DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

Parent, on behalf of the Student,[1]

Petitioner,

v.

The District of Columbia Public Schools ("DCPS"),

Respondent.

Date Issued: January 2, 2011

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2006

HEARING OFFICER DETERMINATION

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-E of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL HISTORY

On November 5, 2010, parent, through her Attorney, filed an "Administrative Due Process Complaint Notice", on behalf of the student, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free appropriate public education (FAPE), because it allegedly failed to:

1) develop an appropriate Individualized Education Program (IEP) for the student on March 3, 2010, by ensuring that the student's IEP included a sufficient level of speech/language and occupational therapy services, to meet the student's speech/language and occupational therapy needs, enable the student to receive access to the general education curriculum, and receive educational benefit;

---

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

2) failed to reevaluate the student to determine whether there was a change in the student's special education needs; prior to removing the student's dedicated aide from his educational program;

3) failed to implement the student's March 3, 2010 Individualized Education Program (IEP), by ensuring that the student received the occupational and speech language therapy services recommended in his IEP;

4) failed to provide the student an appropriate placement, during the 2008/09, 2009/10 and 2010/11 school years, by failing to ensure the availability of a continuum of alternative services, specifically designed to address the student's unique needs.

The Petitioner seeks relief in the form of an Order issued by the Hearing Officer finding in its favor on each of the issues in the complaint; and requiring the Respondent to fund the student's placement and transportation at a private school of the parent's choosing, where the student can receive a full-time special education program, outside the general education setting; and a program specifically designed to address the needs of autistic students; for the remainder of the 2010/2011 school year. The Petitioner also requests that the Hearing Officer issue an Order requiring the Respondent to fund the student's Compensatory Education Plan.

The due process complaint was assigned to this Hearing Officer on November 8, 2010; and on November 13, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for November 29, 2010 at 3:00 p.m... The Hearing Officer also issued an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting. The Respondent filed its initial response to initial complaint on November 1, 2010; and an amended response to the amended complaint on November 15, 2010.

The prehearing conference convened on November 29, 2010, at 3:00 p.m., as scheduled; and on December 2, 2010, the Hearing Officer issued a "Prehearing Order", summarizing the issues in the complaint, matters discussed, and confirming the due process hearing for December 21, 2010, at 9:00 a. m... Thereafter, the Hearing Officer also issued an amended prehearing conference order; clarifying the issues in the complaint.

The due process hearing convened on December 21, 2010, at 9:30 a.m., as scheduled, at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by counsel; and both counsels provided an opening statement. There were no preliminary matters for discussion or for the Hearing Officer to decide, however, the parties stipulated that according to the March 30, 2008 IEP the student was to receive specialized instruction, outside general education, 61-100% of the time.

The Petitioner offered into evidence Petitioner's Exhibits 1-23; and the Respondent offered into evidence Respondent's Exhibits 1-15. After ruling on Respondent's objections to Petitioner's Exhibits 13, 14, 17, and 19, the hearing officer admitted into the record as evidence the following disclosures: Petitioner's Exhibits 1-12, 15-18, and 20-23; and Respondent's Exhibits 1-15. The Hearing Officer excluded from the record, Petitioner's Exhibits 13, 14, and 19. Each party submitted witness lists.

Petitioner's witnesses included the parent; and the Education Advocate. The Respondent's witnesses included the Special Education Coordinator and Special Education Teacher, at the student's neighborhood elementary school.

The Hearing Officer granted the parties leave to file written closing arguments, no later than 4:30 p.m., on December 23, 2010, with a limitation of 5 pages, double spaced. The parties submitted written closing arguments, in a timely manner, however, the Respondent failed to comply with the limitation of 5 pages. Therefore, only the first five (5) pages of the Respondent's written closing arguments will be considered.

III. BACKGROUND

On July 23, 2008, the student was determined disabled and eligible for special education services under the disability classification of Autism Spectrum Disorder. The student is six (6) years of age; and a grade student at his neighborhood school; a District of Columbia public elementary school.

The student has attended the school since the beginning of the 2009/2010 school year; participating in the school's Autism Program. During this period, the Office of the State Superintendent, Autism Division, assigned the student a dedicated aide, to assist the student in accessing the general educational curriculum. The dedicated aide was removed from the student's educational program, on or about February 2, 2010.

