DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

[STUDENT],[1]
through the Parent/Guardian,*

Petitioner,

v

DCPS,

Respondent.

Date Issued: June 2, 2011

Hearing Officer: Seymour DuBow

Case No:

Hearing Date: 5/23/11 Room: 2008

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

The student is a -year-old male currently attending the grade at The student has been found eligible for special education and related services with the disability classification of Emotional Disturbance. (R-8, 9, 10 and P-6, 16, 17) On March 31, 2011 counsel for petitioner filed a due process complaint alleging that the October 15, 2009 IEP and the September 14, 2010 IEP were inappropriate for failing to provide sufficient time to meet his academic or behavioral goals and not containing baselines in academic areas. The due process complaint also alleged that DCPS failed to implement these IEPs in not providing a dedicated aide as determined necessary by the MDT. (P-7) On April 11, 2011 counsel for respondent DCPS filed a response denying the allegations. (R-15) On April 18, 2011 a resolution meeting was held and the parties failed to reach an agreement. (P-5) On April 22,

[1] Personal identification information is provided in Appendix A.

2011 a pre-hearing conference was held by telephone with counsel for petitioner Alana Hecht and counsel for respondent DCPS Harsharen Bhuller. Counsel for petitioner withdrew the issue of failure to do evaluations. A pre-hearing order was issued on April 22, 2011. The Order stated that the issues to be addressed are: 1. Are the October, 2009 and September, 2010 IEPs inappropriate for failing to have sufficient hours of specialized instruction to address the student's disability and the IEPs not having baselines in academic areas? 2. Did DCPS fail to implement the October 2009 and September 2010 IEPs calling for a dedicated aide for the student? 3. Did DCPS fail to provide an appropriate placement at

On April 18, 2011 counsel for petitioner filed a second due process complaint alleging that the April 8, 2011 IEP was inappropriate by failing to have the parent participate in the April 8, 2011 MDT meeting and that the IEP does not provide sufficient services, reduces counseling services and removes the dedicated aide from the IEP without justification. On May 3, 2011 counsel for respondent DCPS filed her response stating that the parent was invited on March 21, 2011 to attend the April 8, 2011 MDT/IEP meeting and the parent was present by telephone. The response also stated the IEP was appropriate. On May 4, 2011 a resolution meeting was held and the parties failed to reach an agreement. On May 10, 2011 a pre-hearing conference was held by telephone with above named counsel on the second complaint. Counsel for petitioner filed a motion to consolidate the second due process complaint with the first complaint and the motion was granted by this hearing officer. The May 10, 2011 Pre-Hearing Order stated that the issues to be decided on the second complaint are: 1. Is the April 8, 2011 IEP inappropriate for failing to have sufficient hours of specialized instruction to address the student's disability, reducing counseling service hours and removing the dedicated aide from the IEP? 2. Did DCPS fail to hold a properly constituted MDT/IEP meeting in not inviting the parent?

The due process hearing convened at 9 a.m. on May 23, 2011 in Room 2008 of the Student Hearing Office at 810 First Street, N.E., Washington, D.C. 20002. Alana Hecht represented the petitioner and Harsharen Bhuller represented the respondent DCPS. The hearing was closed. At the outset of the hearing, both the petitioner's documents P-1-P-27 and respondent's documents R-1-R-16 were admitted into evidence without objection. All witnesses were sworn under oath prior to testifying. Counsel for petitioner called as witnesses the mother and educational advocate, Lawrencia Cole, who testified in person and Dr. Natasha Nelson and James Corley who testified by telephone. Counsel for respondent called as a rebuttal witness Alicia Collins, the student's case manager at

JURISDICTION

The hearing was convened on May 23, 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

The student is a -year-old male currently attending the grade at The student has been found eligible for special education and related services with the disability classification of Emotional Disturbance. (R-8, 9, 10 and P-6, 16, 17) On March 31, 2011 counsel for petitioner filed a due process complaint alleging that the October 2009 IEP and the September 2010 IEP were inappropriate for failing to provide sufficient time to meet his academic or behavioral goals and not containing baselines in academic areas. The due process complaint also alleged that DCPS failed to implement these IEPs in not providing a

dedicated aide as determined necessary by the MDT. (P-7) On April 18, 2011 counsel for petitioner filed a second due process complaint alleging that the April 8, 2011 IEP was inappropriate by failing to have the parent participate in the April 8, 2011 MDT meeting that developed the IEP and that the IEP does not provide sufficient services, reduces counseling services and removes the dedicated aide from the IEP without justification. Counsel for respondent DCPS filed responses denying these allegations.

