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

Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

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[Parent], on behalf of,
[Student], [1]

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: June 6, 2011

Hearing Officer: Jim Mortenson

Case No:

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STUDENT HEARING OFFICE

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## HEARING OFFICER DETERMINATION

### I. BACKGROUND

The complaint in this matter was filed by the Petitioner on March 23, 2011. The Petitioner is represented by Pierre Bergeron, Esq., and the Respondent is represented by Victoria Fetterman, Esq. A resolution meeting was held on April 4, 2011, and did not result in a settlement or any other agreements. A response was filed on April 5, 2011. A prehearing conference was held on April 6, 2011, and a prehearing order issued on that date which, inter alia, denied a claim for failure to timely identify because it was more than two years old. Petitioner filed a memorandum concerning this portion of the prehearing order on April 8, 2011.

The Petitioner filed a motion for a continuance on May 13, 2011, due to the unavailability of one of her witnesses. The Independent Hearing Officer (IHO) denied the motion advising that

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[1] Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

the witness's testimony would be taken on an alternate date, which it was. The Petitioner also filed a motion on May 13, 2011, that it be presumed the Student requires a "full-time" IEP because the Respondent failed to provide all of the Student's educational records. This motion was subsequently amended on May 17, 2011, asking also for a presumption that the Student was entitled to unspecified compensatory education. This motion was denied at the due process hearing on the record because the Respondent's failure to provide records, which apparently do not exist, did not prejudice the Petitioner because they were not otherwise disclosed for hearing or shown to exist. Furthermore, the Petitioner's motion was based, in part, on essentially an education malpractice claim, or tort, which is not cognizable in this forum.[2]

The hearing was convened on May 25, 2011, in room 2006 at 810 First Street NE, Washington, D.C. The hearing continued May 31, 2011, via teleconference to accommodate the Petitioner's witness for whom the continuance was requested (and denied). Due to a power outage at Respondent's Counsel's office, the hearing was again continued until June 1, 2011, and again was held via teleconference, and was concluded on that date.

The Petitioner objected to the Respondent's failure to comply with the prehearing order and file a trial brief. The IHO advised that the Respondent's failure only caused prejudice to itself as its version of the facts would be less clear to the IHO and no additional sanctions were warranted.

The due date for the hearing officer's determination (HOD) is June 6, 2011, and this HOD is issued on June 6, 2011.

[2] The claim, essentially, is that due to Respondent's "educational neglect" the Student became a juvenile delinquent. This claim was discussed at the prehearing and the IHO refused to consider it. The motion appeared to be another way to insert this novel legal argument into this proceeding.

## II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5, Chap. 30.

## III. ISSUES, RELIEF SOUGHT, AND DETERMINATION

The issue to be determined by the IHO is:

> Whether the Respondent failed to offer or provide the Student with an individualized education program (IEP) reasonably calculated to provide educational benefit when the IEP:
> a) lacks a complete statement of the Student's present levels of academic achievement and functional performance;
> b) lacks an adequate statement of measurable annual goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of his other needs that result from his disability, particularly emotional and behavioral needs; and
> c) fails to include adequate special education and related services to enable the Student to advance appropriately toward his annual goals and to be involved in and make progress in the general education curriculum?

The substantive requested relief includes:

1) Placement at a full-time private therapeutic day program.

2) The provision of wrap-around services including:
   - Individual and family counseling
   - Medication management
   - Therapeutic recreation

3) Compensatory education services when the Student ages out.

4) Extended school year (ESY) services for the next three years.

Based on the findings of fact and conclusions herein, this IHO has determined that the IEP developed for the Student on February 24, 2011, is not reasonably calculated to provide educational benefit because it lacks appropriate functional goals concerning the Student's

social/emotional issues, lacks appropriate specialized instruction and related services to address and remediate the Student's academic deficits and behavioral issues which are preventing him from being involved in and progressing in the general education curriculum, and lacks ESY services to enable him to receive a free appropriate public education (FAPE). The appropriate remedy is to revise the IEP and place the Student in a structured therapeutic day school, such as Petitioner's proposed placement, due to his significant academic and functional deficits.

## IV. EVIDENCE

Six witnesses testified at the hearing for the Petitioner. The Respondent did not present any testimonial evidence.

