**DISTRICT OF COLUMBIA**
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**
Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

RECEIVED
JUN 08 2011

---

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

Petitioners,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: June 4, 2011

Hearing Officer: Jim Mortenson

Case No:

---

# HEARING OFFICER DETERMINATION

## I. BACKGROUND

The complaint in this matter was filed by the Petitioners on March 21, 2011. The Petitioners are represented by Roberta Gambale, Esq., and the Respondent is represented by Tanya Chor, Esq.

This case is based on an individualized education program (IEP) partially developed for the Student for the 2011-2012 school year as ordered by this Independent Hearing Officer (IHO) on December 24, 2009 in Case No. Specifics of the IEP were not ordered in that case.

A prehearing conference was held on April 1, 2011, and a prehearing order issued on that date. A response was filed on April 4, 2011. A resolution meeting was held on April 7, 2011, and did not result in a settlement or any other agreements.

---

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

The hearing was convened on May 11, 2011, in room 2004 at 810 First Street NE, Washington, D.C. The hearing continued and concluded on May 13, 2011. Written closing statements were filed on or before May 24, 2011. The due date for the hearing officer's determination (HOD) is June 4, 2011, and this HOD is issued on June 4, 2011.

## 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 proposed an IEP reasonably calculated to provide educational benefit to the Student when the IEP proposed on March 3, 2011, lacks:
>
> a) An accurate statement of the Student's present levels of academic achievement and functional performance;
> b) Appropriate academic goals;
> c) Specialized instruction outside of the general education setting; and
> d) Appropriate or sufficient supplementary aids and services, including extended school year (ESY) services and those recommended by the most recent assessment reports?

The substantive requested relief includes:

1) A revised IEP to include:
   (1) An accurate statement of the Student's present levels of academic achievement and functional performance;
   (2) Appropriate academic goals;
   (3) Full time specialized instruction outside of the general education setting; and
   (4) ESY services and other supplementary aids and services recommended by recent assessments.

2) Placement at a private school for children with disabilities.

Based on the findings of fact and conclusions herein, this IHO has determined that the IEP proposed for the Student on March 3, 2011, is not reasonably calculated to provide educational benefit because it lacks appropriate supplementary aids and services and lacks ESY services for the provision of speech therapy. The appropriate remedy is to revise the IEP.

## IV. EVIDENCE

Nine witnesses testified at the hearing: six for the Petitioners and three for the Respondent.

The witnesses for the Petitioners were:

1) Student's Mother, Petitioner 1 (P1)
2) Student's Fasther, Petitioner 2 (P2)
3) Carolyn Miskel, Education Advocate (C.M.)
4) Admissions Coordinator,
5) Special Needs Coordinator,
6) Teacher,

The witnesses for the Respondent were:

1) Special Education Coordinator,
2) Speech & Language Therapist,
3) Special Education Teacher,

42 documents were disclosed by the Petitioner and 36 were admitted into evidence.[2] The Petitioners' exhibits are:

| Ex. No. | Date | Document |
|---|---|---|
| P 1 | March 3, 2011 | IEP |
| P 2 | March 3, 2011 | Prior to Action Notice |
| P 3 | March 3, 2011 | Advocate's Notes |

[2] The Petitioner disclosed a series of emails as one document (P 42). This was not admitted under the Petitioner, but the Respondent moved for admission of several of the emails and they were admitted as Respondent's exhibits.