ISSUES AND RELIEF SOUGHT

The issues to be determined are as follows:

1. Are the October 15, 2009 and September 14, 2010 IEPs inappropriate for failing to have sufficient hours of specialized instruction to address the student's disability and the IEPs not having baselines in academic areas?
2. Did DCPS fail to implement the 2009 and 2010 IEPs calling for a dedicated aide for the student?
3. Did DCPS deny a FAPE to the student by holding the April 8, 2011 MDT/IEP Meeting without the parent?
4. Is the April 8, 2011 IEP inappropriate for failing to have sufficient hours of specialized instruction to address the student's disability, reducing counseling service hours and removing the dedicated aide from the IEP?
5. Did DCPS fail to provide an appropriate placement at

The relief requested is placement at a non-public special education placement at

and compensatory education.

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 are as follows:

I.

1. The October 15, 2009 IEP and the September 14, 2010 IEP call for ten hours of specialized instruction to be provided in the general education setting and 120 minutes a month of behavioral support services. (P-16 at p.5, P- 17 at p.4, R-8 at p.3, R-9 at p.4)
2. The parent signed that she agreed with the contents of the October 15, 2009 IEP and September 14, 2010 IEP and had an opportunity to be involved in the development of the IEPs. (P-16 at p.1, P-17 at p.1, R-8 at p.1, R-9 at p.1)
3. The sections on baselines for annual goals are blank on both the October 15, 2009 IEP and the September 14, 2010 IEP. (P-16 at p.2, P-17 at p.2, R-8 at 1 and R-9 at 1)
4. The October 15, 2009 IEP and the September 14, 2010 IEP contain present levels of educational performance. The 2009 IEP section on present level of educational performance in the mathematics section states the student is currently working below grade level, in the reading section that he scored on a 6.4 grade level when given the Slosson Oral Reading Test on 9/17/09 and in written expression section performing below grade level in written expression skills. The 2010 IEP sections on present level of education performance for mathematics, reading and written expression contains the same language as in the 2009 IEP. (P-16 at p.2, P-17 at p.2, R-8 at 1 and R-9 at 1)

5. The student's IEP Progress Report on Annual Goals for the October 15, 2009 IEP prepared by the special education teacher and social worker show the student is progressing toward his annual goals in mathematics, reading, written expression and emotional social and behavioral development during the first report period. (R-4) The special education teacher's comment on the mathematics annual goal was "I've observed and assisted [student] in the general education setting. He is usually on target with the Math assignments and doing well." (R-4)The special education teacher's comment on the reading goal is that the student has demonstrated progress and is still working on building comprehension skills. The special education teacher's comment on written expression goal was "[student] is demonstrating progress with writing skills. He needs to continue proofreading assignments before turning them in." (R4.1) The social worker's comment on emotional, social and behavioral development goal was "[student] has been able to identify several feeling words to assist with verbalization of feelings. Although not consistent, he does not react as quickly to situations without thinking." (R-4.1)
6. The student's IEP Progress Report on Annual Goals for the September 14, 2010 IEP show for the first reporting period the student is progressing toward his annual goals in mathematics, reading, written expression and emotional social and behavioral development. The special education teacher's comment on mathematics is that the student is doing okay in math class and tries really hard doing his math work, but needs to pay more attention. The special education teacher's comments on reading and written expression are that the student has missed an excessive amount of school calendar days and "He has made some progress, but due to his absences his

progression is not as great as it is capable of being." The social worker commented that the student is progressing on emotional goals, but tends to provoke other students. (R-5 at 2 & 3, R-6 at 1, 2 &3) In the third report period the student is progressing toward his annual goals in mathematics, reading and written expression, but not on emotional, social and behavioral development. (R-6 at 6) The special education teacher's comment for the third reporting period is that the student could have done better if he would behave himself in class. (R-6 at 6)

7. The student's report cards for the 2010-2011 School Year show he is failing in all his academic classes due to excessive absences, poor behavior and cutting class. (P-10)
8. The student's attendance records show excessive unexcused absences from classes for the 2010-2011 School Year. (P-12)
9. Teachers' notes show that the student can be polite and do assignments in class (P-14 at 14 & 15) and at other times sleep, refuse to do his assignments in class, tease and threaten other students and walk out of class. (P-14 at 3,4,5,6,8,16)
10. Behavior Intervention Plans have been developed on September 14, 2010, February 7, 2011 and April 8, 2011. (R-1,2 & 3) The behavior interventions have not been effective. as shown in the discipline reports (P-13) and teachers' notes (P-14)

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

II.

