DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, D.C. 20003

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STUDENT HEARING OFFICE
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(AMENDED)*[1]

STUDENT,[2]

Petitioners,

versus

District of Columbia Public Schools,

Respondent.

HEARING OFFICER DETERMINATION

Date Issued: March 18, 2011

Wanda I. Resto Torres, Hearing Officer

Case No:

Hearing Date: February 28, 2011, Room: 2009

INTRODUCTION

The Petitioner filed a Due Process Complaint ("Complaint") on January 18, 2011, alleging that the Student was denied a free appropriate public education ("FAPE"). The Petitioner asserted the District of Columbia Public Schools ("DCPS") convened an eligibility team that was inappropriate because it lacked a regular education teacher, and that it failed to determine the Student eligible for special education and related services, failed to provide a behavior intervention plan as part of an individualized education program ("IEP"), and failed to provide an appropriate educational placement during the 2010-2011 academic year.

proclaim

On February 2, 2011, DCPS filed a response indicating that the Student is not a student with a disability and is not entitled to an IEP or a special education placement. In addition, the Respondent argued that a regular education teacher was not required on the eligibility team because it was not making a determination of whether a child is suspected of having a specific learning disability. The Respondent requested that all relief requested be denied.

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[1] The HOD is amended to clarify that one witness testified on behalf of the Respondent as is indicated in footnote 12.
[2] Personal identification information is provided in Appendix A.

The jurisdiction for the due process hearing, and for a decision in this matter is conferred by the Individuals with Disabilities Education Improvement Act ("IDEIA" 20 U.S.C. §§1400 et seq.), its implementing regulations, 34 C.F.R § 300 et seq., the District of Columbia Municipal Regulations, Title 5, Chapter 30, Education of the Handicapped, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures.

I was appointed as the Hearing Officer on January 19, 2011. The parties held a resolution meeting on February 1, 2011 and did not reach an agreement. On February 7, 2011, a prehearing conference was held in the above matter. The Pre-Hearing Conference Summary and Order was issued on February 9, 2011.

On February 28, 2011, a closed hearing was held. Domiento C.R. Hill, Esq. represented the Petitioner and Daniel McCall, Esq. represented the Respondent. The Petitioner presented seventy-two documents; they were admitted into evidence and labeled P-1 through 29 and 39 through 72.[3] Three witnesses testified on behalf of the Petitioner: the Mother, the Psychologist and the Director of the Private School. The Respondent presented nine documents; seven were admitted into evidence and labeled DCPS 3 through 6. One witness testified on behalf of the Respondent: the Special Education Coordinator. No written closing arguments or briefs were submitted.

The issues to be determined are as follows:

a. Whether the multidisciplinary team ("MDT") that met on November 19, 2010, was required to include a regular education teacher, and failed to do so in violation of 34 C.F.R. §§300.306 and 300.321?

b. Whether on November 19, 2010, the MDT inappropriately determined the Student not eligible for special education and related services although an independent comprehensive psychological evaluation conducted a month earlier indicated that the Student is eligible for special education under the "Other Health Impaired" category as a result of having an Attention Deficit Hyperactivity Disorder that

[3] Petitioner documents identified as P30-37 were not admitted for lack of relevancy.

adversely impacts his education? Is the Student eligible for special education pursuant to 34 C.F.R. § 300.8?

c. Did the multidisciplinary team that met on November 19, 2010 inappropriately consider the Student's educational progress as a reason to determine he was not eligible for special education services? Is there a violation of 34 C.F.R. §300.305?

d. Did DCPS fail to propose an IEP designed to meet the Student's unique needs as required by 20 U.S.C. §1401(9), 34 C.F.R. §§300.1, 300.17 and 300.320?

e. Should DCPS have developed an IEP and provided the Student a continuum of services as indicated in DCMR 3012 and 34 C.F.R. §300.115(a)?

f. Whether DCPS failed to comply with 34 C.F.R. § 300.324(i), when it did not include a behavioral intervention plan ("BIP") as part of an IEP for the Student?

g. Did DCPS fail during the 2010-2011 academic year to provide a Student who is eligible for specialized instruction an educational placement to meet his unique needs in violation of 34 CFR §300.116; and DCMR 5§ 3012.1?

h. Does the Petitioner's school choice meet the Student's unique educational needs?

