District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
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CONFIDENTIAL

In Re the Matter of :	)	
	)	
[1]Parent on behalf of Student,	)	** Amended*
	)	
Petitioner,	)	**Date of Complaint:** May 19, 2010
	)	**Date Decision Issued:** July 17, 2010
	)	**Dates of Hearing:** July, 7, 2010,
v.	)	July 8, 2010, and July 9, 2010
	)	
The District of Columbia Public Schools,	)	**Hearing Rooms:** 1, 4A, and 5A
	)	**Student Case Number:**
Respondent.	)	**Student Identification Number:**
	)	
	)	**Hearing Officer:** Attorney Ramona M. Justice
	)	

HEARING OFFICERS' DECISION ("HOD")

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5 of the District of Columbia Municipal Regulations ("DCMR").

II. INTRODUCTION

The above-captioned matter came before this Special Education Due Process Hearing Officer, Attorney Ramona M. Justice, pursuant to Petitioner's Notice of Due Process Complaint, filed on May 19, 2010. On May 19, 2010, the complaint was assigned to this Hearing Officer; and on May 21, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for June 21, 2010, at 3:30 p.m... On June 2, 2010, Respondent filed with the Student Hearing Office the "Due Process Complaint Disposition", indicating that the parties failed to resolve the issues in the complaint, at the resolution meeting.

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[1] *Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution.* * *This decision is amended merely to correct a typographical error.*

On June 3, 2010, Respondent filed "District of Columbia Public Schools' Response". On June 21, 2010, the prehearing conference was held; and the Hearing Officer issued to the parties, a prehearing conference order. On June 29, 2010 and June 30, 2010, Respondent filed witness lists, including a request to compel parents' attendance at the hearing. Respondents' request to compel parents' attendance at the hearing was not filed in accordance with the Standard Operating Procedures or rules governing prehearing motions; and parent appeared for the hearing, therefore, for these reasons Respondent's request is denied.

The due process hearing convened on July 7, 2010, at 9:00 a.m., July 8, 2010, at 9:00 a.m., and July 9, 2010, at 12:00 p.m., as scheduled; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. Petitioner's Exhibits 01 through Petitioner's Exhibits 39 and a witness list dated June 29, 2010; and Respondent's witness lists dated June 29, 2010 and June 30, 2010; were admitted into the record as evidence.

Dr. Julie Kovac, a Clinical Psychologist for Petitioner, was admitted as an expert witness in Psychology, specifically limited to conducting psychological diagnostic tests and providing recommendations regarding the psychological needs of children and young adults. Lynn Grasso, an Occupational Therapist was admitted as an expert witness in Occupational Therapy, specifically limited to sensory integration, as it pertains to pediatric child development, and child diagnoses up to 12 years of age. Dr. Ava Hughs-Booker, was admitted as an expert witness in special education, specifically limited to diagnosing, administering and interpreting psycho-educational evaluations; reviewing psychological evaluations, and assisting in development of IEPs for students.

At the close of Petitioners' case, Respondent entered on the record a motion for directed verdict representing that because Petitioner failed to present witnesses to testify that DCPS failed to develop an appropriate IEP, because the IEP did not include speech and language services; it failed to offer the minimum amount of evidence necessary to prove this issue, and a motion for directed verdict should enter. Petitioner responded that it is not required to present testimonial evidence; and the documentary evidence included in the disclosures proves the allegation. The Hearing Officer deferred a ruling on the motion, pending presentation and review of all evidence.

A directed verdict is usually made because the judge concludes the plaintiff has failed to offer the minimum amount of evidence to prove their case even if there were no opposition. Typically, the judge orders a directed verdict after finding that no reasonable jury could reach a decision to the contrary. After a directed verdict, there is no longer any need for the jury to decide the case. In other words, the judge rules that, as a matter of law, no reasonable jury could decide in the plaintiff's favor. A judge may order a directed verdict as to an entire case or only to certain issues.

The Hearing Officer finds that Respondent, as the moving party in this matter, failed to meet the standard for a directed verdict, by failing to make a showing sufficient to establish the existence of the essential elements of a motion for directed verdict; and on which it bears the burden of proof at the hearing. Although Petitioner failed to present testimonial evidence in support of the allegation that the DCPS failed to develop an appropriate IEP for the student because if failed to include speech and language services; through the introduction of documentary evidence, Petitioner presented the minimum amount of evidence to prove this allegation. Therefore, as a matter of law, it is likely that a reasonable jury could decide in the Petitioner's favor; and Respondent's motion for directed verdict is denied.

III. BACKGROUND

During Head Start the student began exhibiting problematic behavior impacting his learning; and throughout his education, the behaviors persisted. The student was evaluated to determine his eligibility for special education and related services under the IDEA; and on June 15, 2009, was determined disabled and eligible to receive special education and related services, under the disability classification of emotionally disturbed. Since the initial evaluation, the student received several evaluations, and diagnoses. DCPS, as the local education agency, developed an Individualized Education Program ("IEP") for the student on June 15, 2009, October 5, 2009, and March 22, 2010.