The student's July 29, 2008, February 19, 2009, and March 3, 2010 Individualized Education Programs (IEPs) for the 2008/09, 2009/10, and 2010/11school years recommend 25 hours of specialized instruction, outside the general education setting; and related services including 1 hour occupational; and 1 hour speech and language therapy services, weekly. The related services are provided in a group setting.

On November 5, 2010, the parent, through her Attorney, filed this due process complaint on behalf of the student.

IV. ISSUES

The following issues are before the Hearing Officer:

(1) Whether the Respondent denied the student a free appropriate public education, because on March 3, 2010, it failed to develop an appropriate Individualized Education Program (IEP) for the student, by ensuring that the IEP included an appropriate ***level of occupational therapy and speech and language services***, sufficient to meet the student's speech/language and occupational therapy needs; enable the student to receive access to the general education curriculum; and receive educational benefit, in violation of the 20 U.S.C. §1414(a)(i) and the IDEA, at 34 C.F.R. §300.320?

(2) Whether the Respondent denied the student a free appropriate public education, because it failed to reevaluate the student to determine whether the student no longer required a dedicated aide, prior to removing the dedicated aide from the student's March 3, 2010 Individualized Education Program (IEP); in violation of the IDEA, at 34 C.F.R. §300.303?

(3) Whether the Respondent denied the student a free appropriate public education because it failed to implement the student's March 3, 2010 IEP, by failure to ensure that as soon as possible following development of the IEP, the student received the 90 minutes per week, of occupational therapy; and 60 minutes per week, of speech language services, as recommended in his IEP; in violation of the D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003); and the IDEA at 34 C.F.R. §300.323(c)(2)?

(4) Whether the Respondent denied the student a free appropriate public education because it failed to provide the student an appropriate placement during the 2008/2009, 2009/2010 and 2010/2011 school years[2], by failing to ensure the availability of a continuum of alternative services specifically designed to meet the needs of the student; in violation of the IDEA, at 34 C.F.R. §300.115(a)?

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 resides in the District of Columbia with his parents.[3] At the age of three (3), the student attended the District of Columbia Public Schools' Early Childhood Program.[4] He is currently years of age; and a grade student at his neighborhood school; a District of Columbia public elementary school.[5]

---

[2] The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known of the alleged action that forms the basis of the due process complaint; therefore, the two (2) year statute of limitation applies in this matter. See, 34 C.F.R. §300.507(a)(2).
[3] Testimony of parent.
[4] Testimony of Parent.
[5] Id.

2. On ***April 2, 2008***, while attending the Early Childhood Program, the Respondent convened a Multidisciplinary Development Team (MDT) meeting to review screening information developed for the student. The team determined that further evaluation was warranted; including an educational, speech/language, psychological and occupational therapy evaluation. The team also developed a Student Evaluation Plan (SEP) for the student.[6]

3. On ***July 8, 2008***, at the age of three (3) years and 11 months, the student was referred to the Central Assessment Referral and Evaluation (C.A.R.E.) Center, to address concerns regarding the student's communication skills.[7] The C.A.R.E. Center determined that the student presented with significantly depressed receptive and expressive language skills; articulation skills were moderately intelligible; although his voice and fluency were within normal limits.[8]

4. On ***July 14, 2008***, the C.A.R.E. Center completed an Occupational Therapy Evaluation.[9] The evaluator determined that the student's strengths were his gross motor skills; and his weaknesses were self help, fine motor and visual motor skills.[10] *Recommendations included*: school based occupational therapy services and a possible sensory profile assessment in six (6) months to address the student's adverse behaviors that may occur at home and school; and for possible separation from his mother during the school day.[11]

5. On ***July 29, 2008***, the local education agency (LEA) reconvened a Multidisciplinary Development Team meeting, to review the evaluations and determine the student's eligibility for special education services.[12] The team determined that the student is disabled and eligible to receive special education and related services under the disability classification of Autism; and a diagnosis of Autism Spectrum Disorder.[13]

