District of Columbia
Office of the State Superintendent of Education
Student Hearing Office

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In Re the Matter of :	)	
	)	
[1]Parents on behalf of Student,	)	**Amended*
	)	
Petitioner,	)	
	)	**Date of Complaint:** March 15, 2010
v.	)	**Date Decision Issued:** May 12, 2010
	)	
District of Columbia Public Schools, ("DCPS"), on behalf of	)	**Dates of Hearings:** April 26-28, 2010 and May 4, 2010
	)	**Hearing Room:** 1
	)	
	)	**Student Case Number:**
Respondent.	)	**Student Identification Number:**
	)	
	)	**Hearing Officer:** Attorney Ramona M. Justice

2010 MAY 13 AM 9:30

HEARING OFFICERS' DECISION

I. BACKGROUND

The student is years of age and a grade student at School, hereinafter referred to as or a District of Columbia Public School, located in the District of Columbia. At the age of years and 5 months, the D.C. Public Schools CARE Center placed the student in a preschool classroom for autistic students, at

On February 3, 2006, parent filed a due process complaint alleging that DCPS denied the student a free appropriate public education (FAPE), by: 1) failing to complete the student's initial evaluations, 2) develop an appropriate IEP, and 3) provide the student an appropriate placement.

On February 8, 2006, a Hearing Officer issued a decision requiring DCPS to, in part: 1) fund a speech and language and cognitive assessment performed at and by the Center for Autism and Related Disorders (CARD), 2) fund speech and language and occupational therapy, for 90 minutes per week; and 3) fund and issue a Prior Written Notice of Interim Placement, with transportation, to receive special education and related services for the school year 2005/06 at-

[1] *Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution. * The Order, specifically pages 34 and 35, is amended to include additional directives and provide further clarification. All amendments are identified in italics.*

Children and Families located in Kensington, Maryland; and 4) the student may receive related services at Children and Families, if the Center permits, while awaiting DCPS' Prior Written Notice of Interim Placement, or until DCPS provides the student another appropriate placement.

The due process hearing was continued to March 8, 2006, and on March 10, 2006, the Hearing Officer issued a decision requiring DCPS to, among others: 1) send a "Student Non-Public Placement Referral Packet" with the student's assessments and school records to the Autism Program Director for Montgomery County Public Schools; 2) convene the student's BLMDT/Eligibility/IEP/Placement meeting at the Care Center.

DCPS returned the student to and as an alternative, the parent proposed a home-based program of ABA services through the Center for Autism and Related Disabilities ("CARD"), with occupational and speech language therapy provided by independent providers selected by the parents. It is noted that the student and his parents are one of the set of named plaintiffs in the class action lawsuit DL v. DC, Civil Action No. 2005-1457 (RCL), challenging the adequacy of the District of Columbia's IDEIA Child Find program for children ages 3-5.

On June 21, 2006, the parents filed a due process complaint alleging that DCPS failed to complete initial evaluations, develop an appropriate initial IEP, and provide the student an appropriate placement. On July 18, 2006, a Hearing Officers' Decision was issued finding that DCPS denied the student a free appropriate public education (FAPE); and ordered, in pertinent part, that DCPS shall fund for one year at public expense a 40 hours per week, home based Applied Behavioral Analysis (ABA) methods program to include no more than eight (8) hours per month for a consultant to supervise the program; and no more than two (2) hours per month to train the student's parents in the use of ABA methods and behavioral techniques. The Hearing Officer also ordered DCPS to fund or provide the student a 1:1 dedicated aide trained by C.A.R.D. to attend school with the student once he enrolls in either a pre-kindergarten or Head Start program.

During the 2006/07 school year, the student received 40 hours per week, home based Applied Behavioral Analysis (ABA) methods program by CARD, to include no more than eight (8) hours per month for a consultant to supervise the program; and no more than two (2) hours per month to train the student's parents in the use of ABA methods and behavioral techniques. The student began attending as a kindergarten student, during the 2007/08 school year; attended the grade during the 2008/09 school year; and the grade during the 2009/10 school year.

During an IEP team meeting held on July 3, 2007, at the parents requested a full-time dedicated aide from the CARD services, to ensure the continuation of CARD services the student received at home during the 2006/07 school year. The team discussed at length, the qualifications and training of the CARD staff, in comparison to that of DCPS dedicated aides working with autism students. DCPS denied parent's request for a dedicated aide from the CARD services; terminated the CARD services at the end of August, 2007; agreed to provide a DCPS dedicated aide for the student; and place the student in a combination program.

DCPS advised the team that it intended to provide a maximum of 14 hours of training to the aide prior to the beginning of the 2007/08 school year, consisting of two (2) sessions; and introductory training in ABA teaching and ABA data collection. DCPS also agreed to place the student in a combination program. The parent also requested that the DCPS dedicated aide attend all of the student's occupational and speech language therapy sessions, to continue skill development and techniques; however DCPS disagreed and failed to include these provisions in the student's IEP.

At the beginning of the 2007/08 school year, DCPS failed to provide the student a DCPS dedicated aide; and as the year progressed, was unable to secure an instructional aide for the student, as agreed. The student began regressing, and engaging in more self stimulating behavior in the classroom. On September 21, 2007, parent filed a due process complaint alleging, among others, that DCPS denied the student a FAPE, by failing to provide the student a dedicated aide for the first day of school through the date of the complaint, as recommended at a MDT meeting held on July 3, 2007; failed to train the DCPS dedicated aide sufficiently, prior to working with the student; provide the student a FAPE, in the least restrictive environment for the 2007/08 school year; and provide the student occupational and speech language therapy from the beginning of the school year, as recommended by the MDT on July 3, 2007.

On October 18, 2007, DCPS continued the resolution meeting; wherein the team agreed to reinstate CARD services for the student, including a dedicated aide for the 2007/08 school year; and four (4) hours per month of CARD supervision services. DCPS also agreed to provide the student compensatory education services for the services that were interrupted during the Fall of 2007. The team developed an IEP for the student providing for 8.5 hours of specialized instruction, 15 hours a week in general education, 2 hours of speech language therapy, and 2 hours per week of occupational therapy services. The IEP also includes CARD Aide services in implementing the student's social emotional behavioral, reading, reading/writing, and math goals; in a combination general education and resource classroom. The IEP also provides that supplementary aids and services in the classroom would include a dedicated CARD Aide for 32 hours per week, for the entire school day; for the 2007/08 school year.

The due process hearing proceeded on the issue of reimbursement for expenses, and on December 26, 2007, a Hearing Officers' Decision was issued ordering DCPS to honor the ITS invoice in the amount of for services solicited by and rendered to DCPS, on behalf of the student. On January 25, 2008, the parties executed a settlement agreement wherein DCPS agreed to resume the CARD services, and fund the CARD dedicated aide for 169 hours of compensatory education for the services interrupted during the Fall of the 2007 school year; and pay the bill of the CARD and special services personnel according to the invoices submitted to Special Education.

During the Summer of 2008, the parents utilized a portion of the compensatory education services to continue the CARD services during the Summer months; and CARD services were continued during the 2008/09 school year, as part of the student's IEP, however, DCPS failed to provide a CARD shadow/therapist for the extended school year (ESY) program, during the Summer of 2009. Specifically, DCPS was unable to obtain a DCPS dedicated aide for the student for the beginning of the afternoon Summer program of 2009; and the student was unable to participate in the inclusion portion of the program because he did not have the support and assistance of a dedicated aide.

On March 17, 2009 an IEP team convened to review the student's IEP. The meeting participants included: the student's parents, occupational therapist, psychologist, speech language pathologist, special education coordinator, the student's autism teacher, and a representative from CARD services. An IEP was developed for the student providing for 19.5 hours of specialized instruction, 8 hours of general education instruction, and 24 hours of specialized instruction, per week. The IEP also provides for 120 minutes per week of speech language, and 15 minutes of occupational therapy services, per week. The IEP also indicates that the student requires the support of a dedicated aide, however, information regarding the daily schedule of assistance the student will receive, location, or beginning and ending dates are not indicated in the IEP.

The least restrictive environment (LRE) portion of the IEP provides that the student's disability makes it necessary for the student to receive 19.5 hours per week of instruction outside general education, 32.5 hours per week of services from CARD Aide/full-time support, plus 4 hours per month from CARD supervisor; and 120 minutes per week of speech language therapy. The LRE portion of the IEP also provides that due to the student's disability he spends part of the school day in a contained classroom, and part in a general education setting.

During the Summer of 2009, the student was recommended for ESY services at School, for a four (4) week period; and a CARD Aide was provided only during the morning hours, not in the afternoon. In addition, the student failed to receive the two (2) weeks of additional services with nondisabled students, because of the unavailability of staff, as a result, the student was placed in a room alone, with no instruction during this period.

On June 22, 2009, parent filed a due process complaint alleging that DCPS failed to allow the parent meaningful participation in the April 8, 2009 IEP team meeting; provide a sufficiently intense ABA based program of instruction, provide a placement; and consider or provide an appropriate setting for special education services.

On September 11, 2009, a Hearing Officer issued a decision finding that DCPS denied the student a FAPE by predetermining placement and failing to provide the parents an opportunity to participate in the placement decision; and provide the student an appropriate school based placement; Petitioner's placement of the student in an ABA home-based program is proper; and requiring DCPS to fund 25 hours of ABA therapy per week, to be increased up to 40 hours per week as appropriate, 1 hour/week of speech language therapy, 30 minutes per week of physical therapy, and 1hour per week of occupational therapy.

The Hearing Officer ordered DCPS to place and fund the student at his home-based ABA therapy program administered by the CARD, retroactive to April 14, 2006, the date the student turned 3 and became eligible for services; and fund 25 hours per week of home-based ABA therapy to be increased up to 40 hours per week as CARD finds appropriate; fund 1 hour of speech language therapy per week, 30 minutes of physical therapy, 1 hour of occupational therapy per week, retroactive to April 114, 2006, to be provided by the parent's choice at the child's home.