This due process complaint was filed by the parent on behalf of the student, challenging the appropriateness of the student's educational programs, placement, and measures initiated by the D.C. Public Schools to ensure that the student received a free appropriate public education ("FAPE").

IV. ISSUES

The following issues are before the Hearing Officer:

(1) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to evaluate the student in all areas of suspected disability, because it failed to conduct a "Developmental Optometry Evaluation" to evaluate the students' oculomotor skills?

(2) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to develop an appropriate IEP for the student during the 2009/10 school year because it: a) failed to address all of the student's special education needs; b) failed to provide the student a full-time special education program in a therapeutic environment; c) speech and language services; d) occupational therapy services; and e) the IEP includes one generic goal in each of the four (4) areas?

(3) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by placing the student in a part-time inclusion special education program with 5 hours per week of pull-out instruction in a special education program that is not designed to meet the needs of the students with emotional disabilities?

(4) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to provide the student an appropriate placement during the 2009/10 school year, because it failed to place the student in a special education program specifically designed to meet the needs of emotionally disturbed students?

(5) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to place the student in an extended school year program, during the Summer of the 2008/2009 school year?

(6) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to implement the student's June 15, 2009, October 5, 2009, and March 22, 2010 Individualized Education Programs, because it failed to provide the student the specialized instruction and counseling services, as recommended in the IEPs; and failed to implement the October 5, 2009 Behavioral Intervention Plan?

(7) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE), by failing to provide the student a dedicated aide, during the 2009/10 school year?

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 resident of the District of Columbia; and is identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)", under the disability classification of emotionally- disturbed (ED).[2] The student is years of age; and in the grade at a public school located in the District of Columbia. [3]

   The student's history of problematic behavior began during Head start, at the Children's Center; and during the pre-kindergarten at it was requested that the student exit the program because of his behavior.[4] The student was reenrolled at during his kindergarten year; where his behavior problems continued.

2. On September 15, 2006, at the age of 5 and a kindergarten student at a Speech-Language Evaluation[5] was completed. The student was diagnosed with *developmental articulation disorder*. [6] The evaluator concluded that based on formal and informal evaluation of the student's articulation, structure/function of his oral mechanisms, and receptive/expressive language skills, the student required 60 minutes of speech therapy per week, to improve speech intelligibility, to include oral motor exercises to increase the strength and mobility of his tongue and lips, articulation therapy, and phonological awareness training.[7]

3. On May 8, 2009, DCPS completed an Educational Evaluation.[8] The evaluator determined that the student's oral language skills (oral expression and listening comprehension) are average when compared to others at his grade level; his fluency with academic tasks was low average; and his academic skills are low. The evaluator also determined that when compared to others at his grade level, the student's performance is low average in reading comprehension and math reasoning; and low in broad reading, basic reading skills, and math calculation skills; and his knowledge of phoneme-grapheme relationships is very low.[9] For example, his ability to pronounce and spell non-words is very limited.

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[2] Petitioners' Exhibit 1-1.
[3] Testimony of Parent; P-1-1.
[4] Testimony of Parent and P-11-2.
[5] Petitioners' Exhibit P-17.
[6] Petitioners' Exhibit P-17-4.
[7] Petitioners' Exhibit P-17-4.
[8] Petitioners' Exhibit P-16.
[9] Petitioners' Exhibit P-16-2.

4. On May 26, 2009, DCPS completed a Confidential Psychological Evaluation.[10] The Student's Support Team referred the student for evaluation, at the recommendation of the student's teacher, because the *student failed to complete assignments and his behavior inhibited his academic success.*[11] The evaluator determined that the student is a very capable student with above average intellectual capability, however, requires *intensive, supportive counseling while remaining in the mainstream as long as he can demonstrate improved social and emotional adjustment, however, if his behavior continued to deteriorate with services, consideration must be given to* ***increased therapeutic intervention***, possibly in *a more restrictive setting.*[12]

   In determining the students' social emotional functioning, the evaluator determined that the student functions in the ***borderline range*** in his ability to develop or maintain satisfactory interpersonal relationships with peers; ***very significant*** in exhibiting inappropriate behaviors or feelings under normal circumstances; ***significant*** in exhibiting a general pervasive mood of unhappiness or depression; and ***significant*** in a tendency to develop physical symptoms or fears associated with personal or school problems. Overall, the students' total scale score on the Devereux was 137; which is at the 99th percentile for emotional disturbance as displayed in the educational setting.[13] The evaluator concluded that with the students' strong intellectual capability, and pleasing personality when behaving, the prognosis for his improved social and emotional functioning should be good *if given the therapeutic support that he and his family desperately required.*

5. On June 15, 2009, the student was determined eligible to receive special education services, under the disability classification of emotionally disturbed; and an IEP was developed recommending 10 hours per week of specialized instruction in a *general education setting*; and 1.5 hours of behavioral support services per week, *outside general education.*[14]

   DCPS also determined the student eligible to receive extended school year services during the Summer of 2009, to begin June 29, 2009, however, the team did not determine that the student was entitled to receive transportation services. Therefore, transportation for ESY services during the Summer of 2009 was the responsibility of the parents, and not DCPS.[15] Petitioner also failed to present evidence that DCPS failed to make ESY services available for the student, during the Summer of 2009. Petitioner failed to satisfy its burden of proof by presenting evidence that DCPS failed to place or make ESY services available for the student during the Summer 2009.

