to resolve the issue; and
  - v. request the public agency or private service provider to provide the child's relevant records or other documentation within a specified time frame.
- c. The SCO will send a copy of the notice provided in Section II.4.b. to the complainant.
- d. The complainant and the public agency may submit additional information about the allegation(s) in the complaint, either orally or in writing. If the complainant raises new issues unrelated to the complaint, the investigator will immediately notify the SCO. The new issue(s) is treated as a new complaint and must follow the same procedures as a new complaint.

#### Public Agency: Response to Complaint Requirements

The public agency or private service provider must provide a written response to the SCO within ten (10) business days upon receipt of the complaint from the SCO. The public agency or private service provider must simultaneously send a copy of the written response (not supporting documentation) to the complainant consistent with the confidentiality requirements in federal and District of Columbia law and regulation. If the complaint was filed by an organization or individual who is not the parent of a child or an eligible adult student, the public agency or private service provider must also simultaneously send the response to the parent or eligible adult student.

Failure to respond within the allotted ten (10) business days may result in a finding of noncompliance or sanctions against the public agency or private service provider in question.

An extension of the ten (10) day timeline for a response may be granted if necessary to allow the complainant and public agency or private service provider to resolve the complaint themselves. A request for such an extension must be submitted in writing to the SCO by the public agency or private service provider. Both the complainant and the public agency or private service provider will be notified by the SCO of any extension granted.

### **III. MEDIATION SERVICES**

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As an alternative to filing a state complaint or after a complaint is filed, mediation services, in accordance with the IDEA 34 CFR §300.506 and 34 CFR § 303.419 are available, at no cost to the complainant, through the OSSE. Mediation is a voluntary process and both the complainant and public agency or private service provider must be willing to participate. Either the complainant or the public agency or private service provider may initially suggest this option by asking the other party if they are

willing to mediate the disputed issue. If a complaint is filed, mediation will not delay the issuance of the final decision unless, in complaints alleging a violation of Part B, the complainant and the agency agree to extend the timeline to engage in mediation. For more information about mediation contact:

Office of the State Superintendent of Education  
Division of Special Education  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436  
**BY FAX:** (202) 741-0227  
**BY E-MAIL ATTACHMENT:** [osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

OR  
Student Hearing Office  
810 First Street, NE – 2<sup>nd</sup> Floor  
Room 2001  
Washington, DC 20003  
Phone: (202) 698-3819  
Fax: (202) 478-2956

#### **IV. EARLY RESOLUTION**

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If the complainant and public agency or private service provider are able to resolve the complaint within 60 days after the complaint is filed, and so inform the SCO, the SCO will close the case without issuing a decision.

#### **V. INVESTIGATION**

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Within 60 days following the SCO's receipt of a properly filed complaint that meets the requirements of Section I, the SCO will:

1. Conduct an independent investigation of the complaint which may include an on-site investigation, if necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency or private service provider with the opportunity to respond to the complaint, including, at a minimum:
  - a. at the discretion of the public agency or private service provider, submission of a proposal to resolve the complaint; and
  - b. an opportunity for the complainant and the public agency or private service provider to voluntarily engage in mediation.
4. Review all relevant information and make an independent determination as to whether the public agency or private service provider violated a requirement of Part B or Part C of IDEA or corresponding District of Columbia law;

## **VI. FINAL DECISION**

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Upon completion of the investigation and within 60 days of the filing of the complaint, the SCO will determine whether the public agency or private service provider complied with the applicable provisions of Part B or Part C of the IDEA and regulations in a final written decision. The SCO will:

1. Issue and send the final written decision to the complainant and agency involved that addresses each issue raised in the complaint, except those excluded from consideration because they are the subject of a pending due process hearing. The final decision will include the following information:
  - a. summary of complaint issues, parties involved, and the investigatory process;
  - b. findings of facts, based on the information received during the investigation;
  - c. conclusions based on federal and District of Columbia law regarding whether the public agency is in compliance with the law;
  - d. corrective action(s) ordered by the SCO if the public agency or private service provider is found in non-compliance;
  - e. time lines by which the public agency or private service provider is required to respond to the letter and initiate the corrective action(s); and
2. Indicate the date the file was closed and that a decision was made with respect to compliance.
3. If in resolving a complaint, the SCO determines that the public agency or private service provider has failed to provide appropriate services, the OSSE, pursuant to its general supervisory authority under the IDEA will address:
  - a. the failure to provide appropriate services, including corrective action to address the needs of the child (such as compensatory services or monetary reimbursement), and
  - b. appropriate future provision of services for all children with disabilities.
4. To facilitate effective implementation of the SCO's final decision, the SCO may provide assistance to the complainant and public agency or private service provider with any negotiations between those parties that may be useful for implementation of the final decision.

The SCO may extend the 60-day deadline:

1. If exceptional circumstances exist; or
2. In complaints alleging a violation of Part B, the complainant and public agency involved agree to an extension in order to engage in mediation.

## **VII. CORRECTIVE ACTION PLANS**

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1. If in resolving a complaint the SCO finds the public agency or private service provider has failed to provide appropriate services to address the needs of a child with disability, and to facilitate effective implementation of the SCO's final decision, the SCO may require the public agency or private service provider to access training and technical assistance by the OSSE or other public agency.
2. In some cases the SCO may require the public agency to develop a corrective action plan (CAP) and may also require that it be submitted to the SCO for approval.

3. The complainant may also submit comments concerning the plan. The SCO may require revisions to the CAP before approving it. A copy of all communications concerning the plan will be provided to the complainant.

#### **VIII. ENFORCEMENT**

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1. The SCO is responsible for tracking and ensuring that the final written decision, including any CAP, is enforced.
2. Upon verification of completion of all corrective action outlined in the CAP, the SCO will notify the public agency or private service provider. The SCO may, at its discretion, continue to monitor the public agency or private service provider and request additional action to ensure full compliance with federal and state regulations.

#### **VIII. WITHDRAWAL OF COMPLAINT**

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At any time prior to the date that the SCO issues the final decision regarding a complaint, the complaint may be withdrawn by the complainant. Upon withdrawal of a complaint, the SCO will not take further action regarding the matter and will close the file.

The withdrawal of a complaint must be made in writing. If the complaint is withdrawn, the investigator will send a written confirmation of the withdrawal to the complainant and a copy of the confirmation to the other parties. Withdrawal of a complaint does not preclude the complainant from re-filing the complaint at a later date.

#### **X. DISSEMINATION OF THE STATE COMPLAINT RESOLUTION PROCEDURES**

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This document will be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures will also be available on the OSSE website (<http://www.osse.dc.gov>). In addition, the SCO will mail or e-mail a copy of these procedures to individuals and organizations upon request. If you have any questions or need assistance regarding this State Complaint Policy and Procedures, please contact the OSSE-SCO.

## GLOSSARY

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<b>CAP</b>	Corrective Action Plan; plan of action to correct violations committed
<b>Complaint</b>	A signed, written document indicating that a District of Columbia public agency has failed to comply with a requirement of the Individuals with Disabilities Education Act (IDEA) Part B or with a requirement of the District's laws and regulations regarding special education (including the identification, evaluation, educational placement of the student(s) or the provision of a free and appropriate public education (FAPE) to such student(s)) or that a public agency or private service provider failed to comply with a requirement of IDEA Part C or of the District's laws and regulations regarding early intervention services.
<b>Complainant</b>	The student (aged 18-21 years inclusive or an emancipated minor), parent/guardian, advocate or other interested party or organization who has submitted the complaint to the Office of the State Superintendent of Education-State Complaint Office.
<b>Day</b>	Calendar day, unless specified otherwise
<b>DC</b>	District of Columbia
<b>DCPS</b>	District of Columbia Public School
<b>Due Process Hearing</b>	A formal adjudicatory hearing before an impartial Hearing Officer which is guaranteed under the IDEA and relevant state law and in which both parties may be represented by legal counsel and may present evidence and sworn testimony to be considered by the Hearing Officer.
<b>Due Process Complaint</b>	A request for a due process hearing that must be filed with the Student Hearing Office and copies served on all other parties.
<b>FAPE</b>	Free Appropriate Public Education, which is defined as an individualized education program, provided at public expense that emphasizes special education and related services designed to meet the unique needs of the student.
<b>IDEA</b>	Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., 34 CFR Part B and C.
<b>Mediation</b>	A voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement.
<b>LEA</b>	Local Education Agency. In the District of Columbia, LEAs also include public charter schools that have elected to be treated as an LEA for purposes of the IDEA.

<b>Private Service Providers</b>	A private, non-public entity that provides early intervention services under Part C of the IDEA.
<b>Public agency</b>	Any agency responsible for providing a free, appropriate public education (FAPE) to any child who is a resident of the District of Columbia. Public agencies include the SEA, LEA, educational service agencies, nonprofit public charter schools that are not otherwise included as LEAs or educational service agencies and are not a school of an LEA or educational service agency, and any other political subdivisions of the District of Columbia that are responsible for providing education to children with disabilities.
<b>OSSE</b>	Office of the State Superintendent of Education, the District of Columbia's state education agency
<b>SEA</b>	State Education Agency. In the District of Columbia the SEA is the Office the State Superintendent of Education.
<b>SCO</b>	State Complaint Office, where complaints are filed and investigated
<b>Special Education</b>	Specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disability.
<b>Student Hearing Office</b>	The office within the OSSE that coordinates that provision of due process hearings and mediation services.



# Office of the State Superintendent of Education



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

## Model State Complaint Form

If you believe that a public agency has failed to comply with the Individuals with Disabilities Education Improvement Act (IDEA) or with a requirement of District of Columbia law regarding special education under Part B of IDEA or a public agency or private service provider with regard to early intervention services under Part C of the IDEA, you may file a complaint to initiate an investigation of the matter. Should you need assistance completing this form, please contact the State Complaint Office (SCO) for sources to contact to obtain assistance.

**INSTRUCTIONS:** This form has been developed to assist you in filing a state complaint. You do not need to use this form to request a complaint investigation; however, unless indicated otherwise all of the information in this form must be included in a written request for a complaint investigation. Failure to provide all required information may result in a determination by the SCO that the complaint will not be investigated by the SCO. Requests for complaint investigations **MUST be signed and dated and filed with the SCO and, for IDEA Part B, a copy must be forwarded to the public agency at the same time the complaint is filed with the SCO.**

FOR OFFICE USE	Case No.	Assigned To:	Date Received:	Due Date:

### Complainant Information

Name of Complainant:	Date:
	Relationship to child, if alleging violations with respect to specific child ( <i>Optional</i> ):
Address (Street, City, State, Zip):	Phone Number:
	Alternate Phone Number, if available ( <i>Optional</i> ):
	E-mail, if available:

### PART B (children 3 through 21) ONLY:

**Child Information**, if alleging violations with respect to a specific child.

Name of Child:	Date of Birth (MM/DD/YYYY, if known ( <i>Optional</i> )):
Address of the residence of the child(Street, City, State, Zip):	If the child is homeless, available contact information of the child:
Name of Parent or Guardian (if other than person filing complaint), if known ( <i>Optional</i> ):	



DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

## This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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## Office of the State Superintendent of Education

DISTRICT OF COLUMBIA  
MAYOR ADRIAN M. FENTY

### Mediation<sup>4</sup>

Would you be interested in mediation to try to resolve the complaint? ☐ Yes ☐ No

Would you like more information about mediation? ☐ Yes ☐ No

### Signature(s)

*By federal regulation, you must sign the request for a complaint investigation.*

Signature of the person(s) filing the complaint: \_\_\_\_\_

Date: \_\_\_\_\_

### Checklist

Before mailing/faxing/e-mailing your request for a complaint investigation, make sure the items below have been completed.

\_\_\_\_\_ You have completed all sections

\_\_\_\_\_ You have provided detailed information in regard to the allegation (attached additional pages if needed).

\_\_\_\_\_ You have provided a proposed resolution of the problem if alleging violations with respect to a specific child and to the extent known and available.

\_\_\_\_\_ You have signed your complaint.

### Please submit complaint to:

#### BY MAIL:

Office of the State Superintendent of Education  
Division of Special Education - State Complaint Office  
810 First Street, NE – 5<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 727-6436

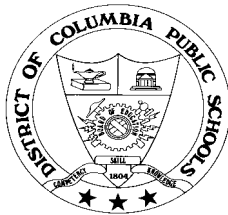
**BY FAX:** (202) 741-0227

**BY E-MAIL ATTACHMENT:** [osse.IDEAstatecomplaints@dc.gov](mailto:osse.IDEAstatecomplaints@dc.gov)

<sup>4</sup> Mediation is a voluntary process in which a neutral individual (mediator) assists the parties in having a full discussion and reaching an agreement. As an alternative to filing a state complaint or after a complaint is filed, mediation services are available, at no cost to the complainant, through the OSSE's Student Hearing Office. Mediation is a voluntary process and both the complainant and public agency or private service provider must be willing to participate. Mediation will not delay the issuance of the final decision unless, in complaints alleging a violation of Part B, the complainant and the agency agree to extend the timeline to engage in mediation.

# **DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

**Clifford B. Janey, Ed. D, Chief State School Officer**



## ***The Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures***

***A Handbook for Hearing Officers, the Local and State Educational Agencies,  
Parent / Child's Representatives, and the Student Hearing Office Staff***

**District of Columbia Public Schools  
State Enforcement & Investigation Division  
Special Education Programs  
Student Hearing Office  
825 North Capitol Street NE, Suite 8076  
Washington, DC 20002-1994  
Phone: (202)442-5432 / Fax: (202)442-5556**

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# SECTION I

## INTRODUCTION

- FACT** More than 11,000 children receive special education and related services in the District of Columbia.
- FACT** Parents and schools do not always agree about a child's special education identification, evaluation, eligibility, program, or placement.
- FACT** Children are best served when parents and educators work together.
- FACT** Federal special education law affords children, their parents, and educational systems certain legal rights when disputes arise, including the right to a due process hearing.

The information in the Standard Operating Procedures Manual for the Student Hearing Office is not intended as legal advice or as an interpretation of the laws and regulations governing special education in the United States. All individuals are urged to seek professional legal advice for guidance in understanding the laws, rules, and regulations that govern special education. The Student Hearing Office will provide information about any free or low-cost legal services available in the District of Columbia upon request. These guidelines will, however, help individuals understand the implementation of these laws in the District of Columbia and the steps for filing a due process complaint to obtain a due process hearing. This document also details procedures to be followed by the Student Hearing Office (“SHO”), the Independent Hearing Officers assigned to conduct due process hearings on disputed issues, and the representatives of the Local Educational Agency (LEA), the State Educational Agency (SEA), and parents/children. You are also invited to visit the District of Columbia Public

Schools (DCPS) website ([www.k12.dc.us](http://www.k12.dc.us)) for additional information about special education and other dispute resolution options. Unless otherwise specified, all days in this handbook are defined as calendar days.

## **SECTION II**

# **THE SPECIAL EDUCATION STUDENT HEARING OFFICE**

### **§ 200 PURPOSE**

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, requires each state and the District of Columbia to establish and maintain procedures to ensure that parents and children with disabilities have an opportunity to seek mediation and/or an impartial due process hearing to resolve disagreements over the identification, evaluation, educational placement, or provision of a free appropriate public education for students with disabilities. These Standard Operating Procedures are designed to implement the requirements of the IDEA and to give notice to the public. Copies of these procedures shall be maintained at all District of Columbia Public and Charter schools and a copy shall be provided without cost or delay to any person on oral or written request. If there is any conflict between the Standard Operating Procedures and the IDEA or the *Blackman/Jones* Consent Decree, the IDEA or the *Blackman/Jones* Consent Decree govern.

### **§ 201 GENERAL RESPONSIBILITIES**

- A. The due process system is administered in the District of Columbia by the Student Hearing Office in the State Enforcement & Investigation Division for Special Education Programs in accordance with the IDEA, 20 U.S.C. § 1400 *et seq.* and Title 5 of the District of Columbia Municipal Regulations

(5 DCMR § 3000, *et seq.*). The Student Hearing Office is responsible for the following:

1. Receiving the written due process complaint for requesting a due process hearing;
2. Scheduling, or coordinating with the Hearing Officer to schedule the hearing, within the statutory time limit;
3. Contracting and assigning an impartial Hearing Officer;
4. Notifying the parties to the hearing of the time and place of the hearing;
5. Providing and coordinating logistical support for the hearing such as adequate space, recording equipment, and an impartial and qualified interpreter who is not an employee of DC Public Schools, if needed;
6. Obtaining transcripts and audio recordings of hearings and retaining copies;
7. Providing copies of transcripts and recordings upon request;
8. Maintaining historical statistical data and archiving hearing files;
9. Processing pre-hearing matters;
10. Maintaining records of due process hearings;
11. Publishing Hearing Officer Determinations; and
12. Promptly and professionally respond to inquiries.

B. The Student Hearing Office shall maintain sufficient staff, equipment, and other resources and implement appropriate training, supervision, and other practices to ensure that hearings are held in a timely and professional manner. The Student Hearing Office administrative support staff will ensure:

1. Office staff promptly and professionally respond to inquiries and otherwise perform their duties competently.
2. Office space is sufficient to provide reasonable working space for the staff at all times and for the use of Hearing Officers in the period before, after and between hearings.
3. Hearings have adequate time and space to be conducted in the time reasonably requested by the parties or allotted by a Hearing Officer.
4. The telephone is answered promptly and professionally during normal business hours; in the exceptional situations in which the telephone cannot be answered promptly (e.g., 5 or more calls come in simultaneously), calls immediately roll over to an answering machine or voice mail system that has sufficient memory to handle all messages.

5. After normal business hours, calls immediately roll over to an answering machine or voice mail system that has sufficient memory to handle all messages.
6. All messages handled by the answering machine or voice mail are retrieved promptly and calls returned no later than the close of the next business day, unless exceptional circumstances prevent it.
7. Incoming communications and documents, including faxes, are received and documented promptly by date stamp; outgoing faxes are sent promptly, and the fax machine produces written transmittal confirmation for each fax attempted. Requests for copies of certified records, transcripts and audio recordings of pre-hearing conferences and hearings shall be kept in a log maintained by the SHO. Five-day disclosures, due process complaints, amended complaints, and HODs shall be logged into the ENCORE data base and tracking system.
8. The Student Hearing Office shall provide and maintain in working order a date stamp machine for use by persons submitting documents by hand and will provide personnel to date stamp documents received by mail. SHO personnel shall return date-stamped documents by mail no later than the next business day if self-addressed postage-prepaid envelopes are provided.
9. Case files for each Hearing Request are accurately maintained and include documentation of all correspondence, including fax transmittal confirmations, 5-day disclosures, and all documents from related cases involving the same student.
10. All notices, decisions, and other correspondence are transmitted in a timely manner to the parties.
11. The Student Hearing Office shall maintain and provide for staff and Hearing Officers reasonable working conditions.
12. Hearing Officers shall be adequately and timely compensated. Hearing Officer compensation shall be competitive with comparable jurisdictions and sufficient to ensure there are enough Hearing Officers to ensure timely hearings. In addition, Hearing Officers shall be provided reasonable assistance from the Student Hearing Office staff so that the Hearing Officers can function efficiently without undue burdens from clerical responsibilities.

## **§ 202                      SHO HOURS OF OPERATION**

The Student Hearing Office shall open at 8:30a.m. and remain open until 5:00p.m. Monday through Friday except for District of Columbia holidays.

## **§ 203 FILING OF PLEADINGS & DOCUMENTS**

1. Except as otherwise provided, all documents, pleadings, and motions shall be filed with the State Enforcement & Investigation Division for Special Education Programs, Student Hearing Office, 825 North Capitol St., N.E., Washington, D.C. 20002. All facsimile filings shall be sent to the following facsimile number: (202)442-5556, which is a dedicated fax line.
2. Electronic filing of documents is not permitted and will not be accepted for filing.
3. All documents received for filing by 5:00 p.m. Eastern Time will be accepted for filing that day. All documents filed after 5:00 p.m. Eastern Time, and all documents filed on any designated holiday, Saturday, or Sunday shall be deemed filed on the following business day, except as provided in ¶ 1 above.
4. Upon the filing of any pleading or motion an attorney is certifying that to the best of the his/her knowledge, information and belief, after an inquiry reasonable under the circumstances, that (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
5. Notice of Appearance of Legal Counsel. The filing of a Notice of Appearance or other pleading by an attorney on behalf of a party in conformity with the requirements of this section shall constitute the entry of an appearance by the party. All pleadings and other papers filed by the attorney shall set forth the name, full business or street address, telephone number, and fax number, if any, of the attorney. Subsequent notices, pleadings, and documents shall be served on the attorney of record or, if not represented, the party.

## **§ 204 SERVICE OF DOCUMENTS**

Unless otherwise provided by law, every letter or document, including every pleading, motion, or notification filed with the Student Hearing Office shall simultaneously be served on all parties or party representatives by the same method as the document was filed with the SHO, except that service by facsimile may be substituted for personal service.

## **§ 205 FAIRNESS AND IMPARTIALITY**

The staff of the Student Hearing Office is not part of nor under the supervision of any District of Columbia Public Schools division or staff office that will participate in the hearing or implement the decision of the Hearing Officer. In fairness to all parties, the Staff shall maintain neutrality and neither favor nor promote the interests of the litigants who participate in due process hearings, and will neither express nor imply an opinion about the outcome of a hearing to anyone seeking information regarding the substantive merit of any claim. The Staff may advise parents/students where to obtain low or no cost legal counsel and refer inquiries to other offices in DCPS.

## **§ 206 CIVILITY AND DECORUM**

All parties and counsel involved in a Special Education Due Process Hearing, including hearing officers, are expected to act with respect and decorum. Rude, offensive, and unprofessional conduct such as inappropriate language, angry outbursts and threatening statements directed at any other person or party is absolutely prohibited. All attorneys are governed by the D.C. Rules of Professional Conduct. The hearing officer has the responsibility for maintaining the integrity and orderly conduct of the hearing process, ensuring that the rights of all parties are protected, and maintaining an atmosphere conducive to impartiality and fairness at all times. When appropriate, the hearing officer may exclude any person, halt or suspend a hearing, consider a referral to Bar Counsel and/or summon appropriate law enforcement authorities to address any inappropriate conduct or misbehavior by any person that disrupts a hearing.

# **Section III**

## **THE DUE PROCESS HEARING**

### **§ 300 OVERVIEW**

A special education due process hearing is an administrative proceeding during which the parties are given the opportunity to present witnesses, documentary evidence, and oral and written argument in support of their respective positions on disputed special education issues. A Hearing Officer then issues a written decision concerning the matters in dispute.

## **§ 301 REQUESTING A DUE PROCESS HEARING**

### **§ 301.1 Filing a Due Process Complaint**

**A. What must be filed.**

To obtain a due process hearing, the complaining party must file a due process complaint. A party may not have a due process hearing until a party, or the attorney representing the party, files notice of a due process complaint.

**B. Who may file a due process complaint.**

Anyone (parent, student, Local Educational Agency (LEA), or the State Educational Agency (SEA)) may file a due process complaint. Typical reasons for filing a due process complaint by parents and students include, but are not limited to, disputes regarding:

1. Eligibility for special education services;
2. Identification of the child as a student with a disability;
3. Results of an evaluation or need for an evaluation;
4. The appropriate educational placement of the student;
5. Entitlement to, types of, and quantity of compensatory education services/products;
6. Appropriateness of the student's IEP;
7. Proper implementation of the student's IEP;
8. Transportation problems;
9. Disciplinary actions taken by the school; or
10. The provision of a free appropriate public education to a child with a disability.

**C. Typical reasons for which the Local Educational Agency (LEA) or State Educational Agency (SEA) may file a due process complaint to initiate a hearing include, but are not limited to, disputes regarding:**

1. A parent's refusal to consent to an initial evaluation or reevaluation;
2. A parent's refusal to consent to the release of a record;
3. Placement of a child with a disability in an interim alternative educational placement for disciplinary reasons; or
4. The need for an independent evaluation.

D. Notice

1. LEA: Parents initiating a complaint must provide notice of the due process complaint to the Local Educational Agency ("LEA"). For students in traditional public schools, non-public day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St., NE, Washington, D.C. 20002. If the student attends a charter school, the parents must file notice of the due process complaint with the principal or director of the charter school. LEAs or SEAs initiating a complaint must provide notice of the due process complaint to the parents.
2. Student Hearing Office: A written copy of the due process complaint must be filed with the Student Hearing Office, 825 N. Capitol St., NE, Washington, D.C. 20002. The complaint may be filed by mail, hand-delivery, or facsimile (unless the parent is unable to read or write or has a disability that prevents a written request). If a parent or guardian is unable to read or write, is not fluent in English or has a disability that prevents a written request, Student Hearing Office personnel shall assist the parent or guardian in filling out the complaint or refer the parent to a legal services program that handles special education matters without charge and is open for intake or Advocates for Justice in Education, the District's Parent Training and Information Center.
3. Model Form: A model "Due Process Complaint Notice" form created by the State Education Agency may be used to give proper notice. A copy of the model form is provided in the Appendix of this procedural manual. DCPS will provide a copy of the form upon oral or written request. DCPS shall maintain an electronic copy of the form on its website with an easily identifiable link to the form from its homepage. Copies of the form shall also be available on request by a parent at every District of Columbia Public School and Charter School and in the Office of Special Education, Office of the General Counsel, Student Hearing Office, State Complaint Office, the DCPS Care Center, Parent Resource Centers, Office of the

Superintendent, and the general office of the State Enforcement & Investigation Division. Nothing in these procedures shall be construed to require use of the model form so long as hearing requests filed in another manner comply with 20 U.S.C. § 1415(a)(7)(A) and § 301.2.B of these standard operating procedures.

## **§ 301.2 Contents of and Timeline for Filing the Due Process Complaint**

### **A. Timeline for Requesting Hearing: Two Year Limitation Period**

1. Unless otherwise provided by law or regulation and except as provided in § 301.2.B., the due process complaint must be filed not more than two (2) years after the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

### **B. Exceptions to the Two Year Statute of Limitation Period**

1. The timeline described in § 301.2.A.1 shall not apply to a parent if the parent was prevented from requesting the hearing due to:
  - (a) Specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
  - (b) The local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.
2. Nothing stated above should be construed to limit the right of the parties to rely upon other applicable exceptions to the statute of limitations period.

### **C. Contents of a Due Process Complaint. The Due Process Complaint must contain the following information:**

- a. The name and address of the child. In the case of a homeless child, available contact information for the child;
- b. The name of the school the child currently attends;
- c. A brief fact-based description of the problem or disagreement about the child's education;
- d. A proposed resolution of the problem to the extent known, and

- e. The signature of the parent or complaining party.

## **§ 302 REQUESTING A HEARING WHEN THE STUDENT ATTENDS A CHARTER SCHOOL**

The parents of a student who attends a charter school have the same right to request a due process hearing as the parent of a student who attends a traditional public school. If the Charter School is a named party, a copy of the due process complaint must be provided to the principal or director of the charter school at the same time that it is filed with the Student Hearing Office. The failure to issue notice of the complaint to a charter school that is a party will result in a delay in scheduling a due process hearing.

### **§ 302.1 Notice of Appearance For Charter School**

The filing of a Notice of Appearance or other pleading by an attorney on behalf of a charter school in conformity with the requirements of this section shall constitute the entry of an appearance by the charter school. All pleadings and other papers filed by the attorney shall set forth the name, full business or street address, telephone number, and fax number, if any, of the attorney. Subsequent notices, pleadings, and documents shall be served on the attorney of record for the charter school.

## **§ 303 RESPONDING TO A COMPLAINT**

### **A. Sufficiency of Complaint.**

A due process complaint shall be deemed sufficient unless the party receiving the due process complaint notifies the Student Hearing Office or assigned Impartial Hearing Officer (if a hearing officer has been assigned to the complaint) and the other party in writing within fifteen (15) days of receipt of the due process complaint that the receiving party believes the due process complaint does not meet the requirements of § 301.2.C. For purposes of this provision, and consistent with § 204 above, the receiving party shall be presumed to have received the complaint on the date received by the student hearing office.

1. Hearing Officer Decision on Sufficiency. Within five (5) days of receipt of notification that a party believes the due process complaint is legally insufficient, an Impartial Hearing Officer shall make a determination based on the face of the notice whether the due process complaint is sufficient to meet the requirements of 301.2.C. and shall immediately notify the parties in writing of that determination.
2. Amending the Due Process Complaint.
  - a. A party may amend its due process complaint only if:
    - i. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session meeting held pursuant to 20 U.S.C. § 1415 (f)(1)(B) and any controlling federal or local regulations; or
    - ii. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before the due process hearing begins.
  - b. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.
3. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint notice that meets the above requirements.

B. Response to Complaint by the Local Educational Agency

1. If the Local Educational Agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA shall, within ten (10) days of receiving the due process complaint, send to the parent a response that includes:
  - a. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
  - b. A description of other options that the IEP Team considered and the reasons why those options were rejected;

- c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
    - d. A description of the other factors that are relevant to the agency's proposed or refused action.
  - 2. A response by an LEA under this subsection B shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.
- C. Other Party Response to a Due Process Complaint
- Except as provided in section B. above, the party receiving a due process complaint must, within ten (10) days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint as set out at 20 U.S.C. 1415(c)(2).
- D. Parties should be cognizant of the 10 day statutory period for filing the response noted in § 303.C.1. Hearing officers may take the failure to so file into consideration in determining how to proceed on a case by case basis, considering the equities of the circumstances.

## **§ 304 PRE-HEARING MATTERS**

### **A. PRE-HEARING CONFERENCES.**

- 1. General Information about Pre-hearing Conferences. The purpose of a pre-hearing conference is to identify all ripe issues that are truly in dispute and that could benefit from a joinder of claims and remedies. Pre-hearing conferences are not mandatory, however, the Hearing Officer may order the conference or either party may request a conference. It permits the Hearing Officer to raise the issue of settlement or mediation if the circumstances suggest that exploration of this issue would be beneficial to the parties and not result in delaying resolution of the complaint. However, hearing officers shall not discuss the terms of settlement or mediate settlement discussions. Conducting a pre-hearing conference also provides the Hearing Officer the opportunity to advise all parties how the hearing will be conducted. Establishing ground rules, which

remove surprise from the proceedings, will result in a more efficient and focused evidentiary hearing.

The Hearing Officer shall not offer advice to any of the parties and/or their representatives, however, a Hearing Officer shall advise pro se litigants that they have a right to counsel and where free legal services may be obtained. The pre-hearing conference must be held in the presence of all parties concerned (either telephonically or face-to-face). Discussion with either party separately could result in an *Ex Parte* relationship that would taint the impartiality of the process and violate the Judicial Code of Conduct. No delay in the hearing date should result from a pre-hearing conference absent the consent of both parties or an Order of the Hearing Officer.

The pre-hearing Order should contain a confirmation of matters addressed during the pre-hearing conference including: (1) a statement of the issues to be resolved at the hearing, (2) the time, date, place, and other physical arrangements for the hearing, and (3) clarification of any procedural points including pre-hearing deadlines, and other various responsibilities of the parties. The Order can also help avoid unnecessary issues arising at the hearing, such as (1) a party's failure to appear, (2) a party's failure to meet a pre-hearing deadline, (3) a party not being prepared to proceed with the provision of evidence, (4) a party seeking a last-minute continuance where good cause is not shown, and (5) confirming special requests. The Order does not have to be a verbatim recitation of everything discussed in the pre-hearing conference; its chief purpose is to set forth the matters either stipulated to by the parties or ordered by the Hearing Officer.

Unless otherwise agreed to by the parties, the hearing officer should transmit the Order to the parties for receipt by each of them within 3 business days after the pre-hearing conference or at least seven business days prior to the hearing, whichever is earlier. The Order shall be sent by fax whenever possible and otherwise by mail to the parties. The Hearing Officer must also provide a copy to the Student Hearing Office.

2. Prior to a hearing, the hearing officer or a party may move for the setting of a pre-hearing conference. At the hearing officer's discretion, the parties shall be directed to appear, either in person or by telephone, at a specific time for a conference prior to a

hearing on the merits for the purposes of considering preliminary matters, including any of the following:

- a. Setting the date and amount of time for the hearing;
- b. The formulation or simplification of issues;
- c. Admission of certain assertions of fact or stipulations;
- d. The procedures at the hearing on the merits;
- e. To establish any limitation on the number of witnesses and the time to be allotted each party to present their case in chief;
- f. Consideration of any motions; and/or
- g. To discuss any other matter that may aid in simplifying the proceeding, disposing of any matter in controversy, up to and including settlement of the dispute.

3. Motions for pre-hearing conferences.

- a. Motions by parties for a pre-hearing conference, unless by consent, shall be filed with the SHO and served on opposing parties (by facsimile whenever possible) no more than ten (10) calendar days after the Notice of Hearing is issued by the SHO. All motions should include a proposed order. Consent motions for a pre-hearing conference shall be filed at least 20 days before the hearing date and include a proposed order.
- b. Any reply or opposition to a non-consent motion under 3.a shall be filed and served not later than 5 business days after receipt.
- c. Hearing officers shall rule on motions for a pre-hearing conference in sufficient time to allow the conference to be held and a pre-hearing Order issued within 3 business days after the pre-hearing conference or no later than 7 days before the hearing, whichever is earlier.

4. In exercising discretion under this provision, hearing officers shall not unreasonably deny a request for a pre-hearing conference.

The pre-hearing conference is not to be used in lieu of a resolution session.

5. To ensure implementation of this section, the SEA shall ensure that there are sufficient hearing officers to accommodate reasonable requests for pre-hearing conferences and that hearing officers are assigned to cases in a timely manner.
6. Action taken at the pre-hearing conference shall be on the record.
7. A written request to reschedule a pre-hearing conference must contain a statement that all parties have been consulted or the reason why all parties were not consulted and list any objection and shall set forth three alternate dates and times for rescheduling the conference. Unless consented to by the parties, continuances shall not be granted without a showing of good cause.

## **§ 400 DUE PROCESS HEARING**

### **§ 400.1 Scheduling the Hearing**

- A. If the LEA has not resolved the due process complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process complaint, the due process hearing must occur.
- B. The timeline for issuing a final hearing officer's determination begins at the expiration of this 30-day period. Pursuant to federal law, not later than 45 days after the expiration of the 30 day resolution period:
  1. A final hearing decision shall be issued by the hearing officer; and
  2. A copy of the decision shall be faxed when possible and otherwise is mailed to each of the parties.
- C. Exceptions:
  1. Waiver of the 30-day resolution period. The parties may jointly waive the resolution session. When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 days following the date of the waiver.

2. OGC determination that settlement discussions not productive. If the resolution session was unsuccessful, as soon as the OGC determines that further settlement discussions would not be productive, the OGC is obligated to immediately notify the SHO to schedule the case for hearing.

D. General Procedures

1. The Student Hearing Office and the parties shall work reasonably in scheduling the case for a hearing. The date and time of the due process hearing may be set during a pre-hearing scheduling conference at the discretion of the Impartial Hearing Officer assigned to preside over the case. However, if the date of the hearing is not set during a pre-hearing scheduling conference, the following general guidelines shall apply:
  - a. Upon notification that the due process complaint has not been resolved, (SHO will receive a Due Process Complaint Disposition Form), upon request by mutual agreement of the parties, or upon the expiration of the 30 day resolution period, whichever occurs first, the SHO Hearing Coordinator will schedule the matter for a due process hearing.
  - b. The complaining party may indicate on the Due Process Complaint Form the estimated amount of time that will be needed for the hearing. All hearings will be scheduled for two hours unless a party requests otherwise. Unless the requesting party agrees to a modification of their request for a particular time allotment, only Hearing Officers may deny or modify a party's request to alter the time allotted for a hearing. If the Student Hearing Office has good cause to believe the time request is unreasonable, the matter shall immediately be referred to the Chief Hearing Officer who shall convene a pre-hearing conference call with the parties' counsel within 3 business days for the purpose of scheduling the hearing and establishing the time allotment. Hearing Officers may deny or modify a party's request to alter the time only after allowing the requesting party an opportunity to be heard about the reason for the request, and may grant such request only after allowing the opposing party an opportunity to be heard.

- c. The parent, or the parent's attorney if the parent is represented by legal counsel, will be contacted and requested to provide 3 available days for scheduling the hearing, and the amount of time needed for the hearing. At this time, the complaining party is required to notify the SHO if the case will require more than 2 hours for the hearing.
  - d. The SHO will make every effort to schedule the hearing on one of the requested dates if one of the dates is available. If one of the 3 (three) dates is available, a Notice of Hearing will be sent by fax to every party/counsel who has a fax and by mail to any party/counsel who does not have a fax.
  - e. If none of the 3 dates are available, and if a date and time has not otherwise been determined by a pre-hearing conference, SHO will propose the next available open hearing date and shall issue a Provisional Notice of Hearing to the parties.
  - f. If any party objects to the provisional hearing date selected by the Hearing Coordinator, and no other date is agreed to between the parties, the matter will be referred to an Impartial Hearing Officer for a telephone pre-hearing conference, and the hearing officer shall render a final decision on the date and time of the hearing. Oral requests for a continuance will be ruled upon during the teleconference.
- 2. When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 calendar days following the date of waiver. See § 1007 for the procedures that govern expedited hearings.
  - 3. Not less than 10 business days before the hearing, the SHO will notify the parties of the hearing officer assigned to the case. This does not preclude the substitution of another hearing officer after the notice of the assignment as a result of unexpected emergencies or other exceptional circumstances.

## **§ 401      MOTIONS**

- A. A motion is a request that a Hearing Officer rule or make a decision on a particular issue prior to or during a hearing. Pre-hearing motions are normally heard by the presiding Hearing Officer, but may be heard by another Hearing Officer for expediency.
- B. The following are examples of issues that are appropriate for resolution through a pre-hearing motion:
  - 1. Whether good cause exists for continuance;
  - 2. The child's stay-put placement pending resolution of the dispute;
  - 3. Dismissal of a party or parties to the hearing;
  - 4. Recusal of the Hearing Officer;
  - 5. Clarification of the issues in dispute;
  - 6. Consolidation of multiple cases into one hearing.
- C. Procedures for Filing Motions:
  - 1. A party may obtain a ruling on a pre-hearing issue by submitting a motion in writing to the presiding Hearing Officer (with a copy to the Student Hearing Office).
  - 2. A copy of the motion must be simultaneously faxed when the party or counsel has a fax machine and otherwise mailed to all other parties. A certificate of service must be attached to the motion verifying that all other parties, or, if represented, their attorney of record, have been served with a copy of the motion. Failure to timely serve the motion to all other parties may result in denial of the motion or scheduling of a contested hearing on the motion at the discretion of the Hearing Officer.
  - 3. The party making the motion must set forth the specific facts supporting the motion and attach supporting affidavits, declarations or documents when appropriate.
  - 4. All motions must be filed no later than the 5-day deadline for disclosing evidence and witnesses. Any motion filed after that date shall be considered untimely, and may be denied at the discretion of the Hearing Officer without further consideration. This rule does not limit the Hearing Officer's discretion to grant a motion filed after the 5-day disclosure deadline upon a showing of good cause by the party for the late filing.

5. Any party wishing to respond to or oppose the motion shall file and serve by fax or mail as specified in 2 above a written response no later than 3 business days from the date the motion is filed with the Student Hearing Office or with the Hearing Officer if one has been assigned. Responses contesting facts shall so state and supply supporting affidavits, declarations or documents as appropriate. Failure to timely respond may be taken as concession of the motion. Failure to timely serve the response motion to all other parties may result in granting of the motion or scheduling of a contested hearing on the motion at the discretion of the Hearing Officer.
6. Requests that require an immediate ruling may be directed to the Chief Hearing Officer at any time prior to the appointment of the hearing officer who will be assigned to preside over the case, or at the pre-hearing conference. No motion shall be decided before the time periods specified above have passed. Hearing officers shall be cognizant of timelines when considering motions and shall decide motions so as not to delay hearings or necessitate requests for continuances.
7. If the parties disagree as to the facts relating to the motion, and both parties have supported their positions with appropriate affidavits, declarations, or documents, if necessary, the Hearing Officer may convene a pre-hearing conference to receive sworn testimony related to the disputed facts, or delay ruling on the motion until the hearing convenes to allow the parties to provide evidence relating to the disputed facts. In ruling on disputed facts, the Hearing Officer will not rely solely on statements made by an attorney or advocate representing a party.

## **§ 402 CONTINUANCES**

**It is the policy of the Student Hearing Office to render final hearing decisions within all stated federal and local rules. Continuances often cause unreasonable delays in the resolution or development of an appropriate educational plan for the student. The SHO discourages the use of continuances; the granting of an extension of time to render the final hearing decision is prohibited in the absence of good cause.**

- A. Continuation defined

1. A continuance is a request by one or more of the parties that a scheduled hearing, pre-hearing conference, or other event be rescheduled to a later date, and may request an extension of time for issuance of the final hearing officer's determination be granted. A party may only request a continuance for "good cause." In determining whether good cause exists for a continuance, the Hearing Officer will consider the facts supporting the request for the continuance, prior rulings, and the legal mandate for prompt resolution of special education disputes. The Hearing Officer may require documentation prior to granting a continuance request and an extension of time to issue a final determination.
2. Pursuant to the *Blackman/Jones* Consent Decree, there is a rebuttable presumption that good cause does not exist for a continuance sought by DCPS for any of the following reasons:
  - a. Unavailability of DCPS witnesses or counsel, unless DCPS has made a diligent effort to have such persons appear;
  - b. Hearing officer unavailability, unless SHO has made a diligent effort to have such persons appear;
  - c. The SHO's or Hearing Officer's decision to allot a different amount of time from that requested by the parent;
  - d. The SHO's failure to secure adequate physical space for the hearing, unless SHO made a diligent effort to schedule reasonable space under the circumstances known to them at the time of the hearing;
  - e. SHO failure to transmit in a timely manner those notices and documents which it is responsible for distributing;
  - f. Late arrival of the Hearing Officer or DCPS attorney to the scheduled hearing; or
  - g. SHO failure to provide the necessary recording equipment to adequately capture the entire proceeding.

B. Procedures for Requesting a Continuance:

1. A request or motion for a continuance shall be submitted to the Student Hearing Office in writing. Only hearing officers can grant a continuance of hearings that have already been set on the hearing docket.
2. A copy of the request shall be provided simultaneously to all other parties by facsimile if the party or counsel has a facsimile. If the other party does not have a facsimile the requesting party shall call

the other party or counsel and leave a voice mail message or leave a message with a responsible adult over the age of 18 and also mail a copy of the request. The requesting party shall make diligent efforts to confer with all other parties or counsel to seek agreement with the continuance. If the parties agree to a continuance, the agreed motion or request should be filed with the Student Hearing Office. In general, the parties' agreement to a continuance constitutes "good cause" to reschedule the hearing to another date and to extend the deadline for issuance of a final determination.

3. A certificate of service must be attached to the request or motion verifying that all other parties have been served and/or notified as provided above. Unless good cause is shown, failure to provide timely notice of the motion to all other parties shall result in denial of the motion or scheduling of a hearing on the motion at the discretion of the hearing officer.
4. Parties opposed to a continuance must submit a written objection to the continuance within 3 business days of the date the motion is filed with the Student Hearing Office and serve same or provide notice as provided for in 2 above.
5. All requests or motions for a continuance shall be submitted and filed no later than the 5-day deadline set for disclosing witnesses and evidence. Any request or motion for a continuance made or filed after that date shall be considered untimely, and may be denied at the discretion of the Hearing Officer without further consideration. This does not prohibit the Hearing Officer from granting a continuance submitted or requested after the 5-day disclosure deadline upon a showing of good cause by the party for the late request.
  - a. **Exception.** This rule imposing a deadline for filing a request or motion for a continuance does not apply to a request or motion that is based upon the unavailability of the student, the student's parent or guardian. Such requests or motions shall be considered timely filed even if filed after the disclosure deadline.
6. The Chief Hearing Officer shall rule on all requests or motions for a continuance unless the case has already been assigned to another Hearing Officer.

7. Until a ruling has been made on the continuance request, the parties should be prepared to proceed on the date and time for hearing indicated on the Notice of Hearing.
8. A Hearing Officer must rule upon all continuance requests within 5 business days of the request or sooner, if practicable. To comply with this provision, the Hearing Officer must issue a written determination whether to grant or deny the continuance stating the basis for the decision, including whether good cause was found. If the factual circumstances relating to the continuance are in dispute, the Hearing Officer may ask the parties to submit declarations, affidavits or other evidence, including witness testimony, which may be taken by telephone.
9. When the Hearing Officer grants the request, the hearing shall be rescheduled and the 45-day time limit will be extended for the duration of the continuance. The case must be reset to a date certain, with notice to all counsel and unrepresented parties, and the final hearing decision must be issued within the extended timelines.
10. No more than one (1) continuance per side shall be granted in any case unless the Chief Hearing Officer grants another continuance based on exceptional circumstances. All continuances shall be limited to ten (10) days, except by the agreement of the parties, or if the applicable Hearing Officer orders otherwise after review.
  - a. **Continuance granted.** The Hearing Officer shall issue an Order confirming that the continuance was granted and provide the parties with notice of the new hearing date. The order shall identify (1) the good cause grounds for granting the extension of time, and (2) the new date for the hearing. The extension of time for issuance of the final hearing determination will only be for the number of days covered by the extension. No open-ended continuance requests will be granted or allowed unless good cause is shown or the parties agree.
  - b. **Continuance denied.** If the continuance request is denied, the hearing will proceed as scheduled and the original deadline for issuance of a final determination will apply.
11. **Recessing a Hearing From Day to Day.** If a hearing cannot be concluded within the time allotted for the hearing, and the case

needs to be recessed from day to day, the hearing will be reconvened as soon as reasonably possible, but in no event shall the case be recessed for more than ten (10) business days, except upon the mutual agreement of the parties, or upon the finding of good cause for a longer delay. The deadline for the issuance of the final hearing decision will be extended only for the duration of the recess period.

12. **No continuance for DCPS failure to attempt Resolution Session.** In the absence of agreement of the parties, if DCPS fails to make any attempt to schedule a Resolution Session within the statutory fifteen (15) days, DCPS shall not be granted a continuance of the due process hearing, except under exceptional circumstances. The failure to notice and conduct a Resolution Session shall not constitute an exceptional circumstance.
13. **Expedited Hearings.** No continuance shall be granted on any case set for an expedited hearing unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the pro se parent's assent is knowing and willing.

## **§ 500 PREPARING FOR THE HEARING**

In preparing for a hearing, a party must not only determine what issues need to be addressed by the Hearing Officer but also arrange to provide evidence to support the party's position on those issues during the hearing.

### **A. Five (5) Day Disclosure Rule.**

1. At least five business days prior to a scheduled due process hearing, each party must disclose and provide to all other parties and the Student Hearing Office copies of all evidence which the party intends to use at the hearing. This rule requires specific disclosure of:
  - a. All documents and tangible things the party wants admitted into evidence for the Hearing Officer to consider;
  - b. The names, addresses, and telephone numbers of all witnesses the party intends to call to testify during the hearing; and

- c. All evaluations completed by that date and recommendations based upon the offering party's evaluations that the party intends to use at the hearing.
2. A party who does not receive adequate prior disclosure of evidence may ask the Hearing Officer to exclude the evidence from the hearing. It is within the discretion of the Hearing Officer to determine whether the evidence will be excluded.

## **§ 600 THE HEARING OFFICER**

### **§ 600.1 Authority and Responsibilities**

The Hearing Officer has the authority and responsibility to conduct the hearing with integrity and dignity; ensure the rights of all parties are protected; rule on procedural matters; take actions necessary to complete the hearing in an efficient and expeditious manner; to be fair and impartial, and to render a final independent administrative decision. The Hearing Officer has additional specific authority to:

1. Administer oaths or affirmations and question a witness on the record.
2. With the consent of all parties to the hearing, request that conflicting experts discuss an issue with each other while on the record.
3. Visit the proposed placement site when the physical attributes of the site are at issue.
4. Call a witness to testify at the hearing if all parties to the hearing consent to the witness giving testimony, or if the hearing is continued for at least five days prior to the witness testifying.
5. Order that an impartial assessment of the child be conducted (the cost of which will be paid by the school system).
6. Restrict the number of witnesses and limit the length of their testimony, provided such limitations do not prohibit a party from introducing relevant material and competent evidence.
7. Ask questions of counsel and parties in order to fully develop an appropriate record.

Hearing Officers have discretion in managing a due process hearing. Hearing Officers may have individualized procedures or rules concerning the handling of documents, exhibits, witnesses and the like. Such preferences shall be expressed in writing and made available upon request by the Student Hearing Office, and posted with timely updates on the DCPS website.

### **§ 600.2 Qualifications of Hearing Officers**

Impartial special education hearing officers are not employees of the DC Public Schools. They are private attorneys who have qualified to serve as hearing officers and who have executed a contract with the DC Public Schools for that purpose. The Student Hearing Office will assign impartial Hearing Officers to cases on a rotating basis. Hearing Officers are selected based on their academic achievement, background in special education and special education law, professional experience, writing ability, and personal qualities. All Hearing Officers are members in good standing of the District of Columbia Bar, have at least five years of active legal experience as an attorney, and have received special training in conducting administrative hearings. Hearing Officers also receive training in special education laws, regulations, procedures, and programs.

The Student Hearing Office shall also maintain a statement of the qualifications of each person who serves as a Hearing Officer and make it available to the public without charge or undue delay upon request.

To ensure impartiality, every Hearing Officer is held to the American Bar Association's Code of Judicial Conduct. Additionally, no Hearing Officer may be employed by DCPS or any agency or organization involved with the care or education of the child in the case, have any other professional or personal interest that would conflict with his or her objectivity in the hearing, or have a prior involvement with the child. A person who otherwise qualifies to conduct a hearing is not an employee of DCPS solely because he or she is paid by DCPS to serve as a Hearing Officer. Additionally, a Hearing Officer may not be employed by or represent schools or parents in any manner in any jurisdiction, nor be an employee of any parent rights or disability rights agency or organization. A Hearing Officer must decline an assignment or ask to be recused as soon as a conflict is known .

### **§ 600.3 Ex Parte Communications Prohibited**

A Hearing Officer may not communicate with either party or counsel about substantive matters in the case without the knowledge and/or participation of the other party(ies) or counsel when the party is represented. This prohibition does not include communication regarding scheduling. If an unrepresented parent is uncertain about what matters may or may not be discussed, they may ask the Hearing Officer what is appropriate. Especially when a parent or student is not represented, a Hearing Officer shall, to the extent possible, without becoming an advocate, assist the unrepresented party in developing the record. Counsel seeking clarification from a Hearing Officer shall always involve the other party's/parties' counsel.

### **§ 600.4 Disqualification of Hearing Officer**

The Student Hearing Office shall ensure that the Hearing Officer assigned to a particular hearing is fair and impartial. The Hearing Officer shall disqualify him/herself from presiding over any case in which the Hearing Officer has a personal or professional interest which might conflict with the Hearing Officer's objectivity in the hearing. If a Hearing Officer is recused, the Student Hearing Office shall appoint another Hearing Officer as a replacement.

#### A. PROCEDURES FOR DISQUALIFYING A HEARING OFFICER

1. Any party to a hearing may challenge the assignment of a particular Hearing Officer. If any party to the hearing objects to the assigned Hearing Officer based on conflict of interest, bias or other reason, the objection shall be presented to the Hearing Officer in writing not less than five (5) business days prior to the date of the hearing.
2. If any party to the hearing objects to the participation of the assigned Hearing Officer for any reason except bias after the five-day disclosure, the Hearing Officer shall use discretion in determining whether to disqualify him/herself from the proceedings. The Hearing Officer assignment will be changed if the Hearing Officer agrees.
3. The Hearing Officer shall issue a written ruling on any objection to their participation. The written objection of any party to the participation of the Hearing Officer and the subsequent written ruling by the Hearing Officer shall preserve the issue for appellate review.
4. No objection to the participation of a Hearing Officer shall be raised for the first time at the hearing itself, unless the grounds for such objection first became known after the deadline for filing the request for recusal or at the time of the hearing.
5. All requests for recusal based on allegations of bias shall be reviewed by the Director of the SHO or an impartial and independent person, designated by the Director of the SHO, who meets the qualifications required for a hearing officer outlined above. In the event that the allegation of bias is substantiated, or upon a determination that it is in the best interests of the student and the parties, the Student Hearing Office shall assign a different Hearing Officer to the case within 2 business days.

## **§ 700                    HELPFUL INFORMATION ABOUT ADMINISTRATIVE HEARINGS**

### **§ 700.1                General Information**

Hearings will normally be held during regular business hours. Hearings may be scheduled outside regular business hours upon request. Hearings will not be scheduled on weekends or holidays without the consent of all parties. An impartial Hearing Officer assigned by the Student Hearing Office on a rotating basis will conduct the hearing.

### **§ 700.2 Purpose**

The purpose of the hearing is to allow all parties to present evidence supporting their positions and to explain to the Hearing Officer why they believe they should prevail on the issues in the hearing.

### **§ 700.3 Failure to Appear**

If the party who requested the hearing (complainant) does not appear at the hearing, the hearing may be dismissed by the Hearing Officer. If the party who did not request the hearing (respondent) does not attend the hearing, the hearing may proceed without that party and a decision will be rendered based upon the evidence presented during the hearing. If for some unexpected reason, a Hearing Officer is absent from a scheduled hearing, the Student Hearing Office will expedite a rescheduling by either rescheduling the hearing for the next available date or assigning another Hearing Officer who can hear the case sooner than the next available date.

### **§ 700.4 Conducting the Hearing**

The hearing is not governed by formal rules of procedure or evidence. The Hearing Officer will attempt to ensure that all parties have an adequate opportunity to present their cases. Although less formal than a court trial, the hearing will proceed in an orderly fashion. Timeliness is important. Unjustified delays that prevent hearings from starting on time should be avoided. Hearing Officers may take such delays into consideration in determining how to proceed on a case by case basis, considering the equities of the circumstances.

At the beginning of the hearing, the Hearing Officer turns on a recorder to make a record of the hearing and, after identifying the case and the parties for the record, briefly explains how the hearing will proceed. The Hearing Officer then usually clarifies the issues to be decided by discussing the case with the parties (and reviews the pre-hearing conference stipulations). If the recorder malfunctions during the hearing, the proceedings must be stopped and an attempt made to remedy the situation. If the problem cannot be solved, the hearing must be continued until such time when proper recording equipment is available. The Student Hearing Office shall ensure that all equipment is in good working order.

The Hearing Officer will ask the parties whether they have discussed settlement of the case. At the parties' request, the Hearing Officer will provide the parties an opportunity to discuss settlement off the record or to request a mediator, if desired. The Hearing Officer will ask whether there are preliminary issues, then will rule on accepting into evidence the documents that the parties have presented. The Hearing officer will determine the order in which the witnesses will be presented.

Once preliminary matters are completed, the parties are generally given an opportunity to make opening statements. Opening statements should provide the Hearing Officer with a brief summary of the parties' positions on the issues for hearing. Following opening statements, the party presenting first will call its witnesses. Oral evidence may be taken only after oath or affirmation and may be provided via telephone. In cases where oral evidence is provided via telephone, the hearing officer shall use appropriate measures to ensure that the circumstance for the taking of that testimony are fair, appropriate, and designed to ensure accuracy and credibility. For example, a hearing officer may ask a witness testifying by telephone to state on the record, under oath, whether anyone else is present in the room from which he or she is giving testimony by telephone and if so, allow the other party to object.

After one party has presented its witnesses and other evidence, the other party(ies) will call its (their) witnesses. Each party will be given an opportunity to ask questions of the other parties' witnesses, and the Hearing Officer may also ask questions of the witnesses. The length of the due process hearing can vary, but the hearing officer shall run the hearing efficiently.

At the end of the hearing, each party is allowed to make a closing statement. The Hearing Officer may ask the parties to make oral closing statements, or if necessary because of the complexity of the issues, submit them in writing after the hearing. The Hearing Officer may also continue the hearing to request written briefs on particular legal issues and schedule additional oral argument, if necessary. No request for written closing statements or briefs shall be grounds for extending the timeline for issuing a hearing decision without the express consent of the parties/counsel. After closing statements are presented, the hearing record is closed. The Hearing Officer then has up

to 10 days to prepare a written decision, unless a decision is due sooner, which will be provided to the Student Hearing Office for distribution to all parties.

