DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 1st Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,[1] through the Parent Petitioner, v District of Columbia Public Schools, Respondent.	Date Issued: Hearing Officer: Case No: Hearing Date: Room:	May 22, 2011 James Gerl May 6, 2011 2006

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on March 30, 2011. The matter was assigned to this hearing officer on March 30, 2011. A resolution session was convened on April 1, 2011. A prehearing conference was convened on April 14, 2011. An expedited due process hearing was convened at the Student Hearing Office on May 6, 2011. The hearing was closed to the public. The student's mother attended the hearing and the student did not attend the hearing. Three

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

witnesses testified on behalf of the petitioner and one witness testified on behalf of the Respondent. Petitioner's exhibits 1-40 were admitted into evidence. Respondent's exhibits 3, 4, 6, 7 and 8- were admitted into evidence, and the remaining Respondent's exhibits were withdrawn. Joint exhibits 1-5 were admitted into evidence. The decision of the hearing officer is due to be issued on or before May 23, 2011.

JURISDICTION

This proceeding was invoked pursuant to the provisions of the Individuals With Disabilities Education Act (hereafter sometimes referred to as "IDEA"), 20 U.S.C. Section 1400 et seq.; Title 34 of the Code of Federal Regulations, Part 300; Title 5-E of the District of Columbia (hereafter sometimes referred to as "District" or "D.C.") Municipal Regulations (hereafter sometimes referred to as "DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

PRELIMINARY MATTERS

All exhibits and testimony received into evidence and all supporting arguments submitted by the parties have been considered.

To the extent that the evidence and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Petitioner's witnesses raised some question during their testimony concerning whether or not the number of hours of services on the student's IEP was appropriate. The due process complaint in the instant case did not mention any issue with regard to hours of services and no such issue was discussed at the prehearing conference herein. Accordingly, this issue was not considered in reaching this Hearing Officer Determination. IDEA § 615(f)(3)(B).

After the hearing, petitioner filed a Motion to Reopen the Record to offer additional documentary evidence. The documents pertain to an IEP team meeting that was scheduled to take place after the due process hearing that allegedly did not occur because one of Respondent's staff was unavailable. Because the documents have only marginal

relevance at most, and because of the principle of finality, the motion is hereby denied.

ISSUES PRESENTED

The following three issues were identified by counsel at the prehearing conference and evidence concerning these issues was heard at the due process hearing:

1. Did Respondent violate IDEA by failing to follow appropriate procedures for a manifestation determination review on March 9, 2011?
2. Did Respondent deny FAPE to the student by failing to adopt appropriate reading and math goals in his March 3, 2010 IEP?
3. Did Respondent deny FAPE to the student by failing to timely update his March 3, 2010 IEP?

FINDINGS OF FACT

After considering all of the evidence in the record as well as the arguments of counsel, I find the following facts:

1. The IEP developed for the student on March 3, 2010 is the last operative IEP for the student. (Stipulation by counsel on the record.) (References to exhibits shall hereafter be referred to as "P-1," etc. for the petitioner's exhibits, "R-1," etc. for the respondent's exhibits, "J-1" etc. for the joint exhibits and "HO-1," etc. for the hearing officer exhibits; references to testimony at the hearing is hereafter designated as "T".)

2. The 2008 Woodcock-Johnson scores for the student are accurate. (Stipulation by counsel on the record.)

3. The independent functional behavioral assessment and comprehensive psychological assessment that were conducted for the student were reviewed at the April 1, 2011 IEP team meeting. (Stipulation by counsel on the record.)

4. The student was born on August 19, 1996. (P-8)

5. The student has received numerous disciplinary referrals while attending his current school. (T of Petitioner's educational advocate; T of student's mother; P-32, P-16, P-17, P-20, P-21, P-22, P-23, P-24, P-25, P-26, P-27)

6. The student received a long-term 45-day suspension from Respondent on November 22, 2010. The suspension was the result of the student assaulting a teacher and

As a result of the long-term suspension, and the underlying assault upon Respondent's teacher, the student attended an alternate school during the period of the long-term suspension. (P-17, P-10)

7. On March 3, 2011, the student was involved in an incident involving vandalism, destruction of property, and graffiti (tagging). Specifically, the student was running through the building wearing a black ski mask and was found in the boys' restroom where he was painting graffiti on the walls. The security officer directed the student to stop, but he continued. After being reported to the administration, the student ran from the security officer. Respondent initially proposed a 67-day suspension for the student for this incident. That was later reduced to a 20-day suspension. (P-15, P-4; T of Petitioner's educational advocate).

