

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

Student Hearing Office  
810 First Street, N.E.  
Washington, DC 20002

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[STUDENT],<sup>1</sup>  
through the Parent/Guardian,

Petitioner,

v

DCPS,

Respondent.

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Date Issued: 11/3/11

Hearing Officer: Seymour DuBow

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STUDENT HEARING OFFICE  
2011 NOV -3 AM 10:26

**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

A due process complaint was filed by counsel for petitioner on August 30, 2011. Counsel for respondent filed her response on September 12, 2011. On September 16, 2011 a resolution meeting was held and the parties failed to reach an agreement. Counsel for petitioner requested the 45 day time line to begin the day after the resolution meeting which is September 17, 2011 and the HOD is due November 3, 2011. On August 30, 2011 counsel for petitioner filed a motion for an expedited hearing. On September 12, 2011 counsel for respondent filed her opposition to the motion for an expedited hearing. On September 14, 2011 a prehearing conference was held with counsel for petitioner and counsel for respondent. On September 19, 2011 a Prehearing Order was issued. The Order denied the motion for an expedited hearing on the grounds that counsel for petitioner failed to show facts demonstrating a safety concern or

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<sup>1</sup> Personal identification information is provided in Appendix A.

other substantial justification requiring an expedited hearing in a non-discipline matter. *See Standard Operating Procedures Section 1008 (B)*. A second prehearing conference was held on October 3, 2011 with counsel for petitioner and counsel for respondent to discuss the results of the resolution process and discuss issues that counsels are trying to resolve.. A prehearing Order was issued on October 6, 2011. The Order stated that DCPS had agreed to authorize an independent psychological evaluation to determine if the student has dyslexia and an independent auditory processing evaluation resolving the issue raised by counsel for petitioner on these evaluations.

The due process hearing convened at 9 a.m. on October 18, 2011

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Washington, D.C. 20002.

Office.

The hearing was closed. At the outset of the hearing petitioner's documents P-1-P-32 were admitted into evidence. Respondent's documents R-1-18 were also admitted into evidence over counsel for petitioner's objection. (Respondent's documents were provisionally admitted pending review of the objection from counsel for petitioner that they were sent two hours after close of business hours on October 11, 2011. The prehearing Order of October 6, 2011 stated that the documents were to be disclosed by October 11, 2011. This hearing officer admitted all respondent's documents because of compliance with the prehearing Order and there was no showing of prejudice by counsel for petitioner with most of respondent's the documents also disclosed by counsel for petitioner.) All witnesses were

sworn under oath prior to testifying. Counsel for petitioner called as witnesses: Dr. Mitchell Hugonnet, a clinical psychologist, Ms. Monica Maines an independent speech and language pathologist, \_\_\_\_\_ Director of Admissions at \_\_\_\_\_ Academy and Sarah Drabkin, a law student who all testified by telephone and the parent and \_\_\_\_\_ who testified in person. Counsel for respondent called as a witness the special education coordinator at the \_\_\_\_\_ who testified by telephone.

### **JURISDICTION**

The hearing was convened on October 18<sup>th</sup> and 20<sup>th</sup>, 2011 pursuant to jurisdiction under *Public Law 108-446, The Individuals with Disabilities Improvement Act of 2004 (hereinafter referred to as IDEA), Title 34 of the Code of Federal Regulations, Part 300 (2006) and Title V-E of the District of Columbia Municipal Regulations.*

### **BACKGROUND**

Counsel for petitioner filed this due process complaint alleging that DCPS denied a Free Appropriate Public Education to petitioner's sixteen-year-old male son who has been found eligible for special education services by DCPS as a student with a Specific Learning Disability. The due process complaint specifically alleges DCPS denied a FAPE to the student by failing to provide appropriate IEPs for the 2009-2010, 2010-2011 and 2011-2012 School Years, failing to additionally classify the student as Speech and Language Impaired, failing to provide appropriate placements at \_\_\_\_\_ School and \_\_\_\_\_ School and failing to provide school records and Prior Written Notices of Placement. The student is currently at the Youth

Services Center of the District of Columbia. Counsel for DCPS denies the above allegations and argues that the student was truant and did not make himself available for the specialized instruction services offered by DCPS.

### **ISSUES AND RELIEF SOUGHT**

The issues to be determined are as follows:

1. Are the IEPs for school years 2009-2010, 2010-11 and 2011-12 inappropriate for failing to require all instructional hours in specialized instruction per week, failing to include a Behavior Intervention Plan, failing to include the related services during school hours of behavioral support services, speech and language services and individualized transition services, failing to include appropriate classroom accommodations to advance to attaining his annual goals and progress in the general curriculum and for state assessment participation and failing to change his IEP goals?

2. Did DCPS fail to classify the student as speech and language impaired in addition to his current classification of a Specific Learning Disability?

3. Did DCPS deny a Free Appropriate Public Education (FAPE) by failing to provide an appropriate placement that meets the student's needs at \_\_\_\_\_ School for the 2009-2010 School Year and at \_\_\_\_\_ School for the 2010-2011 and 2011-2012 School Years?

4. Did DCPS fail to provide school records and issue prior written notices to the parent indicating the student's placement on May 20, June 2, and July 27, 2011?

The relief requested is placement at the non-public full-time day special education program at \_\_\_\_\_ in Lanham, Maryland, compensatory education from the beginning of the

2009-2010 School Year in the form of independent tutoring/educational services to be provided by counseling services, speech and language therapy, therapeutic wrap-around services including a clinical mentor and parental counseling and training for the parent.