The witnesses for the Petitioner were:

1) Petitioner, Student's Mother (P)
2) Dr. Michael Barnes, Child Psychology Expert (M.B.)
3) Dr. Ava Hughes-Booker, Psychoeducation Expert (A.H.)
4) Nyree Thompson, Social Work Expert (N.T.)
5) Education Program Director,
6) Director,

22 documents were disclosed by the Petitioner and 19 were admitted into evidence. The Petitioner's exhibits are:

| Ex. No. | Date | Document |
|---|---|---|
| P 1 | February 23, 2011 | IEP |
| P 3 | February 1, 2011 | Letter from Bergeron to Principal |
| P 6 | May 13, 2011 | Attendance Summary 16 Aug 2010 to 13 May 2011 |
| P 7 | June 14, 2010 | Psychoeducational Evaluation |
| P 8 | May 13, 2011 | Student Timetable (BV) |
| P 9 | September 10, 2010 | Parent's or Guardian's Transfer Request |
| | September 10, 2010 | School Transfer Form |

| Ex. No. | Date | Document |
|---|---|---|
| P 10 | March 16, 2011 | Attendance Summary 16 Aug 2010 to 16 Mar 2011 |
| P 11 | February 23, 2011 | Notes Report |
| P 12 | May 13, 2011 | [Behavior Intervention Plan] |
| P 13 | [Undated] | [Functional Behavioral Assessment] |
| P 14 | April 4, 2011 | Resolution Period Disposition Form |
| | April 4, 2011 | Resolution Meeting Notes |
| P 15 | October 4, 2010 | Order Appointing Educational Attorney |
| P 16 | March 31, 2011 | Letter from Williams to [Petitioner] |
| P 17 | [Undated] | Curriculum Vitae for Michael Edward Barnes |
| P 18 | [Undated] | Curriculum Vitae for Ava L. Hughes-Booker |
| P 19 | [Undated] | Curriculum Vitae for Nyree Price |
| P 20 | January 21. 2011 | Notice of Proposed Disciplinary Action |
| P 21 | [Undated] | The Capital Region Children's Center [Brochure] |
| P 22 | August 23, 2009 | Client's Wrap Circle |

Ten documents were disclosed by the Respondent and seven were admitted into evidence. The Respondent's exhibits are:

| Ex. No. | Date | Document |
|---|---|---|
| R 1 | June 14, 2010 | Psychoeducational Evaluation |
| R 3 | February 23, 2011 | IEP |
| R 4 | March 25, 2011 | Report to Parents on Student Progress |
| R 5 | April 4, 2011 | Resolution Meeting Notes |
| R 6 | [Undated] | Draft [Functional Behavioral Assessment] |
| R 9 | [Undated] | Resume of Monica Moment |
| R 10 | [Undated] | Draft Meeting Participation |

## V. 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 year old learner with multiple disabilities who attends ninth grade at He was identified and found eligible for special education and related services under the definition of specific learning disability in January, 2011.[4] The Student has struggled in school since at least the second grade and was not identified until

[3] Testimony (T) of P, P 1/R 3.
[4] T of P, P 1/R 3.

January 2011.[5] The Petitioner repeatedly asked for help and moved the Student to multiple schools during his educational career.[6] The Student was arrested after being a passenger in a stolen car in 2010.[7] He has had other interactions with the Court as a result of delinquent activity.[8]

2. The Student was referred to the Child Guidance Clinic by the Court and was diagnosed with depressive disorder NOS and learning disorder NOS (reading, mathematics, and writing).[9] The Student's learning disorder has resulted in academic failures which then fed depressive manifestations such as embarrassment, shame, resentment, and anger due to not being able to achieve academically with his peers without special education and related services.[10]
3. The Student's academic performance is in the third to fourth grade range for mathematics, the third to fifth grade range for reading, and fourth grade range for writing.[11]
4. The Student goes to school but rarely stays in or attends his classes.[12] He is also often suspended.[13] The Student responds aggressively toward peers when challenged or teased, is non-compliant with adults, and associates with peers who accept him due to his delinquent or negative behavior.[14] His most recent progress report showed all failing grades.[15]

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[5] T of P, P 7/R 1.
[6] T of P, P 7/R 1.
[7] P 7/R 1.
[8] P 7/R 1.
[9] P 7/R 1.
[10] P 7/R 1, T of T of
[11] P 1, R 3.
[12] P 6, T of P.
[13] P 6.
[14] P 7/R 1, T of
[15] R 4.