6. On August 20, 2009, DCPS completed a Psychological Evaluation[16] to rule out Attention Deficit Hyperactivity Disorder (ADHD). The evaluator determined that the student demonstrated ***significant*** *difficulty with depression, internalizing problems, externalizing problems; at risk for learning problems, attention problems, hyperactivity and school-*

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[10] Petitioners' Exhibit P-16.
[11] Petitioners' Exhibit P-15-1.
[12] Petitioners' Exhibit P-15-5 and P-15-6.
[13] Petitioners' Exhibit P-15-4, and testimony of Parent.
[14] Petitioners' Exhibit P-7-1.
[15] Petitioners' Exhibit P-7-7 and Testimony of Special Education Coordinator at
[16] Petitioners' Exhibit 14.

problems, social emotional needs; and challenged with impulse control and self-regulation skills.[17] The evaluator concluded that the student qualified for special education services under the *disability classification of* ***specific learning disability, in the areas of reading and mathematics***; and recommended, among others, a ***Functional Behavioral Assessment and Behavioral Intervention Plan (BIP), counseling, screening for occupational therapy; and consultation to address his depression and ADHD***. A FBA and BIP were developed for the student in October, 2009.[18]

7. On October 5, 2009, an individualized education program (IEP) was developed for the student recommending 10 hours of specialized instruction, and 60 minutes of behavior support services per week, ***outside general education***; and 60 minutes per month of speech and language services. [19] A Behavioral Intervention Plan (BIP)[20] was also developed for the student. Although there is testimony that the students' general education teacher maintained weekly behavioral charts, there is no evidence of behavioral charts; and according to witness testimony, there was no evidence that the student's BIP was implemented in the students' classroom. According to witness testimony, the student's progress in meeting the goals in the BIP, were not monitored.[21]

   A DCPS Classroom Observation[22] revealed that there was no evidence of a carefully devised plan to achieve the goal of developing the student's behavior in a manner that would assist him in the area of focusing and being more attentive in class; no behavioral strategies implemented, except requiring the student to sit on the floor next to the special education teacher, with constant redirection; and the DCPS observer recommended among others, a dedicated aide because of the student's behavior, a behavior management plan, and development of a BIP. [23]

8. In developing, reviewing and revising the students' IEPs, *DCPS failed to evaluate the student in all areas of suspected disability*, by failing to conduct a comprehensive developmental optometry evaluation of the students' oculomotor skills, by a qualified developmental optometrist[24]; as recommended in this evaluation.

   On November 9, 2009, and November 16, 2009, a Comprehensive Occupational Therapy Evaluation[25] was completed to identify the student's current levels of sensory, motor, visual perceptual/motor functioning, and self-regulation and to determine his need for occupational therapy intervention as part of his developmental and educational programming. The evaluator determined that the student's foundational challenges in self regulation impact his performance and behavior, academically and in his relationships with others. The student scored below average in fine motor precision balance, and overall body coordination; and low average in overall fine manual control and bilateral coordination.

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[17] Petitioners' Exhibit P-14-4.
[18] Petitioners' Exhibit P-14-5, and Exhibits P-4 and P-5.
[19] Petitioners' Exhibit P-6-1.
[20] Petitioners' Exhibit P-5.
[21] Testimony of Social Worker.
[22] Petitioners' Exhibit P-10-2.
[23] Testimony of Clinical Psychologist, Psycho-Educator, DCPS, Office of Special Education, Social Worker, and Special Education Coordinator, and general education teacher at
[24] Petitioners' Exhibits P-12-14.
[25] Petitioners' Exhibit 12.

The student scored in the average range for manual dexterity, and average in upper limb coordination. The student's visual perception skills were all in the average range; the student had most difficulty with visual sequential memory, which is a ***functional skill*** for remembering patterns and visually imprinting in the mind what is seen. The student's movement seeking behavior, oculomotor challenges, and auditory modulation difficulties suggest questionable vestibular system processing; and he presented with significant challenges with oculomotor functioning during an oculomotor screening. The student also exhibited ***significant*** delay in oculomotor skills, with an absence of divergence horizontal tracking, and sustaining visual gaze on a still object; difficulty with vertical and diagonal tracking; and that oculomotor skills are essential for reading across a page, watching the teacher for periods of time, and sustaining attention in general. The student also scored in the below average range for balance.