The student returned to for the 2009/10 school year, with a CARD Aide and CARD supervisory services, during his academic classes. The student also attended art, music, physical education, and library, accompanied by a CARD Aide.

During the second semester the student began participating in a reading program entitled "Drop Everything and Read" (DEAR). It was intended that the student participate in this reading program with nondisabled peers, because the program was a silent reading program and the student required reading aloud, the student was placed in the hallway outside the class with an older student, who assisted him with reading; receiving no classroom instruction.

On March 2, 2010, DCPS convened an IEP team meeting with the student's parents, the occupational therapist, psychologist, speech language therapist, special education coordinator, special education teacher, a CARD representative, and the Principal at for an annual IEP team meeting. The team reviewed the student's March 17, 2009 IEP; and presented parent with a new draft IEP. The parent requested that the student receive the same testing as other students, with accommodations.

The draft IEP recommended that the student would spend 17.5 hours a week receiving specialized instruction, 8 hours a week in a general education setting, 90 minutes per week speech language services, and 15 minutes per week of occupational therapy services. The draft IEP also provides that the *student does not require the support of a dedicated aide*; does not provide for a dedicated aide during ESY services, or time spent in the general education setting.

Near the end of the meeting the Special Education Coordinator announced to the parents and team that DCPS proposed to eliminate the CARD services, and the student's CARD Therapist from the student's IEP; and in its place provide the student a DCPS instructional assistant who can perform the CARD services the student received. The DCPS team stated that it can provide the student a free appropriate public education without the CARD services; would initially provide the student support from the DCPS classroom instructional aides to ensure that the transition from CARD services would include supports to which he was accustomed. However, the draft IEP presented to the parents at this meeting failed to include provision of a dedicated aide for the student; and the team indicated that an instructional aide would only be provided to assist the student with the transition. The team agreed to resume discussion of the elimination of CARD services at a second meeting; and to provide parent the opportunity to obtain legal representation.

According to the student's father, he objected to the elimination of the CARD services and dedicated aide for several reasons including among others, CARD shadows are trained therapists, each of whom has a college degree in a related area, receive at least 60 hours of ABA training prior to starting work with autistic students, receive specialized training for each individual student the therapist works with, as well as ongoing in service training.

On March 10, 2010, a second meeting convened with both parents, occupational therapist, psychologist, speech and language therapist, special education coordinator, special education teacher, Principal, CARD representative, a Behavioral Specialist, who is an independent consultant to Respondent's Attorney, Supervisor, DCPS Office of Special Education, and Petitioner's Attorney. The parent's Attorney reviewed with the team the procedural history of the case; and discussed the amount of time the CARD aide provided the student, intense ABA instruction to target goals, etc... DCPS reiterated its position that it was no longer necessary to provide the student with CARD services, because the DCPS employees would be able to implement the student's IEP without the CARD services.

The parent proposed discussing a possible reduction in CARD services, as opposed to the elimination of services; however, DCPS disregarded parent's request, and did not discuss the proposed reduction in services.

DCPS developed an IEP for the student on March 10, 2010, providing for 17.5 hours of specialized instruction per week, 8 hours per week in a general education setting, 120 minutes per week of speech language services per week, and 15 minutes per week of occupational therapy services per week. The IEP recommends that the student spend 8 hours per week in a general education setting.

The IEP provides that the *student requires the support of a dedicated aide*, however, fail to include in the IEP the daily schedule of assistance the student will receive from the dedicated aide, the location, beginning or ending dates. The IEP provides that during regular statewide assessments, the student will receive accommodations and modification; and classroom accommodations. The IEP provides that during ESY the student will receive 4 hours per day of specialized instruction, and 5 hours per day outside general education, per day; and 120 minutes per week of speech language therapy outside general education. DCPS also issued parent a Prior Written Notice, notifying parent that it intends to remove CARD services from the student's IEP; and replace the CARD Aide with a DCPS dedicated instructional aide.

On March 15, 2010, Petitioner filed a complaint alleging that DCPS denied the student a FAPE, by failing to develop an appropriate IEP for the student on March 10, 2010; and properly convene an IEP team meeting on March 2, 2010 and March 10, 2010 to include the student's general education teacher, during discussion and decisions regarding the student's participation in the general education classes; in violation of "The Individuals with Disabilities Education Act ("IDEA")"; reauthorized as the "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")."

II. ISSUES

The following issues are before the Hearing Officer:

(1) [2]Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to develop an appropriate Individualized Education Program (IEP) for the student on March 10, 2010?

(2) Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to properly convene an Individualized Education Program (IEP) team meeting on March 2, 2010, and March 10, 2010, to include the student's general education teacher, during discussion and decisions regarding the student's participation in general education classes?

[2] Prior to proceeding with a hearing on the merits of the issues in the complaint, Petitioner requested deletion of the portion of Issue 1 of the complaint pertaining to DCPS' alleged failure to implement the student's March 10, 2010 IEP.

III. DISCLOSURES

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF PETITIONER

Petitioner's Exhibits 02 through Petitioner's Exhibits 3, Petitioner's Exhibit 5 through 17, Petitioner's Exhibits 19, Petitioner's Exhibits 21 through 36, Petitioner's Exhibits 38 through Petitioner's Exhibits 54; and a witness list dated April 19, 2010.

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF RESPONDENT

Respondent's Exhibits 01 through 25 and a witness list dated April 20, 2010.

IV. 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 student is a resident of the District of Columbia; and is identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is autism.

2. The student is years of age, and a grade student at School, a District of Columbia Public School, located in the District of Columbia. The student is in a self contained autism class, with approximately seven (7) students, one full-time DCPS instructional aide, one part-time DCPS instructional aide, a Center for Autism and Related Disorders, Inc. ("CARD") Therapist, and a parent who serves as a translator for his/her son. The student received the support of the CARD services during pre-kindergarten, kindergarten, 1st grade, and currently in his grade autism class.

   Throughout the student's education, the student has required the support of a dedicated aide, however, DCPS has had difficulty providing the student a DCPS dedicated aide, to support the student's educational needs. As a result, over the years, the parents, on behalf of the student, have filed several due process complaints; resulting in an enormous expenditure of time and resources by both parties.

   Additionally, as result of several Hearing Officer's decisions and a Settlement Agreement executed by the parties in January, 2008, since the kindergarten, the student has received the support of a dedicated CARD Therapist, with CARD supervision. As a result of the support the student received from the CARD Therapist, the student has made significant progress academically and behaviorally; although he continues to struggle in certain-

areas, requiring the support of a full-time dedicated aide; and is not performing at the grade level. For instance, when the student began school he was nonverbal; and with the support of the CARD staff, he began speaking at age 4, and currently is at age and is beginning to learn to speak.

3. On ***March 2, 2010***, DCPS convened an IEP team meeting with the parent. DCPS presented parent with a draft IEP, providing for 17.5 hours of specialized instruction per week, 8 hours per week in a general education setting; 90 minutes per week of speech language services per week, and 15 minutes per week of occupational therapy services per week. The section of the IEP, identified on page 12 as "**DEDICATED AIDES**" provides that the *student* ***does not require the support of a dedicated aide***, eliminates the dedicated CARD Therapist, and CARD services from the student's IEP.

   Near the end of the meeting DCPS advised the parent that it proposed to eliminate from the student's IEP the CARD Therapist, because it determined that DCPS can provide the student a FAPE; its instructional assistants can perform the CARD services; and therefore, CARD services are no longer needed.

4. On ***March 10, 2010***, DCPS reconvened the IEP team meeting with the parent, the parties Attorneys, and other individuals. DCPS reiterated its position to the parents, and its decision to eliminate the dedicated CARD Therapist and services from the student's IEP, effective ***March 16, 2010***; and replace the CARD Therapist with a DCPS aide.

   DCPS presented parent an IEP, providing for 17.5 hours of specialized instruction per week, 8 hours per week in a general education setting; 120 minutes per week of speech language services per week, and 15 minutes per week of occupational therapy services per week. The section of the March 10, 2010 IEP, identified on page 12 as "**DEDICATED AIDES**" was revised to reflect that the ***student requires the support of a dedicated aide***, during the regular school year; and recommends ESY services.

   The Hearing Officer finds that DCPS proposes to eliminate the only ABA trained and qualified dedicated aide available to support the student in the classroom and ESY, effective March 16, 2010; while acknowledging that it has not identified a DCPS aide to replace the CARD Therapist. Implementation of the proposed change on March 16, 2010, also eliminates the opportunity for the student to transition from CARD services to a DCPS aide; although DCPS committed to parents that the student would have a dedicated aide to assist with the transition.

   The Hearing Officer finds that according to DCPS witnesses there is no plan in place to provide the student the dedicated aide the student requires; its current aides are not ABA qualified or trained, and there is no plan in place to ensure that the existing DCPS aides receive the necessary training in ABA principles and techniques, and training in working with autistic students; prior to continuing to work with the student.

   The Hearing Officer finds that throughout the student's education, the parents have actively participated in the IEP process, and are actively involved in the student's education, however, received no prior written notice of this proposed change in the student's educational program, and the provision of a FAPE.

DCPS proposed to implement the change in the student's educational program without providing the parents reasonable advance notice of the proposed change; providing parents the opportunity for "meaningful" input in the decision; or discuss a reduction in services, as opposed to elimination of services, as recommended by the parent.

The Hearing Officer finds that DCPS currently has difficulty providing and maintaining qualified, reliable and consistent aides, to support the teacher and students in the autism classroom; and elimination of the CARD Therapist and support services would have an adverse impact on the student. The record reflects that on at least two (2) prior occasions, DCPS committed to the student's parents that it can provide the student the support he requires utilizing DCPS staff, however, was unable to fulfill its commitment to the parents, without the support of the CARD services. The Hearing Officer finds that DCPS lacks the appropriate staff and resources necessary to support the student's educational, developmental, and functional needs.

5. According to the March 10, 2010 MDT meeting notes the purpose of the meeting was to ***remove the CARD Aide from the student's IEP***; and was not to review and revise the student's IEP, as appropriate, and required by the IDEA, assess the student's progress towards meeting his goals, academic, developmental, and functional needs, or obtain parent input regarding the proposed change to the student's educational program, and the provision of a FAPE to the student.