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The parties stipulated:
   a. A September 9, 2010, a settlement agreement authorized the Petitioner to obtain independent comprehensive psychological and a functional behavior assessment.
   b. On November 19, 2010, a multidisciplinary team determined the Student not eligible for special education and he is not receiving special education services.
   c. The Student was involuntarily transferred to another middle school.

d. The Respondent invited the Petitioner to an eligibility meeting and offered three dates in February 2011.

2. The Student has a history of problems socializing with his peers since 2004 when he was in kindergarten. In the first grade, teachers complained the Student was getting in other students' space, was disrespectful to teachers, talked back, did not follow directions and was so disruptive to the classroom environment that teachers were unable to teach the other students. That same year he verbalized a desire to himself while at school; he made an attempt by The School Counselor made a recommendation for the Student to be evaluated by a doctor prior to returning to school. He was evaluated by a physician at Children's Hospital and a diagnosis of a major depressive disorder was made. In the grade, the Student another student in the face and he was suspended from class. In and grade he continued to struggle with disruptive behavior and anger in class.[5] In the grade the Student was suspended from school for an altercation with other students; he was removed from his math class and placed in a grade classroom from March 2010 through June 2010. He has difficulty with organization, often forgets part of his work projects and has difficulties managing his time with large projects. The Student is constantly out of class and sent to the office; his grades fluctuate. He was involuntary removed from advanced learners' courses in school and sent to his neighborhood middle school where there is no possibility of him receiving advanced courses.[6]

3. In 2009, the Student was diagnosed with attention deficit hyperactivity disorder ("ADHD"). The Student also has epilepsy; while at school he had a seizure and the staff was not prepared to address the episode. In December 2009, a section 504 Plan was developed to address the Student's problematic behavior. It required that the Student be seated near the teacher and near another student who would serve as a positive role model. It also provided for a reward system to be put in place to encourage good behavior.

[5] P 42 and 43, 47, 55, 57, Teachers Comments from 2005-2008; P 6, 38 -Notice of Disciplinary Action 2006 and 2010; and testimony of the Petitioner.

[6] P54 February 12, 2004 - Teacher Comments, P 52- December 21, 2004- Letter from School Counselor, P 55 February 14, 2005 - Teacher Comments, P 42 and P 43 January 13, 2005- Notes from Teacher and testimony of the Petitioner.

4. At a September 2010 meeting to review accommodations under the Section 504 Plan[7], the team identified organization as the area of disability for the Student and agreed to provide under the 504 Plan the following accommodations:
   - the teacher was to read, repeat instructions and write important words for the Student;
   - the Student was to check in with an adult around midday to review his planner and assignments;
   - all teachers were to support the Student in assuming more responsibility to manage and successfully accomplish his work;
   - the teachers were to be vigilant of the Student's focus and prompt him to get back on task;
   - a positive reinforcement program would be put in place;
   - breaks were to be built into his classes.

   The Team agreed to review accommodations at the end of the advisory and include all teachers in the next meeting. It was recommended that the teachers consider the need for accommodations to standardized and district tests. [8]

5. On October 8 and 13, 2010, the Student was observed by the Clinical Psychologist in the Student's Band, Pre-Algebra, Math and Spanish classes. The Student followed directions and was focused in most situations except in the Spanish class. The observation did not reflect problematic behaviors during the visits. However, the Student's instruction time was interrupted when he was sent to the principal's office to address an incident with another student. The observer does mention that focusing is a challenge for the Student in situations where intense focus and attention may be expected. She recommended that the Student participate in counseling sessions that focus and anger management and impulsivity control and that a Behavior Intervention Plan ("BIP") be developed across all classroom settings.[9]

6. The Student's full scale IQ score is 101, in the Average range of intellectual functioning. His score in Broad Reading is 128 (Superior); Broad Math score is 111 (High Average); and his Broad Written language score is 130 (Superior). The Student has exceptional abilities in all

[7] Pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
[8] P 20 –September 8, 2010 -Section 504 plan
[9] P12 October 22, 2010 -functional behavior assessment ("FBA"), and testimony of the clinical psychologist.

academic areas assessed (math, reading, written expression). The Clinical Psychologist recommended efforts should be made to place the Student in classes designed for advanced learners. There is a big discrepancy between the Student's verbal abilities, which are at a grade equivalent of 14.2, and the Student's thinking abilities, which are at a grade equivalent of 5.2. (below average). His cognitive efficiency was 5.8 -- also below average.