   An IEP was developed for the student recommending 25 hours per week of specialized instruction, outside general education; 1 hour per week of speech and language service; and 1 hour per week of occupational therapy services.[14]
   The team also issued a Prior to Action Notice, notifying the parent of changes to the students' educational program; and identifying Gibbs Elementary School, a District of Columbia Public School, for the location of services.[15]

---

[6] Petitioner's Exhibit 3.
[7] Petitioner's Exhibit 22.
[8] Id.
[9] Petitioner's Exhibit 23-1.
[10] Id.
[11] Petitioner's Exhibit 23-4.
[12] Id.
[13] Testimony of parent.
[14] Petitioner's Exhibit 3.
[15] Petitioner's Exhibit 13.

6. On ***February 19, 2009***, the local education agency (LEA) convened an Individualized Education Program (IEP) team meeting, at the student's neighborhood public elementary school.[16] The team determined that the student remained eligible to receive special education and related services, under the disability classification of Autism.[17]

   An IEP was developed for the student recommending 27 hours of specialized instruction, outside general education, 60 minutes speech/language therapy, 60 minutes occupational therapy, per week.[18] The team also issued a Prior to Action Notice, notifying the parent of changes to the students' educational program; and identifying his neighborhood school, a District of Columbia Public School, for the location of services.[19]

   The student began attending his neighborhood school during the 2009/2010 school year; and since that time, has participated in the school's Autism Program.[20] During this period, the D.C. Public Schools, Office of the State Superintendent of Education's Autism Division, assigned the student a full-time dedicated aide, however, his IEPs were not revised to reflect the addition of the dedicated aide to his educational program.[21] On or about February 2, 2010, the dedicated aide was removed from the student's educational program.[22]

7. On ***July 24, 2009***, in response to the parent's request for independent evaluations, the District of Columbia Public Schools, Office of the Chancellor, issued to the parent an independent educational evaluation (IEE) letter, authorizing the parent to obtain independent Speech/Language and Occupational Therapy evaluations, at its expense.[23]

8. On ***September 10, 2009 through September 24, 2009***, an independent ***Speech and Language Evaluation*** was completed.[24] The evaluator determined that due to the student's limited speech and language skills; and because his receptive and expressive language skills are severely delayed for his age; he is unable to express basic wants and needs, such as hunger, thirst, and toileting.[25]

---

[16] Id.
[17] Id.
[18] Petitioner's Exhibit 6 and Respondent's Exhibit 3.
[19] Petitioner's Exhibit 3 and Respondent's Exhibit 3..
[20] Testimony of parent, and Petitioner's Exhibit 20-5.
[21] Respondent's Exhibit 3, Respondent's Exhibit 1, Petitioner's 3, Petitioner's 4, and Petitioner's 6.
[22] Testimony of parent and Special Education Coordinator at student's school.
[23] Petitioner's Exhibit 12.
[24] Petitioner's Exhibit 20-1 and Respondent's Exhibit 11..
[25] Petitioner's Exhibit 20-9.

The evaluator determined that the student is unable to make choices about non-food items/activities; and it is unclear whether he is able to make clear choices among preferred items.[26] The evaluator also determined that although the Picture Exchange Communication System had been introduced in the classroom, the student had not been able to access the system to communicate his basic wants and needs.[27]

The evaluator concluded that ***the student requires a 1:1 aid to participate in all activities***; the student demonstrates an impulsive nature; and is unable to follow one step commands without ***maximum*** assistance.[28]

The evaluator also concluded that because the student is nonverbal and lacks basic, functional communication skills, with the adults and peers in his life, he requires intensive speech therapy to achieve progress in his environment; speech therapy to address expressive and receptive language delays, specifically through the use of PECS; ***2 hours per week of individual speech therapy, to address the student's severe language delay, and 30 minutes per week of group therapy, to address his social language delays***.[29] The evaluator also notes that the ***student must be accompanied by a 1:1 aide in order to fully participate in speech therapy sessions***.[30]

9. On ***September 25, 2009***, an independent ***Occupational Therapy Evaluation*** was completed.[31] The evaluator determined that based on information gathered from the student's IEP, school observations, interviews, and questionnaires, he experienced difficulties performing functional tasks in the school setting, including fine and visual motor skills, gross motor skills, and self help skills.[32]