## **§ 700.5 Burden of Proof**

As of June 30, 2006, DCPS Board of Education policy regarding the burden of proof was amended (53 DCR 5249 (June 30, 2006)). The revised rule shall apply to all hearing requests filed on or after Monday July 3, 2006.

## **§ 800 RIGHTS**

### **§ 800.1 Rights of All Parties**

All parties have the following rights:

1. Right to representation. All parties have the right to be represented by legal counsel, and to be accompanied and assisted by persons with special knowledge or training related to the problems of disabled children.
2. Right to present evidence and argument. All parties have the right to call witnesses and present written and other evidence that will help them prove their cases. They will also be given the opportunity to argue the merits of their cases.
3. Right to confront and cross-examine adverse witnesses. All parties have the right to be present when witnesses testify against their positions and to ask them questions concerning their views.
4. Right to compel the presence of witnesses. It is the responsibility of the party seeking relief to secure the presence of their witnesses for due process hearings by serving the witness with a Notice to Appear or other form of notification. Only if a relevant witness refuses to appear at the hearing voluntarily, the party requesting the witness has the right to request the hearing officer to issue a "Notice to Appear" to the requested party. Any Notice to Appear shall be issued by the Chief Hearing Officer and shall be served by the party requesting the Notice.

Procedures:

- a. The party should complete and file a Notice to Appear no later than fourteen (14) calendar days prior to the date of the scheduled

- hearing. A copy of the Notice must be served on all counsel of record.
- b. The Notice to Appear must specifically identify the witness or witnesses who are the subjects of the Notice, and must state the relevance of the requested testimony to the pending case.
  - c. The Notice to Appear shall be signed and issued by the Chief Hearing Officer within two (2) business days. [A]ny opposing party has a right to request that the hearing officer withdraw or quash the Notice to Appear.
  - d. Service. It is the responsibility of the requesting party to serve the Notice to Appear. The Notice to Appear must be served by delivering a copy to the witness by certified mail, fax transmission, or hand delivery. If the witness is a party, or an employee of a party, the Notice to Appear shall be served on the witness' attorney of record.
  - e. Proof of Service. Proof of service must be made by filing a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.
- 5. Right to a record of the hearing. The Hearing Officer shall make an electronic record of the hearing. The Student Hearing Office shall maintain the electronic record at all times, including during recesses to new dates, and make it available for review by any party upon request. The parties have a right to a written or electronic copy of the electronic recording at no cost. A copy of the electronic recording will be provided within 5 (five) business days of the request. A transcript will be provided within 30 (thirty) calendar days of the request.
  - 6. Right to written finding of fact and decision. The Hearing Officer must prepare a written decision setting forth his or her findings of fact, analysis of the law, and final order. Copies of the decision will be provided to the parties by the Student Hearing Office.
  - 7. Right to prohibit the introduction of surprise evidence. The Hearing Officer may prohibit the introduction of any evidence at the hearing that has not been disclosed to all parties at least five (5) business days before the hearing. This includes all evaluations and recommendations based upon those evaluations that the party intends to use at the hearing

8. Right to request the exclusion of witnesses. A party may ask the Hearing Officer to order the prospective witnesses to remain outside the hearing room while other witnesses are testifying. The hearing officer shall have the discretion to rule on a motion by either party to allow expert witnesses, who offer opinion testimony (based on their understanding of the facts) to remain in the hearing room while other witnesses are testifying. A party making such a motion shall support it with reference to legal authority and the facts of the particular case.
9. Right to an interpreter. If the primary language of a party is other than English, an interpreter will be provided by the Student Hearing Office without charge. It is important that the parties notify the Student Hearing Office at least 10 days before the hearing when an interpreter is needed. In such circumstances, the party whose primary language is other than English shall also have a right to have their own interpreter present for confidential communications with their counsel. Neither DCPS nor the Student Hearing Office shall be required to pay for this interpreter. When an interpreter is present, the hearing officer will allow time for a verbatim oral interpretation of all statements and all testimony at the hearing, stopping every two to three sentences to allow for such interpretation. The Student Hearing Office, all parties and the Hearing Officer shall plan for the hearing with the recognition that this process requires approximately twice the amount of time that would otherwise be needed for the hearing

## **§ 800.2 Special Rights of Parents**

The law also provides the following special rights of parents in addition to the rights set out above:

1. Right to examine pupil records. Parents have the right to examine all records maintained by the school that are related to their child. Parents should call or write their individual LEA or school(s) to request access to pupil records. Parents may authorize counsel, advocates, investigators or other individuals to review and obtain copies of their children's records.
2. Right to a public hearing. Parents have the right to elect to have a hearing closed to the public or to allow members of the public to attend the hearing.
3. Right to have the child present at the hearing. Parents have the right to have the child involved in the dispute present at the hearing.

4. Right to a written verbatim transcript of the hearing. If a parent wishes to have an electronic copy or written verbatim transcript of the hearing, the parent or parent's counsel should submit a request in writing to the Student Hearing Office. There is no cost to the parent(s) or their counsel.

## **§ 900 PRACTICE OF LAW**

All attorneys and other persons who appear for the purpose of providing legal representation on behalf of a party must be licensed and in good standing to practice law in the District of Columbia. This provision is not intended to exclude law students who are working under the appropriate supervision of a licensed attorney.

## **§ 1000 ATTORNEYS AND ATTORNEYS FEES**

All parties have the right to be represented at all stages of the hearing process by an attorney of their choosing. This does not mean that DCPS must pay for the parent's attorney. Parents may be entitled to have costs of attorney's fees reimbursed if they prevail as a consequence of initiating a due process hearing. A court of competent jurisdiction, in its discretion, may award reasonable attorney's fees to the parent(s) of a child who is the prevailing party. The Student Hearing Office will provide all parties, if requested, with a list of local persons and organizations that can provide free or low cost representation, and this list shall be posted on the DCPS website and updated regularly. No referral to any public or private attorney, law firm, or legal service provider shall constitute an endorsement, representation, warranty, or guarantee by DCPS, the government of the District of Columbia, or the Student Hearing Office about the quality of the legal work or services provided by the attorney, law firm, or legal service provider.

## **§ 1001 EVIDENCE**

Evidence is anything that helps a party prove a fact that is necessary for that party to prevail in the hearing. Common forms of evidence include testimony of witnesses, including the parent's own testimony, and documents. Often, many documents in the child's educational record are put into evidence.

All witnesses must give testimony under oath if their testimony is to be used as evidence in the hearing. The Hearing Officer will give the affirmation or oath whether the matter is being heard by telephone or in person during a hearing. When there is a dispute as to what the facts are, the parties will need to present evidence or witnesses who have direct knowledge of the facts.

To enter documents into evidence, the party must present documents to the Hearing Officer and ask that they be put into evidence. Normally this is done at the beginning of the hearing. As indicated above, all parties must provide copies of the documents they wish to offer as evidence to the other party(ies) at least five business days prior to the hearing.

Documentary evidence is often cumbersome, and dealing with it in the hearing can be confusing and time-consuming. To avoid this problem, each party should logically organize its own documents. All parties should also bring an extra copy of their evidence in a folder for use by witnesses.

Parties wishing to call witnesses should request their presence by contacting him or her to come to the hearing voluntarily. Parents wishing to call a witness who is an employee of the LEA should follow the procedures in § 800.1.4.

## **§ 1002 OUTCOMES**

### **§ 1002.1 Settlement**

It is the policy of the DC Public Schools to encourage resolution of disputes in special education through negotiation and other alternative dispute devices. The resolution process and mediation may prevent future costs to all participants by establishing a partnership between parents and educators, thereby protecting the cooperative relationship between them. Together, the parent(s) and the school system may reach an agreement, thus eliminating the need for a due process hearing or any other resolution action. The Hearing Officer has authority to dismiss a hearing when informed by the parties that the case has been settled (other than those that have been formally mediated), and may, if requested, incorporate the terms of an agreement into an Order with consent of both parties. Settlement negotiations are confidential and details of such shall not be brought to the attention of the Hearing Officer if the hearing goes forward.

### **§ 1002.2 Dismissal**

The Hearing Officer shall dismiss the case if he/she determines that a hearing has been initiated for reasons other than those under the Hearing Officer's jurisdiction

or authority to resolve under IDEA. The Hearing Officer will have a maximum of 10 days from the date of the hearing to issue an Order of Dismissal, noting the reason for dismissal of the hearing.

### **§ 1002.3      Withdrawal**

If the party requesting the hearing decides it does not want to proceed to hearing, that party shall inform the Student Hearing Office and the other party(ies) in writing of the decision to withdraw at the earliest opportunity. If the party requesting the hearing wishes to withdraw the case after the hearing has begun and testimony has been heard, the party shall make a motion to the presiding Hearing Officer. It is within the discretion of the Hearing Officer whether to grant the withdrawal with or without prejudice.

## **§ 1003    THE HEARING OFFICER'S DETERMINATION**

The final decision of the Hearing Officer in the case is formalized in a document referred to as the Hearing Officer's Determination (HOD). The decision must include the identity of the parties, the final determination, and appeal rights. The Hearing Officer's Determination must also include findings of fact and conclusions of law; identify who prevailed on what issue; and specify what the school system, the parent(s), and the child are expected to do to carry out the decision.

The decision of the Hearing Officer shall be based solely upon the oral and written evidence presented at the hearing and any other additional written documents requested by the Hearing Officer prior to closing arguments.

Except as provided in this Standard Operating Procedures Manual or in the *Blackman/Jones* Consent Decree, the final decision must be signed, dated, and issued within 10 days following the hearing and no more than seventy-five (75) days following the request for hearing (subject to any extensions requested by a party and granted by the Hearing Officer). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based solely on the evidence presented at the hearing. The Hearing Officer may at his or her discretion render his or her decision orally at the conclusion of the hearing, to be followed by the written final decision. The Hearing Officer's final decision is considered "issued" on the date that the Student Hearing Office transmits the decision of the Hearing Officer to the parties by Certified Mail/Return Receipt Requested, in person, or by facsimile. All final decisions received from the Hearing Officer and arriving in the Student Hearing Office prior to 3:00 p.m. on a regular business day will be transmitted to the parties that day; all final decisions received after 3:00 p.m. on a regular business day will be transmitted the next business day.

The Student Hearing Office will transmit the Hearing Officer's Determination to all parties as near-simultaneously as possible and will not disclose the content of any Hearing Officer's Determination to any party prior to the dissemination of the decision to all parties. Specifically, the Student Hearing Office will distribute a copy of the Hearing Officer's Determination to: (1) the Superintendent or Director of the LEA or their representative, (2) the child's parent or representative, and (3) the student (if greater than 18 years of age). The Student Hearing Office and the Hearing Officer will retain a copy of the final decision and maintain a record of the transmittal (fax confirmation, signature of personal delivery, and/or certified mail receipt). After deleting personally identifiable information from the Hearing Officer's Determination, the Student Hearing Office shall make the findings and decisions available to the public by publication or at a reasonable cost and within 30 days of issuance.

## **§ 1004 FINAL DECISION AND RIGHT OF APPEAL**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

## **§ 1005 RECONSIDERATION OF HEARING DECISION**

Reconsideration of a hearing decision may be granted on the timely filing of a motion for reconsideration.

Any motion for reconsideration must be filed within ten (10) days of the date of the Order is issued. The hearing officer shall afford the opposing party or parties an opportunity to respond prior to granting the motion. No response to a motion for reconsideration is required unless ordered by the Hearing Officer, which order shall specify the deadline for filing of a response.

Unless otherwise ordered by the hearing officer, the filing of a motion for reconsideration shall not stay the effectiveness of the order. The filing of a motion for reconsideration on a final order, if such motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Hearing Officer or is denied by operation of law.

A motion for reconsideration shall be deemed denied by operation of law if the Hearing Officer has not ruled upon the motion within thirty (30) days of the date that the motion is filed with the Student Hearing Office.

If a motion for reconsideration is granted, the Hearing Officer may reopen the record in the matter, amend the findings of fact and conclusions of law, correct errors or mistakes, or make new findings of fact, conclusions of law, and issue a new order.

## **§ 1006 HEARING RECORD AND TRANSCRIPTS**

After the hearing and all other legal proceedings have been completed, the Hearing Officer shall deliver all documents (which constitute the complete record of the due process hearing) to the Student Hearing Office. The following items shall constitute the hearing record:

- a. All documents and tangible things submitted to the Hearing Officer during the hearing, whether or not formally admitted into evidence, along with an index of exhibits admitted;
- b. All correspondence and pleadings filed with the Student Hearing Office (exhibits, letters, pleadings, files or orders); and
- c. All Interim Orders and the Hearing Officer's Determinations.

In addition, the Student Hearing Office and/or the Hearing Officer shall complete a "Certification of Record" to certify that the above listed documents itemize the entire record. The original Certification of Record will be provided to and retained by the Student Hearing Office along with the record.

## **§ 1007 REQUESTING A TRANSCRIPT**

Unless a court reporter is used, the Hearing Officer will make an electronic record of the hearing which will be maintained by the Student Hearing Office. Any party to the hearing may request a copy of the hearing audio tape or a verbatim written transcript of the hearing by submitting a request in writing to the Student Hearing Office. The parent has a right to a written or electronic copy of the record at no cost to the parent. A copy of the audio tape of the hearing will be provided within 5 business days of the request.

## **§ 1008 EXPEDITED DUE PROCESS HEARING**

### **(A.) Special Rule for Expedited Due Process Hearings**

A due process complaint involving a request for an expedited hearing shall be governed by the same rules as are applicable to due process hearings generally. Special education law authorizes certain issues be heard in an expedited time frame. Expedited hearings generally are required when the dispute is related to discipline, including a proposal to expel a student.

- (1.) An expedited hearing must occur within twenty (20) days after the hearing is requested, and will result in a determination within ten (10) days after the hearing.
- (2.) Resolution Meeting. When an expedited hearing is requested, a resolution meeting must occur within ten (10) days of the date the hearing is requested, and the hearing must proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the request for an expedited hearing.
- (3.) Each party must disclose its list of prospective witnesses and documents as specifically described in Rule 305 described in Rule 305 no later than three (3) business days before the date of the hearing.
- (4.) No continuances will be granted for expedited hearings unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the pro se parent's assent to the continuance is knowing and willing.

## **Section IV CONCLUSION**

It is the intent of the District of Columbia Public Schools, State Enforcement & Investigation Division for Special Education Programs representing the State Education Agency (SEA) in the execution of IDEA, to resolve all disputes related to special education in as efficient and cooperative a manner as possible. DCPS also encourages the use of mediation processes and other less formal dispute resolution options to the maximum extent possible when a parent is dissatisfied with a decision, or lack thereof, regarding identification, evaluation, the educational placement of a child, or the

provisions of free appropriate public education. Any suggestions for improving this handbook should be forwarded to the Student Hearing Office.

# APPENDIX

*State Educational Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs*



## **Due Process Complaint Notice**

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- Parents initiating a complaint must provide a completed due process complaint form to the Local Education Agency ("LEA"). For students in traditional public schools, non-public day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St. NE, Washington, D.C. 20002, with a copy to the Student Hearing Office. If a charter school is a named party, the due process complaint must be provided to the principal or director of the charter school, with a copy to the Student Hearing Office.
- **Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice.** Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a "Resolution Session"**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting. **The Student Hearing Office does NOT schedule resolution sessions.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.
- Policies and Procedures governing due process hearings are contained in federal and local law and the SHO SOP. You may obtain a copy of the SOP from the Student Hearing Office or any D.C. Public or Charter School without cost. The SOP is also at the DCPS website.

### **A. INFORMATION ABOUT THE STUDENT:**

Student Name: \_\_\_\_\_ Birth Date: \_\_\_\_\_

Address: \_\_\_\_\_

Home School: \_\_\_\_\_

Present School of Attendance: \_\_\_\_\_

Is this a charter school? \_\_\_\_\_ (If yes, you must also provide a copy of this notice to the charter school principal or director)

Parent/Guardian of the Student: \_\_\_\_\_

Address (if different from the student's above): \_\_\_\_\_

Phone/Contact Number: \_\_\_\_\_ Fax Number (if applicable): \_\_\_\_\_

**B. Individual Making the Complaint/Request for Due Process Hearing:**

Name: \_\_\_\_\_

Complete Address: \_\_\_\_\_

\_\_\_\_\_

Phone: (h) \_\_\_\_\_ (w) \_\_\_\_\_ (Fax) \_\_\_\_\_ (e-mail) \_\_\_\_\_

Relationship to the Student:

- |                                       |   |   |
|---------------------------------------|---|---|
| <input type="checkbox"/> Parent       | <input type="checkbox"/> Legal Guardian               | <input type="checkbox"/> Parent Surrogate |
| <input type="checkbox"/> Self/Student | <input type="checkbox"/> Local Education Agency (LEA) | <input type="checkbox"/> Parent Advocate  |

**C. Legal Representative/Attorney (if applicable):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: (w) \_\_\_\_\_ (Fax) \_\_\_\_\_ (e-mail) \_\_\_\_\_

Will attorney / legal representative attend the resolution session? ☐ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

- ☐ DCPS school (name of the school if different from page one) \_\_\_\_\_
- ☐ Charter school (name of the charter school if different from page one) \_\_\_\_\_
- ☐ Non-public school or residential treatment facility (name) \_\_\_\_\_
- ☐ Parent

**E. Resolution Session Between Parent and LEA:**

I understand that it is my right to have a resolution session to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution session to avoid having this meeting.)

☐ I wish to waive the Resolution Session.

**F. Mediation Process:**

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply:

- ☐ I am requesting mediation as an alternative to the resolution session meeting.
- ☐ I am requesting mediation services **only**.
- ☐ I do not wish to use a mediator at this time.

**G. Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

1. What is the nature of the problem, including the facts relating to the problem, that will need to be addressed at a Resolution Session meeting, a Mediation Conference, and/or a Due Process Hearing?
  
  
  
  
  
  
  
  
  
  
2. To the extent known to you at this time, how can this problem be resolved?
  
  
  
  
  
  
  
  
  
  
3. Issues presented:

**H. Estimated amount of time needed for the hearing: \_\_\_\_\_**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.

- Interpreter (please specify the type)\_\_\_\_\_
- Special Communication (please describe the type)\_\_\_\_\_
- Special Accommodations for Disability (please be specific)\_\_\_\_\_
- Other\_\_\_\_\_

**J. Waiver of Procedural Safeguards (Optional):**

☐ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this Complaint.

**K. Requirement to Consider Compensatory Education:**

**If a hearing is held on a date that is past the date on which the Hearing Officer's Determination was required to be issued, there is a rebuttable presumption of harm and compensatory education must be an issue considered by the Hearing Officer during the hearing.**

**L. Parent or Local Educational Agency Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent or Guardian Date

\_\_\_\_\_  
Signature of Representative of the Local Educational Agency Date  
(if hearing requested by a LEA)

**M. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate Date

**Mail, fax or deliver this complaint notice to:  
State Enforcement and Investigation Division  
For Special Education Programs (SEID)  
Student Hearing Office (SHO)  
825 North Capitol Street, NE, 8<sup>th</sup> Floor  
Washington, DC 20002**

**Fax number: 202/442-5556**

STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS

In the matter of:	§	BEFORE A SPECIAL EDUCATION
	§	
<u>Petitioner</u>	§	
	§	
vs.	§	HEARING OFFICER
	§	
<u>Respondent</u>	§	
	§	DC PUBLIC SCHOOLS

**NOTICE TO APPEAR**

To: \_\_\_\_\_

This is to notify you that you are required to appear and under oath to give testimony as a witness at the Special Education Due Process Hearing in the above styled cause. The hearing is scheduled for:

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Place:** Special Education Student Hearing Office  
825 North Capitol St., NE  
8<sup>th</sup> Floor  
Washington, DC 20002

This Notice to Appear is issued under the authority of the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(h)(2), 5 D.C.M.R. § 3031.1(b), and § 800.1(4), Student Hearing Office Standard Operating Procedures. Any party to a special education administrative hearing has the right to present evidence and compel the attendance of witnesses who have knowledge of relevant facts or whose opinions are important for reaching an appropriate disposition on the merits of this case.

The exact time of your testimony cannot be determined prior to the date of the hearing. Under the hearing rules please be advised that you might be excluded from the hearing room prior to your testimony. You are welcome to bring reading material or such other activities as you may need to pass the time while waiting.

Your appearance has been requested by:

Name: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
SPECIAL EDUCATION HEARING OFFICER

### **PROOF OF SERVICE**

This will certify that a true and correct copy of this Notice to Appear was served on:

Name of witness: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Manner of Service:

\_\_\_\_\_ Certified mail, return receipt requested

\_\_\_\_\_ Fax transmission

\_\_\_\_\_ Hand delivery

By: \_\_\_\_\_  
(Person executing service)

Date: \_\_\_\_\_

## NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES

Pursuant to section 54 the Blackman/Jones Consent Decree, the Office of the State Superintendent of Education (OSSE) is hereby providing notice of changes to the Standard Operating Procedures Manual (SOP). OSSE has provided notice of these changes to Class Counsel and Class Counsel has not objected to the changes.

### EFFECTIVE DATE

The changes to the provisions for an expedited hearing set forth below will take effect for all due process complaints filed on or after August 18, 2008. However, if all parties to a due process complaint agree to the immediate effectiveness of the provisions for a due process complaint filed on or after August 12, 2008, the changes shall be in effect as of that date for such complaint. The parties shall notify the assigned Hearing Officer of such agreement prior to the Hearing Officer setting the date of the hearing.

## CHANGES

### § 1008 EXPEDITED DUE PROCESS HEARING<sup>1</sup>

#### (A.) Special Rule for Expedited Due Process Hearings

A due process complaint involving a request for an expedited hearing shall be governed by the same rules as are applicable to due process hearings generally, except as set forth below. ~~Special education law authorizes certain issues be heard in an expedited time frame. Expedited hearings generally are required when the dispute is related to discipline, including a proposal to expel a student.~~

Requests for expedited due process hearings must be made in writing, in motion form, and must state the reason why expedited status should be granted.

The hearing officer has no discretion to deny a request for expedited status when the due process complaint concerns certain discipline matters. See 34 C.F.R. 300.532(a), DCMR 2510.13, 2510.18. When the complaint involves such matters; an expedited hearing must be held.

A. Discipline:

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<sup>1</sup> Deletions are noted by strikethrough and additions by underlined text.

(1.) An expedited hearing must occur within twenty (20) days after the hearing is requested. A decision must be issued and will result in a determination within ten (10) days after the hearing.

(2.) Resolution Meeting. When an expedited hearing is requested, A resolution meeting concerning a disciplinary matter can be waived. If not waived, a resolution meeting must occur within ten (10) days of the date the hearing is Requested, ~~and the~~ The hearing must proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the request for an expedited hearing.

(3.) Each party must disclose its list of prospective witnesses and documents ~~as specifically described in Rule 305~~ described in Rule 305 no later than three (3) business days before the date of the hearing.

(4.) When a hearing involving a disciplinary matter is expedited, No continuances will be granted ~~for expedited hearings~~ unless the party requesting the continuance was not consulted regarding the date of the hearing or the parties agree. ~~Where parties have no the parent lacks~~ counsel, a hearing officer must determine if the pro se parent's assent to the continuance is knowing and willing.

#### B. Non-Discipline:

##### Bases for an Expedited Non-Discipline Hearing

Requests for expedited non-discipline hearings shall be decided on the face of the request and response(s), if any, but may be granted before a response is filed. The request shall be granted when:

- (1) the physical or emotional health or safety of the student or others would be endangered by a delay in the conduct of the hearing or
- (2) there is other substantial justification for expediting the hearing.

##### Ruling on Request for an Expedited Non-Discipline Hearing

The Hearing Officer assigned to the case shall rule on a request for an expedited hearing as soon as possible after the filing of the request, but not later than 5 business days after the request is made. (This supercedes the timeline in Section 401 for filing responses.) The written request for an expedited hearing and ruling by the Hearing Officer shall preserve the issue for appellate review.

##### Scheduling An Expedited Hearing

If the request is granted, the Hearing Officer shall set the expedited hearing date after consultation with the parties. The Hearing Officer may also modify pre-hearing deadlines as appropriate.

## **§ 400.1 Scheduling the Hearing**

...

### **C. Exceptions:**

1. Waiver of the 30-day resolution period. The parties may jointly waive the resolution session. ~~When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 days following the date of the waiver.~~ The timeline for issuing the final Hearing Officer's Determination begins the day after both parties agree in writing to waive the Resolution Session.

...

### **D. General Procedures**

...

2. ~~When the parties have jointly agreed to waive the Resolution Session, the due process hearing will be set for an expedited hearing, not later than 20 calendar days following the date of waiver.~~ See § 10078 for the procedures that govern expedited hearings.

...

## NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES

Pursuant to section 54 of the Blackman/Jones Consent Decree, the Office of the State Superintendent of Education (OSSE) is hereby providing notice of changes to the Standard Operating Procedures Manual (SOP). OSSE has provided notice of these changes to Class Counsel and Class Counsel has not objected to the changes.

### EFFECTIVE DATE

The changes to the provisions below will take effect for all due process complaints filed on or after January 22, 2010.

## CHANGES

### § 400.1 Resolution period and Scheduling the Hearing

- A. If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process complaint, the due process hearing may occur.

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- B. The timeline for issuing a final hearing officer's determination begins at the expiration of this 30 day period subject to the adjustment period described in Paragraph C. Pursuant to federal law, not later than 45 days after the expiration of the 30 day resolution period subject to the adjustment period described in Paragraph C:

Deleted: and a hearing decision rendered within 45 calendar days of the expiration of the resolution period subject to the exceptions in Paragraph C.

Deleted: or

1. A final hearing decision shall be issued by the hearing officer; and
2. A copy of the decision shall be mailed to all parties or alternatively may be transmitted electronically or by facsimile if all parties to the due process complaint consent.

Deleted: faxed when possible or

Deleted: and

Deleted: otherwise¶

Deleted: is

Deleted: mailed to each of the parties

C. Adjustments to 30-day resolution period:

Deleted: Exceptions

1. Waiver of the 30-day resolution period. The parties may jointly waive the resolution meeting. The timeline for issuing the final Hearing Officer's Determination begins the day after both parties agree in writing to waive the resolution meeting. Counsel for the LEA shall immediately notify the assigned Hearing Officer who shall schedule the case for hearing.

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2. Settlement discussions are not productive. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties may agree in writing that no agreement is possible. The 45-day timeline for a due process hearing starts the day after the parties agree in writing that no agreement is possible. The LEA's counsel is obligated to immediately notify the assigned Hearing Officer, who shall schedule the case for hearing.

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3. Both parties may agree in writing to continue the mediation at the end of the 30-day resolution period. If later, the parent or LEA withdraws from the mediation process, the 45-day timeline for due process hearings starts the day after the parent or LEA withdraws from the mediation process.

D. Except where the parties have jointly agreed to waive the resolution process or to use mediation, when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent documented using the procedures in 34 C.F.R. § 300.322(d). A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.

- E. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable measures have been made and documented (using the procedures in the IDEA regulation 34 CFR 300.322 (d)), the LEA may request, at the conclusion of the 30 day period, that the Hearing Officer dismiss the parent's due process complaint. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- F. If the LEA fails to hold the resolution meeting within 15 calendar days of receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may request that the assigned Hearing Officer begin the 45 day due process hearing timeline before the expiration of the 30 day resolution period.

## § 402 CONTINUANCES

### B. Procedures for Requesting a Continuance:

\* \* \*

10. No more than one (1) continuance per side shall be granted in any case unless the Chief Hearing Officer grants another continuance based on exceptional circumstances. All continuances shall be limited to ten (10) days, except by the agreement of the parties, or if the applicable Hearing Officer orders otherwise after review.

a. **Continuance granted.** The Hearing Officer shall issue an Order confirming that the continuance was granted and provide the parties with notice of the new hearing date. The order shall identify (1) the good cause grounds for granting the extension of time, and (2) the new date for the hearing. The extension of time for issuance of the final hearing determination will only be for the number of days covered by the extension.

\* \* \*

**Deleted:** No open ended continuance requests will be granted or allowed unless good cause is shown or the parties agree.

13. **Expedited Hearings.** No continuance shall be granted for the occurrence of the hearing and the issuance of the Hearing Officer's Determination for expedited hearings pursuant to the IDEA, 34 C.F.R. § 300.532(a), beyond the timeline set forth in 34 C.F.R. § 300.532(c)(2).

**Deleted:** on any case set for an expedited hearing unless the party was not consulted regarding the date or the parties agree. Where parties have no counsel a hearing officer must determine if the pro se parent's assent is knowing and willing.

## § 1003 THE HEARING OFFICER'S DETERMINATION

\* \* \*

The final decision must be signed, dated, and issued within the timeline set forth in 34 C.F.R. § 300.515 and 34 C.F.R. § 300.510(c) (see also SOP §§ 400.1 and 402). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based solely on the evidence presented at the hearing. \* \* \*

**Deleted:** Except as provided in this Standard Operating Procedures Manual or in the *Blackman/Jones* Consent Decree,

**Deleted:** t

**Deleted:** 10 days following the hearing and no more than seventy-five (75) days following the request for hearing (subject to any extensions requested by a party and granted by the Hearing Officer)

## § 1008 EXPEDITED DUE PROCESS HEARING

\* \* \*

### A. Discipline:

(1.) An expedited hearing pursuant to the IDEA, 34 C.F.R. §300.532, must occur within twenty (20) school days after the hearing is requested. A decision must be issued within ten (10) school days after the hearing.

(2.) Resolution Meeting. Unless the parent and LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within seven (7) days of the date the hearing is requested. The hearing must proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of receiving notice of the due process complaint.

**Deleted:** A resolution meeting concerning a disciplinary matter can be waived. If not waived

**Deleted:** ten (10)

**Deleted:** the receipt of the request for an expedited hearing

\* \* \*

(4.) When a hearing involving a disciplinary matter is expedited, no continuances will be granted for the occurrence of the hearing and issuance of the Hearing Officer's Determination beyond the timeline set forth in the IDEA, 34 C.F.R. § 300.532(c)(2).

**Deleted:** unless the party requesting the continuance was not consulted regarding the date of the hearing or the parties agree. Where the parent lacks counsel, a hearing officer must determine if the proposed parent's assent to the continuance is knowing and willing.

(5.) Sufficiency challenges are not available in an expedited due process hearing.



**Office of the  
State Superintendent of Education**

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**NOTICE OF CHANGES TO THE STANDARD OPERATING PROCEDURES**

Pursuant to Section 54 of the Blackman/Jones Consent Decree, the Office of the State Superintendent of Education (OSSE) is hereby providing notice of changes to the Student Hearing Office Standard Operating Procedures Manual (SOP). OSSE has provided notice of these changes to the attorneys for the Blackman/Jones plaintiffs' class, as required by the Consent Decree.

By letter dated February 6, 2009, the United States Department of Education, Office of Special Education Programs (OSEP) notified OSSE that the reconsideration process set forth in Section 1005 of the SOP was inconsistent with the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1415(i)(1)(A); 34 C.F.R. §300.514(a)) in that a decision made in a hearing is final except that a party may appeal the decision by filing a civil action in a state court of competent jurisdiction or in a district court of the United States. OSEP directed OSSE to revise this Section of the SOP to ensure consistency with the IDEA.

OSSE commenced a review of OSEP's request that Section 1005 be revised and, pending the review, instructed all Hearing Officers by memorandum dated March 20, 2009 to deny Motions for Reconsideration consistent with the OSEP directive. By letter dated October 20, 2010, OSEP informed OSSE that it maintains the position that once a final decision has been issued, no motion for reconsideration of the findings of fact and conclusions of law is permissible under the IDEA. This prohibition, however, does not prevent a party from seeking administrative correction of typographical errors in a final hearing officer decision.

**EFFECTIVE DATE**

The SOP expressly states that if there is any conflict between the SOP and the IDEA, the provisions in the IDEA will govern. Therefore, based on the OSEP directive, the reconsideration provision in the SOP was inconsistent with the IDEA and motions for reconsideration must be denied. The repeal of Section 1005 of the SOP effectuates the memorandum previously issued by OSSE to all Hearing Officers and is effective upon the date of this Notice.

**CHANGES**

**~~§ 1005 RECONSIDERATION OF HEARING DECISION~~**

~~Reconsideration of a hearing decision may be granted on the timely filing of a motion for reconsideration.~~

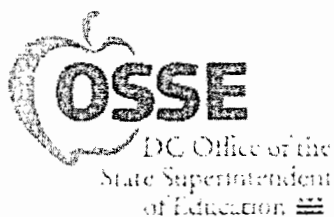
~~Any motion for reconsideration must be filed within ten (10) days of the date of the Order is issued. The hearing officer shall afford the opposing party or parties an opportunity to respond prior to granting the motion. No response to a motion for~~

~~reconsideration is required unless ordered by the Hearing Officer, which order shall specify the deadline for filing of a response.~~

~~Unless otherwise ordered by the hearing officer, the filing of a motion for reconsideration shall not stay the effectiveness of the order. The filing of a motion for reconsideration on a final order, if such motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Hearing Officer or is denied by operation of law.~~

~~A motion for reconsideration shall be deemed denied by operation of law if the Hearing Officer has not ruled upon the motion within thirty (30) days of the date that the motion is filed with the Student Hearing Office.~~

~~If a motion for reconsideration is granted, the Hearing Officer may reopen the record in the matter, amend the findings of fact and conclusions of law, correct errors or mistakes, or make new findings of fact, conclusions of law, and issue a new order.~~



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## MEMORANDUM

**TO:** All Participants in the Special Education Administrative Due Process System

**FROM:** Dr. JoAnn Smoak  
Executive Director  
Office of Review and Compliance

**DATE:** June 20, 2008

**RE:** Reminder Regarding the Filing of Administrative Due Process Hearing Requests

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This is a reminder that all due process complaints must be filed with the respondent or respondent party. See 20 U.S.C. §1415(b)(7)(A)(i); 34 C.F.R §300.508(a)(1); SOP §§ 204 and 301.1(D).

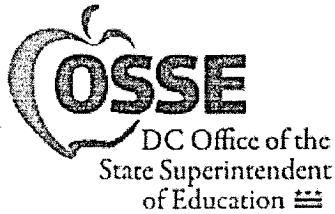
In addition, a copy of all due process complaints must be forwarded to the Student Hearing Office. See 20 U.S.C. §1415(b)(7)(A)(i); 34 C.F.R §300.508(a)(2); SOP §§ 201, 203 and 301.1(D).

In accordance with the IDEA<sup>1</sup>, where a party initiates a due process complaint, the date of the respondent or respondent party's receipt of the due process complaint – not the SHO's receipt of the copy – starts the timeline culminating in the issuance of a hearing officer's determination. See 34 C.F.R §§300.508, 300.510(b), and 300.515; 5 DCMR §§3029-30. It is recommended that a filing party include proof of service with the copy of the due process complaint filed with the SHO. Under the SOP, "the receiving party shall be presumed to have received the complaint on the date received by the student hearing office," SOP § 201, however, this is a rebuttable presumption and any dispute regarding the date of filing pursuant to the IDEA will be a matter to be considered and resolved by the assigned Hearing Officer.

Should you have any questions about this procedure, please contact Dakarai D. Thompson, Esq. at 202-481-3459 or at [Dakarai.thompson@dc.gov](mailto:Dakarai.thompson@dc.gov).

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<sup>1</sup> The D.C. Municipal Regulations incorporate the IDEA by reference regarding the initiation of a due process hearing (5 DCMR §§3029-30) and the Standard Operating Procedures (SOP), § 200, provides that if there is any conflict between the SOP and the IDEA or the Blackman/Jones Consent Decree, the IDEA or the Blackman/Jones Consent Decree governs.



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## Memorandum

**To:** Stakeholders to the District of Columbia Special Education Administrative Due Process Hearing System

**From:** Dakarai Thompson, Student Hearing Office

**CC:** Lyn Beekman, Chief Hearing Officer  
Special Education Administrative Due Process Hearing Officers  
Student Hearing Office

**Date:** 20 August 2010

**Re:** Due Process Hearing Notice/ Notice of Hearing Officer Appointment

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This memorandum serves as notice that the Student Hearing Office (SHO) is moving forward with a programmatic and process reform re the information contained in the "Due Process Hearing Notice" that the office issues after a due process complaint is filed (see sample attached).

This programmatic reform is consistent with the training of the Independent Hearing Officers (IHO) noticed in the "Appropriate Standard Practices" document.<sup>1</sup>

Undergirding aspects of the standard practices is the principle that parties and IHOs must communicate at integral points in the due process hearing system to ensure fair, effective, and timely hearings and decisions. Some of these vital case management junctures include 1. contact upon the filing of a due process complaint, 2. contact to schedule a pre-hearing conference, and 3. contact to schedule a due process hearing.

In support of this principle, the SHO has substituted the office's "Due Process Hearing Notice" with the "Notice of Hearing Officer Appointment" (see attached.)

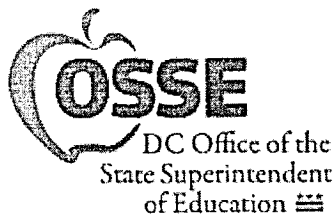
### Appointment Notices

Upon receipt of a due process complaint, the SHO will issue a "Notice of Hearing Officer Appointment." This document, noticed and attached to the "Appropriate Standard Practices", will provide all parties to a due process hearing complaint with the name and contact information of their assigned IHO. This document will not provide parties with provisionally scheduled pre-hearing conference and due process hearing dates and times.

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<sup>1</sup> The final version of the "Appropriate Standards Practices" was forwarded to all IHOs on 4/19/10. The same final version was forwarded to a listserve of practitioners to the due process hearing system on 4/28/10.

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After an IHO has been assigned to a due process complaint, they will contact parties to the matter and schedule the pre-hearing conference. In scheduling a pre-hearing conference, IHOs have been trained and directed that the date of the pre-hearing conference must consider the expedited or non-expedited nature of the case; any timeline adjustments as a result of the resolution process; and be early enough in the hearing timeline to provide for an effective and efficient hearing and a timely hearing decision. This change in process also allows for consideration of the schedules of parties and the IHO at the commencement of the process and will avoid unnecessary rescheduling<sup>2</sup>.

[Note: Pre-hearing conferences are mandatory in every matter where the entire case is not resolved prior to the commencement of the hearing timeline.]

#### Pre-Hearing Conferences

Either before or no later than the scheduled pre-hearing conference, IHOs will also schedule the due process hearing. In scheduling due process hearings, IHOs have been trained and directed to consider the above factors and the timeline for the issuance of the hearing decision. In addition to the consideration of the schedules of parties to the matter, this reform will also the IHO to schedule the hearing to ensure the availability of any necessary witnesses, clients, etc., the required length of the due process hearing<sup>3</sup>, and the due date of the hearing decision. To memorialize the pre-hearing conference, IHOs must issue a pre-hearing order within three (3) business days after the pre-hearing conference.

To ensure that pre-hearing conferences and due process hearings are properly and timely scheduled and adjudicated, the SHO has implemented a number of measures, both in our electronic docketing system and our office business process, to monitor and examine every case.

The new "Notice of Hearing Officer Appointment" will be used for all due process complaints filed on and after Friday, August 27, 2010. If you have any questions/comments re this revised practice, please don't hesitate to contact me by phone at 202-481-3444 or by email at [Dakarai.thompson@dc.gov](mailto:Dakarai.thompson@dc.gov), or Chief Hearing Officer Lyn Beekman by phone at 202-481-3448 or by email at [Lyn.Beekman@dc.gov](mailto:Lyn.Beekman@dc.gov)

Thank you and please have a nice day.

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<sup>2</sup> In non-expedited cases, Hearing Officers shall generally schedule the pre-hearing conference within one week of the termination of the resolution period. In an expedited hearing, Hearing Officers shall schedule the pre-hearing conference as soon as possible.

<sup>3</sup> Hearing Officers have also been trained and directed to resolve all doubts as to the length of time for a due process hearing in favor of scheduling more time than estimated necessary to avoid the possible need to continue the hearing to another date and thereby delay issuance of the hearing decision.

## APPROPRIATE STANDARD PRACTICES

### 1. Correspondence, Pleadings and Other Documents (subsequent to original DPC):

#### A. Correspondence and Pleadings.

1). Correspondence. Hearing Officers shall require all correspondence to and from a Hearing Officer to include the Student name and the case number, including in the subject line of all emails.

2). Caption. Hearing Officers shall require every pleading subsequent to the original Due Process Complaint to contain a caption setting forth the name of the Student Hearing Office, the names of the parties, the case number, and the name of the Hearing Officer assigned to the case. The caption shall conform to Appendix A/Form 1.

3). Filing Party Information And Signature. Hearing Officers shall require all correspondence, pleadings and motions to state the filing party's mailing and/or email address and telephone number, if any. Hearing Officers shall require every pleading to be signed by the attorney of record, or if the party is not represented by an attorney, by the party. Hearing Officers may allow documents to be signed by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States (as per Fed. R. Civ. P. 5.2(d)(3)).

4). Rejected Pleadings. Hearing Officers may reject any pleading, motion or other document filed subsequent to a Due Process Complaint that does not comply with these practices or the SOP unless the Hearing Officer expressly approves its non-compliance. If Hearing Officers reject a pleading, motion or other document, the Hearing Officer shall issue an order providing the reasons for rejection.

#### B. Filings.

1). Filing With The Hearing Officer Defined. Hearing Officers shall require the filing of any papers after the original Due Process Complaint to be filed concurrently with the Student Hearing Office and the Hearing Officer assigned to the case. Hearing Officers shall note on all papers the filing date, if not otherwise indicated. Hearing Officers may permit papers to be filed by mail, fax, or email.

2). Resolution Meeting Waivers And Forms. If the parties agree in writing: (a) to waive the Resolution Meeting; or (b) after the Resolution Meeting or mediation starts the parties agree that no agreement is possible before the end of the 30-day resolution period, Hearing Officers shall require the parties to immediately file a copy of the agreement and/or disposition form with the Hearing Officer. If the parties desire to continue settlement discussions or mediation beyond the 30-day resolution period, they shall advise the Hearing Officer immediately in order that the hearing deadline may be addressed.

3). Notices To Appear. Hearing Officers shall require all requests for the issuance of a notice to appear, or to quash a notice to appear, to be filed solely with the Hearing Officer and not the Chief Hearing Officer. After reviewing the request, in accordance with the provisions of §800.1(4) of the SOP, Hearing Officers shall forward the request to the Chief Hearing Officer with the Hearing Officer's recommendation as to whether the Notice to Appear (Appendix A/Form 2) should be issued or not, based on the Hearing Officer's advice with regard to whether the witness would appear voluntarily and the relevance of the testimony to be presented or quashed, as the case may be.

2. **Representation by Attorney:**

A. Appearance by Attorney.

Hearing Officers shall permit only an attorney admitted to the Bar of the District of Columbia to appear before them, except as otherwise permitted by Rule 49(c)(4) and (8) of the District of Columbia Court of Appeals, and law students in accordance with Rule 48 of the District of Columbia Court of Appeals and §900 of the SOP.

B. Attorney Withdrawal.

1). Hearing Officers may approve the withdrawal of an attorney from representation of a party. Hearing Officers shall require the withdrawing attorney to provide the reason for withdrawal, the name, phone number, and email address of the new attorney who will be representing the party, or, if the party will be proceeding pro se, the name and phone number of the party.

3. **Due Process Complaint, Response, and Other Pleadings:**

A. In General.

1). Requirements. After the original Due Process Complaint, Hearing Officers shall require allegations and arguments in any subsequent pleadings, motions or other documents to be simple, concise, and direct. Hearing Officers shall require each pleading to be a separate document.

2). Extraneous Allegations Or Arguments. Hearing Officers may penalize any party who files, subsequent to the Due Process Complaint, a form pleading, motion or other document that contains extraneous factual allegations or legal arguments not applicable to the matter being heard. Hearing Officers may exercise discretion in assessing adverse consequences that are in accordance with IDEA, including rejecting the pleading under Practice I-A-4 above.

3). Court Rules. Hearing Officers shall not use the rules of civil procedure utilized by District of Columbia and federal courts except by way of analogy or as prescribed in IDEA.

B. Signature of Petitioner.

Hearing Officers shall not require a Petitioner to sign a Due Process Complaint as a standard to determine whether the complaint is sufficient under IDEA. Hearing Officers shall have discretion whether to require a Petitioner to sign the complaint for other reasons.

C. Motion for Expedited Hearing.

Hearing Officers shall require, in accordance with §1008 of the SOP, a request for an expedited due process hearing in a non-discipline situation to be made in writing, in a separate motion, and state the specific reasons why expedited status should be granted. Hearing Officers shall reject all requests for a non-discipline expedited hearing included within a Due Process Complaint without an accompanying motion.

D. Responsive Pleading.

Hearing Officers may consider the failure of a Respondent to file, and serve on the opposing party, a responsive pleading within ten (10) days of receiving the Due Process Complaint (when a prior written notice has not been sent to the Parent on the subject matter in the DPC) an admission of the allegations in the Complaint. Hearing Officers may consider a Respondent's failure to comply with 34 CFR §300.508(e) or otherwise specifically address the allegations in the Complaint, in determining how to proceed at the due process hearing. The adverse consequences available to Hearing Officers include, but are not limited to, shifting the burden of production to a Respondent.

E. Withdrawal.

1). Timing, Consent, and Subsequent Withdrawal. Hearing Officers shall allow a Petitioner to withdraw a Due Process Complaint within fifteen (15) days of the service of the Complaint, or by written agreement of the parties. Unless otherwise requested in the withdrawal or agreement, the dismissal will be without prejudice. If a Petitioner withdraws the complaint after fifteen (15) days from the service of the Complaint, Hearing Officers will have discretion whether to dismiss the Complaint with prejudice. If a Petitioner withdraws a subsequent Due Process Complaint, and if the facts and claims in this Complaint are virtually identical to a previous Complaint that Petitioner also withdrew, Hearing Officers shall dismiss this Complaint with prejudice absent extraordinary circumstances.

2). Failure to Withdraw in Writing. If a Petitioner makes a verbal withdrawal that is not confirmed in writing, the Hearing Officer may confirm the withdrawal by dismissing the Complaint.

Hearing Officers shall require any withdrawal to expressly state whether it is based on a settlement. Hearing Officers may require a Petitioner to file the settlement agreement with the withdrawal notice.

4. Consolidation and Disqualification:

A. Consolidation.

The first Hearing Officer appointed shall make the determination whether to consolidate. In ordering the consolidation of any cases, Hearing Officers shall expressly state the applicable timelines in the order.

B. Disqualification.

In accordance with the provisions of §600.4-A-1 of the SOP, Hearing Officers shall require a party to submit any request for recusal of a Hearing Officer to the Hearing Officer.

5. **General Responsibilities:**

A. Professionalism.

Hearing Officer And Counsel/Parties. Hearing Officers shall adhere to follow and require counsel/parties to:

1). Timeliness. Be on time and prepared to proceed at the time set for prehearings and hearings. And, on the exceptional circumstance when an individual is not, the person will immediately advise counsel or the Hearing Officer, as the case may be, of the problem and when the person will be prepared to proceed.

2). Responsiveness. Respond to calls from counsel/parties and Hearing Officers within 24 hours or the next business day. Further, they shall endeavor to respond in the same amount of time to emails. At a minimum, the message shall be acknowledged and advice given as to when it will be returned.

3). Conduct. Comply with the applicable rules of professional conduct.

B. Adverse Consequences.

1). Party Or Counsel. Hearing Officers will have discretion should any breach of the applicable responsibilities by a party or counsel occur to subject the individual to adverse consequences in accordance with IDEA.

2). Hearing Officer. Hearing Officers shall notify any party who alleges that a Hearing Officer breached his or her applicable responsibilities that the party may file a grievance in accordance with the Grievance Procedures. See Appendix B, Guidelines for Handling Grievances Against Hearing Officers.

6. **Security:**

A. Consider at Prehearing.

If counsel raise any security concerns at the time of the prehearing conference and Hearing Officers find there is reasonable cause to believe there is a security concern, Hearing Officers shall request the Student Hearing Office to provide security services at the time of the hearing. On the day of the hearing, the Student Hearing Office will confirm that the security services are present at the time of the hearing and will remain readily available throughout the hearing.

B. Hearing Procedures.

If the security concern arises for the first time during the course of a hearing, Hearing Officers shall take such steps as deemed reasonably necessary to maintain safety and order. Among other steps, Hearing Officers might warn the party to act appropriately and instruct the party's counsel to confer with their party about appropriate conduct during a recess (possibly granting reasonable opportunities for counsel to confer with their client upon request) or request the presence of security services.

7. Prehearings:

A. Scheduling and Planning.

1). Prehearings Mandatory. Hearing Officers shall conduct a prehearing conference, either in person or by telephone, in every case, which shall be scheduled by the Hearing Officer and held after receipt of a Notice of Hearing Officer Appointment (Appendix A/Form 3). In non-expedited cases, Hearing Officers shall generally schedule the prehearing conference within one week of the termination of the resolution period. In an expedited hearing, Hearing Officers shall schedule the prehearing conference as soon as possible.

2). Discretion To Call Additional Conferences. Hearing Officers have the discretion to call additional prehearing conferences as deemed necessary to manage the hearing process.

3). Obligation To Request Hearing Officer Intervention. Hearing Officers shall require that if between the time of the prehearing conference and the time the HOD is issued any dispute arises: (a) counsel must first confer with opposing counsel; (b) in the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by email any appropriate written motion or documentation and arrange a status conference by telephone to present the matter to the Hearing Officer for decision after argument; and (c) if counsel are unable to resolve the dispute between themselves, they should be prepared to discuss at the telephone status conference whether the offending party should face adverse consequences.

B. Subjects for Consideration.

1). Notice Of Prehearing Conference/Subjects. Upon confirmation of the date and time for the prehearing conference, Hearing Officers shall send to the parties/counsel the content of Appendix A/Form 4 in an email or as an attachment to an email (Notice of Prehearing Conference), along with Appendix A/Form 5 (Prehearing Conference—Subjects To Be

Considered) unless counsel are familiar with the form. Each counsel who participates in any prehearing conference shall have authority to enter into stipulations, make admissions of fact, identify claims and defenses that the party will not be contesting, and settle all or part of the claims in the case, or have reasonable access by telephone to the party or the party representative having such authority.

2). Five-Day Disclosures—Witnesses. Hearing Officers shall require the five-day disclosures to provide the name, job title, address, and a phone number for each witness, as well as the general thrust of the testimony of each witness. Hearing Officers shall also require each party to distinguish the witnesses the party expects to testify in the party's case in chief from the witnesses the party will call only as necessary. Hearing Officers shall require, to the extent possible, the disclosure to distinguish the witnesses who will testify by telephone, if the Hearing Officer permits. Hearing Officers shall not permit a party to reserve the right to call witnesses listed on the opposing party's disclosure. Hearing Officers shall not permit a party to reserve the right to call rebuttal witnesses, since the party must make this request at the due process hearing and Hearing Officers have discretion whether to grant the request. Hearing Officers shall not permit a party to list or call a "designee" of any proposed witness, but rather require the parties to specifically identify every witness. Hearing Officers shall require the parties to provide curriculum vitae for each proposed expert witness in their five-day disclosures.

3). Five-Day Disclosures—Exhibits. Hearing Officers shall require copies of all proposed exhibits to be marked for the purpose of identification (e.g., Petitioner's as P-1, Respondent's as R-1, and Joint as J-1) and every exhibit to have sequential page numbers. Hearing Officers shall require in listing the proposed exhibits, the disclosure to distinguish the exhibits that the party expects to offer from the exhibits that the party may offer only if necessary. Hearing Officers shall not permit a party to reserve the right to offer exhibits listed on the opposing party's disclosure.

4). Five-Day Disclosures—To The Hearing Officer. Hearing Officers shall require each party or counsel to serve their disclosures on the opposing party five (5) business days before the due process hearing and concurrently send the Hearing Officer a copy in such manner as the Hearing Officer directs. Hearing Officers shall require the exhibits in the copy provided to the Hearing Officer to be divided by tabs.

5). Scheduling The Due Process Hearing. During the prehearing conference, Hearing Officers will discuss with counsel the time necessary for the hearing. Hearing Officers shall resolve all doubts in favor of scheduling more time than estimated necessary to avoid the possible need to continue the hearing to another date and thereby delay issuance of the HOD.

C. Prehearing Order.

Hearing Officers shall issue a prehearing order substantially in conformance to Appendix A/Form 6 within three (3) business days after the prehearing conference.

D. Failures.

If a party or a party's counsel fails to appear at a conference, is unprepared to participate in the conference, fails to participate in good faith, or fails to obey a prehearing conference order, Hearing Officers shall exercise discretion whether to subject the individual to adverse consequences.

**8. Continuances:**

**A. In Writing.**

1). Mandatory. Hearing Officers shall require every Motion for Continuance to be submitted in writing before the Hearing Officer may rule on the Motion. Hearing Officers shall require a Motion for Continuance to conform to Appendix A/Form 7. If a party verbally requests a continuance, Hearing Officers shall require the party to file a Motion for Continuance within two (2) business days of the request. If the party fails to follow up a verbal request with a written motion, Hearing Officers shall proceed with the hearing as originally scheduled absent extraordinary circumstances.

2). Where Good Cause/Timely Effort/Exceptional Circumstances Required. Pursuant to the Blackman/Jones Consent Decree, whenever a party is required to show good cause, make a "timely effort" or present "exceptional circumstances" in support of its request for a continuance, Hearing Officers shall require the party to provide specific facts concerning such good cause, timely effort or exceptional circumstance in the Motion for Continuance (Appendix A/Form 7).

**B. Order.**

Hearing Officers and/or the Chief Hearing Officer shall use the form Interim Order on Continuance Motion (Appendix A/Form 8) when granting or denying continuances. In doing so Hearing Officers and the Chief Hearing Officer shall note in detail the reasons which serve as the basis for good cause, exceptional circumstances and timely effort, as the case may be.

**9. Due Process Hearings:**

**A. Hearing Room.**

1). Requirements. Hearing Officers shall require counsel and all parties to meet the Hearing Officer in the assigned hearing room at or before the time the hearing is scheduled to commence. Hearing Officers shall not be expected to telephone or search for counsel or parties before starting the due process hearing. Any change in the hearing room on the day of a hearing shall be arranged by the Hearing Officer through the Receptionist in the SHO Office. Counsel should inform parties and witnesses of the name of the Hearing Officer and instruct them to check the posted schedule to ascertain the hearing room. If the parties and witnesses have any further questions, they should check with the Student Hearing Office Receptionist to confirm where they should appear for the hearing. Hearing Officers shall note the hearing room in the case file and in the HOD.

2). State Case Name/Number. Each time Hearing Officers go on the record in a hearing, and after each recess, the Hearing Officer shall state the names of the parties, case number, and the date and time of the hearing.

B. Qualification of Expert.

Whether a witness may be qualified as an expert is within the discretion of the Hearing Officers. When Hearing Officers qualify a witness as an expert, the Hearing Officer shall state on the record the area(s) of expertise in which the witness is being qualified.

C. Rules of Evidence.

Hearing Officers shall not apply the rules of evidence used in courts except by analogy in the discretion of the Hearing Officer. Hearing Officers may admit and give probative effect to evidence admissible in a state or federal court. When necessary, Hearing Officers may admit evidence not generally admissible in a court if the evidence is reliable and relevant. Hearing Officers may exclude irrelevant, immaterial, and unduly repetitious evidence. Hearing Officers may also exclude privileged information.

D. Testimony by Telephone.

Hearing Officers shall ask any witness testifying by telephone whether: a) the witness is in a setting that protects confidentiality, including whether anyone else is present where the witness is testifying; and (b) whether the witness has any documents. Hearing Officers may ask the witness to ensure that no one outside of the hearing can hear his/her testimony and to not refer to any documents without identifying the document and asking for permission from the Hearing Officer. Hearing Officers shall require counsel to provide all witnesses who testify by telephone with copies of all disclosures and any other documents in advance of the witness testifying. If counsel provides the witness documents that were not included in the party's five-day disclosures, Hearing Officers shall require counsel to bring copies of those documents to the hearing for the Hearing Officer and opposing counsel. Hearing Officers shall advise that counsel is responsible for ensuring the witness has access to a confidential setting in which to provide testimony.