Additionally, in all settings throughout the evaluation, the students' impulsivity and movement seeking prevailed and were constant, which the evaluator opined the student receives relief with movement; while noting that this *can often appear as though the student is manipulating to "get his way" or to avoid work*, however, clearly the nature of his disability is that he cannot remain still.[26] This finding is consistent with reports by the student's general education teachers, in describing the students' behavior. However, it also supports a finding that the student requires instruction from special education teachers, qualified and knowledgeable regarding the students' disabilities; and that although it appeared to his teachers that he was manipulating to get his way or avoid work, he was in fact attempting to control and manage the symptoms of his disabilities, within the general education school environment. [27]

The teachers' responses and resulting scores from the Dunn Sensory Profile School Companion reveal *definite difference from normal scores* in all four (4) sensory continuum quadrant areas: registration of sensory information, sensory seeking behaviors, sensory sensitivity, and sensory avoiding characteristics.[28] The school checklist for OT services covers motor skills and classroom/school behaviors related to specific sensory areas, and according to the students' general education teacher, the student has extensive difficulty in almost all categories. The student requires occupational therapy services with an emphasis on sensory integration, 60 minutes per week to improve inefficient sensory processing that is causing consistent disruptive behavior at home and school. [29]

The evaluator recommended a comprehensive evaluation of the students' oculomotor skills, by a qualified developmental optometrist[30], a psychological evaluation by an appropriate professional specializing in attention-related disorders to rule out ADHD, and/or determine medical or alternative treatments to address *severe* movement seeking and inattentiveness behaviors as soon as possible; occupational therapy services with an emphasis on sensory integration, focusing and self-regulation strategies; and classroom accommodations.[31]

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[26] Petitioner's Exhibit P-12-13.
[27] Petitioners' Exhibits P-11-2, P-11-3, and Testimony of the General Education and Special Education teachers.
[28] Petitioners' Exhibit P-12-7 through P-12-8
[29] Petitioners' Exhibit P-12-9 and P-12-14.
[30] Petitioners' Exhibits P-12-14.
[31] Petitioners' Exhibits P-12-11 through P-12-14.

DCPS failed to complete a comprehensive evaluation of the students' oculomotor skills, by a qualified developmental optometrist[32], as recommended in the evaluation.

9. *DCPS failed to provide the student a dedicated aide during the 2009/10 school year.*

   During the 2009/10 school year, the student's general education teacher requested a dedicated aide, to assist the student in accessing the general education curriculum. At the IEP team meetings held on June 15, 2009, October 5, 2009, and March 22, 2010, DCPS determined that the student did not require the support of a dedicated aide. On November 9, 2009, DCPS completed a "Justification and Plan for Dedicated Aide"[33], however, failed to provide the student a dedicated aide during the 2009/2010 school year, as requested, and recommended by the student's teacher.[34] Additionally, although DCPS may argue that a dedicated aide would provide the student additional classroom support, if advanced to the 4th grade, it is evident that the nature of the student's disabilities are such that education in the general education environment, even with the use of supplementary aids and supports, cannot be accomplished satisfactorily; and the student requires a more restrictive setting.

10. On January 6, 2010 and January 11, 2010, an independent Comprehensive Psychological Evaluation[35] was completed to assess the student's cognitive, educational and social emotional functioning. The evaluator determined that the student presents with *separation anxiety disorder, dysthymic disorder, rule out for ADHD, educational problems, and problems with primary support group.* During the evaluation, the student required a significant amount of support, tangible reinforcement to engage in the evaluation process; and difficulty controlling impulses, and was very challenging to evaluate.

    The evaluator determined that the student has *great* difficulty following school rules, and his *disabilities **significantly** impact his ability to function during the school day; transitioning between tasks; completing class assignments without consistent support; often distracts other children; can be violent with other students and school staff; requires constant redirection and attention; is often isolated and ostracized by classmates; is not allowed to attend field trips without a parent, participate in academic lessons, or school activities because of his behavior.* The evaluator concludes that, as a result, the student suffers from low self esteem, feelings of helplessness, and continues to struggle with his behavioral problems in school. The student requires more support at school than is available; is unable to function in a regular education class; and his significant emotional and behavioral issues ***significantly*** impact his ability to fully access the general academic curriculum. [36]

11. On January 8, 2010, a Speech and Language Report[37] was completed, to determine the student's current levels of functioning in the areas of speech and language. The evaluator concluded that based on a comparison of chronological age to age equivalents and standard-scores using standardized tests and performance analysis, the student demonstrates some-

[32] Petitioners' Exhibits P-12-14.
[33] Petitioners' Exhibit 9.
[34] Testimony of parent, and general education teachers.
[35] Petitioners' Exhibit P-11, and Testimony of independent Clinical Psychologist.
[36] Petitioners' Exhibit P-11-2, P-11-10, P-11-12, P-11-3; testimony of general education teacher and independent Clinical Psychologist.
[37] Petitioners' Exhibit P-13.

language-based weaknesses in semantics as reflected in the Word Classes subtest of the CELF-4. The evaluator recommended *60 minutes of speech language services, weekly*; and outlined the difficulty the student may experience in successfully accomplishing verbal reasoning, making inferences without active discussion and participation, interpreting-idiomatic language without pre-teaching; and connecting ideas within a paragraph without active discussion and participation, without modifications.[38]