| Ex. No. | Date | Document |
|---|---|---|
| P 4 | March 3, 2011 | Multi-Disciplinary Team [IEP team] Meeting Notes |
| P 5 | October 26, 2010 | Final Eligibility Determination Report |
| P 6 | October 26, 2010 | IEP |
| P 7 | October 26, 2010 | Advocate's Notes |
| P 8 | October 24, 2010 | Prior Written Notice-Evaluation |
| P 9 | October 24, 2010 | Analysis of Existing Data |
| P 10 | October 26, 2010 | Meeting Notes |
| P 11 | October 26, 2010 | IEP Mtg [Meeting Notes] |
| P 13 | March 24, 2011 | Summary and Score Report |
| P 14 | April 27, 2011 | Letter from Bahadori to [Petitioners] |
| P 15 | December 28, 2010 | Speech-Language (IEE) Evaluation Report |
| P 16 | October 22, 2010 | Observations |
| P 17 | October 25, 2010 | Classroom Observation |
| P 18 | October 23, 2010 | Speech and Language Re-evaluation Report |
| P 19 | September 28, 2010 | Review of Independent Assessment |
| P 20 | [Approx. March 30, 2010] | Review of Independent Neuropsychological Evaluation |
| P 21 | January 7, 2010 | Neuropsychological Evaluation |
| P 22 | December 21, 2009 | Comprehensive Occupational Therapy Evaluation |
| P 23 | December 11, 2009 | Assistive Technology Evaluation |
| P 24 | January 10, 2009 | Comprehensive Developmental Evaluation |
| P 25 | December 12, 2008 | Physical Therapy Evaluation Report |
| P 26 | December 22, 2008 | Occupational Therapy Evaluation Report |
| P 27 | December 24, 2009 | Case Hearing Officer's Determination |
| P 29 | September 28, 2010 | IEP |
| P 30 | September 28, 2010 | Advocate's Notes |
| P 31 | March 30, 3010 | [Student Meeting Notes] |
| P 32 | April 20, 2010 | [Student Meeting Notes] |
| P 33 | April 20, 2010 | [Student Meeting Notes] |
| P 34 | April 1, 2011 | Annual Student Enrollment Profile |
| P 35 | [Undated] | Goals for [Student] |
| P 39 | February 23, 2011 | Letter from Fulwood and Santa Cruz to [Petitioners] |
| | March 8, 2011 | Letter from Fulwood and Santa Cruz to [Petitioners] |
| P 40 | March 2, 2011 | [Email chain ending from Berfalk to Miskel] |
| P 41 | [Undated] | Curricula Vitae for Maria Zimmitti |

Two documents were disclosed by the Respondent. One of those was admitted into evidence (R 2). Seven additional documents that had been part of P 42 were entered into evidence as Respondent's exhibits (R 3, R 6 – R 11). Two documents that were not disclosed due to being

created on May 5, 2011, were also entered into evidence (R 4 and R 5). The Respondent's exhibits are:

| Ex. No. | Date | Document |
|---|---|---|
| R 2 | March 3, 2011 | Multi-Disciplinary Team [IEP team] Meeting Notes |
| R 3 | November 1, 2010 | [Email chain ending from Smith to Miskel] |
| R 4 | May 5, 2011 | [IEP team] Meeting Notes |
| R 5 | May 5, 2011 | Advocate's Notes |
| R 6 | October 21, 2010 | [Email chain ending from Bergfalk to P1] |
| R 7 | January 20, 2011 | [Email chain ending from Berfalk to P1] |
| R 8 | February 1, 2011 | [Email chain ending from Bergfalk to P 1] |
| R 9 | March 2, 2011 | [Email chain ending from Bergfalk to Miskel] |
| R 10 | March 16, 2011 | [Email chain ending from Bergfalk to P 1] |
| R 11 | April 25, 2011 | [Email chain ending from Bergfalk to P 1] |

One document was requested by the IHO. This document is labeled IHO 1 and is a progress report of the Student for the 2009-2010 school year at

## 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 a disability who was placed by his parents at a private play-based preschool school for children with and without disabilities.[3] The Student's parents placed him at two years ago due to concerns that his needs were not being met at the Respondent's school and because offered him an inclusion program with good support for children with disabilities, a low student to teacher ratio, staff pay close attention to detail, it is a nurturing environment, and the program shows good results.[4] The Parents filed a complaint and obtained reimbursement for their private placement in 2009 as

[3] Testimony (T) of P1, T of L.A., P 1.
[4] T of P1, T of C.W., IHO 1, P 9.

a result of a denial of a free appropriate public education (FAPE) by the Respondent previous to their unilateral placement.[5]