   The evaluator recommended ***occupational therapy, on an individual basis*** without the presence of peers; and consultative time to facilitate consistent communication between the treating therapist and the student's teachers and parents.[33] The evaluator also recommended structured 'sensory diet' to provide him the tools and strategies to assist him in becoming more organized and improve his ability to attend and focus in class; activities utilizing a variety of tactile mediums; continued use of grasp on classroom tool activities; and activities to increase the student's visual motor integration skills.[34]

---

[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Petitioner's Exhibit 21 and Respondent's Exhibit 10.
[32] Id.
[33] Id.
[34] Id.

The evaluator also determined that the student presented with ***significant difficulties*** with sensory processing and modulation; ***significant difficulties*** with sensory processing and modulation; ***frequently*** seeks out opportunities for vestibular (movement), proprioceptive (pressure input to the muscles and joints), tactile (touch), and oral input throughout the school day to help regulate his system.[35]

The evaluator concluded that the ***student required consistent adult support to assist him in following multi-step directions and remain on task due to attention difficulties.***[36] The evaluator also concluded that the ***student requires a lot of support from adults within the classroom, in order to participate in tasks, and the level of support he requires, impacts his overall ability to be available for learning***.[37]

10. On ***January 20, 2010***, the student's teacher completed a "Dedicated Aide Justification" form, documenting that the student is nonverbal and requires a dedicated aide throughout the school day, for his own safety and that of others; to access the general education curriculum; perform daily living tasks (i.e. toileting, mobility, feeding, dressing); during transitions; and at work times.[38]

    The teacher also noted that she completed a Functional Behavioral Analysis (FBA); and a Behavioral Intervention Plan (BIP)[39], to address the student's aggressive behavior; and although use of the plan was successful, full implementation of the plan is not possible without ***one on one support throughout the entire day*** to properly and effectively produce the desired result.[40] The teacher also noted that the ***student does not effectively learn in a group setting; and had shown growth in his goals since receiving the one on one instruction***.[41]

11. On ***January 26, 2010***, the D.C. Public Schools, Office of Special Education, Autism Division, conducted a classroom observation, of the student.[42] The observer completed an "Observation Form for Dedicated Aide Utilization" form.[43] Areas of concern were safety of self and/or others; instruction/educational requirements; lack of functional/self-help skills.[44] The observer expressed concern that the student is a child with functioning autism who shows frustration through aggression, aggression with bite attempts, drops and self injurious behaviors.[45]

---

[35] Id.
[36] Id.
[37] Id.
[38] Petitioner's Exhibit 7.
[39] Petitioner's Exhibit 10.
[40] Id.
[41] Id.
[42] Petitioner's Exhibit 8.
[43] Id.
[44] Id.
[45] Id.

The observer noted that the child is capable of participating in the picture exchange program, and that his skill in this area is emerging; and the student can feed himself.[46] The observer also noted that there were no goals in the student's IEP to address the student's aggressive behavior.[47]

On or about February 2, 2010, the Office of Special Education, Autism Division removed the dedicated aide from the student's educational program; without any prior notice; an IEP team meeting; or discussion with the parent regarding the change to the student's educational program.[48]

12. On ***March 3, 2010***, the location education agency (LEA) convened an annual IEP team meeting with the students' parents, to review the independent speech/language and occupational therapy evaluations; and revise the student's IEP, as appropriate.[49] The Speech/Language Pathologist and Occupational Therapist reviewed the independent Speech and Language and Occupational Therapy evaluations with the team.[50]

    The Speech/Language Pathologist and Occupational Therapist agreed with the recommendations in the evaluations, except the recommended level of services.[51] There was no discussion, nor did the Therapists provide a basis for its disagreement with the level of speech/language and occupational therapy services, recommended by the evaluators.[52]

    The IEP team also developed an IEP for the student recommending 25 hours per week of specialized instruction, outside general education; 90 minutes per week of speech/language therapy services; 60 minutes per week of occupational therapy services; and 30 minutes per month of occupational therapy consultation services.[53] The IEP also recommends classroom accommodations, and regular statewide assessments without accommodations, transportation services, extended school year services; and compensatory education services.[54]