   The Hearing Officer finds that at the MDT/IEP meetings held on March 2, 2010 and March 10, 2010, DCPS failed to provide parent evaluations, substantive or scientifically based data which serves as the basis for its decision to eliminate the CARD Aide and services, that the student no longer requires a dedicated aide, that the student can progress with a DCPS dedicated aide; or information regarding the training, qualifications and experience of DCPS aide intended to replace the CARD Therapist. DCPS also failed to inform the parents of its plans for ensuring that the student receives the same or services comparable to that provided by the CARD services.

   The Hearing Officer finds that according to the testimony of DCPS staff, at the beginning of the 2009/10 school year, and prior to meeting with the parents on March 2, 2010 and March 10, 2010, DCPS had unilaterally made the decision to remove the CARD Aide and services from the student's IEP, pursuant to a management directive. Therefore, it was not DCPS' intent at these meetings or at any other time, to provide the student's parents an opportunity to provide "meaningful" input in the decision to eliminate CARD support services from the student's IEP.

   The ***student's Special Education Teacher*** testified that the 2009/10 school year is her first year of teaching, and she had no prior experience teaching autistic students, "per se". The teacher testified that since the beginning of the school year her class size has increased from 5 to 7 students; and staff has reduced from 2 full-time instructional and 2 full-time dedicated aides (including the CARD Aide), to 1 full-time instructional aide, and 1 part-time instructional aide, 1 CARD Aide, and a parent, for 7 students. The teacher testified that pending DCPS hiring a full-time dedicated aide for the student, she would donate her 1 hour planning time each day to fill in if needed to provide extra support for the student.

The teacher testified that the students in her class consist of 1 student who speaks only Turkish, 1 nonverbal, 1 slightly verbal, 1 slightly less verbal as the student, and 1 equally verbal, as this student; indicating that the student's needs vary and require support. The teacher testified that the DCPS dedicated aide which DCPS purports will replace the CARD Therapist, has not been hired; there would have to be a change in scheduling to meet the needs of the student with the current staff; and the student requires a dedicated aid to ensure that he receives services comparable to what he currently receives from CARD; and because he requires a dedicated aide to assist him in becoming more independent.

The teacher testified that the time that the student attends the inclusion class, is the same time that the other 6 students attend other classes, supported by the DCPS aides; and the CARD Aide accompanies the student to the grade class for physical education. The teacher also testified that because physical education is during the lunch period, it would be difficult to staff and support the students, without the CARD Aide. The teacher testified that the student also attends the DEAR class three times a week, lunch, recess, and the Fillmore Center, with the support of the CARD Aide. The teacher also testified that the students attending the Fillmore Center are in three different classes, with each student requiring staff support in each class.

The teacher testified that if there is no dedicated aide for the student, he will not be able to participate in the general education curriculum and activities with nondisabled peers, which enables him to work on his social skill goals. The teacher also testified that some students have behavior difficulties; and when this student is distracted or does not receive the attention he requires, he loses focus engages in self stimulating behavior, requiring redirection; and that although it is very difficult for her to make up time lost by students due to this and other types of behavior, the CARD Aide is able to fill in for her with this student, as needed.

The teacher testified that the CARD staff, are Therapists, very well trained, very helpful to her as a new teacher, and because the Therapists enter the classroom with the necessary training, it was not necessary that she expend time teaching them the ABA principles and techniques. The teacher also testified that the CARD Supervisor made suggestions that she implemented in the student's program; and when progress reports are due she meets with the CARD Supervisor to discuss the student's progress and behavior.

The teacher testified that baseline data and data collection is important because it drives the student's educational program; and there is a need to continue to collect data to assess the student's progress, and may "trigger" modification of the student's educational program.

The teacher also testified that she does not have the time to collect data and collected a lot less than she wanted; the CARD staff collects more data; and the DCPS Instructional Aides informally collect data during math and reading, two hours per day, and communicate data to her verbally; however, do not collect data during science, and other classes.

The teacher testified that with appropriate training, an instructional aide can meet the student's needs; however, she can only provide the DCPS aides brief training because of their work hours. The teacher testified that approximately one month ago the DCPS Classroom/Autism Consultant met with both DCPS Aides, however, the DCPS aides require improved training on how to interact with students with autism, teachers, monitoring behavior, collecting data, specific jargon familiarity; training prior to entering the classroom; ongoing ABA training for all aides; and professional development training in autism.

The teacher testified that there is a considerable difference in training of DCPS dedicated aides and CARD Aides; and ABA training requires a significant amount of training, and practice prior to implementation. The teacher testified that a dedicated aide must understand ABA principles and strategies and implementation.

The teacher testified that the DCPS, Office of Special Education recommended elimination of CARD services and staff from the student's IEP; and that she is not aware of any obstacles preventing the CARD support staff from remaining with the student, until a DCPS Aid is hired and properly trained; and that based on her experience with hiring, it can take DCPS from a short period of time to three weeks, at most, to identify a dedicated aide for the student.

The teacher stated that the student has made incredible progress on every IEP goal, compared to other student's in his class; far exceeded the other student's in the class, academically and behaviorally; she has observed his growth since the beginning of the school year; although there remain requiring continued support. The teacher testified that if the CARD Aide is removed, the student would be curious regarding the availability of the CARD Aide, it would require an adjustment for him, he would miss someone to monitor his social/emotional goals and someone trained to know different prompts, and the friendship developed with the CARD Therapists and staff.

The Hearing Officer finds that, the student has made significant progress academically and behaviorally with the use of the CARD Therapists, however, there remain areas where he continues to require support; the DCPS Aides lack the knowledge, skills, and experience of the CARD Therapists, and as is necessary to support autistic students, and according to the teacher she does not have the time to provide the DCPS Aides the training required and necessary to support her and the autistic students.

The Hearing Officer finds that there are current staffing issues for the students in the autistic class, and elimination of the CARD Aide from the student's IEP would remove the support the student currently requires and receives in the special and general education classes and activities; and have an adverse impact on the student. Additionally, the student would not be able to interact with nondisabled students in the general education curriculum and activities, without the support of a dedicated aide; the student would not receive educational benefit, and is likely to regress and not progress academically and behaviorally.

The Hearing Officer finds that the DCPS lacks the staff, with the training, qualifications and skills necessary to provide this autistic student, the level and degree of support he requires, and that is comparable to that currently received from the CARD Therapists and Supervisor.

The Hearing Officer finds that DCPS failed to carefully consider the potential adverse impact that removal of the CARD services would have on the student, if the CARD services are removed, prior to rendering the decision to remove the services.

The Hearing Officer finds that the collection of data on autistic students drives the student's educational program, however, according to the student's special education teacher she lacks the time necessary to collect reliable data on the student; and the DCPS Aides are not trained to collect data, consistent with ABA principles and techniques.

The Hearing Officer finds that at the March 10, 2010 IEP team meeting DCPS issued a Prior Written Notice indicating that it proposed to remove CARD services from the student's IEP, to be replaced by a DCPS Instructional Aide; who *has received ABA training from DCPS Classroom/Autistic Consultant;* will receive ongoing training; and prior to working with the student, will consult with the student's Teacher. However, according to the student's special education teacher she lacks the time necessary to train the DCPS Aides on ABA principles and techniques; and at most, would donate her one (1) hour of planning time per day to provide the student the additional support he requires, until a DCPS Aide is assigned to the student.

The Hearing Officer finds that DCPS is unable to fulfill its commitment to the parents made at the March 10, 2010 meeting, to provide the student the level and depth of support services of a dedicated aide that he requires, and that is comparable to the services currently provided by the CARD.

6. The ***Principal at*** testified that the student's classroom consists of seven (7) students, one teacher, two (2) DCPS aides (1 full-time for 1 student, and 1 special education aide for all the other students). The Principal testified that one DCPS aide is in the student's classroom for math and reading in the morning, and does not support recess and lunch; and when student's transition to general education classes from 9-10:30 a.m., one aide leaves the room with the students. The Principal testified that "it is his hope" to identify someone with ABA training to serve as the student's dedicated aide, however, in the interim the one full-time and one part-time DCPS aide would be assigned to the student.

   The Principal testified that the student requires a dedicated aide, and it would be difficult for the student's teacher to manage the responsibilities of the class, without the CARD Aide; and he opines that with the teacher's guidance, a DCPS aide can provide the student the support he requires. The Principal also testified that the student is behind other student's in the class in reading and math, however, not too different socially, although it is a challenge for him in grade.

The Principal testified that both aides accompanies 3 students to the 1st grade class for lunch; and when a dedicated aide is absent there is no funding for a substitute aide, nor reassigning of staff from other classes, although aides are reassigned if there are absences in math and reading classes.

The Principal testified that the student does not attend physical education with general education students, he attends the class with his peers; and when the student attends the DEAR class, he receives no instruction, however, reads outside the general education class with another student and an aide. The Principal testified that five of the seven students attend the Fillmore Educational Center for art instruction, accompanied by the aides and the student's teacher.

The Principal testified that the DCPS dedicated aides and classroom instructional aides receive on the job training; neither an Associate or Bachelor's Degree is required; and the only educational requirement is a high school diploma or general education degree (GED), post secondary credits, and possible completion of a paraprofessional exam.

The Principal testified that during a Cluster 1 meeting for school Principals, held at the beginning of the 2009/10 school year, he was advised by his Supervisor, the DCPS, Office of Special Education, DCPS Cluster Supervisor, that she was under a directive to reduce the number of dedicated and CARD Aides; which was subsequently reiterated by the SEC at

The Principal testified that during the beginning of the 2009/10 school year the DCPS Special Education Specialist informed him that it was recommended that the CARD Aide be removed from the student's IEP. The Principal testified that the SEC informed parent of this decision at the March 2, 2010 meeting, and that although the parent expressed disagreement with this decision, the DCPS team failed to respond to his concerns, except that this was the recommendation of the team.