8. On March 9, 2011, Respondent convened a manifestation determination review team with regard to the March 3, 2011

disciplinary infraction by the student. In attendance at the meeting were the student, his mother, his educational advocate, a special education teacher, Respondent's special education coordinator, a second special education teacher, the assistant principal, the school's dean of students, and a security officer. The manifestation determination review team concluded that the student's conduct was not caused by and did not have a direct or substantial relationship to the student's disabilities, and that the conduct in question was not the direct result of Respondent's failure to implement the student's IEP. The team concluded that the conduct for which the student was being disciplined was not a manifestation of his disability. The student's mother disagreed with the conclusion, and the Petitioner's educational advocate stated that she did not have enough information to decide. (P-4; P-5; P-3; T of Petitioner's educational advocate).

9. The primary disability listed on the student's March 3, 2010 IEP is a specific learning disability. In addition, the comprehensive psychological evaluation conducted for the student on January 5, 2011 concluded that the student also suffers from depressive

disorder. As a result of the depressive disorder, the student might be expected to behave in an aggressive manner, talk back to teachers or other adults, and be rude. (P-10, P-8; T of Petitioner's psychologist)

10. The manifestation determination review team that met with regard to the student on March 9, 2011 correctly concluded that the student's behavior in engaging in vandalism, destruction of property, graffiti (tagging) was not caused by and did not have a direct or substantial relationship to the student's disabilities and that the conduct in question was not the direct result of Respondent's failure to implement the student's IEP. (P-16, P-3, P-4; P-10; P-11; record evidence as a whole)

11. An IEP was developed for the student on March 3, 2010. Present at the meeting were the student's mother, Respondent's social worker, a school psychologist from Respondent, Respondent's special education coordinator, three special education teachers, an assistant principal, and three general education teachers. The IEP includes information concerning the student's present levels of educational performance, including specifics with regard to his

problems concerning reading. Said IEP includes two reading goals. The IEP includes present levels of educational performance with regard to written expression and includes three goals in that area. The IEP also includes present levels of performance and analysis and goals with regard to emotional/social/behavioral development. The IEP provides that the student will receive specialized instruction in written expression five hours per week in a general education setting, specialized instruction in reading in the general education setting five hours per week. The IEP also includes related services of behavioral support services at 30 minutes per week outside the general education setting and behavioral support services at 30 minutes per week inside the general education setting. The IEP also includes the following classroom accommodations: reading of test questions (math, science and composition only); preferential seating; small group testing; breaks between subtests; and breaks during a subtest. (P-8)

12. The student made progress with respect to each of his academic goals under his March 3, 2010 IEP for the reporting period from

January 22, 2011 through March 25, 2011. The student made academic progress under his IEP dated March 3, 2010. (J-1; T of Respondent's special education teacher)

13. The goals on the student's March 3, 2010 IEP are appropriate. The student's March 3, 2010 IEP is reasonably calculated to confer educational benefit. (Record evidence as a whole.)

14. Respondent has failed to meet to update the student's IEP and to develop a complete IEP since March 3, 2010. (T of Petitioner's educational advocate.)

15. The student has not made progress with respect to any of his behavioral/emotional/social goals on his March 3, 2010 IEP. (J-1)

16. The student engages in disruptive and inappropriate behaviors in the classroom. The student walks around in the classroom and sometimes leaves the classroom. He works well in a group, but when he is by himself, he often sings songs or otherwise engages in disruptive behaviors. The student's continuing behavioral issues impact his learning and the learning of other students. (T of Respondent's special education teacher.)

17. On January 19 and February 2, 2011, Petitioner's expert psychologist conducted a functional behavioral assessment of the student. The functional behavioral assessment includes four observations of the student in class at the alternative school and two observations of the student in his current school. The assessment also included interviews of the student's teachers at his current school, as well as at the alternative school. The functional behavioral assessment includes an analysis of many of the student's current problem behaviors and includes recommendations concerning how best to deal with them. (P-9; T of Petitioner's psychologist.)