5. The statements of the Student's present levels of academic achievement and functional performance in the IEP adequately describe how his disabilities affect his involvement and progress in the general education curriculum.[16]
6. The annual academic goals in the IEP are adequate to address his academic needs.[17]
7. There are three functional goals in the IEP to address his social/emotional needs.[18] The first of the goals is too broad to be effectively measured and includes three different issues.[19] The second is not appropriately outcome-based but rather focuses on the activities he will participate in (counseling to "explore the issues underlying his/her motivation and attendance difficulties").[20]
8. The IEP requires unspecified specialized instruction for 12 hours per week outside of the general education setting due to his cognitive abilities, and eight hours of unspecified specialized instruction in the general education setting.[21]
9. The IEP requires intense behavioral support services for 30 minutes per week outside of the general education setting because his social/emotional development is far below age expectancy.[22]
10. State-wide academic assessments will be provided to the Student with accommodations specified in the IEP.[23] The accommodations for State-wide assessments are identical to the

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[16] P 1/R 3, P 7/R 1, P 13, T of
[17] P 1/R 3, T of
[18] P 1/ R 3.
[19] P 1/ R 3.
[20] P 1/R 3, T of . testified to recommended goals, both of which do not appear to be on point based on the evaluation data. Healthy and trusting relationships with adults does not appear to be as significant a concern as peer relationships in the data and observations. Furthermore, attendance, completion of assignments, compliance with directions, and positive peer relationships are the priority needs as reflected in the assessment data and observations. A.H. did not assess the Student and had no first hand knowledge of the Student rendering her recommendations for goals less than convincing when compared to the data collected from those with first hand knowledge.)
[21] P 1/R 3.
[22] P 1/R 3.
[23] P 1/R 3.

supplementary aids and services the Student will be provided in the classroom which include:[24]

1) Interpretation of oral directions
2) Reading of test questions (math, science, and composition only)
3) Repetition of directions
4) Simplification of oral directions
5) Calculators
6) Location with minimal distractions
7) Preferential seating[25]
8) Small group testing
9) Breaks between subtests
10) Extended time on subtests
11) Breaks during a subtest

11. The IEP does not require extended school year services because the Student can get credits to graduate through summer school.[26]

12. The Petitioner has not challenged the postsecondary goals and services in the IEP, despite deficiencies pursuant to 34 C.F.R. § 300.320(b), and so they are not specifically addressed in this determination.[27]

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[24] P 1/R 3. (Items 9, 10, and 11, appear appropriate for State-wide testing accommodations, but it is unclear how these supplementary aids and services are applicable to the classroom. Thus, the entire list of supplementary aids and services ("classroom accommodations") is suspect as it appears to have been given little thought.
[25] It is unclear how "preferential seating" is different from "location with minimal distractions."
[26] P 1/R 3.
[27] P 1/R 3.

13. A functional behavioral assessment (FBA) was conducted in March 2011.[28] The FBA indicates the Student's negative behaviors (defiance, truancy, and fighting) occur all the time since the beginning of the school year.[29] The behaviors allow the Student to feel like he has some control over the given situation.[30] The Student avoids class and other situations because he is so far behind academically and this embarrasses him and makes him feel uncomfortable.[31] His behaviors allow him to resolve internalized emotional conflicts, gain power and control over situations, and avoid tasks that he does not want to participate in.[32]

14. The interventions put in place May 13, 2011, to address these behavioral issues are:[33]

    1) Remedial instruction in small groups.

    2) Meeting once per week with a social worker to develop and improve pro-social problem solving and conflict resolution skills.

    3) Meeting daily with attendance counselor at 8:30 a.m. to receive his daily attendance sheet and return the sheet at the end of each day signed by all teachers.

    4) Meeting weekly with both social worker and case manager to review behavioral progress.

    5) Receiving an unspecified tangible reward for complete attendance for a week.

    6) Removing unspecified allowances and privileges whenever he fails to comply with the behavior plan.