The Hearing Officer finds that according to the Principal at although the student has progressed academically and behaviorally he continues to require a dedicated aide; a DCPS dedicated aide has not been identified for the student by DCPS; there are current staffing issues in the student's class and no funding to replace or reassign staff during the absence of a DCPS Aide.

The Hearing Officer finds that according to the Principal at elimination of the CARD Aide from the student's IEP would remove the support the student currently requires and has in the special and general education classes and activities, the student would not be able to interact with nondisabled students; the student would not receive educational benefit and is likely to regress and not progress academically and behaviorally.

The Hearing Officer finds that the decision to remove CARD services from the student's IEP was based solely on a directive received by the Principal and Special Education Coordinator at from the Office of Special Education, to reduce the number of-

dedicated and CARD Aides throughout DCPS; was not based on reliable data and information supporting the elimination of CARD services from the student's IEP; or a change in the student's educational, developmental, and functional needs.

The Hearing Officer also finds that DCPS failed to carefully consider concerns of the parent, student's teacher, and individuals having personal knowledge regarding the student's needs, and the potential adverse impact that such a decision would have on the student, prior to deciding to eliminate CARD services from the student's IEP. DCPS merely complied with the OSE directive and input from the DCPS Cluster Supervisor, DCPS Office of Special Education, in rendering the proceeding with the decision to eliminate CARD services from the students' IEP; without any consideration of the needs of the student.

7. The ***DCPS Classroom/Autism Consultant*** testified that she visits classes at six (6) schools, 10 classes, for approximately 60 students; supporting teachers with programming, behavior, and IEP questions.

   The witness testified that she is a full-time Consultant; she spends approximately half a day in each class, and in certain classes a full day. The Consultant testified that she has a Masters degree in education, is licensed in Virginia and not in D.C.; requires a total of 1500 hours for Board Certification as a Behavioral Analyst, and as of January, 2010, she requires 75 hours of supervision, which she anticipates completing in January, 2011; and once completed, she will participate in an exam, to receive her certification as a Behavioral Analyst.

   The Consultant also testified that currently there is no training module or tests for the DCPS instructional aides and the DCPS aides can enter an autistic classroom with no training. The Consultant testified that although changes in the autism program are being considered for the next school year; she is unaware of the nature or extent of the changes, or if these changes will take place next year because it is merely at the planning stage; however, she is confident that would be affected (i.e. mandatory training for all aides).

   The Consultant testified that a new aide requires at least 8 hours of training on ABA theories, prompting, behavior management, discretionary trials; and the DCPS Aides have only been able to receive on the job training; and no training outside the classroom. The Consultant testified that a dedicated aide requires more training on discretionary trial teaching, reinforcements, prompting, shadowing without interfering; and currently a

   The Consultant testified that she attends the teachers classes on Friday afternoon, generally from 12-3 p.m., providing support to DCPS staff and personnel upon request; however, during the last couple of months has not been in the student's classroom, provided no support to the student's teacher, or related service providers, or staff at the Fillmore Center, because her assistance was not requested.

   The Consultant testified that during the 2009/10 school year, she only provided the DCPS aides forty minutes of training; and within the four hours of support per week she provides the school, she does not have the time to train the DCPS Aides.

The Consultant testified that during this school year, she was in the student's classroom on three different occasions for the entire day, and the part-time aide was not present, although the aide is expected to be in the classroom each day.

The Consultant testified that she has not reviewed the CARD data for the student, and is not familiar with all the data collected for the student; however, opines that based on the student's needs as of this date, the student requires a continuation of data collection on social/emotional goals, implementation of the CARD behavior plan, tracking of the data CARD gathers, and implementation of academic goals.

The Consultant concluded that the data collection by the DCPS Aides is limited at best; she has limited knowledge regarding the data collected for the student; and she is not familiar with CARD data collection instruments; and is unaware of whether the current DCPS Aides create reports based on data collected.

The Hearing Officer finds that the Classroom/Autism Consultant lacks the time necessary to train current DCPS Aides; would not be available to provide a new DCPS dedicated aide the training necessary to support this autistic student; and the existing DCPS Aides require far more training than the Classroom/Autism Consultant is able to provide, and which is necessary to effectively support this autistic student.

The Hearing Officer finds that the current DCPS aides enter the classroom with no ABA training, knowledge, or skills necessary to support the teacher or this autistic student; DCPS has no plan in place to provide the DCPS Aides the necessary training; the DCPS does not have a dedicated aide identified for the student, or a plan in place to identify a qualified and skilled dedicated aide for the student; or the necessary support staff to assist the student in transitioning from the CARD Therapist, to a DCPS dedicated Aide.

The Hearing Officer finds that at the March 10, 2010 IEP team meeting DCPS issued a Prior Written Notice indicating that it proposed to remove CARD services from the student's IEP, to be replaced by a DCPS Instructional Aide; who *has received ABA training from DCPS Classroom/Autism Consultant, and will receive ongoing training.* However, contrary to representations by DCPS at this meeting, the DCPS Classroom/Autism Consultant testified that the DCPS Aides are not trained to collect ABA data, trained on ABA principles and techniques, or qualified to implement ABA principles; and she lacks the time necessary to train the DCPS Aides on ABA principles and techniques or the collection of data for autistic students; which is contrary to representations by DCPS to the parents.

The Hearing Officer finds that the DCPS Instructional Aides have not received ABA training from the DCPS Classroom/Autism Consultant, within the last school year she has only provided the DCPS Aides forty minutes of training; the Aides require more extensive training than she has provided; she lacks the time necessary to provide future or ongoing training; and according to the student's teacher she lacks the time to necessary to provide the DCPS Aides the level and degree of consultation necessary to support the student.

The Hearing Officer finds that DCPS has had and continue to have staffing issues in the autistic classroom; has been unable to fulfill prior commitment to the parents, that it can and will provide the student the level and degree of staff support he requires, and that is necessary to meet his educational needs, without the support of CARD services; resulting in numerous due process complaints and hearings; and an expenditure of an enormous amount of resources by DCPS and the parents.

The Hearing Officer finds that DCPS currently has no staff available with the qualifications and skills necessary to provide the student, an autistic student, the level and degree of educational support services he requires, or that is comparable to that currently received from the CARD services, during the school year or extended school year; DCPS is uncertain regarding the date that a DCPS Instructional Aide will be identified and available for the student; as a result, it is unlikely that the student will receive educational benefit, and is likely to regress instead of progress academically and behaviorally. The Hearing Officer finds that removal of the CARD services would have an adverse impact on the student.

The Hearing Officer finds that in the absence of evidence to the contrary, it may be surmised that DCPS has not and will not be able to meet the student's educational, developmental, and functional needs, without the continued support of the CARD services; or DCPS aides with comparable qualifications, training, knowledge and experience in ABA principles, techniques, and data collection.

8. The ***father*** testified that when the student began attending DCPS schools he was nonverbal, and currently he is verbal to a point where he is just starting to learn to speak; his clarity of speech is not good; memory is too short to retain events; and can only recall events occurring each moment. The father testified that he relies on the CARD Therapist and teacher to communicate with him regarding the student's progress and needs, because the student is unable to do so.

   The father testified that at the March 2, 2010 IEP team meeting he expressed to DCPS that he and his wife were not involved in the DCPS team decision to terminate CARD services, the decision was without their knowledge or that of the CARD services. The father testified that the SEC at committed to providing the student services comparable to those provided by CARD services, through a DCPS dedicated aide, however, was unable to respond to the father's request that he inform the team of the actual services the student receives from the CARD staff, which reportedly would be performed by the DCPS aide; the training and qualifications of CARD staff; or background information regarding the student's progress with CARD staff, etc..

   The father testified that he is aware that DCPS is mandated to discharge 200-300 teachers; which is consistent with the decision to eliminate CARD services. The father also testified that at the March 2, 2010 and March 10, 2010 IEP team meetings DCPS disregarded his concerns regarding elimination of CARD services, and suggestions that the team discuss a reduction of CARD services, as opposed to elimination of services.

The father testified that after the March 10, 2010 meeting he was not provided the opportunity to review the minutes from the meeting prior to the minutes being finalized by DCPS; and after reviewing the minutes, had concerns that the minutes failed to include concerns he raised at the meeting regarding the elimination of the CARD Aide.

The father testified that he prepared and delivered to the student's homeroom teacher and Principal written comments regarding the March 10, 2010 meeting, and proposed elimination of CARD services, and requested that his concerns and comments be included in the record of meeting notes, however, as of this date he received no response from DCPS.

The father testified that the decision to eliminate CARD services from the student's IEP was made prior to DCPS obtaining input from the student's general education teacher, parents, or CARD services; and the decision to reduce CARD staff was made at the beginning of the 2009/2010 school year, however, the parents were not included in this decision, or informed of this decision until the March 2, 2010 IEP team meeting.

The Hearing Officer finds that DCPS denied the students' parents the opportunity for "meaningful" input in all decisions regarding the student's educational program, and the provision of a FAPE to the student; and the decision to make a significant change in the student's educational program, by eliminating the dedicated CARD Therapist and services from the student's IEP.

The Hearing Officer also finds that the decision to change the student's educational program was a unilateral decision by the DCPS, Office of Special Education; and not a team decision. The decision was made without the benefit of input from the parent and individuals with personal knowledge regarding the student and his educational, developmental, and functional needs (i.e. CARD service personnel, the ABA Consultant, parents, student's general and special education teacher); and failed to carefully consider the input provided.

The ***CASE Manager for the Center for Autism and Related Disorders (CARD)*** testified that she is in the process of completing her Master's degree, completing her thesis next week, and pursued a PhD., however, failed to complete it. The Case Manager testified that she completed course work in Principles of ABA and practices; and has prior experience with ABA.

The Case Manager testified that the CARD Therapists are referred to as Shadows in the school environment, and their role is to break down instructions given the student by the teacher, to assist with comprehension, provide effective prompting techniques, use specific schedules of reinforcement, and break down social situations.

The Case Manager testified that the staff collect data on everything the student does, and the organization regularly place supervisors to conduct therapy, when a therapist is absent or to be involved with the student, teacher, and class and to have an improved understanding of the student's needs.