### **FINDINGS OF FACT**

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact on issue one the failure to provide an appropriate IEP are as follows:

I.

1. The student's IEP of March 9, 2009 stated the student's primary disability is a Specific Learning Disability. (P-7-1) The IEP of March 9, 2009 stated the present level of educational performance in mathematics was at the 4.1 grade equivalency and at the 2.4 grade equivalency in reading. (P7-2) The IEP calls for annual goals in reading, written expression and mathematics. The IEP states the student will demonstrate progress by mastery of the following short term objectives, but the IEP does not contain any short term objectives for any of the annual goals in mathematics, reading and written expression. There is no baseline or anticipated date of achievement information. The absence of any short term objectives makes the annual goals not measurable. (P-7-2) The IEP provided for **10 hours** a week of specialized instruction outside of general education and no related services. (P-7-3) The IEP provided for classroom and statewide assessment accommodations extended time on subtests, preferential seating, location with minimal distractions, repetition of directions, simplification of oral directions and interpretation of oral directions. In the classroom, the IEP added the accommodations of small group work and visual

stimuli reduced. (P-7-3)The mother signed that she participated in the MDT meeting and signed that she agreed with the contents of the IEP. (P-7-1)

2. The student's IEP of October 26, 2009 stated the student's primary disability is a Specific Learning Disability. (P-12-1) The IEP contained the same present levels of educational performance as cited in the March 9, 2009 IEP. (P-12-2)The October 26, 2009 IEP did contain specific annual goals for the academic areas of mathematics, reading and written expression. (P-12-2) The IEP of October 26, 2009 called for **10 hours** per week of specialized instruction in the general education setting and no related services. (P-12-5) The IEP called for classroom and state assessment accommodations of extended time on subtests, preferential seating, location with minimal distractions, repetition of directions, simplification of oral directions, interpretation of oral directions and on classroom accommodations to reduce visual stimuli. (P-12-7) There is not Behavior Intervention Plan in the IEP. The parent did not participate in the October 26, 2009MDT/IEP meeting and the IEP was not signed by the parent. (P-12-1, Testimony of Mother)
3. The student's IEP of September 23, 2010 stated the student's primary disability was a Specific Learning Disability. (P-15-1) The IEP contained the same levels of educational performance in mathematics and reading as in the March 9, 2009 IEP. (P-15-2) The IEP contained specific annual goals in mathematics, reading and written expression that were different and more complex and difficult than in the previous October 26, 2009 IEP. (P-15-2&3) The IEP of September 23, 2010 as in the October 26, 2009 IEP called for **10 hours** of specialized instruction in the general education setting with no related services. (P-15-5) The IEP called for classroom and statewide

assessment accommodations of calculators and preferential seating. (P-15-7) The IEP contains a post-secondary transition plan that is generic and not individualized to the needs of this student. (P-15-9) The IEP does not contain a Behavior Intervention Plan. The student had more behavior problems and frustrations when at

School. (Testimony of mother) The parent did not participate in the MDT/IEP meeting and did not sign the IEP. (P-15-1)

4. The student's IEP of March 31, 2011 stated the student's primary disability was a Specific Learning Disability. (P-21-1) The IEP of March 31, 2011 contained the same present levels of educational performance as in the March 9, 2009 IEP. (P-21-2) The IEP of March 31, 2011 contained the exact same annual goals as in the September 23, 2010 IEP. (P-21-2&3) The IEP called for **13 hours** a week of specialized instruction in the general education setting and no related services. (P-21-5) The classroom and statewide assessment accommodations were the same as in the previous September 23, 2010 IEP. (P21-7) The IEP contains a post-secondary transition plan that is identical to the previous IEP plan. (P-21-9) There is no Behavior Intervention Plan in the IEP. There is no signature of the parent participating in the MDT/IEP meeting. (P-21-1)
5. The student's IEP of May 20, 2011 stated the student's primary disability was a Specific Learning Disability. (P-22-1) The IEP of May 20, 2011 contained the same present levels of educational performance as in the March 9, 2009 IEP. (P-22-2) The IEP of May 20, 2011 contained the exact same annual goals as in the September 23, 2010 IEP. (P-22-2&3) The May 20, 2011 IEP, as in the previous two IEPs, called for **13 hours** a week of specialized instruction in the general education setting and no

related services. (P-22-5) On classroom and statewide assessment accommodations the IEP added repetition of directions, simplification of oral directions, small group testing and extended time on subtests to the previous accommodations of calculators and preferential seating. (P-22-7) The IEP contains a post-secondary transition plan that is identical to the previous two IEP transition plans. (P-22-9&10) The IEP does not include a Behavior Intervention Plan. The mother signed that she participated in the MDT/IEP meeting, but she did not sign her agreement with the IEP. (P-22-1)