15. The Student was accepted at a therapeutic day school for children with disabilities, on March 31, 2011, pending approval from the Respondent or a hearing officer determination, and receipt of current assessments from DCPS.[34] The school had few

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[28] P 13. (The date of the report is not recorded, but the contents and context of the report indicate it must have been completed in March or April, prior to the resulting behavior intervention plan that was first created in draft form in April 2011.)
[29] P 13.
[30] P 13.
[31] P 13.
[32] P 13.
[33] P 12.
[34] P 16, T of

openings available on March 31, 2011, and could not guarantee the Student a place.[35] is a school that could appropriately meet the Student's needs if he were enrolled there.[36] There is no evidence the Petitioner informed the IEP team at the most recent meeting prior to attempting to enroll the Student at that she was rejecting the IEP proposed on February 23, 2011, or that she intended to enroll the Student there at public expense.[37]

## VI. 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. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

> special education and related services that –
> (a) Are provided at public expense, under public supervision and direction, and without charge;
> (b) Meet the standards of the SEA, including the requirements of this part;
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

34 C.F.R. § 300.17. The Supreme Court has described the purpose of the IDEA quite clearly:

> When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

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[35] P 16.
[36] T of provided detailed credible testimony as to how the school could serve the Student and implement his IEP.)
[37] T of P. (Nor did the Respondent pt on any such evidence. However, the Petitioner never made an argument to persuade the IHO that the Petitioner to steps to meet the conditions for reimbursement for unilateral private placement, including but not limited to the initial complaint. Thus, it is presumed and found that these conditions were not met.)

Board of Educ. v. Rowley, 458 U.S. 176, 203-204 (1982). It is within this legal context the case at hand must be examined.

2. Federal regulations at 34 C.F.R. § 300.320 lists the required contents of an IEP:

> (a)(1) A statement of the child's present levels of academic achievement and functional performance, including —
> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
> (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
> (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
> (B) Meet each of the child's other educational needs that result from the child's disability;
> (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
> (3) A description of — (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
> (4) A statement of the special education and related services and supplementary aids and services, based on peerreviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
> (i) To advance appropriately toward attaining the annual goals;
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
> (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
> (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
> (A) The child cannot participate in the regular assessment; and
> (B) The particular alternate assessment selected is appropriate for the child; and
> (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

3. The statement of the Student's present levels of academic achievement and functional performance, including how his disability affects his involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), is consistent with the most recent data available – that of the June 14, 2010, psychoeducational evaluation.

The Petitioner complained that the IEP fails to appropriately state that the Student has multiple disabilities, and this is incorrect. First, there is no legal requirement for the IEP to document the category under which the Student was determined eligible (in this case, it is SLD). Second, the IEP does include a comprehensive statement about how the Student's emotional disorder affects his progress and involvement in the general education curriculum, which is required under 34 C.F.R. § 300.320. Thus, there is no violation.

4. The functional goals in the IEP are not appropriate because they are not measurable or are focused on an activity (the service – counseling) and not the outcome (goal). They are not adequately designed to meet the Student's needs that result from his depression and the emotional impact of his learning disabilities to enable him to be involved in and make progress in the general education curriculum or to meet each of his other educational needs that result from his disabilities. This must be corrected and appropriate measurable functional goals put in place.

5. "Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability[.]" 34 C.F.R. § 300.39(a)(1). Federal Regulations at 34 C.F.R. § 300.39(b)(3) defines "specially designed instruction" as:

> adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
> (i) To address the unique needs of the child that result from the child's disability; and
> (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

6. "Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education,. . . ." 34 C.F.R. § 300.34(a).

7. Federal regulations at 34 C.F.R. § 300.106 provides for the provision of extended school year services for some children with disabilities. The regulation requires that:

(a) General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
(3) In implementing the requirements of this section, a public agency may not —
(i) Limit extended school year services to particular categories of disability; or
(ii) Unilaterally limit the type, amount, or duration of those services.
(b) Definition. As used in this section, the term extended school year services means special education and related services that —
(1) Are provided to a child with a disability —
(i) Beyond the normal school year of the public agency;
(ii) In accordance with the child's IEP; and
(iii) At no cost to the parents of the child; and (2) Meet the standards of the SEA.

8. The concept of "least restrictive environment" (LRE) is defined in Federal Regulations as:

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114(a)(2).

9. The IEP will have improved functional goals that are designed to meet the Student's needs. With these goals comes the need to provide services designed to assist the Student in reaching the goals, as well as to ensure access to the general education curriculum. This latter issue is the most significant for the Student because he is so far behind academically and these deficits directly affect his behavior or functional performance, including attendance and peer relationships. In order to ensure both academic needs (the specialized instruction to overcome his learning disabilities and the remedial instruction to overcome his deficit in progress in the general education curriculum) and social/emotional needs are met, the level of specialized instruction and related services must be appropriately structured so as to be reasonably calculated to result in educational benefit. To achieve this, the Student will be placed in a segregated day school that can address the Student's learning disabilities, his need for remediation to get caught up in grade level education standards, and emotional support services. The behavior intervention plan (BIP) put in place May 13, 2011, is not specific

enough nor comprehensive enough to ensure the Student will benefit from special education services.