18. The student's IEP team met on April 1, 2011. The purpose of the meeting was to review the independent evaluations, including the comprehensive psychological evaluation, the functional behavioral assessment, and a psychiatric evaluation of the student; to review and revise the IEP, if necessary and to review and revise the student's behavioral intervention plan, if warranted. (J-2)

19. At the April 1, 2011 meeting, the team agreed to provide an authorization for an independent educational evaluation for the

student to obtain an occupational therapy evaluation and to return to complete the meeting after the occupational therapy evaluation was completed. (J-1; R-4; T of Petitioner's educational advocate.)

20. The student's IEP team is scheduled to meet again on approximately May 10, 2011 to complete the work that had begun on April 1, 2011. (J-2; R-7, R-8; T of Petitioner's educational advocate.)

21. Recreational summer camps are well suited to deal with students who are experiencing behavioral and emotional problems. A requirement that Respondent fund a recreational summer camp for the student will remedy the harm caused by the failure of Respondent to timely update the student's IEP. (T of Petitioner's educational advocate; P-40)

CONCLUSIONS OF LAW

Based upon the evidence in the record, the arguments of counsel, as well as my own legal research, I have made the following Conclusions of Law:

1. When a local educational agency such as Respondent removes a student from his current placement for more than ten consecutive school days, the discipline is a change of placement that requires a manifestation determination review meeting. At the manifestation determination review meeting, the local education agency, the parent and relevant members of the IEP team must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

   i. If the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or
   ii. If the conduct in question was the direct result of the local education agency's failure to implement the student's IEP.

   IDEA § 615(k); 34 C.F.R. §300.530(e). In the instant case, Respondent properly convened a manifestation determination review team and correctly determined that the conduct for which the student was being disciplined on March 3, 2011 was not a manifestation of his disability.

2. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education (hereafter sometimes referred to as

"FAPE") to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA") and an analysis of whether the Individualized Educational Plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

3. In order to provide FAPE, a school district is not required to maximize the potential of a student with a disability. Instead, a school district is required to provide the basic floor of educational opportunity. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991)

4. The law does not require a local education agency, such as Respondent, to close the "gap" between the achievement level of a student with a disability and the achievement level of his non-disabled peers in order to provide a FAPE. Allyson B. by Susan B. and Mark B. v. Montgomery County Intermediate Unit No. 23, 54 IDELR 164 (E.D. Pa. March 31, 2010); JL and ML ex rel KL v. Mercer Island School District 55 IDELR 164 (W.D. Wash. October 6, 2010); MPP by Perusse v. Poway Unified School District, 54 IDELR 278 (S.D. Calif. July 12, 2010); Montgomery Public Schools, 110 L.R.P. 28732 (SEA Md. January 14, 2010).

5. When reviewing an IEP for appropriateness, hearing officers and courts must view the IEP as a snapshot and not a retrospective. In judging the appropriateness of an IEP, the IEP must be considered in terms of what was objectively reasonable when the snapshot was taken, that is at the time that the IEP was promulgated and developed. S.S. ex rel. Shank v. Howard Road Academy, 585 F.2d 56, 51 IDELR 151 (D.D.C. November 12, 2008).

6. The IEP developed by Respondent for the student on March 3, 2010 is reasonably calculated to confer educational benefit to the student. Said IEP is appropriate. Said IEP contains appropriate reading goals, and contains sufficient goals as it is written.

7. A local education agency, such as Respondent, must review the IEP of a child with a disability periodically, but not less than annually. The review should include any necessary modifications to the student's IEP, including any necessary interventions, supports or other strategies to address behavior problems that impede the learning of a child or the learning of others. IDEA §614(d)(4)(A); 34 C.F.R. § 300.324(b)(1) and (2). In the instant case, Respondent denied FAPE to the student by failing to update his March 3, 2010 IEP on a timely basis in view of the student's ongoing behavioral problems that were interfering with his learning and that of other students.