1. The student's October 15, 2009 IEP checks the box yes that the student requires the support of a dedicated aide. The section on dedicated aides under the check box also

includes the daily schedule of assistance and has a begin date of 10/16/2009 and an end date of 6/14/2010. (R-8 at 3)

2. The student's September 14, 2010 IEP that is signed by the parent and disclosed by respondent checks the box **no** that the student does not require the support of a dedicated aide. (R-9 at 4)
3. The student's September 14, 2010 IEP disclosed by petitioner that is not signed by the parent checks the box yes that the student requires the support of a dedicated aide. That section also includes the daily schedule of assistance with a begin date of 10/16/2009 and an end date of 6/14/2010. Those dates are from the previous October 15, 2009 IEP. The document submitted by petitioner has been altered from the original. (P-16 at 5)
4. Counsel for petitioner presented no evidence that the dedicated aide was not provided for the student at pursuant to the October 15, 2009 IEP.
5. The parent signed the September 14, 2010 IEP agreeing to the contents of the IEP including the section that a dedicated aide is not required. (R-9)

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

III.

1. The parent did not attend the April 8, 2011 MDT Meeting. (R-10 at 1, P-6 at 1)
2. No written logs were presented by DCPS on their attempts to arrange a mutually convenient meeting and convince the parent to attend.

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

IV.

1. An IEP was developed on April 8, 2011 that calls for ten hours of specialized instruction per week in general education setting and 90 minutes a month of behavioral support services. No dedicated aide was required.(R-10 at 5, P-6 at 5)
2. The April 8, 2011 IEP contains present levels of educational performance based on a DCBAS dated January 2011 where the student scored basic in Algebra, Measurement, Data Analysis, Number Sense and in Geometry. The IEP states: "These results mirror [student's] performance in his math inclusion class so far this school year." (R-10 at 1) On reading, the IEP showed a present level of educational performance based on the January 2011 DCBAS test that the student scored basic in language development, informational text and literary text and mirror his performance in the English inclusion class. (R-10 at 1) On written expression, the present level of educational performance is basic level for his grade level. (R-10 at 2) On emotional, social and behavioral development there is current detailed information on his behavior. (R-10 at 3) The IEP contains baselines for annual goals and contains specific measurable annual goals in mathematics, reading, written expression and emotional, social and behavioral development. (R-10 at 1, 2 & 3)
3. The parent did not sign the IEP. (R-10, P-6)
4. An independent comprehensive psychological evaluation was conducted by Dr. Natasha Nelson on the student on May 16, 2011 and the report written on May 17,

2011. (P-27) This evaluation was done over a month after the April 8, 2011 IEP was developed. DCPS and the MDT at have not had an opportunity to review and consider this independent evaluation.

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

V.

1. The student is currently in the seventh grade at (R-10, P-6)
2. The student's IEPs of September 14, 2010 and April 8, 2010 providing for ten hours of specialized instruction per week in the general education setting and the provision of counseling services are implemented at (R-6)

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 (3rd Cir. 2004) Dr. Natasha Nelson qualified as an expert witness in clinical psychology. Dr. Nelson did a comprehensive psychological evaluation of the student and recommended that the student be placed in a therapeutic school for students with ADHD and an Emotional Disturbance. Dr. Nelson made this recommendation based on her interviews with the parent and student and her testing. Dr. Nelson did not observe the student at his present placement and did not interview his teachers prior to making this recommendation in her evaluation report. Dr. Nelson's report recommends a Behavior Intervention Plan without knowing that the school had a BIP. This hearing officer

gives less weight to her expert opinion on placement based on her making the recommendation without talking to the student's teachers or doing an observation of the student's class as well as her lack of knowledge of school interventions including the BIP.

The parent testified in person that she was not given notice by DCPS of the April 8, 2011 MDT meeting. She testified she did not receive a letter about the meeting. She further testified she talked to Ms. Collins, the student's case manager, on the day DCPS sent the April IEP home in the student's backpack. Ms. Collins told her to sign it. The mother sent it back to school unsigned and the next day Ms. Collins called her asking her why she did not sign the IEP. She told Ms. Collins her lawyer told her not to sign it. Ms. Collins testified by telephone that she sent out a letter to the mother inviting her to the April MDT meeting. She further testified she talked to the mother by telephone on March 31, 2011 and told her to come to the April 8, 2011 MDT meeting to update the student's IEP. The parent said she would attend. On the morning of the April 8, 2011 MDT meeting, Ms. Collins called the mother as to why she was not at the meeting and the mother told her she was advised by her attorney not to participate. The school than went on with the MDT meeting. Counsel for the respondent DCPS did not disclose any school written logs about communications with the parent about participation in the April 8, 2011 MDT meeting. This hearing officer is unable to determine which version of scheduling of the MDT meeting is correct.