The Case Manager testified that on a regular basis, the organization have clinic meetings with parents, school personnel, to review the case and provide 1:1 training; training of Therapists is ongoing; every Therapist is assigned a Supervisor who serves as a mentor for the Therapist. CARD has quarterly evaluations of the Therapists; have monthly mentor meetings and 1:1 meetings with Supervisors and mentees at the office.

The Case Manager testified that instructional worksheets are completed for therapists, they may have 2 or three supervisors depending on the number of students assigned, to assess their strengths, needs revisited, refer to training log and various training tools, and may practice with role play. CARD may also have regular mandatory training for all staff in the evenings once every six weeks, for 2-3 hours.

The Case Manager testified that CARD shadows back up teachers and break down instruction, serve as training models, prompting, reinforcement, follow up with teacher regarding instructions, record keeping for all tasks; and ABA is science driven, therefore, collecting data is important. The Case Manager discussed the various forms of data collections, and data collection reports; and testified that CARD Supervisors are available to Therapists via email, telephone, and text mail, at all times.

The Case Manager testified that prior to becoming a CARD Therapist, each individual is required to complete a 60 hour training program consisting of classroom learning of ABA principles and applications; and the second component consisting of application of the ABA principles; each Therapist is paired with a currently trained Therapist, who provides feedback at the end of each session for 2-3 weeks. Thereafter, the Therapists must complete and pass two (2) examinations consisting of a written and practicum examination on ABA principles and application.

The CARD Therapist accompanies the student during lunch, recess, DEAR, structural play, work time with the teacher, snack time, breakfast, work, circle time, math, social worker, library, and the student's manding is always tracked. CARD developed the Behavioral Intervention Plan for the student, collects and manages data for all programs and behavior; track behavior moment by moment as it occurs.

The Case Manager testified that the CARD Therapist intercedes when the student is not engaged by the DCPS school staff, because the student loses attention and focus; engages in self stimulating behavior, off task behavior; or plays inappropriately. The CARD Therapist shadows the student throughout the school day, gathers data regarding the student's behavior, and developed the social emotional goals and goals in other areas of the student's IEP.

The Case Manager testified that the student's characteristics are more severe and not mild as reported by DCPS; his receptive and expressive language skills, social and play skills, level of comprehension, attention deficit, exercise of functional and social cognitive skills are law, challenging behaviors-high rate, and is severely below grade level in all areas,- except math where he is slightly below grade level; and the student has a BIP, which he requires. The CARD Supervisor testified on redirect that consistency is good for the student, as well as generalizations.

The Case Manager testified that nearly 90% of the CARD Therapists have a Bachelors Degree in Psychology, Education, or Human Development; one Therapist has a Masters Degree and is in her PHD program, 20% have had a Masters Degree or are pursuing a PhD. The Basic requirement for a CARD Therapist is prior experience working with children, and a high school diploma.

The Hearing Officer finds that the Center for Autism and Related Disorders, Inc. uses Applied Behavior Analysis (ABA) techniques in their treatment services. Behavior analysis is the science of learning and motivation and consists of principles based on over 100 years of research. ABA for individuals with autism involves increasing skills and decreasing challenging behaviors. More than 40 years of scientific research has shown behavioral treatments to be the most effective approach for individuals with autism.

The Hearing Officer finds that CARD services include: diagnostic services, standardized and behavioral assessments, supervision and consultation, direct one on one therapy, school shadowing, speech and language services, behavior management services, medical procedure facilitation services, relationship development, social skills groups, sibling programs, training for parents, practitioners, and schools, and workshop services.

The Hearing Officer finds that as part of the CARD Therapist Training Protocol, the CARD Therapists receive a minimum of 60 hours of ABA classroom training **BEFORE** they start working with students. Training entails a comprehensive lecture in Applied Behavior Analysis (ABA) covering topics such as and not limited to: behavior management, reinforcement strategies, discrete trial training, discrimination training, natural environment training, fluency-based instruction, child development, autism and related disorders, verbal behavior, generalization, maintenance, prompting an fading, chaining and shaping, play skills, social skills, data collection, and implementation of CARD curriculum.

The practical portion of ABA Therapist training requires overlapping of 30 hours of therapy sessions; therapists must pass a written and practical examination at the end of their basic training; therapist receive additional training on individualized programs on their cases and learn to implement programs through supervision and team meetings; therapists receive monthly training and updates, therapists are evaluated on a quarterly basis and provided feedback; therapists are supervised and observed once a month by a supervisor for additional feedback and training support, therapists work on several cases receiving training and experience with working with different skill levels of clients; therapists are trained to implement individualized education programs; therapist undergo vigorous criminal background checks; and must test negative for tuberculosis.

The Hearing Officer finds that the CARD have highly trained and qualified staff to meet the needs of autistic students, and this student; CARD staff receive ongoing training; the CARD have staff readily available *at all times* to replace absent Therapists or provide Therapist and teacher support; Therapists have the ongoing support of Supervisors - serving as mentors, and are specially trained on ABA principles and strategies, and serving the needs of autistic children.

The Hearing Officer finds that the CARD staff developed for the student recommended goals and objectives in the areas of language social skills/play skills, community social behavior, gross motor skills, self help skills, pre-academic/academic skills; fine motor skills, for inclusion in the student's IEPs; Quarterly Patient Evaluation Reports; ***Therapist and Supervisor logs for programs*** including touch math, attributes, social identification questions, sequencing, manding, choice time-play skills, categories, expressive labels, brushing teeth; and ***Therapist school logs*** during breakfast, work, circle time, math, social worker time, library, science, journal/work time, lunch, recess, DEAR, structured play, work time with manning, and snack.

The Hearing Officer finds that the CARD staff developed a Behavior Intervention Plan for the student, targeting his verbal stimulatory behavior, and scripting; which is included as part of his IEP; gather and record behavior management data.

The Hearing Officer finds that according to the student's teacher the student has made significant progress in all areas *because of the support he receives from the CARD services*, compared to other students in his class; however, he continues to require the support services of an ABA trained dedicated aide, in certain areas.

The Hearing Officer finds that the student will continue to receive educational benefit and progress academically and behaviorally, with the support of CARD services; and is likely to regress in these areas, without the continued support of the CARD services staff which he has had since kindergarten; or DCPS staff of comparable qualifications, training, knowledge and experience.

9. The ***DCPS Speech Language Pathologist*** testified that during an evaluation conducted in February and March, 2009, the student required consistent sensory breaks, redirection, and tangible reinforcement during the evaluation process secondary to fidgeting, decreased attention, and increased distractibility.

   The Pathologist concluded that based on formal and informal assessment measures, the student is demonstrating a *moderate –severe receptive and expressive language disorder and a moderate articulation disorder*. Areas of concern included auditory processing of information, a week lexicon, grammatical morphemes, linguistic concepts, and formulating sentences of increasing length and complexity. The Pathologist also noted that the *student is presenting with increased distractibility and decreased attention to tasks and speaker which negatively impact his comprehension of presented information, recommending continued speech and language services.*

   The Pathologist testified that she never observed the student at the Fillmore Center, once in physical education, 5 minutes during recess with nondisabled peers, snack time, and occasionally in the special education class, approximately 25% of the time, 2-3 times during the 2009/10 school year.

   The Pathologist testified that based on individual sessions with the student, and her limited observation of the student, in passing; and her conversation and collaboration with CARD regarding the student's progress, she opined that the student was doing well; and not certain he requires an Aide.

The Pathologist testified that during her limited observation and interaction with the student he was easily redirected, while noting that the CARD Therapist would observe the type of requests the student made, document the requests, and indicate whether there was a question, request, or utterance. The Pathologist also testified that she had not spoken with the CARD services staff regarding the elimination of CARD services.

The Pathologist testified that the student has made some nice gains and progress in his language goals and mastered three (3) goals in is IEP this year; and according to the student's teacher and CARD Aide, at least weekly, the student's comprehension and use of terms, as well as quantitative and qualitative concepts are completed with 80% accuracy. The Pathologist also testified that prior to the March 2, 2010 IEP team meeting, she was advised by her Supervisor that DCPS was considering discontinuing CARD services for the student; and would replace the CARD Aide with a DCPS Aide.

The Hearing Officer finds that according to the Speech and Language Evaluation dated March 13, 2009, the student is demonstrating a *moderate –severe receptive and expressive language disorder and a moderate articulation disorder,* and there remain areas of concern requiring continued attention and support; which is contrary to representations reportedly made by the SEC to the Cluster Supervisor, in his written justification, for a dedicated aide for the student, which is that CARD services are no longer warranted because the instructional aides assigned to that classroom can deliver the same ABA techniques to the student; and the student has *mild* characteristics of a student with autism, and is functioning slightly below grade level.

The Hearing Officer also finds that the Speech Language Pathologist's information regarding the student's educational program, CARD services, and familiarity with the student is limited to the provision of speech language services; and therefore lacks information sufficient to provide a recommendation regarding the elimination of the CARD Therapist and services from the student's IEP; whether the student no longer requires a dedicated aide; or whether the student can progress, with a DCPS aide and without the CARD Therapist.

10. The ***Special Education Coordinator ("SEC") at ES*** testified that he is primarily responsible for facilitating and coordinating IEP initiatives; and that he and the student's teacher share responsibility for ensuring IEP implementation. The SEC also testified that he is at Monday and Tuesday of every week, and rotates every other Wednesday.

The SES testified that he is the default Case Manage for the student, and the student's special education teacher is the student's Case Manager, responsible for updating present levels of performance, developing baselines for the student, implementing accommodations in the classroom, development the least restrictive environment statement for the IEP, monitoring the student's progress, developing progress reports, developing the majority of the IEP goals, and ensuring goal implementation.

The SEC testified that at the March 2, 2010 IEP team meeting, he advised the parents regarding the removal of CARD services; that the related services personnel and student's special education teacher could continue to maintain the student's progress without CARD services.