    The IEP team also issued to the parent a Prior Notice Letter, notifying the parent of changes to the student's educational program.[55] The parent agreed with the IEP, however, voiced concern regarding the provision speech/language and occupational therapy services in a group setting versus one on one therapy; and disagreed with the SEC's decision that the student did not require a dedicated aide.[56]

---

[46] Id.
[47] Id.
[48] Testimony of parent and SEC.
[49] Petitioner's Exhibit 4: MDT Meeting Notes.
[50] Id.
[51] Id.
[52] Id.
[53] Id.
[54] Id.
[55] Petitioner's Exhibit 9.
[56] Testimony of Parent and Respondent's Exhibit 2.

The parents stated that the student is making progress; and will go to the bathroom.[57] The mother stated that her main concern is the level of benefit received by the student in the group setting; and the dedicated aide.[58] The SEC advised the parents that the student would receive one on one OT services, although the student's IEP was not revised to reflect one on one OT services.[59]

The SEC also advised the parents that the student did not meet the criteria for a dedicated aide.[60] There was no discussion with the parent or team regarding the criteria for a dedicated aide, or the basis for the SEC's decision that the student failed to meet the criteria for a dedicated aide.[61]

The parent also requested extended school year services for the student.[62] The SEC advised the parent that the student would receive extended school year services; and these services were reflected in the student's March 3, 2010 IEP.[63]

13. On ***May 5, 2010***, the parent forwarded an email to the Office of the State Superintendent of Education (OSSE), Chancellors' Office, requesting individualized instruction for the student; an increase in the level of speech language and occupational therapy services; and reinstatement of the student's dedicated aide.[64]

14. On ***May 7, 2010***, a representative from the D.C. Public Schools, Office of Special Education (OSE) forwarded an email response to the parent inquiring regarding a convenient time to discuss the concerns in her May 5, 2010 email.[65]

15. On ***May 24, 2010***, a representative from the D.C. Public Schools, Office of Special Education (OSE) forwarded an email to the parent documenting unsuccessful attempts to reach the parent to provide an update regarding her concerns.[66] The OSSE representative also advised the parent that the SEC and OT Program Manager were attempting to calculate the hours of Occupational Therapy (OT) services missed by the student, due to the absence of the OT provider, due to maternity leave.[67] There was no further discussion with the parent regarding her concerns.[68]

---

[57] Petitioner's Exhibit 4.
[58] Id.
[59] Id.
[60] Id.
[61] Id.
[62] Id.
[63] Id.
[64] Petitioner's Exhibit 12.
[65] Id.
[66] Id.
[67] Id.
[68] Testimony of parent.

16. On ***December 3, 2010***, the student's Education Advocate conducted a classroom observation of the student.[69] The advocate noted that the student was crying hysterically on the floor with a mat and blanket in hand, when she entered the room; and it took a considerable amount of time redirecting the student, and encouraging the student to participate in the reading group; and throughout the observation the student had frequent loud outbursts.[70]

    The advocate also noted that the student required the teacher's assistance with every task, including toileting; and according to the teacher the student requires a dedicated aide; and the teacher would recommend a dedicated aide for the student.[71] The advocate also noted that the student requires 1:1 attention throughout the school day.[72]

17. **Failure to Develop an Appropriate IEP for the Student on March 3, 2010, By Failing to Ensure a Sufficient Level of Occupational and Speech Language Therapy Services**

    The September 10, 2009-September 24, 2009 *independent* Speech and Language Evaluation recommends ***individual speech therapy for two (2) hours per week and group therapy for 30 minutes per week,*** in order for the student to make progress towards goals; and a dedicated aide to fully participate in speech therapy sessions.[73]

    The September 25, 2009 *independent* Occupational Therapy Evaluation recommends ***two (2) 60 minute sessions, individual and consultative occupational therapy services, per week for a total of 120 minutes,*** to address identified areas of weakness; and consultative time to facilitate consistent communication between the treating therapist and the student's teachers and parents.[74]