12. On March 22, 2010, an IEP was developed for the student recommending 5 hours of specialized instruction in reading, and 5 hours of specialized instruction in mathematics per week *in general education*; 5 hours per week of specialized instruction in written expression, *outside general education*; and 60 minutes per week of behavioral support services per week, *outside general education.* Parent disagreed with the recommended specialized instruction and related services, goals in the IEP, and placement.[39]

13. DCPS failed to develop an appropriate IEP for the student, during the 2009/10 school year.

The June 15, 2009, October 5, 2009, and March 22, 2010 IEPs are not appropriate for the student because they are not specifically tailored to address the unique academic, developmental, and functional needs of the student. Specifically, DCPS failed to review and revise the students' IEPs to address his lack of progress towards meeting the goals in his IEP. According to witness testimony, the student lacks the skills necessary to advance to the 4th grade; and should not advance to the 4th grade because he has not mastered the goals in his IEP.[40]

DCPS also failed to review and revise the students' IEPs consistent with the classroom observations, or findings and recommendations in the Speech and Language[41], Educational[42], Occupational Therapy[43], and Confidential Psychological evaluations;[44] to ensure that all of the students' special education needs were addressed in the IEPs. DCPS failed to ensure that the parent had the opportunity to provide "meaningful" input in all decisions regarding the student's education and the provision of a FAPE.

The students' behavior impedes his learning and that of others, however, DCPS failed to revise the students' IEPs or BIP, or consider the use of positive yet intensive behavioral interventions and supports, and other strategies, to address that behavior.[45] DCPS also failed to review and revise the student's IEPs to address his behavior. The student has a history of problematic behavior and although he has the intellectual ability to progress-

[38] Petitioners' Exhibit P-13-4 through P-13-5.
[39] Petitioners' Exhibit P-1-6; P-1-3 and Parents' testimony.
[40] Testimony of student's general education teacher.
[41] Petitioners' Exhibit P-17-4 and P-13.
[42] Petitioners' Exhibit P-16.
[43] Petitioners' Exhibit P-12.
[44] Petitioners' Exhibit P-15-1, P-14, and P-11.
[45] IDEA, 34 C.F.R. §300.324(a)(2).

academically, his behavior consistently hinders his ability to access the general academic curriculum;[46] and unless the student receives the intensive behavior interventions and supports he requires, in a therapeutic environment, he will continue to regress academically and behaviorally.[47] DCPS also failed to review and revise the student's IEP to address the student's inability to function effectively in the general education and inclusion setting, which historically, has proved unsuccessful. The goals in the IEPs are not reasonable, realistic, and attainable; because they are not specifically tailored to address the students' unique academic, developmental, and functional needs; and are not reasonably calculated to provide the student educational benefit. [48]

Furthermore, the student has the intellectual ability to progress academically, however, he lacks the skills necessary to effectively manage his behavior. As a result, his behavior consistently hinders his ability to access the general academic curriculum;[49] and efforts to function in the general education and inclusion setting remain unsuccessful. Therefore, until such time as the students' behavior is appropriately addressed and effectively managed, his ability to access the general education curriculum will be hindered. However, once the student's social emotional needs are addressed, and his behavior becomes more manageable, the student can learn. Therefore, any determination regarding the student's academic needs at this time; is premature.[50]

Finally, according to testimony of the DCPS' Social Worker, pursuant to an initiative of the D.C. Public Schools, Office of the Chancellor, D.C. public schools are required to educate all students in their neighborhood school, regardless of a child's unique academic, developmental, and functional needs. The Social Worker also testified that the educational program at is not specifically designed to meet the needs of emotionally disturbed students; however, because of the Chancellor's initiative it can meet the needs of all students, regardless of need.[51]

Based on this testimony, it is evident that DCPS is aware that is unable to provide the student an educational program specifically tailored to his unique academic, developmental, and functional needs, as a student presenting with the disability of emotionally disturbed; or an educational program reasonably calculated to provide the student educational benefit. The decision to maintain the student's placement at is based on a DCPS initiative to integrate all students into their neighborhood schools; and not based on the needs of the student.

14. DCPS failed to implement the students' June 15, 2009, October 5, 2009, and March 22, 2010 IEPs.

June 15, 2009 IEP. The student failed to receive the 10 hours per week of specialized instruction from a special education teacher, ***outside general education***; as recommended in his IEP. ***October 5, 2009 IEP.*** The student failed to receive the 10 hours per week of-

[46] Student's general education teacher.
[47] Student's general education teacher; and testimony of Psycho-Educator.
[48] Testimony of students' parent and general education teacher.
[49] Student's general education teacher.
[50] Testimony of Dr. Ava Hughs-Booker.
[51] Testimony of DCPS Social Worker.

specialized instruction from a special education teacher, ***in general education***; or 60 minutes per month of speech and language therapy, as recommended in his IEP. ***March 22, 2010 IEP***. The student failed to receive 5 hours per week of specialized instruction in reading and mathematics, by a special education teacher, ***in the general education*** classroom; and 5 hours per week of written expression by a special education teacher, ***outside general education***; as recommended in his IEP.