E. Communications.

Hearing Officers may develop their own policies regarding the use of electronic devices in the hearing room. Hearing Officers have the discretion to ban the use of cell phones, PDAs, and laptop computers during the hearing to, among other things, avoid disrupting the hearing and address the "rule of witnesses" being violated.

F. Briefs/Closing Arguments.

Counsel may submit briefs and/or closing arguments in writing after the due process hearing, in the discretion of the Hearing Officer. Further, Hearing Officers may present counsel with the option of either filing a brief/closing argument under a very short timeline or filing a

motion for continuance to extend the HOD deadline to allow a longer timeline for filing a brief/closing argument. Hearing Officers have the discretion to deny a request by counsel to submit written briefs and/or closing arguments where good cause is not shown. Hearing Officers shall have no automatic “right” to have 10 days in which to issue a HOD.

**10. Order of Withdrawal, Order of Dismissal and HOD:**

**A. Order of Withdrawal.**

1). In The Absence Of Settlement. If counsel for a Petitioner withdraws a Due Process Complaint in the absence of a settlement, Hearing Officers shall issue an Order of Withdrawal that conforms to Appendix A/Form 9-Option 1.

2). As A Result Of Settlement. If counsel for a Petitioner withdraws a Due Process Complaint as a result of a settlement agreement, Hearing Officers shall issue an Order of Withdrawal that conforms to Appendix A/Form 9-Option 2 and include, if known, whether it was the result of a resolution meeting. Hearing Officers may request that the parties indicate whether the Hearing Officer should dismiss the Complaint with prejudice. Alternatively, the parties may provide the Hearing Officer with a copy of settlement agreement, or the Hearing Officer may require such, so that the Hearing Officer may determine from agreement of the parties whether to dismiss the Complaint with prejudice. Hearing Officers may incorporate the terms of an agreement between the parties in an order with the consent of the parties.

**B. Order of Dismissal.**

Any Dismissal Order without a hearing, withdrawal, or settlement shall be captioned by Hearing Officers as an Order of Dismissal and shall provide a Notice of Appeal.

**C. HOD.**

1). Definition. An HOD refers to final decisions Hearing Officers issue following a due process hearing, including, among other things, Findings of Fact and Conclusions of Law.

2). Format. Each HOD issued by Hearing Officers shall substantially conform to Form 10.

3). Orders. Any order directing a party to take action issued by Hearing Officers shall be specific and establish timelines for each directive or anticipated action.

4). Issuance. Hearing Officers shall issue HODs in accordance with Title 5, DCMR Section 3030.11. In addition, Hearing Officers shall send an electronic copy of the HOD to counsel for both parties. Hearing Officers shall send an electronic copy of the HOD to the Student Hearing Office, and, if DCPS is a party, to [dueprocess@dc.gov](mailto:dueprocess@dc.gov).

5). Copy to Parties. Hearing Officers shall send an electronic copy of the HOD to each party, if all the parties consent and provide their email addresses.



Office of the



State Superintendent of Education

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## RESOLUTION PERIOD DISPOSITION FORM

This form is designed to assist the LEA in notifying the Hearing Officer and the Student Hearing Office (SHO) regarding the outcome of the resolution meeting(s). **Failure to notify the Hearing Officer and the SHO within 3 calendar days after the termination of the resolution period may result in a finding of noncompliance by the Office of the State Superintendent of Education, Quality Assurance and Monitoring Division.**

### **Student and Case Information**

Student Name: \_\_\_\_\_  
Student Date of Birth: \_\_\_\_\_  
Student ID: \_\_\_\_\_  
SHO Case Number: \_\_\_\_\_

### **Parent Information**

Parent Name: \_\_\_\_\_  
Parent Address: \_\_\_\_\_  
Parent Phone Number: \_\_\_\_\_

### **LEA Information**

Name of LEA: \_\_\_\_\_  
LEA Representative: \_\_\_\_\_  
LEA Address: \_\_\_\_\_  
LEA Representative Phone Number: \_\_\_\_\_  
LEA Representative Fax: \_\_\_\_\_

### **Resolution Meeting Information**

Date Due Process Complaint Filed: \_\_\_\_\_  
Date of Resolution Meeting(s): \_\_\_\_\_

Was meeting held within 15 calendar days or, in the case of an expedited discipline hearing, within 7 days?

Yes      No

If Meeting was not held within 15/7 days, reason for delay (*reason does not excuse the LEA from the obligation to comply with the 15/7 day timeline*):

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## **Resolution Outcome**

### **I. Resolution Agreement**

\_\_\_\_\_ Resolution Agreement reached that satisfies all issues in the complaint. (All issues in the complaint have been resolved and an agreement has been reached to the satisfaction of the parties.) The parties agree the due process complaint should be dismissed.<sup>1</sup>

**A copy of the Resolution Agreement must be forwarded to the Hearing Officer and the SHO.**

### **II. Partial Resolution Agreement**

\_\_\_\_\_ Resolution Agreement reached that satisfies one or more of the issues in the complaint, but does not satisfy all issues in the complaint. (The issues in the complaint have been partially resolved and an agreement has been reached on these issues to the satisfaction of the parties.) The parties agree that the resolved issues should be dismissed and all outstanding issues should proceed to a due process hearing.<sup>2</sup>

### **III. No Resolution Agreement**

- A. \_\_\_\_\_ No agreement was reached by the end of the 30 day resolution period and the case should proceed to a due process hearing.
- B. \_\_\_\_\_ Although an agreement was not reached at the resolution meeting, the LEA and parent agree to continue to attempt to resolve the complaint prior to the end of the 30 day resolution period. The 45 day timeline will not begin until the 30 day resolution period has expired.
- C. \_\_\_\_\_ Although the 30 day resolution period has not yet expired, the LEA has not resolved the issues in the complaint to the satisfaction of the parent and the LEA and parent agree no agreement is possible prior to hearing. The LEA and parent agree that the case should proceed to due process hearing.

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<sup>1</sup> If all issues in the due process complaint were resolved to the satisfaction of the parties, provide a copy of the Resolution Agreement to the Hearing Officer, the SHO, and the Blackman/Jones Database email address below.

<sup>2</sup> If some, but not all, issues in the due process complaint were resolved to the satisfaction of the parties, provide a copy of the Resolution Agreement to the Hearing Officer, the SHO, and the Blackman/Jones Database email address below.



Office of the



State Superintendent of Education

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**Signatures and Affirmation**

I affirm that if an offer of substantive relief was made, and one or more issues in the complaint are resolved at the resolution meeting, a legally binding agreement was executed on or before the date of this form. I further affirm that the information provided in this form is true and correct.

\_\_\_\_\_  
Signature of Parent/guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of LEA Representative

\_\_\_\_\_  
Date

Mail, fax, e-mail, or deliver this form to:  
Office of the State Superintendent of Education  
Student Hearing Office  
810 First Street, NE 2<sup>nd</sup> floor  
Washington, DC 20002  
(202) 478-2956  
[hearing.office@dc.gov](mailto:hearing.office@dc.gov)

In addition, please email this form to the Blackman Jones Database:  
[dueprocess@dc.gov](mailto:dueprocess@dc.gov)



Office of the



State Superintendent of Education

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## -----Mandatory Notice Regarding Mediation-----

### **You Have a Right to Resolve Your Dispute through Mediation**

If, after attempting to resolve your dispute through Resolution, you are still not satisfied with the results, the Office of the State Superintendent of Education provides a mediation process which is voluntary on the part of all participants and is in compliance with the INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA). Participating in a Due Process Hearing can be stressful, and in the end, a Hearing Officer determines the results. With Mediation, both sides have the opportunity to frame what the results will ultimately be.

Under IDEA, the Office of the State Superintendent of Education must ensure that procedures are established and implemented to allow parties to disputes involving any matter under 34 CFR Part 300, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. [34 CFR 300.506(a)] [20 U.S.C. 1415(e)(1)]

By law, Mediation cannot be used to deny or delay any participant's right to a due process hearing, or to deny any other rights afforded under IDEA. Mediations are conducted by qualified and impartial mediators who are trained in effective mediation techniques. At the agreement of both parties to participate in mediation, the Office of the State Superintendent of Education will assign a mediator. The purpose of mediation is to provide a way for people who are parties to a dispute to discuss and resolve their concerns openly, without fear that what they say will be used against them.

If you are interested in mediating your dispute, OSSE will provide a fair, impartial mediator who is both qualified and knowledgeable in the laws and regulations of IDEA to mediate your concerns. This service is absolutely FREE to parents, and will be scheduled in a location and at a time that is convenient to the parties to the dispute. [34 CFR 300.506(b)(5)] [20 U.S.C. 1415(e)(2)(E)]

**Your Mediation Agreement is Enforceable by Law: A written, signed mediation agreement under 34 CFR 300.506(b) is enforceable in any State court of competent jurisdiction or in a district court of the United States. [34 CFR 300.506(b)(7)] [20 U.S.C. 1415(e)(2)(F)]**

### **Why Choose Mediation?**

**SPEED:** In resolving or narrowing disputes through mediation, parties avoid the delay of a third party or judicially decided outcome.

**ECONOMY:** In resolving or narrowing areas of disputes through mediation, parties save an enormous amount of time, energy, and expense associated with hearings, protracted conflict and litigation.



Office of the



State Superintendent of Education

**QUALITY OF SETTLEMENT:** Studies indicate parties entering into voluntary agreements through mediation are far more likely to adhere to and fulfill commitments made in such agreements than they are with judicially imposed resolutions.

**PROMOTE COOPERATIVE OUTCOMES:** Through mediation, parties avoid the "win-lose" outcome that may result from a hearing because the parties work together to create a "win-win" for everyone.

**YES:**

☐ Parent: I, \_\_\_\_\_, ***am interested*** in resolving this complaint through Mediation.

☐ LEA Representative: I, \_\_\_\_\_, on behalf of \_\_\_\_\_ ***am interested*** in resolving this complaint through Mediation.

**If you checked "yes", you will be contacted by a representative from the OSSE Student Hearing Office's Mediation Team.**

**NO:**

☐ Parent: I, \_\_\_\_\_, ***am not interested*** in resolving this complaint through Mediation.

☐ LEA Representative: I, \_\_\_\_\_, on behalf of \_\_\_\_\_ ***am not interested*** in resolving this complaint through Mediation.

Signature of Parent/Guardian \_\_\_\_\_ Date \_\_\_\_\_

Signature of LEA Representative \_\_\_\_\_ Date \_\_\_\_\_

***For more information about Mediating a Dispute, contact the OSSE Student Hearing Office at (202) 698-3819.***

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
1150 Fifth Street, S.E.  
Washington, DC 20003

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Parent Name on behalf of  
Student

Petitioner,

Hearing Officer: Seymour DuBow

v.

Case No:

DCPS

Respondent

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**NOTICE OF PRE-HEARING CONFERENCE**

A pre-hearing conference by telephone has been scheduled for July 19<sup>th</sup> 2010 at 3:30 p.m.

**Please be advised that the purpose of this Notice is two-fold.** The first purpose of this notice is to advise you of the various matters that I will discuss with you during the pre-hearing conference. The second purpose is to provide you an opportunity to confer with your client prior to the pre-hearing conference and take such other steps as may be necessary in order to meaningfully address these matters and otherwise participate in the pre-hearing conference.

**Note: The attorney for each party participating in any conference shall have the authority to enter into stipulations, make admissions of fact, identify claims and defenses that the party will not be contesting, and settle all or part of the claims in the case, or have reasonable access by telephone to the party having such authority.**

At the time of the pre-hearing conference, it is my expectation that the parties will be in a position to discuss and address all of the items on the enclosed Subjects To Be Considered.\*

Within three business days of the pre-hearing conference, I will issue a pre-hearing order including stipulations, admissions of fact, agreements reached, and ruling made during the pre-hearing conference. If either party believes that the pre-hearing order contains omissions or misstatements, the party must bring them to my attention

within three business days of the date of the Order with a copy to opposing counsel. I will address your concerns promptly.

Date: June 28, 2010

Seymour DuBow

\* If counsel is already familiar with Subjects To Be Considered it will not be enclosed.

## **PREHEARING CONFERENCE – SUBJECTS TO BE CONSIDERED**

1. If a party is not represented by counsel, does the party plan to retain counsel before the due process hearing? If so, the party or new counsel must immediately advise the Hearing Officer and opposing counsel of the counsel's appearance in the case.  
  
If not represented by counsel, did the parent receive notice of any free or low cost legal services that may be available?
2. When did the Resolution Meeting process conclude? What was the agreement reached by the parties, if any? If DCPS is the LEA, did it file the disposition form and was it signed by the parties? Are the parties willing to pursue/considering pursuing in good faith mediation or further settlement discussions? When does the 20/45-day deadline start running?
3. Please indicate whether the student's name, date of birth, school of attendance, and student number are accurately reflected on the due process complaint notice.
4. What are the specific issues to be determined (e.g., what aspects of the IEP are alleged to be inappropriate?) and what is the specific proposed relief (e.g., what type/amount of compensation is sought?) During the prehearing the Hearing Officer may require the parties to provide further clarification of their claims, defenses and relief requested.
5. Did the Respondent file a response? If not, how will the Hearing Officer address Respondent's failure to file it?
6. Are there any admissions of fact or stipulations? Did the parties reach an agreement on any of the claims in the complaint? The Hearing Officer may ask counsel to certify in the 5 day disclosures or start of the due process hearing that they have attempted in good faith to stipulate to facts that are not in dispute.
7. If this is an expedited hearing in the context of discipline, are there other issues presented that require bifurcation (given the different timelines)?
8. What witnesses does each party plan to call at the due process hearing i.e., description of each witness and the subject matter of his/her testimony. How much time is needed to hear the case? What additional time, if any, should be scheduled to deal with unanticipated problems/delays?
9. When will the hearing be held (i.e., dates and times)?
10. Is any continuance of the 45-day timeline anticipated? If so, how might it be avoided?

11. What is the due date for the five-day disclosures of proposed exhibits, witness lists (including a name, role/position, address, phone number, and general thrust of the testimony), and evaluations/written recommendations that may be used at the due process hearing?

**Note:** (1) The disclosure must separately identify those witnesses whom, and exhibits which, the party expects to present/offer and those whom/which the party may call/offer if the need arises; (2) the disclosure must designate witnesses expected to be presented by telephone if allowed in the discretion of the Hearing Officer; (3) copies of all proposed exhibits shall be marked (Petitioner as P-1, Respondent as R-1 and Joint as J-1); (4) each party shall at the 5-day deadline send the Hearing Officer a copy of the disclosure with the exhibits divided by tabs, in such manner as the Hearing Officers directs; (5) in their five day disclosures, each party must provide a curriculum vitae for all proposed expert witnesses.

Hearing Officers may require counsel to provide written objections to the opposing party's exhibits within two business days of their receipt of the five day disclosures. Hearing Officers may also encourage counsel to submit joint exhibits when possible.

12. Has either party had or anticipate having a problem accessing or obtaining witnesses or records (e.g., the need to compel witnesses or the production of documents)? The requesting party should be prepared to explain the relevance of the witness testimony or records requested.

If yes, the party that refuses to produce the witness or records should explain why they will not voluntarily ensure the appearance of the witness or production of the documents. Will the LEA make current employees voluntarily available at the due process hearing?

13. Does either party anticipate any witness scheduling or other logistical problems? How does the party propose to resolve them?
14. Have counsel provided the Hearing Officer all known (to both counsel and his/her firm/organization) pending due process complaints and all HODs rendered and settlement agreements reached in the last 18 months regarding the Student?
15. Do the parties anticipate any motions or other disputes that should be addressed during the prehearing conference? If so, how will they be addressed i.e., the dates on which motions must be filed and the timeline for decisions on the motions?
16. Should a date and time be set for a second prehearing conference, and if so, when?
17. Any other matters that the Hearing Officer deems appropriate.

**NOTE:** When the parties are represented by counsel, it will be presumed (and included in the Prehearing Order), unless counsel objects at the prehearing conference, that:

- There are no objections to the appointed Hearing Officer.
- The Parent opts for a hearing to be closed.
- The Parent will participate in the due process hearing.
- The Student will not be present at the due process hearing.
- Neither party requires interpreter services or other accommodations.
- The Petitioner shall proceed first at the hearing.
- The Petitioner shall carry the burden of proof.
- The parties shall be prepared to present oral closing argument
- The Parent elects to be provided a written decision.
- The parties consent to a copy of the decision being transmitted electronically or by facsimile.

**DIRECTIVE:** Counsel are directed that, between now and the time the HOD is issued, should any dispute arise, counsel must first confer with opposing counsel. In the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by e-mail any appropriate written motion or documentation and arrange a status conference by telephone to present the matter to the Hearing Officer for decision after argument. If counsel are unable to resolve the dispute between themselves, they should be prepared to discuss at the telephone status conference whether the offending party should face adverse consequences.

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003

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PA, on behalf of  
STUDENT,\*

Petitioner,

Hearing Officer: Seymour DuBow

v

Case No: 2010-

DCPS

Respondent.

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**PREHEARING ORDER**

On July 19, 2010 at 3:30 p.m., a prehearing conference was held in the above matter. Participating in the conference were: Petitioner's counsel, Katherine Zeisel; Respondent's counsel, Linda Smalls; and this hearing officer.

The following matters were addressed:

1. The parties concluded the Resolution Meeting process by failing to reach an agreement. Accordingly, the parties agreed that the 45-day timeline started to run on June 30, 2010.

2. The issues raised by the Petitioner, including the relief requested, and the response of the Respondent, present the following issues, defenses and requested relief for determination by the Hearing Officer: The issues and relief raised by petitioner's counsel are first, Did DCPS deny a Free Appropriate Public Education (FAPE) to the student by failing to provide an appropriate placement for the 2010-2011 School Year by proposing Hamilton Center as the student's placement. Counsel for the Petitioner requested as relief DCPS to place and fund the student including providing transportation to Children's Guild in Chillum, Maryland or to a substantially similar non-public placement. Counsel for the Respondent denies DCPS failed to provide a FAPE in that the proposed placement at Hamilton Center is appropriate. Counsel for Petitioner has raised as the second issue that the April 23, 2010 IEP is inappropriate for not containing appropriate accommodations or modifications to address the student's attention issues such as frequent breaks, extended time, preferential seating, chunking of work and not including testing accommodations. Counsel for the Respondent stated DCPS would provide these appropriate modifications and accommodations in the student's IEP and counsel for both parties will inform this hearing officer prior to the hearing if this issue has been resolved. The final and

\*If the Student is a minor.

third issue raised is did DCPS deny a FAPE to the student by failing to include the parent in the placement decision through failure to consider other options than Hamilton Center, failing to provide the parent with sufficient information about the Hamilton Center placement after the parent raised questions after her site visit and by failing to provide a written Prior Notice of Placement at Hamilton Center. Counsel for the Respondent denied this third issue and both counsel agreed that at both the February and April IEP meetings that Hamilton Center was proposed as the student's placement by DCPS. Counsel for the Respondent makes admissions as to the Jackie Robinson placement and the student's need for a full-time therapeutic setting in her response.

3. After discussing the time necessary to hear this matter, counsel agreed that the due process hearing will be held from 9 a.m. to 5 p.m. on August 5, 2010. Counsel shall immediately advise the Hearing Officer if a party will request a continuance or plans to withdraw a complaint.

4. The deadline for the parties to exchange their five day disclosures, i.e., the lists of their potential witnesses, copies of potential exhibits, and copies of available evaluations and written recommendations intended to be used, is July 28, 2010 by close of business. A curriculum vitae will be filed for any expert witness. Both counsel shall concurrently mail a copy of their five day disclosures to the Hearing Officer with exhibits divided by tabs at 1715 Luzerne Avenue, Silver Spring, Maryland 20910. Counsel are directed to adhere to the specific requirements for disclosures as set forth in Practice 8-B-2 through 4 in the Uniform Standard Practices.

5. Counsel for the Petitioner will call as witnesses, the parent, Dr. Sheila Iseman an expert witness, who will testify about placements for the student, an investigator who attended the IEP meetings and will testify about those meetings and a representative of the Children's Guild who will testify about their placement. Counsel for the Respondent will call a representative of Jackie Robinson Center to testify about the IEPs for the student and the assistant principal of Hamilton Center who will testify about the Hamilton Center placement.

6. Counsel advised that they are not aware of any due process complaints, HODs, and settlement agreements regarding the Student within the last 18 months:

7. Counsel were asked if they had any objections to the presumptions regarding the various procedural items set forth in the "Note" near the close of the "Prehearing Conference—Subjects To Be Considered" form, which was enclosed in the Prehearing Notice. Counsel agreed:

- There are no objections to the appointed Hearing Officer.
- The Parent opts for a hearing to be closed.
- The Parent will participate in the due process hearing.
- The Student will not be present at the due process hearing.
- Neither party requires interpreter services or other accommodations.
- The Petitioner shall proceed first at the hearing.
- The Petitioner shall carry the burden of proof.

- The parties shall be prepared to present oral closing argument
- The Parent elects to be provided a written decision.
- The parties consent to a copy of the decision being transmitted electronically or by facsimile.

8. With regard to any motions or other problems to be addressed or anticipated, counsel advised neither would file any motions.

9. Counsel are directed that, between now and the time the HOD is issued, should any dispute arise, counsel must first confer with opposing counsel. In the unlikely event that counsel cannot resolve the dispute between themselves, counsel must immediately submit by e-mail any appropriate written motion or documentation and arrange a status conference by telephone to present the matter to the Hearing Officer for decision after argument. If counsel are unable to resolve the dispute between themselves, they should be prepared to discuss at the telephone status conference whether the offending party should face adverse consequences.

10. The parties and their counsel will be held to the matters agreed upon, ordered, or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within three (3) business days of the date of this Order (and provide a copy to opposing counsel). The Hearing Officer will address the party's concern promptly.

IT IS SO ORDERED.

Date: July 19, 2010 *Seymour DuBow*  
Hearing Officer

Copies to: All Counsel

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 5<sup>th</sup> Street, S.E.  
Washington, DC 20003

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PARENT NAME, on behalf of  
STUDENT,\*

Petitioner,

Hearing Officer:

v

Case No:

LEA,

Respondent.

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**MOTION FOR CONTINUANCE**

This Motion by the Petitioner/Respondent [strike one] is to request a continuance of the due process hearing currently scheduled to take place on \_\_\_\_\_ for \_\_\_\_\_ days.

The reason for the continuance is:

The Parent/Parent representative [strike one] is not prepared to proceed with the properly scheduled hearing because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The Parent/Student/Parent representative/Parent witness [strike those not applicable] is unavailable because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The LEA representative/LEA witness/LEA counsel is unavailable because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\*If the Student is a minor.

Further, the timely efforts made by the LEA to have such person(s) appear were:

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Other reason for request of Parent/LEA [strike one]:

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**Second Or Greater Continuance.** This is the second or more continuance for the party requesting it in this matter. Within the meaning of the Blackman/Jones Consent Decree, the following “exceptional circumstance” warrants it being granted:

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I have contacted opposing counsel who [does] [does not] object to the continuance requested.

By my signature below I certify that I have provided the opposing party with a copy of this Motion.

Date: \_\_\_\_\_

\_\_\_\_\_  
Petitioner/Respondent [strike one] Counsel

[Mailing Address]

[Phone Number and Email Address]

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
1150 Fifth Street, S.E.  
Washington, DC 20003

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PARENT NAME, on behalf of  
STUDENT,\*

Petitioner,

Hearing Officer:

v

Case No:

LEA,

Respondent.

---

**NOTICE TO APPEAR**

To: \_\_\_\_\_

This is to notify you that you are required to appear and under oath to give testimony as a witness at the Special Education Due Process Hearing in the above cause. The relevance of the requested testimony to this cause is: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: Special Education Student Hearing Office  
1150 Fifth Street, S.E.  
First Floor  
Washington, DC 20003

This Notice to Appear is issued under the authority of the Individuals with Disabilities Education Act, 20 U.S.C. §1415(h)(2), 5 D.C.M.R. §3031.1(b), and §800.1(4), Student Hearing Office Standard Operating Procedures. Any party to a special education administrative hearing has the right to present evidence and compel the attendance of witnesses who have knowledge of relevant facts or whose opinions are important for reaching an appropriate disposition on the

\*If Student is a minor.

merits of this case. If you refuse to appear, the party who requested this subpoena may seek the Order of an appropriate court with jurisdiction, pursuant to statute, to force your attendance and compliance. If you have any questions or objections to appearing, please call the person who requested this subpoena noted below.

The exact time of your testimony cannot be determined prior to the date of the hearing. Under the hearing rules please be advised that you might be excluded from the hearing room prior to your testimony. You are welcome to bring reading material or such other activities as you may need to pass the time while waiting.

Your appearance has been requested by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Hearing Officer

**PROOF OF SERVICE**

This will certify that a true and correct copy of this Notice to Appear was served on:

Name of Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Manner of Service:

\_\_\_\_\_ Certified mail, return receipt requested

\_\_\_\_\_ Fax transmission

\_\_\_\_\_ Hand delivery

By: \_\_\_\_\_  
(Person executing service)

Date: \_\_\_\_\_

**Office of the State Superintendent of Education**

**Hearing Officer Determinations**

**October 2007-present**

Hearing Officer Determinations are available at the State Superintendent of Education's website, [www.osse.dc.gov/seo](http://www.osse.dc.gov/seo) or through the following link:

<http://osse.dc.gov/seo/cwp/view,a,1222,q,563251.asp>

*State Education Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs*



## *Due Process Complaint Notice*

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- Parents initiating a complaint must provide a completed due process complaint form to the Local Education Agency ("LEA"). For students in traditional public schools, nonpublic day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St. NE, Washington, D.C. 20002, with a copy to the Student Hearing Office. If a charter school is a named party, the due process complaint must be provided to the principal or director of the charter school, with a copy to the Student Hearing Office.
- Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a "Resolution Session"**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting. **The Student Hearing Office does NOT schedule resolution sessions.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.
- Policies and Procedures governing due process hearings are contained in federal and local law and the SHO SOP. You may obtain a copy of the SOP from the Student Hearing Office or any D.C. Public or Charter School without cost. The SOP is also at the DCPS website.

**A. Information About the Student:**

Student Name: \_\_\_\_\_ Birth Date: \_\_\_\_\_

Address: \_\_\_\_\_

Home School: \_\_\_\_\_

Present School of Attendance: \_\_\_\_\_

Is this a charter school? \_\_\_\_\_ (If yes, you must also provide a copy of this notice to the charter school principal or director.)

Parent/Guardian of the Student: \_\_\_\_\_

Address (if different from the student's above): \_\_\_\_\_

Phone/Contact Number: \_\_\_\_\_ Fax Number (if applicable): \_\_\_\_\_

**B. Individual Making the Complaint/Request for Due Process Hearing:**

Name: \_\_\_\_\_

Complete Address: \_\_\_\_\_

\_\_\_\_\_

Phone: (h) \_\_\_\_\_ (w) \_\_\_\_\_ (Fax) \_\_\_\_\_ (e-mail) \_\_\_\_\_

Relationship to the Student:

- |                                       |   |   |
|---------------------------------------|---|---|
| <input type="checkbox"/> Parent       | <input type="checkbox"/> Legal Guardian               | <input type="checkbox"/> Parent Surrogate |
| <input type="checkbox"/> Self/Student | <input type="checkbox"/> Local Education Agency (LEA) | <input type="checkbox"/> Parent Advocate  |

**C. Legal Representative/Attorney (if applicable):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (w) \_\_\_\_\_ (Fax) \_\_\_\_\_ (e-mail) \_\_\_\_\_

Will attorney /Legal representative attend the resolution session? ☐ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

- ☐ DCPS school (name of the school if different from page one) \_\_\_\_\_
- ☐ Charter school (name of the charter school if different from page one) \_\_\_\_\_
- ☐ Non-public school or residential treatment facility (name) \_\_\_\_\_
- ☐ Parent

**E. Resolution Session Between Parent and LEA:**

I understand that it is my right to have a resolution session to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution session to avoid having this meeting.)

☐ I wish to waive the Resolution Session.

**F.     Mediation Process:**

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply:

- ☐ I am requesting mediation as an alternative to the resolution session meeting.
- ☐ I am requesting mediation services only.
- ☐ I do not wish to use a mediator at this time.

**G.     Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

1.       What is the nature of the problem, including the facts relating to the problem, that will need to be addressed at a Resolution Session meeting, a Mediation Conference, and/or a Due Process Hearing?
  
  
  
  
  
  
  
  
  
  
2.       To the extent known to you at this time, how can this problem be resolved?
  
  
  
  
  
  
  
  
  
  
3.       Issues presented:

**H.     Estimated amount of time needed for the hearing:**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.

- Interpreter (please specify the type)\_\_\_\_\_
- Special Communication (please describe the type)\_\_\_\_\_
- Special Accommodations for Disability (please be specific)\_\_\_\_\_
- Other\_\_\_\_\_

**J. Waiver of Procedural Safeguards (Optional):**

☐ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this Complaint.

**K. Requirement to Consider Compensatory Education:**

If a hearing is held on a date that is past the date on which the Hearing Officer's Determination was required to be issued, there is a rebuttable presumption of harm and compensatory education must be an issue considered by the Hearing Officer during the hearing.

**L. Parent or Local Educational Agency Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent or Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Representative of the Local Educational Agency      Date  
(if hearing requested by a LEA)

**M. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate

\_\_\_\_\_  
Date

**Mail, fax or deliver this complaint notice to:  
State Enforcement and Investigation Division  
For Special Education Programs (SEID)  
Student Hearing Office (SHO)  
1150 5<sup>th</sup> Street, SE  
Washington, DC 20003  
Fax number: 202/698-3825**

*State Education Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs*



## ***Due Process Complaint Notice***

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- Parents initiating a complaint must provide a completed due process complaint form to the Local Education Agency ("LEA"). For students in traditional public schools, nonpublic day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St. NE, Washington, D.C. 20002, with a copy to the Student Hearing Office. If a charter school is a named party, the due process complaint must be provided to the principal or director of the charter school, with a copy to the Student Hearing Office.
- Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a "Resolution Session"**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting. **The Student Hearing Office does NOT schedule resolution sessions.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.
- Policies and Procedures governing due process hearings are contained in federal and local law and the SHO SOP. You may obtain a copy of the SOP from the Student Hearing Office or any D.C. Public or Charter School without cost. The SOP is also at the DCPS website.

**A. Information About the Student:**

Student Name: Alison Birth Date: 1/01/01

Address: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Home School: Turner at Green Elementary School

Present School of Attendance: AB Elementary School

Is this a charter school? No (If yes, you must also provide a copy of this notice to the charter school principal or director.)

Parent/Guardian of the Student: Keisha R.

Address (if different from the student's above): n/a

Phone/Contact Number: XXXXXXXX Fax Number (if applicable): n/a

**B. Individual Making the Complaint/Request for Due Process Hearing:**

Name: Keisha R.

Complete Address: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Phone: (h) XXXXXXXXXX (c) XXXXXXXXXX (Fax) n/a (e-mail) n/a

Relationship to the Student:

<input checked="" type="checkbox"/> Parent	<input type="checkbox"/> Legal Guardian	<input type="checkbox"/> Parent Surrogate
<input type="checkbox"/> Self/Student	<input type="checkbox"/> Local Education Agency (LEA)	<input type="checkbox"/> Parent Advocate

**C. Legal Representative/Attorney (if applicable):**

Name: Joy Purcell, The Children's Law Center

Address: 616 H Street, NW, Suite 300, Washington, DC 20001

Phone: (w) (202) 467-4900, ext. 525 (Fax) (202) 552-7125 (e-mail) jpurcell@childrenslawcenter.org

Will attorney /Legal representative attend the resolution session? ☒ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

☒ DCPS school (name of the school if different from page one) AB Elementary School  
☐ Charter school (name of the charter school if different from page one) \_\_\_\_\_  
☐ Non-public school or residential treatment facility (name) \_\_\_\_\_  
☐ Parent

**E. Resolution Session Between Parent and LEA:**

I understand that it is my right to have a resolution session to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution session to avoid having this meeting.)

☒ I wish to waive the Resolution Session.

## **F. Mediation Process:**

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply:

☐ I am requesting mediation as an alternative to the resolution session meeting.

☐ I am requesting mediation services only.

☒ I do not wish to use a mediator at this time.

## **G. Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

1. What is the nature of the problem, including the facts relating to the problem, that will need to be addressed at a Resolution Session meeting, a Mediation Conference, and/or a Due Process Hearing?

### **The relevant facts include, but are not limited to the following:**

Alison is an eight year old year girl with many special needs that affect her academic progress. Alison has been diagnosed with Attention-deficit Hyperactivity Disorder (*hereinafter* "ADHD") which undeniably affects her ability to focus, complete class work, and control her behavior in school. Alison's ability to control her behavior and participate in class is further complicated by her history of trauma which resulted in a diagnosis of Post-traumatic Stress Disorder (*hereinafter* "PTSD"). Alison also has diagnoses of Mood Disorder Not Otherwise Specified, Disruptive Behavior Disorder, Dysthymic Disorder, and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.

Getting Alison to AB Elementary School (*hereinafter*, "AB Elementary") every morning is a battle—she begs to stay home because she is afraid of the girls in her class and cannot emotionally handle the everyday stresses at school. When at school, she is unable to participate in class. She cannot stay focused on her school work and she is frequently involved in fights with other students. She often runs crying to the front office to call her mother and request that she pick her up from school. When Alison is disciplined or redirected she will erupt with anger, using profanity towards school staff nearly every day and frequently running away from school authorities. On one occasion this school year Alison injured her teacher when the teacher attempted to intervene in a fight between Alison and another student.

This is not the first time that Alison has struggled at AB Elementary . In fact, she has exhibited these difficulties since she was in the first grade during the 2007-2008 school year. Throughout the 2007-2008 school year Alison struggled to develop the skills required of first graders and she required frequent prompting to complete all work habits and personal and social skills. Alison's first grade teacher described her as a "very active child" who "exhibits sudden and extreme mood changes" and "unpredictable behavior." By the end of the 2007-2008 school year her teacher eventually concluded that "Alison was unable to access her education and gain the skills required of a first grader.

Throughout the 2008-2009 school year, when Alison was in 2<sup>nd</sup> grade, Alison continued to struggle academically and behaviorally, exhibiting an inability to follow directions from school authorities and displaying aggressive behavior towards her teachers and classmates. During the 2008-2009 school year her aggressive erratic behavior only escalated while her academic progress continued to stagnate. In the fall of 2008, Alison was expelled from the AB Elementary afterschool program for aggressive behavior towards the staff and in October 2008 she was suspended from school for fighting with other children in her class. Even more startling, in the spring of 2009 Alison began exhibiting suicidal ideations, in one instance, wrapping a belt around her neck and attempting to hang herself. After repeated instances of suicidal behavior Alison was eventually hospitalized in the inpatient psychiatry department of Children's National Medical Center.

Despite Alison's lack of academic progress, uncontrollable mood swings at school, and her mother's specific request that Alison be evaluated for special education services in December 2008, the District of Columbia Public Schools (*hereinafter*, "DCPS") did not identify, locate, and evaluate Alison. Consequently Alison's mother, Ms. R. filed a due process complaint in June 2009 requesting payment for an independent Psychological/Psychoeducational Evaluation completed by Dr. David Missar. Through a Settlement Agreement, DCPS agreed to pay for the independent evaluation.

On August 4, 2009 DCPS convened a Multidisciplinary meeting to review Dr. Missar's evaluation to determine Alison's eligibility for special education services, develop an Individual Education Program (*hereinafter*, "IEP"), and discuss placement. However, the IEP Team was unable to develop an IEP and discuss placement at the August 4<sup>th</sup> meeting because DCPS failed to ensure that all necessary members of the IEP Team were present. Notably, neither Alison's general education teacher, Ms. Butler, nor any special education teacher from AB Elementary was present at the meeting.

After reviewing the results of Dr. Missar's evaluation and the recommendations of Alison's treating physicians, the Team agreed that Alison was eligible for special education services as of August 4, 2009. However, DCPS disregarded the recommendations of Dr. Missar and her doctors and instead inappropriately classified Alison as a student with "Other Health Impairment." This classification is inappropriate because it does not address all of Alison's special needs, and led DCPS to deny Alison the specialized instruction and related services that she requires to access her education.

After determining that Alison was eligible for services at the August 4<sup>th</sup> meeting, the IEP Team reconvened on August 20, 2009 to develop an IEP for Alison and to discuss placement. The IEP developed by DCPS at the August 20, 2009 meeting is inappropriate for many reasons, including but not limited to, an inappropriate classification, inappropriate mathematics, reading, writing, and social-emotional annual goals, and an insufficient level of specialized instruction. Though Alison requires a full-time therapeutic placement, DCPS has refused to provide Alison with the level of specialized instruction and therapeutic supports she requires to access her education.

Further, the IEP is inappropriate because it lacks the related services and accommodations that Alison requires, including but not limited to, group counseling with social skills instruction, social work services, and psychiatric services. The IEP is also inappropriate because it lacks a Behavior Intervention Plan (*hereinafter* "BIP") with appropriate intervention strategies, positive behavioral supports, and consequences that Alison requires to control her behavior so that she can participate in class.

Since the start of the 2009-2010 school year Alison's behaviors have continued to escalate, resulting in frequent calls home to Ms. R. and multiple suspensions. On at least one occasion, DCPS failed to provide Ms. R. with any written notice of the suspension. In Fall 2009 Alison was again expelled from the AB Elementary afterschool program for uncontrollable behavior. She uses profanity towards school staff nearly every day, frequently fights with her peers and frequently runs unaccompanied throughout the school. On at least one occasion, Alison ran outside of the school and down Alabama Avenue—a busy artery of Southeast Washington, D.C.

As a result of Alison's chronic behavioral difficulties, there are very few instances when Alison is able to participate in class. Consequently, her behavior has directly impacted her academic progress. She is still functioning below grade level in all academic subjects and is rarely able to complete any work habits, personal or social skills. At the filing of this complaint, Alison continues to languish in an inappropriate placement, without sufficient related services and the therapeutic supports that she needs so that she may access her education and make academic progress. As a result, DCPS has denied and continues to deny Alison the free appropriate public education (*hereinafter*, "FAPE") to which she is entitled.

2. To the extent known to you at this time, how can this problem be resolved?

DCPS will immediately place, fund, and provide transportation for Alison to attend The Children's Guild in Chillum Maryland, or another similar nonpublic full time therapeutic psychoeducational day school for children with emotional disturbance.

3. Issues presented:

The central issue to be addressed is DCPS's past and continuing failure to provide Alison with a FAPE. The particular issues are specifically, but not limited to, the following:

- 1) Did DCPS fail to follow the legally mandated disciplinary procedures when it suspended Alison during the 2009-2010 school year?
- 2) Did DCPS fail to consider the independent educational evaluation obtained by Ms. R. when making decisions regarding the provision of FAPE to Alison?
- 3) Has DCPS failed to provide Alison with an appropriate Individualized Education Program?
- 4) Has DCPS failed to provide Alison with an appropriate special education placement?

**H. Estimated amount of time needed for the hearing: 8 hours**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.

- Interpreter (please specify the type) N/A
- Special Communication (please describe the type) \_\_\_\_\_
- Special Accommodations for Disability (please be specific) \_\_\_\_\_
- Other \_\_\_\_\_

**J. Waiver of Procedural Safeguards (Optional):**

**X** I Ms. R. waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this Complaint.

**K. Requirement to Consider Compensatory Education:**

If a hearing is held on a date that is past the date on which the Hearing Officer's Determination was required to be issued, there is a rebuttable presumption of harm and compensatory education must be an issue considered by the Hearing Officer during the hearing.

**L. Parent or Local Educational Agency Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent or Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Representative of the Local Educational Agency      Date  
(if hearing requested by a LEA)

**M. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate

\_\_\_\_\_  
Date

**Mail, fax or deliver this complaint notice to:  
State Enforcement and Investigation Division  
For Special Education Programs (SEID)  
Student Hearing Office (SHO)  
1150 5<sup>th</sup> Street, SE  
Washington, DC 20003  
Fax number: 202/698-3825**

*State Education Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs*



## **Due Process Complaint Notice**

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- The due process complaint must describe an alleged violation that occurred not more than two (2) years before the date that the parent or school system knew or should have known about the alleged action that is the basis of the complaint.
- Notice must be provided to the Student Hearing Office of the DC Public Schools, 825 North Capitol Street, NE, 8<sup>th</sup> Floor, Washington, DC 20002; fax number 202/442-5556.
- Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a “Resolution Session”**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting.  
**The Student Hearing Office does NOT schedule resolution meetings.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.

### **A. INFORMATION ABOUT THE STUDENT:**

Student Name: Jacob Smith Birth Date:

Address:

Home School: Ballou High School

Present School of Attendance: Anacostia High School

Is this a charter school? ☐ No ☒ Yes Operated by Friendship PCS

Parent/Guardian of the Student: Jill Smith

Address (if different from the student's above): N/A

Phone/Contact Number Fax Number (if applicable): N/A

**B. Individual Making the Complaint/Request for Due Process**

**Hearing:**

Name: Jill Smith

Complete Address:

Phone: (h) ±(c) \_\_\_\_\_ (Fax) N/A (e-mail) N/A

Relationship to the Student:

☒ Parent ☐ Legal Guardian ☐ Parent Surrogate

☐ Self/Student ☐ Local Education Agency (LEA) ☐ Parent Advocate

**C. Legal Representative/Attorney (if applicable):**

Name: Kathy Zeisel, The Children's Law Center

Address: 616 H Street, NW Ste 300

Washington, DC 20001

Phone: (w) 202-467-4900 ext. 547 (Fax) 202-552-6001 (e-mail) kzeisel@childrenslawcenter.org

Will attorney / legal representative attend the resolution session? ☒ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

☒ DCPS school (Anacostia SHS, Kramer Middle School, P.R. Harris Educational Center, Henley ES)

☒ Charter school (Friendship PCS, OSSE)

☐ Non-public school or residential treatment facility (name)

☐ Parent

**E. Resolution Session Meeting Between Parent and LEA:**

I understand that it is my right to have a resolution meeting to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution meeting to avoid having this meeting.)

☒ I wish to waive the Resolution Session Meeting

**F. Mediation Process:**

IDEIA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session Meeting or as an alternative to a Due Process Hearing. Please check all that apply:

- ☐ I am requesting mediation as an alternative to the resolution session meeting.
- ☐ I am requesting mediation and a due process hearing.
- ☐ I am requesting mediation **only** at this time.

**G. Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

This complaint contains the relevant facts known to the Petitioner at the time of filing. DCPS is hereby on notice of any and all actions taken by DCPS subsequent to the filing of this complaint. The relevant facts, as known at the time of the complaint include, but are not limited to the following:

Jacob Smith is a fifteen year old boy who has mild mental retardation and who can barely read, cannot get around his school by himself and who needs a dedicated aide in order to ensure that he is safe at school. Jacob is currently a student at Anacostia High School, but the school has completely failed to implement his IEP and has wrongly placed him in ninth grade. Anacostia High School does not have any of Jacob's educational records, and as a result is not providing him with individualized instruction or important components of his IEP, including a dedicated aide. DCPS not only failed to ensure that Jacob's school has his records, but it also failed to provide the cumulative records to the parent in spite of numerous requests for Jacob's complete file. Jacob has made no progress since he was first evaluated in 2002, and his behavioral problems have actually gotten more serious. Although Jacob has limited cognitive abilities, he is performing below those abilities in all areas and he has actually regressed in certain areas because DCPS has consistently failed to provide Jacob with a Free and Appropriate Public

Education (“FAPE) by, among other things, failing to provide appropriate Individualized Educational Program (“IEP”), an appropriate placement, the services specified in the IEP and by failing to evaluate him as required by law.

#### **I. DCPS is Failing to Provide Jacob with FAPE**

DCPS has denied FAPE to Jacob in the 2009-10 school year by failing to provide him with an appropriate IEP or even to implement the IEP that is currently in place and by failing to provide him with an appropriate placement that can meet his needs. Jacob is currently in his second year at Anacostia High School (“HS”), but the school wrongfully placed him in the ninth grade and the school does not have any of his educational records, including his IEP.

Jacob’s current IEP is inappropriate for numerous reasons, including, but not limited to, inappropriate goals, including in the social-emotional and academic areas, and the complete failure to provide any adaptive functioning goals. In addition, it also provides an inappropriate transition plan. Finally, DCPS fails to provide the necessary related services or Extended School Year services (“ESY”) to Jacob in the IEP. (See Section IIb).

However, Anacostia HS does not even have this inappropriate IEP or any of Jacob’s educational records. This means that Jacob is not receiving any of the individualized instruction delineated in his IEP and he is not receiving the accommodations and services that he requires. In addition, he is enrolled in classes, specifically ROTC, that are not appropriate for him and which his mother has not given consent for him to be enrolled in.

Apart from the total failure to provide the individualized instruction on his IEP, DCPS also failed to provide Jacob with a dedicated aide this school year. Jacob has had a dedicated aide assigned to him since the 2002-03 school year and he cannot access his education without an aide. When Jacob does not have an aide with him, he has significant behavioral problems, cannot navigate the school and is unable to complete lessons in class. For example, Jacob is not able to navigate Anacostia HS without assistance, including finding his way to classes, lunch or the bathroom. DCPS’ failure to

provide the dedicated aide necessary for Jacob to access his education constitutes a denial of FAPE.

The placement at Anacostia HS is also inappropriate because DCPS is not providing the required services to Jacob. As a fifteen year old student, Jacob should be learning necessary adaptive and life skills, but he is not. In fact, in his time at Anacostia HS, Jacob has made no progress and has actually regressed in certain areas.

## **II. DCPS Denied FAPE in the 2008-09 School Year**

### **a. Jacob's Placement at Anacostia HS was Inappropriate**

In the 2008-09 school year, Jacob attended Anacostia HS where the school implemented an invalid IEP and where he failed to make any progress. During the first half of the school year, DCPS utilized an invalid IEP from 2007 because no 2008 IEP was ever created. In spite of the outdated IEP, no IEP meeting was convened until March 17, 2009.

Jacob's failure to progress was documented in the IEP created on March 17, 2009. That IEP includes 2008 academic testing scores that are virtually identical to the 2003 and 2006 scores indicated in the May 11, 2006 IEP, indicating that Jacob made no progress between 2006 and 2008. From March 17, 2009 until the end of the school year, Jacob continued to struggle and did not make progress.

Although he purportedly had an aide during the 2008-09 school year, that aide was frequently not with Jacob. Because of his disability, Jacob has a tendency to do what other boys around him do and is unable to think through the consequences of his actions fully. Thus, when the aide was absent, Jacob would get into serious trouble. Ms. Jill Smith, Jacob's mother, was called to the school at least once a week throughout the school year because of an incident with Jacob. In one incident, Jacob was in the hallway near his classroom when he was beaten by another child and had to go to the doctor for treatment. A criminal case is pending against the other student as a result of that incident. On other occasions when DCPS failed to provide an aide, Jacob got into

potentially dangerous situations by following other boys, getting into fights, touching girls inappropriately and being part of a group responsible for damaging a fire extinguisher. Ms. Smith repeatedly requested a change of placement after these incidents, but DCPS refused to convene a meeting and told her that it was not possible to change his placement.

**b. Jacob's March 17, 2009 IEP was Inappropriate**

There are apparently two different versions of the March 17, 2009, a valid one which Ms. Smith signed at the IEP meeting and an invalid one which was illegally created without the input or consent of the parent at some subsequent date.<sup>1</sup>

The valid IEP consented to by the parent was not fully implemented in the 2008-09 school year. It provided for 27 hours of specialized instruction outside of general education and an hour of related services for Jacob. However, DCPS did not provide these services and Jacob actually took four general education classes during the 2008-09 school year, all of which he struggled in. In addition, DCPS failed to consistently provide a dedicated aide to Jacob as required by the IEP.

The March 17, 2009 IEP was also inappropriate as drafted. First, the IEP was not based on valid data. DCPS has failed to conduct a psychoeducational evaluation since 2004 or a speech-language evaluation since 2003. Therefore, the data was not available to the IEP/MDT team to determine that not only was Jacob not making progress, but he also was regressing in certain areas. Without that data, it was impossible for the team to create an IEP with appropriate goals and services. Second, although Jacob has serious deficits in gross and fine motor skills that negatively impact his education, DCPS failed to provide occupational therapy and no occupational therapy evaluation was requested.

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<sup>1</sup> When DCPS provided records for this case, DCPS provided two versions of the March 17, 2009 IEP, one that was identical to the one the mother had received at the March 17, 2009 meeting and another, different version. Both of the DCPS-provided versions were unsigned and were dated March 17, 2009. Upon information and belief, DCPS implemented the second IEP that was illegally created by DCPS.

Third, the IEP has inappropriate goals, including, but not limited to the social-emotional goals, the reading goals and the written expression goals. The IEP also lacks appropriate adaptive goals, including accessing public transportation, getting around the school and other goals that are critical for Jacob to be able to access his education.

Fourth, the IEP contained a transition plan that was completely inappropriate, in part because it contained objectives that were unattainable for Jacob given his current level of functioning.

Fifth, the IEP also fails to provide for ESY services for Jacob in spite of the fact that he was regressing and needed consistent and year-round education in order to make progress. The team actually agreed that he needed ESY, but these services were not provided for in the IEP. Finally, although Jacob had made no progress, the IEP inappropriately states that Jacob is not entitled to compensatory education.

Finally, although the MDT notes indicate that he had behavioral problems, no functional behavioral assessment “FBA” was conducted, or even requested, and no behavior intervention plan “BIP” was created.

The subsequent illegal IEP, which, upon information and belief, was the one being implemented for Jacob, had substantial changes that were done without the knowledge or consent of the parent. There was a reduction of services in that the number of hours of specialized instruction outside of general education was changed from 27 to 20 and the transition plan was removed from the IEP. No prior notice was provided for these changes and Ms. Smith was never informed about them.

### **III. DCPS Denied FAPE by Failing to Evaluate Jacob as Required by Law and By Providing Inadequate Evaluations**

DCPS failed to provide adequate evaluations for Jacob throughout his ten years at DCPS, and DCPS failed to provide the re-evaluations as required by law. DCPS’ last psychoeducational evaluation of Jacob was on March 12, 2004, the last physical therapy

evaluation was on January 9, 2003 and the last speech-language evaluation was on January 13, 2004. This is a serious violation of Jacob's rights, and negatively impacts him because it means that his IEPs were not based on valid data and there is no valid benchmark for his abilities.

In October of 2008, the special education teacher at Anacostia HS did an academic evaluation of Jacob, but DCPS conducted the without notice to or the consent of the parent.

In addition, DCPS failed to conduct other necessary evaluations. In spite of obvious gross and fine motor problems, DCPS never conducted an occupational therapy evaluation. Also, Jacob had documented behavioral problems since the third grade, but DCPS never conducted a functional behavioral assessment or created a behavior intervention plan for him.

#### **IV. DCPS Denied FAPE by Failing to Provide an Appropriate Placement for Jacob from 2000 to 2008**

Although the data available is limited because DCPS failed to timely and adequately evaluate Jacob, it is clear from the limited records from DCPS<sup>2</sup> that Jacob was not provided with an appropriate placement, including an appropriate IEP or services, from 2000 to the present because he made no meaningful progress in that time.

##### **i. Henley Elementary School: 2000-2002**

Jacob attended Henley Elementary School for first grade in the 2000-01 school year and for second grade in the 2001-02. In first grade, he began to show memory problems and speech problems that impacted his education. DCPS failed to locate, identify or evaluate Jacob during the 2000-01 school year in spite of his significant cognitive and speech problems that were evident at school and which negatively impacted his education.

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<sup>2</sup> Although numerous requests were made to DCPS for Jacob's complete educational file, only a small part of it was ever provided to the parent.

DCPS failed to make any referrals to special education and failed to provide Ms. Smith with notice of her procedural rights.

In the second grade during the 2001-02 school year, Ms. Smith insisted that he needed to be evaluated and obtained evaluations through Jacob's doctor at Children's National Medical Center because of his problems at school and home. At this time, Jacob was diagnosed with mild mental retardation. DCPS failed to identify, locate or evaluate Jacob in spite of the clear cognitive and speech problems that manifested themselves at school and negatively impacted his education. It was not until Ms. Smith had him evaluated herself and then provided the school with this evaluation, that an IEP/MDT was convened and an IEP was created. However, in spite of the fact that the school recognized that Jacob needed intensive services and created an IEP for him, DCPS failed to implement any services during this school year.

#### **ii. P.R. Harris Elementary School: 2002-2007**

Jacob attended P.R. Harris ES from the third through seventh grades and received special education services as a student with mental retardation. However, although Jacob attended the school for five years, upon information and belief, DCPS only convened three IEP meetings. When Ms. Smith inquired about the IEP meeting in the years that none was convened, she was informed they would be working from the prior year's IEP and that a meeting was not necessary. DCPS failed to issue prior written notice to explain DCPS's decision not to hold the IEP meetings.

During his time at P.R. Harris ES, Jacob made no meaningful academic progress and he exhibited significant behavioral problems that were never adequately addressed in his IEP or through his services. Although Jacob had a dedicated aide while he was at P.R. Harris ES, the aide was frequently absent. When the aide was not present, Jacob would inappropriately respond to social situations, which, upon information and belief, manifested by him following other boys running around the halls, fighting or otherwise getting into potentially dangerous situations. Jacob was suspended at least two or three times every year he was at P.R. Harris for these infractions, which likely would not have

occurred has his aide been present at the school. In addition, the school frequently requested that Ms. Smith go to the school to talk to Jacob and calm him down in order to avoid additional suspensions.

On March 14, 2004, Jacob had his first psychoeducational evaluation by DCPS. Although that evaluation was deficient in several ways, it does note that Jacob had not made any academic progress since his prior evaluation in 2002. The evaluation also stated that more intensive services were needed in order for him to make progress.

In the 2005-06 school year, when Jacob was in sixth grade at P.R. Harris, he received D's and F's in every class except for music and physical education. Yet, his May 11, 2006 IEP still provided for only twenty hours a week of specialized instruction and not a full-time placement. The IEP notes that Jacob struggled in all of his subjects and that he exhibited behavioral problems. They also specifically state that he remained at the first grade level in spite of the fact he was in sixth grade. This data, taken into account with his grades, show that he did not make any educational progress during this school year, or may have even regressed, from the level he was at when he was first evaluated in 2002. In addition, DCPS did provide ESY in 2006, but failed to provide it for any other year in spite of Jacob's need for consistent year-round instruction in order to make progress.

The IEP also failed to include a BIP or to request an FBA, even though both the report card and the MDT notes indicated that he had significant behavioral problems. It also had inappropriate goals, including but not limited to, inappropriate social-emotional and academic goals. It also failed to include adaptive goals, and, in fact, information about his adaptive functioning was completely absent from the IEP. Instead of providing the appropriate services or being retained, Jacob was promoted to the next grade without any additional services being provided to him. Once again, DCPS denied Jacob FAPE and he continued to attend school without making any meaningful progress.

In the 2006-07 school year, Jacob again failed to show academic progress, failed to meet any of his IEP goals, and continued to struggle in all areas. Yet, DCPS did not increase his services or his specialized instruction and did not consider another, more appropriate, placement. DCPS also failed to provide ESY for Jacob in spite of the clear need for it.

### **iii. Kramer Middle School: 2007-08**

Jacob moved to Kramer Middle School (“MS”) for eighth grade in the 2007-08 school year at the direction of DCPS, but DCPS failed to issue a notice of placement or to hold a placement meeting.

Jacob again failed to make progress at Kramer MS, but was still promoted to ninth grade. An IEP meeting was convened during the school year, but DCPS failed to have the required participants and only Ms. Smith and one staff member were present. Consequently, the meeting was adjourned without any discussion of the previous IEP or the creation of a new IEP. Ms. Smith was told that the meeting would be rescheduled, but it was never rescheduled and no annual IEP meeting occurred during the 2007-08 school year. Instead, upon information and belief, Kramer implemented the invalid IEP for the second half of the school year. Jacob was not provided with ESY during the summer of 2008. No prior notice was issued for the change of placement to Anacostia or for the decision not to convene an annual IEP meeting and no placement meeting was ever held for Anacostia.

## **V. DCPS’ Significant Procedural Violations Constitute a Denial of FAPE**

DCPS committed numerous procedural violations that, when taken independently or together, constitute a denial of FAPE to Jacob. First, DCPS failed to convene an annual IEP meeting and failed to create a new IEP in the 2007-08 school year. From 2002-07, upon information and belief, only three annual IEP meetings were held. Therefore, for at least three of Jacob’s eight years in special education, DCPS implemented invalid IEPs and the MDT team never met to discuss Jacob’s total lack of progress.