The SEC testified that the draft IEP sent to the parent on March 2, 2010, did not provide the student a dedicated aide; and that it was expected that the student's special education teacher would address the student's social emotional needs based on the goals developed by the CARD; and the student's IEP would be developed by the teacher and CARD.

The SEC testified that at the March 10, 2010 meeting, he discussed with the parent rotating three (3) DCPS aides for the student. The SEC testified that the parents were provided the opportunity to participate in decisions regarding the student's educational program, and provide input regarding the removal of CARD services.

The SEC testified that the DCPS Office of Special Education, Cluster Supervisor, was involved in the decision to eliminate CARD services, which was based on information regarding the student's progress obtained from the student's special education teacher and related service providers; and she is responsible for staffing the Aide for the student.

The SEC testified that DCPS has not identified a DCPS aide to serve as the student's dedicated aide, and awaits a decision by the Hearing Officer; and although he opines that would be the best choice, as the student's dedicated Aide, and she remains a DCPS employee, he is uncertain whether she would be assigned to the student.

The SEC testified that he was not aware that the student exhibits behavior problems, although aware that the student exhibits stimming, and there was discussion of a behavioral goal.

The SEC testified that the DCPS instructional and dedicated aides have met whatever requirements DCPS has established; and that the ABA Consultant worked with the DCPS aides in the classroom, although he is not aware of the amount of staff; and the Consultant will work with them on strategies to utilize.

The SEC testified that the student would have a dedicated aide during the Summer ESY program; and that it is automatically understood that if a dedicated aide is indicated on the IEP, that the aide would be with the student full-time and can communicate with the parent the location, beginning and ending dates, at an IEP team meeting.

The SEC testified that after his observation of the student, and based on information received from the student's special education teacher and related service providers, he opined that the student is more independent than the parent is aware. However, the SEC acknowledged that he only observed the student in his classroom more than once, for more than fifteen minutes; had not observed the student at the Fillmore Center, recess, lunch, library class; or conducted a formal written observation of the student.

The Hearing Officer finds that based on the testimony of the SEC, the decision to eliminate and/or reduce CARD and dedicated aides was made at the beginning of the 2009/10 school year; denying parents the opportunity for "meaningful" input in all decisions regarding the elimination of the CARD Therapist and services from the student's IEP.

The Hearing Officer finds that the parent's concerns and input regarding the elimination of the CARD Aide from the student's IEP were disregarded, not carefully considered. The Hearing Officer finds that DCPS also disregarded parent's recommendation that the DCPS consider discussing a reduction in CARD services versus eliminating services; or written comments, concerns, and request that the parent's concerns are reflected in the March 10, 2010 MDT meeting notes.

The Hearing Officer finds that although the SEC testified that he discussed the student's progress with the student's special education teacher and related service providers, he did not testify that he informed these individuals that it proposed to eliminate CARD services from the student's IEP; obtain input from these individuals regarding the proposed elimination of CARD services from the student's IEP; or discussed any potential harm that may result to the student, if the CARD services are removed from the student's IEP.

The Hearing Officer finds that according to the testimony of the SEC, the decision to eliminate CARD services from the student's IEP was a unilateral decision made pursuant to a management directive from the DCPS, Office of Special Education ("OSE"), at the beginning of the 2009/2010 school year; prior to meeting with the parent on March 2, 2010; and without the benefit of input from the parent and individuals having personal knowledge regarding the student and his educational needs (i.e. CARD service personnel, the ABA Consultant, parent, student's general and special education teacher).

This is further corroborated by referring to the March 10, 2010 IEP team meeting notes which clearly provide that the purpose of the meeting was to ***remove the CARD Aide from the IEP***; which indicates that the decision had already been made, denying parent, the ABA Consultant, or any other individuals having personal knowledge of the student and his educational needs, another opportunity to provide "meaningful" input in the decision.

The Hearing Officer also finds that the SEC's information and familiarity with the full scope of the student's educational program and the provision of CARD services is limited; and therefore lacks information sufficient for a recommendation regarding the elimination of the CARD Therapist from the student's IEP; whether the student no longer requires a dedicated aide; whether the student can progress with a DCPS aide and without the CARD Therapist ; or whether the DCPS instructional aides assigned to the student's autistic classroom can provide the student the same or comparable services as currently required and received by the student, and provided by the CARD services staff.

11. The ***DCPS Office of Special Education, Cluster Supervisor***, testified that she reviewed the student's March 17, 2009 IEP in the DCPS database, and was concerned regarding reasons the CARD services were continued; and subsequently learned that the service were continued because of a prior Hearing Officer's Decision.

The Supervisor testified that currently DCPS opines that once the Settlement Agreement was complied with, it can provide the student the services CARD had already instituted; and is willing to provide a DCPS dedicated aide for the student. The Supervisor testified that she recommends that the individual identified is trained on ABA principles and familiarize themselves with the CARD procedures used for the student. The Supervisor testified that DCPS ***will*** have an individual designated to train the dedicate aide assigned to the student; and that DCPS Supervisor of the autism staff, with responsibility for policies and procedures for the DCPS autistic program, ***will*** identify an aide for the student.

The Supervisor testified that she is aware that currently four (4) CARD services staff provide support services for the student, to ensure that the student does not become too attached to a particular individual; provide support to the student's special education teacher; and work independently on individual skills based on the student's IEP to ensure his academic success.

The Supervisor testified that the DCPS dedicated aides are required to have the same educational qualifications as an instructional aide, which includes two (2) years of college education and passing a highly qualified assessment; which is inconsistent with the testimony of the DCPS Classroom/Autism Consultant; and Principal at regarding the requisite qualifications of DCPS Aides.

The Supervisor also testified that DCPS dedicated aides and instructional aides require training once or twice a year; although she is not familiar with the type of training they require; and it is her understanding that the DCPS Classroom/Autism Consultant is expected to provide the DCPS aides training, once or twice a year; which is usually scheduled for all day or a half day, approximately 10 hours a year; although she was not aware that the training occurred this school year; the amount of training the individual replacing the CARD Therapist will receive; or the manner in which the number of training hours will be determined.

The Supervisor testified that on March 1, 2010 and March 15, 2010, she conducted a classroom observation of the student; and spoke with the SEC at who indicated that CARD services were no longer warranted. The SEC testified that it is the policy of the Office of Special Education, that if there is a recommendation to reduce the number of dedicated aides, a classroom observation must be completed to provide strategies, agree or disagree with the recommendation; prior to convening an IEP team meeting. The SEC testified that she is uncertain whether she conducted the March 15, 2010 observation prior to the March 10, 2010 IEP team meeting, however, the March 2, 2010 IEP team meeting occurred after the March 1, 2010 observation.

The Supervisor testified that she observed the student in the classroom on March 1, 2010, for approximately 1 hour; wherein she observed the CARD staff with the student for approximately 15 minutes of the one hour, and the remainder of the time in the back of the room taking notes.

The Supervisor also testified that the DCPS aide worked with the student with an activity and reading for approximately 20-30 minutes; and that the student is more independent, accepts redirection easily, and the strategies of ABA and services observed from CARD can, and was implemented by DCPS' current staff.

The Supervisor also testified that on March 15, 2010 she observed the student in the classroom for approximately 1 hour and 45 minutes; and the CARD Aide was in the back of the room, with large notebook; and when she approached the student the CARD aide also approached the student, however, at no time was involved with the student who appeared quite independent.

The Supervisor testified that the student would so often say things unrelated to the topic; however was easily redirected by the DCPS Aide; and the CARD Aide sat with the student once the teacher's attention was directed towards another student. The Supervisor testified that the CARD Aide advised her that the student is much better and responses are more accurate and praised the student for his work; staying with him another 5 minutes and then returned to the back of the room where she remained during the observation.

The Supervisor testified that the CARD Therapist was at the back of the room for at least 45 minutes, and observed the student from the back of the room, though not working with him directly; and she observed the teacher prompting the student twice, the Aide promoted the student once, and the CARD Aide prompted the student twice. According to the Supervisor, during the Spring of the 2008/09 school year, the DCPS requested that during classroom instruction, the CARD staff reduce the close supervision provided the student; and according to the CARD Case Manager, the CARD Therapists shadow the student, and only engage the student upon request of the student's teacher, DCPS Aide, or as needed to fill in for the teacher.

The Supervisor testified that based on her observations, she recommends a DCPS Instructional Aide can provide the services of the CARD Aide, which failed to do anything special other than that provided by the Teacher and DCPS Aide; and that during her observations, she did not observe the DCPS Aides recording information regarding the student's performance, behavior, etc...

The Supervisor testified that she did not communicate with the student's special education teacher, the DCPS Aide, or Card Therapist regarding the recommendation to eliminate CARD services however, provided the results of her observation to the SEC at ES.

The Supervisor initially testified that the section of her observation report identified as *"Information Gleaned from Record Review, Staff/Parent Interviews, and Classroom Observation"* provides that the student has *mild* characteristics of a student with autism; and that she made this decision based on a review of prior reports, specifically the Psycho-educational Evaluation.

The Supervisor subsequently testified that the information included under the *"Information Gleaned from Record Review, Staff/Parent Interviews, and Classroom Observation"* section of the report ; including information that the student has *mild* characteristics of a student with autism; his behaviors can be redirected and he currently does *not* have a Functional Behavioral Assessment (FBA), or Behavior Intervention Plan (BIP); has severe receptive and expressive language and has a mild articulation disorder; is easily distracted and, without frequent redirection, will be unable to complete a task successfully; and *is functioning slightly below grade leve* ; was based on information she obtained from the written justification for a DCPS dedicated aide, prepared by the SEC at ES; and was not based on her personal observation, knowledge, or information.

The Supervisor also testified that she reviewed the student's prior IEPs, Educational Assessment, Confidential Psycho-educational Triennial Evaluation Report, Speech and Language Triennial Evaluation, and progress reports. The Supervisor testified that she has no concern that DCPS will not be able to provide the student a trained dedicated aide, and is not opposed to the CARD training the dedicated aide. The Supervisor testified that

The Supervisor testified that she has not been involved in identifying a dedicated aide for the student; the Supervisor of the DCPS autism program is responsible for identifying and hiring a dedicated aide for the student; and the Office of Special Education has identified a person to train the DCPS Aide; however, she is not aware of the identity of the person. The Supervisor testified that the IEP should be written to include the duties of the dedicated aide, to assist in mastering the goals in the IEP.