Failure to implement the student's IEPs is further supported by the testimony of the students' general education teachers, having no knowledge of whether the student received the services recommended in his IEPs; and inconsistency in the testimony of the teachers whether the student received specialized instruction in his general education class or outside general education; the amount of instruction received; or the time periods the student received the specialized instruction. Additionally, one of the teachers had no knowledge regarding the students' disability classification, as identified in his IEP. There is no evidence that the student failed to receive the behavior support services, outside general education, as recommended in his IEPs.

15. *DCPS failed to provide the student an appropriate placement during the 2009/10 school year.*

DCPS failed to ensure that the placement decision was made by a group of individuals, including the parent, and that the parent had the opportunity to provide "meaningful" input in the placement decision. Although the parent attended the IEP team meetings and provided input at the meeting, it is apparent from the parent's testimony that she lacks the requisite knowledge and understanding of the IDEA, relevant terminology, the IEP and governing processes; which is necessary to provide "meaningful" input in decisions regarding the student's education. This is further evidenced by the parent's testimony that throughout the student's education, she relied on DCPS to develop an appropriate IEP, and identify an appropriate placement for the student; which failed to occur.

DCPS also failed to carefully consider the input of the parent, teachers, evaluation findings and recommendations for more intensive academic and behavioral interventions and support; and the need for education in a more therapeutic environment. The student requires education, in full-time therapeutic environment, for emotionally disturbed students; which is not available at

Throughout the students' education, it remained evident that the nature of his disabilities are such that the student is unable to function successfully, in a full inclusion or general education environment, even with the use of supplementary aids and services; however, for the last five (5) years, DCPS maintained the student in a mainstream environment, where he continued to regress academically and behaviorally. DCPS failed to carefully consider the potential impact on the student and his learning, by maintaining his placement in the mainstream environment. For instance, the student is often separated from other students in the classroom; not allowed to participate with other students in class activities; is alone during the lunch period; has no friends at school; is not allowed to attend field trips without his parent, because of his behavior; and suffers from low self esteem and depression.

The student is also very energetic, has an active imagination, has difficulty focusing due to his ADHD and possible vision deficits, is very distractible, struggles to follow directions, and requires a significant amount of time and effort to transition from one activity to another and refocus, students' frustration leads to tantrums, is not easily redirect, is easily frustrated, and as a result, decompensate emotionally.[52] utilizes an open space concept of teaching, in a large classroom with a limited number of partitions, and the student is easily distracted; which is not conductive for a student with a significant delay in oculomotor skills, and ADHD.[53]

Finally, the placement was not based on the student's IEPs. The decision to maintain the student's placement at is not based on the students' needs or the schools' ability to meet the needs of the student, however, is made consistent with the DCPS, Office of Special Educations' initiative and directive to place all students at neighborhood schools; regardless of need. There is an apparent conflict between the child's needs, versus the policy of the DCPS; and in this instance, DCPS has decided to resolve the issue in favor of its own policy, rather than the needs of child.[54]

The student requires placement in a full-time separate day school program for emotionally disturbed students with average cognitive ability, in a therapeutic environment, outside general education; multi-sensory stimuli; specialized instruction from certified special education teachers; individual therapy; group therapy, with emphasis on social emotional skills; family therapy; reward system; tutoring for reading and mathematics; targeting of the student's ADHD; frequent breaks; and more prompting; a small student to teacher ratio where he can receive one on one instruction[55]; intensive behavioral supports and interventions; a structured environment; individual, group, and family therapy; a FBA; and instruction and tutoring in reading and mathematics; which is not available at however, is available at the

The is an appropriate placement for the student because it can provide the student an educational program specifically tailored to his unique academic, developmental, and functional needs; and provides the student educational benefit.[57]

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. The burden of proof in this matter is properly placed on the Petitioner, the party seeking relief in this matter.[58] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[59]

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[52] Testimony of Social Worker, D.C. Child and Family Services.
[53] Testimony of independent Clinical Psychologist and Psycho-Educator.
[54] Testimony of DCPS, Office of Special Education, Social Worker.
[55] Testimony of regular education teacher.
[56] Petitioners' Exhibit P-11-12 through P-11-14.; and testimony of Clinical Psychologist and Psycho-Educator.
[57] Testimony of Director, The Episcopal Center for Children.
[58] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C. M.R. §3030.3.
[59] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)

2. The student is a child with disabilities entitled to receive special education and related services, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., the federal statute governing the education of students with disabilities. Federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300.

3. The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.[60] States receiving federal assistance under the IDEA are obligated to (1) provide a "free appropriate public education" to each disabled child within its boundaries, and (2) ensure that such education is in the "least restrictive environment" possible. In the District of Columbia a FAPE must be made available to all disabled children residing in the District of Columbia, between the ages of 3 and 21.