7. In his first advisory report in October 2010, the Student received an A in Science, an A in Pre-Algebra, a "B" in English, and a "C" in Spanish.[10]

8. According to the Clinical Psychologist, the Student's interpersonal problems reflect his difficulties with impulsivity and are related to his ADHD diagnosis. The Student does not take time to think about the pros and cons of his actions before he performs them. The Student often fails to give close attention to detail and makes careless mistakes in schoolwork; he often has difficulty sustaining attention; he does not always follow through on instruction; and he is easily distracted by extraneous stimuli. The Student also fidgets with hands or squirms in seat and talks excessively. The symptoms are present both at home and in school. The aforementioned behaviors are maladaptive and inconsistent with the Student's current developmental level. The Clinical Psychologist opined the Student meets the criteria for ADHD combined type disorder. She suggested that because the Student has ADHD and epilepsy that the Student classifies in the school system as a student who is other health impaired," and should receive related services based on this diagnosis. The Clinical Psychologist indicated the Student requires accommodations and specific instruction to address his abilities to plan, initiate, organize and monitor his behavior. She stated his difficulties with ADHD are affecting his relationship with peers and teachers. She recommended that the Student receive support at his school in the form of cognitive-behavioral counseling. She also recommended that a behavior intervention plan be implemented. [11]

9. According to a DCPS School Psychologist, the Student's cognitive profile reveals that he has average to high-average intelligence, which indicates he has the potential to succeed

[10] DCPS 5 - October 25, 2010 -First advisory report on Student progress.
[11] P11- October 21, 2010, Independent Comprehensive Psychological Evaluation.

academically. She indicated that based on the Student's A and B grades and proficient scores on the DC-CAS, she did not believe that the Student had suffered academic impact. According to the DCPS School Psychologist, the results of the BASC-II and the ADHDT revealed that the Student displays inattentive, hyperactive and aggressive behaviors at home and in school. It was reported that the Student is provoked to anger when he does not get what he wants or when he disagrees with something. School records confirm that Student has been suspended on two occasions during academic year 2010-2011 for verbally aggressive behavior and fighting. These behaviors happen with both students and teachers, can occur in any classroom setting, and last for several minutes. According to the School Psychologist, the Student's ADHD is the main reason for some of the inattention and troubled relationships he has in school. She deemed the 504 plan strategies successful academically. She stated that Student could benefit from a 504 plan based on his documented diagnoses of ADHD and epilepsy. It is her belief that academic modifications, accommodations and behavioral supports are needed by the Student and she adopted some of the independent of comprehensive psychological evaluation recommendations.[12] The School Psychologist concluded the Student's grade and standardized test information suggests that he is able to access the general education curriculum with success.

10. On November 19, 2010, a multidisciplinary team ("MDT") acknowledged the Student has epilepsy and was diagnosed with ADHD. The MDT agreed the Student was hyperactive and exhibited aggressive behaviors, and the LEA representatives of the MDT determined that although those conditions exist they were "found in class within limits." The LEA-MDT members decided that the Student did not meet the eligibility requirements for special education services and that he would maintain the modifications and school counseling under the plan adopted under section 504 of the Rehabilitation Act.[13]

11. On December 17, 2010, the Student was involuntarily transferred to his neighborhood school as a result of a pattern of threatening and harassing behaviors. The transferring Principal indicated that the safety and welfare of other students could be jeopardized by maintaining the

[12] P16 - April 19, 2010, Student Results DC CAS; P 50 April 17, 2007- Student Results DC CAS; and P13 - November 5, 2010, Review of independent psychological evaluation.
[13] DCPS 4 - November 19, 2010, MDT meeting notes.