    The student's March 3, 2010 IEP recommends ***25 hours per week of specialized instruction, outside general education; 90 minutes per week of speech/language therapy services; 60 minutes per week of occupational therapy services; and 30 minutes per month of occupational therapy consultation services.***[75]

    At the March 3, 2010 IEP team meeting, the Speech/Language and Occupational Therapists reviewed the independent speech/language and occupational therapy evaluations; agreeing with the independent evaluations, *except* the level of services recommended in the evaluations.[76] Although the Therapists disagreement is noted-

---

[69] Petitioner's Exhibit 11.
[70] Id.
[71] Id.
[72] Id.
[73] Petitioner's Exhibit 20-10.
[74] Petitioner's Exhibit 21-6.
[75] Petitioner's Exhibit 6, and Respondent's Exhibit 1.
[76] Petitioner's Exhibit 4.

in the MDT meeting notes, the notes do not reflect that the therapists discussed; or provided the team members a basis for the disagreement with the level of services recommended in the independent evaluations.[77]

The LEA relied solely upon the limited input of the Therapists, and not the input of the parents and other team members, in deciding not to adopt the finding and recommendations in the independent evaluations, that the nature and severity of the student's disability is such that he requires an increase in the level of speech/language and occupational therapy services, to receive 'meaningful' educational benefit.[78]

Additionally, the Respondent presented no evidence at the hearing, refuting Petitioner's allegations that the level of speech/language and occupational therapy services recommended in the March 3, 2010 IEP is insufficient to meet the student needs of the student; or that the level of services recommended in the March 3, 2010 IEP is sufficient, and the basis thereof.[79]

For these reasons, the Hearing Officer finds that the level of related services recommended in the independent evaluations is sufficient to meet the student's speech/language and occupational therapy needs; and the local education agency erred, by not revising the student's March 3, 2010 IEP, to reflect an increase in the level of services, consistent with the findings and recommendations in the evaluations.

The Hearing Officer finds that on March 3, 2010, the Respondent failed to develop an appropriate Individualized Education Program (IEP) for the student, by:

- Failing to ***review*** the student's IEP, and on the basis of that review and input from the parents and student's teachers, determine whether the occupational therapy and speech language goals for the student were being achieved;

- Failing to ***revise*** the student's IEP, as appropriate, to address the results of the independent evaluations, by ensuring that the IEP included a sufficient ***level of occupational therapy and speech and language services***, to meet the occupational and speech/language needs of the student; and that the IEP reflected that the student would receive the related services independently, which is necessary for the student to make progress towards the goals in his? IEP; and address identified areas of weakness; and[80]

- The parent was denied the opportunity to provide "meaningful" input in decisions regarding the student's educational program, and the provision of a FAPE to the student, including the level of speech/language and related services the student required and would receive.

---

[77] Petitioner's Exhibit 6.
[78] Id.
[79] Id.
[80] Respondent's Exhibit 2, page 1 of 4; and Testimony of SEC.

18. **Failure to Reevaluate the Student to Determine Whether the Student No Longer Requires a Dedicated Aide**

The Hearing Officer finds that prior to removing the dedicated aide from the student's educational program on February 2, 2010; and the March 3, 2010 decision that the student failed to satisfy the criteria for a dedicated aide, the location education agency failed to review existing evaluation data, including evaluations and information provided by the parents of the child, and on the basis of that review, and input from the parents of the child, reevaluate the student to determine the educational needs of the student, whether the student continued to require the support of a dedicated aide, and whether any additions or modifications to the student's services were necessary for the student to meet the goals in is IEP, and to participate, as appropriate, in the general education curriculum.[81]

The Hearing Officer also finds, however, that additional assessments were not necessary, because the information available to the team at the March 3, 2010 IEP team, was sufficient for the team to determine that the student requires a dedicated aide, to access the general education curriculum; and receive educational benefit.