   The IDEA defines a free appropriate public education ("FAPE"), as follows:

   > Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA... include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.[61]

   The Supreme Court, in Rowley[62] provides:

   > Insofar as a Sate 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.*

   Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA is tailored to the unique needs of the student by means of an IEP. *See Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).*

4. In determining whether the student received a FAPE, a Hearing Officers' inquiry is twofold. *First*, the Hearing Officer must determine whether DCPS complied with the procedural requirements of the IDEA's, and if not, whether the procedural requirements are to such an extent that they are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE); and *Second*, whether the IEP developed for the student is reasonably calculated to provide the student access to the general education curriculum; or enable the child to receive educational benefits. *See, Board of Education v. Rowley, 458 U.S.-*

[60] 20 U.S.C. §1400(d)(1)(A) and §1412(a)(1).
[61] IDEA, 34 C.F.R. §300.17.
[62] *Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

176, 206-07 (1982). If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress and the courts can require no more.

5. **Evaluation of the student in all areas of suspected disability.** IDEA provides that a child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. IDEA also provides that the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. §300.304 (c) (4) and (6).

   Petitioner satisfied its burden of proof by presenting evidence that in developing, reviewing and revising the students' IEPs, DCPS failed to evaluate the student in all areas related to the students' suspected disability of vision impairment, by failing to conduct a Comprehensive Developmental Optometry Evaluation to determine the need and feasibility of vision therapy; as recommended in the independent Comprehensive Occupational Therapy Evaluation completed on November 9, 2009 and November 16, 2009.[63]

6. **Development of an appropriate IEP for the student during the 2009/10 school year.** Petitioner satisfied its burden of proof by presenting evidence that DCPS failed to develop an appropriate IEP for the student during the 2009/10 school year, consistent with the requirements set forth at 34 C.F.R. §300.320(a)(1) through (7).

   In developing, reviewing, and revising the student's June 15, 2009, October 5, 2009, and March 22, 2010 IEPs, DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324(a)(1) which provides that the IEP team must consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and (4) academic, developmental, and functional needs of the child.

   DCPS also failed to comply with the IDEA, 34 C.F.R. §300.324 (b), which requires a ***review*** of the child's IEP to determine whether the annual goals for the child are being achieved; and ***revision*** of the IEP, as appropriate, to address any *lack of expected progress* toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; *the results of any reevaluation conducted under §300.303*; information about the child provided to, or by, the parents, as described under §300.305(a)(2); and *the child's anticipated needs*; and provide the student the intensive academic and behavioral interventions and supports he required throughout his education; and as recommended in the evaluations.

   In determining the student's educational needs, DCPS failed to comply with the IDEA, 34 C.F.R. §300.306 (c) which provides that in interpreting evaluation data for the purpose of determining if a child with a disability under §300.8, *and the educational needs of the child*, each public agency must *draw upon information from a variety of sources*, including aptitude and achievement tests, *parent input, and teacher recommendations*, as well as information about the child's physical condition, social or cultural background, and *adaptive behavior*; and *ensure that the information obtained from all of these sources is documented and carefully-*

[63] Petitioners' Exhibits P-12-11 through P-12-14.

considered; which failed to occur in this matter. The parent, students' teacher, and IEP team recommended a dedicated aide for the student, to assist him in accessing the general education curriculum, however, DCPS failed to provide the student a dedicated aide, as recommended.

7. **Appropriate placement.** The IDEA and its implementing regulations provide that when determining the educational placement of a child with a disability, the decision is made by a group of individuals, including the parents; that the educational placement must be based on a child's IEP[64]; and once the IEP is developed, it is then implemented through appropriate placement of the student in an educational setting specifically tailored to the student's needs; which failed to occur in this matter. *See Roark v. District of Columbia, 460 F. Supp. 2d 32, 35 (D.D.C. 2006).*

   The IDEA also provides that the placement decision must be made consistent with the least restrictive environment requirements of the IDEA. The IDEA seeks to educate disabled children with non-disabled children "to the maximum extent possible"; and with appropriate interventions and supports. 20 U.S.C. §1412(a) (5) (A). "Special classes, separate schooling, or other removal...occurs only when the *nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;*" as in this matter. The educational benefit to be provided a child must be "meaningful" and it "must be assessed based on the educational capacity of each individual student." *J.P. v. County Sch. Bd. Of Hanover County, 447 F.Supp. 2d 553, 584 (E.D. VA. 2006).*

   DCPS failed to ensure that the placement decision was made by a group of individuals, including the parent, and that the parent had the opportunity to provide "meaningful" input in the placement decision. Although the parent attended the IEP team meetings and provided input at the meeting, it is evident from parent's testimony that she lacks the understanding of the IDEA, relevant terminology, the IEP and governing processes; which is necessary to provide "meaningful" input in all decisions regarding the student's education. This is supported by parent's testimony that throughout the student's education, she relied on DCPS to develop an appropriate IEP, and identify an appropriate placement for the student.

   DCPS also failed to carefully consider the input of the parent, teachers, evaluation findings and recommendations for more intensive academic and behavioral intervention and support should the student's problematic behavior continue; and the need for education in a more therapeutic environment. As a result, the student was consistently denied access to the general education curriculum because of his behavior; and educational benefit. The student requires education, in full-time therapeutic environment, for emotionally disturbed students; which is not available at Takoma EC.