Student's placement at the middle school. The transfer was approved by the Instruction Superintendent on December 30, 2010.[14] Since enrollment in January 2011 in the current middle school, the Student has not had any behavior problem at school.[15]

12. The Petitioner seeks placement of the Student at a non-public special education school in the District of Columbia. In the school in which the Petitioner seeks placement, there are approximately 225 students in grades K-12. The K-8 grades program is un-graded. There are 70-75 students in the middle school program. The curriculum is the standard approved by DCPS. The student teacher ratio is 10 to 11 students per class, with one special education teacher and one teacher assistant. Related services at the school are available in pullout sessions and are also integrated into classroom.[16]

Preliminary Matter

The Petitioner claimed that the multidisciplinary team ("MDT") that met on November 19, 2010 was required to include a regular education teacher. Pursuant to 20 U.S.C. § 1414(4)(A) "the determination of whether the child is a child with a disability as defined in 20 U.S.C. § 1401(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child ...." See 34 C.F.R. §300.306.1. The statute does not require that a regular education teacher be present.

The IDEIA regulations provide that the regular education teacher is only required when the group is making a determination of whether a child is suspected of having a specific learning disability. 34 C.F.R. §300.308.2. The MDT was not making such a determination in this case. Thus, there was no evidence that the IDEIA required DCPS to include a regular education teacher in the present case, and as a result, Petitioner's claim that the MDT was inappropriate because it did not include a regular education teacher is dismissed.

[14] P 40 – December 17, 2010, Letter from prior school principal.
[15] Testimony of the Special Education Coordinator.
[16] Testimony of Director of Private School.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The IDEIA requires that a free appropriate public education must be available to all children between the ages of 3 and 21 who are residing in the District of Columbia.[17] Free appropriate public education ("FAPE") means special education and related services that are provided at public expense, under public supervision, and without charge; meets the standards of the State Education Agency, include an appropriate school; and are provided in conformity with an individualized education program ("IEP") that meets the requirements of §§300.320 through 300.324. [18]

The questions before this Hearing Officer are (1) whether the Student has a disability that falls within at least one of the delineated classifications; (2) does the disability have an adverse effect on educational performance; (3) whether as a result the Student needs special education and related services; and (4) if so, what is the proper placement for the Student to receive such services. The burden of proof on these questions belongs to the party seeking relief, in this case the parent. Based solely upon the evidence presented at the hearing, the hearing officer must determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the conduct of DCPS was inadequate to provide the student a FAPE.[19] See: Schaffer v. Weast, 546 U.S. 49, 51 (2005) (holding that the burden of proving a violation of the IDEA lies on the party seeking relief during the administrative process).

DCPS must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated...."[20]

[17] 34 C.F.R. § 300.101(a) and D.C.M.R. 5§3002.1
18 20 U.S.C. §1400(d)(1)(A), §1401(9), 34 C.F.R. §300.17, and 30 DCMR §3001.1.
[19] 5 D.C.M.R. § 3030.14.
[20] 34 C.F.R. §300.111(a) (i).

In addition, 34 C.F.R. §300.111(c) (1) demands that DCPS also identify children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade.[21]

The IDEIA regulations at 34 C.F.R. § 300.306(c)(1)(i) provide that in the determination of eligibility and educational need, the District must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

The Petitioner claims the Student as a result of having a medical diagnosis of an Attention Deficit Hyperactivity Disorder ("ADHD") and epilepsy is eligible for special education under the Other Health Impaired category.

The IDEIA defines "child with a disability" as a child evaluated and found having ..., other health impairment..., and who, by reason thereof, needs special education and related services.[22]

"Other Health Impairment" in accordance with 34 C.F.R. § 300.8(c)(9)(i) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, ...; and

(ii) Adversely affects a child's educational performance.