Second, DCPS failed to conduct the required re-evaluations of Jacob. DCPS has not updated the psychoeducational evaluation in over five years and has not updated the speech-language evaluation in almost six years. This is a significant procedural violation because the MDT team lacked adequate information about Jacob's failure to make progress, or, in some cases, his regression in certain areas.

Third, DCPS conducted an academic evaluation without parental consent in 2008. The parental consent provisions of the law are unequivocal and a parent has an absolute right to consent to evaluations.

Fourth, Jacob was placed at Kramer and at Anacostia without a placement meeting or prior notice being issued. This is another significant denial of the right of the parent to participate and to consent in the special education process.

## **2. To the extent known to you at this time, how can this problem be resolved?**

1. DCPS will immediately place, fund and provide transportation for Jacob Smith to Pathways School in Springville, or to a substantially similar non-public placement.
2. DCPS will continue to fund a dedicated aide for Jacob at his placement.
3. DCPS will provide reimbursement for an independent psychoeducational evaluation, speech-language evaluation, occupational therapy evaluation and functional behavioral assessment to be conducted by evaluators chosen by the parent.
4. DCPS will provide compensatory education to compensate for its denial of FAPE from 2000 to the present.

## **3. Issues presented:**

The central issue to be addressed is DCPS's past and continuing failure to provide Jacob Smith with a free and appropriate public education. The particular issues are specifically, but not limited to, the following:

1. Did DCPS wholly and/or in a timely manner fail to locate, identify and/or fully and/or appropriately evaluate Jacob?

2. Did DCPS fail to provide adequate and timely evaluations for Jacob from 2002 to the present?
3. Did DCPS commit procedural violations that individually and collectively denied FAPE by, among other actions by: (1) failing to convene at least three annual IEP meetings; (2) failing to provide re-evaluations as required by the law; (3) conducting an inadequate academic evaluation without the consent of the parent; (4) failing to hold placement meetings before moving Jacob to Kramer MS or Anacostia HS; (5) failing to issue prior notice for placements at Kramer MS or Anacostia HS?
4. Did DCPS fail to develop and/or timely develop appropriate IEPs for Jacob from the 2001-02 school year to present?
5. Did DCPS fail to fully implement the IEPs for Jacob from the 2001-2002 school year to the present?
6. Did DCPS fail to provide and/or timely provide Jacob with an appropriate educational placement from the 2001-2002 school year to the present?
7. Did DCPS fail to produce complete records when requested by the parent as required by law?

**H. Estimated amount of time needed for the hearing: \_\_\_\_16 hours\_\_\_\_**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.

- Interpreter (please specify the type)

\_\_\_\_\_

- Special Communication (please describe the type)

- Special Accommodations for Disability (please be specific)\_\_\_\_\_

- Other\_\_\_\_\_

**J. Waiver of Procedural Safeguards:**

☒ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time.

**K. Parent Signature and Affirmation:**

I affirm that the information provided on this form is true and correct.

\_\_\_\_\_  
Signature of Parent or Guardian

\_\_\_\_\_  
Date

**L. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate

\_\_\_\_\_  
Date

**M. Signature of LEA Representative (if hearing requested by LEA):**

\_\_\_\_\_  
Representative of LEA

\_\_\_\_\_  
Date

**Mail, fax or deliver this complaint notice to:  
State Enforcement and Investigation Division  
For Special Education Programs (SEID)  
Student Hearing Office (SHO)  
825 North Capitol Street, NE, 8<sup>th</sup> Floor  
Washington, DC 20002  
Fax number: 202/442-5556**

## **DUE PROCESS COMPLAINT**

**PURPOSE:** This model form can be used to request a due process hearing under the Individuals with Disabilities Education Act (IDEA). The party, or the attorney representing a party, must file a Due Process Complaint with the other party and forward a copy of the Complaint to the OSSE, c/o the Student Hearing Office: 810 First St., NE, 2nd Floor Washington, DC 20002 or email a copy to [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov) or fax at (202) 478-2956. You are not required to use this form; however, you may not have a hearing on a Due Process Complaint until a Complaint is filed that meets the requirements of the IDEA (34 C.F.R. §300.508(b)). Filling out this form will meet those requirements and provide additional important information to the Hearing Officer.

### **A. INFORMATION ABOUT THE STUDENT**

Name of the student:<sup>1</sup> : James Smith Date of Birth: 2/18/2005  
Address of the residence of the student:<sup>2</sup> \_\_\_\_\_  
My house, Washington DC 20019  
Present School of Attendance: Kimball Elementary School  
Uniform Student Identification Number: \_\_\_\_\_

### **B. INFORMATION REGARDING THE PARENT OF THE STUDENT** **(IF THE STUDENT IS A MINOR OR DETERMINED LEGALLY INCOMPETENT)**

Name of the Parent(s): Nachelle Smith  
Address of the Parent(s), (if different from the student's above):  
\_\_\_\_\_  
Home Phone Number(s): N/A  
Mobile Phone Number(s): (202) 555-5555  
Fax Number: \_\_\_\_\_  
Email Address(es): nachele2013@gmail.com

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<sup>1</sup> In the case of a child who is a ward of the District of Columbia, the request must so state, provided, that a child who is a ward of the District shall be listed "c/o Child and Family Services". (DCMR, Chapter 5-E30-§3029.3(b))

<sup>2</sup> In the case of a homeless child or youth, provide the available contact information for the child for residence.

**C. ATTORNEY, (IF APPLICABLE)\***

Name: Kathy

Zeisel

Address: Children's Law Center, 616 H Street NW, Suite 300

Washington, DC

20001

Office

Phone Number(s): (202) 467-4900

x547

Mobile Phone

Number(s):

Fax Number(s): (202) 552-6001

Email Address (es): kzeisel@childrenslawcenter.org

*\*If this section is completed all further communication from the Student Hearing Office and the Hearing Officer will be with the attorney.*

**D. COMPLAINT MADE AGAINST**

☐ Public Educational Agency:

Name(s) of the agency(s) and known contact information: District of Columbia Public Schools (DCPS) 1200 First Street NE, Washington, DC 20002

**Or**

☐ Parent or Eligible Student:

Name(s) and contact information, if not provided above:

**E. AVAILABILITY OF MEDIATION**

Notice: The Individuals with Disabilities Education Act (IDEA) requires that any time a party requests a due process hearing; mediation must be available at no cost to allow the parties to resolve the dispute. In addition the parties may agree to use mediation instead of the Resolution Session Meeting.

**H. ACCOMMODATIONS AND ASSISTANCE NEEDED:**

Please note any accommodations you may require.

- Interpreter (please specify the type):
- Special Communication (please describe the type):

- Special Accommodations for Disability (please describe the type): \_\_\_\_\_
- Other: \_\_\_\_\_

**F. DESCRIPTION OF THE PROBLEM**

Provide a description of the nature of the problem of the student relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the student or the provision of Free Appropriate Public Education to the student, **including** facts relating to the problem.

James Smith is a third grader at Kimball Elementary School. DCPS conducted psychological and educational evaluations of James in April of 2013. James was exited from special education after these evaluations, but he is significantly below grade level in reading according the reading testing this year, and Ms. Smith would like him to have independent evaluations to assess whether his disability continues to impact him educationally. Ms. Smith, through counsel, requested independent evaluations on October 23, 2013. Although Robin Rabb, the Special Education Coordinator, responded that she would obtain the IEE letter, no IEE authorization has been provided.

**G. DESCRIPTION OF THE PROPOSED RESOLUTION OF THE PROBLEM**

To the extent known and available at this time, this Complaint can be resolved by providing an authorization for an independent educational evaluation and an independent psychological evaluation.

**H. NAME AND SIGNATURE OF REQUESTING PARTY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

---

Mail, fax or hands deliver this Complaint Notice to:  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor, Suite 2001  
Washington, DC 20002  
Fax: (202) 478-2956  
Email Address: [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov)



## DUE PROCESS COMPLAINT

**PURPOSE:** This model form can be used to request a due process hearing under the Individuals with Disabilities Education Act (IDEA). The party, or the attorney representing a party, must file a Due Process Complaint with the other party and forward a copy of the Complaint to the OSSE, c/o the Student Hearing Office: 810 First St., NE, 2nd Floor Washington, DC 20002 or email a copy to [Hearing.Office@dc.gov](mailto:Hearing.Office@dc.gov) or fax at (202) 478-2956. You are not required to use this form; however, you may not have a hearing on a Due Process Complaint until a Complaint is filed that meets the requirements of the IDEA (34 C.F.R. §300.508(b)). Filling out this form will meet those requirements and provide additional important information to the Hearing Officer.

### A. INFORMATION ABOUT THE STUDENT

Name of the student:<sup>1</sup> : Janice Smith Date of Birth: 5/10/2007

Address of the residence of the student:<sup>2</sup> \_\_\_\_\_  
XXXX, Washington DC 20032

Present School of Attendance: Savoy Elementary School

Uniform Student Identification Number: XXXX

### B. INFORMATION REGARDING THE PARENT OF THE STUDENT (IF THE STUDENT IS A MINOR OR DETERMINED LEGALLY INCOMPETENT)

Name of the Parent(s): Ellen Smith

Address of the Parent(s), (if different from the student's above):  
\_\_\_\_\_

Home Phone \_\_\_\_\_

Number(s): (240)XXX \_\_\_\_\_

Mobile Phone Number(s): \_\_\_\_\_

(240) XXX

Fax Number: \_\_\_\_\_

Email Address(es): \_\_\_\_\_

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<sup>1</sup> In the case of a child who is a ward of the District of Columbia, the request must so state, provided, that a child who is a ward of the District shall be listed "c/o Child and Family Services". (DCMR, Chapter 5-E30-§3029.3(b))

<sup>2</sup> In the case of a homeless child or youth, provide the available contact information for the child for residence.



**Office of the  
State Superintendent of Education**

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**C. ATTORNEY, (IF APPLICABLE)\***

Name: Renee

Murphy

Address: Children's Law Center, 616 H Street NW, Suite 300

Washington, DC

20001

Office

Phone Number(s): (202) 467-4900

x580

Mobile Phone

Number(s):

Fax Number(s): (202) 552-6018

Email Address (es): rmurphy@childrenslawcenter.org

*\*If this section is completed all further communication from the Student Hearing Office and the Hearing Officer will be with the attorney.*

Ms. Smith's attorney will be attending the Resolution Session.

**D. COMPLAINT MADE AGAINST**

☐ Public Educational Agency:

Name(s) of the agency(s) and known contact information: District of Columbia Public Schools, 1200 First Street NE, Washington, DC 20002, Fax (202) 442-5115 or (202) 442-5198/7 Phone: (202) 442-5885

**Or**

☐ Parent or Eligible Student:

Name(s) and contact information, if not provided above:

**E. AVAILABILITY OF MEDIATION**

Notice: The Individuals with Disabilities Education Act (IDEA) requires that any time a party requests a due process hearing; mediation must be available at no cost to allow the parties to resolve the dispute. In addition the parties may agree to use mediation instead of the Resolution Session Meeting.

**H. ACCOMMODATIONS AND ASSISTANCE NEEDED:**

Please note any accommodations you may require.

- Interpreter (please specify the type):
- Special Communication (please describe the type):



Office of the



State Superintendent of Education

- 
- Special Accommodations for Disability (please describe the type): \_\_\_\_\_
  - Other: \_\_\_\_\_



**F. DESCRIPTION OF THE PROBLEM**

Provide a description of the nature of the problem of the student relating to the proposed or refused initiation or change of the identification, evaluation, or educational placement of the student or the provision of Free Appropriate Public Education to the student, **including** facts relating to the problem.

Janice Smith is a kindergarten student at Savoy Elementary School. Janice has Attention Deficit Hyperactivity Disorder (ADHD) symptoms along with documented deficits in her fine motor and sensory skills, emotional and behavioral issues and difficulty in recalling short stories, working with sequencing and categorizing words. Ms. Smith referred Janice for a comprehensive evaluation on or about March 28, 2012. On July 5, 2012, DCPS conducted evaluations under the IDEIA, consisting only of an Educational Evaluation and Occupational Therapy Evaluation of Janice. Ms. Smith disagrees with DCPS's insufficient initial evaluations of Janice. Therefore, on April 19, 2013, Ms. Smith, by and through her attorney, requested the following independent educational evaluations (IEEs) at public expense for Janice: Cognitive Evaluation, Clinical Psychological Evaluation, Educational Evaluation, Functional Behavior Assessment, Occupational Therapy Evaluation, and Speech-Language Evaluation. The request was sent to Anthony Bowden, DCPS Office of Compliance. On May 30, 2013 and June 7, 2013, Ms. Smith, via counsel, emailed Mr. Bowden because DCPS had not authorized public funding for the IEEs. Mr. Bowden responded stating that he would have IEEs authorized shortly. Despite having apologized for a delay and acknowledging intent to authorize the IEEs, to date DCPS has not provided Ms. Smith or undersigned counsel with authorization for public funding for the requested IEEs.

This Complaint is limited to DCPS's failure to provide the independent evaluation at public expense or file a Due Process Complaint to defend its evaluation. DCPS's failure to provide the independent educational evaluation at public expense or file a Due Process Complaint to defend its evaluation violates Ms. Smith's right to an independent educational evaluation at public expense under 34 CFR § 300.502.

Ms. Smith reserves the right to file future Due Process Complaints regarding any and all other claims under the IDEIA and reserves the right to file future Due Process Complaints regarding Janice's educational needs as revealed by any evaluations.



**Office of the  
State Superintendent of Education**

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**G. DESCRIPTION OF THE PROPOSED RESOLUTION OF THE PROBLEM**

To the extent known and available at this time

This Complaint can be resolved by authorization of public payment for the independent educational evaluations, specifically a Cognitive Evaluation, Clinical Psychological Evaluation, Educational Evaluation, Functional Behavior Assessment, Occupational Therapy Evaluation, and Speech-Language Evaluation, and child care and transportation assistance in order to get the evaluations completed.

**H. NAME AND SIGNATURE OF REQUESTING PARTY**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**I. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

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Mail, fax or hands deliver this Complaint Notice to:  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor, Suite 2001  
Washington, DC 20002  
Fax: (202) 478-2956  
Email Address: Hearing.Office@dc.gov

***State Education Agency for the District of Columbia  
State Enforcement and Investigation Division (SEID)  
Special Education Programs***



## ***Due Process Complaint Notice***

- The form is used to give notice of a due process complaint to the **District of Columbia Public Schools, District of Columbia Public Charter Schools (DCPS or LEA) and/or parents** with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education to that child. **A party may not have a due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA).**
- Parents initiating a complaint must provide a completed due process complaint form to the Local Education Agency ("LEA"). For students in traditional public schools, nonpublic day school, or residential treatment facility, notice to the LEA shall be provided to the Office of the General Counsel, 825 N. Capitol St. NE, Washington, D.C. 20002, with a copy to the Student Hearing Office. If a charter school is a named party, the due process complaint must be provided to the principal or director of the charter school, with a copy to the Student Hearing Office.
- Unless the other party agrees, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that are not raised in this Due Process Complaint Notice. Therefore, please be thorough in providing the information requested.
- Prior to the opportunity for an impartial due process hearing, the Local Educational Agency (LEA) shall convene a meeting (**called a "Resolution Session"**) with the parent(s) unless the parent(s) and the Local Educational Agency agree in writing to waive this meeting. You will be contacted by a representative of the Local Educational Agency to schedule the meeting. **The Student Hearing Office does NOT schedule resolution sessions.**
- Mediation is also available to all parties as an alternative to a resolution meeting or a Due Process Hearing.
- Policies and Procedures governing due process hearings are contained in federal and local law and the SHO SOP. You may obtain a copy of the SOP from the Student Hearing Office or any D.C. Public or Charter School without cost. The SOP is also at the DCPS website.

**A. Information About the Student:**

Student Name: Sean Smith Birth Date: 7/18/2007

Address: XXXX, Washington, DC 20019

Present School of Attendance: Plummer Elementary

Is this a charter school? No (If yes, you must also provide a copy of this notice to the charter school principal or director.)

Parent/Guardian of the Student: Sally Smith

Address (if different from the student's above): Same as student

Phone/Contact Number: XX email: XX

**B. Individual Making the Complaint/Request for Due Process Hearing:**

Name: Sally Smith

Complete Address: XXXX, Washington, DC 20019

Phone: (h) XXXX (w) \_\_\_\_\_ (Fax) \_\_\_\_\_ (e-mail) SallySmith@earthlink.net

Relationship to the Student:

<input checked="" type="checkbox"/> Parent	<input type="checkbox"/> Legal Guardian	<input type="checkbox"/> Parent Surrogate
<input type="checkbox"/> Self/Student	<input type="checkbox"/> Local Education Agency (LEA)	<input type="checkbox"/> Parent Advocate

**C. Legal Representative/Attorney (if applicable):**

Name: Renee Murphy

Address: Children's Law Center, 616 H St NW, Suite 300, Washington, DC 20001

Phone: (w) 202-467-4900 ext 580 (Fax) 202-552-6018 (e-mail) rmurphy@childrenslawcenter.org

Will attorney /Legal representative attend the resolution session? ☒ Yes ☐ No

**D. Complaint Made Against (check all that apply):**

- ☒ DCPS school (name of the school if different from page one) \_\_\_\_\_
- ☐ Charter school (name of the charter school if different from page one) \_\_\_\_\_
- ☐ Non-public school or residential treatment facility (name) \_\_\_\_\_
- ☐ Parent

**E. Resolution Session Between Parent and LEA:**

I understand that it is my right to have a resolution session to resolve this complaint. I also understand that I may voluntarily waive this right if I choose. (Note: All parties must agree to waive the resolution session to avoid having this meeting.)

☐ I wish to waive the Resolution Session.

Revised May 1, 2006

**F. Mediation Process:**

IDEA requires that any time a party requests a due process hearing, mediation should be offered at no cost to the parent. Both parties can request mediation as an alternative to the Resolution Session. Mediation is also available prior to a due process hearing, but mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint. Please check all that apply:

- ☐ I am requesting mediation as an alternative to the resolution session meeting.
- ☐ I am requesting mediation services only.
- ☒ I do not wish to use a mediator at this time.

## **G. Facts and Reasons for the Complaint:**

In accordance with the Individuals with Disabilities Education Improvement Act (IDEIA), please complete the following questions. Provide complete details about all the facts supporting your claims. (You may attach additional pages if needed):

1. What is the nature of the problem, including the facts relating to the problem, that will need to be addressed at a Resolution Session meeting, a Mediation Conference, and/or a Due Process Hearing?

This complaint contains relevant facts, on the limited issues presented, known to the Petitioner, Sally Smith, at the time of filing. District of Columbia Public Schools (DCPS) is hereby on notice of any and all actions taken by DCPS prior to or subsequent to the filing of this complaint. Relevant facts, as known at the time of the complaint include, but are not limited to the following:

Sean Smith is a first grade student with complex disabilities at Plummer Elementary, a District of Columbia Public School (hereinafter "DCPS"). Sean has right hemiparetic Cerebral Palsy, a history of prematurity, a Ventriculoperitoneal shunt, functional monocularism, seizure disorder, asthma, and developmental delays in communication, fine motor, gross motor, sensory development, academic, and adaptive skills. During DCPS's initial evaluation of Sean, DCPS conducted what DCPS titled a speech-language evaluation which contained no standardized testing, a physical therapy evaluation, an occupational therapy evaluation, and a Psychological evaluation that failed to include neuropsychological, cognitive, and achievement testing. DCPS provided no accommodations for Sean's visual impairments during its testing. DCPS failed to conduct any assessments regarding Sean's visual impairments or his need for assistive technology, despite knowing about his significant impairments.

DCPS continued to fail to comprehensively evaluate Sean at his triennial re-evaluation while Sean was a student at Smothers Elementary, another DCPS school. Sean's triennial re-evaluation under the IDEIA was due no later than August 18, 2013. Exhibit A. Ms. Smith never agreed that re-evaluation was not necessary. *See* 34 CFR 300.303(b)(2). Upon information and belief, Ms. Smith was never provided with any prior written notices or notices regarding her rights during the re-evaluation.<sup>1</sup> In spring 2013, DCPS conducted analyses of existing data, specifically the evaluations it had performed during the initial evaluation of Sean, and classroom observations, but did not comprehensively re-evaluate Sean. Instead of comprehensively evaluating Sean's disabilities and educational needs, DCPS utilized, adopted, and relied on its initial evaluations and the limited observation procedures it did perform, and completed Sean's re-determination of eligibility, thus completing his triennial re-evaluation, on May 16, 2013.

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<sup>1</sup> DCPS did not determine that no further assessments or evaluation procedures were necessary; specifically, DCPS's review states that "an updated speech-language evaluation is warranted." *See* 34 CFR 300.305(c), Exhibit B. DCPS failed to complete that evaluation.

On September 5, 2013, Ms. Smith, by and through counsel, disagreed in writing with the adequacy of DCPS's evaluations of Sean, both the initial evaluations and DCPS's inadequate triennial re-evaluations. Exhibit C. Ms. Smith requested independent educational evaluations of Sean at public expense, specifically a Neuropsychological Evaluation, Educational Evaluation, Speech-Language Evaluation, Physical Therapy Evaluation, Occupational Therapy Evaluation, and Assistive Technology Evaluation. On September 24, 2013, at an IEP meeting, DCPS stated that it would not authorize public funding for the necessary independent educational evaluations. To date, DCPS has not authorized the public funding for the independent educational evaluations. DCPS has not filed a due process complaint to defend its evaluations of Sean.

In addition, at the IEP meeting on September 24, 2013, DCPS agreed to conduct all necessary vision evaluations on an expedited timeframe. DCPS agreed to conduct a Cortical Vision Impairment assessment and a Learning Media Assessment within two weeks. DCPS also agreed to conduct an assessment of Sean's vision-related equipment needs, as soon as possible after checking the specialist's schedule. Upon information and belief, DCPS has not conducted any of these evaluations to date, in violation of the agreement at the IEP meeting and further delaying these needed evaluations, which should have been completed at the initial evaluations and during the triennial evaluation. After later learning that a Functional Vision Assessment is also a necessary vision evaluation for a student with visual impairments, Ms. Smith also requested that evaluation of Sean, by and through counsel. Upon information and belief, DCPS has also not conducted this evaluation of Sean.

Ms. Smith reserves the right to file future Due Process Complaints regarding any and all other claims or issues under the IDEIA and reserves the right to file future Due Process Complaints regarding Sean's educational needs as revealed by any evaluations.

2. To the extent known to you at this time, how can this problem be resolved?

This Complaint can be resolved by an order for DCPS to authorize public payment for the independent educational evaluations, specifically a Neuropsychological Evaluation, Educational Evaluation, Speech-Language Evaluation, Physical Therapy Evaluation, Occupational Therapy Evaluation, and Assistive Technology Evaluation. In addition, it can be resolved by an order for DCPS to authorize public payment for all necessary evaluations of Sean's vision-related disabilities and needs, specifically a Cortical Vision Impairment Assessment, Learning Media Assessment, Functional Vision Assessment, and assessment of vision-related equipment needs.

3. Issues presented:

This Complaint is expressly limited to the following issues:

- A. DCPS's violation of Ms. Smith's procedural rights and right to participate in her child's education by DCPS's failure to provide the independent evaluations at public expense or file a Due Process Complaint to defend its evaluations. DCPS's failure to provide the independent educational evaluations at public expense or file a Due Process Complaint to defend its evaluations violates Ms. Smith's right to independent educational evaluations at public expense under 34 CFR § 300.502.
- B. In the alternative, DCPS's failure to comprehensively re-evaluate all of Sean's disabilities and educational needs at its triennial re-evaluation during the 2012-2013 school year.
- C. DCPS's violation of Ms. Smith's procedural rights and rights to participate in her child's education by failing to provide prior written notices and required notices regarding Sean's triennial re-evaluation.

**H. Estimated amount of time needed for the hearing: 5 hours**

Note: In the absence of a specified amount of time, the SHO schedules hearings in two hour blocks of time and will allocate two hours to conduct the hearing. Please indicate if you believe more than two hours will be needed.

**I. Accommodations and Assistance Needed:**

Please list any special accommodations you may require for a Resolution Session Meeting/Mediation Conference/Due Process Hearing.

- Interpreter (please specify the type)\_\_\_\_\_
- Special Communication (please describe the type)\_\_\_\_\_
- Special Accommodations for Disability (please be specific)\_\_\_\_\_
- Other\_\_\_\_\_

**J. Waiver of Procedural Safeguards (Optional):**

☐ I (parent/guardian) waive receiving a copy of the procedural safeguards at this time. I understand that waiver of this right is optional and not a requirement for filing this Complaint.

**K. Requirement to Consider Compensatory Education:**

If a hearing is held on a date that is past the date on which the Hearing Officer's Determination was required to be issued, there is a rebuttable presumption of harm and compensatory education must be an issue considered by the Hearing Officer during the hearing.

**L. Signature of Attorney/ Legal Representative:**

\_\_\_\_\_  
Legal Representative / Advocate

\_\_\_\_\_  
Date

**Mail, fax or deliver this complaint notice to:  
Office of the State Superintendent for Education  
Student Hearing Office (SHO)  
810 First Street, NE, 2nd Floor, Room 2001  
Washington, DC 20002  
Facsimile: (202) 478-2956**

**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

<hr/>	)	
Elizabeth Smith, parent and next friend of	)	
minor child, JV	)	
Petitioner,	)	
	)	
v.	)	
	)	
DCPS,	)	
	)	
Respondent.	)	
<hr/>	)	

**MOTION FOR EXPEDITED HEARING**

Petitioner, parent and next friend of Scott Ventura, through her counsel, Katherine Zeisel, Esq. of the Children’s Law Center, hereby moves for an expedited hearing against the Respondents because Petitioner’s son, Scott Ventura, is in physical and emotional danger in his current placement due to illegal corporal punishment in the form of physical discipline and restraints. An expedited hearing is further necessary because Scott is not currently attending school due to the failure of DCPS to provide a safe placement for him.

**I. FACTUAL BACKGROUND**

Scott is a ten-year old boy who is currently in the fourth grade at Garrison Elementary School (“Garrison ES”). His classroom teacher, Ms. Martin has repeatedly used illegal corporal punishment in the form of physical discipline and inappropriate restraints on Scott. On the morning of March 8, 2008, Ms. Smith received a call from Ms. Martin and heard Scott yelling “Ouch, she’s grabbing me.” Later that day another student scratched Scott on his face by his eye and Ms. Smith was called into school to pick him up. Ms. Smith took Scott to the pediatrician regarding the severe facial cuts/lacerations. Later that evening at home, Ms. Smith discovered bruises in the shape of finger marks on the upper

part of each of Scott's arms. Scott reported words to the effect of: My teacher grabbed me and put me in time out.

A letter was sent to Mr. Seaward, the principal at Garrison ES on March 8, 2010 notifying him of this incident and of other past incidents of improper restraints used by his teacher. See Exhibit A. There has been no response by DCPS to this letter. A second letter was sent to the Garrison ES principal on March 23, 2010 providing further documentation and requesting visiting instruction. See Exhibit B. Scott subsequently reported the incident to his occupational therapist at Georgetown, who also saw the visible bruises. This interaction was documented in Scott's medical records. See Exhibit C. Photographs were also taken of Scott's injuries, which initially manifested as finger-shaped scratches and redness and then showed as visible bruises the next day. See Exhibits D and E. The bruises remained visible for several days.

Upon information and belief, the first incident of inappropriate physical violence occurred during the 2008-09 school year when Scott's classroom teacher, Ms. Martin, hit him with a ruler, causing an abrasion on his hand that was visible for approximately a week. Ms. Smith discussed the incident with Ms. Martin, another Garrison ES teacher and with the school counselor. However, upon information and belief, no action was taken by the school. In the time period between the two incidents, Scott reported inappropriate physical restraint by his teacher on several occasions.

DCPS's failure to address the ongoing illegal corporal punishment being utilized against Scott in his classroom cause not only physical harm to Scott, but also negatively impact his ability to be able to learn in the classroom because Scott is so stressed and fearful that he cannot fully participate in his education.

## **II. EXPEDITED HEARING IS NECESSARY IN THIS CASE**

### **A. Expedited Hearing is Necessary Due to Illegal Discipline**

Although expedited hearings are required for disciplinary matters, the hearing officer retains the authority to grant an expedited hearing in other extraordinary circumstances. In fact the OSSE standards go so far as to say that an expedited hearing “shall be granted” in certain circumstances, recognizing that there are cases in which the situation is so grave that an expedited hearing must occur. See OSSE Standard Operating Procedures, §1008(B)(1) (2008). Pursuant to the Standard Operating Procedures, an expedited hearing request shall be granted when the physical or emotional health or safety of the student or others would be endangered by a delay in the conduct of the hearing.

In this case, it is clear that Scott is physical danger in his current placement. Ms. Martin uses illegal corporal punishment on Scott which threatens both his physical and emotional well-being. As long as Scott remains in his current placement, he is in danger. An expedited hearing is necessary so that Scott can be placed in an appropriate and safe program which can meet his need.

#### **B. Expedited Hearing is Necessary Because of Total Denial of FAPE**

Garrison ES has completely ignored the parent’s reports of illegal corporal punishment and Scott has not been attending school since the last incident because Ms. Smith fears for his safety. Because no alternative forms of instruction have been provided, Scott is being totally denied a FAPE.

The Office of the State Superintendent Standard Operating Procedures specifically provides that an expedited hearing may also be granted for any other substantial justification. See OSSE Standard Operating Procedures, §1008(B)(2) (2008). For example, a hearing officer granted an expedited hearing for the failure of the school to appropriate place a child with several disabilities. See Allen v. Alzheimer Unified Sch. Dist., 2007 U.S. Dist. LEXIS 57566 (E.D. Ark. Aug. 6, 2007) (hearing officer ordered change of placement after expedited hearing on request).

Where DCPS’s actions are so extreme as to constitute a total denial of FAPE to a student, an expedited hearing is an appropriate remedy because each day that FAPE is denied

causes additional harm to the child. See Blackman v. D.C., 277 F. Supp 2d 71 , 79 (D.D.C. 2003) (holding that the failure of a school district to comply with its statutory obligations under the IDEA and provide appropriate educational placements can have a devastating impact on a child's well-being.).

Each day that Scott is out of school due to the failure of DCPS to provide a safe school environment is a total denial of FAPE. As Blackman states, “While a month in the life of an adult may be insignificant, the rate at which a child develops and changes, especially one at the onset of biological adolescence with or without special needs like those of our plaintiff, a few months can make a world of difference in the life of that child.” See Blackman at 79. An expedited hearing is necessary in this case to ensure that Scott has a safe and appropriate school environment where he can be provided a FAPE.

### **III. CONCLUSION**

An expedited hearing is necessary to protect Scott from illegal school discipline and to protect his physical and emotional health and safety. An expedited hearing is also necessary to address the total denial of FAPE because Scott does not have a placement where he can access his education. For all of these reasons, Petitioner respectfully requests that the motion for expedited hearing be granted.

Respectfully Submitted,

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**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

<b>In the Matter of</b>	)
	)
A. H.	)
Date of Birth 11/17/97,	)
	)
Petitioner	)
	)
v.	)
	)
The District of Columbia Public Schools,	)
Moten Center,	)
	)
Respondent.	)
_____	)

**MOTION FOR DEFAULT JUDGMENT**

Pursuant to Rule 55 of the Federal Rules of Civil Procedure and §401 of the District of Columbia Public Schools’ Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures (“SOP”), E. R., mother and next of friend of minor child, A. H., through counsel respectfully moves this Hearing Officer for an order adjudging Respondent, District of Columbia Public Schools (“DCPS”) to be in default for failing to respond to Ms. R.’s Due Process Complaint and for failing to schedule a Dispute Resolution Session, as required by federal and local law. Any sanction other than the entry of a default judgment would be inappropriate considering DCPS’ history of unresponsiveness to Ms. R., the prejudice caused to Ms. R., and the harm caused to her son, A., by impeding his right to a free and appropriate public education and depriving him of educational benefit as he remains in an inappropriate school placement where his safety, health, and education are comprised.

This Motion is based upon the attached Memorandum of Points and Authorities.

WHEREFORE, Ms. R. requests that the Hearing Officer:

1. Grant Ms. R.'s Motion for Entry of Default Judgment.
2. Grant the remedy requested in the April 24, 2007 Due Process Complaint, or in the alternative, convene a hearing to determine the remedy to be awarded;
3. In the alternative, if a default judgment is not granted, hold that DCPS has admitted the facts in the Due Process Complaint and deny DCPS from presenting any evidence to defend the Due Process Complaint; and
4. Grant such other and further relief as the Hearing Officer deems proper.

Respectfully Submitted,

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Counsel for E. R.

**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

<b>In the Matter of</b>	)	
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A. H.	)	
Date of Birth 11/17/97,	)	
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Petitioner	)	
	)	
v.	)	
	)	
The District of Columbia Public Schools,	)	
Moten Center,	)	
	)	
Respondent.	)	
_____	)	

**MOTION FOR DEFAULT JUDGMENT**

I. Summary of Argument

Petitioner, E. R., mother and next of friend of A. H., moves this Hearing Officer for an order entering default judgment against District of Columbia Public Schools (“DCPS”) and ordering the remedy requested in the April 24, 2007 Due Process Hearing Complaint or in the alternative, convening a hearing to determine remedy. In the alternative of granting a default judgment, Ms. R. moves this Hearing Officer for an order deeming all facts in the Due Process Complaint admitted as true by DCPS and preventing DCPS from presenting any evidence to defend the Due Process Complaint, due to its complete failure to defend in an answer and deny any of the facts alleged in the Complaint.

DCPS has been wholly unresponsive to Ms. R.’s Due Process Complaint. DCPS has never issued a Prior Written Notice with respect to the subject matters described in the April 24, 2007 Due Process Complaint, has not responded to the Due Process Complaint, and has not scheduled or attempted to schedule a Dispute Resolution Session. Any action by this Hearing

Officer other than entry of default judgment would be inappropriate considering DCPS' history of unresponsiveness and inaction, and the prejudice and harm caused to Ms. R. and her son A..

## II. Facts and Procedural History

A. H. is a nine year old child with a serious emotional disturbance, juvenile rheumatoid arthritis, attention deficit hyperactivity disorder, reading disorder, mathematics disorder, disorder of written expression, borderline intellectual functioning and speech/language deficits. Because DCPS has not provided A. with appropriate special education supports and services in an appropriate school placement, A. is unsafe at his current school, Moten Center, he is regressing in his social-emotional development, he is not able to access his education, and he is not making academic progress. *See Attachments P-1; P-2.*

Ms. R. filed a Due Process Complaint on April 24, 2007, alleging DCPS' many failures to provide A. with a free and appropriate public education, *Attachment P-1*. Ms. R. is seeking funding and placement for A. at The Children's Guild and compensatory education services for the amount of time for which A. was denied a free and appropriate public education. *Attachment P-1*. In addition, Ms. R. filed a Motion for Expedited Hearing on April 24, 2007, requesting an expedited due process hearing due to A.'s urgent need for a speedy resolution, given that A.'s health and safety are at risk at A.'s current school placement. *See Attachment P-2*. DCPS failed to respond in any way to Ms. R.'s Motion for Expedited Hearing. *Attachment P-3*. No Order was issued in response to Ms. R.'s Motion, and an expedited hearing was never scheduled or convened for A.. *Id.*

DCPS never issued Prior Written Notices regarding any of the issues alleged in the Due Process Complaint. Moreover, DCPS has issued no written response whatsoever to Ms. R.'s Due Process Complaint, more than fifty-nine days after DCPS was required to issue a response.

*See Attachments P-3; P-4.* DCPS also failed to convene a Dispute Resolution Session and failed even to make an attempt to schedule a Dispute Resolution Session following the filing of the Due Process Complaint. *Id.* More than two full months have lapsed since the filing of the Due Process Complaint and no Dispute Resolution Session has been convened by DCPS. *Id.*

When the Local Educational Agency (LEA) fails to hold the dispute resolution session within fifteen days of receiving notice of the parent's Due Process Complaint, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. 34 C.F.R. §300.510(b)(5). Because DCPS failed to convene or make any attempt to convene a Dispute Resolution Session before May 9, 2007 as required, Ms. R. filed a Motion to Schedule Due Process Hearing on May 18, 2007, requesting that the forty-five day timeline for the scheduling of a due process hearing and the issuance of a Hearing Officer's Determination begin on the sixteenth day after the filing of the Due Process Complaint. *See Attachment P-5.* DCPS was unresponsive again, failing to file any response to Ms. R.'s Motion. *See Attachment P-3.* Although motions to which no response is filed can be treated as conceded, Ms. R.'s Motion to Schedule Due Process Hearing was denied without just cause.<sup>1</sup> *See* SOP §401.

To date, more than sixty-nine days after the filing of the Complaint, DCPS continues to be completely unresponsive to the Complaint. As a result, Ms. R.'s due process rights are being compromised and A. continues to languish in an inappropriate school placement where he is unable to make educational progress and where his health and safety are in jeopardy. *See Attachments P-1; P-2.*

### III. Legal Argument

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<sup>1</sup> Although there is no requirement that a parent prove that his/her child was denied a free and appropriate public education in beginning the due process hearing timeline after an LEA's failure to convene a Dispute Resolution Session, Ms. R.'s Motion to Schedule Hearing was denied because Ms. R. failed to connect DCPS' failure to a denial of a free and appropriate public education for A..

A. DCPS Failed to File a Written Response and Convene a Dispute Resolution Session Following the Filing of the Due Process Complaint

DCPS has completely disregarded its legal obligations to Ms. R. and A. following the filing of the April 24, 2007 Due Process Complaint. In accordance with the Individuals with Disabilities Education Improvement Act (“IDEIA”), if DCPS has not filed a Prior Written Notice to the parent regarding the subject matters contained in the parent’s Due Process Complaint, DCPS must file a response within ten days of DCPS’ receipt of the Due Process Complaint. 20 U.S.C. §1415(c)(2); *see also* 34 C.F.R. 300.508(e); SOP § 303. Therefore, DCPS was required to issue a response no later than May 4, 2007. The IDEIA specifically requires that the response include an explanation of why DCPS proposed or refused to take the actions raised in the complaint, a description of other options that were considered and the reasons why they were rejected, a description of each evaluation procedure, assessment, record or report DCPS used as the basis for the proposed or refused actions, and a description of the factors that are relevant to DCPS’ proposals or refusals. 20 U.S.C. §1415(c)(2)(B). DCPS’ response to the Complaint must comply precisely with these requirements, as “Congress’ delineation of the four requirements [in a response] makes clear that general responses are not acceptable.” *See Massey v. District of Columbia*, F. Supp. 2d. 66 (D.D.C. 2005). Here, not only did DCPS fail to provide Ms. R. with all of the required information prior to May 4, 2007, but now sixty-nine days after the filing of the Complaint, DCPS still has failed completely to provide Ms. R. with any response whatsoever. *Attachments P-3; P-4*. By not providing Ms. R. with the necessary information to understand DCPS’ decision-making process in regards to A., DCPS denied Ms. R. the knowledge and empowerment guaranteed to her by the IDEIA. Ms. R. has therefore been unable to adequately advocate on A.’s behalf or engage in an informed dialogue with DCPS aimed at

early resolution of the Complaint, and A. continues to suffer in an inappropriate placement where he is unable to make educational progress. *See Attachments P-1; P-2.*

The IDEIA also requires that DCPS convene a Dispute Resolution Session no later than fifteen days following the filing of the Due Process Complaint. 20 U.S.C. §1415(f)(1)(B). DCPS should have therefore convened a Dispute Resolution Session no later than May 9, 2007, but it failed to do so. Moreover, DCPS not only failed to timely convene a dispute resolution session, but it failed completely to convene any Dispute Resolution Session whatsoever. DCPS never contacted Ms. R. or Ms. R.'s counsel in an attempt to schedule a Dispute Resolution Session. *See Attachments P-3; P-4.* As such, DCPS violated the due process protections that Ms. R. should have been afforded under the IDEIA and denied her of the opportunity at an early resolution to her Due Process Complaint. As a result, A.'s learning disabilities, therapeutic needs, and physical health needs continue to go unaddressed, causing A. to suffer with each passing day DCPS fails to afford him a free and appropriate public education. *See Attachments P-1; P-2.*

Following Ms. R.'s filing of the Due Process Complaint DCPS failed completely to respond in any way. There are no exceptions to the legal obligations imposed on DCPS by the IDEIA. By not complying with its duties under the IDEIA, DCPS has not only blatantly disregarded its legal obligations, it has denied Ms. R. an opportunity at early resolution and denied Ms. R. the information which would have allowed her to advocate in an informed way on behalf of her son, and as a result A. remains in an inappropriate school placement, where his education, health and safety are compromised.

B. DCPS' Procedural Violations After the Filing of the Process Due Complaint Amount to a Denial of a Free and Appropriate Public Education for A.

A. has been undoubtedly denied the free and appropriate public education to which he is entitled as a result of DCPS' inaction following Ms. R.'s filing of the Due Process Complaint.<sup>2</sup> In order for a hearing officer to find that a child did not receive a free and appropriate public education based on procedural inadequacies, the procedural violations must have impeded the child's right to a free and appropriate public education, significantly impeded the parents' opportunity to participate in decision-making regarding the provision of a free and appropriate public education to the child; *or* caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii) (emphasis added). DCPS' failures to provide a response to the Due Process Complaint and to convene a Dispute Resolution Session in fact resulted in all three of these contemplated results.

First, as a result of DCPS' failures, A. has been deprived of educational benefit. Specifically, without receiving an answer to the Due Process Complaint, Ms. R. was denied any information on DCPS' position, the factors upon which its decisions about A.'s education were made, its legal defenses, and the issues which DCPS may not have intended to defend, which are issues it may have been willing to resolve short of litigation. Without this information, Ms. R. was unable to advocate effectively on her son's behalf or to work with DCPS to arrive at early resolution to the matter.

Moreover, without a Dispute Resolution Session, Ms. R. was denied the opportunity to engage in a dialogue aimed at early resolution of the Complaint, as is her right under the IDEIA. DCPS has thereby not only interfered with the adversarial process, but also the non-adversarial process of peaceful resolution. By not scheduling a Dispute Resolution Session, DCPS is not

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<sup>2</sup> Because a default judgment is designed to protect a diligent party and does not require proof of the substantive issues, this Hearing Officer may order a default judgment without a showing of the denial of a free and appropriate public education to A.. See, e.g., *H.F Livermore Corp v. Aktiengesellschaft Geburder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970). Nonetheless, A. has undoubtedly been denied a free and appropriate public education as a result of DCPS' failures to respond as required by the IDEIA to Ms. R.'s Due Process Complaint.

only precluding Ms. R. from her statutory right to participate in such a meeting, but also denying Ms. R. the opportunity at dialogue and communication between the parties that the IDEIA seeks to guarantee. At “[t]he core of the [IDEA]...is the cooperative process it establishes between parents and schools,” *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). DCPS’ violation is particularly egregious because its failure to participate directly interferes with the intent of the statute. DCPS also disregarded DCPS’ own Standard Operating Procedures, through which DCPS intends “to resolve all disputes related to special education in as efficient and cooperative a manner as possible.” SOP Section IV. DCPS was entirely unresponsive and by failing to convene a Dispute Resolution Session it delayed the progress of resolving the severe deficiency in the services DCPS is providing to A..

It is a well-settled principle in special education cases in the District of Columbia that time is of the essence when resolving matters related to the education and provision of services to children with disabilities. *See Blackman v. D.C.*, 185 F.R.D. 4, 7 (D.D.C. 1999) (“[To] a young, growing person, time is critical. While a few months in the life of an adult may be insignificant, at the rate at which a child develops and changes, especially one at the onset of biological adolescence with or without special needs like those of our Petitioner, a few months can make a world of difference in the life of a child”). There is no doubt that DCPS’ violations affected A.’s substantive rights, and resulted in continuing and compounding harm to him. *See Lesesne v. D.C.*, 447 F.3d 828, 834 (D.C. Cir. 2006) (requiring a showing of harm to the child as a result of procedural violations). Without the information needed to advocate on her son’s behalf and without the opportunity at early resolution through a Dispute Resolution Session, A. continues to languish in an unsafe and inappropriate school placement, suffering further detriment, resulting in the denial of a free and appropriate public education and the deprivation

of educational benefit. *See Attachment P-2.*

Second, by failing to provide Ms. R. with a response to her Due Process Complaint and by failing to convene a Dispute Resolution Session, DCPS significantly impeded Ms. R.'s opportunity to participate in the decision-making process regarding the provision of a free and appropriate public education to A.. By neglecting to provide Ms. R. with a response and to engage in the early resolution process entirely, DCPS deprived Ms. R. of the opportunity to learn about DCPS' proposed actions and inactions. Without any response from DCPS regarding the allegations in the Complaint, Ms. R. was denied the information she needed to understand DCPS' position and the actions it has taken or refused to take in regards to A.'s education and therefore she is unable to effectively advocate and participate in the decision-making process for her son. Without a Dispute Resolution Session, Ms. R. was denied an opportunity at dialogue with DCPS through which she could have discussed her son's urgent unmet needs and educational placement with the school officials who could address the allegations outlined in the Due Process Complaint. Without full participation by DCPS in the due process and early resolution procedures provided for by the IDEIA, Ms. R. was unable to engage fully in the decision-making process for A.. *See Attachments P-3; P-4..*

The required LEA response to a Due Process Complaint gives a parent information she can use to advocate for her child effectively and information she can use to attempt to arrive at an early resolution with the LEA. Therefore, the LEA response to a Complaint is a mechanism through which a parent can engage in the decision-making process for her child. The Dispute Resolution Session is an opportunity for dialogue about a child's needs and an opportunity at early resolution mandated by the IDEIA, and is therefore also a mechanism through which a parent is entitled to participate in the decision-making process regarding her child's right to a

free and appropriate public education. DCPS denied Ms. R. the ability to engage in these decision-making processes, leaving A. to languish without the informed advocacy or early resolution that would have provided him with the critical special education supports and services he requires to receive educational benefit.

C. A Default Judgment Should Be Entered as a Result of DCPS' Failures

The Hearing Officer should issue an order granting a default judgment against DCPS because DCPS violated federal law and DCPS' own operating procedures in failing to respond, as required, to Ms. R.'s Due Process Hearing Complaint. DCPS' failures deny Ms. R. the timeliness, efficiency, and due process to which she is entitled by law, prejudicing her in the due process hearing through which she is pursuing the vindication and protection of her rights and the rights of her disabled son.

Longstanding rules of civil procedure and equity provide a mechanism through which Ms. R. can seek relief in response to DCPS' complete inaction in this matter. Specifically, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend," a judicial officer may enter a default against the party. Fed. R. Civ. P. 55(b)(2). This Hearing Officer should order a default judgment against DCPS because DCPS has failed to provide Ms. R. with a response to her Due Process Complaint and it has failed to convene a Dispute Resolution Session. Both of these procedures are required by the law and provide parents with an opportunity to learn about the LEA's position on the issues alleged in the complaint and promote the potential for early resolution. In committing these procedural violations, DCPS thereby failed to plead or otherwise defend and failed to cooperate in a spirit of dialogue as provided by the rules and by the IDEIA.

The Hearing Officer should grant Ms. R. a default judgment to ensure that DCPS' failure

to participate has not advantaged DCPS over Ms. R., who diligently filed her Due Process Complaint. Furthermore, the IDEIA specifically requires that a Local Educational Agency's response to a Due Process Complaint include an explanation of its actions, a description of other options considered and the reasons those options were rejected, a description of each evaluation, procedure, assessment, record or report used as a basis for its actions, and a description of factors relevant to its actions. 20 USC §1415(b)(2)(i)(I). This information must be provided in a response to the parent within ten days of the receipt of the Complaint. *Id.* The IDEIA provides for a detailed LEA response soon after the following of the Due Process Complaint in part so that parents may be informed of the LEA's intended defenses as to be able to prepare adequately for the due process hearing. The response requirement is in essence a notice requirement aimed at protecting a parent's right to due process, information, and equity in the hearing procedure. DCPS also neglected to provide Ms. R. with a Dispute Resolution Session through which she could have discussed the allegations in the Complaint with DCPS officials. Without this opportunity at dialogue, Ms. R. was again denied the chance to learn about DCPS' position, other options DCPS considered or is proposing for A., and the factors upon which its decisions are based.

The importance of DCPS adhering to the procedural requirements of the IDEIA is undisputed and the technicality of the federal and local timeline requirements is directly linked to the substantive due process rights of the parent. *See Massey v. District of Columbia*, 400 F. Supp. 2d 66, 76 (D.D.C. 2005) (explaining that DCPS' failure to adhere to procedural safeguards as required by the IDEA may result in harm to the parents and child necessitating judicial intervention); *Blackman v. D.C.*, 277 F.Supp.2d 71, 78 (D.D.C. 2003) citing *Rowley*, 458 U.S. 176 (1982) (noting "the procedural due process protections included by Congress in the IDEA

are of critical importance to effectuating the goals of the statute”). Ms. R. and her son should not be disadvantaged in the hearing process due to DCPS’ failure to comply with the procedures required by the IDEIA following the filing of a Due Process Complaint.

As a result of DCPS’ failure to provide Ms. R. with a response to her Due Process Complaint and a Dispute Resolution Session, Ms. R. goes without notice of DCPS’ defenses, and is unable to adequately prepare for the Due Process Hearing. Ms. R. provided DCPS with detailed information in her Due Process Complaint, addressing the legal issues, relevant facts, and proposed remedies, as required by the IDEIA. 20 USC §1415(b)(7). Her Complaint provided DCPS with information on her position, her allegations, and the corresponding factual support. DCPS’ failure to file a response to the Due Process Complaint denies Ms. R. access to DCPS’ position on the legal matters and facts outlined in her Complaint. Without receiving Prior Written Notice or a response to her Complaint in compliance with the IDEIA, Ms. R. goes without notice of DCPS’ position, its intended defenses, and the factors upon which its defenses rest, and is therefore unable to adequately prepare to address those defenses in the Due Process Hearing. Ms. R. will be prejudiced by entering the due process hearing without any of the information to which she is entitled under the IDEIA regarding DCPS’ position, defenses, or factual support. Receipt of this information early in the process, within ten days of her filing of the Complaint, would have afforded Ms. R. the time for adequate preparation for the due process hearing to which she is entitled.

The only remedy which will save Ms. R. and A. from the harm caused by DCPS’ procedural violations and ensure due process is the entry of a default judgment. Default judgments are provided to protect diligent parties from adverse parties who are “essentially unresponsive” and in order to protect the diligent parties from “interminable delay and continued

uncertainty as to [their] rights.” *H.F. Livermore Corp. v. Aktiengesellschaft Geburder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970); *see also Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980) (explaining that default judgments are appropriate “when the adversary process has been halted because of an essentially unresponsive party”). Hearing Officers have broad discretion in determining the appropriate relief. *See School Committee of Burlington v. Dep’t of Ed.*, 471 US 359 (1985). This Hearing Officer can order a finding of default and the remedy requested in the Due Process Complaint to protect Ms. R., who filed a thorough Due Process Complaint, thereby providing notice to DCPS of the allegations she will litigate at the Due Process Hearing and the supporting facts. DCPS in turn failed to provide Ms. R. with all of the information that it is required to provide a parent as part of the LEA’s response to a Due Process Complaint. Ms. R. is therefore now disadvantaged as she prepares to enter the due process hearing without any notice of DCPS’ position or its defenses. Ms. R., the diligent party, was denied her due process rights by DCPS’ procedural violation because DCPS’ silence precluded Ms. R. from receiving the benefit of the information and urgency required by law. 20 U.S.C. § 1415. The only result that will resolve the inequity faced by Ms. R. and the harm suffered by A. as a result is the entry of a default judgment against DCPS and the granting of the relief requested by Ms. R.- the placement of A. at The Children’s Guild and compensatory education services to address the denial of a free and appropriate public education suffered by A..

D. In the Alternative, All Facts in the Complaint Should be Deemed as Admitted and DCPS Should Be Precluded From Defending the Complaint at a Due Process Hearing

If a default judgment is not ordered, in the alternative, this Hearing Office should order that the facts in the Due Process Complaint are admitted as true and preclude DCPS from presenting a defense. When a responsive pleading is required, equity requires that averments in

the initial pleading are admitted if they are not denied in a responsive pleading. Fed. Rules Civ. P. 8; *see* Wright and Miller, Federal Practice and Procedure, vol. 5, secs. 1181-1290.1, 690 (West Group 1998). DCPS' failure to respond in any way to Ms. R.'s Due Process Complaint constitutes a failure to deny in a responsive pleading and therefore the facts detailed in the Due Process Complaint should be deemed admitted. DCPS was required by the IDEIA to respond with specific information to Ms. R.'s Due Process Complaint. DCPS not only failed to respond with the information required by the IDEIA, but failed to respond in any way and therefore failed to deny any of the facts presented in the Due Process Complaint. *See* 20 U.S.C. § 1415 (c)(2)(B)(ii) (2007); 34 C.F.R. 300.508(e) (2006); DCPS SHO SOP § 303(B)(1). Therefore, the facts presented in Ms. R.'s Complaint should be deemed admitted by DCPS.

Further, DCPS should be precluded from presenting a defense in the Due Process Hearing as a result of its failure to provide Ms. R. with notice of its defenses, thereby denying her an opportunity both to reach a settlement agreement with DCPS and to adequately prepare for the Due Process Hearing. DCPS was required to include any affirmative defenses it intends to present at the hearing in its response to the Complaint. Fed. Rules Civ. P. 8(c). The IDEIA includes these notice requirements to ensure fairness in the litigation process. Complaints must be sufficient, and responses must include required information to provide the complaining party with notice of its intended defenses, including descriptions of the actions taken or not taken on the child's behalf, the other options considered, the relevant factors behind each decision, and even information as detailed as each evaluation procedure, assessment, record or report utilized in support of its defenses. 20 USC §1415(b)-(c). In failing to provide Ms. R. with a response to her Complaint or to engage in dialogue through a Dispute Resolution Session, DCPS specifically denied Ms. R. any information on its intended defenses, the reasons in support of its defenses,

and any areas upon which DCPS intends not to defend, areas upon which the two parties might have settled in advance of the Due Process Hearing. Clearly, without any response from DCPS detailing its defenses, Ms. R. is prohibited from being able to fully “present evidence and...compel the attendance of witnesses” in the Due Process Hearing. D.C. Mun. Regs. tit. 5, 3031.1(b). Moreover, not only is DCPS circumventing the litigation process by interfering with Ms. R.’s opportunity to adequately prepare for the hearing, DCPS also circumvented the settlement process for Ms. R., who hoped to work cooperatively with DCPS to resolve this matter at the earliest stage possible. DCPS should not have an opportunity to present a defense at the Due Process Hearing after DCPS completely impeded Ms. R.’s ability to reach an early resolution and her right to adequately prepare for the Due Process Hearing.

#### IV. Conclusion

The Hearing Officer should grant an entry of default judgment as a result of DCPS’ complete failure to respond to the Complaint. DCPS’ lack of cooperation and inaction in this matter has caused A. a continuing and expounding denial of FAPE resulting in substantially harmful effects to A.’s educational achievement. Without the information provided to a parent by an LEA through a response to a Complaint and without the benefit of the dialogue that the IDEIA requires at a Dispute Resolution Session, Ms. R. is distinctly disadvantaged without knowledge of DCPS’ defenses as she prepares for the Due Process Hearing. Without receiving the information to which she was entitled through a response to her Complaint and a Dispute Resolution Session, Ms. R. is not able to adequately or effectively prepare to respond to DCPS’ defenses at the Due Process Hearing.

A default judgment is the only remedy available to fully protect the rights of this parent and her son, rights that have already been trampled both procedurally and substantively by

DCPS. In the alternative, if a default judgment is not granted, this Hearing Officer should deem the facts in the Due Process Complaint admitted as true by DCPS and prevent DCPS from presenting a defense or any related evidence.

Respectfully Submitted,

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Yael Zakai  
DC Bar No. 482389  
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Washington, D.C. 20005  
202-467-4900, ext. 513 (phone)  
202-467-4949 (fax)

Counsel for E. R.