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 that the October 2009 IEP and September 2010 IEP are inappropriate are as follows:

"The burden of proof shall be the responsibility of the party seeking relief. Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." *5 D.C.M.R. 3030.3*

In determining if the October 2009 and September 2010 IEPs are appropriate this hearing officer must answer the question "is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, at 206-07 (1982). 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 (6th Cir. 1989); *Fort Zumwalt School District v. Clynes,* 26 IDELR 172 (8th Cir. 1991); *Roland M. v. Concord School Comm'n,* 16 IDELR 1129 (1st Cir. 1991) and *Hall v. Vance County Board of Education*, 557 IDELR 155 (4th 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.ex rel. 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 *A.I. ex rel. Iapalucci v. D.C*, the Court upheld a hearing officer's decision that the IEP goals were appropriate based on reference to IEP progress reports that "contain a myriad of specifics that substantiate the hearing officer's finding of progress." *Id.at p.169* In this case, the IEP progress reports for the October 2009 IEP and September 2010 IEP contain many specifics that also support a finding of progress on the student meeting his annual IEP goals in mathematics, reading and written expression and emotional, social, and behavioral development. (See Findings of Fact # I. 5 & 6)

Counsel for petitioner argues that the October 2009 IEP and the September 2010 IEP are inappropriate for not having baselines on individual annual goals. The IEPs show the baseline sections are blank. (See Findings of Fact #I.3) The IEPs do have present levels of educational performance. (See Findings of Fact #I.4) These present levels of educational performance provide the information that provides a baseline of the student's performance levels in mathematics, reading and written expression.

In *S.S. by Shank v. Howard Road Academy*, 585 F. Supp. 2d 56, 70 (D.D.C. 2008), the Court held: "The annual goals met the requirements of the *IDEIA*. The Court cannot say that the IEP was not reasonably calculated to enable S.S. to derive educational benefit because it failed to provide more specificity with respect to reading, written language and mathematics goals or to provide additional short-term objectives in these areas." In this case, while the baseline sections

in the 2009 and 2010 IEPs were blank, the information provided in the present levels of educational performance served the same function of providing a baseline to measure progress.

Counsel for petitioner's argument that the October, 2009 and September, 2010 IEPs do not contain sufficient hours is undercut by the parent signing she agreed to the contents of both of these IEPs including the number of hours of specialized instruction and was involved in the IEPs development. (See Findings of Fact #I. 2) Counsel for petitioner has failed to meet her burden of proof that the October 2009 and September 2010 IEPs do not contain sufficient hours. This hearing officer concludes that the above IEPs were reasonably calculated to provide educational benefit.

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 of not providing a dedicated aide are as follows:

The October 2009 IEP requires the provision of a dedicated aide for the student. Counsel for the parent has presented no evidence that did not provide the dedicated aide. The September 2010 IEP signed by the parent does not require the provision of a dedicated aide for the student. Counsel for petitioner has failed to meet her burden of proof on this issue. This hearing officer has serious concerns that the September 2010 IEP section on the requirement of a dedicated aide disclosed by counsel for petitioner is altered from the September 2010 IEP signed by the parent and disclosed by respondent. (See Findings of Fact II. 2, 3, & 5)

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 on parental participation and issue four on the April 8, 2011 IEP are as follows:

The parent testified that she was not invited to the April 8, 2011 MDT meeting. The parent maintains she did not receive a letter of invitation from the school and was only called by the school when the IEP was sent home and she was asked to sign it and return the IEP to school. The parent was called again the next day when it was not signed. Ms. Collins testified that she did send a letter of invitation and called the parent on March 31, 2011 inviting her to the MDT meeting. The parent agreed to attend. On the morning of the April 8, 2011, Ms. Collins testified she called the parent when she did not show for the meeting and was told by the parent she would not come on advice of counsel. The MDT than convened the meeting. While this hearing officer cannot determine which of above versions is correct, the law is clear. School districts are required to keep a record of their attempts to arrange a mutually convenient meeting and convince parents to attend. *34 C.F.R. Section 300.322 (d)*. Such a record can include detailed logs of telephone calls made or attempted and the results of those calls; copies of correspondence sent to parents and any responses received; and detailed records of visits made to the parents' home or places of employment and the results of those visits. *34 C.F.R. Section 300.322 (d)(1)-(3)*. This section of the regulations demonstrates the importance that IDEA places on parental participation in IEP meetings. As the Court pointed out in *A.I. ex rel. Iapalucci v. District of Columbia, Id* at 164 "While not every technical violation of the procedural prerequisites of an IEP will invalidate its legitimacy..., procedural inadequacies that...seriously infringe upon the parents' opportunity to participate in the IEP formulation process...clearly result in the denial of a FAPE." In this case, counsel for respondent failed to disclose a written record of attempts to invite the parent to the April 8, 2011 MDT meeting. This hearing officer therefore concludes that DCPS denied a FAPE in not showing through any of the above required written documentation that the parent was invited to participate at the April 8, 2011 MDT meeting. The

resulting IEP from that meeting is incomplete until attempts are made with the above required written documentation to invite the parent to attend an MDT/IEP meeting. *See W.G. v. Board of Trustees of Target Range Sch. Dist*, 960 F.2d 1469, 18 IDELR 1019 (9th Cir. 1992) Counsel for respondent in her May 3, 2011 response stated: "DCPS is willing to convene a meeting to discuss and revise the student's IEP." (R-16) This hearing officer is ordering a reconvening of the MDT meeting at a mutually convenient time. Since the April MDT meeting, an independent comprehensive psychological evaluation has recently been conducted on the student on May 16, 2011. (P-27) DCPS has not had an opportunity to review and consider this evaluation. *34 C.F.R. Section 300.502 (c)(1)* At a reconvened meeting, the MDT with parental participation will have an opportunity to review and consider the May 2011 independent psychological evaluation and discuss and determine the hours of specialized instruction and counseling and whether the hours of specialized instruction will be provided outside of general education.

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 five on the placement being inappropriate are as follows:

The Supreme Court held in *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, 201 (1982) that IDEA was intended to provide a "basic floor of opportunity" and an individualized plan "designed to provide educational benefit to the handicapped child." *See Schoenbach v.District of Columbia*, 309 F. Supp. 2d 71, at 80 (D.D.C. 2004) This Circuit has held that a school has met its obligation to provide a FAPE if the school's program "confers some educational benefit." *Kerkam v. Superintendent, District of Columbia Public Schools*, 931 F 2d 84 (D.C. Cir. 1991) The analysis of the appropriateness of a public school placement "is not comparative." *Jenkins. v. Squillacote*, 935 F.2d 303, 305 (D.C.Cir. 1991) Although IDEA

guarantees a FAPE, it "does not necessarily guarantee the child [with the disability] the best available education." *Holland v. District of Columbia*, 71 F.3d 417,419 (D.C.Cir. 1995). Nor does IDEA ensure that a FAPE will consist of the precise plan that the parent desires. *See Shaw v. District of Columbia*, 238 F.Supp. 2d 127,139 (D.D.C. 2002). An IEP must be 'reasonably calculated' to confer educational benefits on the child, ...but it need not "maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Rowley* at 200, 207. , quoted in *Anderson v. District of Columbia*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009)

In this case, this hearing officer finds at Findings of Fact #V-2 that is implementing the student's current IEP. This hearing officer concludes that the student's current placement is able to implement the student's IEP that is reasonably calculated to provide educational benefits if he takes advantage of these educational opportunities at

Counsel for petitioner has failed to meet her burden of proof that is inappropriate.

ORDER

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

DCPS shall invite the parent to an MDT/IEP meeting to review and revise the student's IEP at a mutually convenient time. Counsels for the parties shall assist in scheduling that mutually convenient time. The MDT/IEP meeting shall be held no later than June 17, 2011. The MDT will consider the independent comprehensive psychological evaluation conducted by Parker Diagnostics and discuss and

determine the hours of specialized instruction and counseling services and whether the specialized instruction will be provided outside of general education.

Issue one on the inappropriateness of the October 2009 IEP and September 2010 IEP is DISMISSED with prejudice.

Issue two on not providing a dedicated aide is DISMISSED with prejudice.

Issue five on the inappropriateness of the placement is DISMISSED.

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: 6/2/11 Seymour DuBow /s/

Hearing Officer