2. At the Student enjoys school, both teachers and his peers.[6] He has difficulty with transitions at times, but these are not severely hampering his progress.[7] He is supported in the classroom at throughout the day with multi-step directions, one on one assistance, frequent breaks, additional time to complete tasks, a back-jack to support his upper body, a fidget toy, and a massage brush.[8] Student often takes a day or two to get back into routine following breaks.[9]

3. In addition to attendance at the Student also has been receiving speech and language services from the Respondent at school for one hour per week, physical therapy for 30 minutes per week, and occupational therapy for 30 minutes per week.[10] The Parents also take the Student to the for additional speech services.[11] The staff at the believe the Student requires speech services over the summer of 2011 to ensure maintenance of newly acquired emerging speech skills.[12]

4. The Student has missed up to 15 of his speech therapy sessions provided by the Respondent during the 2010-2011 school year and would be doing better if attendance were improved.[13] The Respondent did not provide speech or OT services at his school, but rather required him to come to one of Respondent's buildings, causing disruption to his daily schedule.[14]

---

[5] P 27.
[6] T of L.A.
[7] T of L.A., IHO 1, P 13, P 17.
[8] T of L.A., T of C.W.
[9] T of L.A.
[10] T of P1.
[11] T of P1.
[12] P 15.
[13] T of S.R.
[14] T of P1, T of B.B., T of S.R.

5. The Student suffers from a seizure disorder that is regulated by medication.[15] This disorder has resulted in language based problems, gross and fine motor skill problems, and memory problems.[16] The Student is on medication which stops the seizures and sedates him.[17]
6. The most recent data about the Student shows his disability affects his participation in appropriate activities by causing:

   Cognitive problems:

   a. Reducing his ability to retain information.[18]
   b. Significant weakness in cognitive processing, both verbal and non-verbal.[19]
   c. Difficulty maintaining focus and staying on task or remaining seated.[20]

   Which result in:

   a. Slower progress, however the Student's academic skills are largely advanced given he has not yet attended kindergarten.[21]
   b. Cannot identify 3 letters of the alphabet.[22]
   c. Cannot write letters on demand.[23]
   d. Difficulty with subtraction and telling time, although understands basic addition with manipulatives and can count to 15 with minimal mistakes.[24]

   Motor Skills (visual, fine, and gross) problems:

[15] T of P1.
[16] T of P1.
[17] T of P1.
[18] T of P1, P 9, P 20, R 5.
[19] P 20.
[20] P 20, R 4.
[21] P 9, P 13, P 20, R 4, R 5, T of C.W.
[22] P 20, R 4, R 5.
[23] P 20.
[24] P 9, R 5.

a. Difficulty with vestibular processing and integrating sensory input received from environment impacting his arousal level, balance, body awareness, motor skills, ability to cross midline and establish hand dominance, and muscle tone.[25]

b. Difficulty with tracking objects in various places and adjusting his eyes from near and far points.[26]

Which result in:

a. Difficulty interacting with people and his environment, including problems completing assignments timely, and playing sports. (Requires many breaks.)[27]

b. Difficultly learning pre-writing skills/letter formation.[28]

c. Sitting up straight without leaning.[29]

Speech and language problems:

a. Difficulty with oral motor planning.[30]

b. Difficulty with rapid movements of the tongue from back to front.[31]

c. Various articulation problems involving initial, medial, final, and blending sounds.[32]

Which result in:

a. Problems with overall intelligibility.[33]

b. Slow laborious speech.[34]

---

[25] P 19, R 4.
[26] P 19.
[27] P 19, R 5.
[28] P 19, R 4.
[29] R 4.
[30] P 18.
[31] P 18.
[32] P 18.
[33] P 15, P 18.
[34] P 18.