The Supervisor testified that if a DCPS Aide assigned to the student is absent, the OSE would be notified to send a replacement; which is expected to occur within 24 hours of a request. The Supervisor also testified that unless an IEP indicates that the dedicated aide is part-time, it is *assumed* that the aide is full-time.

The Supervisor testified that she is not aware that the CARD services staff provide other support services to the student's teacher; failed to observe the student in any other setting other than his special education classroom; and is not aware if the student spends anytime in a general education setting, or the role of the CARD Aide in providing the student support in alternate settings at ES.

The Supervisor testified that both DCPS Aides currently supporting the autism class can deliver the same ABA techniques to the student as provided by the CARD services, however, she is not aware of one of the DCPS aide's qualifications. The Supervisor also testified that *it would be necessary that DCPS train all dedicated aides to ensure full coverage during absence of an aide or other staff are pulled away for other duties.*

The Supervisor initially testified that the SEC, the student's special education teacher, and a DCPS Aide opined that CARD services were no longer warranted; however, subsequently testified that she failed to obtain input from the student's special education regarding the proposed elimination of the CARD Aide from the student's IEP.

The Supervisor testified that she had no idea whether budgetary constraints was a factor in the Office of Special Education's decision to reduce the number of dedicated aides or an effort was underway to do so.

The Hearing Officer finds that the fact that CARD staff spends a considerable amount of time documenting, is because the nature of the student disability is such that, gathering extensive data regarding the student's daily activities and behavior, is critical in assisting the student's teacher in developing an appropriate IEP for the student; monitoring the student's progress and areas of need; and implementing the goals and objectives of the IEP.

The Hearing Officer finds that the DCPS, OSE, Cluster Supervisor's information and familiarity with the student, the nature and extent of the student's disability of autism, the full scope of the student's educational program, and the provision of CARD services is limited; and therefore lacks the information necessary to support a recommendation or decision to eliminate the CARD Therapist and support services from the student's IEP; to determine whether this student no longer requires the support services of an ABA trained and qualified dedicated aide; whether the student can progress with a DCPS aide and without the CARD Therapist ; or whether the DCPS instructional aides assigned to the student's autistic classroom can provide the student the same or comparable services as currently required and received by the student, and provided by the CARD services staff.

The recommendation and decision of the DCPS, OSE, Cluster Supervisor to eliminate CARD services from the student's IEP was a unilateral decision made pursuant to a management directive from the DCPS, Office of Special Education ("OSE"), at the beginning of the 2009/2010 school year; prior to meeting with the parent on March 2, 2010; and without the benefit of input from the parent and individuals having personal knowledge regarding the student and his educational needs (i.e. CARD service personnel, the ABA Consultant, parent, student's general and special education teachers).

The recommendation and decision of the DCPS, OSE, Cluster Supervisor to eliminate the CARD Therapist and services from the student's IEP was also based on input from the SEC at and representations regarding the nature and extent of the student's disability, made by the SEC at in his written justification for a DCPS dedicated aide; and was not based input from individuals having personal knowledge regarding the student's educational program and needs, or the needs of the student.

12. The ***DCPS, Office of Special Education, Special Education Specialist (SES)*** testified that she is responsible for monitoring and supporting IEPs through the Cluster 1 program, consisting of 29 schools, 14 of which she has responsibility; assisting the SEC's, advising the SEC's, monitoring the SEC's, assisting and mentoring teachers in managing their caseloads, assisting with instruction and questions of school staff; and her Supervisor is the DCPS Office of Special Education, DCPS Cluster Supervisor.

The SES testified that she became familiar with the student, on paper, in June, 2009; is not familiar with the student's IEP; and only familiar with the CARD services through limited discussion with the former SEC at regarding implementation of a prior Settlement Agreement, during the 2008/09 school year; review of current disclosures; and conversations with others regarding the CARD services.

The Hearing Officer finds that the DCPS, Office of Special Education, Special Education Specialist's (SES) information and familiarity with the student, the nature and extent of the student's disability of autism and educational program, the provision of CARD services; and DCPS' recommendation to eliminate the CARD Therapist and services from the student's IEP, is very limited.

13. The Hearing Officer finds that on March 2, 2010 and March 10, 2010, DCPS lacked the information necessary to support elimination of the CARD Aide and services, from the student's IEP; and prior to rendering the decision had limited knowledge and information regarding the following:

    1) the full scope of the student's existing educational program; 2) the student's academic, developmental, and functional needs in the general and special education classrooms and activities; 3) the level and depth of services provided the student and teacher, by the CARD staff; 4) a basic understanding of autism and the functional needs of an autistic student; ABA principles, techniques, and strategies; 5) the significance of ABA data collection in developing and implementing the educational program for this autistic student; 6) the qualifications, training, and experience of CARD Therapists and DCPS Aides, and the significance of ensuring that Aides servicing autistic student receive ABA training prior to working with an autistic student; and 7) that the DCPS Aides are capable of providing the student the support services he requires, and as currently provided by the CARD services staff.

14. The Hearing Officer finds that prior to rendering the decision to eliminate the CARD Aide and services from the student's IEP, DCPS failed to observe the student in all general and special education settings; reevaluate the student to determine whether the student's needs changed warranting a change in the services he received; and failed to carefully consider the full scope of the services the student requires in the general and special education settings, lunch, recess, the Fillmore Center, physical education, library, and the DEAR program.

15. Assuming arguendo, DCPS identifies and assigns to the student a DCPS ABA qualified and trained dedicated aide, according to witness testimony, the nature of the student's disability is such that the student has difficulty with generalization with different individuals, and different skills; and must practice skills these with different individuals, to ensure that he does not forget information; and can apply the same skills learned with different individuals.

    Currently, the autism class is not fully staffed with DCPS Aides; and the Aides assigned to the class do not consistently report to the class, or are available to support the teacher or students in the class.

Therefore, it would be necessary that DCPS not only train a dedicated aide for the student on ABA principles, techniques, and strategies; however, also train all of its current aides; to ensure the availability and rotation of DCPS Aides to provide the student the requisite support he requires.

16. The Hearing Officer finds that Petitioner satisfied its burden of proof by presenting evidence that on March 10, 2010, D.C. Public Schools failed to develop an appropriate Individualized Education Program (IEP) for the student. The Hearing Officer finds that the March 10, 2010 IEP is inappropriate for the following reasons:

    - The section of the March 10, 2010 IEP, identified on page 12 as "**DEDICATED AIDES**" was revised to reflect that the *student **requires the support** of a dedicated aide*, during the regular school year; however, it is incomplete and fail to include the daily schedule of assistance the student will receive from the dedicated aide, the location, beginning or ending dates, who will serve as the student's dedicated aide, and does not reflect that the student will have a full-time dedicated aide.

    - The IEP eliminates the use of a CARD Therapist, and Supervisor; and in comparison to the March 17, 2009 IEP, does not incorporate in the goals of the IEP, use of a dedicated or instructional aide to support the student throughout each day.

    - The IEP provides that the student will receive statewide Assessment accommodations; and classroom accommodations in all academic subjects; however, includes no accommodations during recess, lunch, library, DEAR, art, physical education, music, etc.

    - The IEP eliminates from the student's IEP and ESY goals, the goal associated with the student's learning to brush his teeth appropriately, which is a necessary and appropriate goal for the student as part of the acquisition of daily living skills; which requires the support of an aide. The IEP eliminates from the student's IEP a discussion regarding management and monitoring of the student's stimming, which requires the support of an aide.

    - The IEP recommends ESY services consisting of 4 hours per day of specialized instruction outside general education, 5 hours per day outside general education, and 120 minutes per week of speech and language services, outside general education, however, eliminates from the student's IEP, the opportunity for the student to interact with non-disabled students in a general education setting, during ESY; which was available in his March 17, 2009 IEP.

    - The IEP recommends ESY during the Summer of 2009/10, however, fail to include a dedicated or instructional aide to support the student during the ESY, and extended ESY activities during interaction with non-disabled students.

- The IEP indicates that the student is to spend 8 hours per week in general education; however, there is no information in the IEP, regarding the nature and extent of the student's time in the general education setting; or whether he will receive support of a dedicated or instructional aide.

- The IEP eliminates from the student's IEP social skill goals and objectives, which are necessary to address the student's peer interaction, with nondisabled students.

- The student's participation in the Drop Everything and Read (DEAR) program, consists of silent reading time in a general education classroom, however, the student participates in the DEAR in the hallway of the general education class, with a general education student and aide, which deprives the student the opportunity to interact with non-disabled peers; and address his goal of integration and working on social/emotional skills.

- In developing the student's March 10, 2010 IEP, the IEP team failed to consider the strengths of the child, concerns of the parents for enhancing the student's education, results of prior and recent evaluations of the child; or the academic, developmental, and functional needs of the child.

- During review and revision of the student's IEP on March 10, 2010, DCPS failed to comply with the IDEA, 34 C.F.R. §300.324 (b), which requires a ***review*** of the child's IEP to determine whether the annual goals for the child are being achieved; and ***revises*** the IEP, as appropriate, to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; *the results of any reevaluation conducted under §300.303*; information about the child provided to, or by, the parents, as described under §300.305(a)(2); and *the child's anticipated needs*; or other matters.

- The nature and severity of the student's disability is such that this student can only make progress on IEP goals and objectives with the support of a full-time qualified ABA Therapist, or ABA trained and qualified dedicated aide; and DCPS failed to consider the student's ability to meet the IEP goals without the support of full-time a qualified ABA Therapist, or ABA trained and qualified dedicated aide; or any potential harm that may result to the student if the dedicated aide is removed from the student's educational program.

- The goals in the student's March 10, 2010 IEP are not reasonable, realistic, or attainable by the student because it eliminates the support services of a CARD Aide, and makes no provision for a full-time dedicated aide, with comparable qualifications, training, and skills in ABA principles and techniques.