10. Due to the nature of the Student's disabilities and the cycle of problems that result from his poor academic performance and seeking of acceptance from groups of peers who do not value academic success, the least restrictive environment for the Student is a segregated day school for children with or without disabilities, and that can provide both specialized instruction as well as remedial instruction in a therapeutic environment where behavioral supports and counseling services are always available when needed. The Respondent may select a public or non-public school that can provide this level of service and support for the Student. It is noted that the is an appropriate school that can do this if it has space for the Student.

11. Because the Student is so far behind academically, he will require ESY services at least over the summer of 2011 to help close this academic gap and provide a FAPE, including specialized instruction and related services.

12. The Petitioner's request for "wrap-around" services are in excess of what is required to enable the Student to benefit from his special education. He does not have a problem getting to school as much as he has a problem going to and remaining in class. Thus, the attendance issue is appropriately addressed with placement in a structured day school with counseling services available at all times. The Petitioner's focus on the Student's relationships with family and adults appears secondary to his relationships with peers. Again, positive peer relationships will be better managed in a segregated school as opposed to remaining in the unstructured environment of Other components of the requested "wrap-around" services can be provided in the structured school setting.

13. The remedy provided below is appropriate to address the Student's denial of a FAPE and there is no need for additional services to be ordered. The IEP team may determine that additional services are necessary, however, based on information not available to the IHO at this time.

## VII. DECISON

The Petitioner prevails because the Student's IEP developed February 23, 2011, is not reasonably calculated to provide educational benefit. The IEP lacks appropriate functional goals concerning the Student's social/emotional issues, lacks appropriate specialized instruction and related services to address and remediate the Student's academic deficits and behavioral issues which are preventing him from being involved in and progressing in the general education curriculum, and lacks ESY services to enable him to receive a FAPE.

## VIII. ORDER

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

1. The IEP will be revised for the 2011-2012 school year and will include, minimally, the following:
    a) The statement of the Student's functional goals will include the following annual goals that will replace the current functional goals:
        (1) Student will increase his attendance from not attending classes to always being in class, for the duration of the class, unless excused for a legitimate reason.
        (2) Student will increase compliance with adult directions from not following directions with multiple prompts to compliance with directions without prompts.

(3) Student will improve completion of class assignments from not completing assignments to completing all assignments timely.

(4) Student will improve peer relationships from socializing with delinquent peers to working with and socializing with peers who maintain good school attendance and grades.

b) The Student will receive specialized instruction in academics to close his academic achievement gap from present levels to being on grade level. They will be provided in a structured day school setting that can provide special education and related services, due to the significant need for remediation as well as the Student's challenges due to learning disabilities and social/emotional needs. The specialized instruction will begin no later than June 27, 2011, and continue until the Student is able to demonstrate basic performance in core academic areas, consistently pass classes, and meet all of his academic and functional IEP goals.

c) The Student will require the following related services to enable him to benefit from his special education services:

(1) Therapy available during the school day when Student has a challenging episode stemming from behaviors.

(2) Structured group or individual therapy for at least 60 minutes per week to address social/emotional needs and resulting behaviors.

(3) Positive reinforcement for good behavior and choices (to be specified by IEP team).

2. The Respondent will convene the IEP team meeting no later than June 17, 2011. The Respondent will notify the Petitioner of three alternative meeting times from which the

Petitioner may choose. The Respondent will advise the Petitioner of the meeting time that will go forward if she fails to choose one of the proposed times. All other required components of the IEP, pursuant to 34 C.F.R. § 300.320, must be addressed and appropriately documented.

3. The IEP will be reviewed and revised consistent with 34 C.F.R. § 300.324, but the primary objective of this Order, as stated in paragraph 1 b above, must remain in effect until achieved.

4. If the Respondent fails to convene the IEP team or revise the IEP in accordance with this order the Petitioner may seek any viable enforcement of this order including, but not limited to, filing a complaint with the Office of the State Superintendent of Education under 34 C.F.R. §§ 300.151-300.153.

**IT IS SO ORDERED.**

Date: June 6, 2011

Independent Hearing Officer

## 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).