**Certificate of Service**

I hereby certify that on July 2, 2007, a copy of the foregoing Motion to Schedule Hearing has been transmitted via facsimile to the following:

Hearing Officer Purcell  
Student Hearing Office, DCPS  
Van Ness Elementary  
1150 5<sup>th</sup> St., SE  
Washington, D.C. 20003

Sheila Hall  
Director  
Student Hearing Office, DCPS  
825 North Capital St., N.E.  
8<sup>th</sup> Floor  
Washington, D.C. 20002

Office of General Counsel, DCPS  
825 North Capital St., N.E.  
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Yael Zakai



Daniel McCall  
Attorney for DCPS, Lewis v. DCPS  
DCPS Office of the General Counsel  
825 North Capitol Street, NE, 9<sup>th</sup> Floor  
Washington, DC 20002  
Via fax: (202) 442-5115

February 4, 2010

**RE: Lewis v DCPS, 5-day Disclosures**

Dear Mr. McCall,

I am writing in reference to the due process hearing scheduled for Child/Student (Case No. 2009-0000). The purpose of this letter is to provide you a list of witnesses and documents, including evaluations, which we may rely on in the hearing.

**Witnesses**

1. Child/Student, Petitioner\*  
Address  
Washington, DC 20020

Phone: (202) 555-5555

Petitioner will testify about the facts alleged in the complaint.

2. Ms. Emily Peltzman, Investigator, The Children's Law Center  
616 H Street, NW, Suite 300, Washington DC 20001 Phone: (202) 467-4900

Ms. Peltzman will testify about her observations of Child/Student at school, her review of the records and her observations at the IEP meetings and dispute resolution session.

3. Dr. Kara Covington, Psychologist\*  
Children's National Medical Center Pediatric Mobile Clinic  
1901 Mississippi Avenue, SE Washington, DC 20020 Phone: (202) 436-3060

Dr. Covington will testify about her evaluation, about the appropriate special education placement and services and about compensatory education.

4. Ms. Marlene Gustafson, Associate Head of School\*  
Kingsbury Day School  
5000 14th Street, NW  
Washington, DC 20011

Phone (202) 722-5555

Ms. Gustafson will testify about the proposed placement and its appropriateness for Child/Student.

5. Kathia Sturdivant, Therapist\*  
Capital Region Children's Center

Phone: (202) 596-5951

Ms. Sturdivant will testify about her observations of Child/Student as her therapist.

\* denotes that witness may testify by telephone

° denotes that witness may testify as expert

### **Documents Offered By Petitioner**

#### **IEPs and related documents**

SL-1	10/1/09 Student Evaluation Plan
SL-2	10/9/09 IEP and Parent Notes
SL-3	11/25/09 Behavior Intervention Plan
SL-4	12/2/09 IEP
SL-5	1/8/10 IEP
SL-6	1/8/10 Dispute Resolution Session Notes
SL-7	1/27/10 IEP

#### **Evaluations and Reports**

SL-8	Psychoeducational Evaluation by Dr. Covington, June 2009
SL-9	Vanderbilt Rating Scale by Ms. Agwalla for Dr. Covington, dated 3/20/09
SL-10	Functional Assessment Interview Form, 10/15/09
SL-11	Occupational Therapy Report, 11/19/09
SL-12	Psychological Evaluation, 11/16/09
SL-13	Speech and Language Evaluation Report, 11/18/09

#### **Other Testing**

SL-14	DC CAS Scores, 4/20/09
SL-15	Diagnostic Report, 12/1/09
SL-16	2009-2010 DC BAS Scores

#### **School Records**

SL -17	2006-07 Report Card
SL-18	2007-08 Report Card
SL-19	2008-09 Report Card- First three advisories
SL-20	2008-09 Report Card- Full year report card
SL-21	2009-10 Report Card
SL-22	4/6/09 Suspension Notice
SL-23	4/28/09 Suspension Notice
SL-24	6/10/09 Suspension Notice
SL-25	Photographs of Child/Student
SL-26	Child/Student . Work Samples

#### **Communication with Turner**

SL-27	8/20/09 Records Request to Elementary School
SL-28	11/19/09 Letter to PH regarding records
SL-29	11/29/09 Letter to RG regarding violent incident against Child/Student
SL-30	12/2/09 Email to PH regarding records

SL-31 12/3/09 Email to PH regarding records  
SL-32 12/8/09 Email with PH regarding records  
SL-33 1/5/10 Letter to PH regarding records  
SL-34 1/27/2010 Letter to PH regarding records  
SL-35 1/29/2010 Emails with PH regarding records

**Other**

SL-36 Affidavit of Michael Wilson  
SL-37 CNMC Medical Record 2/22/07  
SL-38 Acceptance Letter from Kingsbury Day School  
SL-39 Resume of Dr. Kara Covington  
SL-40 Resume of Kathia Sturdivant  
SL-41 Work Sample from Kingsbury

DCPS has notified us that additional records which have been repeatedly requested by Plaintiff, including work samples for Child/Student, will not be available until Friday, February 5, 2010. If DCPS provides the work samples, Petitioner reserves the right to include them in supplemental disclosures and to utilize them in the hearing.

In addition, we reserve the right to examine any witnesses and rely on documents disclosed by DCPS. We also reserve the right to use any documents or testimony for the purposes of impeachment.

Please let me know if we can settle this matter in advance of the hearing date. I can be reached at: 202-467-4900 (phone); 202-552-6001 (fax); or, [kzeisel@childrenslawcenter.org](mailto:kzeisel@childrenslawcenter.org).

Sincerely,

Kathy Zeisel, Esq.  
Attorney for Petitioner, Child/Student

CC: Student Hearing Officer Terry Banks

## **Joe Smith Closing**

DCPS has failed to provide an IEP or placement that can provide for Joe's unique needs to ensure that he can receive a FAPE. The parent has met her burden of showing that DCPS failed to provide FAPE and that DCPS has completely failed to meet Joe's unique and extremely pervasive needs.

### **I. Background**

Joe Smith is a 14 year old boy with serious mental health issues stemming from serious physical abuse as a child. Joe's mental health issues have seriously impacted his ability to access his education throughout his childhood, and he has been in highly therapeutic non-public placements with a dedicated aide for at least the last ten years. Because of his severe PTSD and ADHD, Joe is extremely anxious and fearful, is very impulsive, very disruptive in a school environment, frequently uses profanity towards adults and peers and has difficulty focusing on his work. When Joe is afraid, he may lash out both verbally and physically.

For the past eight years, he has also received psychiatric care and therapy at Children's National Medical Center. For the past six years, he has had a community support worker to provide in-home support to the family through First Home Care, and First Home Care is looking to provide even more services because of his declining mental health.

Joe attended Children's Guild for sixth through eighth grades, but the school ends at 8<sup>th</sup> grade and so a new placement had to be determined for him. As a student at CG, Joe's behavior was erratic and he was frequently disruptive. Shawn Hampton, Joe's community support worker, provided detailed testimony about Joe's behaviors,

including frequent profane and disrespectful language, anxiety and extreme susceptibility to peer pressure without regard to his safety or the safety of others.

During the 2009-10 school year, Joe was suspended twice—once for removing a window from the frame after his peers urged him to do it and once for exposing himself at the school. Joe also continued to have serious problems with cursing at staff and peers, with being defiant and oppositional. In addition, we know from his records that he was performing at only a third grade level academically.

In the past several months, at the end of the school year and even more so over the summer after DCPS denied him ESY, his mental health has further decompensated and his behaviors have gotten even worse. Dr. Dave, Mr. Hampton and Ms. Smith provided testimony about this regression in his behavior—and they all agree that a structured summer school program could have prevented this significant of a regression.

## **II. Joe's needs**

Although Joe has borderline intellectual functioning, Dr. Dave testified that Joe has the capacity to do continue to progress academically and socially with the right supports, but that his behavior will limit his academic progress without those supports.

Joe needs a calm school setting that is highly therapeutic and where he can be in very small classes with a very low student teacher ratio. As Mr. Hampton and Dr. Dave described, when he is around more children, his behavior gets even worse and he models the bad behavior of his peers.

Due to his PTSD, Joe also needs to be in a school that does not use restraint or seclusion and which does not allow physical violence or horseplaying. He does,

however, need an appropriate supervised space with a mental health professional who can be available on an as-needed basis where he can deescalate if that is necessary.

In addition, Joe needs to have access to a school psychiatrist, a therapist and family therapy at his school in order to ensure that he can be successful at school. The family therapy is important because school is a significant stressor for Joe and because Joe is not able to generalize very well and it will help him improve his functional behaviors so that he can benefit from his education.

As Dr. Dave and Dr. Iseman testified, the school psychiatrist is necessary both to monitor medications, to observe Joe and to provide advice to the clinical team that is providing direct services to Joe. As USC held, where the medical service is required for a child to be able to access school, then it must be included in the IEP. Cedar Rapids Comm. Sch. Dist. v. Garret, 526 U.S. 66 (1999); Irving Independent School Dist. v. Tatro, 468 U.S. 883 (1984).

Joe also needs a school environment that is structured and predictable and where he will feel safe. As Dr. Dave and Dr. Iseman testified, a lack of structure will mean that Joe will be unable to progress therapeutically – getting into trouble with his peers in ways that can be dangerous to himself and others and will therefore be unable to access his education

Because of Joe's susceptibility to peer influence, Dr. Dave and Dr. Iseman recommend that he be in an environment where peer modeling is utilized so that he can get benefits from positive peer pressure.

In addition, ESY is necessary for Joe because he will regress academically and socially without it.

### III. Joe needed ESY in 2010

The IEP is inappropriate because it did not include ESY.

Suggs v DC, 2010 U.S. Dist. LEXIS 3735, 18 (DDC, 2010)

- a. An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, see *Reid v. District of Columbia*, 401 F.3d at 519-20; the nature and effects of the child's disability have not been adequately monitored, see *Harris v. District of Columbia*, 561 F. Supp. 2d at 68; or a particular service or environment not currently being offered to a child appears [\*19] likely to resolve or at least ameliorate his educational difficulties. See *Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006).

Joe had ESY every year because of the danger of that regression until the summer of 2010, when he was changing schools. Suddenly, per DCPS' own notes from the MDT meeting at J-1, DCPS determined that although CG and Ms. Smith believed he needed ESY, he could not have ESY in the summer of 2010.

The result of DCPS's unilateral denial of extended school year services The IEP is inappropriate because it did not include ESY. were what everyone feared, The IEP is inappropriate because it did not include ESY. Joe decompensated and his behaviors got worse over the summer. Dr. Dave testified that if he had been in a structured school program, he likely would not have shown this regression and Joe would have been able to retain the academic information and the behavior strategies he learned at school.

### IV. Placement is implementation of IEP and program

The placement encompasses services in the IEP as well as the school environment and program, and a change between two full-time special education programs that on-face can implement the IEP can still constitute a change in placement. See Lunceford v DCPS et al, 745 F.2d 1577, 1581 (DC Cir, 1984); See also A.K. ex rel. J.K. v. Alexandria City School Board, 484 F.3d 672, 680 (4<sup>th</sup> Cir. 2007) (The Court rejected an assertion that “stating the particular location where services will be provided is a mere technical requirement separate from a student’s educational placement determination.”)

*In the alternative, if the HO holds that everything should be in the IEP, then it is clear that Joe’s IEP is lacking. Joe had services that were well beyond his IEP at Children’s Guild because that was part of the program. If the HO holds that the IEP is the only that determines placement, then the entire necessary program should be incorporated into the IEP.*

#### **V. CG to Shadd is a change of placement not location of services**

Joe will changing placements regardless of which school he attends. DCPS does not contest in their answer that Shadd is a change of placement, and in fact claims they issued a prior notice about the change of placement.

At CG, Joe was in a highly intensive program where he had two certified teachers and a social worker in class in addition to his dedicated aide. Joe also had access to the school psychiatrists, who could provide the observation and consultation to the clinical staff. Joe had access to a supervised de-escalation and calming spaces where he could process with a mental health staff, he had social skills incorporated to the curriculum and he had access to a social worker as needed. In addition, Ms. Smith was able to visit the school and she actively participated in his education.

Shadd is a substantially different program. Dr. Iseman, Ms Smith and Ms Bernal all testified about their recent visits to Shadd. Ms. Smith detailed a visit to Shadd in which

Joe became afraid and literally backed himself into a corner—but rather than respond in an appropriate therapeutic manner, the staff continued to approach Joe physically and informed him that he would go to jail if he did not go to the school. They also stated that they would use physical restraints on him if he escalated as he did that day—even though during the incident he was not posing a threat to himself or anyone else. Instead of permitting Ms. Smith and Joe to tour the school, DCPS staff forced them to leave.

When Ms. Bernal went to the school, she saw very few students and those students that were there were not working—they were wandering the halls unsupervised, playing video games and reading sports webpages on the computer. She also saw a staff member with his hands on the neck of a student.

Dr. Iseman testified that in June she saw a student being wrestled by a teacher and on a previous occasion had seen a student wrestled to the ground by a teacher.

In addition, we have heard testimony that Shadd does not have any access to a psychiatrist, Shadd does not provide the therapeutic calming spaces where Joe can be alone with a therapist. Shadd also uses restraints on students, and has already indicated to Ms. Smith that they would use them on Joe. The deescalation space at Shadd is not staffed by a mental health professional and is not even always supervised. The school also does not have any family therapy component.

In addition, Shadd's environment is substantially different than the environment at CG. The environment is chaotic with students unsupervised in the hallway, horseplay between students and staff and students who are not engaged in learning—all of which Dr. Dave testified would be detrimental to Joe because of his extreme susceptibility to harmful peer modeling.

The students have a significant problem with truancy—Dr. Iseman, Ms Bernal and Ms. Smith all testified that the school had very few students or staff even though school was in session. Ms Bernal also testified that the school staff told her that the students don't come to school for the last few weeks---Dr. Dave testified that this type of environment will negatively affect Joe b/c he will follow the lead of the other students.

Furthermore, Ms. Smith, who has always been an active participant in Joe's education, does not have meaningful access to the school. She requires oxygen and uses a cart to walk—but the school does not have any handicapped access and she would be required to climb the three flights of stairs in order to get to the school.

The parent's right to participate in her child's education is a fundamental right contemplated by the IDEA. The IDEA requires the parent to consent to all evaluations, to be given the opportunity to participate at all IEP meetings, to consent to all services, and to participate in the placement decision for her child. While a parent does not have to agree with the final outcome if the placement is appropriate, the parent must be afforded the opportunity for meaningful participation. Holdzclaw v. DC, 524 F. Supp. 2d 43, 46 (D.D.C. 2007).

Ms Smith's ability to effectively participate in Joe's education is limited through a placement that is physically inaccessible to her.

#### **VI. Placement at Shadd was unilateral by DCPS and Violated Ms. Smith's Rights in Placement Process**

Ms. Smith's rights to participate in the placement process were violated by DCPS and that violation constitutes a denial of FAPE. Parental participation in educational placement is specifically required by the law. 20 U.S.C. §1414(e); 34 C.F.R. §300.327, §300.501; 5 DCMR §3013. In fact, one of the critical goals of the legislation as identified by Congress is that parents have a meaningful opportunity to participate in the

education of their children and to ensure that the rights of parents of children with disabilities are protected. 20 U.S.C. §1400(c)(5)(b); 20 U.S.C. §1400(d)(1)(B). It is no exaggeration to say that parental participation is the cornerstone of the IDEA. Holland v DC, 315 US App DC 158 (DC Cir, 1995). DCPS is uniquely in control of the information about a potential placement, including what services will be available to the child, how the class determination was made and other important details of the placement.

While a parent does not have to agree with the final outcome if the placement is appropriate, the parent must be afforded the opportunity for meaningful participation. Holdzclaw v. DC, 524 F. Supp. 2d 43, 46 (D.D.C. 2007).<sup>1</sup> Once a placement determination has been made, the LEA must issue prior notice that includes specific detailed information about how the decision was made. 34 C.F.R. §300.503; 5 DCMR 3024.1.

The IDEA specifically permits a finding of a violation of FAPE when there are procedural violations that “significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child.” See 20 USC 1415(f)(3)(E)(ii).

In this case, DCPS gave little information about Shadd at the IEP meeting and just told Ms. Smith that Shadd was the placement determined by DCPS and was the only option. While DCPS gave Ms. Smith an opportunity to visit after the meeting, DCPS had already stated that they would not consider any other placement. This meant that there was no real opportunity for Ms Smith to participate b/c it did not matter what she found at Shadd and the IEP team could not address whether Shadd was appropriate after the

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<sup>1</sup> A placement decision may only be made without the parent if the LEA is unable to contact the parent and has documented their attempts to contact the parent in compliance with the law, including by phone, in writing and by personal visits to the student's home. 34 C.F.R. §300.322(d); 5 DCMR 3003.5(g). These strict requirements were not done in this case and the parent was wrongfully excluded.

visit. This is not meaningful participation by the parent as contemplated by the law—this is DCPS unilaterally assigning Joe to the only full time program that DCPS has without any consideration of whether his unique needs can be met. This is an extremely significant violation of the law because Joe's will be harmed by not receiving the appropriate services at the appropriate placement and should be considered a denial of FAPE.

## **VII. Shadd cannot serve Joe's needs**

The particular school that a child will attend must be determined after considering the child's unique needs, including the methods of instruction and other factors that might cause a child's education to decline. See generally *Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp. 2d 1093, 1107 (C.D. Cal. 2000); *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994).

In this case, DCPS did not consider Joe's unique needs in any way—DCPS simply offered the only therapeutic placement it had without considering whether it had sufficient services to provide a FAPE to Joe.

Petitioner also presented detailed testimony about the Petitioner's search for a school after the February 2010 IEP meeting in which she was told a new placement would have to be found for Joe. She looked in DC—at High Roads, but because of the severity of his needs, Joe was rejected. Then, she saw the Frost School and felt it would serve Joe's needs. She asked to discuss it with the IEP team at the May 2010 meeting, but Dr Gayle, the DCPS LEA, refused to discuss any placement except Shadd. Although Ms. Smith was permitted to visit Shadd, it was after the May meeting, when she had been told there were no other options and DCPS would not consider anything else.

Ms. Smith shared her concerns with DCPS when given the opportunity on her visit and at the DRS, but DCPS failed to address those concerns or to consider Joe's specific needs, and simply maintains that Shadd is appropriate.

- Per Gellert v DC, 435 F. Supp. 2d 18, 23 (2006), ignoring the need for a small class size and need for a calm quiet learning environment can render a school inappropriate for a student.
- Per D.C. v. Bryant-James et al, 2009 U.S. Dist. LEXIS 120509, 12 (DDC, 2009) where DCPS does not dispute evaluation recommending small class setting that is quiet and distraction free and IEP does not include that, then IEP fails to address chief concern of evaluator).

I have already described many of the issues at Shadd, and Dr. Iseman provided detailed testimony about why Shadd is not an appropriate placement for Joe because the placement could actually be detrimental due to his severe mental health needs and because his extreme susceptibility to peer pressure he could be dangerous to himself or others.

Academically, it is also not an appropriate placement for him given that he is on the third grade level. As we learned on cross, the school did not meet AYP last year—meaning that the students did not make adequate academic progress under federal law. Furthermore, the class sizes are too large for Joe to be able to receive the necessary attention and academic support for him to make progress.

**VIII. Frost can serve Joe's needs and is the only placement before the HO which can**

The Petitioner has presented detailed testimony about Frost and the unique intensive therapeutic community model at Frost. Joe would be in a HS program with only 17 students total, and he would be in a classroom with only 3 or 4 students that is specifically designed to work with children who are as academically behind as he is and is taught by a licensed special ed teacher. He would also have access to the reading specialist.

Frost does not use restraint and does not permit any kind of physical aggression, even horseplaying, between students. Clare Savage, the clinical coordinator for the program, testified that they have other students who had a history of physical aggression, but that those students are able to obey the rules about physical contact because of the intensely therapeutic environment.

The school also utilizes peer modeling and positive peer pressure to aid the students in understanding social skills and in modifying their behavior—something which Dr. Iseman and Dr. Dave testified would be very effective for Joe.

In addition, the school has mandatory weekly family therapy conducted by a therapist in order to ensure that the parent is engaged in the school process and so that the student can learn to understand that his behavior affects the school and home community.

**IX. HO has broad authority and should order placement at Shadd and comp ed**

HO's have broad authority when crafting relief, and DCPS has failed to prove that Hamilton Center is an appropriate remedy for their failures to provide FAPE, or that it can meet his unique needs as those needs should have been reflected on his IEP. See Sch. Comm. of Burlington v. Dep't. of Ed., 471 U.S. 359, 369 (U.S. 1985). (citing that the

IDEA provides Courts with broad discretion to “grant such relief as the court determines appropriate.”) 20 U.S.C. § 1415(i)(2)(c) (2008); Harris v. Dist. of Columbia, 1992 U.S. Dist. LEXIS 11831, at 12-13 (D.D.C., 1992) (specifically recognizing a hearing officer’s authority to grant any relief he/she deems necessary).

Furthermore, under Reid, the HO has authority to grant compensatory education to ensure that a child will be where he would have been had he received a necessary service.

In this case, the Petitioner is requesting that you find that:

- the IEP was inappropriate, that Joe should have been provided with ESY in the summer of 2010 and
- that Ms. Smith’s right to participate in the placement process was violated and that violation was so significant as to constitute a violation of her substantive rights
- that the 2009-10 placement is inappropriate.

The relief requested is:

1. comp ed for the missed ESY in the form of 30 hours of tutoring
2. placement and transportation to the Frost School for the 2010-11 school year.

**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
STUDENT HEARING OFFICE**

<hr/>	)	
Elizabeth Smith, parent and next friend of	)	
minor child, JV	)	
Petitioner,	)	Case No. 2010-0324
	)	
v.	)	Hearing Officer Kimm Massey
	)	Hearing: April 15, 20 and 21, 2010
DCPS,	)	
	)	
Respondent.	)	
<hr/>		

Tommy Ventura is a ten year old boy with high functioning autism who has the capacity to make significant progress at school. However, DCPS has failed to provide Tommy Ventura with a free and appropriate public education (“FAPE”) since at least March of 2008 by failing to provide an appropriate IEP or placement for Tommy. As a result, Tommy has made no meaningful progress and continues to function well below his abilities.

**I. TOMMY HAS MADE NO MEANINGFUL PROGRESS**

The Petitioner has shown that Tommy made no meaningful progress in his current placement with his current IEP. In fact, Tommy has made virtually no progress in any area and has actually regressed in math calculations. (Test. Dr. Chase; Test. Elizabeth Smith). Had Tommy received the appropriate services since March of 2008, he would be at least a grade level higher in all academic areas and in his speech-language capabilities. (Test. Dr. Chase, Test. Elizabeth Novak).

It is clear that in comparing Dr. Chase’s educational testing (P-24) to the DCPS testing conducted almost exactly a year earlier (P-17), Tommy has made no academic progress. He was on a late first grade to beginning second grade level on the DCPS testing, and he remains at that academic level in Dr. Chase’s testing.

In addition, to the testing, it is clear that in examining the IEPs that Tommy did not make meaningful progress. (P-24). Many of his goals have remained at basically the same level since

the March 2008 IEP and even though he has been working on those goals for a full two years, he has not achieved them (P-4). Though they are currently far above his academic level, as Dr. Chase testified, they are goals that he is capable of achieving with appropriate instruction on an ongoing basis.

The April 2007 MDT notes (P-3) also establish functional levels for Tommy that are very similar to where he is now. Specifically, the notes say that in speech-language therapy, he would be working on “wh” questions and this is still an IEP goal for him. The notes state that in reading, Tommy could distinguish features of a sentence and segment one syllable words and could spell one and two syllable words. This is the same level as the work samples from this year. (P-37). The notes also say that in math, Tommy has mastered single digit addition. That is currently the height of his math skills as well, and he still cannot do two digit addition. (Test. Dr. Chase; P-24; Test. Elizabeth Smith).

Ms. Smith testified that Tommy is still reading the same books at home that he was reading at the end of first grade, and that these books are beginner books with lots of pictures and short sentences. She also said that in math, he used to do addition in his head and that he now counts on his fingers. This statement is supported by Ms. Martin’s observation that Tommy could do math in his head during the educational evaluation in February, 2009 (P-17, p2) and her testimony that saw him do that in the past. However, in the neuropsychological evaluation conducted in February, during DCPS occupational therapy on March 2, 2010 and to complete basic addition for homework, Tommy needed to count on his fingers to add and subtract (DC-8, note dated 3/2/10; Test. Dr. Chase; Test. Elizabeth Smith).

During her testimony, Ms. Martin could not identify specific areas of academic progress, noting that Tommy still skipped words he did not understand during reading and that he still had poor reading comprehension. Although she claimed there was progress in math, she provided no credible testimony about why as recently as October of 2009, Tommy was still working on single digit addition when she claimed he had achieved that goal in the second grade.

Ms. Martin has not measured his academic progress this year because she is using a new tool, the VB Map Assessment, and she cannot correlate it to any of his previous testing. (Test. Crystal Martin). She was only able to get a baseline for Tommy and could not measure whether there was progress. *Id.* In addition, she initially thought Tommy had made enough progress that it would be appropriate for Tommy to take the DC CAS with a read aloud accommodation. However, after administering the DC BAS preparation tests, she determined that it would not be appropriate because he did so poorly on those tests. *Id.* Ms. Martin also testified that each year she had leave some goals unchanged on Tommy's IEP because he had failed to achieve them.

In addition to the failure to make meaningful academic progress, Tommy also failed to make meaningful progress in other critical areas. Specifically, as testified to by Ms. Smith and by Elizabeth Novak, Tommy's Georgetown speech-language therapist, Tommy did not make meaningful progress with social skills. Although he began to be able to respond more to the question "Hi, how are you?" during speech-language therapy at Georgetown, he was not able to generalize this skill and he did not have meaningful improvement in social interaction at school. In addition, he remained completely unable to have appropriate social interaction with general education students. (Test. Crystal Martin, Test. Elizabeth Smith). Ms. Martin also indicated that any progress Tommy had made with social interaction was due only to the fact that he was older and getting more mature, as was typical with all of her students. *Id.*

In addition, Ms. Holmes conceded that she could not say whether Tommy had made progress year to year because she had no idea what skills he had last year, or which of those skills he may have lost over the summer.. In fact, the area that she testified Tommy made progress in, specifically "wh" questions, was one that had been on his IEP the prior year and had been addressed in speech therapy then. (P-9; P-4).

In addition, Tommy has made no progress in his ability to manage his environment in order to control his behaviors and maintain his attention. Instead, at school he has continued to self-stimulate by humming, hand flapping, and running around. He is also unable to pay attention or focus on work in large part due to his inability to incorporate sensory stimuli from his environment. (Test. Elizabeth Eggeling; P-24). As Amanda Eggers testified, Ms. Martin

reported that she had to prompt Tommy approximately every minute to focus on his work. Elizabeth Eggeling, Tommy's Georgetown occupational therapist, testified that had DCPS implemented an appropriate sensory diet and provided occupational therapy to work on his sensory integration deficits, he would have been able to better control these behaviors and perform at school. Instead, until Ms. Eggeling informed her otherwise, DCPS had led Ms. Smith to believe that these behaviors were part of autism and could not change. (Test. Elizabeth Smith).

Unfortunately for Tommy, it appeared as though DCPS's occupational therapist, Ms. Sugimoto, had no real understanding of autism generally or how it affects him specifically. Ms. Sugimoto, did not demonstrate any real understanding of how autism affects Tommy during her testimony or of her role as an occupational therapist in treating a child with autism. Nevertheless, she testified that Tommy had made progress in copying more complex designs during her one-on-one sessions with him and that he could write for a few minutes longer than when he initially began to work with her, up to seven minutes. Yet, she was unable to say whether this progress carried through to the classroom. Ms. Martin's testimony indicated that there was not sufficient carryover as she shared that she still has to prompt Tommy at least every five minutes. If that is the case, then even if Tommy has made some isolated progress in the occupational therapy sessions, it is really not meaningful because it is not supporting Tommy's academic progress.

If Tommy's IEP had contained the appropriate services, goals and accommodations, Tommy would have made meaningful progress. (Test. Dr. Chase) His failure to make meaningful progress indicates that the IEP could not have been appropriate.

## **II. TOMMY NEEDS SPECIFIC SERVICES AND ENVIRONMENT TO MAKE PROGRESS**

In many ways, Tommy is typical of a child with high functioning autism in that he has severe expressive and receptive language deficits, has limited ability to have social interactions and that he would benefit from specific instructional techniques, including visual models, Applied Behavior Analysis ("ABA"), TEACCH and PROMPT. (Test. Dr. Chase; Test. Elizabeth Novak). He also demonstrates many of the typical self-stimulating actions such as hand flapping, running around and humming and vocalizations because he has significant sensory

integration deficits that leave him unable to process his environment appropriately. (Test. Elizabeth Eggeling; Test. Dr. Chase).

Uniquely, although Tommy has deficits in most cognitive areas, he is at the same level as his same age non-disabled peers in the area of visual perceptual reasoning. (Test. Dr. Chase; P-24). As a result, he would benefit even more than the average child with autism from visual cues and instruction and he has the capacity to make significant progress if he is presented with work in a non-verbal manner. *Id.*

i. Necessary Services and Instruction for Tommy to Make Progress

The Petitioner presented clear evidence that went unrefuted by DCPS about the level of service necessary for Tommy to make progress. For academic instruction, Tommy needs full-time specialized instruction with a dedicated aide in the classroom. (Test. Dr. Chase; Test. Elizabeth Novak).

With respect to occupational therapy, Tommy needs two sessions per week of individual occupational therapy and a group session of occupational therapy in order to make meaningful progress. (Test. Elizabeth Eggeling).

The occupational therapists working with Tommy should have training in sensory integration and in different treatment approaches for working with children with autism. (Test. Elizabeth Eggeling). Ms. Eggeling had been certified in sensory integration after completing a 250 hour course and had training in different autism treatment, including Floor Time and Applied Behavioral Analysis (“ABA”). *Id.* She also practices under the supervision of a person certified in Floor Time and ABA. *Id.* In addition to this training, she has significant experience working with children with autism and has ongoing competency testing at Georgetown. *Id.*

As part of his school-based occupational therapy, Tommy needs a sensory diet to address his significant sensory integration deficits. (Test. Elizabeth Eggeling; Test. Dr. Chase). The purpose of a sensory diet is to help Tommy learn to identify how he is feeling with respect to sensory integration and to help Tommy choose activities to calm his body down so that he does

not need to do inappropriate self-stimulation, such as hand flapping, allowing him to concentrate and engage with his academic material for longer periods of time. *Id.* Tommy's Georgetown occupational therapist designed such a sensory diet and Tommy utilizes it with prompting at home and in outside occupational therapy sessions. (Test. Elizabeth Eggeling; Test. Elizabeth Smith). Part of that sensory diet is the "how does your engine run?" program, which illustrates one way that Tommy is learning to self-soothe. (Test. Elizabeth Eggeling; Test. Elizabeth Smith, P-39).

Although DCPS has refused to create or utilize a sensory diet for school, it was clear from Ms. Martin's testimony and from DCPS' own occupational therapy evaluation that Tommy experiences problems with sensory integration at school. In addition, Tommy's Georgetown occupational therapist testified that on the days she sees him after school, he is very stressed out and demonstrates significant self-stimulation behaviors while on the days he does not come from school, he is much calmer.

In addition to occupational therapy services, Tommy needs accommodations and modifications including access to heavy work activities such as a trampoline, an air-filled seat cushion, seating near the teacher and not in the middle of the classroom, movement breaks every hour and use of a laptop due to his handwriting delays. (Test. Elizabeth Eggeling). Tommy also needs, at a minimum, a 3-way screen and headphones for Tommy to use while completing work or other tasks. (P-24).

One of the major accommodations and instructional techniques should be the use of visual models. (Test. Dr. Chase; Test. Elizabeth Eggeling; Test. Elizabeth Novak). The main visual tool for Tommy, an emotions chart, is not functional for Tommy because he is not capable of identifying his emotions. (Test. Amanda Eggers; Test. Elizabeth Eggeling).

With respect to speech-language, Tommy needs, at the very minimum, speech therapy four times a week on an individual pull-out or push-in basis and once a week in a group setting. (Test. Beth Novak). If Tommy has a dedicated aide, then all of the individual therapy should be provided on a pull-out basis with the speech-language therapist providing support to the classroom staff. *Id.*

In addition, Tommy needs a social skills group with children who are at his functional level or who are slightly above, and that is run by a trained professional. (Test. Dr. Chase; Test. Elizabeth Eggeling). This group would be above and beyond group occupational or speech-language therapy and would allow Tommy to practice structured social interactions. *Id.*

Neither the Petitioner nor DCPS contest that Tommy should continue to receive adaptive PE as is currently reflected in his IEP.

ii. Necessary Aspects of Placement for Tommy to Make Progress

Though DCPS has failed to provide Tommy with a placement that met all of his needs, multiple experts testified that the experts testified that there are numerous requirements which constitute the minimum necessary for Tommy to make progress. First, Tommy must be in a classroom with other children with high functioning autism so that he has appropriate children who he can model himself after and learn appropriate social interaction. (Test. Dr. Chase; P-24). In addition, Tommy needs to work in a part of the classroom where he can do work without auditory or visual distraction. (Test. Dr. Chase; Test. Elizabeth Novak). He also needs a room where he can deescalate and which has sensory objects for him to calm himself. (Test. Dr. Chase; Test. Elizabeth Eggeling). The placement must also be able to provide appropriate ESY services for a child with Tommy's disability and level of functioning, which includes providing a summer placement in the same type of full-time environment with all the supports, services and peer group he requires during the regular school year. (Test. Dr. Chase).

All of the experts testified that Tommy needs to be in peer groups with children at or slightly above his functional level in order to make progress. (Test. Dr. Chase; Test. Elizabeth Novak; Test. Elizabeth Eggeling). Tommy needs this because he needs to model upwards, but general education students are so advanced that he cannot comprehend what they are doing to be able to model them. (Test. Dr. Chase).

The placement should also ensure that Tommy does not have to have contact with general education students because he is not at a developmental level to be able to appropriately interact

or benefit from interactions with general education students. (Test. Dr. Chase; Test. Elizabeth Smith; Test. Crystal Martin). Tommy does not currently have the social or communication skills to interact appropriately with general education students. (Test. Dr. Chase). There are several reports of teasing and physical violence against Tommy when he has been in the general education environment. (Test. Elizabeth Smith). In addition, and perhaps more importantly, Tommy's extreme sensitivity to his environment means that when he is in a noisy, unstructured environment with general education students, he cannot handle the sensory overload. (Test. Dr. Chase). One recent example of this was during his visit to Ludlow-Taylor when he began to flap his hands and became very quiet when he had to be in the hallway with general education students. (Test. Elizabeth Smith; Test. Amanda Eggers).

The placement must be able to offer intensive occupational therapy and speech-language services that can be provided in an individual setting with both pull-out and push-in services. (Test. Dr. Chase; Test. Elizabeth Novak; Test. Elizabeth Eggeling; P-24).

Scientifically proven autism treatments and instructional strategies must also be utilized, including ABA, TEACCH and Applied Verbal Behavior. (Test. Dr. Chase). In addition, visual models and directions should be present in the classroom and throughout the school because Tommy learns best by viewing visual directions. (Test. Dr. Chase; Test. Elizabeth Eggeling; Test. Elizabeth Novak; Test. Elizabeth Smith).

### **III. DCPS HAS DENIED A FAPE BY FAILING TO PROVIDE AN APPROPRIATE PLACEMENT**

Although DCPS has provided Tommy with a full-time autism placement since the 2006-07 school year, DCPS has failed to provide qualified instructors and service providers, has failed to provide the necessary services and has failed to provide the necessary aspects of a placement to ensure meaningful progress for Tommy.

A child must make more than de minimus progress for an IEP or placement to be appropriate. See A.I. v. District of Columbia, 402 F. Supp. 2d 152, 168 (D. D.C. 2005) (Progress must be

more than de minimus.); SS. v Howard Rd. Acad., 585 F. Supp. 2d 56,66 (D. DC 2008); M.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 361 (D. N.J. 2002).

In this case, Tommy has made no progress because DCPS has failed to provide a placement with the necessary elements for him to do so.

i. DCPS has Failed to Provide the Necessary Services and Instruction for Tommy to Make Progress

On a basic level, it is clear that any teacher working with a child with a very serious disability such as Tommy or any other child with autism should have training in instructional techniques, behavioral modification techniques and should have more than simply a basic understanding of autism. Yet, DCPS failed to provide a qualified teacher to Tommy. Tommy's classroom teacher for the past three years was Ms. Martin. Ms. Martin testified that she was under only a provisional license for most of the time she taught Tommy. Although she seemed unclear of when her licensure status changed, the Office of the State Superintendent for Education (OSSE), which maintains information about licensing, indicated that as of April 12, 2010, Ms. Martin did not have a permanent license. (P-40).

In addition, Ms. Martin testified that no specific training is necessary to teach children with autism. She stated that she is trained in PECS, which the DCPS speech-language pathologist explained was a technique for working with non-verbal children with autism. (Test. Crystal Martin; Test. April Holmes). Ms. Martin testified that she had not done any behavioral analysis of Tommy since he entered her class in second grade. (Test. Crystal Martin). Ms. Martin demonstrated a fundamental lack of understanding about Tommy's autism during her testimony and in the documents she has created over the years. She stated that Tommy is lazy and defiant and that an appropriate goal for him is to be punished fewer than three times per week. (Test. Crystal Martin; DC-9). Yet, it is clear that his behaviors, short attention span and low stamina are directly related to his autism diagnosis and these characterizations about Tommy are inappropriate. (Test. Elizabeth Eggeling; Test. Dr. Chase). In fact, it is counterproductive to moving Tommy towards his goals to treat his autism-related behaviors as though they were part of a willful defiance. (Test. Elizabeth Eggeling)

In addition, Tommy's occupational therapy is not being provided by a qualified therapist and is not appropriately addressing his needs. In contrast to the extensive qualifications and experience of Ms. Eggeling, the DCPS occupational therapist had attended one session of a four session training on sensory integration and had no other training in working with children with autism. (Test. Ms. Sugimoto). She has no experience in working with children with autism prior to this school year, and it was not clear that she is practicing under the supervision of anyone with appropriate certifications or training. *Id.*

Tommy's current level of service and method of service provision is inadequate to allow him to make meaningful progress that he can generalize to the classroom. The DCPS occupational therapist had no idea if Tommy is able to utilize the skills she works on with him the classroom because she provides only pull-out services and she does not discuss how Tommy does with occupational therapy skills in the classroom. (Test. Ms. Sugimoto). Furthermore, at least one in three occupational therapy sessions are provided in a setting where another student is receiving other forms of therapy. *Id.* Despite Tommy's problems with attention and sensory integration of multiple visual or auditory stimuli, no noise buffer is provided and only sometimes is a visual buffer provided. *Id.*

In spite of the clear manifestations of Tommy's sensory integration deficits at school, the DCPS occupational therapist testified that she does not think Tommy needs a sensory diet at school. (Test. Ms. Sugimoto). She also demonstrated her basic lack of understanding of how to provide occupational therapy services to children with autism when she testified that in her opinion, a sensory diet is to be utilized by the caretakers and is not a means to help Tommy learn to self-soothe. *Id.* Though expert testimony clearly established that Tommy's self-stimulating behaviors were a way to shut out stimuli in the world around him, including academic instruction, DCPS's occupational therapist testified that she believes hand flapping and Tommy's other forms of self-stimulation are appropriate and that she does think he needs a formal program to learn to stop doing them. *Id.* Ms. Sugimoto was not familiar with the "how does your engine run" program, and although she claimed to be familiar with other similar programs, she could not provide any specifics. *Id.* Ms. Sugimoto clearly has a very limited

understanding of sensory integration and has not provided appropriate goals or support for Tommy in the school environment.

With respect to the modifications and accommodations necessary for Tommy, DCPS has not provide the necessary accommodations consistently and appropriately. Although Ms. Martin testified that she provides use of a trampoline, she provides that to all of her students and does not have any particular program to structure Tommy's use of the trampoline. (Test. Crystal Martin). Furthermore, none of these accommodations are appropriately reflected in the IEP, so there is no consistency in what he is provided. (P-9). Ms. Martin also stated that she has not read the occupational therapy evaluation because it is not part of her job. (Test. Crystal Martin). Thus, she is not even aware of Tommy's particular deficits and needs.

DCPS does not provide sufficient or appropriate speech-language services for Tommy. DCPS provides only one hour of pull-out speech language services to Tommy, and he has not made meaningful progress with speech. Ms. Holmes, the DCPS speech language therapist, has very limited experience working with children with autism and her only training relevant to working with autistic children relates to non-verbal children. (Test. Ms. Holmes).

ii. DCPS has Failed to Provide Necessary Aspects of Placement for Tommy to Make Progress

DCPS has failed to provide the necessary aspects of a placement as described above and as a result, Tommy has not made meaningful progress. Tommy has high functioning autism, something that was evident prior to Dr. Chase's evaluation given his relatively high level of speech and academic potential as compared to other student's with autism. Yet, his class contains at least three students who are non-verbal. This is inappropriate because Tommy lacks appropriate models and opportunities for social interaction. (Test. Dr. Chase). Tommy is the highest functioning child in his classroom. (Test. Crystal Martin). Therefore, he lacks appropriate peer models to learn from and to interact with in the classroom.

Ms. Martin testified that she believes it is good to expose all autistic children to general education peers so they can model behaviors and practice social interaction. However, she also

testified that Tommy has never had successful interactions with general education peers and that when he does model behaviors, he is not able to distinguish between good and bad behaviors. The DCPS occupational therapist also testified that when she has seen Tommy on the playground with general education students, she has never seen Tommy successfully interact with his non-disabled peers.

In fact, DCPS has failed to consider whether it is appropriate for Tommy specifically to be exposed to general education peers. It is clear from the evidence provided during the hearing, that Tommy does not benefit and is actually harmed by interaction with his general education peers. When he went to art class with general education students for over a year, Ms. Martin had to call Ms. Smith every single time because he had tantrums and he tried to avoid going to school on the days he knew he had the art class. (Test. Elizabeth Smith; Test. Crystal Martin). Ms. Martin agreed with Ms. Smith's decision to remove Tommy from the program as she also felt it was not appropriate for him because he could not interact appropriately with the non-disabled students and because he could not manage the noise in the environment. *Id.* This elevated level of stress harms Tommy because he becomes so escalated that he is unable to soothe himself so that he can access his education. (Test. Dr. Chase).

In addition, Ms. Martin testified that Tommy is required to go to lunch and recess with general education students, but that when he interacts with the general education students, it normally does not end well. She reported that he spits on the other students and chases them. (Test. Crystal Martin). In addition, when with regular education students, DCPS fails to provide any appropriate or therapeutic supervision to guide Tommy's interactions. During lunch and recess with regular education peers, Tommy is supervised by whatever teacher happens to be on duty that day. *Id.*

The current placement has no sensory room for Tommy to utilize to deescalate and does not provide any meaningful auditory or visual barriers for Tommy. There are headphones in his class, but they are only for when he uses the computer during his break times and not for instruction or when he is doing classwork. (Test. Crystal Martin).

DCPS has failed to provide ESY to Tommy any year. DCPS does not have an appropriate autism program for Tommy. (Test. Elizabeth Smith).

The staff in the program also has no training to utilize any of the necessary scientifically-based programs, including ABA, TEACCH or Applied Verbal Behavior programs. Lastly, the related services are offered to Tommy only on a pull-out basis.

Therefore, DCPS has failed to provide the necessary services and placement components to allow for Tommy to make meaningful progress.

iii. DCPS Placement is Inappropriate Because it Failed to Fully Implement the IEP  
Although the November 2, 2010 IEP finally added occupational therapy services for Tommy, DCPS also failed to create and implement a sensory diet even though the team determined it was necessary. (Test. Emily Peltzman). The sensory diet is essential to Tommy being able to self-soothe so he can effectively participate in academics. (Test. Elizabeth Eggeling; Test. Dr. Chase; Test. Amanda Eggers; Test. Elizabeth Smith; P-38, p96).

Although the IEPs contained insufficient accommodations, DCPS failed to even implement those that it contained. The January 20, 2010 IEP provided for a noise buffer for Tommy in the classroom, but no noise buffer was provided. Instead, Ms. Martin restricted Tommy's access to headphones to use with the computer, but provided nothing when Tommy was actually trying to complete class work or testing. (Test. Amanda Eggers).

iv. DCPS Placement Inappropriate Because Teacher Utilized Corporal Punishment  
The law is clear that DCPS teachers may not employ any form of corporal punishment, including but not limited to grabbing and hitting. 5 DCMR §2403. In this case, Tommy reported two separate incidents of corporal punishment to Ms. Smith. Although both of these incidents were reported to DCPS personnel, no appropriate action was taken. The use of illegal corporal punishment clearly makes the placement inappropriate and constitutes a denial of FAPE to Tommy.

The first occurred in the middle of the 2008-09 school year when Tommy was hit with a ruler by Ms. Martin after he threw a ball at another child in the class who was sleeping. Ms. Smith provided detailed testimony of not only what Tommy reported to her and about the bruise she observed on Tommy's wrist, but also about her numerous conversations with Ms. Martin about the incident. Ms. Smith also reported the incident to two DCPS employees, Ms. Gathaway, a counselor, and Ms. Abney, her other son's first grade teacher. (Test. Elizabeth Smith). On April 6, 2010, Ms. Gathaway verified that Ms. Smith had made this report to her last year. (Test. Amanda Eggers). In addition, Elizabeth Eggeling testified that in the same time period, she saw a bruise on Tommy's wrist but could not ascertain what happened because Tommy was too stressed out to be coherent.

Ms. Martin admitted that she hit Tommy with a ruler, but although she claimed it was an accident, that she did not notice the bruising and that she did not remember the specifics. (Test. Crystal Martin).

The second incident occurred on March 8, 2008 when Tommy came home with severe scratches on his face and bruises on his arms in the shape of fingers. (Test. Elizabeth Smith, P-29). When Ms. Smith discussed the incident with Tommy on March 8, 2010, he said that his teacher grabbed him and put him in time out and pointed to his arms. (Test. Elizabeth Smith). However, it was not until March 9, 2010 that Ms. Smith observed the bruises on his arms and at that point she again inquired how he got them and Tommy again said his teacher grabbed him and put him in time out. *Id.* This was not the first time that Tommy reported being grabbed, but it was the first time Ms. Smith had seen bruises of this nature. (Test. Ms. Smith; Test. Crystal Martin). Ms. Smith reported that Tommy was unusually stressed out and for the first time absolutely refused to go to school. As a result of Tommy's reaction and her fears for his safety, she decided not to send him to school until the school appropriately addressed the incident.

Elizabeth Eggeling also testified that in the same period, she observed scratches on Tommy's face and saw bruises on his arms. She said that once again Tommy was too stressed out to be able to coherently tell her what happened, but that he was talking about his teacher and another student.

On March 8, 2010, Petitioner's attorney sent a letter to the principal of the school reporting the incident, but the school did not respond and did not address the incident. (P-25). On March 23, 2010, Petitioner's attorney again sent a letter to the school to address the incident and to report that the independent evaluation report authorized by DCPS had not yet been received by Petitioner's counsel. (P-26). Although DCPS claims to have contacted the police, there is no police report or even a DCPS incident report in evidence to prove that. In addition, if the police or anyone else did investigate, they never contacted Ms. Smith or Tommy to inquire about the incident. (Test. Ms. Smith). The only evidence DCPS provided about these incidents were self-interested statements by Ms. Martin.

Ms. Martin's testimony about this incident was, at the very least, incomplete. It was not until cross examination that Ms. Martin admitted she had made two calls to Ms. Smith that day. It is certainly possible that Tommy did not yell out during the second call, as Ms. Martin testified, but Ms. Martin never denied that it happened during the first call, as Ms. Smith testified. In addition, Tommy's statements about being in put in time out are consistent with the punishments and terminology for that punishment that Ms. Martin utilizes with Tommy. (Test. Ms. Martin). Both Dr. Chase and Ms. Eggeling testified that they do not believe that Tommy is capable of lying based on his diagnosis and on their knowledge of him.

DCPS failed to appropriately respond to any of these incidents. Although Ms. Smith reported these incidents to DCPS personnel, Ms. Smith was never contacted by MPD or by any DCPS officials with respect to these incidents. (Test. Elizabeth Smith). DCPS did not provide any police or incident reports to prove that it had conducted any thorough investigation, and instead only offered the testimony of Ms. Martin.

iv. DCPS Placement is Inappropriate Because DCPS Failed to Adequately Supervise Tommy

Tommy sustained significant injuries and was repeatedly hit and teased by other students at his school because DCPS failed to provide adequate supervision for him. On November 17, 2009, Tommy was scratched so deeply that his skin was taken off and his face was swollen the next

day. (P-38, p46; Test. Elizabeth Smith). On March 8, 2010, Tommy was scratched by the same student so severely that he had to have a tetanus shot. (Test. Elizabeth Smith). Ms. Martin was clearly aware of this danger because she told Ms. Smith that she cut the nails of the other boy to prevent such incidents. (Test. Elizabeth Smith). However, if DCPS was aware of the danger posed by the other boy, DCPS should have provided intensive supervision to ensure that incidents such as these did not happen.

In addition, Tommy was hit by other children on the playground and at the art class he participated in during the 2008-2009 school year. Tommy reported to Ms. Smith that another child had hit him during the art program in the 2008-09 school year. (Test. Elizabeth Smith). In the communications log, Ms. Smith asks Ms. Martin to look into an incident that Tommy reported to her where he was hit in the face by another girl on the playground. (P-38, p37). Ms. Martin appeared to be unaware of the incident and only asked Tommy about it. *Id.* Ms. Smith also expressed her concern that she is only aware of these incidents because Tommy has been able to report them and that Ms. Martin was not aware of them. (Test. Elizabeth Smith). In addition, DCPS does not provide adequate supervision during the most unstructured parts of the day, lunch and recess. Tommy is supervised only by whatever teacher happens to be on duty, even though he has extensive social emotional needs, particularly related to interacting with others, and as a result, unsurprisingly, he has had numerous negative interactions during that time. (Test. Crystal Martin). Particularly because Tommy's significant communications deficits mean that he is not always able to report when he is physically or emotionally harmed, DCPS' failure to provide appropriate supervision to Tommy is alarming.

#### **IV. DCPS' PROPOSED PLACEMENT IS ALSO INAPPROPRIATE**

DCPS has repeatedly stated that Ludlow-Taylor is a lateral placement so it is the same program as Garrison Elementary School, but in a different school. (Test. Amanda Eggers; Tanya Chor). In fact, DCPS counsel stated that it is DCPS' position that Garrison Elementary School is appropriate for Tommy and they are offering the other placement only because there is now bad blood with Garrison Elementary School.

Thus, program at Ludlow-Taylor would provide the same services in the same way as Garrison. Yet, this method of service provision is clearly ineffective for Tommy since he has not made meaningful progress. As with Garrison, the classroom that Tommy is in is taught by an uncertified teacher. (Test. Amanda Eggers). Furthermore, DCPS provided no evidence that any of the scientifically-based methods of instruction recommended by Dr. Chase are utilized in the autism program at Ludlow-Taylor.

The students in the autism classrooms at Ludlow-Taylor are assigned solely by age and grade and are assigned by the downtown office of DCPS. (Test. Ms. Gayles). There is one child who is being mainstreamed from the classroom, and apart from him it is not clear that Tommy would have any appropriate peer group in the class. *Id.* Furthermore, since DCPS does not assign students to the class based on functioning level, it is possible that the class composition could change to be all low functioning children in the class.

Furthermore, the classroom proposed for Tommy has no visual models or instructions anywhere in classroom. (Test. Elizabeth Smith; Test. Amanda Eggers). In fact, it has virtually no decorations and no color. *Id.*

In addition, the classroom is located at a significant distance from the other autism classroom and in the middle of general education classrooms. As a result, Tommy would regularly have to move in the hallways with general education students. (Test. Amanda Eggers). He would also have to attend lunch and recess with general education students in this program. *Id.*

The SEC for Ludlow-Taylor had very little understanding of the appropriate way to provide instruction to autistic students and she had no idea about whether the program would be appropriate for Tommy because she had reviewed only the complaint prior to testifying. (Test. Ms. Gayles). She was unsure whether Tommy was a primary Spanish-speaker even though she had met him and she believed it would be appropriate for a spanish speaking child with autism to be placed in an English-speaking classroom at Ludlow-Taylor with the sporadic support of a general education Spanish teacher. Though clearly not appropriate for any Spanish-speaking

child with autism and significant speech delays, it only served to emphasize how little DCPS's witness understood about serving children with autism generally. .

In addition, the SEC failed to observe Tommy's self-stimulation behaviors during the tour, and it was not clear from her testimony that she understood what those behaviors would even be. (Test. Ms. Gayles).

Ultimately, if this is the same program at a different school as DCPS purports it to be, then it is not appropriate for Tommy because Tommy needs a different program where he can make meaningful progress. DCPS failed to demonstrate that this program can provide any of the necessary services, accommodations or instructional techniques necessary for Tommy to make progress.

#### **V. DCPS FAILED TO TIMELY AND ADEQUATELY EVALUATE TOMMY**

DCPS has an obligation to timely and adequately evaluate Tommy in all areas of suspected disability. 34 CFR 300.11; 34 CFR 300.30. DCPS also has an obligation to provide adequate re-evaluations at least once every three years. 34 CFR §300.303; 5 DCMR §3005.7. DCPS is required to do triennial evaluations unless IEP team determined it was not necessary. 34 CFR §300.303(b)(2). In this case, DCPS failed to fully evaluate Tommy in all areas of suspected disability and failed to provide any triennial psychological evaluation. Tommy was harmed by this failure to timely and adequately evaluate because his IEPs were not based on appropriate data and he did not receive the services necessary for him to make progress.

DCPS failed to timely and adequately evaluate Tommy for occupational therapy. DCPS apparently conducted an April 2007 occupational therapy evaluation (DC-12). DCPS was required to provide qualified professionals to review evaluations. 5 DCMR §3005.4. However, that evaluation was never reviewed by a team and an occupational therapist was not even present at the March 2008 IEP meeting. (Test. Elizabeth Smith; P-4). The evaluation also was not reviewed by DCPS as part of a records review for DCPS's own occupational therapy evaluation in 2009, which contained the complete listing of records provided for review by the evaluator from DCPS. (P-21; Test. Ms. Sugimoto). In addition, although inadequate, the April 2007

evaluation did contain some recommendations for Tommy, but DCPS never implemented those or issued a prior notice about its decision not to do so.

The April 2007 DCPS evaluation was not an adequate evaluation. (Test. Elizabeth Eggeling). Instead of testing for sensory integration problems, the evaluation looks largely at Tommy's handwriting. *Id.* The only test performed for sensory integration, touching Tommy's hand, was not sufficient to ascertain Tommy's sensory integration problems, and as a result, the findings were invalid. (Test. Elizabeth Eggeling).

In July of 2008, Ms. Smith obtained an independent occupational therapy evaluation from Georgetown because DCPS never informed her they had conducted one. (Test. Elizabeth Smith). Ms. Smith provided that evaluation, which specifically discussed the critical nature of providing occupational therapy at school for Tommy, to DCPS in August of 2008. (Test. Elizabeth Smith). The Georgetown evaluation was adequate to create school-based occupational therapy goals (Test. Elizabeth Eggeling). Ms. Smith provided that evaluation to Ms. Martin, who gave it to the SEC and indicated to the SEC that Ms. Smith wanted occupational therapy services. (Test. Crystal Martin).

However, DCPS insisted on performing its own evaluation before considering the provision of services for Tommy, but did not do so for twelve months, until August of 2009. (P-21). And then, did not begin providing occupational therapy until January, 2010. Thus, even though DCPS had a valid evaluation on Tommy's OT needs in August of 2008, DCPS failed to provide services for at least fifteen months (Test. Ms. Smith; Test. Crystal Martin; Test. Elizabeth Smith). Once DCPS finally conducted the evaluation, the DCPS evaluators conducted many of the same tests as the Georgetown evaluation, but they failed to talk to the occupational therapist who had been working with Tommy for almost a year by the time of the DCPS evaluation. (P-21, Test. Elizabeth Eggeling). They also failed to make appropriate recommendations about sensory needs for Tommy even though the testing indicated significant sensory deficits and it was clear that those deficits impacted Tommy academically. (Test. Elizabeth Eggeling, P-21).