7. An IEP was developed and proposed at a March 3, 2011, IEP team meeting.[35] The IEP includes statements of the Student's present levels of academic achievement and functional performance that address his performance in math but is not based on any current data.[36] The IEP does indicate the Student progresses more slowly, although this is not clearly stated.[37] The Student's disability is not impacting his reading skills, and so there is appropriately no present level of academic achievement or functional performance addressing those skills.[38] The Student's present levels of functional performance in the areas in visual motor, fine motor, and gross motor skills are adequately stated in the IEP.[39] The Student's present levels of functional performance for speech and language skills are adequately stated in the IEP.[40]
8. The IEP includes only academic goals for math.[41] Writing skills are appropriately addressed as functional performance stemming from his fine motor deficits.[42]
9. The IEP includes specialized instruction for 10 hours per week to reach the goals in the IEP and to progress in the general education curriculum.[43] Given the functional nature of his goals, minimal specialized instruction is necessary and the Student will benefit from

---

[35] P 1, T of B.B. (Inexplicably, after the complaint was filed, additional IEP meetings have been held to further revise the IEP. See e.g. R 4 & R 5. These revisions to the IEP are not fully part of the record (No IEP document following the March 3, 2011, revision was offered by either party). It is unknown why the parties would proceed to hearing on an IEP they are proceeding to work out in meetings. This dual approach to resolving their disagreements over the IEP is questionable given that this HOD may change some of the agreements they have reached outside of the IHO's knowledge. Of course, nothing prevents those agreed upon changes to proceed upon agreement of the parties, regardless of the HOD.)
[36] P 1, P 9, T of B.B. (While the IEP was developed March 3, 2011, and this HOD includes some data collected later that month, the discrepancy between the statements in the IEP and the reports subsequent is too large to be a legitimate change from March 3, 2011, to the end of the month, or even the following month.)
[37] P 1.
[38] P 1, P 13,
[39] P 1, P 19,
[40] P 1, P 15, P 18.
[41] P 1.
[42] P 1.
[43] P 1.

supplementary aids and services and related services to assist him in progressing toward the annual goals and in progressing in the general education curriculum.[44]

10. Subsequent to the March 2011 revision of the IEP staff have recommended reducing the hours of specialized instruction to just 30 minutes per day.[45]
11. The IEP does not include ESY services for the Student and that proposal had not changed by the time of the due process hearing.[46] The Respondent's position on ESY was based on its own arbitrary criteria (not legally promulgated rule) concerning regression and not n whether the services were required to provide a free appropriate public education to the Student.[47]
12. The IEP includes the following related services:[48]
    a. OT for 60 minutes per week
    b. PT for 30 minutes per week
    c. Speech and Language for 240 minutes per month (approximately 60 minutes per week)
13. The IEP requires bus transportation and preferential seating, but no other supplementary aids or services.[49]

[44] T of L.A., T of B.B., T of M.N.
[45] T of B.B., T of M.N., R 4, R 5.
[46] P 1, T of M.N.
[47] R 5, T of B.B.
[48] P 1.
[49] P 1.

## 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.

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 proposed IEP includes statements of the Student's present levels of academic achievement and functional performance that are mostly accurate. The statement concerning the Student's present level of performance for math is not accurate, however. The statement is not based on current data available and reflects less developed skills than he has. It does insinuate the Student progresses slowly because he needs repetition, re-teaching, and frequent breaks. The current data shows that the Student has difficulty with subtraction and telling time, although understands basic addition with manipulatives and can count to 15 with minimal mistakes. These skills are at the kindergarten level and so the Student's disability is not impacting his progress in a way that he is not meeting State standards. Thus, while the statement is not accurate, the Student's math skills are advanced for his grade and the IEP need not address them. The statement must continue to reflect how the Student's disability affects his involvement and progress in the general education curriculum and participation in appropriate activities generally, which is slower progress and difficulty staying focused and

on task. To support the Student in the classroom to continue to be able to be involved in and progress in the general education curriculum in kindergarten supplementary aids and services, as addressed below, will be provided.

4. The academic goals for math are not necessary because the Student's true present levels of performance in math are advanced at a kindergarten level. Because his other academic skills, such as reading, are also advanced, the IEP properly does not include goals to address them. The IEP does include goals to address writing as part of his fine motor skills. There is no dispute about the Student's functional skills, other than whether he needs ESY services to maintain improvement in his speech and language skills (also addressed below).

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. "Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116." 34 C.F.R. § 300.42.

7. "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). Related services include speech therapy. Id.

8. 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.