The evidence in the present case is that the MDT in November 2010 met to review the independent comprehensive psychological evaluation, FBA, and discuss the observations of the Student at school and home. The MDT acknowledged the Student has epilepsy, and that he was diagnosed with ADHD. The School Psychologist who had concluded that the Student's grade and standardized test

[21] 20 U.S.C. 1401(3); 1412(a)(3); 34 C.F.R. § 300.111(c).
[22] 20 U.S.C. §1401(3)(A) and 34 C.F.R. §300.8 (a)(1).

information indicate that he is able to access the general education curriculum with success also participated. The MDT agreed the Student was hyperactive and exhibited aggressive behaviors. The LEA representatives of the MDT determined that although those conditions exist, they were "found in class within limits." The MDT decided that the Student would maintain the modifications and school counseling under the existing section 504 Plan, already in place since December 2009. The MDT notes do not indicate any further reasoning for the MDT decision. Apparently, the MDT relied on the School Psychologist's view that the Student's high grades and proficiencies show that the Student did not suffer an adverse academic impact.

It is undisputed that the Student has grades above average; however, there is also vast information in his educational record that he has had discipline problems since first grade. Even the School Psychologist agreed that the Student displays inattentive, hyperactive and aggressive behaviors at home and in school. It was reported that the Student is provoked to anger when he does not get what he wants or when he disagrees with something. School records confirm that Student has been suspended for aggressive behavior and fighting. These behaviors have happened with both students and teachers and occur in any classroom setting. According to the School Psychologist, the Student's ADHD is the main reason for some of the inattention and troubled relationships in school.

DCPS as the LEA must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade.[23]

As noted in the Analysis of Comments and Changes in the regulations implementing Part B of the IDEA discussing subpart B, it has been clarified in § 300.101(c) that a child does not have to fail or be retained in a course or grade in order to be considered for special education and related services. However, in order to be a child with a disability under the Act, a child must have one or more of the impairments identified in section 602(3) of the Act and need special education and related services because of that impairment.[24]

[23] 20 U.S.C. 1412(a)(1)(A) and 34 C.F.R. § 300.101(c).

[24] Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations 46540, at 46541

The core of the IDEIA is individualized attention to students it requires the group determining the eligibility of a child for special education and related services must make an individual determination as to whether, notwithstanding the child's progress in a course or grade, he or she needs or continues to need special education and related services. Id. at 46580.

The Office of Special Education Programs in the U.S. Department of Education (OSEP) has issued an opinion letter regarding ADHD and high performing students. Although such letters are not binding legal precedent, they do provide helpful guidance. The OSEP opinion letter states that even students who are making progress within the regular educational environment, as well as students with physical impairments who perform well in school, may require special education services. Moreover, OSEP has repeatedly stated that the meaning of the terms *educational performance* and *adversely affects* must be established on a case-by-case basis in light of particular facts and circumstances.[25]

OSEP issued another letter in January 2010 that offers additional guidance about classification of students with high cognition and disabilities such as attention deficit hyperactivity disorder. OSEP indicated that while the IDEA is silent regarding gifted students, "It remains the department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations...." For example, according to OSEP, a child with high cognition and ADHD could be considered to have an 'other health impairment,' and could need special education and related services to address the lack of organizational skills, homework completion and classroom behavior, if appropriate. 110 LRP 52277 -55 IDELR 172 - Letter to Anonymous- Offices of Special Education Programs- January 13, 2010.

The courts have determined a student with ADHD qualified for special education as "other health impaired" despite well-above-average grades and test scores. In one of those cases involving a high achiever, the behavior scales submitted by the child's teachers indicated significant levels of oppositional behavior, hyperactivity, restlessness, impulsivity, anxiety, and problems with social interaction. The court stated that "educational need" under the IDEIA is not strictly limited to

[25] Letter to Pawlisch, 24 IDELR 959 (OSEP 1995).

academics, but also includes behavioral progress and the acquisition of appropriate social skills as well as academic achievement." [26]

Here, the information used by the MDT to support its decision of non-eligibility was that the Student's has good grades and is proficient in standardized assessments. Yet the Comprehensive Psychological evaluation done on the Student mention that he often fidgets with his hands or squirms in seat and talks excessively. The Student often fails to give close attention to detail and makes careless mistakes in schoolwork; he often has difficulty sustaining attention; he does not always follow through on instruction; and he is easily distracted by extraneous stimuli. In addition the Student's interpersonal problems reflect his difficulties with impulsivity as related to his ADHD diagnosis. The Hearing Officer finds the Student has ADHD and epilepsy and classifies a as a student who is other health impaired.