6. A psycho-educational evaluation was conducted on the student by the Child Guidance Clinic of the Superior Court of the District of Columbia Family Court-Court Social Services Division on May 10, 2010 and a report written on May 20, 2011. (P-3) The reason for the referral was an order for the evaluation on April 27, 2011 by D.C. Superior Court Judge Mary Grace Rook. The student was before the court on various criminal charges. The purpose of the assessment was to address the student's level of intellectual functioning and academic achievement, assess his personality functioning and make treatment recommendations. The evaluator, Gizelle Carr, is a clinical extern under the supervision of Dr. Mitchell Hugonnet. The student was fifteen years and seven months old and in the ninth grade at \_\_\_\_\_ School at the time of the evaluation. The student was administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) to determine his intellectual functioning. The student had a Full Scale IQ score of 71 which classifies his intelligence in the Borderline range and places him in the 3<sup>rd</sup> percentile when compared to other adolescents his age. The student obtained a Verbal Comprehension Index , which represents the ability to reason with previously learned information, of 67 which

places him in the 1<sup>st</sup> percentile and in the Extremely Low range of functioning. On the Processing Speed Index, which measures the ability to perform cognitive tasks under time pressure, the student had a composite score of 65 which places him in the 3<sup>rd</sup> percentile and in the Extremely Low range of functioning. (P-3-7&8) The student was also administered the Woodcock-Johnson Tests of Achievement (WJ-III) to assess his academic functioning. His academic performance in Broad Reading was in the Extremely Low range with a standard score of 56 with an age equivalent of 8 years and 4 months and corresponds to a grade equivalent of third grade. On Written Expression he had a standard score of 81 with a grade equivalent of fifth grade three months and an age equivalent of ten years and eight months. This placed the student's performance in the Low Average range. The student's academic performance in Broad Math, comprised of Calculation, Applied Problems and Math Fluency subtests, he earned a standard score of 60 which is in the Extremely Low functioning range with an age equivalent of nine years one month and a grade equivalent of third grade and seven months. (P-3-9&10) The report stated that based on the above, he meets the criteria for diagnoses of Dysthymic Disorder, Reading Disorder, Mathematics Disorder, and Disorder of Written Expression. (P-3-14) The report recommended that the student needs to receive special education hours on a full time basis. The report stated: "Given that his academic functioning is generally at the third grade level, 13 IEP hours is woefully inadequate. He would be better served in a setting that is able to provide him with concentrated special education services with emphasis on speech and language components. It is important to note that [student] should not be placed in a setting with "emotionally disturbed"

adolescents since he does not function well in emotionally charged settings.” (P-3-15)

The report also recommended school counseling to meet academic challenges and his emotional needs and he should be referred to art and music therapy as well as social skills training and anger management classes. (P-3-15) Dr. Hugonnet’s testimony supported the report’s findings and recommendations. Dr. Hugonnet was qualified as an expert in clinical psychology without objection from respondent’s counsel. Based on Dr. Hugonnet’s expert opinion, the student needs a full-time special education setting for students with learning disabilities with a small student to teacher ratio of ten to twelve students to one special education teacher. Dr. Hugonnet’s psycho-educational evaluation and expert testimony is that the student has a diagnosis of Dysthymic Disorder and has been depressed for many years. He found that the student is frustrated with his inability to do the academic work and acts out in explosive behavior and fighting or avoiding classes and being truant. It is Dr. Hugonnet’s expert opinion that the student needs behavioral support services in school and a behavior intervention plan to enable the student to cope with the stresses in school because of his inability to understand the academic material. He recommended counseling in the school setting as necessary to keep him in school and address his frustrations. It is Dr. Hugonnet’s expert opinion that the student’s truancy is related to his disability- that the student is not attending because he is aware that he cannot do academic tasks and he cannot take the stress of flunking every class and the teasing of classmates about his being a special education student in a general education class and he therefore has become avoidant of attending class. It is Dr. Hugonnet’s expert opinion that based on his evaluation’s results that the student is too

low functioning to perform the goals in the September 23, 2010, March 31, 2011 and May 20, 2011 IEPs. Dr. Hugonnet did not meet or assess the student, but reviewed with the evaluator her findings and recommendations. Dr. Hugonnet and the evaluator did not interview any of the student's teachers or other DCPS school personnel. (See Findings of Fact I. #6, Testimony of Dr. Hugonnet)

7. An independent speech and language evaluation was conducted on the student by Ms. Monica Maines, speech/language pathologist on June 6, 2011. (P-2) The evaluation results "show both receptive and expressive language skills to be severely delayed, although there was a greater delay in receptive skills-which was statistically significant....The greatest areas of weakness were in listening and comprehension and vocabulary." (P-2-4) Her diagnoses for the student are Receptive/Expressive Language Disorder, Suspected Auditory Processing Disorder and Linguistic Memory Disorder. The report recommended that the student be placed in a full-time special education program, with small class size with a staff trained to work with students with language disorders. The report also recommended speech and language therapy twice a week for 45minute sessions on an individual basis. (P-2-4) Her report also recommended an intensive reading program based on the student's "extremely poor listening comprehension skills, coupled with his scores from the WJ-III, which indicated that decoding and comprehension skills are on a second to third grade level". (P-2-5) Ms. Maines was qualified as an expert on speech and language pathology with agreement from counsel for respondent. It was Ms. Maines' expert opinion that the student would struggle with anything language based and would have difficulty in the general education setting understanding information presented in the

traditional verbal way and expressing himself and keeping up with same age peers. Based on Ms. Maines's expert opinion, the student needs to be placed in a full-time special education program for students with language disorders. It is her expert opinion that pull-outs for speech therapy would not be sufficient due to the severity of his language delay and he needs different types of learning strategies to address his disorder including integrated speech therapy in the classroom and "a multi-sensory teaching method that incorporates hands on learning". (P-2-5) She recommended that his IEP should have speech and language goals and the related services of speech therapy twice a week for 45 to 60 minutes each time. [redacted] found the student has severe language delays going back for several years. It is Ms. Maines's expert opinion that the student needs compensatory education in the form of speech therapy to make up for what he was not getting in the past. She recommended as compensatory education one hour a week outside of the school day for the remainder of this school year and then to retest the student. She also recommended speech services in the summer and reiterated her recommendation in her evaluation for an intensive reading program cited above. His classroom and testing accommodations would need visual supports. It was her expert opinion that previous IEPs that did not include speech and language goals and speech therapy were not appropriate because of his severe language delays. (Testimony of Ms. Maines)