9. Placement determinations are to be made according to the following:

> In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that —
> (a) The placement decision —
> (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
> (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;
> (b) The child's placement —
> (1) Is determined at least annually;
> (2) Is based on the child's IEP; and
> (3) Is as close as possible to the child's home;
> (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
> (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
> (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

34 C.F.R. § 300.116.

10. 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).

11. While the Student is not currently behind academically, his success must be attributed to the supports and services he is receiving at Those supports and services include: multi-step directions, one on one assistance, frequent breaks, fidget toys, a message brush, and so

on. These supports and services are not, in a regular school setting, adaptations of content, methodology, or delivery of instruction, but rather supplementary aids and services provided within the context of the regular classroom. Only minimal changes to the delivery of instruction, such as repetition, need be necessary and thus documented as specialized instruction on the IEP. These supplementary aids and services will be necessary to ensure the Student is educated in the least restrictive environment in accordance with 34 C.F.R. § 300.114. The Student's disability is not so problematic or severe to require special classes, separate schooling, or removal from the regular education environment. However, since the IEP lacks these supplementary aids and services, it is not reasonably calculated to provide educational benefit. Rather, it lists 10 hours of unspecified "specialized instruction" that the staff now do not believe are necessary. This will have to be corrected in the IEP. A segregated special education day school is not the least restrictive environment for the Student and is not required in this case where the appropriate remedy is to correct the IEP for implementation in the general education setting.

12. Speech therapy is a related service the Student requires to assist him in benefiting from special education. His articulation is poor and this impacts the ability of those around him to understand him and thus his relationships and measurement of his academic progress may be negatively impacted and any benefit from special education negated. Because he still has articulation problems despite private services purchased by the Petitioners on top of what the Respondent has attempted to provide, he requires speech services during the particularly long break over the summer of 2011 to further improve his articulation skills in order for him to be prepared for the start of the 2011-2012 school year and to ensure his access to and progress in the general education curriculum in the least restrictive environment.

## VII. DECISON

The Petitioner prevails because the Student's IEP, proposed March 3, 2011, is not reasonably calculated to provide educational benefit. The IEP lacks necessary supplementary aids and services, and ESY services for speech therapy, necessary to ensure the child can reach the annual goals in his IEP and be involved in and progress in the general education curriculum.

## VIII. ORDER

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

1. The IEP for the 2011-2012 school year will be revised to include, minimally, the following:
    a) The statement of the Student's present levels of academic achievement and functional performance will be revised to reflect that the Student's disability results in difficulty retaining information, a weakness in cognitive processing, difficulty maintaining focus and staying on task, and slower progress. He requires supplementary aids and services to accommodate these problems and permit his to continue to be involved in and progress in the general education curriculum. He is not behind academically and so requires no annual goals for academic performance.
    b) Academic goals may be removed. If they are not removed, the academic goals must be based on the District of Columbia kindergarten content standards.
    c) Specialized instruction consisting of support for the classroom teacher to provide repetition or re-teaching to the Student will be provided. The frequency and duration of this specialized instruction will be determined and documented in the IEP by the IEP team. This specialized instruction may not be required at all if the purpose – to overcome Student's retention issue - can be meet by one on one assistance.

d) The following supplementary aids and supports must be included in the IEP:

(1) multi-step directions

(2) one on one assistance

(3) frequent breaks

(4) additional time to complete tasks

(5) a back-jack to support his upper body

(6) a fidget toy

(7) a massage brush

The IEP team will meet to determine and document in the IEP the frequency, location, and duration of each of these supplementary aids and services.

e) Extended school year services consisting of speech language therapy over the summer of 2011 will be provided. The ESY services will be initiated no later than June 27, 2011, and will conclude no sooner than one week prior to the start of the 2011-2012 school year. The frequency, location, and duration of the ESY services will be determined by the IEP team and documented in the IEP.

2. The Respondent will convene the IEP team meeting no later than June 17, 2011. The Respondent will notify the Petitioners of three alternative meeting times from which the Petitioners may choose. The Respondent will advise the Petitioners of the meeting time that will go forward if they fail to choose one of the proposed times.

3. 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 4, 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).