- DCPS failed to carefully consider the information obtained from the various sources (i.e. prior evaluations, parents, CARD services staff, special and general education teachers), in violation of IDEIA, §300.306 (c)(1)(i)(ii); and failed to ensure that the information obtained from all of these sources was documented and carefully considered in developing the student's March 10, 2010 IEP.

- The March 10, 2010 IEP eliminates the student's Intervention Behavioral Plan (IBP), and fails to include in the IEP strategies, including positive behavioral interventions, supports, and other strategies to address that behavior.

- The March 10, 2010 IEP does not provide the student "a basic floor of opportunity", some educational benefit, or access to the general curriculum, because it eliminates from the student's IEP the support services of a dedicated aide, which he requires to make academic progress.

- The student's March 10, 2010 IEP is not specifically designed and tailored to meet the student's unique educational, developmental, and functional needs, or provide the student the support services, necessary to permit him to access the general curriculum and receive educational benefit; in violation of 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii).

17. Petitioner satisfied its burden of proof by presenting evidence that on March 2, 2010 and March 10, 2010, D.C. Public Schools failed to properly convene an Individualized Education Program (IEP) team meeting, because the meeting failed to include not less than one regular education teacher of the child, during discussion and decisions regarding the student's participation in the general education curriculum; in violation of the IDEA, 34 C.F.R. §300.321(a) (2).

18. DCPS failed to comply with the procedural requirements of the IDEA, by failing to ensure that the parent was provided the opportunity for "meaningful" input in all decisions regarding the student's educational program, and the provision of a FAPE.

19. DCPS failed to comply with the procedural requirements of the IDEA, by failing to provide parent prior written notice that it proposed to eliminate CARD support services from the student's IEP, within a reasonable time before it proposed to initiate or change the provision of a FAPE to the student.

20. DCPS failed to comply with the procedural requirements of the IDEA, by failing ensure that on March 2, 2010 and March 10, 2010, the IEP team included, among others, not less than on regular education teacher of the child; and individual knowledgeable regarding the student's general education curriculum; and an individual knowledgeable regarding the availability of DCPS staffing resources (i.e. qualifications of experience of the DCPS Aides).

V. 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:

1. In determining the student's educational needs, DCPS failed to comply with the IDEA, 34 C.F.R. §300.306 (c) which provides that in interpreting evaluation data for the purpose of determining if a child with a disability under §300.8, *and the educational needs of the child*, each public agency must *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 *ensure that the information obtained from all of these sources is documented and carefully considered*; which failed to occur in this matter.

2. In reviewing and revising the student's IEP on March 10, 2010, DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324 (b), which provides that each public agency must ensure that the IEP team ***review*** the student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved (i.e. whether the student met the functional goal of brushing his teeth, which was included in his prior IEP, stimming, etc.); and ***revised***, as appropriate, ***to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate***; the results of any reevaluation conducted under §300.303; information about the child provided to, or by, the parents, as described under §300.305(a)(2); and the ***child's anticipated needs***; or other matters.

   According to the March 10, 2010 IEP team meeting notes, the purpose of the meeting was to eliminate the CARD Aide from the student's IEP; and was not to review the student's IEP to determine whether the annual goals for the student were being achieved; and the student was progressing as expected towards meeting his annual goals, with the support of the CARD Therapist and services, therefore, there was no basis for DCPS to revise the student's IEP to eliminate the CARD Therapist and services, which represented the very support which attributed to his continued progress.

   DCPS also failed to address the student's anticipated needs; because although it included in the March 10, 2010 IEP that the student requires a dedicated aide, it has not identified a dedicated aide for the student, or informed parent of efforts underway, information regarding the qualifications and experience of the DCPS dedicated aide to be assigned to the student; or when the parents can expect that the DCPS dedicated aide will be assigned to the student.

3. DCPS failed to comply with the IDEA, 34 C.F.R. §300.320; and the IDEA, 34 C.F.R. §300.324(a)(2)(i) and 34 C.F.R. §300.324(a)(3)(i), which provides in part, that if the child's behavior impedes his learning (i.e. stimming), as in this instance, the IEP team ***must*** include in the IEP strategies, including positive behavioral interventions, supports, and other strategies to address that behavior; which failed to occur in this matter.

4. In developing, reviewing, and revising the student's IEP on March 10, 2010, DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324(a)(1) which provides that the IEP team must consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and (4) academic, developmental, and functional needs of the child.

5. DCPS failed to comply with the **IDEIA, 34 C.F.R. Section 300.321(a)** which provides in pertinent part that the public agency must ensure that the IEP Team for each child with a disability includes, among others, not less than on regular education teacher of the child; and an individual knowledgeable regarding the general education curriculum.

6. DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. Section 300.503(a) (1) and (b), which provides that whenever the public agency *proposes to initiate or change*, or refuses to initiate or change the identification, evaluation, or educational placement of the child *or the provision of FAPE to the child (i.e. reduction in specialized instruction services)*; *written notice* that meets the requirements of paragraph (b) of this section must be given by the public agency to the parents of a child with a disability within a reasonable time before the proposed action.

7. The student was deprived of a free and appropriate public education, for the following reasons:

   (1) DCPS violated the IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE), and

   (2) The March 10, 2010 IEP is not reasonably calculated to provide the student access to the general education curriculum; or enable the child to receive educational benefits. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

8. The FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, unless it can be determined that the inadequacies:
   - (I) impedes the child's right to a free and appropriate public education;
   - (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
   - (III) caused a deprivation of educational benefit.

   The procedural violations in this matter impedes the student's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; and deprives the student the educational benefit he is entitled to receive under the IDEA.

   The procedural violations also result in substantive harm to the parent and student because the procedural violations in question seriously infringe upon the parent's opportunity to provide "meaningful" input in all decisions regarding the student's education; and the provision of a FAPE to the student. As a result, the student is deprived an individualized education program specifically designed to address his unique academic, developmental, and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

VI. ORDER

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

1. DCPS shall convene an MDT/IEP team meeting with the parent, no later than *May 26, 2010*, to review the student's March 17, 2009 and March 10, 2010 IEPs; and revise the student's March 10, 2010 IEP, consistent with the findings in this decision and order. *DCPS shall utilize the March 17, 2009 IEP as its template, in revising the March 10, 2010 IEP.*

   DCPS shall ensure that the parent has the opportunity to provide "meaningful" input in all decisions regarding the student's educational program and the provision of a FAPE to the student.

   [3]The team shall revise the March 10, 2010 IEP, to include however, not limited to the reinstatement and the continued funding of the CARD services for 32 hours per week, in addition to 4 hours of CARD supervision services, currently provided the student during the academic school year, in addition to all ESY classes and activities with nondisabled peers; accommodations during the school year and ESY; incorporation of CARD services, in the IEP goals as provided in the March 17, 2009 IEP; inclusion of social skills goals and objectives in the IEP, during the academic school year and ESY; clarification of the ESY service hours and duration and provision for CARD services during ESY; and the incorporation of the student's IBP.

   DCPS shall also incorporate in the IEP an inclusion component for the student's academic and ESY instruction and activities, with *"meaningful"* input from the parent, which shall consist of an increase in the amount of time the student spends in an inclusion setting with nondisabled peers, during the student's academic instruction, and a dedicated aide from the CARD.

2. DCPS shall continue to fund the provision of the CARD services for 32 hours per week, in addition to 4 hours of CARD supervision services, currently provided the student during the academic school years, and all ESY classes and activities with nondisabled peers; until such time as DCPS demonstrates that it has the staff and resources necessary to meet the student's educational, development, and functional needs, including however, not limited to, comparable ABA support and supervision services provided by the CARD services; and a cadre of DCPS Aides with comparable ABA qualifications, training, knowledge, and experience, as the CARD, Therapists, prior to the DCPS Aides working with the student.

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[3] *At the election of the parents, the parties may discuss parent's initial proposal to reduce and not eliminate CARD services, and the parent may agree to reduce and/or modify the CARD services, **if** the parents are confident that such a reduction and/or modification will continue to meet the educational, developmental, and functional needs of the student; and will not adversely impact the student's educational program, and the provision of a FAP. The student's IEP shall be revised, consistent with any agreement the parties may reach.*

3. At such time as DCPS has the staff and resources available to meet the academic, developmental, and functional needs of the student, as represented in paragraph 2 of this Order, the IEP team shall reconvene to discuss, review and revise the student's IEP, as appropriate.

   The IEP shall include a daily schedule of assistance to be provided by the dedicated aide; the location of services, beginning and ending dates of the services, whether the aide is a full-time dedicated aide during the academic school year and ESY, and the duties of the DCPS dedicated Aide. DCPS shall provide the parent information verifying that the DCPS Aides possess the training, qualifications, and experience comparable to that of the CARD Therapists, prior to working with the student; and that the DCPS Aides have access and will utilize the curricula materials and components provided as part of the School based CARD services; direct supervision and support services, comparable to that currently provided the CARD Therapists by the CARD Supervisor; and the team shall discuss and agree upon a plan to assist the student in transitioning from the CARD services to the DCPS Aide, to minimize any potential adverse impact upon the student's educational program.

4. DCPS shall ensure that it convenes the IEP team meeting referenced herein, consistent with IDEIA, 34 C.F.R. §300.321(a), which shall include, among others, not less than one regular education teacher of the student, *a CARD Case Manager or Supervisor*, and an individual knowledgeable regarding the general education curriculum; and DCPS Autism Program Supervisor .

5. *DCPS shall amend the March 10, 2010 IEP team meeting notes to accurately reflect and incorporate the parent's written comments provided subsequent to the March 2, 2010 and March 10, 2010 IEP team meetings.*

6. DCPS shall schedule all meetings through the parent's counsel, Attorney Margaret A. Kohn, in writing, via facsimile at (202) 667-2330; and it is further

7. In the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

8. Any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further

9. That this decision and order are effective immediately.

VII. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: *May 13, 2010*

Attorney Ramona M. Justice

Hearing Officer