8. The student is currently at the [redacted] awaiting court action. After reviewing the above psycho-educational evaluation and speech therapy evaluation, the DCPS special education coordinator at [redacted] has proposed changing the student's IEP to a full-time IEP with the related services of counseling and speech

therapy services. (Testimony of DCPS special education coordinator at This proposed change to a full-time IEP is consistent with the recommendations of the above psycho-educational evaluation and speech therapy evaluation.

9. The student made no progress on any of his annual goals in mathematics, reading and written expression during the 2009-2010 School Year at School. (See the student's IEP Progress Report at R-6)

10. The student's report card at School dated September 9, 2011 for the 2010-2011 School Year shows the student failed all his courses. The report card also shows the student was absent 21 days and present 149 days. (P-29, R-14)

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact on issue two the failure to classify the student as speech and language impaired are as follows:

## II.

1. The student has been found eligible for special education with the primary disability of a Specific Learning Disability in all his IEPs. (See Findings of Fact I. #1-#5)
2. The student has never had speech and language goals or been provided with the related service of speech and language therapy in any of his IEPs in the record. (See Findings of Fact I. #1-#5)
3. The independent speech and language evaluation conducted by Ms. Maines on the student found that both his receptive and expressive language skills are severely delayed with the greatest areas of weakness in listening and comprehension and vocabulary. Her diagnoses for the student are Receptive/Expressive Language Disorder, Suspected Auditory Processing Disorder and Linguistic Memory Disorder.

Ms.Maines recommended in her report and testimony that the student needs speech and language therapy twice a week for 45 minute sessions on an individual basis and his IEP should have speech and language goals. (See Findings of Fact I. #7)

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact on issue three- the failure to provide an appropriate placement at

School and School are as follows:

### III.

1. The student was enrolled at his neighborhood middle school of School in the 2009-2010 School Year. (P-7, P-12) The student started the 2009-2010 School Year in the 8<sup>th</sup> grade at with the March 9, 2009 IEP being implemented. (Testimony of Mother) The March 9, 2009 IEP called for ten hours of specialized instruction outside of general education. (See Findings of Fact I. #1, P-7-3) The student began the 2009-2010 School Year making some progress in his academic work, but when the October 26, 2009 IEP was implemented that changed his ten hours of specialized instruction from outside of general education to inclusion services in the general education class he began to struggle and could not understand the work. (Testimony of Mother) The student made no progress on any of his annual goals in mathematics, reading and written expression during the 2009-2010 School Year at School. (See Findings of Fact I. #9, The student's IEP Progress Report at R-6)
2. The student has been enrolled at his neighborhood high school of School for the 2010-2011 and 2011-2012 School Years. (P-15,P-21, P-22, P-29,

R-14) The student's report card at \_\_\_\_\_ for the 2010-2011 School Year shows that student failed all his courses. The report card also shows the student was absent 21 days and present 149 days that school year. (P-29, R-14) He will go to school, but not attend class. \_\_\_\_\_ School is a large public high school with large classes. The student struggled in this large setting at

\_\_\_\_\_. School, had behavior problems and there were a lot of distractions and teasing of his being a special education student. (Testimony of Mother)

3. The student is currently placed at the \_\_\_\_\_ awaiting court action. The \_\_\_\_\_ is a District of Columbia facility for youths awaiting trial or placement. The \_\_\_\_\_ provides inclusion classes taught by team teachers of a special education teacher and regular education teacher and has pull-outs for related services of counseling and speech therapy. There are seven special education teachers on staff certified in non-categorical K-12. The highest number of students in a class is 13 and the lowest is one. Most classes range between eight and ten students and the student population is highly transient. The student has an IEP at \_\_\_\_\_. The student has refused to attend any classes at \_\_\_\_\_ (Testimony of special education coordinator at \_\_\_\_\_)

4. The student has been accepted at the \_\_\_\_\_ of the District of Columbia. \_\_\_\_\_ is a full-time day special education program for students with learning disabilities for grades ninth through twelfth and ages 14-21. The class size is 8-10 students depending on the subject area taught by certified special education teachers who are also certified in content area. There is also a teacher's assistant in each classroom. \_\_\_\_\_ follows the DCPS



### CREDIBILITY FINDING

A hearing officer is responsible for assessing the credibility of witnesses. *See Shore Regional High School Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3<sup>rd</sup> Cir. 2003) The mother testified in person and this hearing officer after observing her demeanor and her direct and reflective answers to both counsel found her testimony credible. This hearing officer also found the testimony of Ms. Monica Maines to be very credible based on listening to her careful, thorough and detailed answers over the telephone to both counsel for petitioner and counsel for respondent. This hearing officer also found the testimony of Dr. Hugonnet to be credible based on his comprehensive and thoughtful answers to both counsel for petitioner and counsel for respondent.