Though DCPS has never consistently presented academic and related service information visually to Tommy, they had been on notice of Tommy's unusual strengths in visual learning since at least the 2005 psychoeducational evaluation. Dr. Chase also testified that even if no one had read Tommy's evaluations, DCPS's special education staff should have been aware of Tommy's learning profile based on their knowledge of the traditional learning deficits and information processing issues of children with autism and their direct experience with Tommy.

DCPS completely failed in their obligation to conduct a psychoeducational re-evaluation for Tommy and the limited academic testing they did for Tommy was completely inadequate. The February 2009 DCPS Academic Testing was not a complete evaluation in that it does not report all of Tommy's scores. However, even this inadequate evaluation should have resulted in changes to the IEP. The testing showed that Tommy was still at a late first grade level in most academic areas and his IEP contained third grade goals. Yet, DCPS did not convene a meeting to discuss this evaluation and did not revise the IEP as was necessary. (Test. Elizabeth Smith).

As a result of DCPS's failure to conduct a triennial psychoeducational evaluation or to provide prior notice as to the decision against re-evaluation, the November 2009 and January 2010 IEPs did not have the necessary psychological data to make important changes to the IEP.

Importantly, had the testing been conducted, the team would have known that Tommy actually has visual perceptual skills at or above his same-age non-disabled peers and would have been able to adjust the goals and accommodations accordingly. (P-24, Test. Dr. Chase).

Despite Tommy's frequent need for prompting to stay on task, his escalating behaviors, and the fact that his self-stimming was frequent throughout the day, DCPS failed to conduct a functional behavioral assessment or create a BIP—so Tommy's behaviors and attention issues were never sufficiently addressed in the IEP. Dr. Chase stated that an FBA would have been beneficial to pinpoint Tommy's triggers and he gave numerous strategies that could have been implemented through a BIP to address behaviors. The FBA should be conducted by a behavioral psychologist in order to determine the triggers for Tommy's behavior appropriately. (Test. Dr. Chase).

## **VI. DCPS HAS FAILED TO PROVIDE TOMMY WITH AN APPROPRIATE IEP**

DCPS has failed to provide Tommy with an IEP that was reasonably calculated to provide him with educational benefit as evidenced by his failure to make progress. The IEP must be reasonably calculated to provide educational benefit in. See Board of Education of Hendrick Hudson Central District School v. Rowley, 458 U.S. 176, 203, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982). Tommy's IEPs were inappropriate at the time they were created because they did not contain appropriate goals, accommodations or services for him and they were proven to be inappropriate by his lack of progress.

Furthermore, if the IEP was inappropriate, the law is clear that the placement cannot be appropriate. See O.O. v. D.C., 573 F. Supp. 2d 41, 53 (D.D.C. 2008); Gellert v. D.C. Pub. Schs., 435 F. Supp. 2d 18, 27 (D.D.C. 2006); Blackman v. DC, 278 F. Supp. 2d 1, 4 (D.D.C. 2003).

i. DCPS Failed to Provide Reasonably Calculated IEPs because IEPs were not based on Valid Data

The IEP cannot be reasonably calculated if the team did not appropriately consider all of the data before them in order to address the child's individual needs. In this case, DCPS has consistently provided incorrect or inaccurate information about Tommy's progress at IEP meetings and has failed to perform timely and adequate evaluations. Consequently, the goals on the IEP have consistently been based on inaccurate data. DCPS relied on evaluations or informal assessments by DCPS staff that were inadequate, leading to an IEP that was not at all reasonably calculated to provide Tommy with educational benefit. Furthermore, although Ms. Smith obtained independent speech-language and occupational therapy evaluations during the statutory period, DCPS failed to appropriately consider them in creating the IEPs.

ii. DCPS Failed to Provide Appropriate Services, Accommodations and Goals on IEPs

None of the IEPs in place during the statutory period provided sufficient services or accommodations for Tommy and none of them contained appropriate goals for him. Pursuant to Suggs v DC, 2010 U.S. Dist. LEXIS 3735, 18 (DDC, 2010), the IEP may not be considered to be reasonably calculated if a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. Furthermore, the failure of a parent to object does not categorically bar relief where an IEP is inappropriate. See

Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238 250 (3d Cir. N.J. 1999) (rejecting the contention that failure to object to an IEP while in force categorically bars relief related to that IEP).

It is clear that in each of these IEPs, DCPS failed to provide essential services and accommodations that would allow him to derive educational benefit from the IEP. It is the responsibility of DCPS, as the experts in special education, to ensure that Tommy is getting the appropriate services and that his IEP contains appropriate goals. While the parent must have an opportunity to participate in the process, DCPS is the expert and holds the ultimate responsibility for ensuring that the appropriateness of the IEP. This failure to provide an appropriate IEP constitutes a denial of FAPE to Tommy.

Specifically, the academic goals on all of the IEPs are not properly tailored to Tommy's educational level. Ms. Martin testified that the goals she included are the content standards for the grade that Tommy was going to be in and did not consider Tommy's current level of performance. For instance, in her written report for the January 16, 2009 IEP meeting, she indicated that he was reading on a first grade level, but she provided third grade reading goals for him. (DC-9; Test. Crystal Martin).

In addition, although Tommy regressed in math, was unable to follow routines he had been able to follow prior to the summer break and would have benefited from the repetition of summer school, DCPS never provided for ESY on his IEP.

As for the level of services required, it was not until the November 2, 2009 IEP that any occupational therapy services were provided on the IEP. (P-8). Yet, DCPS was on notice that Tommy required such services and simply failed to provide them. The services were provided only as pull-out and did not include any element to ensure generalization of the skills. (Test. Ms. Sugimoto). In addition, the occupational therapy goals beginning in the November 2, 2009 IEP were inappropriate because they failed to address Tommy's significant sensory integration deficits. (P-8; P-9).

Although the IEP determined that Tommy would benefit from a sensory diet at the November 2, 2009 IEP meeting, Ms. Sugimoto unilaterally determined that Tommy did not need one at school. (See P-8, supplemental notes; Test. Emily Peltzman). The sensory diet is not contained anywhere in the January IEP document even though the team again agreed it was necessary. (Test. Elizabeth Smith; Test. Amanda Eggers). However, it should be noted that the IEP document was not available for parent to comment on during the meeting and DCPS unilaterally created the written document at both the November 2009 and January 2010 meetings. (Test. Ms. Martin; Test. Ms. Smith) The letter sent on behalf of Ms. Smith on December 1, 2009 reflects this agreement requests a written copy of the diet be provided for review by Ms. Smith. That same letter put DCPS on notice of Ms. Smith' concerns about the occupational therapy evaluation and goals proposed by DCPS, but DCPS failed to address these concerns at the January 2010 meeting.

The sensory diet that was eventually created at the very end of January 2010 was never implemented in the school and the occupational therapist informed Ms. Smith that she intended it for home use only. (P-30, P-10, Test. Elizabeth Smith). This, however, did not make any sense. The team agreed it was necessary at school and the DCPS occupational therapist had already been informed by Ms. Smith and by the Georgetown Occupational Therapist that Tommy already had a successful sensory diet at home. (Test. Elizabeth Eggeling; Test. Elizabeth Smith).

In addition, DCPS failed to provide sufficient speech-language services. Elizabeth Novak testified that at a minimum, Tommy needs one half hour four days a week of individual therapy and one half hour a week of group therapy on the day he does not have group therapy. In addition, Tommy would not be able to benefit from more than a half hour of therapy per session. (Test. Elizabeth Novak). DCPS was on notice from Tommy's first speech-language evaluation in 2005 (P-11) and his evaluation at Georgetown (P-20) that Tommy needed intensive, school-based speech language in order to make progress. However, in spite of these recommendations and in spite of the fact that he has not made progress in speech language (Test. Elizabeth Novak), DCPS failed to provide any more than one hour per week of speech language therapy. (Test. Elizabeth Novak).

The IEPs also failed to provide a social skills group even though all of the experts testified that such a group was essential for Tommy. (Test. Dr. Chase; Test. Elizabeth Novak; Test. Elizabeth Eggeling). DCPS was on notice at least from the time of the Georgetown Occupational Therapy Evaluation that Tommy needed a social skills group, but failed to provide it and failed to issue a prior notice about its decision not to provide it. (P-16; Test. Elizabeth Smith). DCPS should have known Tommy needed this prior to the Georgetown evaluation based on the consistent reports of his inability to appropriately interact with other children.

The IEPs also all failed to provide the appropriate accommodations and modifications for Tommy. These are described in detail above in Section II(i), but the IEPs do not contain more than one or two accommodations for him. DCPS also failed to include appropriate modifications for visual learning in the IEP and failed to provide adequate visual models and instructions to Tommy in the classroom and throughout the school.

Finally, all of the IEPs failed to provide a dedicated aide for Tommy. DCPS had repeatedly identified that Tommy needed prompting every one to four minutes and that he was unable to work alone. (Test. Emily Peltzman; Test. Amanda Eggers). All of the experts specifically recommended a dedicated aide for Tommy in order to help him focus and to help him learn to self-soothe. (Test. Dr. Chase; Test. Elizabeth Novak; Test. Elizabeth Eggeling).

a. January 2010 IEP is Inappropriate

In addition to the reasons described above, the January 2010 IEP (P-9) is specifically inappropriate because DCPS relied on inaccurate information. If DCPS had conducted timely and adequate evaluations, the IEP could have been based on appropriate data. Instead, the team was forced to rely on Ms. Martin's informal observations of Tommy's levels. At the IEP meeting, she stated that he was on a third grade level and proposed fourth grade goals for him. (P-9 notes, Test. Amanda Eggers). Yet, on another occasion she told Ms. Eggers that Tommy was on a second grade level and she testified that she is not sure what level Tommy is on. (Test. Amanda Eggers, Test. Crystal Martin). From Dr. Chase's evaluation, we know that none of these estimations was correct and that Tommy is actually on a late first grade level in most academic areas. Although Ms Smith indicated that she did not believe that Tommy was at the levels that

Ms. Martin suggested at the IEP meeting, DCPS put fourth grade goals, such as writing a three paragraph essay, into the IEP. (P-9, Test. Elizabeth Smith). It clear, however, that it would not be possible for Tommy to make this much progress in his current program in one year. (Test. Dr. Chase).

Although DCPS stated that these are goals that are reasonable for Tommy, there is no basis to believe that he will go from the late first grade level to the fourth grade level in any academic area while he remains in his current program. Ms. Martin proposed goals based on the fourth grade standards (P-9, Present Level of Performance Notes) and stated that it was reasonable to expect Tommy to write a three-paragraph essay as a goal for the next year. (Test. Amanda Eggers and Elizabeth Smith).

The only classroom accommodations included on the IEP are a noise buffer and breaks during class work and no testing accommodations are listed. (P-9, p10).

b. November 2009 was Inappropriate

In addition to the reasons described above, the November 2, 2009 IEP was inappropriate. The team did not change the academic goals or the amount of speech-language therapy from the January 16, 2009 IEP, but it did add 90 minutes of occupational therapy and 90 minutes of adaptive physical education. This IEP document was not provided to Ms. Smith at the meeting and she did not have an opportunity to review the occupational therapy goals at the meeting. (Test. Elizabeth Smith; Test. Emily Peltzman; Test. Crystal Martin). Since she did not have an opportunity to review the document, she also did not have an opportunity to object to the failure of DCPS to include a sensory diet in the IEP document even though the team had determined it would be necessary. (Test. Elizabeth Smith; Test. Emily Peltzman). When Ms. Smith discovered that the sensory diet was not being implemented and the adaptive physical education was in a group, not individual as she had believed, she addressed that issue in the communication log with Ms. Martin. (P-38, p91). The supplemental notes provided by the parent's attorney to DCPS indicate that DCPS was on notice that Ms. Smith had concerns with the provision of occupational therapy and with the inadequate accommodations and modifications being provided to Tommy. (P-8).

The occupational therapy goals that were included were inappropriate because they dealt only with motor integration and not the other areas that are necessary to address in order for Tommy to be able to access his education. As Elizabeth Eggeling testified, the school occupational therapist should be addressing sensory integration issues so that Tommy can learn to self-soothe and is able to participate in his education effectively.

c. January 16, 2009 was Inappropriate

The January 16, 2009 was inappropriate for all of the reasons described above and because it failed to provide any occupational therapy. By the January 16, 2009 IEP meeting, DCPS had been in possession of the Georgetown Occupational Therapy evaluation for almost five months. (Test. Elizabeth Smith). DCPS did have an occupational therapist at the meeting for the first time, but although DCPS could have created school-based goals from this evaluation, DCPS failed to do so. (Test. Elizabeth Eggeling). Instead, DCPS refused to provide occupational therapy services and failed to evaluate Tommy.

The IEP also provides absolutely no modifications or accommodations for Tommy, although they were clearly necessary given the manifestations of his disability. (Test. Elizabeth Eggeling). Although Ms. Soils raised her concerns at the IEP meeting, as in other years she was not able to review the complete IEP prior to being required to sign the first page. (Test. Elizabeth Smith). Ms. Smith testified that she signed this IEP and the prior IEPs because she believed it to be similar to registering a child to school and that if she did not sign it, Tommy would not receive services. *Id.* She also testified that she never fully understood the IEP because it was never reviewed with her at meetings, and, when she did raise concerns, DCPS failed to address them in any meaningful way. *Id.*

It was not until after this meeting, when Ms. Smith obtained an advocate, that DCPS finally conducted its own evaluation in August of 2009. (Test. Elizabeth Smith, P-7, P-21). However, had DCPS conducted timely and adequate evaluations or had DCPS reviewed the Georgetown Evaluation, DCPS would have known that Tommy needed occupational therapy services and related accommodations and modifications to make meaningful progress at school.

Furthermore, the IEP team also relied on Ms. Martin's observations of Tommy's academic levels rather than any scientifically proven evaluation of his levels. Ms. Martin provided a teacher report at the January 16, 2009 meeting in which she states that Tommy is lazy, defiant, lacks internal motivation and has a short attention span. (DC-9). She also recommended that Tommy have third grade level goals even though it is clear he was, at best, functioning at a first grade level at that time. (DC-9; P-14).

d. March 8, 2008 IEP Was Inappropriate

The March 8, 2008 IEP was created shortly before the statutory period began, but was in effect from the beginning of the statutory period on March 24, 2008 until the January 16, 2009 IEP was created. The March 8, 2008 IEP was inappropriate for Tommy for all of the reasons listed above. Although Ms. Soils raised her concerns at the IEP meeting, as in other years she was not able to review the complete IEP prior to being required to sign the first page.

Had DCPS performed adequate and timely evaluations, Tommy would have received occupational therapy on this IEP as well. DCPS' failure to do so caused significant harm to Tommy because he did not receive services until November of 2009.

The academic goals contained in the IEP are more advanced than Tommy can do now, over two years later and were clearly inappropriate for him at the time. The goals include solving multiplication problems, multidigit subtraction problems, adding and subtracting fractions, identifying characters in a story by name and other goals that were inappropriate for Tommy at the time and would be inappropriate now. (Test. Dr. Chase, P-24).

**VII. PROCEDURAL VIOLATIONS ARE SO SIGNIFICANT AS TO CONSTITUTE A DENIAL OF A FAPE**

It is clear that where, as in this case, DCPS' commits numerous procedural violations that harm the child, then this can be independent basis for finding that DCPS denied FAPE. It is clear both from the IDEIA statute that procedural rights are intended to be significant and violation of those

rights can constitute a denial of FAPE. 20 USC 1415(f)(3)(E)(ii). Furthermore, the Supreme Court has held that:

It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process... as it did upon the measurement of the resulting IEP against a substantive standard.” Bd. of Educ. v. Rowley, 458 U.S. 176, 205-206 (U.S. 1982).

i. DCPS Denied Ms. Smith the Right to Effectively Participate in the IEP Process

DCPS denied Ms. Smith the right to effectively participate in the IEP process by failing to review the complete IEP with her at IEP meetings and by failing to provide any written IEP document other than the first page to her during IEP meetings. DCPS also denied her the right to effectively participate by failing to convene placement meetings as required by law when Tommy’s placement was changed from Meyer Elementary School to Garrison elementary school. One of the critical goals of the legislation as identified by Congress is that parents have a meaningful opportunity to participate in the education of their children and to ensure that the rights of parents of children with disabilities are protected. 20 U.S.C. §1400(c)(5)(b); 20 U.S.C. §1400.

Furthermore, parental participation in educational placement is specifically required by the law. 20 U.S.C. §1414(e); 34 C.F.R. §300.327, §300.501; 5 DCMR §3013. While a parent does not have to agree with the final outcome if the placement is appropriate, the parent must be afforded the opportunity for meaningful participation. Holdzclaw v. DC, 524 F. Supp. 2d 43, 46 (D.D.C. 2007).<sup>1</sup> Once a placement determination has been made, the LEA must issue prior notice that includes specific detailed information about how the decision was made. 34 C.F.R. §300.503; 5 DCMR 3024.1.

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<sup>1</sup> A placement decision may only be made without the parent if the LEA is unable to contact the parent and has documented their attempts to contact the parent in compliance with the law, including by phone, in writing and by personal visits to the student’s home. 34 C.F.R. §300.322(d); 5 DCMR 3003.5(g). These strict requirements were not done in this case and the parent was wrongfully excluded.

DCPS obtained Ms. Smith' consent for the IEPs without providing her with the complete IEP document from 2006 until the November 2009 IEP meeting. Ms. Martin testified that it is standard practice for DCPS to request signatures on the first page of the IEP and then to send the rest of the IEP in Tommy's backpack. Ms. Smith testified that she provided that consent because she did not know she was supposed to receive anything other than the first page and that she consented because she believed Tommy would not have any services without it. (Test. Elizabeth Smith). Ms. Smith testified that it was not until her attorney explained the IEP to her that she began to understand what the different sections meant. *Id.*

DCPS argues that no one would sign the IEPs if they had not reviewed the entire document. However, it is reasonable to believe that parent who was relying on DCPS to provide appropriate services and who had no other basis for knowing what DCPS was supposed to provide would believe that the first page was all that was provided at meetings and that she had to sign it for services. As soon as Ms. Smith became aware of her rights, she did not sign the IEP as in November of 2009 or she wrote a note stating her objections to the IEP as in January of 2010. (P-8; P-10; Test. Elizabeth Smith).

DCPS is uniquely in control of the information about a potential placement, including what services will be available to the child, how the class determination was made and other important details of the placement. As described above, DCPS did not hold a placement meeting or issue a prior notice for Tommy's change in placement. (Test. Elizabeth Smith). This resulted in a substantive harm to Tommy in that his new class was inappropriate for him. Thus, Ms. Smith could not effectively participate in the placement decision because she did not have the information and because she was not afforded the opportunity.

ii. DCPS Failed to Issue Prior Notices

DCPS' failure to issue any prior notices to Ms. Smith during the statutory period constitute a denial of FAPE. Written prior notice is required for a change in placement and for a change in or a refusal to change services. 20 USC 1415(b)(2)(B)(3). That prior notice is essential to guarantee effective parental participation in the IEP process. See Holland v DC, 315 US App DC 158 (DC Cir, 1995)(holding that given the heavy emphasis in the statute on parental

involvement in all aspects of a child's special education, as well as the Act's detailed guarantees of full notice to the parents of any proposed or refused action, failure to do so constituted a denial of FAPE).

As discussed earlier, DCPS failed to issue prior notice for its refusal to conduct the legally required triennial psychological evaluation or for its refusal to provide occupational therapy services until November of 2009. There was a substantive harm to Tommy in that he did not receive these services or evaluations and Ms. Smith never received any notice of why DCPS had refused to provide the services or evaluations, so she could not effectively challenge those decisions. In fact, Ms. Smith never received any prior notices from DCPS. (Test. Ms. Smith).

iii. DCPS' Failure to Provide Timely and Adequate Evaluations Were a Substantive and Procedural Violation of Tommy's Rights

As discussed in detail above, DCPS failed to provide adequate or timely evaluations. This constitutes both a procedural and substantive violation of Tommy's rights. It is clear that by failing to perform these evaluations and by performing inadequate evaluations, Tommy was substantively harmed because he did not receive the appropriate services and modifications.

**VIII. Remedies Should Be Granted for Denial of a FAPE**

A hearing officer has broad discretion to fashion appropriate remedies where there has been a denial of FAPE. See Sch. Comm. of Burlington v. Dep't. of Ed., 471 U.S. 359, 369 (U.S. 1985). (citing that the IDEA provides Courts with broad discretion to "grant such relief as the court determines appropriate.") 20 U.S.C. § 1415(i)(2)(c) (2008); Harris v. Dist. of Columbia, 1992 U.S. Dist. LEXIS 11831, at 12-13 (D.D.C., 1992) (specifically recognizing a hearing officer's authority to grant any relief he/she deems necessary).

i. Placement at Kennedy Krieger Should Be Awarded

Kennedy Krieger is the only appropriate placement before the Hearing Officer and it is appropriate to award placement at Kennedy Krieger.

a. Kennedy Krieger is the Appropriate Placement

Kennedy Krieger can provide all of the services, accommodations and instructional modalities necessary for Tommy to make meaningful progress. Kennedy Krieger is a full-time special education school that services only children with a primary diagnosis of autism. (Test. Darla Woodring; P-32, p 5). The school is an OSSE-certified non-public school. (P-33).

There are currently 43 children in the school and they are divided into six classes, which are assigned based on age and functioning level. (Test. Darla Woodring). Each classroom has 5-9 children and is staffed by at least four adults, a teacher, a teacher's assistant and two instructional aides. (Test. Darla Woodring). There are two possible classrooms for Tommy and he could be grouped with children with high functioning autism. *Id.*

In addition, all of the staff have experience and are trained to work with children with autism and receive weekly additional training. (Test. Darla Woodring). The instructional program utilizes best practices in the field, including TEACHH, Applied Behavioral Analysis, discrete trial, incidental learning and Pivotal Response Treatment. (P-32).

There are two occupational therapists and two speech-language pathologists employed full-time at the school, and the head therapists each have at least seven years experience working with children with autism. (Test. Darla Woodring). The occupational therapy and speech-language therapy are both designed on an individual basis for all students after careful review of evaluations and clinical observations in the classroom. *Id.* Services are provided through pull-out and push-in services and can also be provided on as needed basis. *Id.*

Occupational therapists work with all children to address individual sensory needs and sensory integration deficits. (P-32). The school also has a state-of-the art sensory room where children can receive occupational therapy and where they can go to calm themselves at any time. (Test. Darla Woodring; P-32).

The school also utilizes functional behavioral assessments as a component of positive behavior intervention for all children. (P-32). All staff members are trained in crisis-intervention in order to aide in de-escalation of a student if necessary. (P-32).

In order to promote appropriate social interaction, the school offer social skills groups. (Test. Darla Woodring). In addition, students have an opportunity learn social skills in through therapeutic interaction in their natural environment. (P-32).

In order to ensure that the appropriate services are being provided, the school does regular assessments of the students through benchmark assessments, the Maryland State Assessment Program and quarterly review of the IEP goals. (P-32).

During Tommy's visit to Kennedy Krieger, he was able to effectively participate in the interview because he was provided with visual cues about what he needed to do. (Test. Elizabeth Smith; Test. Darla Woodring). In addition, there were visual instructions throughout the school, including for handwashing in the bathroom. (Test. Darla Woodring).

In contrast to his current placement, Tommy would be able to participate in art and music because they would be provided in an appropriate environment for him. (Test. Darla Woodring). Furthermore, unlike at Ludlow-Taylor where Tommy demonstrated self-stimulating behaviors in the hallways and stayed close to his mother, at Kennedy Krieger he was able to tour alone and asked if he could live at the school. (Test. Elizabeth Smith; Test. Darla Woodring).

ii. Hearing Officer Should Award Placement at Kennedy Krieger

Once a denial of FAPE has been established and the parent has selected an alternative school, DCPS bears the burden for showing that their placement is appropriate rather than the parent. N.G. v D.C., 556 F. Supp. 2d 11, 68 (D.D.C., 2008) (holding that the hearing officer improperly shifted the burden of proof to Plaintiffs to show that Wilson was inappropriate, rather than placing it on DCPS to show that Wilson was appropriate). After the denial of FAPE has been established, the parent bears the burden of showing that the alternative private placement should be reasonably calculated to enable the child to receive educational benefits, but not necessarily that it meets the standards of the IDEA's FAPE requirements. See Regional School Dist. No. 9 v. M.R., 2009 U.S. Dist. LEXIS 71032, 40 (Dist. Conn., 2009). There is no authority to grant the

school system a second chance to make another proposed placement when it has failed to do so already. See Wirta v DC, 859 F Supp 1, 5 (DDC, 1994).

The statutory requirements to consider placing within DCPS first do not apply once there is an established denial of FAPE at a due process hearing. That requirement is specifically within the section proscribing the considerations that should be looked at when an IEP team is making a placement decision, not when the case has escalated to a due process hearing. 5 DCMR §3013.1.

Furthermore, it would be discriminatory to parents who cannot afford to prospectively place their children to do anything but award the parent's proposed placement if it is appropriate. In a case where a child is prospectively placed by a parent, it is clear that if the Petitioner can establish a denial of FAPE and can show the parent's placement is appropriate, then the parent will receive reimbursement. See Burlington, 471 U.S. at 370, 105 S. Ct. at 2003. If a hearing officer fails to award a private placement in a case where the parent has established a denial of FAPE and has shown that the proposed non-public placement is appropriate, then they are not treating parents who are unable to prospectively place their children in a private school equally. See Draper v. Atlanta Ind. Sch. Syst., 518 F.3d 1275, 1286 (11<sup>th</sup> Cir. 2008)(holding if the district court could not prospectively award Draper a placement in a private school, Draper would be worse off with an award of prospective education than he would be with a retroactive award of reimbursement for the same violations of the Act. The Supreme Court has recognized that "conscientious parents who have adequate means" will place their child in private school if they are "reasonably confident of their assessment" that an educational program at a public school is inadequate. *Id.* at 370, 105 S. Ct. at 2003. The argument of the School System would provide those wealthier parents greater benefits under the Act than poorer parents.)

Finally, placement considerations must take into account equitable considerations, including the conduct of the parties. Branham v DC, 368 US App DC 151, 156 (DC Cir, 2005). Thus, DCPS' continued failure to provide FAPE through its inability to provide a safe placement where Tommy can make meaningful progress must be considered.

In this case, Petitioner has proven that there is a denial of FAPE through the inappropriate IEPs, inappropriate placement and the numerous procedural violations. Therefore, the Hearing Officer must first consider the Petitioner's placement and if it is appropriate, award that placement. It is clear from the evidence that Kennedy Krieger is an appropriate placement for Tommy and so should be awarded as a remedy in this case.

iii. Compensatory Education Should Be Awarded

Tommy's failure to make meaningful progress is directly correlated to DCPS' failure to provide the necessary services during the statutory period. Pursuant to Reid, Tommy is therefore entitled to compensatory education to aid him in achieving the progress he would have made had the appropriate services been provided to him. Reid v DC, 401 F.3d 516; 365 U.S. App. D.C. 234, 242 (2005).

In this case, all of the experts agreed that Tommy needs an appropriate placement with the necessary services to make any progress. (Test. Dr. Chase; Test. Elizabeth Eggeling; Test. Elizabeth Novak). If the Hearing Officer declines to award Kennedy Krieger as a placement remedy, then it would also be an appropriate compensatory education remedy.

In addition, both Dr. Chase and Elizabeth Novak indicated that Tommy would benefit from Lindamood Bell instruction to aid with reading. Elizabeth Novak and Elizabeth Eggeling also both testified that Tommy would benefit from a laptop with appropriate educational, typing software and Microsoft Office that he could utilize at home and at school. Elizabeth Eggeling also stated that Tommy would benefit from tutoring to aid him in making academic progress because he requires a lot of repetition and prompting to complete academic tasks.

Therefore, the Petitioner respectfully requests that compensatory education in the form of:

- Lindamood Bell evaluation and services until Tommy advances a year academically, and;
- a laptop with educational software, specifically Fast Forward and Earobics, typing software and Microsoft Office be provided to Tommy.

Respectfully Submitted,

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/S/

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Elizabeth Smith, parent and next friend of	)	
minor child, JV	)	
Petitioner,	)	Case No. 2010-0324
	)	
v.	)	Hearing Officer Kimm Massey
	)	Hearing: April 15, 20 and 21, 2010
DCPS,	)	
	)	
Respondent	)	

## 37

D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
SPECIAL EDUCATION STUDENT HEARING OFFICE

<u>Parent, parent and next friend</u>	)	
<u>Of Minor child, Student</u>	)	
Petitioners	)	
	)	Case Number: 2011-0188
	)	Hearing Officer: Coles Ruff
v.	)	Hearing Dates: 4/5/2011 & 4/6/2011
<u>District of Columbia Public Schools and</u>	)	
<u>William E. Doar, Jr. Public Charter School</u>	)	
Respondents	)	
	)	

**PETITIONER’S COMPENSATORY EDUCATION PLAN**

As requested by Hearing Officer Ruff, what follows is the proposed plan for compensatory education for Student as known to the Petitioner at the time of this filing. Educational consultant, Dennis Leighty, will testify regarding this plan.

- Two hours per week of academic tutoring at Kingsbury and/or in-home by Kingsbury Tutoring or EC Tutoring Services, for one year. Necessary transportation should be funded by DCPS.
- Twenty-five hours of behavioral intervention consultation from a trained behavior specialist to develop a program for home and school.
- Three-weeks of “B” Social Summer Camp by Susan Abrams at Fitness for Health that emphasizes social skills thinking/training to be implemented during summer 2011. Transportation should be paid for by DCPS.
- Social skills training group for ten weeks. Transportation should be paid for by DCPS.

Submitted by:

Date: \_\_\_\_\_

\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2011, copies of the foregoing Petitioner's Compensatory Education Plan have been delivered by email to the following:

Hearing Officer Coles Ruff  
Office of the State Superintendent for Education  
Student Hearing Office (SHO)  
810 First Street, NE, 2nd Floor  
Washington, DC 20002  
*Via email:* Coles.Ruff2@dc.gov

Linda Smalls  
Office of the General Counsel  
District of Columbia Public Schools  
1200 First St., NE, 10<sup>th</sup> Floor  
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Office of the State Superintendent for Education  
Student Hearing Office (SHO)  
810 First Street, NE, 2nd Floor, Room 2001  
Washington, DC 20002  
*Via email:* Student.HearingOffice@dc.gov

Date: \_\_\_\_\_

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Dr Chase Direct—301-770-3524

**I.     Phone background**

1. Name
2. Where are you?
3. Are you alone?
4. Do you have anything in front of you?
5. Do you have a copy of the disclosures in this case?
6. Have you reviewed all of the exhibits?

**II.    Qualify as an Expert**

1. Current professional positions
  2. What does it mean to be a clinical psychologist?
  3. What does it mean to be a licensed neuropsychologist?
  4. Educational qualifications
    - a. Undergrad
    - b. Graduate degree
    - c. Post-graduate work
  5. Professional positions after post-graduate work
  6. Years in the field
  7. Years doing psychoeducational evaluations
  8. Number of psychoeducational evaluations conducted
  9. Number of neuropsychological evaluations conducted
- 2000

10. What is the difference between a neuropsychological evaluation and a standard psychoeducational evaluation?

11. In what percentage of those evaluations were you evaluating children with autism?

Part of training in Phd and seen and worked with kids with autism in 20 years of clinical work; stay current and educate myself

12. Any training for evaluating with children with autism?

13. Do you conduct trainings for other psychologists or psychology students? In what areas? in the area of psychological evaluations?

14. What documents do you typically review for your evaluations?

15. Why?

16. Have you had any training in interpret s/l evaluations?

Generally yes

17. What type of training have you had?

18. Have you had any training in reading o/t evaluations?

Generally

19. What kind of training have you had in reading OT evaluations?

20. As a child psychologist and evaluator, take part in IEP meetings?

21. How many?

many

22. Help determine if an IEP is appropriate?

23. Make recommendations about what services are necessary for a child to be able to derive educational benefit?

24. How often?

25. Make recommendations about what placement is appropriate for a child?

26. How often?

27. What training, if any, have you had in the provision of special education?

28. Testified as an expert in special education services and accommodations?

29. Testified as an expert in special education placements?

30. Testified as an expert about compensatory education?

31. How many times were you qualified as an expert in special education

Court hearing- two times as expert; school hearing- 7 times as an expert in school hearing

**TENDER Him as an expert clinical psychologist and neuropsychologist, with an expertise in neurological and psychoeducational evaluation, special education services and placement**

### **III. Evaluation**

7. Do you know Juan Smith?

8. How?

9. When did you perform that evaluation?

10. When did you issue the final report from that evaluation?

11. Turn to P-24, is this your report?
12. Did you review any documents prior to writing this report?
13. What documents?
14. Why did you these documents?
15. How would you describe Juan?
16. Generally, how would you describe the accuracy of your test results in describing Juan's abilities?  
*High estimation of his abilities*

**A. Testing**

17. What areas did you test Juan in?
18. Why?
19. What, if any, clinical observations did you have about Juan while you administered the testing?

**WISC**

20. In the area of intelligence testing, what test did you administer? (p3)
21. What did you learn from the WISC?
  - a. Full scale iq
  - b. Accurate assessment of his full scale iq?
  - c. Subtests
22. You noted that areas tested relating to visual perception were significantly higher than the other subtests, what does that mean?  
For instance, one part of the test requires kids to take a word and take away part of it. For instance, what is baseball without base? Juan could not do it with just hearing the instructions, but I wrote the word down and then crossed out base and asked him what it said. From that, he was able to do the other words.
23. What impact does that have on Juan?
24. What impact does it have on Juan's ability to perform in school?
25. Would a classroom teacher have been able to determine that Juan had visual strengths even without this testing?

26. How?

27. How can these strengths be utilized at school to ensure Juan is able to access his education?

28. You also noted that the Juan had significant deficits in areas related to verbal skills, what impact does that have on Juan

29. What impact does it have on Juan's ability to perform in school?

#### WIAT

30. What test did you administer in the area of academic achievement? (p6)

The WIAT-III and the GORT-4 (and the CTOPP)

The WIAT-III and the GORT-4 (and the CTOPP)

31. Why did you administer the WIAT?

Because the WIAT is:

1. A good and well-normed test of academic achievement functioning
2. Generally accepted by most public school systems
3. Specifically co-normed with the WISC-IV IQ test

32. Why did you administer the Gray-Oral Reading test?

Because the GORT-4 is a well respected, normed test of basic functional reading and reading comprehension that places minimal demands on a child's oral expressive abilities.

33. Why did you administer the OWLS Listening Comprehension subtest?

Because the OWLS is a good and relatively 'pure' test of basic listening and language comprehension which places minimal demands on a child's oral expressive abilities.

34. What did you learn about Juan's reading skills from this testing?

b. What did you learn about Juan's mechanical reading skills?

WIAT-III Word Reading: SS=62 (1<sup>st</sup> %ile) GE 6:4

WIAT-III Pseudoword Decoding: SS=82 (12<sup>th</sup> %ile) GE=7:0

WIAT-III Basic Reading Readiness Skills: SS=79 (8<sup>th</sup>%ile)

GORT-4 Reading Accuracy: SS=3 (1<sup>st</sup> %ile; GE=1:2; AE=6:3)

c. What did you learn about Juan's reading comprehension skills?

WIAT-II Reading Comprehension: SS62 (1<sup>st</sup> %ile) GE=1:2 (on 1<sup>st</sup> Grade Reading)  
GORT-4: Reading Comprehension= 2<sup>nd</sup> percentile; GE=<1:0; AE=<6:0

35. What, if anything, do these comprehension deficits tell you about Juan's language processing abilities?

That Juan's language processing and comprehension skills are severely impaired.

36. How is Juan's method of language processing related to his disability?

Children with Autism invariably have significant impairments in their functional language and communication skills which require intensive intervention from early on.

37. How would you expect Juan's deficiencies in reading mechanical skills to impact him at school?

38. How would you expect Juan's reading comprehension deficits to impact him at school?

39. What did you learn about Juan's mathematics skills?

*Math problem solving-standard score of 72, 3%, 2.2 grade; could do not items covered in later part of second grade, including reading clock, counting coins, concept of place value*

*Numerical operations: 66, 1%, grade 1.7—totally unable to do problems adding double or triple digit numbers*

*Arithmetic fluency addition- grade 1.0*

*Subtraction- 1.9*

*Multiplication- could not do it at all*

40. What does this tell you about Juan's ability to do math at school?

41. What did you learn about Juan's written expression skills? (p9)

*WIATT II- 7%, 2.1 grade—inability to spell words greater than 4 or 5 letters, overly phonetic spelling errors,*

*Spelling- heard and perceived sounds/phonemes in these words correctly and in proper order, but breakdown in Juan's ability to convert these correctly processed words sounds into the written forms—reps significant deficits*

*Sentence composition subtest-did surprisingly well, 21%, mildly below avg, 4.7 grade -but had significant trouble with part of test requiring him to independently create sentences*

*Essay composition- 2%, less than third grade level*

42. How might these deficits impact Juan at school?

43. What did you learn about Juan's oral language/communication skills from this testing? (p10)

WIAT-III Oral Expression: SS=70 (2<sup>nd</sup> %ile; GE=1:0; AE=6:0)

1. Expressive Vocabulary: SS=70; 2<sup>nd</sup> %ile
2. Oral Word Fluency: SS=85; 16<sup>th</sup> %ile
3. Sentence Repetition: SS=73; 3<sup>rd</sup> %ile)

WISC-IV Vocabulary: SS=3 (1<sup>st</sup> %ile)

Qualitative Observations showed severe expressive language impairment:

4. Speaks in brief utterances (1 to 2 sentences maximum)
5. Sentences a frequently agrammatical
6. Sentences generally omit use of pronouns
7. Echolalia present

44. What did you learn about Juan's listening comprehension from this testing? (p11)

WIAT-III Listening Comprehension: SS=75 (5<sup>th</sup> %ile; GE=1:6; AE=6:6)

1. Receptive Vocabulary: SS=90; 25<sup>th</sup> %ile)
2. Discourse Comprehension: SS=72; 3<sup>rd</sup> %ile)

OWLS Listening Comprehension: SS=29 (<1<sup>st</sup> percentile)

Qualitative Observations: Poor attentional listening skills

Poor non-verbal communication skills

Literal in his language comprehension

45. How do Juan's deficits in oral language and communication and in listening comprehension impact him at school?

46. You said you administered the WIAT b/c it is co-normed to the WISC-IV, what, if anything, did you learn by comparing these test results? What does that mean for Juan?

Because the WIAT-III and WISC-IV tests are both 'Wechsler Tests' and co-normed with one another, it is possible to obtain 'predicted' academic achievement scores based on a child's actual intelligence scores. It is then possible to compare their actual and predicted achievement scores and determine whether the discrepancy between them is clinically and/or functionally significant and atypical.

#### **Attention/concentration and mental/attentional control skills (p11)**

47. You said you also tested in Juan in attention and concentration, why did you test in this area?

Because attention and concentration skills are generally the basis of most higher-level cognitive, intellectual, and academic skills.

48. what tests did you administer in that area?

The WISC-IV WMI and PSI, as well as behavioral observations.

49. Why did you administer the WISC-IV working memory index?

Because the WMI is generally administered as part of overall intelligence testing with the WISC-IV and because it provides useful information about a child's attentional/mental control and working memory skills.

50. What, if any, observations did you make during testing about Juan's attention and concentration?

*Max span of attention was often 3-5 minutes and no more than 10-15 minutes*

51. How could Juan's significant deficits in attention and concentration impact him at school?

52. You said you also did an assessment of Juan's executive functioning (p12),

53. what is executive functioning?

'Executive Functioning' is an 'umbrella term' for a number of separate yet related 'higher cognitive and behavioral functions' affecting an individual's ability to think, work, and behave in a purposeful, goal-directed, logical, well-controlled, independent, non-impulsive, and effective manner.

54. Why did you test him in this area?

55. how did you do this assessment?

Primarily through behavioral and qualitative observations made during testing and by obtaining information on Juan's functioning at school and home through review of academic records, parental interviewing, and review of parental ratings of Juan.

56. You stated that asked for a rating scale from the mother, but not the teacher, why didn't you ask for a scale from the teacher?

Oversight

57. Are your conclusions valid without this rating scale?

Yes.

58. Why?

Administration of the BRIEF was mostly a formality. There is no question that Juan's executive functioning is severely impaired. Specific teacher ratings on the BRIEF are not really necessary to know or confirm this.

59. What did you learn?

60. How do Juan's deficits in executive functioning impact him at school?

61. How do you know this?

62. You also did an assessment of Juan's adaptive and behavioral functioning (p14), what tests did you administer to do this assessment?

The Adaptive Behavioral Assessment Scale—Second Edition (ABAS).

63. You stated that asked for a rating scale from the mother, but not the teacher, why didn't you ask for a scale from the teacher?

Because Juan's mother was deemed to be a better and more appropriate judge/rater of his level of adaptive functioning in all areas assessed on the ABAS with the possible exception of 'Functional Academics' – and I had considerable information about Juan's 'functional academic abilities' from other sources.

64. Are your conclusions valid without this rating scale?

Yes.

65. Why?

Because my evaluation and report deal primarily with Juan's intellectual, neuropsychological, and academic functioning with recommendations primarily guided by findings in these areas. Thus, while it is important to know about Juan's functioning in the areas of self-care, community use; safety, etc. (as they will ultimately need to be addressed as well) not having this information would not effect findings and recommendation regarding Juan's academic needs.

66. What did you learn?

That, as expected given his significant level of Autism, Juan experiences marked impairments and disabilities in his general level of adaptive functioning beyond his academic abilities (i.e., in the areas of self-care, safety, community use, activities of daily living, socialization) all of which will need to be specifically addressed to improve his quality of life and chances for maximum functioning as he matures into adulthood.

### **Diagnosis (p20)**

67. After testing Juan, were you able to make any diagnosis?

HFA

68. What was it?

69. What does High Functioning Autism mean?

HFA is characterized by most of the symptoms that characterize autism with the notable exception of better developed language-based communication skills and, better cognitive/intellectual functioning— although these will typically be markedly impaired relative to a normal or non-autistic individual.

70. What does HFA mean for Juan?

71. How does it impact him at school?

72. Based on this diagnosis and your testing and observations of Juan, what can you say about Juan's ability to knowingly lie?

It is not impossible, but children with significant autism like his have an extremely hard time lying—they don't know how to. To lie requires you to have a sense severed from others. Kids with autism like Juan does not have the cognitive capacity to be creative, they are very literal and don't have sense of themselves separate enough. They think you know what they know. Likelihood is only about 5% he could tell a lie.

73. Based on this diagnosis and your testing and observations of Juan, what can you say about Juan's ability to become angry and act on that anger an hour or two later?

Nothing impossible, but it is likely b/c he has poor self-control that he will react in the moment and be sort of impulsive. It is possible—if there is an intervention in the moment by someone. Then Juan may decide he doesn't need do anything—later, if he sees the kid, he may act then.

74. Based on your review of the documents, is this diagnosis consistent with prior diagnoses of Juan?

-yes (not MR b/c of his PRI skills—w/o that would also have mmr)

### **Recommendations (p20)**

75. Based on your evaluation, review of the documents, and expertise, were you able to make recommendations for Juan?

76. What is your recommendation about the type of school program necessary for Juan?

- Multi-modal/multi-sensory instructional techniques
- Small student:teacher ratio
- Emphasis on individual instruction over group instruction
- Provides intensive speech/language therapy, occupational therapy/sensory-integration therapy, physical therapy, social skills integration therapy, emotional/behavioral regulation therapy both on a 'pull-out' basis and integrated into the general classroom curriculum.
  - a. Has staff specifically trained in approved instructional and behavioral modification techniques known to work most effectively with Autistic children, including:
    - i. Applied Behavioral Analysis (ABA)
    - ii. Discrete Trial Learning
    - iii. TEACCH
    - iv. Pivotal Response Treatment
    - v. Sensory Diets
    - vi. Intensive individual and group speech/language and pragmatic language therapy
    - vii. Augmentative Communication
    - viii. Functional and Vocational training

Program that is specifically designed for kids with HFA—if there is a kid who is slightly lower

- cluster related- if in a school with gen, they are protected and separated—especially lunch and recess should be separate b/c so unstructured; could get into trouble
- prefer that whole campus is for these kids
- he needs to be protected b/c he is almost clueless; he is like a very young child cognitively
- particularly b/c other kids that age tease him
- student/teacher—2:1 student, teacher ratio in the classroom; not more than 10, but rather be 5-6 kids
- needs to be multiple computers b/c computer teaching is a good way to work with him and kids on autism spectrum
- need de-escalation and cooldown room—need to get to a quiet setting when agitated
- teachers have to be well-experienced and trained in working specifically with kids with autism b/c they are a whole different breed
  - in grad school training, they need to show they have considerable coursework and training in teaching autistic kids and then after grad school they should have a few years experience (at least the main teacher should have that);
  - aides: should be teachers not paraprofessionals b/c need to be trained to work with autistic kids; if you don't understand autism very well, then you don't know how to

work with them when they are escalated—so need to be a trained teacher or paraprofessional with training in autism

-dedicated aide b/c needs to be prompted, needs to be in a whole school that is protected and dedicated to these kids with teachers and aides that can prove they have training and experience

Classroom needs multimodal teacher, esp we know he is a visual learner and somewhat a hands-on; hearing things explained is not useful for him;

-visual cues throughout the school—should have signs and then point them out to him

Will need environmental management—he is such a victim to his environment, he will be calm if the environment is calm; he can't just follow normal school rules so you have to manipulate the environment—that is why it is important to have kids who understand autism—o/t and s/l must be an integral part of the team; o/t in and out of classroom; all kids on sensory diet so that there is constant interaction of needs---KK has this

Lunch w/ dedicated aide would not be sufficient—it is not just to protect him, but it is b/c he is so sensitive to lunch and recess; too much stimulation for him

Five crucial things to know about Juan:

1. ability to focus—needs help with this;
2. needs individual supervision and instruction with extensive reinforcement
3. Language- his progress is largely contingent on his language skills; he'll read more accurately and not understand so need to work on language skills
4. Instruction needs to be geared to a non-verbal style
5. Sensory Diet

77. Why is it important that Juan be in a class with only HFA and not other forms of autism?

Because, if Juan is in a class primarily with students who are lower functioning (as is reportedly the case at present):

- a. the level of instruction will probably be geared primarily towards the lower level of the majority of the class (meaning that Juan will not have nearly as much opportunity to experience instruction that will stretch and increase his level of functioning.
- b. Teachers may not perceive Juan as being as impaired (and thus in need of as intensive help) as he is – because he will look and perform better than the majority of his classmates.

- c. Being in a class with primarily lower-functioning students will contribute to Juan's level of frustration and agitation and prevent him from having opportunities to 'model up' to slightly higher-functioning students.

78. Is there any harm to Juan if the children in his class are not HFA?

79. What is that harm?

80. Is there any harm to Juan if the other children in his class are lower functioning than him?

81. What is that harm?

82. You also say Juan should be in that program full-time, does that include non-academic subjects?

83. Why?

84. Does that include lunch and recess?

85. Why?

86. Is there any harm to Juan if he has non academic subjects or lunch and recess with regular education peers?

Because Juan's autism places him a risk if he is placed with normal children his age (or even younger) as he will not be able to function at their level or understand what is happening or what is expected of him. He will also be a target for teasing and bullying.

87. Why?

For the same reasons as stated above and, also, because placing Juan (and other autistic children) in a crowded and noisy cafeteria or playground with large groups of other children would likely lead to 'stimulation overload' and possible agitation.

88. Do you have a recommendation about class size?

5 children (plus or minus 2)

89. Why?

Needs small class size to help ensure individualized instruction and supervision, as well as to minimize over-stimulation.

90. What student to teacher ratio do you recommend?

1:1 or 2:1 (students to instructors)

91. What training should the teacher have?

Teachers should have had specific training in their graduate education regarding working with and teaching children with autism and should have considerable professional experience in this area. Training in Adaptive Behavioral Analysis (ABA); Applied Verbal Behavior (AVB); TEACCH; and Pivotal Response Treatment would also be helpful (although are not necessarily 'essential').

92. What training should any classroom aides have?

Ditto above.

93. You also recommend a one-to-one aide, why is that necessary?

Juan lacks the ability to work or learn independently for more than a few minutes without specific 1-on-one supervision, guidance, and direction.

94. Is there any harm to Juan if he does not have a one-to-one aide?

95. What is that harm?

96. You also said that Juan should have an FBA to create a BIP—why?

A Functional Behavioral Assessment (FBA) is probably necessary to formally assess and clarify what specific traits and characteristics in Juan, his school environment, and the interaction between the two contribute to positive/adaptive versus negative/maladaptive behavior for him during the school day. This information is important to proactively create a program of environmental and behavioral management designed to optimize positive behavior and outcomes for Juan.

97. Turn to DC-9, this document from Juan's teacher states that he has challenges including laziness and defiance and recommends a goal of limiting the frequency of punishment to less than 3 times a week and reducing loud outbursts of defiance to less than three times per week—are the challenges and goals listed appropriate for Juan?

98. What are some of examples of strategies that could be used for Juan in a BIP?

- a. Start teaching/working at easier difficulty levels to avoid Juan's becoming acutely anxious, agitated, or shut-down upon starting newer or more challenging tasks.
- b. Utilize multi-modal teaching strategies – and especially visual and haptic/experiential/hands-on methods
- c. Utilize 'environmental management' and behavioral reinforcement techniques to help Juan remain calm, focused, motivated, and on-task
- d. Minimize group instruction and maximize individual instruction.
- e. Augment personal instruction through appropriate use of computer-based instruction.
- f. Integrate academic instruction (in reading, writing, and arithmetic) with specific instruction in social skills; verbal and nonverbal communication; and emotional management and regulation and sensory regulation (through having speech/language therapy, Occupational Therapy, and psychological therapy integrated into the classroom curriculum.
- g. Build Juan's 'emotional vocabulary' (pictures, faces, body language, words and adjectives describing different feelings and emotions) as well as gradations of intensity (1 to 10).
- h. Use 'verbal scripts' and 'social stories' to teach Juan how to respond appropriately in various common social and functional situations.
- i. Make sure to 'train generalization' of specific skills taught in one context so they are also used in other situations, environments, and contexts (including having his parents be involved so

they can further train generalization at home and in the community)

- j. Juan's classroom instruction must explicitly focus on teaching him to use imitation as a form of learning (and not just as meaningless parroting or repetition of others' words or behaviors. Teachers must help him understand that he needs to watch and listen and then copy what they do and say as a way of learning new skills – meaning that he has to actually pay attention to other people and learn and practice 'joint attentional and work skills' (rather than more 'parallel-play' type skills).

99. What is that harm?

100. In your recommendations on page 21 for o/t, you specify that a sensory diet should be implemented—what is a sensory diet?  
Some children with Autism are under or over-sensitive to certain kinds of sensory stimulation (whether it be 'touch', 'movement', 'vestibular stimulation', 'sight', or 'sound'). Having more or less of these types of sensory stimulation than their nervous systems requires (or can handle) will often lead them to seek-out, avoid, or react-to these types of sensory stimuli – often in ways that are inappropriate and maladaptive. A 'sensory diet' refers to the development of specific exercises, tasks, or techniques that can be used to provide Juan's nervous system with the correct type and intensity of sensory stimulation it needs to be better regulated. This, in turn, will likely contribute to his being emotionally and behaviorally balanced, better-regulated, calmer, and more able to sit, focus, learn, and work.

101. Should school staff in an autism program be able to identify these issues even without your evaluation?

Typically, this would be an Occupational Therapist.

102. Where should it be implemented?

At school, at home, in the community – wherever and whenever it is needed by Juan.

103. Why is it important that it be implemented at school and at home?

Because it is an effective method of 'self-calming' and 'self-regulation' that can often improve functioning without necessarily having to rely on medication.

104. Is that something you would expect an occupational therapist at Juan's school to be able to identify?

105. You also make several recommendations about other strategies that could help Juan control other sensory input on page 21-22-- You make a recommendation on p21 that the classroom have a time-out room/quiet room where Juan can go, why is that important?  
Because children with Autism tend to have very poor 'self-regulatory skills' (emotionally and behaviorally) and tend to be highly 'environmentally dependent' (meaning that if their environment is calm, they are more likely to be calm and if their environment is more stimulation or less structured and controlled, they are likely to get over-stimulated and/or agitated. Thus, trying to get an over-stimulated and agitated child with Autism to 'calm down' in the same environment that contributed to his becoming upset and out-of-control is likely to fail. You need to have a separate, quiet, structured, calming environment that they can go to de-escalate and calm back down.

a. Is there any harm to Juan from not having this room?

b. What is that harm?

106. Based on your testing and observations of Juan, would he be capable of determining on his own when he needed to go into such a space?  
Highly unlikely due to lack of insight and self-regulatory and initiation skills.

107. Who could help Juan determine that at school?  
Teachers, aides, therapists.

108. You also recommend that Juan utilize a three-way screen for his desk while he does desk work, why is this important?  
To help block-out or minimize visual distractions that might interfere with his ability to stay focused on work-related tasks and desk-work.

a. Is there any harm to Juan from not having this screen?

109. On p 22, you recommend that Juan have special/therapeutic earphones why is this important?  
To help block-out or minimize auditory distractions or over-stimulation that may hamper his ability to focus, stay on-task, or cause him to become agitated.

110. When should he utilize these headphones?

111. Where should he utilize them?
- a. Is Juan capable of determining when he needs to wear the headphones by himself?
  - b. Is there any harm to Juan from not having these headphones?
  - c. What?
112. Should Juan's need for the visual and auditory buffers you described be evident to a classroom teacher?

Once he was diagnosed with autism, the needs of a lot of autistic kids are similar. There are differences in what behaviors they display and what reinforcements are effective. Should have expected he would be oversensitive to over-stimulation and had modifications in place. 99.999% of kids with autism are verbal learners, need o/t.

113. He should have had IQ and academic achievement tests to see how he was.

114. Why?

115. You also recommend intensive speech-language therapy with both individual and group work (p21)—what do you mean by intensive?  
No less than 3 times a week, and preferably 5 days a week.

116. Why is this necessary for Juan?  
Because one of Juan's most severe disabilities is in his highly impaired verbal (and non-verbal/social-pragmatic) communication skills. If these are not addressed, his functional reading comprehension and writing cannot be expected to improve much and, even if he does learn additional academic skills, they will be functionally useless to him if he cannot work or function around other people.

117. Where should this therapy occur?  
Preferably at school – integrated into his academic program (although supplemental therapy received outside of school is alright, in addition).

118. Why is it important that it occur at school?  
As stated above, having Juan receive such therapy away from school will make it significantly harder to teach/get him to generalize skills learned to his actual interactions with adults and children he sees and interacts with at school every day.

119. What do you mean by generalize?
120. You also recommend augmentative communication strategies, what does this mean?
121. Providing Juan with a chart or brief booklet containing pictures or symbols indicating commonly used words, emotions, needs and requests that he can quickly point to in order to communicate when doing so with words would prove too slow, inefficient, or frustrating for him.

i. Why is it important for Juan?

122. Would this replace his need for verbal speech?  
No. It is important that Juan continue to receive intensive therapy to improve his speech and verbal communication skills, and that he be strongly encouraged to practice and use these skills. 'Augmentative communication' skills are meant to be just that, 'augmentative'.

123. How do you recommend implementing these augmentative communications strategies?  
Speech/language therapist in-conjunction with Juan's teachers, aides, parents, and other therapists

124. On p 22, you also recommend that Juan's academic instruction utilize multi-modal strategies, what does that mean?  
Instruction that makes simultaneous use of verbal/auditory language, visual, tactile, and physical/experiential techniques.

125. Why is it important?  
d. Specific program recommendations?  
e. Computer program—why?

126. Recommend that functional and life skills be an important part of Juan's curriculum on page 23, why?

127. On page 23, you also recommend ESY—why?

Because children, like Juan' with severe academic, intellectual, and functional disabilities require continued structure, practice, routine, and reinforcement of newly learned skills or they tend to lose them. Thus, being out of school (and away from the structure, instruction, routine, and therapeutic services Juan requires for the summer months would likely cause him to regress significantly.

a. Do you think there is any harm to Juan if he does not have ESY?