8. A due process hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates IDEA. School Committee Town of Burlington v. Department of Educ., 471 U.S. 358, 369, 105 S.Ct. 1996, 556 IDELR 389 (1985);

Forrest Grove Sch Dist v. TA 129 S.Ct. 2484, 52 IDELR 151, n. 11 (U.S. 2009); Reid ex rel Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32, (D.C. Cir. 3/25/2005); Garcia v. Bd. of Educ. of Albuquerque Public Schs, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 3/25/2008); Los Angeles Unified Sch. Dist. v. D.L., 548 F. Supp.3d 815, 46 IDELR 252 (C. D. Calif. 3/10/2008); Bishop v. Oakstone Academy, 47 I.D.E.L.R. 125 (S.D. Ohio 2007); Brockton Central Sch. Dist. 49 IDELR 24 (SEA N.Y 2007); In re Student With a Disability, 108 LRP 45824 (SEA WV 6/4/2008).

9. All relief under the IDEA is equitable in nature. Compensatory services or compensatory education, for a violation of IDEA should be flexible and designed to remedy the harm caused by a violation of the Act. Relief under IDEA should be tailored to the specific facts and circumstances of a particular case, the nature and severity of the violation and the nature and severity of the student's disability. Reid ex rel Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32, (D.C. Cir. 3/25/2005). In the instant case, an award of compensatory services involving a recreational

summer camp will appropriately redress the violation of the act committed by the Respondent herein.

DISCUSSION

1. Merits

Issue No. 1: Did Respondent violate IDEA by failing to follow appropriate procedures for a manifestation determination review?

Because Respondent suspended the student for twenty days for an incident that occurred on March 3, 2011, and because the original intention was to suspend him for a longer period of time, a manifestation determination review was clearly warranted, inasmuch as the length of the suspension was a disciplinary change of placement. IDEA § 615(k); 34 C.F.R. §300.530(e).

Respondent convened a manifestation determination review team meeting on March 9, 2011. Present at the manifestation determination review meeting were the student, his mother, his educational advocate, a special education teacher, a special education coordinator, a second special education teacher, an assistant principal, the dean of students at the school, and a security guard.

The student's educational advocate contends that the manifestation determination review meeting was improper because Respondent's representatives would not answer questions she propounded. She testified that she could not make up her mind whether the conduct in question was a manifestation of the student's disability without receiving answers to the questions.

The testimony of the educational advocate in this regard is not credible or persuasive. It particular, it is contradicted by the notes for the manifestation determination review meeting that were taken by said educational advocate. Said meeting notes reveal that Respondent refused to answer questions about conduct beyond the scope of the March 3, 2011 disciplinary incident. Thus, it was not true that Respondent refused to answer questions about the student or his disability, but rather only other conduct or items outside the scope of the manifestation determination review. Accordingly, the testimony of the educational advocate with respect to this issue is not credited.

More importantly, Petitioner has failed to make any argument or present any testimony that the conduct in question was a manifestation of the student's disabilities. The conduct for which the student was

being disciplined involved damaging school property. More specifically, the student was running through the building wearing a black ski mask and was found in the boys' restroom tagging, or writing graffiti on the walls. After being ordered to stop by the security officer, the student continued writing on the walls. After being reported to the administration, the student ran from security.

The student's disabilities, as identified by the school authorities for purposes of special education eligibility, as well as through the independent psychoeducational evaluation, are a specific learning disability and a depressive disorder. It seems quite clear that the student's bad behavior in writing graffiti on the walls and refusing to comply with the directives of the security officer are not related to his disabilities. Petitioner could not even mount an argument that the behavior in question was either caused by or a direct and substantial relationship to the student's disabilities or that the conduct was a direct result of Respondent's failure to implement the student's IEP. Thus, even assuming arguendo that Respondent failed to follow appropriate procedures with regard to the manifestation determination review process, there is no evidence in the record to support an argument that

the student suffered harm because Respondent reached the wrong conclusion at the manifestation determination review. See, Lesesne ex rel BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006)

Inasmuch as the conduct for which the student was disciplined was clearly not a manifestation of his disabilities, Respondent has not violated the special education laws with regard to its handling of this disciplinary incident.

Petitioner has failed to meet her burden with respect to this issue. Respondent has prevailed as to this issue.

Issue No. 2: Did Respondent deny FAPE to the student by failing to adopt appropriate reading and math goals in the student's March 3, 2010 IEP?