### DISCUSSION/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 on issue one on the failure to provide appropriate IEPs are as follows:

Here, counsel for petitioner contends that the IEPs developed for the student are procedurally and substantively inadequate. The United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982) in determining if a FAPE has been provided held that courts must determine: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements

are met, the State has complied with the obligations imposed by Congress and the courts can require no more. *Rowley*, 458 U.S. at 206-07. On the first prong, “procedural flaws do not automatically render an IEP legally defective.” *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990) (en banc). Rather, “an IDEA claim is viable only if ...procedural violations affected the student’s substantive rights.” *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828,834 (D.C. Cir. 2006). “Before an IEP is set aside, there must be some rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of education benefits.” *Roland M.*, 910 F. 2d at 994.

Counsel for petitioner alleges that the student’s IEPs for the 2009-2010, 2010-2011 and 2011-2012 School Years are procedurally flawed for failing to contain any related services specifically speech and language services and behavioral support services. None of the IEPs for these school years contains provision for the above related services. (See Findings of Fact I. #2-#5) Counsel for petitioner rely on the expert testimony of speech pathologist Ms. Maines that the student has severe language delays going back for years and he should have been provided speech and language services to address these language delays. It is also Ms. Maines’s expert opinion that the student’s IEPs needed to contain speech and language goals. (See Findings of Fact I. #7) Counsel for petitioner rely on the expert testimony of clinical psychologist Dr. Hugonnet and his psycho-educational evaluation that the student needs behavioral support services in the form of individual counseling in school to meet academic challenges and his emotional needs based on frustration, anxiety and depression with his not understanding the academic material. (See Findings of Fact I. #6) This hearing officer concludes based on the expert testimony of Ms. Maines and her independent speech and language evaluation and the

expert testimony of Dr. Hugonnet and his psycho-educational evaluation that the IEPs for the above years were procedurally inadequate and not reasonably calculated to provide educational benefit for failing to contain speech and language goals and speech and language services to address this student's severe language delays and behavioral support services to address his emotional needs.

Counsel for petitioner also alleges that the IEPs for the 2009-2010, 2010-2011 and 2011-2012 School Years are inappropriate because the annual goals are the same. The goals in the September 23, 2010, however, are different than the goals in the October 26, 2009 IEP and are more complex and difficult. (See Findings of Fact I. #2-#3) Counsel for petitioner has failed to show that the annual goals for the above October 26, 2009 IEP and September 23, 2010 IEP are the same. The annual goals in the March 31, 2011 and May 20, 2011 IEPs are the same as the goals in the September 23, 2010 IEP. (See Findings of Fact I. #3-#5) It is Dr. Hugonnet's testimony that based on the student's low level of functioning found in his evaluation, that the student could not perform these annual goals. (See Findings of Fact I. #6) This hearing officer concludes based on a review of the above IEP goals and the evaluation results in both the psycho-educational evaluation and speech and language evaluation and the testimony of Dr. Hugonnet and Ms. Maines that the IEP goals are inappropriate for being set too high for the student to achieve. Specifically formulated goals will be inadequate when they are too easily achievable or conversely too difficult to attain. *See San Bernardino City Unified School District, 3 ECLPR 223 (SEA CA 1998)* where hearing officer ruled the IEP goals for achievement in the area of oral language reflected unjustifiably low expectations for the hearing-impaired student.

The IEP of March 9, 2009 was in effect at the beginning of the 2009-2010 School Year. The March 9<sup>th</sup> 2009 IEP states the student will demonstrate progress by mastery of the following

short term objectives, but does not contain any short term objectives for any of the annual goals in mathematics, reading and written expression. There is no baseline or anticipated date of achievement information. Because of the absence of this information, there are no measurable annual goals in the March 9, 2009 IEP (See Findings of Fact I. #1, P-7-2) That IEP is procedurally flawed for failing to contain any measurable annual goals as required by *34 C.F.R. Section 300.320 (2)(i)*. The requirement for a statement of measurable annual goals makes it possible for a review of the appropriateness of the student's educational program as part of an IEP review. Failure to include measurable annual goals is a denial of a FAPE as a matter of law. *See Evans v. Board of Ed. of Rhinebeck Central School District*, 930 F. Supp. 83 (S.D. N.Y., 1996) (finding IEPs inappropriate because "include only broad, generic objectives and vague subjective methods of monitoring Frank's progress.") *See also In re. Sara P.*, 401 IDELR 260 (EHLR 401:260) (SEA WA 1988) (failure to include specific goals or instructional objectives in the IEP for a mentally retarded student rendered the IEP legally inadequate and fatally defective.)