Yes.

b. What do you think that harm is?

See above. Lack of ESY greatly increases Juan's chances of regressing and losing skills that he and everyone else worked so long and hard to establish throughout the previous school year.

128. Is Juan's inability to retain information something that his teacher could have been aware of without your testing?

129. Why?

### **Progress**

Review of DCPS academic evaluation:

130. You said that as part of your evaluation you reviewed the DCPS educational evaluation from 2009 at P-17, did you learn anything from this evaluation? What did you learn?

131. Based on the scores from this evaluation, are you able to say anything about Juan's academic progress?

132. What?

133. Would you expect that a classroom teacher would be able to tell that Juan was not making academic progress?

134. How?

If he has been one of the highest functioning kids, he probably shines even if he is not making progress so relatively speaking he is doing well.

From 2<sup>nd</sup> grade IEP—it doesn't look like he has made much meaningful progress. He has not even met the 2<sup>nd</sup> grade IEP short term goals. When you are working with the kid day in and day out, you may not notice. But that is why the school program has to not rely on what the teachers are saying, but they have to periodically retest with people who can use normative measures and see how he is doing.

Review of other documents:

135. You said you also reviewed the prior IEP's, what IEP's did you review?

136. What were your conclusions?

137. Were those conclusions significant in the assessment of your evaluation testing measures?
138. Why?
139. What implication do these conclusions have for Juan?
140. You have talked about Juan's limitations, do you think that Juan is capable of making more progress than he has made in the last three years?
141. Why?
142. Has he made any progress?
143. Was it meaningful?
144. Why not?

**Kennedy Krieger**

145. Do you have any knowledge about Kennedy Krieger?
146. How?
147. Based on your knowledge of KK, would this program be appropriate for Juan?
148. Why?
- There are two classes potentially; he is provisionally accepted and they think they can help him. She said most likely he would be with high functioning kids. Class size is 5-9 kids with about 4 staff members. If Juan came in with an aide based on his IEP, that would be an additional person in the classroom.

Teachers have all either gotten certification or are currently getting certification. Most experienced teacher is 10 years with autistic kids and previous 8 years as a teacher; least experienced is her second year. KK provides 100% reimbursement on all classes and courses that people take, so people take classes and have to stay x number of years. Keeps retention and experiences people. Every weds they do staff training on teaching methods, sensory methods. It seems that their people are reasonably qualified. All aides have at least college experience; the whole program is based on integrated cirric method—speech, o/t and psychologists work in classroom.

They do have an o/t gym with swings and they have a Verizon sensory room for the kids with lights, vibrating chairs that can be used for therapy and calming for kids.

They do ABA and have a behavioral regulation team that is headed by a behavioral psychologist. Teachers would implement it, but in concert with the behavioral specialists. The teachers and aides would provide ABA guided by behavioral specialists.

ABA and TEACHH methods are the best we have for autistic kids and they implement them at KK. They have community activities for kids to go into the community, they have parent training and outreach.

They have pivotal response intervention—there seem to be some pivotal behaviors that if you train, they automatically lead to improvements in related skills and get improvements in generalization.

### **Comp Ed**

149. Based on your evaluations, observation and review of documents, can you determine when Juan's autism began to manifest?
150. When you do you think it began to affect his performance in school?
151. Do you know when Juan was first placed in an autism program?
152. How do you know?
153. What types of services do you think Juan needed in kindergarten to address his deficits?
154. You said Juan was placed in an autism program in first grade, but he has not made meaningful progress since then---what services do you think would have been necessary for him to make meaningful progress?  
*½ day of individual therapy, 2 hours/week of group therapy and o/t*
155. And what was the harm in not providing those services?
156. What services would have been necessary in second grade?
157. Harm?

158. Third grade?
159. Harm?
160. If we look back from March of 2008 to now, if Juan had received the services you describe, what level do you think he would be functioning at now?

*Mid-third grade*

161. If we look back from March of 2008 to now, what do you think would be necessary now to get Juan to the academic and functional level he would have been at if he had received the services you described during that time period?

*Individual tutoring—about 100 hours of tutoring in ½ segments during the week (1.5-2 hours a week)*

*Laptop with earbuds to utilize at home*

162. Why do you recommend tutoring?
163. Why do you recommend laptop?
164. Why would a laptop be effective for Juan?
165. If Juan were to receive the compensatory education you recommended, but remain in the same placement, would you expect to see meaningful progress?
166. *clarify these questions after further conversation with Dr. Case*  
*Anticipated areas of cross:*
- no communication with the school
  - no observation of Juan with other children
  - any holes in training
  - length of time with Juan
  - Whether he's aiming at Juan's potential, or what Juan should have been able to achieve with the Chevy of academic supports (rather than the Cadillac)

Direct of Sally Smith

1. Name
2. Do you know John Jones?
3. How?
4. Where do you live?
5. Who lives with you?

John and James, my two sons.

6. How old is John?
7. How old is James?
8. Can you please describe John?

John is a nine year old, very intelligent, but a lot medical issues—ADHD, ED, asthma seizures, sleep apnea, pica. He has behavior problems—his behavior problems is trying to agitate adults or child to try to get them upset; he eats things that are not appropriate. He is also hyperactive and emotional. He loves math and science, and I am hoping he can overcome his medical problems and become a good citizen.

Wanders around a lot, so you have to keep an eye on him at all times, especially in parks

9. Does John have any disabilities?
  - a. Mental Health diagnoses?

ADHD

ED

- b. Medical diagnoses

Pica—putting objects in his mouth (marbles, pencils)

Asthma- because he is overweight and his surroundings

Sleep apnea—going to have surgery on august 16  
seizures

He has a condition with his foot

10. What are these?
11. What is pica?
  - Marbles, papers, anything

12. In what setting does he do put inedible objects in his mouth?
  - Every setting

13. Is there anything that can be done medically to prevent the pica?

No

14. So what can be done to ensure that he does not eat objects?

Constantly watching him and asking what is in his mouth; must be observed by an adult

15. You also mentioned that he has asthma, how does this affect him?

Limits his activities in the sense of running too long, gets out of breath and can't push out long breaths; has to have albuterol and other medicine—he can do them for short periods of time b/c out of breath, sometimes it takes too long to catch his breath

*1. You mentioned limited physical activity, does this have any relation to his ability to get around, climbing stairs or similar activities?*

*He gets out of breath; I don't even let him throw something in the trash; he can't lift bags. He gets out of breath.*

*2. Do you think that John could climb three flights of stairs?*

*No, he would have to stop and take a break after each flight.*

3. What is sleep apnea?

Max sleep of 3 hours, sleeps in upright position—tosses, turns, grunts

4. What impact does sleep apnea have on him during the day?

The dr said that some sleep apnea patients like John will make behavior problem worse. Makes him not sleep—moody, irritable and tired

5. Did anyone tell you that the sleep apnea has these effects?

The doctor told me, and as a parent I observed it

6. You also mentioned several other psychiatric diagnoses, how do these affect John?

ED—he is very emotional at least 20-30 times a day—he has a little explosion 100 times day. He gets upset 5 times an hour for the littlest things and I have to find the words or solution to calm him down. He gets upset about the littlest things that he shouldn't be upset about. He swears, throws chairs in the classroom, tearing the classroom up and they have to walk him out to somewhere. Even if he isn't at home, I make him go to his room to calm down.

He doesn't know how to share with peers or play with peers, he gets upset if his little brother takes a toy from him that he wants to play with.

Low self-esteem, won't talk baths and he smells

7. What does he get upset?

Depends—lower level would be kicking and scrunching his body  
Higher is throwing furniture, kicks/hits, slams doors—can't calm himself down

He tries to calm himself down and looks upset

8. Who has he kicked and hit in the past?  
Me, his peers, the door, the furniture, his brother

9. At school?

10. How know?

School calls me for every behavior at school, especially if they have to take him to the time out room—esp. if he hits a student or an adult

11. How often?

A lot—I was on probation for my job and my job said I had to leave to get my son together and then come back.

I get calls at least 5 times a week, sometimes twice a week—I tried to calm down by phone and then I would have go when that didn't happen. If he couldn't calm down, someone had to go to school to get him b/c he couldn't get on the bus.

The police officer had to escort the bus home last year b/c he was fighting on the bus and the aides on the bus couldn't handle it. The bus had to stop in the middle of the bus and the police officer had to get on it.

12. What are some examples of aggressive behavior at school?

Could not restrain him b/c he was kicking, try to choke teachers and students, spits on them—mostly teachers but also students. I would try to calm him down on the phone—not work, I have to go physically for him to see me.

Trying to touch teacher inappropriately, very disrespectful to women, indecent language. Sexually touched his peers—has to be walked to the bathroom by himself to use the bathroom.

He is aggressive towards adults. kicked the teacher in the groin in the 2008-09 school year.

He can't even play in the neighborhood b/c older kids beat him up.

13. Does he have other problematic behaviors?

Spitballs that he throws

He tries to bite and slap himself and call himself names. If anyone is front of him when he is mad, he will push them.

At school he shows behavior. He will show himself to other peers. When he went into the bathroom, he would peep into stalls or show kids inappropriate sexual behavior. He also says sexual things to his teachers.

He is abusive to his brother—he held a knife to him, he hits him—I have to watch him 24/7. Drs at childrens asked me to hide all the knives b/c he is so impulsive. There are no knives around our house. He has to be watched 24/7.

14. How is John's hygiene?

He don't care about it, his self-esteem is very low. He does not like to take baths. It is an argument for baths, to brush his teeth. I still have to go physically with him in the bath and I have to give him a bath b/c he doesn't do it himself—he won't stay in it and he still has feces on him.

15. What school did John attend for the 2009-10 school year?

Jackie Robinson Center

16. What grade was he in?

Third grade

17. How many years did he attend JRC?

Three years

18. What type of school is JRC?

A center to help kids with behavior problems

19. Can you describe the physical lay out of JRC?

JRC is very accessible for the kids, it is one level—each classroom is close together, classes can be observed, not too many places for them to wander, no stairs in the property. Security at the front and second door. Had a mental team for whatever problem the kids might have—a physical or mental time.

20. Who was on the mental team?

Ms Pipkin, counselor

Dr. Park-psychiatrist

SEC

21. How many hours a day in sped?

Full day

22. What school did he attend prior to JRC?

23. How long was he at Moten for?

2 years

24. What type of school was Moten?

Special ed for them

25. How many hours a day in special education?

Full-time

26. What related services did John receive at Moten?

Ot, counseling and behavior meds

27. Who was his counselor?

Ms. Pipkin

28. Who gave the meds?

Dr. Park—she gave meds and referred for procedures based on seizures

29. John's first at JRC was first grade, did you visit his classroom?

30. How many kids?

At first three and then 6.

31. How many adults?

3

32. In second grade, did you visit his classroom?

33. How did John do behaviorally during the 2008-09 school year when he was in second grade?

At the beginning he had issues with his behavior, with restraint, suspensions—a lot of suspensions. They wanted him to be admitted at Children's mental department. Children's refused to admit him.

He would run out of the classroom, running to 295, hitting his peers, cursing grownups

Inappropriate sexual behaviors, cursing at adults and peers

At home it was the same issues, his behavior was aggressive.

I lost my job b.c he had such behavioral problems

a. Did you observe any changes in his behavior during the school year?

b. How do you know how his behavior was at school?

34. You said he runs onto 295, where is 295 in relation to the school?

35. Turn to P-6—what is this?

Letter from ms pipkin

36. How did you get this letter?

Ms Pipkin called me to get the letter and said I had to take him to CNMC b/c so worried about outbursts

37. To your knowledge, are the behaviors in the letter accurate?

Yes, he ran to to 295 at least 2 times that week; his features were not coherent

38. Did you take him to CNMC?

39. Was he admitted?

No—he was calm when he got there; CNMC referred him to psychiatrist at CNMC

40. Turn to P-7—what is this document

From Dr. Park

41. How did you get it?

I picked it up from Dr. park b./c she was worried about seizures during rages

42. Where did you pick up the letter?

At JRC

43. Where is Dr. park's office?

In JRC next to Ms Pipkin

44. What was your understanding of why the letter was written?

She was so worried about his behavior and his seizures and being dangerous running onto 295

45. Was he admitted at that time?

46. Why not?

HSCSN said not enough to be admitted, they wanted to put into place outside solutions—psychiatrist at CNMC and ASY

47. What is ASY?

48. What services did John receive?

Therapeutic after care, group therapy, family therapy, self-esteem and medication/psychiatric care and counseling.

49. What, if any, related services did he receive during the 2008-09 school year?

O/t and counseling, behavior meds

50. Who did the meds?

Dr. park

51. Who did the counseling?

Ms Pipkin

52. Did you ever visit his class in second grade?

53. Who was his teacher?

Ms White

54. How many students?

Max was 5; with 3 adults—two teachers and one or two aides

55. In third, did you visit?

56. How many students?

8

57. How many adults?

4

58. how was behavior in 2009-10 school year in third grade?

It was a lot better at the beginning of the s/y, and then it got bad after January.

They called to praise me at the beginning of the year and he was getting greens and then that changed a month into school and he got all reds.

Hitting teachers, trying to hit in groin, cursing, hitting of his peers, spitting, trying to bite them, running out of the classroom, refusing to work, not cleaning himself when he goes to the bathroom at school

Ms Pipkin called to ask if I can send extra clothes to school for him.

Up and down. He got upset because he did not understand the school work—sends him in a frenzy when he doesn't understand b/c he doesn't want to be dumb.

He still had inappropriate sexual behaviors in the classroom, playing with his feces. His behavior was the same as the year before—being loud and obnoxious, curse at his teachers a lot, tries to fight the teacher

59. Any particular incidents last year?

In classroom, he showed himself in the class.

Jumping through window, got hit by a car on east hospital—police officer tried to arrest him b/c he was disrespectful

At school—hit teachers, hit peers, spitting on them, in the time out room a lot, he was calling his peers names, cursing at adults, tried to hit them in the groin, hitting himself, biting himself, running to 295 a lot—3 or 4 people have to hold him down for him to get relaxed

Inappropriate sexual behaviors went on—his teachers had to walk him to the bathroom with no others in the bathroom.

Disrespectful to females—called them the b word. Calls from his principal b/c said if behaviors not change, he is going to have to go somewhere else. He got a lot suspension and a lot of warnings. He was suspended 2-3 days for about 20 days total.

60. How do you know?

School calls me—Ms Pipkin call me, Dr. Park, his teachers call me—all the teachers know my number to get in contact with me

61. How often does the school call you b/c of a problem?

At least 4-5 times a week

62. What, if any, related services did he receive during the 2009-10 school year?  
o/t, meds, mental health

63. Who was his counselor?

64. To your knowledge, how often did Ms Pipkin work with John?

She worked with John every day; Ms Pipkin and Dr. Parks were the main ones interacting with him b/c he had so many behavioral problems

65. Did John get any services in the community in the 2009-10 school year?  
Yes ASY and Children's. He was receiving therapeutic aftercare, group therapy and psychiatrist and family therapy

66. Did you attend any IEP meetings during the 2009-10 school year?

67. How many?

3

68. When were they?

Beginning of the year, February and April

69. What was discussed during the Feb meeting?

That school is closing and they want to send to him another location-Hamilton Center

Behaviors and needs—discussed goals and needs; teacher was concerned he will not get services at Hamilton b/c he has come so far

He needed evaluations b/c they were old

70. What, if anything, was discussed about John's school placement for the 2010-2011 school year during the February meeting?  
They said Hamilton Center and that I should see the school

71. At the feb meeting, What, if anything, did you learn from DCPS about the Hamilton Center at the meeting?  
No one could tell me about, they said I had to go see it

72. After that meeting, what, if anything, did you to investigate the Hamilton Center on your own?

73. What did you see on your tour of Hamilton Center?  
3 flights of stairs that they said he would have to take three times a day  
Showed me the rooms, surroundings

The rooms are very large---there is too much room and not enough therapeutic room to deal with him

They have a bigger group with JRC and fewer teachers

I learned that the school is too big for him—physical school is too big  
The stairs are too much for him—he will be out of breath on the first set of stairs and there are three flights of stairs. They have to do them at least 3 times a day

I saw that he is being switched to different rooms that are not close to each other; he has to switch classes.

12-13 kids with two teachers in the classroom

Hallways were so long and he will be wandering and will go where he wants go. Lots of kids wandering without adults.

The classrooms are not close together—they are on different floors, that is too much activity for him with his medical problems

The classes were too big for him

He will be lost with all the grown up kids there

Not enough aides.

John needs therapeutic surrounding—not therapeutic, not doing introducing them to more school—like animals, football or soccer where he can learn to participate; no extracirulars. Outside grounds too big for him, he needs small setting to be watched

74. After your tour, what was your opinion about the Hamilton Center?

My baby is going to be lost in the school, nothing will be accomplished for him and what he did accomplishment will go away b.c/ lost in the system and medial probs will get worse needs individual attention.

75. Why?

76. Is there another school that you want John to attend?

77. What school?

78. Did you ever tell DCPS that you wanted to discuss Children's Guild as a placement?

79. When?

April IEP

80. What was DCPS' response?

They said no comments—they said he had to go to Hamilton center. They said they cannot discuss it and only Hamilton is the choice they have for us.

81. Have you visited the Children's Guild?

yes

82. Could you afford to pay for the Children's Guild on your own?

No

83. Why not?

Income is TANF and SSI

84. Why do you want John to attend the Children's Guild?

b.c of the peaceful surroundings, b/c equipped for his behaviors, timeout rooms are soothing and not have to use bodily force to calm him down; two floor with an elevator; extracirric activities; therapeutic environment. He could attention at CG—I see a lot of togetherness, the teacher and the aide cares. No students were wandering in the halls, it was quiet.

## **Direct Examination Parent**

### **Intro**

1. Good Morning, Could you tell everyone here your name
2. Parent, where do you live?
3. Do you have any children  
Yes
4. What are their names  
Paris, Student and Savian
5. Do they live with you?  
Yes

I'd like to talk a little bit about Student

### **Educational Background**

6. What grade is Student in currently?  
9<sup>th</sup>
7. Where does he go to school?  
Dunbar
8. When did Student start at Dunbar?  
September of this year
9. We'll come back to Dunbar in a minute, but where did he attend school before that?  
Burroughs
10. What grade was that?  
8<sup>th</sup>
11. And do you remember when he started there?  
September 2009
12. Where was he before that?  
Thurgood Marshall
13. What grade was that?  
7<sup>th</sup> grade
14. When did he start at Marshall?  
January 2009
15. And where was he before that?

## Shugart in PG Country

16. Where is that?  
Maryland
17. How much time did he spend in Shugart?  
6<sup>th</sup> and 7<sup>th</sup> grade

## Student's Profile

18. Parent I want to turn for a minute to Student himself – Could you tell us a little bit about what he is like a child?
19. What is he like at home?  
He's really helpful around the house, pretty good kid, Ive noticed some emotional problems lately, but he's easy to deal
20. What about when he first gets home from school?  
He is really cranky  
Feels like he's overwhelmed from his school day – he is angry, cranky, won't eat, won't talk, sometimes just plain nasty
21. How long does that last?  
About two hours, but sometimes longer if the day was really hard for him
22. Does he bring school work home?  
I haven't seen any work
23. Did he ever bring work home from his other school?  
Yes and he used to bring home books to  
I don't think they let him bring books home from Dunbar  
Everything is a Xerox paper – makes it hard to help him without the books

Let's talk for a minute about the days when he does bring work home?

24. What kind of work comes home?  
The works that I've seen looks kind of difficult for Student  
She doesn't see how he can do it without books – lord knows I can't  
Some of the work that I see that he does at school looks totally opposite

The work I see that he has done at school is almost like baby work – it just doesn't match  
I can understand why he's frustrated because the work he bring home is really hard – I couldn't do it, so I can't imagine how he can as far behind as he is

He often tells me, I don't know how to do it, we didn't talk about this in class

25. You just testified Student gets frustrated with the work he brings home – can you tell us a little bit about what that looks like?

Some of the math looks really difficult – he never has any examples to go by – a book breaks it down step by step

26. How does Student express his frustration

Deep breathing, tapping of pencil, patting of foot on the floor and finally he'll just say I can't do it

27. How long will that last?

HE will try to hang in there for 30 minutes or so, but then he will give up because he says he can't understand it

28. How is Student doing with the instruction?

He's not really getting instruction – there is none – he is just copying things done  
All of the time he is telling me that they don't show us how to do anything. They just give us something to copy and then expect that we are going to know it – they don't teach me.

29. How do you know that?

He told me

30. When did he tell you that?

In general conversation when we were trying to do work?

31. Was it only one time?

No he's said that a lot of times

**Parent I want to back up just a little bit -**

**Maryland:**

32. Parent what was the last grade Student spent any time in Maryland Public Schools?

Part of 7<sup>th</sup> grade

33. Where was he then?

Shugart

34. Do you remember what year that was?

6<sup>th</sup> grade and half of 7<sup>th</sup>

First half of 2008-2009 school year

35. And do you remember what special education services he was getting when he first started at Shugart?

He was getting full time

36. Was that on his IEP?

I don't think so

37. Do you know why they put him in a self-contained classroom?

When I enrolled him – the SEC told me that they looked at his records and they told me that they were going to try it

I knew Student was slow so I didn't object to it

38. How did that work?

He seemed like he was doing ok

39. How was his attendance?

Good

40. How was his behavior at home

It was ok

41. Did he stay in the full time special education at Shugart?

No, they took him out

42. Why not?

I remember a phone call saying that they wanted to test him to see if he could handle it?

43. What did they try at that point?

They put him in regular education

44. How did that go?

It was a disaster – he had schedule changes, the classes were huge, he did horrible

45. Did he get any special education services during that period?

Not at first

46. Did he get ever start getting special ed while in Maryland

They started giving him pull out services

47. Did the pull out help?

Not really?

48. How do you know that?

I used to pop up a lot, observe, watch through the window  
I spoke to a few teachers  
The special education coordinator was hard to get in touch with – so I would regularly call his teachers  
Drive around when I had free time and observe

49. When did you move to DC?  
January 2009
50. What did you do when you first enrolled Student in DCPS  
Thurgood Marshall
51. Why did you go to TM?  
It's the neighborhood school
52. What did you do when you got there?  
I told them that I needed to enroll my kids
53. Did you bring any documents?  
Plenty –  
Histories, IEP's, transfer packet – I brought everything
54. Did you speak to anyone?  
Yes
55. Who did you speak to?  
The Principal
56. What did you discuss?  
I was concerned about special services for Student and the school being open space  
I asked if they thought they could accommodate him and when could he start?
57. Did you talk about what services Student had gotten in MD  
Yes
58. What did you tell them?  
I told her that he was in a full time placement and then he went to pull out  
I gave her a copy of the IEP  
She said she was going to review it and have her coordinator contact me
59. You testified that you gave them a copy of Student's Maryland IEP – do you remember when the Maryland IEP was created?  
March of 2008
60. Did you tell her your thoughts on whether the special education services he was getting in MD were working?

I told her that they were not working

61. What did the school do to address your concerns?

They didn't do anything

They stuck him in a class and he wasn't getting any services

He wasn't getting pull out or special education services

62. How do you know that?

Because Student told me – several times

63. Did you do anything once you learned that?

I called the school several times and asked what was going on

They said that they were trying to get him scheduled for some evaluation

Teachers were calling me all of the time

64. How long did that go on for?

The whole school year

65. Did they every get around to testing Student

I think they gave him a psychological test in May

66. Did you ever had an IEP meeting

At the end of the school year

I think it was the last day of school

67. What happened there?

It was very informal

They basically left everything the same – they were just going to dump everything in Burroughs

68. Did they go over the results from that psychoeducational test?

Yes

69. Did DCPS make any changes to services based on the evaluation

I don't think so

70. Did you agree with the IEP back then?

No

71. Did you sign it?

Yes

72. Why?

Because I just wanted him to move on and I hoped he'd get better services at the next school

They told me that he wouldn't get anything if he didn't sign it

73. Who told you that?

I can't remember – it was either the teacher or Ms. King

### **Burroughs**

74. Where did Student go next?

John Burroughs

75. What grade was this?

8<sup>th</sup> grade

76. Did Student get special education services at Burroughs

Yes

77. What did he get?

15 hours of pull out

78. How did Student do at Burroughs?

He started off ok

And then he nose dived

79. Tell me what you mean by Nose dived?

Grades started to drop

His classes were large

He didn't know what was going on

80. How was his attendance at Burroughs

He could've done better

81. Why did he miss class?

Sometimes he was actually sick, sometimes I think he faked sick to avoid the situation

That school had a lot of gang violence – security couldn't even stop them

One time they busted in the school to get Student and he wasn't there

82. You just testified that Student sometimes wanted the situation – what do you mean?

Student is a really calm quiet kid and he can't handle an over load of kid frustration

He's not one of those kids that can just shrug it off his shoulders

He just explodes he can't deal with it

83. How did you feel about all of that?

It was hard being a parent watching my son struggle with that

He'd get the stomach aches, headaches, real nasty moods

84. Did you share your concerns with anyone?

Yes

85. Who

Principal, Asst. Principal, resource room teacher, French teacher

86. Was anything done

We had one meeting after Student was targeted

Principal would sometimes pull kids into her office and try to talk to them

87. Was it helpful

Not really

88. Did you ever attend an IEP meeting at Burroughs?

Yes

89. When was this?

July 201

90. Do you remember the purpose of the meeting?

To discuss Student's special education services and to review his testing

91. What testing is that

I requested that Student be re-evaluated

I felt like there was more going on with Student that no one was addressing

92. Did the team review the evaluation

Yes

93. What did they do with that information

Basically nothing -

94. Did they make any changes to the IEP?

His classification

95. Did you talk about goals at all

They added a few goals

96. Did you talk about services

Yes

97. What did they do with the services?

Nothing

98. Did you express any concerns?

Of course

99. What about?

I said that I was worried about the amount of hours

I felt like they ignored the evaluation

I felt like they were just passing him off to Dunbar has he has been from school to school

100. Did they agree to make any changes to the services?

NO

101. What did they purpose to place Student the following year?

To send him to Dunbar

102. Did they give you any information about Dunbar

No

103. Did you ask for any information

Many times

104. What were you told?

I was told that Dunbar was the neighborhood school

But they couldn't give you any information re: services, who to contact, who was the SEC

In fact during that meeting the SEC herself admitted that she didn't know any of that information

105. Did she tried to find out for you

She called during the meeting, kept us waiting for about 30 minutes and the end result was Dunbar hanging up on her with no information

It really bothered me – how could they refer Student to a school and say it was going to be good for him when they knew nothing themselves about the program

I didn't make any sense

### **Dunbar -**

Parent, I'd like to turn to the current school year

106. Where is Student currently enrolled?

Dunbar

107. Why he is attending Dunbar?

That's where John Burroughs sent his paperwork because they told us the boundaries had been changed

And Dunbar said it wasn't – but that's where his paperwork was sent

108. Did you ever visit Dunbar prior to enrolling Student?

I did go

109. What happened?  
I hand carried a packet for Student and I spoke to a woman that does enrollment  
She said that Student's IEP would be honored and not to worry
110. Did anything else happen  
When Student was sitting in the hall waiting for me in the office – two boys tried to  
intimidate Student and start a fight  
Something in reference to the way he looked
111. Did anything else stand out  
I knew that he was going to be overwhelmed because I was  
I knew that the size was going to be overwhelmed  
Because it was in other school  
  
Sure enough - it was he would get lost – he would come home so cranky and  
overwhelmed
112. What did you observe about Student at home when he began attending Dunbar?  
There was a major personality change  
Huge decrease in appetite, attitude, a lot of slang he didn't use at first  
He was cranky a lot  
He was complaining about getting lost, changing his schedule  
He told me he never used the bathroom because of the activity going on there
113. Did you ever try to observe Student in school?  
I was told by the Principal
114. Did you ever have any meetings with Dunbar staff about Student?  
Yes
115. When?  
Very beginning of the school year
116. What was that meeting  
An IEP meeting
117. Why was that meeting scheduled?  
They told me that Student was doing so well they wanted to adjust his hours
118. What did you discuss first in that meeting?  
Then wanting to reduce Student's hours
119. Did they say why they wanted to do that?  
Because they said he was doing so well?

120. How long had Student been there at that point?  
About two weeks
121. What did DCPS recommend?  
Reduce the number of hours Student was receiving instruction outside of general education
122. Did they say why they were making this decision?  
So that he could graduate on time
123. What was your response?  
I really totally disagreed with that because I thought he would fall even further behind and still not graduate on time
124. Why?  
Because he really needs as much service as possible  
He needs really good instruction time
125. What did you tell them  
I said no way that was crazy and they insisted
126. Did they review the evaluation  
At that point they didn't review the evaluation
127. Did they ever get it during the meeting?  
You gave it to them?
128. Did they review the evaluation after I gave it to them?  
They flipped through it but didn't talk about it
129. What did you discuss next?  
The time he spends with the counselor
130. Who spoke about this?  
The counselor, Ms. Hall
131. What did she recommend?  
She felt like Student didn't need the one-on-one support
- She said that she didn't know what my son looked like, someone else had to point him out to her – that let me know that she didn't even meet with him before this
132. Did they have any other interaction?  
Not really – she said she observed him once
133. Did she ask you at the meeting for any input from you about this decision?

Yes

134. What did you tell her?

I told her about his depression stage and major weight loss and not eating

135. What did she say after you told her this?

She didn't seem to be too concerned

1. Where any changes made to Student's IEP?

They decreased hours of specialized

Did they do anything with the behavioral support – they left it along

2. Did you agree with the changes made to Student's IEP?

No

### **Attendance**

3. Did you communicate with the school again after that meeting?

Yes

4. Why?

Because the automated system called me every day

5. Why?

They had changed Student's schedule 4 times

He was confused

Didn't know how to be

One time when I called the school they did even know where he was – they were only able to tell me where they thought he might be?

6. Were you able to speak with anyone?

I spoke to someone in the office

7. Who?

I think it was the receptionist

8. How many calls did it take to speak to a person

After the 6<sup>th</sup> call of getting transferred

I told her I didn't want to be transferred I wanted to talk to someone

I told her I was trying to talk to the Principal

I even got transferred to Enrollment

I never got a return phone call from anyone

9. How long did that last?

It was maybe a month where I wasn't able to speak with anyone

10. Was the issue ever resolved?

I finally got in touch with Ms. Clarke – she said that the last schedule that Student got is the one that should be in place

11. About when was that?

Around November

12. Did you ever do anything else to straighten out the concerns about getting misinformation about the attendance

I went to the attendance office and spoke with the person who keeps track of it

I brought all of Student's notes and he gave me a copy of Student's current schedule He said that we were able to excuse everything expect for 3 days

That was when Student came back from being so sick with the flu

Going back to Student -

**Student in Dunbar**

13. After Student's pull out services were decreased, how did he do?

He didn't do well at all

14. Was this a change?

It got worse

15. How was he acting?

Really negative behavior, not eating, stomach aches, headaches, always nasty angry and frustrated

He always kept saying the same thing – it's just copying copying copying

I'm not being shown how to do this

16. Did you talk to him about it?

He said he just wasn't learning

17. How was Student's attendance during this period?

It was pretty bad

18. Did he ever tell you why he wasn't going?

He had some major bullying issues

There was a kid harassing him in the bathroom, coming into his classroom, catching him in the stairwell

Sometimes when I would pull up to pick him up, he would appear to be hiding on the other side of the building and he would come around and run into the car

19. When did you learn about the bullying?

End of October

20. How did you find out what was going on?

He didn't tell me at first

My mom walked in on a conversation he was having with my brother and found out everything

21. What did you do then?

I called you, I got therapy started right away, took him to see his pediatrician because I was really concerned about the change in body weight and headaches

22. What did Dr. Bellard say?

Dr. B had a conference with Student for about an hour, talked to him about coping skills to try to relieve some of the stress, told me he could tell it wasn't a good place for him because of the stress

23. Did you speak to anyone at the school

I spoke to the Assistant Principal myself

24. Did the situation improve?

No – she told me she already knew about it

She said that she had spoken to the boys (although she never called me) and it didn't improve, it seemed to get worse.

That's when the boys started busting into the class eyeballing him and giving him looks

### **Dispute Resolution Session**

25. Did you ever have any other meetings at Dunbar

Yes

26. What was that meeting

Dispute Resolution Session

27. Do you remember who was there?

Someone from DCPS, Special ed, coordinator, you, me Amanda, Ms. Clark, the counselor

28. Did you come to a resolution of the complaint at that meeting?

No

29. What did they offer Student?

Really nothing

The counselor suggested that

They offered us a meeting

30. Did they say why?

They said that the whole IEP team wasn't there so we couldn't be offered anything

31. So what did you talk about

My concerns about Student's progress and his hours and basically about his health depression and not eating

32. What did you tell them?

Just that I felt like Student needed more hours and she was really concerned about his safety and well being in his school

33. What was your response?

I didn't feel like it was sufficient

34. Did you bring up the bullying concern?

Yes

35. Did the team know about it?

No

36. What did they say?

They didn't say much of anything

But I had already talked to the principal

The counselor offered to meet with him more

37. Did you discuss any other concerns

His safety and his attendance

38. Can you tell us about that?

I felt like I wasn't getting accurate information

I would drop him off saw him walk in, the attendance system would call me even though he was there, called the principal 5 or 6 times, went to the school had a meeting with the attendance office.

39. Did you discuss anything how about you would get accurate information in the future?

The special ed coordinator suggested Student carried a sign in sheet in order to prove he was in class?

40. What was your response to this sign in sheet

I felt like it wasn't a good idea because he was already feeling isolated and this would make him stand out even more by being forced to stand out even more

41. Did you make any suggestions about how we could deal with this?

I suggested that maybe we could make sure he's signing in on the actual sheet the teacher has and I could communicate with the teachers maybe on a weekly basis

42. What was the DCPS response to this?

They really wanted to try get him to carry the sheet – it didn't sound good to me or Sarah but we said we would try it.

43. Was anything resolved at the end of this meeting

No – nothing really

### **Student Now**

44. After the DRS, Did Student go back to school?

Yes

45. How did it go?

It was a little rocky, nothing really changed

46. Did Student carry the sign in sheet

He refused to take it, he said he wasn't going to do it

He said he didn't feel like it was necessary because he was getting to his classes and he felt like we were picking on – he was upset about that

47. How about the counseling – did he go to that?

No

48. Why?

He felt like it was too impersonal

It wasn't individual it was a group session

She was asking questions that weren't appropriate in a group setting – she asked if he was involved in a school rape because she hadn't seen him around

Was anyone in his family incarcerated  
She made him feel really uncomfortable coming to him because he felt labeled as a misfit  
or coming from a bad home

49. How do you know all of this

He told me

I kept trying to encourage him to go but it came up many times

50. Parent does Student participate in any therapy

Yes

51. What's that

He gets counseling in the home setting

52. Who is that with?

Capital region

53. Does he Participate in those sessions?

Yes

54. What kind of therapy is that?

Individual and family

Twice per week

55. After the Dispute Resolution Session – did Student continue to attend class?

No

56. Why?

I found out that the torment from the bullying in the classroom, hallways, and cafeteria  
started all over again

57. How did you know that?

He told me

58. How is Student doing now?

He's really calm over Christmas vacation

But I do notice that the anxiety has built back up about returning back to school

59. Are you willing to send him back to Dunbar?

I don't want to

60. Why not?

I'm worried about a large amount of things

I worried about his mental state – he is more depressed, getting headaches and stomach aches – he had to get a prescription for zantac

He can't sleep – he stays up all night anticipating the following day

He is really cranky all of the time

It takes a long time

61. Academically

He's not learning

He told me all they do is copy copy copy all of the time

There is no instruction time

He's not being shown HOW to do the work so he is really frustrated with that

## **Lourie Center Direct Examination**

### **Introduction**

- Can you please state your name for the record?
  - Tamieka Thomasson
- Where do you work?
  - The Lourie Center
- How long have you been at The Lourie Center?
  -
- What is your position?
  - Admissions
- What does your position entail?
  -
- What professional and educational training do you have?

### Admissions at Lourie:

- Can you describe the admissions process at the Lourie Center
  - We require students to submit ...
  - Then we review the material – if the students appears like they might be appropriate for our program, we ask them to come in for an interview
- 

### Moses:

- Do you know Moses Lyones?
  - Yes
- How do you know him?
  - He applied to the Lourie Center...
- Did you personally review his evaluations?
  -
- Have you ever met Moses?
  - Yes
- When?
  - We interviewed him on April 13, 2010
- What did Moses's visit entail?
  - Moses and his mother came in to interview and to tour the Lourie Center

- Who did he meet?
  - Myself and the clinical director Dianne -
- Did you meet with Ms. Lyones on the visit?
  - Yes
  - Ms. Lyones and I met for over an hour
- What did that part of the interview process involve?
  - I asked Ms. Lyones about Moses, his profile, his needs, her concerns, his background, what was being done in his current school, where/how he was struggling
- Did Ms. Lyones also tour the Lourie Center?
  - Yes
- What did that tour involve?
  - I took Ms. Lyones into several classrooms (describe one way mirrors)
  - I showed her the OT room
  - We toured the entire property
  - Add details...

#### Lourie's Program

- Does the Lourie Center have program that is appropriate for a child with Moses's educational profile that includes .....give nutshell of his profile in the question? I see you ask more specific questions below...
  - Yes
- Can you describe the educational program that Moses would participate in if he came to the school?
- Is the school accredited by the state of MD?
  - Yes
- Are the teachers certified special education teachers?
  -
- What about the teachers in the class that Moses would be in?
- Is there therapy integrated into the daily curriculum/classroom? Please describe.
- \*Insert a questions about therapeutic training...
- Are the classes self-contained?
- Do the student's have Behavior Intervention Plans?

- Is staff trained to respond to student crises situations?
- Is there a psychiatrist available at the school?
- Is there counselor available throughout the day for therapy?
- Would speech / language therapy be available on site?

#### Moses's Class

- If Moses came to the Lourie Center, what class would he be placed in?
- How many children are in that classroom?
- How many full-time instructors are in that classroom?
- How many aides or other adults are in that classroom?
- Could you please describe the structure of a typical day for Moses?

#### Moses's special needs:

- As you know from reviewing his evaluations and speaking with his mother, Moses has been diagnosed with Oppositional Defiant Disorder and has had social/emotional and behavioral struggles in the classroom – how is the Lourie Center equipped to address this so that he can access his education?
- Additionally Moses has been diagnosed with ADHD, how will the Lourie Center be able to address this so that it's effect on Moses's ability to access his education is minimized?
- Does the Lourie Center have anything in place to encourage family involvement and to maintain continuity between the classroom and the home environments?

#### Conclusion/Appropriateness of Lourie

- Will Lourie Center be able to provide the necessary services that Moses needs?
  -
- Based on your knowledge and experience, would the Lourie Center be able to provide Moses an appropriate education?
  - YES
- As you know, Moses does not yet have an IEP, if he is placed at the Lourie Center, how would this be addressed?
  -

- \*Consider asking if any other students have been placed there without IEP's in the past. If you find out the answer is yes, then sure go ahead and ask it.
- When could Moses begin attending Lourie?

**I. Qualifications to be an expert**

1. Please state your name and spell it for the record
2. What is your current profession?
3. What does it mean to be an educational advocate?
4. I'd like you to turn to P-68, is this your curriculum vitae?
5. Is this an accurate representation of your educational and professional background?
6. Can you give us a brief description of your educational background?
7. Do you have any specific training to work with children with autism?
8. Do you keep up with the scientific research on interventions for children with autism?
9. Your CV indicates that you are a research associate at University of Maryland, what does that entail?
10. What courses do you teach?
11. Your CV also indicates that you were the Director of Autism Educational Programs at the Forbush School for 8 years, is that correct?
12. Can you please describe the school?
13. Can you please describe the student population?
14. What were your duties as the Director of Autism Educational Programs?
15. Apx how many children with autism did you work with in this position?
16. Prior to this position, your CV indicates that you taught at several other schools, in how many of those positions did you work with children with autism?
17. Apx how many children with autism did you work with in this position?

18. In total, how many children with special needs would you say you have worked with in your career?
19. Apx, how many of them were children with autism?
20. What training do you have in understanding evaluations done for special education purposes?
21. During your career, what, if any, involvement have you had in developing appropriate IEPs for children?
22. Have you been involved in developing IEPs for children with autism?
23. With language impairments?
24. How many?
25. Have you taught others how to develop appropriate IEPs?
26. In what capacity?
27. How many IEPs have you been involved in writing appropriate goals?
28. How many IEPs have you been involved in deciding what services a child need to get educational benefit?'
29. How many IEPs have you been involved in developing appropriate behavioral interventions?
30. Were you involved in recommending whether goals were appropriate?
31. During your career, what, if any involvement have you had with educational placement of children?
  - a. How many?
32. Have you testified in due process hearings before?
  - a. How many?

b. For whom?

33. Have you been qualified as an expert before?

34. How many times?

35. How many times have you testified as an expert witness in DC?

36. In what areas have you been permitted to testify about your opinions as an expert?

Move to have Dr. Livelli qualified as an expert in special education services and placement for children with autism.

### **Knowledge of Juan/Observations**

1. Are you familiar with Juan Martinez?
2. How?
3. Have you reviewed all of the records in the disclosures?
4. You said that you have observed Juan, when did you conduct that observation?
5. What classes did you observe?
6. How long did you observe in each class?
7. Please describe what your observations of Juan were in his special education class
8. Did you have an opportunity to speak with Mr. Smith?
9. What did you learn in that conversation?
10. Please describe what your observations of Juan were in his gen ed class
11. Did you have an opportunity to speak with Ms. Jones?
12. What did you learn from Ms. Jones?
13. In addition to your observation and review of the records, have you talked to anyone else about Juan?
14. Who?
15. What did you learn?
- 16. Based on all of this information, can you please describe Juan's educational profile?**
- 17. Have you ever worked with students with a similar educational profile to Juan's?**
- 18. How many?**
- 19. Based on all of this information, what can you tell us about Juan's current educational performance?**
  - a. What is the basis of this opinion?**

### **Recommendations for Juan**

1. Given what you have described about Juan's educational profile, what recommendations do you have about what level of services Juan needs at this time?
  - a. Classification
  - b. Level of services

c. Academic approach (visual etc)

2. Why do you believe that Juan needs special education support in all of his academic classes?
3. Why do you believe that Juan should be with general education peers during electives?
4. Why do you recommend that Juan be with the special education teacher in this context rather than take part in an autism classroom?
5. If you were told that DCPS' position is that Juan would be saturated with services if he has more than 12 hours per week of specialized instruction, what opinion would have about that?
6. Dr. Amado recommended a full time placement in his May 2013 psychoeducational evaluation, why don't you recommend that?
7. In your opinion, are any additional evaluations or assessments needed at this time?
8. Which ones?
9. What is an evaluation for ABA services?
10. Why is an evaluation for ABA services needed?

**DCPS observation report**

11. Please turn to P-66, DCPS' Observation Report of Juan, have you reviewed this document?
12. Do you have any opinion about this document with respect to the observation?
13. What ?
14. Do you have any opinion about this document with respect to the recommendations?
15. What?

**IEPS**

**Old IEPs**

1. Based on your review of the records, when did Juan begin receiving special education services?
2. What was his educational classification?
3. What type of placement did he have?
4. To your knowledge, what, if any, changes occurred with Juan's special education classification in April of 2011?
5. In your opinion, was it appropriate to change Juan's educational classification from developmental delay to multiple disabilities for OHI and SLD?
6. Why not?
7. What other classifications should they have considered?
8. Why?
9. To your knowledge, what IEP was in place in October of 2011?
10. Turning to P-7, page xx, how many hours of specialized instruction was Juan receiving at that time?
11. How does this compare to the specialized instruction he received the year before? (P-1)
12. In your opinion, by October of 2011, could DCPS have assessed whether this change in the IEP services was working for Juan?
13. In your opinion, was it working?
14. Why not?
15. Do you think that April IEP was ever appropriate for Juan?

16. Why not?
17. Let's look at the specifics of the IEP, Please turn to P-7, the April 29, 2011 IEP, page 60, was this IEP appropriate for Juan at the time it was created?
18. Why not?
- a. Turning to page 54, what, if anything, can you say about the math goals?
  - b. Turning to page 56, what, if anything, can you say about whether the reading goals?
  - c. Turning to page 56, what, if anything, can you say about the written expression goals?
  - d. Turning to page 58, what, if anything can you say about the social emotional goals?
  - e. What, if anything, can you say about the accommodations and modifications?'
  - f. What is your opinion about the Level of specialized instruction provided in this IEP?
  - g. Opinion of related services
  - h. Lack of BIP
  - i. Lack of sensory diet
  - j. No esy
  - k. Do you have any other comments on the IEP?
  - l. What?
19. Let's turn to the **March 26, 2012 IEP P-9**, was this IEP appropriate for Juan at the time it was created?
20. Why not?
- a. Page 70, Math goals
  - b. Page 71, Reading goals
  - c. Page 72, Written expression goals
  - d. Page 74, behavioral support goals
  - e. Accommodations and modifications
  - f. Level of specialized instruction
  - g. Lack of related services
  - h. Lack of BIP
  - i. Lack of sensory diet
  - j. No ESY
21. Let's turn to the P-12, **March 22, 2013 IEP**, was this IEP appropriate for Juan at the time it was created?
22. Why not?
- a. Page 85, Math goals
  - b. Page 86, Reading goals
  - c. Page 87, Written expression goals
  - d. Page 90, behavioral support goals
  - e. Accommodations and modifications
  - f. Level of specialized instruction
  - g. Lack of related services
  - h. Lack of BIP
  - i. Lack of sensory diet

## **ESY**

1. You mentioned that the March 2013 IEP did have ESY, in your opinion were those ESY services sufficient for Juan?
2. Why not?

## **11/19/13 IEP**

3. Please turn to the proposed IEP from P-21, Nov. 19, 2013, , is this IEP appropriate for Juan?
4. Why not?
  - a. Reading goals
  - b. Written expression goals
  - c. Math goals
  - d. Accommodations and modifications
  - e. Level of specialized instruction
  - f. Lack of related services
  - g. Lack of BIP
  - h. Lack of sensory diet

## **Comp ed/progress**

### **Reading**

5. In the Woodcock Johnson academic testing by DCPS in 2011 at P-40, Juan had a 92 in broad reading and in the 2013 testing by Dr. Amado at P-47, he had a 60, what does that indicate about whether he made progress?
6. Turning to P-49, what is the TRC test?
7. Can you please explain what Juan's scores indicate about his reading levels?
8. What does the <PC score mean?
9. What does the <RB score mean?
10. Would progress would have you have expected from Juan had been receiving appropriate services during the 2011-12 school year when he was in first grade?
11. What grade level is the C score?
12. What progress would you have expected from Juan in reading comprehension had he received the appropriate services in the 2012-13 school when he was in second grade?
13. What do the scores tell you about Juan's progress in reading comprehension?
14. Based on all the information you have about Juan, what can you say about what progress Juan has made in reading in the past 2 years?
15. I want to turn to some of the academic testing over the years. Looking at Juan's abilities in written expression, in the Woodcock Johnson academic testing by DCPS in 2011 at P-40, Juan had a 58 in written expression and in the 2013 testing by Dr. Amado at P-47, he had a 79, what does that indicate about whether he made progress?
16. Based on all the information you have about Juan, what can you say about what progress Juan has made in written expression in the past 2 years?

17. What level of progress would you have expected had Juan received the appropriate services?
18. Turning to Juan's abilities in mathematics, in the Woodcock Johnson academic testing by DCPS in 2011 at P-40, Juan had a 97 in written expression and in the 2013 testing by Dr. Amado at P-47, he had a 78, what does that indicate about whether he made progress?
19. Based on all the information you have about Juan, what can you say about what progress Juan has made in math in the past 2 years?
20. What level of progress would you have expected had Juan received the services you recommended?
21. Based on the information that you have about Juan, what can you say about what progress Juan has made in social emotional functioning in the past 2 years?
22. You have said that you would think Juan should have had specialized instruction for all academic classes since Oct 2011, correct?
23. If Juan had had those services, what progress would you have expected in the past 2 years?
24. Why would you expect that rate of progress for Juan?
25. What compensatory services would Juan need now in order to make the progress that you have described?

## Cross Examination for DCPS Psychologist

### Background

1. You are a school psychologist?
2. What is your educational background?
3. Certifications?
4. Aware of the professional guidelines from the National Association of School Psychologists?
5. Follow these guidelines your work?
6. One of your primary responsibilities with DCPS is administering psychological examinations of students?
7. Psychological evaluations are to address the particular needs of and concerns about the student?
8. So not all students should receive the same testing?
9. Have to be familiar with the childhood disorders?
10. And the different behavioral and conduct disorders?
11. Learning disability is a common problem you find in testing?
12. ADHD?
13. Mental retardation?
14. Adjustment disorder?
15. So you are familiar with the DSM-IV?
16. You are aware that it is guide created by the American Institute of Psychiatry to diagnose mental disorders?
17. And is based on research methodology to determine the criterion for the disorders?
18. It is the standard of practice to utilize the DSM-IV to make diagnoses in psychology?
19. Since one of your primary responsibilities is administering psychological testing for students, you are familiar with the DSM-IV criterion for a learning disability?
20. What is that criterion?
21. You are familiar with the DSM-IV criterion for ADHD?
22. What is it?
23. You are familiar with the DSM-IV criterion for adjustment disorder with mixed emotions and conduct?
24. What is it?
25. you are familiar with the DSM-IV criterion for mild mental retardation?
26. what is it?
27. Typical behaviors of MR include poor peer relationships?
28. Poor self-care skills, including problems toileting?
29. Poor academic performance?
30. Poor memory?
31. You also participate in IEP/MDT meetings as a school psychologist?
32. Help determine what is necessary for the child in an IEP?

33. What progress would you expect to see once a child has an IEP in place?

If they cannot name criterion:

1. If you don't know the criterion for these, how do you administer the correct testing to diagnose them?
2. Stated follow the professional guidelines from the National Assoc of School Psychologists—state that you must be familiar with the up-to-date testing methodology and use the most appropriate tests for a child?
3. And that school psychologists are required to use methods that the profession considers to be responsible research-based practice?

**DCPS Psych eval (RT-8)**

34. You conducted/reviewed the psychological examination conducted by DCPS on January 28, 2008?
35. Reviewed her records?
36. So would have read the comments on her report cards documenting her significant problems with attention, regulating her behavior and poor peer interactions?
37. Was RT on medication during the evaluation?
38. Only the WISC-IV and the Beery were administered?
39. On the WISC-IV her full scale IQ was 56?
40. According to the DSM-IV, this full scale IQ would put her in the range for mental retardation?
41. But no adaptive testing was conducted even though she had a low IQ and documented adaptive difficulties?

If they bring up her IQ was a low estimate:

42. You said the IQ was a low estimate because of problems regulating behavior, but there is no indication that it is 15 points too low?
43. So, her IQ even if a few points higher, would still be below 70?
44. And adaptive testing should have been performed?
45. Evaluation did stated that no evaluation of ADHD had occurred?
46. But were told by mother that dr diagnosed ADHD?
47. Meant that no DCPS evaluation had occurred to verify diagnosis?
48. And your position is that w/o the DCPS evaluation, can't tell if it is a real diagnosis?
49. And made numerous observations about RT's inability to pay attention, sit still and to regulate her behavior?
50. Evaluator also reviewed records that indicated these behaviors?
51. But did not conduct any screening for ADHD?

52. Noted specifically that her inability to regulate her behavior prevented him from getting accurate test results?
53. It is reasonable to think then that this same behavior, which had been noted by her teachers, would also impact her in the classroom?
54. In spite of these behavioral reports, no behavioral testing at all was conducted, correct?
55. No social-emotional testing of any kind?

### **3/8/08 IEP Meeting- RT-5**

56. School psychologist participated in the March 3, 3008 IEP/MDT meeting?
57. Reviewed psychological, educational and social work evals at meeting?
58. Information about her behavior was presented by mom and by teachers?
59. Determined she had a learning disability?
60. B/c she was performing below what could be expected of her cognitive and age level?
61. True that in spite of behavioral concerns raised in psychological evaluation and the reported ADHD diagnosis by the mother, neither ADHD nor any other behavioral disability was considered for RT?

### **3/17/09 IEP- RT-6**

62. Reviewed the records from the 3/17/09 IEP meeting?
63. Reviewed the report cards and reports since 3/8/08?
64. Indicate the same behavior that was present prior to the 3/8/08 IEP, including the inability to pay attention, regulate her behavior and to have appropriate peer relationships?
65. Reviewed Dr. Missar's evaluation?
66. Saw that her disability classification was expanded to include ADHD and MMR?
67. A child doesn't suddenly become MR at age 8, right?
68. So she was always MR?
69. And she was misdiagnosed in 2008?
70. And misclassified on the 2008 IEP?
71. And the manifestation of her ADHD was same as prior to the March 3, 2008 meeting?
72. So she was also misclassified b/c of the failure to include ADHD?

### **If testify about the appropriateness of the IEP:**

1. You testified the 3/3/08 IEP was appropriate?
2. You maintain that it was appropriate even though her disability classification was wrong?
3. And that she made no academic progress in the year following the implementation of the IEP?

### **Cross Examination of DCPS Placement Specialist**

1. As placement specialist who made decision about where to place William, you know about the school?
2. Does Johnson have a soft room for William to cool of in?
3. Has an emotion word wall?
4. You know that last year, 65.4% of the classes at Johnson were taught by teachers who were not considered highly qualified under NCLB?
5. And that almost 30% of teachers had no valid teaching license?
6. This year Johnson is under restructuring?
7. B/c in the last several years, students have had low proficiency rates?
8. In 2008, only 19% were proficient in reading on DC-CAS?
9. And only 11% of the disabled students were proficient in reading?

10. In 2008, only 9% were proficient in math on DC-CAS?
11. And only 5.5% were proficient in math on DC-CAS?
12. In 2007 only 5.8% were proficient in reading on DC-CAS?
13. In 2007 only 9% were proficient in math on DC-CAS?
14. Johnson is transitioning to be a full-service school?
15. But in 2009-10 there will be only money allocated in the school budget for one social worker for the school provided by DMH?
16. And only one special education aide for the entire school?

Cross of Hamilton Center SEC

1. DCPS uses Easy IEP?
  2. Provides only certain options in drop downs?
  3. And as part of the form?
  4. No place to specify class size?
  5. Psychiatric services are not in the drop down for related services?
  6. De-escalation room is not listed as an accommodation?
  7. Individual attention is not listed anywhere?
- 
1. Hamilton Center was recently restructured?
  2. Meaning that the entire staff had to reapply for their jobs?
  3. And that was because the students at Hamilton Center did not make sufficient annual yearly progress as defined under No Child Left Behind for five consecutive years prior to the restructuring?
  4. And in the most recent year with scores available, 2009, only 8% of the student body was proficient in reading?
  5. And none were advanced?
  6. And only 7% of students in 2009 were proficient in math?
  7. And none was proficient in reading?

Cross-Ex for Ms Green-Peterson

1. You are the only special education teacher at RT?
2. In addition to teaching resource, do you also administer educational testing?
3. Do you help administer the DC CAS?
4. Stated at 3/19/09 IEP meeting that there are 5-6 students in the class RT is in with you?
5. And there are no aides?
6. What disabilities do the other children have?
7. What are their ages?
8. Work with any children diagnosed with mental retardation?
9. RT has made no academic progress based on the testing administered by you on 2/17/09?
10. As her special ed teacher, noticed that she was not making progress?
11. In your class, prior to the IEP meeting, you observed that RT has problems paying attention?
12. That she frequently needs to be redirected?
13. That she seeks attention frequently?
14. But you did not ask for an IEP meeting to discuss whether LD was the only disability impacting her education?
15. to adjust her services?
16. Or to get an FBA?
17. Or to revise her BIP?
18. You stated you take RT for individualized instruction for (NUMBER FROM DIRECT) hours per week?
19. What time of the day?
20. What subjects does she miss in her general education class?
21. Do you always do this?
22. But you don't make up instructional time when RT's misses it?
23. On March 31, you were administering evaluations and didn't get RT?
24. That was true on March 30 and April 1?
25. When did you make up the hours for RT?

## Opening Statement

Student is a 15 year old special education performing years behind his academic peers. He is a child whose self esteem and confidence are eroding with each passing day. He is a child who the educational system has a chance to reach, but who is in serious danger of slipping out of its grasp.