Petitioner contends that the student's March 3, 2010 IEP is inappropriate because the reading goals are insufficient and because there are no math goals. To support this argument, Petitioner presented the testimony of her educational advocate, who testified that the reading goals were inappropriate because they did not match the

student's needs. Petitioner also called a psychologist as a witness, who testified that the reading goals were ok but that the baselines from which they were measured were inappropriate. Concerning the math goals, the psychologist testified that the student's low achievement scores justified such goals. The thrust of the arguments of the educational advocate and the psychologist who testified on behalf of Petitioner is that the student's IEP was inappropriate because his achievement scores were significantly behind the scores of his non-disabled peers.

Petitioner misapplies the legal standard. The law does not require that in order to provide a FAPE, a school district must close the "gap" between the achievement level of a student with a disability and the achievement levels of his non-disabled peers. Allyson B. by Susan B. and Mark B. v. Montgomery County Intermediate Unit No. 23, 54 IDELR 164 (E.D. Pa. March 31, 2010); JL and ML ex rel KL v. Mercer Island School District 55 IDELR 164 (W.D. Wash. October 6, 2010); MPP by Perusse v. Poway Unified School District, 54 IDELR 278 (S.D. Calif. July 12, 2010); Montgomery Public Schools, 110 L.R.P. 28732 (SEA Md. January 14, 2010). Instead, IDEA requires only that a school

district provide a student with a disability with the basic floor of educational opportunity, or an IEP that is reasonably calculated to confer educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

In the instant case, it is clear that the student's IEP was reasonably calculated to confer educational benefit. Respondent provided the testimony of the student's special education teacher, as well as documentary evidence, to show that the student made progress on all of his academic IEP goals and that he was generally making academic progress. The testimony of respondent's witnesses is corroborated by the documentary evidence that shows that the student made progress on all of his academic IEP goals. To the extent that Petitioner's witnesses contradict the testimony of Respondent's witnesses as to this issue, the testimony of Respondent's witnesses is more credible and persuasive because Petitioner's witnesses employed the wrong standard. Accordingly, it is concluded that the student's IEP is appropriate.

Moreover, the appropriateness of an IEP should be judged at the time that it was written and not in hindsight. An IEP in this sense is a snapshot rather than a motion picture. S.S. ex rel. Shank v. Howard Road Academy, 585 F.2d 56, 51 IDELR 151 (D.D.C. November 12, 2008). Here, Petitioner has shown no evidence that the IEP team had in its possession on March 3, 2010 information that would require the inclusion of additional goals in said IEP. Petitioner's argument fails.

Petitioner has failed to meet her burden with respect to this issue. Respondent has prevailed with regard to this issue.

Issue No. 3: Did Respondent deny FAPE to the student by failing to timely update his March 3, 2010 IEP?

Petitioner contends that Respondent violated IDEA by failing to update the student's March 3, 2010 IEP. IDEA requires that a local education agency such as Respondent review and update, if necessary, a student's IEP at least annually. IDEA §614(d)(4)(A); 34 C.F.R. § 300.324(b). In the instant case, Respondent concedes that it failed to comply with the legal requirements of a review of the student's IEP on

at least an annual basis. The student's most current IEP at the time of the due process hearing was the March 3, 2010 IEP.

Respondent contends, however, that because the student was making academic progress pursuant to his IEP, the procedural violation in not updating his IEP was harmless and not actionable. Respondent cites Lesesne ex rel BF the District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006) and related cases in support of its argument.

Respondent's argument is misplaced, however. It was the testimony of all witnesses in this proceeding, including Respondent's own special education teacher, that the student's behaviors continue to impede his learning and the learning of other students. Accordingly, Respondent's failure to update the student's IEP, and in particular to review the findings of the independent functional behavioral analysis which was conducted for the student, rises to the level of a denial of FAPE. Corroborating the testimony of all witnesses regarding the student's emotional problems, is the documentary evidence, including the Respondent's progress report, which shows that the student made no progress with respect to the social/emotional/behavioral goals on his

March 3, 2010 IEP. Thus, it is concluded that the student's behaviors were interfering with his learning and the learning of others. Behaviors that interfere with learning are one of the factors to be considered by an IEP team in the annual review of IEPs. 34 C.F.R. § 300.324(b)(2)

The violation by Respondent in this case is tempered somewhat by the fact that the student's IEP team did meet on April 1, 2011, in particular to discuss the results of the independent psychological evaluation and the independent functional behavioral analysis, and by the fact that the IEP team has rescheduled the meeting for approximately May 10, 2011 to consider these matters, plus Respondent has provided authorization for an independent educational evaluation for an occupational therapy evaluation. Nonetheless, the student's IEP was out of date from March 3, 2011 until at least the date of the due process hearing herein. Because of the student's ongoing behavioral issues, this violation constitutes a denial of FAPE and requires an appropriate remedy.