Counsel for petitioner also alleges that the IEPs are inappropriate for not including appropriate classroom and statewide assessment accommodations. Counsel for petitioner relies on the expert testimony of Ms. Maines and Dr. Hugonnet that the accommodations in the September 23, 2010 and March 31, 2011 IEPs are inadequate because they only provide for calculators and preferential seating. It is Dr. Hugonnet's and Ms. Maine's expert opinion that only providing calculators and preferential seating would not enable the student to attain his IEP goals and make progress in the classroom and on state-wide assessments. This hearing officer concludes that the September 23, 2010 and March 31, 2011 IEPs provide inadequate classroom

and statewide assessment accommodations based on the student's severe language delays and low functioning. (See Findings of Fact I. #3-#4)

Counsel for petitioner also alleges that the IEPs are inappropriate for failing to contain individualized transition services. The IEPs for September 23, 2010, March 31, 2011 and May 20, 2011 all contain the identical post-secondary transition service plan. (See Findings of Fact I. #3-#5) It is Dr. Hugonnet's expert opinion based on the student's test scores that the student needs a transition to a trade rather than a post-secondary college education. *IDEA at 20 U.S.C. 1401 (34) and 34 C.F.R. 300.43* defines transition services as a "coordinated set of activities for a child with a disability that...(2) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests..." The IEP must include "Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals, based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills." *34 C.F.R. 300.320 (b)(1)*. That IEP also must include "transition services (including courses of study) needed to assist the child in reaching those goals." *34 C.F.R. 300.320 (b)(2)*. In this case, DCPS has provided identical generic transition plans in the last three IEPs that are not based on the individual child's needs and have not been updated annually. This hearing officer therefore concludes the IEP's transition service plans are inappropriate.

Counsel for petitioner argues that the IEPs for the 2009-2010, 2010-2011 and 2011-2012 School Years are inappropriate for failing to contain a Behavior Intervention Plan. Dr. Hugonnet's psycho-educational evaluation and expert testimony is that the student has a diagnosis of Dysthymic Disorder and has been depressed for many years. Dr. Hugonnet testified

that the student is frustrated with his inability to do the academic work and acts out in explosive behavior and fighting or avoiding classes and being truant. It is Dr. Hugonnet's expert opinion that the student needs counseling in school and a behavior intervention plan to enable the student to cope with the stresses in school. (See Findings of Fact #6) The mother testified that the student's frustrations and behavior issues increased when he went to School. (See Findings of Fact I. #3 and Findings of Fact III. #2, Testimony of mother) Based on the expert testimony of Dr. Hugonnet and the testimony of the mother, this hearing officer concludes that the September 23, 2010, March 31, 2011 and May 20, 2011 IEPs were inadequate for failing to include a Behavior Intervention Plan.

Finally, counsel for petitioner argues that the IEPs for the 2009-2010, 2010-2011 and 2011-2012 School Years are inappropriate for not containing sufficient hours of specialized instruction to meet the student's needs. The October 26, 2009 IEP provides for 10 hours a week of specialized instruction in the general education setting. The September 23, 2010, March 31, 2011 and May 20, 2011 IEPs all provide for 13 hours of specialized instruction in the general education setting. (See Findings of Fact I. #2-#5) Counsel for petitioner relies on the expert opinions of Dr. Hugonnet and Ms. Maines and their evaluation recommendations that the student needs a full-time IEP implemented in a full-time day special education program to address his severe delays. (See Findings of Fact I. #6-#7)

In determining if an IEP meets the substantive requirements of the IDEA, courts and hearing officers must determine "is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Rowley*, 458 U.S. at 206-07. In *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988) *cert denied*, 488 U.S. 1030 (1989), The Third Circuit held that appropriateness

under *Rowley* as applied to a student with severe disabilities means more than trivial educational benefit. The Court held in *Polk* that "...using *Rowley*'s own terminology, we hold that Congress intended to afford children with special needs an education that would confer meaningful benefit." *Polk* at p.184 Other Circuits have endorsed the *Polk* court's interpretation of educational benefit in *Doe v. Smith*, 441 IDELR 544 (6<sup>th</sup> Cir. 1989); *Fort Zumwalt School District v. Clynes*, 26 IDELR 172 (8<sup>th</sup> Cir. 1991); *Roland M. v. Concord School Comm'n, Id.*, and *Hall v. Vance County Board of Education*, 557 IDELR 155 (4<sup>th</sup> Cir. 1985) In *Ridgewood Bd. of Educ. v. N.E.*, 30 IDELR 41,44 (3d Cir. 1999) and *T.R. v. Kingwood Township Board of Education*, 32 IDELR 30 (3d Cir. 2000) the Third Circuit held that an IEP must provide "meaningful benefit." See also *A.I. Iapalucci v. D.C.*, 402 F. Supp. 2d 152 (D.D.C. 2005) ("...the appropriate focus of the court's review should be on whether DCPS is providing A.I. with an IEP that is reasonably calculated to provide meaningful educational benefit." *Id.* at p.167)

In this case, the record shows that the student made no progress on his IEP goals when he was receiving 10 hours of specialized instruction in the general education setting at Kramer Middle School. (See Findings of Fact I. #9) He received failing grades in all his courses at Anacostia Senior High School when his IEP provided for 13 hours of specialized instruction in the general education setting. (See Findings of Fact I. #10) The student's extremely low test scores on both cognitive and achievement testing show severe language delays that require in order for the student to receive a FAPE a full-time IEP with specialized instruction provided outside of general education. (See Findings of Fact I. #6-#7) This hearing officer concludes that the student's October 26, 2009, September 23, 2010, March 31, 2011 and May 20, 2011 IEPs

are not “reasonably calculated to provide meaningful educational benefit” to the student and the student was denied a FAPE.