The District of Columbia Public Schools has seen Student's academic performance slide downhill ever since his enrollment. Evaluation after evaluation demonstrated that Student struggled with focus and attention and needed intense remediation. Each grade the situation worsened. As demonstrated by his psychoeducational evaluation in Joint 1 and report cards at P-4 through 6, he is currently between 3-6 years behind in nearly every single academic area.

However, instead of giving Student the individualized support he required and addressing his academic meltdown – DCPS chose instead to send Student to successively larger neighborhood schools and reduce the time he was provided special education support outside of general education, a fact which will be demonstrated by Student's current IEP and IEP meeting notes in Joint exhibits 3 and 4.

Knowing that Student was a child who not only needed academic remediation but was also socially and emotionally fragile and at risk for depression – DCPS sent him to a school of close to thousand students with a reputation for bullying and mismanagement. Despite explicit recommendations from a psychologist, that Student be given full time special education and a supportive environment – DCPS reduced the amount of resource room support Student received, suggested cutting his counseling hours and failed to provide him with an appropriate education.

Student enrolled in the District of Columbia Public Schools as a 7<sup>th</sup> grader in January of 2009. You will hear testimony from Student's mother, Ms. Parent, about how when Student's mother signed him up at Marshall Elementary, his neighborhood school, she brought reports cards, IEPs and transfer packets full of information about her son. Parent will tell you how she also spoke to the Principal and told her all about how at Student's last school they had tried full time special education and pull out services for him. She described how the pull out support was a disaster for Student and how she was worried he hadn't been getting what he needed. Parent will also tell you how for the next 6 months Student didn't receive services and didn't have an IEP meeting until the very last day of school. That IEP, is exhibit P-3. She will tell you about how at that IEP meeting, she felt like DCPS was passing Student from one school to the next, not really addressing any of his difficulties and leaving her hoping that the next year might be better.

Parent will also describe how Student went next to John C. Burroughs, where she hoped things might change. At least at Burroughs, she thought, he would receive the services on his IEP – but much to Parent's dismay – things did not improve. Student continued to struggle and now in addition to his academic problems, she started to notice social difficulties as well as increasing frustration surrounding school. Parent asked DCPS for an independent educational evaluation, because she believed that the last set of DCPS testing, didn't really address all of Student's suspected disabilities.

In May of 2010, Dr. Samantha Bender evaluated Student. Dr. Bender is an experienced child psychologist whose credentials are found in exhibit P10. Dr. Bender evaluated Student over the course of 4 days and her final report is exhibit J-1. Not only did Dr. Bender diagnose him with ADHD, but her

reports suggests that he has actually regressed in the majority of academic areas that she was able to test him in. Exhibits J-1, P-1 and P-2 will demonstrate how in Broad Math alone, Student's standard scores dropped 22 points over the past several years.

Dr. Bender will testify about how Student is a child with a strong understanding of social norms and how the world around him functions. She will tell you how he is a bright and kind boy who really wants to do well. But she will also tell you how he requires a very specific learning environment and how he has not been able to access his education with the support that he has so far been provided. She will testify about how Student's response to the pull out intervention has been to actually regress. She will also say that testing also indicates that he is acutely aware of his own shortcomings and struggles daily to overcome them. His ADHD makes it very difficult for Student to organize information and process emotionally complex situations. She explained that Student is constantly overwhelmed, frustrated and beating himself up for not being able to do the right thing both socially and in the classroom.

DCPS was giving this report after its completion and held an IEP meeting July 7<sup>th</sup> 2010. Exhibits P-3 and Joint 2 will show you that they did exactly nothing to increase Student's services, in direct contradiction to the report. You will hear testimony that the IEP team changed Student's classification from Speech Language Impairment, something there was actually zero support for, to MD to represent a learning disability and ADHD. The team acknowledged that Student was far behind and needed support. However, you will also hear testimony that Parent was told to yet again – to wait it out and hope that it will be better in the next school. Even more disconcerting will be the testimony that the special education coordinator at that meeting was not able to give Parent any information about the program she was recommending Student being in the Fall of 2010. No one from DCPS was made available to Parent tell her about what her son would be walking into – and yet again she was just to cross her fingers and see what happens.

So Parent again enrolled Student in the DCPS school suggested by his IEP team. And as with each previous DCPS experience – disaster ensued.

Parent will tell you how each area of concern that she had was magnified at Dunbar Senior High School. The school was huge, the classes were large, there was chaos everywhere, the teachers did not provide Student with instruction he could understand and he very shortly became the target of upperclassmen bullying.

You will hear testimony that Parent did in fact receive an early call from the special education department at Dunbar. Not because they wanted to look out for anticipated problems, or address how his evaluations showed how he was falling even further behind – but because within just a few weeks of attendance they had decided Student didn't actually need 15 hours of pull out special education support – and that half of that time could be given in the classroom. Parent and Amanda Eggers, a Children's Law Center investigator will tell you about the meeting where Dunbar Staff reduced Student's special education support outside of general education – against the wishes of his mother and without ever reading his most recent psychoeducational evaluation.

You will hear testimony from Dr. Sheila Iseman, an expert in special education who has worked in the field for over 20 years. Her credentials can be found at P-9. She will testify about Dunbar as a placement for Student. She will describe his educational profile to you and give evidence about his needs. She

will tell you about how someone with Student's disabilities requires a small class setting and individualized attention. She will also describe her observations of Student in Dunbar. She will tell you about how she saw him drift through his classes without learning a thing. How she saw his teachers pay attention to him, but instead of using the multimodal method of instruction he requires – they just gave him answers and filled out his homework and tests for him. She will describe how Student cannot make progress in his current setting.

Dr. Iseman will testify about the proposed placement, Kingsbury Day School in the context of a child with Student's educational profile and why it would be an appropriate placement for him. Finally, Dr. Iseman will discuss compensatory education and what would be required to bring Student to the level of performance that he would be at today, were he appropriately served by DCPS.

Finally, you will hear from Marlene Gustafson, a representative of Kingsbury Day School the placement that Parent proposes for her son. Ms. Gustafson will describe everything that the Kingsbury has to offer for her son. She will tell you about the educational program he would participate in if he was placed there and she will describe the qualifications of the teachers and other staff at Kingsbury. Further, Ms. Gustafson will describe the program they have in place for a student with Student's profile and special needs. Ms. Gustafson will also describe the Kingsbury admissions process and her interactions with the Street family.

Ultimately you will hear about Student and his struggle to learn. How he went from school to school, each year hoping, maybe this time, it will be different. You will hear how he has been inappropriately served for several years and cannot and will not be able to make meaningful progress if DCPS refuses to provide him the services he requires. You will also hear about the devastating effects that these past years, and acutely the past few months, have had on his mental state.

DCPS may try to tell you that this is just simply a child who won't show up. They may assert that they are doing every they can, but Student isn't available for them. I ask you to consider what Student would be showing up for. What a child might experience in a classroom that was 3-7 years too advanced for him that was being taught in a manner he could not possibly learn from. I would also ask you to consider the effect of this constant struggle on a child who desperately wants to learn, who knows he is falling behind and who just can't find anyone to help him.

Parent is asking you to place Student in a full-time special education day school and award him compensatory education, in order to address all of his unique needs, enable him to access his curriculum, and make meaningful progress.

**STATE EDUCATION AGENCY  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

Elizabeth Smith, parent and next friend of	)	
minor child, TV	)	
Petitioner,	)	
	)	Case No.
v.	)	
	)	Hearing Officer Massey
DCPS,	)	
	)	
Respondent.	)	
	)	

**Petitioner's Opening**

Tommy Ventura is a ten year old boy who loves to play video games and do puzzles. However, Tommy also has high functioning autism—a disability which affects every area of his life. Tommy's language skills are significantly delayed and he has problems with social interaction. Unlike many children with autism, Tommy also has visual reasoning skills that are at a level at or above his non-disabled peers.

Although Tommy is eager to learn, he requires lessons that are very visual and he requires frequent prompting—as often as every 1 to 4 minutes. We will show during this hearing that because DCPS has failed to provide an appropriate IEP or placement, and as a result Tommy has not made any meaningful progress in school during the statutory period.

**2005-06: Kindergarten**

Tommy started in DCPS in the 2005-06 year, when he attended kindergarten at Garrison ES. Tommy was in a general education classroom, and Ms Smith had to attend school with him all day, every day because the teacher could not manage him and he would run out of the classroom and off the school property, but DCPS did not evaluate him or provide any services for him.

It was in November of 2005 that Ms. Smith obtained the speech language therapy evaluation from CNMC at P-11 and in March of 2006, she obtained a psychological evaluation from WATS at P-13. The WATS evaluation put DCPS on notice that Tommy had significant strengths in visual-motor and non-verbal tasks, but none of his IEPs have reflected that.

DCPS was on notice with the WATS and the speech language therapy evaluation that Tommy required intensive speech language, at least 3-4 times per week and that he had a diagnosis of autism. Although she gave both evaluations to the school as she received each one, the school did not convene an IEP meeting until June 6, 2006. DCPS did not conduct any of its own evaluations, and in its review of the speech language therapy evaluation recommended only 30 minutes a week of speech language therapy in spite of the significant deficits identified in the evaluation.

The June 6, 2006 IEP, at P1, found Tommy eligible for services as a child with autism and stated that he needed full time specialized instruction, but provided only one-half hour per week of speech language therapy. The team stated that he needed a dedicated aide at that time.

### **2006-07: First Grade**

For the 2006-07 school year, Tommy was in the first grade in a full time autism program at Meyer ES. In the April 12, 2007 IEP, P-3, the team requested an occupational therapy evaluation. Based on the DCPS disclosures, it seems that some evaluation was done--- but Ms. Smith will testify she never saw that evaluation and evidence will show that the team never reviewed it and that DCPS did not issue a prior notice about its decision not to provide even the limited services recommended by the evaluation. —and DCPS’ own occupational therapy evaluation from this school year, at P-21, lists all of the prior evaluations and does not list an April 2007 DCPS evaluation.

Furthermore, in spite of the fact that Tommy had issues retaining information and needed consistency and repetition to learn, DCPS did not provide ESY this summer or any other

summer. In fact, DCPS told Ms. Smith each year that no autism classroom was available for Tommy during ESY.

At this and every IEP meeting before Ms. Smith had an attorney, Ms. Smith was required to sign the first page of the IEP without being provided the rest of the document—she will testify that she signed b/c she believed he would not receive any services if she did not sign.

### **2007-08: Second Grade**

Since other kids were much lower functioning in Tommy's first grade class, he was moved to another classroom for second grade. This was his first year with Crystal Martin, his teacher of the last three years. Ms. Smith will tell you that she received a letter that Ms. Martin was not highly qualified for the past three years, letter at P-28, and OSSE reports that she has only a provisional license.

The kids in Tommy's new class were older and frequently caused physical injury to him by pushing him and knocking him down. In spite of Ms. Smith' expressing her concerns, Ms. Martin did nothing to protect Tommy---a pattern that would begin in the second grade and continue until now.

Ms. Smith will testify that at the March 2, 2008 IEP meeting and at every subsequent IEP meeting, she expressed concern about his lack of academic progress, the failure to provide occupational therapy and the need for more speech language therapy services. Rather than address her concerns, DCPS had her again sign the front page without providing her with the rest of the IEP.

### **2008-09: Third Grade**

Over the summer, Ms. Smith received a phone call from DCPS to tell her that Tommy would attend Garrison. There was no meeting and no PN was issued---you will hear testimony that this was harmful to Tommy b/c he continued with the same teacher, but

the children in the new classroom were much lower functioning than Tommy. 3 were the same non-verbal children who had been in his first grade class.

Because DCPS was not providing any OT services for Tommy, in July of 2008, Ms. Smith had an occupational therapy evaluation performed at Georgetown, the evaluation is at P-16. The evaluation stated that school based services are vital to his development and that he should also have social skills group. She received the evaluation and gave it to the school at the beginning of the school year with a request that the school implement the services per the recommendations in the evaluations. However, DCPS did not convene an IEP meeting to review this evaluation until the annual meeting in January of 2009. DCPS still refused to provide occupational therapy services in spite of this evaluation stating that Tommy needed school-based services—and it took a year and half from the time of the evaluation in July 2008 until Tommy actually received occupational therapy services from DCPS.

At the January 2009 IEP meeting, the team decided that DCPS should do an occupational therapy evaluation. However, Ms Smith will testify that it was not until she requested another meeting in June of 2009 that the school obtained the consent for this evaluation, the evaluation, at P-21, was not completed until August of 2009 and was not reviewed by the team until November of 2009.

In Feb of 2009, Ms. Martin performed an educational evaluation—which showed that Tommy was still only at a high first grade level and at the very beginning of second grade—literally 2.0. Ms. Smith will testify that this evaluation was never reviewed and was not provided to her until the November 2009 IEP meeting. The evaluation is at P-17 and the full results are on page 6 of the eligibility report located at P-6. Although the triennial psychological was required by law, DCPS failed to perform a psychological evaluation. This proved to be very harmful to Tommy because DCPS proceeded to create an IEP without knowing critical information—most critically that Tommy is above average in visual perceptual skills. You will hear expert testimony about how this crucial

skill should have altered Tommy's educational program. No prior notice was issued about the decision not to perform the educational evaluation.

It was during this school year that Ms. Smith became aware that the school staff employed illegal corporal punishment with Tommy. Ms. Smith will also testify that Tommy came home from school with a rectangular shaped bruise on his hand and told her that Ms. Martin hit him with a ruler. You will hear testimony that although Tommy's father wanted to call the police immediately, Ms. Smith felt she had a good relationship with Ms. Martin. Ms Smith will tell you that she called Ms. Martin and spoke with her—Ms. Martin admitted to hitting Tommy with a ruler during an incident where Tommy threw a ball in the classroom. You will hear that she not only apologized and promised it would never happen again that night, but that she called Ms. Smith in the morning and apologized again.

Ms. Smith will tell you she did not know what to do and so she spoke with two other staff at the school—neither of whom fulfilled their obligations as mandatory reporters. She will tell you that she ultimately did not want to cost Ms. Martin her job and she believed that Ms. Martin would not do anything like that again.

#### **2009-10: Fourth Grade**

After another summer w/o ESY, Tommy returned to Garrison ES for the 2009-10 school year and to Ms. Martin's class for fourth grade—in a class where he continued to be the highest functioning child in the class.

Ms. Smith will tell you that in July of 2009 she also obtained a speech-language evaluation from Georgetown, at P-20, and a physical therapy evaluation, P-19, and that she provided that evaluation to Ms. Martin at the beginning of the school year. However, DCPS did not meet to review the evaluations until November of 2009.

In November of 2009, an IEP was convened at Ms. Smith' request to review DCPS' evaluations. The IEP is at P-8. DCPS refused to provide PT, but did agree to provide

adaptive PE, 90 minutes of occupational therapy and to develop a sensory diet for Tommy. You will hear testimony that the team, including Ms. Smith and Ms. Martin, felt that a sensory diet was important because Tommy needs prompting every 1-4 minutes and Ms. Martin felt that she needed additional assistance in calming him.

However, you will hear testimony that no sensory diet was developed until after the Jan 2010 IEP meeting. At that IEP meeting, the occupational therapy reported that she had never seen Tommy in his classroom and that she had not developed a sensory diet. She did develop a sensory diet at P-10, but then decided that it should not be used in school. Contrary to DCPS' representations that the occupational therapy consulted with Ms. Smith about this, she left a voice message for Ms Smith indicating the sensory diet was for home only. That voice message and a transcription of it are at P-30. Ms. Smith will tell you that she received another call after that message and was again told by the occupational therapy that Tommy's sensory diet was for home—and although Ms. Smith objected, the occupational therapy refused to implement a sensory diet at school. You will also hear testimony that a sensory diet is essential for Tommy.

You will also hear that an FBA is essential as away to track Tommy's behaviors and triggers in order to create a functional BIP to address Tommy's occasional inappropriate social behaviors.

Because DCPS did not perform the triennial psychological evaluation, Ms. Smith obtained an independent psychological evaluation that was authorized by DCPS. Dr. Robert Chase performed that evaluation, located at P-24,—and you will hear him testify that while Tommy has delayed language skills typical of children with autism, he has above average visual perceptual skills compared to non-disabled children his own age.

Dr. Chase will testify based on his testing and review of the documents, Tommy has not made meaningful progress during the statutory period. Ms. Smith will testify that she also has not seen any meaningful progress, and that while Tommy used to be able to do basic math in his head, he now counts on his fingers—a claim supported by DCPS'

occupational therapy notes from 3/2/10 and in the DCPS educational evaluation at P17 p 2.

In light of that, Dr. Chase will testify that he needs his education to be particularly tailored with visual models and instructions. He will tell you that had Tommy received the appropriate instruction and services for the past 2 years, he would be at a mid-third grade level academically rather than stagnated at a late first grade level.

You will also hear testimony that Tommy needs intensive speech language therapy therapy—at least daily individual therapy and bi-weekly group therapy-- to address his significant deficits in expressive and receptive language.

On March 8, 2010 there was an emergency situation at the school. You will hear from Ms. Smith that on March 8, 2010, she was called twice by Ms. Martin. The first time she was called to help Tommy—who was yelling, “Help, she’s grabbing me,” while she talked to him. The second time was later the same day when Ms. Martin called to report that another child in his class had scratched him deeply near his eye—the same boy who had previously scratched him this school year. Tommy told Ms. Smith that Ms. Martin grabbed him and put him in time out, and he pointed to his harms to say they hurt. Ms. Smith examined him and saw red marks and bruising in the shape of adult fingers on both his upper arms. Ms Smith decided that Tommy was not safe at school. The school was notified that day about the incident, ex. atP-25, but no action was taken. The school was notified again on March 23 ,ex P-26, after Ms. Smith received repeated calls about Tommy’s absences, but she was never contacted by the school about the incident.

DCPS has proposed an alternate, lateral placement at Ludlow-Taylor ES—meaning a placement that will provide the same program at a different school. The Petitioner will show that this placement is inappropriate for Tommy because it cannot provide the necessary supports.

The Petitioner's testimonial and documentary evidence will clearly prove that DCPS has denied Tommy a FAPE by failing to provide an appropriate IEP or placement—with the result that Tommy has not made any meaningful progress during the statutory period. The evidence will further show that Tommy needs a placement where he can receive the necessary instruction and accommodations and where he can receive intensive speech language therapy and occupational therapy, both pull out and inside the classroom, in a placement where he is not interacting with general education children and where he has a peer group of other children with high functioning autism—and the evidence will show the only appropriate placement before you is Kennedy Krieger.

DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
Student Hearing Office  
810 First Street, N.E. 2<sup>nd</sup> Floor  
Washington, D.C. 20003

, parent and next friend	)	Case Number:
Of Minor child,	)	Hearing Officer:
Petitioners,	)	Hearing Date:
v.	)	
	)	
District of Columbia Public Schools,	)	
Respondent.	)	
	)	

**PETITIONER’S MOTION TO SHIFT BURDEN OF PROOF OR OF PRODUCTION**

Petitioner \_\_\_\_\_, legal guardian and next friend of DCPS student \_\_\_\_\_, by and through her undersigned counsel, Joy M. Purcell, Esq., of the Children’s Law Center hereby moves this tribunal to shift the burden of proof to the Respondent District of Columbia Public Schools (*hereinafter* “DCPS”). In the alternative, Petitioner requests that this tribunal shift the burden of production, due to Respondent’s failure to comply with requirements of the IDEIA. Petitioner submits the attached Memorandum of Law in support of her Motion to Shift the Burden of Production.

WHEREFORE, Petitioner respectfully requests that this tribunal grant Petitioner’s Motion to Shift the Burden of Proof or Production.

Respectfully Submitted,

\_\_\_\_\_  
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Date: \_\_\_\_\_

**MEMORANDUM OF LAW IN SUPPORT OF**  
**PETITIONER'S MOTION TO SHIFT THE BURDEN OF PRODUCTION**

**I. PROCEDURAL HISTORY:**

Petitioner \_\_\_\_\_ filed a due process complaint (*hereinafter*, "Complaint") on behalf of her daughter \_\_\_\_\_ against Respondent District of Columbia Public Schools (*hereinafter*, "DCPS") on April 21, 2011. *See* Exhibit A. Respondent's Response was due on May 1, 2011. To date, DCPS has not filed a Response to Petitioner's Complaint.

**II. ARGUMENT:**

The Individuals with Disabilities Education Improvement Act specifically requires that the LEA file a response to the due process complaint that includes the following:

- a. An explanation why the agency proposed or refused to take the action raised in the due process complaint;
- b. A description of other options that the IEP Team considered and the reason why those options were rejected;
- c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- d. A description of the other factors that are relevant to the agency's proposed or refused action.

20 U.S.C. 1415(2)(b)(1).

This information is also required by the Student Hearing Office's Standard Operating Procedures (*hereinafter*, "SOP"). *See* SOP § 303(B). An LEA is required to file a specific response to the due process complaint so that the parent has sufficient information to move forward with her case and meaningfully participate in the due process hearing. Indeed, one of the main underlying purposes of the IDEIA is to ensure that parents can be fully informed through adequate notice so

they can participate in the special education process. *See Holland v. District of Columbia*, 315 US App DC 158 (DC Cir, 1995).

An LEA's failure to provide a parent with the information necessary to participate in the special education process can constitute a substantive denial of the child's right to a free appropriate public education (*hereinafter*, "FAPE") in certain circumstances. The IDEIA specifically permits a finding of a violation of FAPE when there are procedural violations that "significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child." *See* 20 USC 1415(f)(3)(E)(ii). The detailed procedural requirements put forth in the law by Congress are clearly designed to ensure that the parent can effectively participate in the hearing. As the Court in *Rowley* held:

It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process... as it did upon the measurement of the resulting IEP against a substantive standard.

*Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-206 (U.S. 1982).

By failing to provide any response to the Petitioner's Complaint DCPS has violated both the IDEIA and the SOP. The failure to file a response is therefore not only a procedural violation of the IDEIA but also a substantive violation of \_\_\_\_\_ right to receive a FAPE. DCPS has significantly impeded Ms. \_\_\_\_\_'s opportunity to participate in the due process hearing and thus, the decision-making process regarding the provision of FAPE to \_\_\_\_\_. It has additionally disadvantaged the Petitioner in preparing her case because without a response, the Petitioner does not have any notice of Respondent's anticipated arguments or defenses. Petitioner's complaint is detailed, and Petitioner has no way of knowing which facts will be disputed and which will not. It is inequitable to force the Petitioner to prepare a case that

proves each of the factual allegations, when the Respondent may only plan to dispute only a small fraction of those allegations. Furthermore, it is against judicial economy. In responding to the Petitioner's allegations, the Respondent has the opportunity to narrow the issues to be decided at hearing and stipulate to any items not in dispute. Without a response the Petitioner must prepare her case as though she is required to prove every allegation set forth in the Complaint. As a result, the Respondent forces the Petitioner to potentially use unnecessary time of the Hearing Officer's and the parties.

When faced with a violation of FAPE a hearing officer is authorized to issue a remedy to correct the results of the school system's violations and "confer the educational benefits contemplated by proper implementation of the [IDEA] in the first instance." *See Diatta v. District of Columbia*, 319 F. Supp.2d 57, (D.D.C. 2004) (granting a parent's motion for summary judgment and awarding compensatory education where DCPS failed to provide an appropriate required therapy). Indeed, a hearing officer has broad authority to grant whatever relief is appropriate to provide the child the FAPE to which he or she is entitled. *See Sch. Comm. Of Burlington v. Dept. of Ed.*, 471 U.S. 359, 369 (U.S. 1985). (citing that the IDEA provides Courts with broad discretion to "grant such relief as the court determines appropriate.") 20 U.S.C. § 1415(i)(2)(c); *Harris v. District of Columbia*, 1992 U.S. Dist. LEXIS 11831, at 12-13 (D.D.C., 1992) (specifically recognizing a hearing officer's authority to grant any relief he/she deems necessary).

Section 600 of the SOPs details the authorities and responsibilities of Hearing Officers. Section 600.1 specifies that Hearing Officers have the "authority and responsibility to conduct the hearing with integrity and dignity; ensure the rights of all parties are protected; rule on

procedural matters; take actions necessary to complete the hearing in an efficient and expeditious manner; to be fair and impartial, and to render a final independent administrative decision.” Additionally, Section 303(D) of the SOP states, “Parties should be cognizant of the 10 day statutory period for filing the response noted in §303.C.1. Hearing Officers may take the failure to so file into consideration in determining how to proceed on a case by case basis, considering the equities of the circumstances.” *See* SOP § 303(D). These sections therefore authorize the Hearing Officer to take steps necessary to maintain the integrity and dignity of the hearing and to protect the rights of all parties when one party’s action violates the other party’s rights in the hearing process.

In this case, the equities of the circumstances require that this Hearing Officer take action to recalibrate the inequities created by DCPS’ failure to file a response to the Petitioner’s Complaint. By failing to file a Response, DCPS has deprived the Petitioner of information necessary to prepare her case for the due process hearing. Therefore, in order to recalibrate the inequities this Hearing Officer should require that DCPS carry the burden of proof or the burden of persuasion, so that the parent is not forced to litigate a case without an understanding of the fact and issues still in dispute. At a minimum, DCPS should be ordered to present its case first at the due process hearing so that the Petitioner has adequate notice of what issues require response, and whether other issues have been conceded. Alternatively, this Hearing Officer may choose to shift the burden of persuasion or burden of proof to DCPS.

## **II. CONCLUSION:**

Based on the foregoing facts and argument Petitioner’s Motion to Shift the Burden of Production should be granted. DCPS has failed to file any response to the Petitioner’s Complaint

thereby violating the IDEIA and SOPs. DCPS has additionally unfairly disadvantaged the Petitioner. Petitioner therefore respectfully requests that this Hearing Officer grant her Motion to Shift the Burden of Production.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
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OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
FOR THE DISTRICT OF COLUMBIA  
Student Hearing Office

Y G, legal guardian and next friend )		
Of minor child, C )		
Petitioners, )		
	)	Hearing Officer: Terry Banks, Esq.
v. )		Hearing Dates: September 22 & 23,
	)	2010
	)	Complaint Filed: August 17, 2010
District of Columbia Public Schools, )		Case No: 2010-1013
Respondents )		
	)	

**PETITIONER’S MOTION THAT ALL ISSUES NOT SPECIFICALLY DENIED BY  
THE RESPONDENT BE DEEMED ADMITTED**

Pursuant to the Federal Rules of Civil Procedure, 8(b)(6), Superior Court Civil Procedure Rules 8(d), and under measures of equity and fairness in the litigation process, Petitioner Y G, legal guardian and next friend of District of Columbia Public Schools (“DCPS”) student C , by and through her undersigned counsel, Lauren Onkeles Esq., of Children’s Law Center hereby moves this tribunal for a finding that all issues not specifically denied by the Respondent at the time of the filing of this motion be deemed admitted. Petitioner submits the attached Memorandum of Law supporting her Motion.

WHEREFORE, Petitioner respectfully requests this tribunal to order that all issues not specifically denied by the Respondent at the time of the filing of this motion be deemed admitted.

Respectfully Submitted,

\_\_\_\_\_  
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## **MEMORANDUM OF LAW**

### **I. Statement of Facts:**

C is a twelve year old girl who should currently be in seventh grade. C has extensive mental health needs and a reading disorder that impact her in all areas of her academic and social emotional functioning. Unfortunately, as of the filing of the Petitioner's due process complaint, DCPS failed to provide an appropriate placement or issue prior written notice to any placement for C for the 2010/2011 school year that began on August 23, 2010.

C has been diagnosed with depressive disorder, oppositional defiant disorder ("ODD") and attention deficit hyperactivity disorder ("ADHD") in addition to a reading disorder. Through July of 2010, C had been attending the Episcopal Center School ("Episcopal Center") an 11-month full time therapeutic placement for children with emotional disturbance needs. The Episcopal Center's program only serves children through the sixth grade. As C was in the sixth grade during the 2009/2010 school year, she was in need of a new placement for the 2010/2011 school year.

During the 2009/2010 school year, there was both an Individualized Education Program ("IEP") meeting and a Multidisciplinary Team ("MDT") meeting held where C's need for an appropriate placement for the upcoming school year was discussed. Although in attendance at both meetings, DCPS failed to issue prior written notice to a DCPS placement or to any other placement that could meet C's needs. Upon information and belief, there was no one in attendance at these meetings with information on available resources within DCPS or who had placement authority on behalf of DCPS. An IEP was developed for C that did not include the level of services she received at the Episcopal Center, did not have measurable academic goals, and did not accurately reflect the amount of time that C spent away from her regular education peers.

Though in contact with Petitioner, Ms. G, over the summer regarding the need to find an appropriate placement for C for the 2010/2011 school year, DCPS did not issue prior written notice.

### **II. Procedural Background**

Due to DCPS's failure to respond to C's need for a school placement and with the school year fast approaching, Ms. G filed a due process complaint to resolve the situation and ensure her daughter could receive a free and appropriate public education ("FAPE"). *See*, Attachment A.

Consequently, the complaint was filed on August 17, 2010 along with a motion for expedited hearing. The six legal issues raised in the Petitioner's complaint are:

- (1) DCPS's failure to ensure development of an appropriate IEP;
- (2) DCPS's failure to ensure implementation of an appropriate IEP for the 2010/2011 school year;
- (3) DCPS's failure to provide an appropriate placement for C for the 2010/2011 school year;
- (4) DCPS's failure to ensure Ms. G's participation in any placement decision regarding the 2010/2011 school year;
- (5) DCPS's failure to issue prior written notice regarding placement for the 2010/2011 school year;
- (6) DCPS's failure to convene or support the convening of a legally sufficient IEP and/or MDT and/or placement meeting during the 2009/2010 school year

*See*, Attachment A, page 4.

On August 27, 2010 a dispute resolution session ("DRS") was held at DCPS headquarters, 1200 First Street, NE Washington DC 20002. By that point, Ms. G had found a school she felt could meet C's needs and communicated her desire for placement at Rock Creek Academy to DCPS prior to the meeting. At the DRS, DCPS offered to resolve the complaint through placement in a previously undisclosed D.C. public school named the Hamilton Center.

On August 31, 2010 DCPS filed its untimely response, failing to address any of the six legal issues raised in the complaint. *See*, Attachment B.

In its response, DCPS claimed only that Hamilton Center could implement C's IEP as it was written at the time of filing, and therefore Hamilton Center would be appropriate. *See*, Attachment B, page 2. DCPS did not address whether the IEP itself as written was appropriate, nor whether at the time of filing DCPS had failed to ensure the implementation of an appropriate IEP, failed to provide an appropriate placement or issue prior notice, or failed to convene a legally sufficient IEP meeting or to ensure the Petitioner's participation in any placement decision.

At a pre-hearing conference on September 3, 2010, after prompting from the Hearing Officer, Respondent stated DCPS's position that the IEP was appropriate at the time of filing. Respondent did not provide a response to any of the remaining five issues from the complaint.

At the end of the pre-hearing conference, Petitioner's counsel stated Petitioner's intent to file a Rule 8(b)(6) motion regarding the failure to provide a response on any of the remaining issues.

### **III. Legal Argument:**

#### **A. Respondent must provide notice as to what is being defended at a hearing and why.**

A fundamental portion of any legal proceeding is notice. For cases brought under the Individuals with Disabilities in Education Improvement Act ("IDEIA"), complaints must be sufficient to provide Respondents notice of the issues to be addressed and the facts underlying each issue. *See*, 20 USC §1415(c)(2)(B); CFR § 300.508(e); DCPS Special Education Student Hearing Office Standard Operating Procedures ("SOP") §303(B)(1). Equally, Respondents must provide a response to the complaint that provides notice to a Petitioner not just which areas will be defended at a hearing, but why the Respondent has chosen to defend those issues. *See*, *Id* . Because of the absence of any response from DCPS on five of the six legal issues raised in the complaint, despite numerous opportunities, Petitioner has had to prepare her case without any notice regarding what areas beyond the appropriateness of the IEP Respondent is intending to defend.

#### **B. Federal and State Rules of Procedure Provide Remedy for Petitioners who are not provided appropriate notice regarding a Respondent's decision to defend legal issues raised in a complaint.**

Federal and State rules of procedure dictate that when specific denials are required, all issues not specifically denied by a Respondent be deemed admitted. *See*, Fed. R. Civ. P. 8(b)(6); D.C. Sup. Ct. Civ. P. 8(d). In its written answer to the complaint, Respondent did not issue denials to any of the six issues raised in the complaint, choosing instead to discuss the Respondent's proposed remedy. At the pre-hearing conference, counsel for Respondent only stated his client's desire to defend the appropriateness of C's IEP. Respondent did not indicate

any other issues that would be defended at the hearing, or any basis for a defense of any further issues. Even after counsel for Petitioner indicated Petitioner's intention of filing the instant motion based on Respondent's failure to properly respond under the law, Respondent has failed to issue any response to the five outstanding legal issues.

Consequently, the appropriate remedy under federal and state rules of procedure, and looking to issues of justice and equitable relief is to consider all allegations not addressed by respondent according to the IDEIA and DCPS's Student Hearing Office's Standard Operating Procedures to be admitted. *See*, Fed. R. Civ. P. 8(b)(6); Fed. R. Civ. P. 8(e); D.C. Sup. Ct. Civ. P. 8(d). As the Respondent failed to respond to the legal issues raised in the complaint, failed to address the deficiency orally during the pre-hearing conference, and failed to respond either orally or in writing after being put on notice of Petitioner's intent to file the instant motion, Respondent's lack of a response must be read as an admission.<sup>1</sup>

#### **IV. Conclusion:**

Based on the foregoing facts and argument, Petitioner's requests that the following issues raised in the complaint and unaddressed by Respondent be deemed admitted:

- (1) DCPS's failure to ensure implementation of an appropriate IEP for the 2010/2011 school year;
- (2) DCPS's failure to provide an appropriate placement for C for the 2010/2011 school year;
- (3) DCPS's failure to ensure Ms. G's participation in any placement decision regarding the 2010/2011 school year;
- (4) DCPS's failure to issue prior written notice regarding placement for the 2010/2011 school year;
- (5) DCPS's failure to convene or support the convention of a legally sufficient IEP and/or MDT and/or placement meeting during the 2009/2010 school year

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<sup>1</sup> Though respondent reserved the right to amend their response in the footnotes of its insufficient answer, the law affords no such right. Additionally, Respondent was provided ample opportunity to amend – both orally and in writing – and chose against any revision. Allowing any such amendment at this point would be contrary to both the letter and the spirit of the law.

As such, the only outstanding legal issue to be determined at the hearing is the issue of whether or not the February 25, 2010 IEP was appropriate and what remedy is required for DCPS's denial of FAPE for Petitioner.

Petitioner respectfully requests this motion be granted to ensure the hearing may move forward equitably and efficiently under the law.

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**Certificate of Service**

I hereby certify that on \_\_\_\_\_, a copy of the foregoing Motion that All Issues not Specifically Denied by the Respondent be Deemed Admitted has been sent via facsimile and electronically filed with the following:

Hearing Officer Terry Banks, Esq  
Independent Contractor with the Office of the State Superintendent of Education  
Fax: (202) 698-3825  
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Lauren Onkeles

Issue:	Law	Evidence
Whether DCPS failed to timely <b>identify, locate, and/or appropriately evaluate</b> Moses for special education eligibility.	<ul style="list-style-type: none"> <li>• CFR 300.111 Child Find</li> <li>• DCMR 5-E3004.1 – referral to IEP team</li> <li>• DCMR 5-E3005.1 – Ensure a full and individual eval for each child with a suspected disability</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluations</li> <li>• Malcolm X report Cards (showing all 1's)</li> <li>• Fact that he failed DCPS kindergarten</li> <li>• Mom's testimony re: classroom difficulties</li> </ul>
Whether DCPS <b>failed to review</b> all of the data in its possession in order to determine Moses's particular category of disability, his present levels of performance, and his needs for special education and related services, <b>in order to develop an appropriate Individualized Education Plan</b> and determine an <b>appropriate educational placement</b> .	<ul style="list-style-type: none"> <li>• DCMR 5-E3006.3 – IEP team all assessment reports in evaluating a child</li> <li>• 34 C.F.R. 300.324 – Development, review and revision of IEP</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluations</li> <li>• Testimony from Mom about when she brought them</li> <li>• Testimony from Amanda re: teacher/counselor saying it was an inappropriate placement?</li> </ul>
Whether DCPS <b>failed to create and implement an appropriate, or any, Individualized Education Plan</b> for Moses to address his special education needs.	<ul style="list-style-type: none"> <li>• DCMR 5-E3009.1 – an IEP for a child with a disability shall include...</li> <li>• 34 C.F.R. 300.320-Defn of IEP</li> <li>• 34 C.F.R. 300.324 – Development, review and revision of IEP</li> </ul>	-Absence of an IEP in the face of his evaluations, classroom struggles and poor academic performance
Whether DCPS failed <b>to provide Moses an appropriate educational placement</b> to address his unique special needs.	<ul style="list-style-type: none"> <li>• DCMR 5-E3013 – placement requirements</li> <li>• 34 C.F.R. 300.116/CDCR 5-3013.1 - LEA must make sure placement determination conforms with LRE, based on child's IEP (and therefore the child's needs).</li> </ul>	<ul style="list-style-type: none"> <li>• Sheila's testimony re: teacher comments on his behavior, her observations</li> <li>• Ms. Lyones's testimony</li> <li>• Amanda's testimony on classroom observation</li> <li>• Thomasson Lourie testimony</li> </ul>
Whether DCPS fail to provide Moses with a <b>Free Appropriate</b>	<ul style="list-style-type: none"> <li>• DCMR 5-E3000.1 – all kids get FAPE</li> </ul>	<ul style="list-style-type: none"> <li>• Reports cards, testimony re: classroom behavior, lack of</li> </ul>

<b>Public Education</b>	<ul style="list-style-type: none"> <li>• 34 C.F.R. 300.17 FAPE defined</li> </ul>	<p>friends: Lack of measurable progress both academically and social/emotionally</p>
<p>Whether DCPS wrongfully excluded Moses from his education by <b>illegally removing him from his classroom without following procedure for any type of suspension</b> and without considering if Moses's actions were <b>manifestations of his disabilities</b></p>	<ul style="list-style-type: none"> <li>• DCMR 5-B2504 – applies to on and off site suspension</li> <li>• DCMR 5-B2505.3 – students who are proposed to be expelled/suspended get a conference</li> <li>• DCMR 5-B2505.4 – what the conference must include</li> <li>• DCMR 5-B2505.6 – written notice of suspensions</li> <li>• DCMR 5-B2510.3 – removal for more than 10 days requires a manifestation hearing</li> <li>• DCMR 5-B2510.23 – notice of a student with a disability</li> <li>• DCMR 5-B2510.6 – FAPE must be available to all students who have been suspended</li> <li>• DCMR 5-B2599.2 – Defn of Suspension/Short term removal from classroom</li> </ul>	<ul style="list-style-type: none"> <li>• Ms. Lyones's testimony re: number of times she is called, when he is excluded from the classroom, where he is sent, fact that she has received nothing in writing</li> <li>• </li> <li>• Amanda's testimony where teacher told her that he was sent out to different places and that he was suspended (ISS)</li> </ul>

**Issue 1:** Whether DCPS failed to timely **identify, locate, and/or appropriately evaluate** Moses for special education eligibility.

- CFR 300.111 Child Find
  - State must have in place policies and procedures to ensure that all children with disabilities residing in the State....and who are in need of special education and related services are identified, located and evaluated
- DCMR 5-E3004.1 – referral to IEP team
  - (a) A child with a suspected disability who may need special education and is at least two years, eight months of age and less than twenty-two years of age, **shall be referred**, in writing, to an IEP team.
  - (b) A referral, which shall state why it is thought that the child may have a disability may be made by the following:
    - (1) **A child's parent** or person in a parental relationship; or
    - (2) A child (self-referral) who is between the ages of eighteen (18) and twenty-two (22) years of age or an emancipated minor who is eligible to attend the LEA; or
    - (3) **A professional staff employee of the LEA**; or
    - (4) A staff member of a public agency who has direct knowledge of the child.
  - (c) If the child to be referred attends a D.C. public school or is enrolling in a D.C. public school at the time this referral is made, this referral shall be submitted by his or her parent to the building principal of his or her home school, on a form to be supplied to the parent by the home school at the time of the parent's request.
  - (d) If the child to be referred does not attend a D.C. public school and the parent does not register the child to attend a D.C. public school at the time the referral is made, this referral shall be submitted by the parent to a site designated by the Superintendent on a form to be supplied to the parent by that site at the time of the parent's request.
  - (e) Following a referral, an IEP team shall meet to review:
    - (1) Existing Data;
    - (2) Information from the parent;
    - (3) Pre-referral interventions and strategies;
    - (4) Current classroom-based assessments; and
    - (5) Observations by teachers and related service providers.
- DCMR 5-E3005.1 – Ensure a full and individual eval for each child with a suspected disability
  - 3005.1 The LEA shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine:
    - (a) if the child is a "child with a disability" under this Chapter; and
    - (b) the educational needs of the child.

Documentary Evidence:

- Evaluations of Moses while in South Carolina [Enumerate these]
  - Evidence that there was a suspected disability
- Moses's kindergarten report card
  - Shows that he was retained – evidence of possible disability
- Malcolm X grade 2 and 3 reports cards
  - Shows that he was not making progress in school – evidence of a possible disability
- SST report

- Shows more concerns over behaviors that could be indicative of a disability

#### *Testimonial Evidence*

- Sue Lyones:
  - When she brought the evaluations to Malcolm X
    - Evidence that they had knowledge during the asserted time frame
  - Testimony that she asked for help for him
  - Testimony that she only received an SST process
    - Evidence that DCPS never considered Moses for special education

#### *DCPS Response*

- DCPS does not suspect that the student has a qualifying disability

**Issue 2:** Whether DCPS **failed to review** all of the data in its possession in order to determine Moses's particular category of disability, his present levels of performance, and his needs for special education and related services, **in order to develop an appropriate Individualized Education Plan** and determine an **appropriate educational placement**.

- DCMR 5-E3006.3 – IEP team all assessment reports in evaluating a child  
The IEP team **shall consider all assessment reports** in completing any evaluation of a child suspected of having a disability, or, in the case of reevaluation, any child identified as having a disability under this section. As the result of its consideration, the IEP team will determine whether the child:
  - (a) is a child with a disability under this Chapter (or, in the case of reevaluation, whether the child continues to be a child with a disability); and
  - (b) whether the child needs special education and related services (or, in the case of reevaluation, whether the child continues to need special education and related services).
- 34 C.F.R. 300.324 – Development, review and revision of IEP
  - (a) Development of IEP (1) General. In developing each child's IEP, the IEP Team must consider –
    - (i) The strengths of the child;
    - (ii) The concerns of the parents for enhancing the education of their child
    - (iii) The results of the initial or most recent evaluation of the child; and
    - (iv) The academic, developmental and functional needs of the child
  - (2) Consideration of Special factors. The IEP team must –
    - (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports and other strategies, to address that behavior

*Documentary Evidence:*

- Evaluations
  - Evidence of assessment reports in DCPS possession

*Testimonial Evidence:*

- Testimony from Mom about when she brought DCPS the evals
  - Evidence that the reports were in DCPS possession
- Testimony from Mom that an eligibility meeting was never called
- Testimony from Amanda re: teacher/counselor saying it was an inappropriate placement?
  - Evidence that DCPS failed to determine an appropriate placement
- 

*DCPS Response*

- DCPS will schedule a meeting to review the evaluations

**Issue 3: Whether DCPS failed to create and implement an appropriate, or any, Individualized Education Plan for Moses to address his special education needs.**

- DCMR 5-E3009.1 – an IEP for a child with a disability shall include...
  - (a) A description of the child's present levels of academic achievement and functional performance, including **how the child's disability affects the child's involvement and progress in the general education curriculum** (the same curriculum as for non-disabled children), and for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
  - (b) Omitted
  - (c) A statement of measurable annual goals, including academic and functional goals, designed to:
    - (1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (2) Meet each of the child's other educational needs that result from the child's disability;
  - (d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or support for school personnel that will be provided for the child:
    - (1) To advance appropriately toward attaining the annual goal;
    - (2) To be involved and make progress in the general education curriculum in accordance with § 3011.1 of this Chapter and to participate in extracurricular and other nonacademic activities; and
    - (3) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this section;
  - (e) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the general education class and in the activities described in paragraph (d) of this subsection;
  - (f) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with the guidelines established for alternate assessments;
  - (g) If the IEP Team determines that the child shall take an alternate assessment on a particular District-wide assessment of student achievement, a statement by the team of:
    - (1) Why the child cannot participate in the regular assessment; and
    - (2) How the particular alternate assessment selected is appropriate for the child;
  - (h) The projected date for the beginning of the service and modifications described in paragraph (d) of this section and the anticipated frequency, location, and duration of those services and modifications;
  - (i) A statement of how the child's progress toward the annual goals will be measured and how the child's parent will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled child's progress, of:
    - (1) The child's progress toward annual goals; and
    - (2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
- 34 C.F.R. 300.320-Defn of IEP
  - (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed and revised in a meeting in accordance with 300.320 through 300.324 and that must include:...
- 34 C.F.R. 300.324 – Development, review and revision of IEP
  - See above

*Documentary Evidence:*

- 

*Testimonial Evidence:*

- Ask Ms. Lyones if she had ever been invited to an eligibility meeting/MDT meeting/IEP meeting
- Look for questions on cross as well

*DCPS Response*

- The student does not have an IEP because, at this time, he is not a student with a disability under the IDEA

**Issue 4: Whether DCPS failed to provide Moses an appropriate educational placement to address his unique special needs.**

- DCMR 5-E3013 – placement requirements  
3013.1 The LEA shall ensure that the educational placement decision for a child with a disability is:
  - (a) 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;
  - (b) Made in conformity with the Least Restrictive Environment (LRE) provision of the Act and § 3011 of this Chapter;
  - (c) Made within timelines consistent with applicable local and Federal law;
  - (d) Determined at least annually after his or her initial placement;
  - (e) Based on the child's IEP; and
  - (f) Is as close as possible to the child's home.
- 34 C.F.R. 300.116/CDCR 5-3013.1 - LEA must make sure placement determination conforms with LRE, based on child's IEP (and therefore the child's needs).  
In 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; and
    - (2) Is made in conformity with the LRE provisions of this subpart, including 300.114, through 300.118;
  - (b) The child's placement –
    - (1) Is determined at least annually;
    - (2) Is based on the child's IEP; and
    - (3) Is as close to home as possible to the child's home
  - (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
  - (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
  - (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

#### *Documentary Evidence*

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#### *Testimonial Evidence*

- Sheila's testimony re: teacher comments on his behavior
  -
- Sheila's testimony re: teacher comments on needs
  - Evidence of
- Amanda's testimony re: meltdown in classroom
  -
- Lyons' testimony re: SunRise – what it's about, what it could provide
  - Evidence of the appropriateness of the remedy
-

*DCPS Response*

- The student is not eligible for special education at this time, so his placement is in the general education setting.

Response

-

### **Issue 5: Whether DCPS fail to provide Moses with a Free Appropriate Public Education**

- DCMR 5-E3000.1 – all kids get FAPE  
All local education agencies (LEA) in the District of Columbia shall ensure, pursuant to the Individuals with Disabilities Education Act (IDEA), that all children with disabilities, ages three to twenty-two, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE) and that the rights of these children and their parents are protected.
- 34 C.F.R. 300.17 FAPE defined  
Free appropriate public education or FAPE means special education and related services that-
  - Are provided at public expense, under public supervision and direction and without charge
  - Meet the standards of the SEA, including the requirements of this part;
  - Include an appropriate preschool, elementary school or secondary school education in the State involve; and
  - Are provided in conformity with an individualized education program (IEP) that meets the requirements of 300.320 through 300.324

#### *Documentary Evidence*

- Reports cards – to evidence the inappropriate nature of the elementary school as measured by lack of progress

#### *Testimonial Evidence*

- testimony re: classroom behavior from Amanda and Sheila
- lack of friends:
- Lack of measurable progress both academically and social/emotionally – Mom?

#### *DCPS Response:*

- The student is not currently eligible for special education, so he is not entitled to a FAPE under the IDEA

#### *Response*

- DCPS' failure to identify a child cannot be equated with ineligibility

**Issue 6:** Whether DCPS wrongfully excluded Moses from his education by **illegally removing him from his classroom without following procedure for any type of suspension** and without considering if Moses's actions were **manifestations of his disabilities**

- DCMR 5-B2504 – applies to on and off site suspension
- DCMR 5-B2505.3 – students who are proposed to be expelled/suspended get a conference
- DCMR 5-B2505.4 – what the conference must include
- DCMR 5-B2505.6 – written notice of suspensions

- DCMR 5-B2510.3 – removal for more than 10 days requires a manifestation hearing
- DCMR 5-B2510.23 – notice of a student with a disability (part a specifies that if the parent is illiterate notice is different)

DCPS is deemed to have knowledge that a child is a child with a disability if

- The parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to supervisory or administrative personnel of [DCPS], or a teacher of the child, that the child is in need of special education and related services;
  - The parent of the child has requested an evaluation of the child; or
  - The teacher of the child or other personnel of DCPS has expressed specific concerns about a pattern of behavior or performance of the child to the Director of Special Education or to other DCPS personnel.
- DCMR 5-B2510.6 – FAPE must be available to all students who have been suspended
  - DCMR 5 – B2599.3 –
    - “Suspension” - the denial of the right of a student to attend any DCPS school or program, including all classes and school activities, except in an approved Alternative Educational Setting, in no event exceeding ninety (90) school days pursuant to the provisions of this chapter.
    - “Temporary Removal of Student from Classroom” - removal from the student’s classroom for less than half a school day, not to extend beyond the time of dismissal on the day of the disciplinary action. During any such removal, the student shall be supervised and provided with instructional materials.

#### *Documentary Evidence*

- Suspension form from May 13, 2010

#### *Testimonial Evidence*

- Ms. Lyones’s testimony re: number of times she is called, when he is excluded from the classroom, where he is sent, fact that she has received nothing in writing
- Amanda’s testimony where teacher told her that he was sent out to different places and that he was suspended (ISS)
- Testimony that there is no SEC
- Sheila’s testimony that teacher told her he needed

*DCPS Response:*

- The student is not currently a student with a disability under the IDEA, so he is not entitled to the discipline protection of the IDEA

*Response*

- Inaccurate bc DCPS will be on notice that he is suspected bc of Mom's concerns (no need for writing) and teacher's concerns (expressed in form of SST bc there is no SEC)

## **Dispute Resolution Session Cheat Sheet**

### **Applicable Law**

- 20 USC §1415(f)(1)(B)
- 34 CFR §300.510
- Student Hearing Office Standard Operating Procedures (SOP)

### **What is a DRS?**

- After DP complaint is filed, parent is entitled to DRS with the school district to try to resolve the legal issues in the complaint prior to the hearing
- There is no mediator/arbitrator present at a resolution session- simply an opportunity for parents and school officials to come to an early resolution
- The parents “discuss their complaint, and the facts that form the basis of the complaint, and the LEA is provided the opportunity to resolve the complaint.” 20 USC §1415(f)(1)(B)(i)(IV)
- DCPS often refers to this session as a Resolution Mediation Session (RMS)

### **When will the DRS take place?**

- Must occur within 15 days of the school district’s receipt of the parent’s due process complaint
- Can be waived if the parent and LEA agree in writing to waive the meeting or agree to use the mediation process instead (Due process hearing can then be scheduled to occur not later than 20 days after the waiver (SOP §400.1)).
- DCPS or the charter school will usually contact you to set up the DRS.

### **Who should be there?**

- Parents (but the child does not need to be there)
- Relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint (as determined by parent and LEA)
- A representative of the LEA who has decision-making authority on behalf of the LEA
- May not include an attorney for the LEA unless the parent is accompanied by an attorney

### **Where will the DRS take place?**

- Usually at the school
- If the child attends a private school through the voucher program or if it is during a school break, may take place at DCPS Headquarters or alternate location
- Can request to have the meeting at DCPS if there is a reason not to have it at the school

### **Preparing for the Dispute Resolution Session**

- Review each of the legal issues
- Review the facts, including the child’s school history
- Review the requirements for a dispute resolution session
- Be prepared to ask whether all of the right team members are present
- Be prepared to object on the record if the legal requirements are not met
- Bring a colleague with you to the meeting in case you need a witness later

### **Preparing With Your Client for the Dispute Resolution Session**

- Tell your client what to expect- the purpose of the DRS, who will be there
- Prepare your client for any questions he/she may be asked directly

- Discuss with your client what he/she is willing to settle for
- Explain to your client that he/she has the opportunity at any time to ask you questions/step out of the room with you

#### **The Realities (What to Expect)**

- DCPS sometimes fails to convene a resolution session
- Often no school official present with decision-making authority to resolve the issues in the complaint
- Often no school official present with knowledge of all of the legal issues/facts in the complaint
- Ask about the above issues on the record
- Often the LEA offers the status quo/another meeting
- Sometimes a DCPS lawyer will be there
- Don't give away your whole case!
- DCPS will ask you to sign a form indicating whether the case was resolved. You should get a copy of this form and send it to the Hearing Officer as soon as possible so that the resolution period will end.

#### **What if we actually succeed at a DRS?**

- Sometimes cases are actually resolved at a DRS. This is especially true where the case does not involve a private placement.
- DCPS will rarely settle just part of a case.
- If a settlement is reached, the parties should execute a written, legally binding settlement agreement. 20 USC § 1415(f)(1)(B)(iii)-(iv).
- Both parent and representative of the LEA with to bind the LEA should sign
- Settlement agreement is enforceable in any State court of competent jurisdiction.
- Review period: a party can void the agreement within three business days of its execution (execution = signing by both parties)

#### **What if the Dispute Resolution Session never happens?**

- If the LEA fails to convene the DRS, don't push them to do so- this failure strengthens your case in a pre-hearing motion or at due process hearing
- If the LEA fails to hold the DRS within 15 days, parent may seek intervention of a hearing officer to begin the 45 due process hearing timeline. 34 CFR § 300.510(b)(5) (i.e. file a motion to schedule the hearing).

## **Filing a Due Process Complaint – Cheat Sheet**

### **Timelines, How to File, Scheduling**

Consult All 3 Sources of Law

- IDEIA
- DCMR
- Student Hearing Office Standard Operating Procedures (SOP)

#### **Timelines**

- 1) Within 10 days of the filing of the Complaint, DCPS must file a Response in conformity with 20 USC 1415(b)(7)(B), unless DCPS previously issued a Prior Written Notice pertaining to the matters in the Complaint
- 2) 30 days for resolution period:
  - a. Within 15 days DCPS must convene a Dispute Resolution Session
  - b. An additional 15 days is allotted for the parties to reach a resolution on their own
- 3) After the 30 day resolution period is completed (or sooner if parties agree no resolution is possible), a hearing must be scheduled and decision issued within 45 days.

#### **How to File a Complaint**

- Fax or hand deliver a copy of the complaint to the Student Hearing Office and DCPS Office of General Counsel
- Keep the fax confirmation sheet as proof of filing or get a date stamp from SHO and OGC if hand delivering
- The complaint is considered filed on that day if it is served on DCPS before 5pm.
- If filing against a charter school or non-public school, also file with the principal or director
- Contact information for the Student Hearing Office:  
Student Hearing Office  
810 1st Street NE, 2<sup>nd</sup> Floor  
Washington, DC 20002  
Phone: (202) 698-3819  
Fax: (202) 478-2956
- Contact information for the DCPS Office of General Counsel  
1200 First St., NE, 10<sup>th</sup> Floor  
Washington, DC 20002  
Phone: (202) 442-5000

Fax: (202) 442-5115 (for filings/serving documents)

Other fax: (202) 442-5097/5098

**Scheduling the Hearing**

- If the LEA has not resolved the complaint within 30 days of receipt of the complaint, the hearing is scheduled so that HOD will be issued within 45 days.
- Once the resolution period ends, the Hearing Officer will convene a pre-hearing conference (PHC). During the PHC, the hearing will be scheduled, so you should be prepared with dates when you and your witnesses will be available. You should also be prepared to justify how much time you will need for the hearing.
- The hearing dates will be reflected in the Prehearing Order that will be issued after the PHC.