Petitioner has met her burden with respect to this issue. Petitioner has prevailed with regard to this issue.

2. Relief

A due process hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates IDEA. School Committee Town of Burlington v. Department of Educ., 471 U.S. 358, 369, 105 S.Ct. 1996, 556 IDELR. 389 (1985); Forrest Grove Sch Dist v. TA 129 S.Ct. 2484, 52 IDELR 151, n. 11 (U.S. 2009); Reid ex rel Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32, (D.C. Cir. 3/25/2005); Garcia v. Bd. of Educ. of Albuquerque Public Schs, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 3/25/8); Los Angeles Unified Sch. Dist. v. D.L., 548 F. Supp.3d 815, 46 IDELR 252 (C. D. Calif. 3/10/8); Bishop v. Oakstone Academy, 47 I.D.E.L.R. 125 (S.D. Ohio 2007); Brockton Central Sch. Dist. 49 IDELR 24 (SEA N.Y 2007); In re Student With a Disability, 108 LRP 45824 (SEA WV 6/4/2008).

Awards of compensatory education under IDEA are flexible and equitable in nature. A compensatory education award should be designed so as to address the harm created by the violation of the Act by the Respondent. It should not be merely an award of hour per hour replacement of missed services. Reid ex rel Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32, (D.C. Cir. 3/25/2005).

Petitioner presented the testimony of her educational advocate with regard to a compensatory education plan for the student. The compensatory education plan recommended: a Lindamood-Bell assessment, tutoring and a summer camp. The bulk of the testimony and the supporting exhibit with regard to Petitioner's compensatory education plan concerns violations that have not been found herein. For example, the Lindamood-Bell assessment, which is to remedy reading violations is not appropriate because there has been no finding that Respondent committed violations other than with regard to the behavioral/emotional/social issues of the student. Accordingly, the Lindamood-Bell assessment is not awarded as relief. The tutoring recommended by the educational advocate is largely to remedy academic problems that were alleged by Petitioner but not found as violations herein. Moreover the tutoring seems to have been developed on an hour for hour basis and then merely cut in half. Such cookie cutter calculations for compensatory education are not appropriate under Reid and its progeny. The tutoring does not seem to be calculated to remedy the violation found herein, and accordingly, it is not awarded.

The third component of the educational advocate's compensatory education plan does seem to be appropriate, however. This component involves a recreational summer camp for the student, preferably involving football or boxing. It was the unrebutted testimony of the educational advocate that summer camps are well suited to improve behavioral issues for students like this student. Given that the violation found herein, a delay in reviewing and revising the student's IEP and its resulting impact upon the student's behavioral issues, the summer camp would seem to be appropriate to remedy the specific violation committed by Respondent. Accordingly, the Order portion of this decision shall include a requirement that Respondent fund or reimburse for a summer camp for the student as compensatory education or compensatory services to remedy the violation by Respondent in not timely updating the student's IEP and the resulting harm with regard to the student's behavioral issues.

The educational advocate testified that she suggested a football or boxing camp because these were tied to the student's interests. Although such a summer camp may well be appropriate, any summer camp that permits the student to receive some help with his

behavioral/social/emotional issues, whether it be formal help or not, is awarded as relief.

ORDER

Based on the foregoing, it is HEREBY ORDERED as follows:

1. Unless the parties agree otherwise, Respondent is hereby ordered to pay for or reimburse the Petitioner for the student to attend a summer camp selected by Petitioner during the summer of 2011 as compensatory education/services. Unless the parties agree otherwise, the cost of the camp shall not exceed the market rate for similar summer camps in the Washington, D.C. metropolitan area; and

2. All other relief requested by the instant due process complaint is hereby denied.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Date Issued: May 22, 2011

/s/ James Gerl
James Gerl,
Hearing Officer