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 on issue two- the failure to classify the student as speech and language impaired in addition to having a Specific Learning Disability are as follows:

The independent speech and language evaluation conducted by Ms. Maines on the student found that both his receptive and expressive language skills are severely delayed with the greatest areas of weakness in listening and comprehension and vocabulary. Her diagnoses for the student are Receptive/Expressive Language Disorder, Suspected Auditory Processing Disorder and Linguistic Memory Disorder. Ms. Maines testified that the student has had these severe language delays for many years, but DCPS never provided speech and language goals or speech and language therapy in his IEPs. (See Findings of Fact I. #7) This failure in the IEPs made them inappropriate to address the student’s identified educational needs for speech therapy and confer educational benefit to the student. Once the student had been classified with a Specific Learning Disability, his IEPs should have included the related services of speech therapy. The additional classification of Speech and Language Impaired would not be necessary if the IEPs addressed his identified educational need for speech therapy.

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 on issue three- that the placement at \_\_\_\_\_ School and \_\_\_\_\_ School are inappropriate for failing to meet the student’s needs- are as follows:

The legal standard for educational placements was stated in the U.S. Department of Education interpretative guidelines that “educational placements under Part B must be individually determined in light of each child’s unique abilities and needs, to reasonably promote the child’s educational success.” *Appendix A to 34 C.F.R. Part 300 Question 1*. Following the development of an IEP, the public school system is required to provide an appropriate educational placement that meets the needs set forth in the IEP and allows for its implementation. *See Spilsbury v. District of Columbia*, 307 F. Supp. 2d 22, 25 (D.D.C. 2004) (citing *Petties v. District of Columbia*, 238 F. Supp. 2d 114, 116 (D.D.C. 2002) and *34 CFR 300.116*)

In this case, placing the student in a full-time inclusion general education setting at both School and School resulted in the student not achieving his IEP goals at and failing all his courses at School. This hearing officer found persuasive the expert opinions of Dr. Hugonnet and Ms. Maines that the student needs a full-time day special education program with a small student to teacher ratio “to reasonably promote the child’s educational success.” I also found persuasive the testimony of the mother that the student was doing better at School when he received his specialized instruction outside of general education, but really began to struggle and not understand when he was placed in a full-time inclusion general education setting. The student continued to struggle at a large public high school with large classes- where he was placed in a full-inclusion general education setting and faced a lot of distractions and teasing for being a special education student. (See Findings of Fact III. #1 & #2, Testimony of Mother)

Counsel for respondent argues that the student’s truancy made him unavailable for learning and taking advantage of the educational opportunities offered by DCPS. This hearing

officer has found based on the expert testimony of both Dr. Hugonnet and Ms Maines that the student's truancy is related to his disability. The student has avoided going to a general education class setting because due to his disability of a severe language delay he cannot understand the academics. (See Findings of Fact I. #6 & #7) Counsel for petitioner has met their burden of proof that DCPS denied a FAPE to the student in placing the student in full inclusion general education settings at \_\_\_\_\_ School and \_\_\_\_\_ School.

Once a court or hearing officer finds that the public school district has failed to offer a FAPE, the court or hearing officer is authorized to "grant such relief as the court determines is appropriate." *20 U.S.C. Section 1415(i)(2)(C)(iii)*. "Under this provision, equitable considerations are relevant in fashioning relief, and the Court enjoys broad discretion in so doing." *Florence County School District Four v. Carter*, 510 U.S. 7 at 16 (1993) Counsel for the petitioner is requesting for relief placement of the student at the High Road Academy of Washington, D.C.. Such relief can be granted under the Supreme Court decisions in *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359 (1985) and *Carter* if the public school system failed to provide a FAPE and the private placement is appropriate. *See also IDEA 2004* and its *2006 Regulation* at *20 U.S.C. 1412 (a)(10)(C)(ii)* and *34 CFR 300.148 (c)*. These conditions are met in this case. Findings of Fact III. #4 shows that the High Road Academy is an appropriate private placement that can provide educational benefits.

Counsel for petitioner is also requesting as relief compensatory education from the beginning of the 2009-2010 School Year in the form of independent tutoring/educational services to be provided by \_\_\_\_\_ counseling services; speech and language therapy, therapeutic wrap-around services including a clinical mentor and parental counseling and training for the parent.

Compensatory education is an equitable remedy for the denial of a FAPE. In *Reid v. District of Columbia*, 401 F. 3d 516 (D.C. Cir. 2005), this Circuit set out the standards for an award of compensatory education. “Under the theory of ‘compensatory education,’ courts and hearing officers may award educational services...to be provided prospectively to compensate for a past deficient program. *Id.* at 522 Designing a compensatory education remedy requires “a fact-specific exercise of discretion by either the district court or a hearing officer.” *Id.* at 524 To assist the court or hearing officer’s fact specific inquiry, “ the parties must have some opportunity to present evidence regarding [the student’s]specific education deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits.” *Id.* at 526 DCPS may be required to “offer proof that the placement compensated for prior FAPE denials in addition to providing some benefit going forward.” *Id.* at 525

In tailoring the ultimate compensatory education award, a hearing officer needs a sufficient record to provide “insight about the precise types of education services [the student] needs to progress.” *Mary McLeod Bethune Day Acad. Pub. Charter Sch.* 555 F. Supp. 2d 130 (D.D.C. 2010) The parent has the burden of “propos[ing] a well-articulated plan that reflects [the student’s] current educational abilities and needs and is supported by the record.” *Phillips v. District of Columbia*, 2010 WL 3563068, at \*6, quoting *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt (“Nesbitt II”)*, 583 F. Supp. 2d 169, 172 (D.D.C. 2008)