Neither the IDEIA nor the implementing regulations defined the phrase, "adverse effect on education performance," leaving it to adjudicators to give the phrase meaning. In this case, the Student's ADHD is having an adverse effect on his educational performance. Even though since 2009 DCPS has put in place section 504 Plan accommodations to the Student's educational program, he continues to have behavior problems, and his grades are fluctuating. He has been suspended from school a number of times, most recently on December 17, 2010. The Student's patterns of threatening and harassing behavior – which result from his ADHD have led to his transfer to another school. The information in the record is that the Student's aggressiveness has led to school suspensions and ultimately to a transfer from a middle school to his neighborhood middle school. The Student has lost instruction time with the suspensions and now has had his educational program changed so that he is in a program where his intellectual abilities will be less challenged in a non advanced learners program.

The IDEIA requires that to develop an individualized educational plan, an MDT team must consider, among other things, non-academic factors, functional performance, learning characteristics, social development, and adaptive behavior. Educational performance is not limited to academics. Instead, the MDT team must consider the totality of the Student's educational performance, which includes academic performance, behaviors and socializing skills.

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[26] Venus Indep. Sch. Dist. v. Daniel S. 36 IDELR 185, 102 LRP 9294 (2002) U.S. District Court, Northern District of Texas.

A proper gauge of a child's educational performance consists of more than an evaluation of his grades and test scores. The focus should be upon the Student's individual needs. Despite the Student's academic success, he could benefit for special education services to address his lack of abilities to plan, initiate, organize and monitor his behavior. The Student also requires counseling, social skills training and a BIP to address the types of persistent misbehavior that resulted in his removal from the classroom.

The Respondent failed its legal obligations under the IDEIA when it did not determine the Student eligible for special education and related services to address his disruptive behavior in class and violence towards other students. The Hearing Officer finds that the Student's disabilities did adversely impact his educational performance such that he needs special education. The Petitioner met her burden; the evidence was that the ineligibility determination was not proper under the IDEIA. The Student was not provided a FAPE. DCPS failed to propose an IEP designed to meet the Student's unique needs. As required by 34 C.F.R. §§300.1,17 and 300.320. The MDT should have developed an IEP and provided the Student a continuum of services. See 34 C.F.R. §300.115(a) and 5 D.C.M.R. § 3012.1.

All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114.

The Petitioner is asking for a private full time special education placement for the Student.

The evidence does not support a full time level of special education services for this Student. The request for a full time special education private placement is denied. The Student does require special education services and DCPS will convene a MDT/IEP team to develop an IEP for the Student with no less than 7.5 hours of specialized instruction outside the general education setting. The IEP for this Student must include strategies to reintegrate him into courses designed for advanced learners in reading and any other academic area determined necessary by the MDT/IEP. After the MDT/IEP team develops an appropriate IEP for this Student; the MDT will determine an educational placement to meet his unique needs and comply with 34 CFR §114 through 300.117; and DCMR 5§ 3013.3.

The request for compensatory education was withdrawn at the pre-hearing conference.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

ORDERED, DCPS shall by April 15, 2011 provide three dates to the Petitioner to schedule and convene an MDT/IEP team with the appropriate personnel to develop an IEP identifying the Student as a student eligible to receive special education and related services as a result of his being other health impaired. The IEP shall provide the Student with a minimum of 7.5 hours per week of specialized instruction outside the general education setting to address his lack of abilities to plan, initiate, organize and monitor his behavior, 1 hour a week of psychological counseling, and include a behavior intervention plan[1] **it is further;**

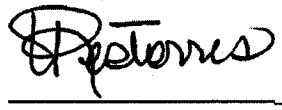
ORDERED, the Respondent will schedule all meetings at a mutually agreeable time with the parent, **it is further;**

ORDERED, This order resolves all issues presented in the Petitioner's January 18, 2011 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1415(i)(2)(B).

Dated: March 22, 2011



Wanda I. Resto Torres -Hearing Officer