   Petitioner satisfied its burden of proof presenting evidence that DCPS failed to comply with the procedural; and ***Least Restrictive Environment (LRE)*** requirements of the IDEA, at 34 C.F.R. §300.116; in determining the student's placement. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

[64] 20 U.S.C. 1412(a)(5); 34 C.F.R. §300.116; and 5 D.C.M.R. §3013.1(e).

8. **Extended School Year (ESY) Services.** Petitioner failed to satisfy its burden of proof by presenting evidence that DCPS failed to place the student in an extended school year program during the Summer, 2009. The IDEA, at 34 C.F.R. §300.106, provides that 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. On June 15, 2009, October 5, 2009, and March 22, 2010, DCPS determined the student eligible to receive extended school year services; consistent with the procedural requirements of the IDEA. The students' failure to attend ESY during the Summer, 2009, was not due to DCPS' failure to determine the student eligible for the services, or make the services available for the student.

9. **IEP Implementation**. Petitioner satisfied its burden of proof by presenting evidence that DCPS failed to comply with the IDEA, 34 C.F.R. §300.323(c) (2), by ensuring that as soon as possible following development of the student's June 15, 2009, October 5, 2009, and March 22, 2010 IEPs, special education and related services were made available to the child, as recommended in the IEPs; and through the appropriate placement of the student in an educational setting tailored to his unique academic, developmental, and functional needs. *See Roark ex rel. Roark v. District of Columbia, 460 F.Supp. 2d, 32-35, (D.D.C. 2006).*

10. **BIP Implementation**. Petitioner also satisfied its burden of proof by presenting evidence that DCPS failed to implement the October 5, 2009 Behavioral Intervention Plan (BIP) developed for the student.

    The IDEA, 34 C.F.R. §300.320; and the IDEA, 34 C.F.R. §300.324(a)(2)(i) and 34 C.F.R. §300.324(a)(3)(i), which provides in part, that if the child's behavior impedes his learning, as in this instance, the IEP team ***must*** include in the IEP strategies, including positive behavioral interventions, supports, and other strategies to address that behavior. DCPS developed a BIP for the student; however, the BIP was not implemented or monitored. Additionally, the parent, student's teacher, and IEP team recommended a dedicated aide, to assist the student in accessing the general education curriculum[65]; however, DCPS failed to provide the student a dedicated aide.

    Free Appropriate Public Education. The Petitioner satisfied its burden of proof by presenting evidence that the student was denied a FAPE during the 2009/10 school year, entitling the student to compensatory education services, however, failed to satisfy its burden by presenting evidence regarding the nature and amount of compensatory education services the student is entitled to receive, consistent with the standard established in *Reid v. District of Columbia*.

    First, DCPS failed to comply with the procedural requirements of the IDEA, in developing, reviewing, and revising the students' IEPs, and determining the student's placement; and the violations occurred over such an extended period of time, that they are serious and detrimentally impact upon the child's right to a free and appropriate public education. *Second,* the June 15, 2009, October 5, 2009, and March 22, 2010 IEPs developed for the student are not reasonably calculated to provide the student access to the general education curriculum; or enable the child to receive educational benefit, therefore, the student was denied a FAPE. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

[65] Petitioners' Exhibit 9.

The violations also result in substantive harm to the student because for the parent was denied "meaningful" input in decisions regarding the student's education, placement, and the provision of a FAPE; and for the past five (5) years, the student was deprived an individualized education program specifically designed to address his unique academic, developmental, and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

VII. ORDER

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

1. **ORDERED**, that within fourteen (14) calendar days from the date of this decision, DCPS shall issue to parent a Prior Notice of Placement, authorizing funding of the student's tuition, with transportation; for the student to attend the located in Washington, D.C., during the 2010/2011 school year; and it is further

2. **ORDERED**, that within fourteen (14) calendar days from the date of this decision, DCPS shall convene an MDT/IEP meeting to review and revise the student's March 22, 2010 IEP consistent with the findings and recommendations in all the student's evaluations; and it is further

3. **ORDERED**, that the revised IEP shall include, however, not be limited to, occupational therapy services with an emphasis on sensory integration, focusing and self-regulation strategies; and classroom accommodations, as recommended in the evaluation; speech language therapy services, family counseling, and training as a related service on the student's IEP; and tutoring in reading and mathematics; and it is further

4. **ORDERED**, that D.C. Public Schools shall fund an independent comprehensive developmental optometry evaluation, by a qualified developmental optometrist; to determine the students' oculomotor skills and needs in this area; and it is further

5. **ORDERED**, that within fifteen (15) calendar days of the receipt of the independent comprehensive developmental optometry evaluation, D.C. Public Schools shall reconvene an MDT/IEP meeting at the to review and revise the student's IEP consistent with the findings and recommendations in the evaluation; and it is further

6. **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at The and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

7. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

VIII. 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: July 20, 2010

Attorney Ramona M. Justice

Ramona M. Justice, Hearing Officer