In this case, counsel for petitioner presented a compensatory education plan developed by owner and founder of Seeds of Tomorrow, Inc. (P-4) develops compensatory education plans and provides direct special education services to students. developed the compensatory education plan by reviewing psycho-educational evaluations of 6/2/03, 3/9/07, 10/3/06 and 5/10/11, a supplemental cognitive testing-

CTONI of 6/13/11, speech and language evaluations of 4/3/03 and 6/6/11, all the student's IEPs from 3/5/08 to 5/20/11, IEP Progress Reports of 9/22/11, 2/5/10, and 11/16/09 and interviews with the mother on 10/5/11 and a short interview with the student on 10/5/11 while at

did not personally assess the student. (Testimony of

The compensatory

education plan recommended individualized speech and language services that have been missed for the past two years at an amount of 2-3 times a week for 45 minutes for two years at a maximum of 234 hours, a reading and writing remediation program using the Wilson Reading System for one hour a day for four days a week for six months or 96 hours, a math remediation program using the Touch Math program for one hour a day for four days a week for six months or 96 hours, therapeutic services in the form of art or music therapy for one hour a week for two school years or 74 hours and anger management and social skill training for one hour a week for two school years or 74 hours, specialized homework support of four hours a week for four months or 192 hours, a transition planning system at one hour a week for two years or 74 hours and DCPS transportation in the form of a bus or fair cards to participate in compensatory education services. The above recommendations for types of services are based on recommendations in the May 10, 2011 psycho-educational evaluation and the June 6, 2011 speech and language evaluation. (P-4, Testimony of

The above calculations of

compensatory education services are based on two school years of missed services. (P-4-3) This hearing officer finds that the above calculations are multiplying the number of missed services based on a school calendar year for two years and are an hour-for-hour replacement of time spent without FAPE. Such a calculation was rejected in *Reid* as a "cookie-cutter approach," i.e., an hour of compensatory instruction for each hour that a FAPE was denied. *Reid*, 401 F. 3d at 523. *See also Mary McLeod*, 555 F. Supp. 2d at 135 (citing *Reid*, 401 F. 3d at 524)

This hearing officer finds the expert opinion and evaluation recommendations of Ms. Maines on compensatory education, who actually evaluated the student, to be more relevant and appropriate in crafting an award. It was Ms. Maines expert opinion that because of the student's significant language delays over a long time that he needs in addition to speech therapy during the school day, an additional one hour a week of speech therapy outside the school day for the remainder of this school year as well as during the summer to make up for what he was not getting in speech and language services in the past. Ms. Maines also recommended an intensive reading program "based on [student's] extremely poor listening comprehension skills, coupled with his scores from the WJ-III, which indicated that decoding and comprehension skills are on a second to third grade level..." (See Findings of Fact I. #7, P-2-5) One additional hour a week of individual tutoring in reading by a tutor trained and experienced in teaching learning disabled students after school for the remainder of this school year, provision of an ESY program for the summer of 2012 with emphasis on reading interventions tailored to this learning disabled student in combination with the full-time specialized instruction at \_\_\_\_\_ will provide in totality what the student should have been provided in the first place, *Reid*, 401 F. 3d at 524 and "yield tangible results." *D.W. v. District of Columbia*, 561 F. Supp. 2d 56,61 (D.D.C. 2008) This compensatory education award is crafted to provide the *Reid* standard's qualitative flexible focus.

Counsel for petitioner has stipulated that respondent DCPS has provided all school records and prior written notices in their possession to petitioner. (See p. 1 of Petitioner's Disclosures) This issue has been resolved.

**ORDER**

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

**DCPS shall fund and place the student at The \_\_\_\_\_ of the District of  
Columbia at \_\_\_\_\_ for the 2011-2012  
School Year including transportation costs, with 45 minutes a week of speech and language  
services and 30 minutes a week of behavioral support services during the school day at  
\_\_\_\_\_ within fifteen school days of issuance of this Hearing Officer's  
Determination. Within 30 school days of placement at \_\_\_\_\_ an IEP  
meeting shall be convened to review and revise the student's IEP.**

**Compensatory education is awarded in the form of speech and language services to  
be provided after school hours for one hour a week for the remainder of the 2011-2012  
school year and the 2012 Extended School Year commencing ten school days after issuance  
of this Hearing Officer's Determination for a total of 38 sessions. The speech and language  
services are to be provided by a qualified DCPS speech and language pathologist. If a  
qualified DCPS speech and language pathologist is not available to provide the services ten  
school days after issuance of this Hearing Officer's Determination, DCPS shall fund a  
private independent speech and language pathologist consistent with the rates set by the  
OSSE or DCPS. Compensatory education is also awarded in the form of individual  
tutoring in reading to be provided by a reading tutor trained and experienced in tutoring  
learning disabled students for one hour a week after school hours for the remainder of the  
2011-2012 School Year for a total of 30 sessions commencing ten school days after issuance  
of this Hearing Officer's Determination. The reading tutor is to be paid at a rate not to  
exceed sixty-five dollars (\$65) an hour. As part of the compensatory education award,**

**DCPS shall also provide Extended School Year (ESY) services for the student for the 2012 summer that includes instructional interventions in reading, written expression and mathematics tailored to this student with learning disabilities.**

**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: 11/3/11

\_\_\_\_\_  
*Seymour DuBow /s/*  
Hearing Officer