The information available to the IEP team at the March 3, 2010 IEP team meeting, which if failed to carefully review and consider, included:

1) concerns of the parent, student's teacher, and Office of Special Education observer, regarding the student's safety and safety of others because of the student's aggressive behavior and emotional outbursts;
2) progress notes and records documenting the student's academic and behavioral performance with and without the dedicated aide;[82]
3) the January 20, 2010 dedicated aide justification form, completed by the student's former teacher;[83]
4) the independent speech/language and occupational therapy evaluations;[84]
5) the student's Behavioral Intervention Plan, reflecting that a dedicated aide is required for the student to receive maximum benefit from the plan; and
5) classroom observations conducted by the Office of Special Education observer;[85] and Education Advocate.[86]

At the March 3, 2010 IEP team meeting, the Special Education Coordinator, as the Respondent's representative, unilaterally decided that the student failed to meet the criteria for a dedicated aide, and the student would not receive the dedicated aide requested by the parent.[87]

---

[81] Petitioner's Exhibit 6.
[82] Petitioner's Exhibits 15, 16, and 18.
[83] Petitioner's Exhibit 7.
[84] Petitioner's Exhibits 20 and 21.
[85] Petitioner's Exhibit 8.
[86] Petitioner's Exhibit 8 and 11.
[87] Id.

The SEC, as the LEA's authorized representative, failed to ensure that there was discussion; and input from the student's parents, teachers, service providers, or other members of the team regarding the student's need for a dedicated aide, and the provision of a FAPE to the student.[88]

There was no consideration of any potential harm to the student, by removing and/or not providing the student a dedicated aide; the criteria considered by the SEC in rendering her decision; or why the student failed to meet the criteria for the aide.[89]

The parent was denied the opportunity to provide "meaningful" input in decisions regarding the student's educational program, and the provision of a FAPE to the student, including decisions regarding a dedicated aide.

At the hearing, the SEC testified that the student failed to meet the criteria for a dedicated aide because there is a small student to teacher ratio in the student's class, and there is adequate staff to meet the student's needs; the student had poor attendance and was not available for an aide; and the student was not available for an observation.[90]

The record reflects that the student's class includes one special education teacher, approximately two (2) classroom aides, and six (6) students, however, according to the classroom observations, Dedicated Aide Justification form completed by the students former teacher, and testimony of the student's current teacher, the student's teachers have been serving as the student's dedicated aide; the student relies upon the support of the teachers and not the instructional aides, throughout each school day; and the student's requires a dedicated aide. [91] This is further supported by the information obtained by the OSE and Education Advocate, during the classroom observations.[92]

Although the SEC provided a basis for her decision that the student failed to meet the criteria for a dedicated aide, and that the student would not receive a dedicated aide, at the hearing; there is no justification for a unilateral decision regarding a student's educational program; and the provision of a FAPE to a student. The IDEA clearly provides that decisions regarding a student's educational program and the provision of a FAPE, are made by an IEP team, including among others, the parents of a child, and not the LEA;[93] and that the parents must be afforded an opportunity to provide "meaningful" input in all decisions regarding the student's education and the provision of a FAPE[94].

---

[88] Id.
[89] Respondent's Exhibit 2.
[90] Testimony of SEC.
[91] Testimony of teacher, and Petitioner's Exhibit 11.
[92] Petitioners' Exhibits 8 and 11.
[93] IDEA, at 34 C.F.R. §300.321 and 300.324.
[94] IDEA, at 34 C.F.R. §300.501(a)(2).

The IDEA also provides that decisions to initiate a change or refuse to initiate change in a student's educational program, must be based on reliable and substantive data and information regarding the student's educational needs; which failed to occur in this matter.

The Hearing Officer also finds that that the IEP team failed to issue to the parent a Prior Notice of the Office of Special Education's, Autism Division's intent to remove the dedicated aide from the student's educational program; and the local education agency's decision not to provide the student the dedicated aide, requested by the parents.

19. **Failure to Implement the March 3, 2010 IEP, by Providing the Student the Occupational and Speech Language Services Recommended in the IEP**

The Hearing Officer finds that there is no evidence that the Respondent failed to implement the student's March 3, 2010 IEP, by failing to provide the student the 27 hours per week of specialized instruction, outside general education; or 60 minutes per week of speech/language and occupational therapy services, as recommended in his IEP.[95] There is also no reliable evidence that the student missed services were not provided to the student, to make up for any missed services.[96]

Finally, although it is argued by the Petitioner; and the independent evaluations recommend independent speech/language and occupational therapy, at the time of the complaint, there was no requirement in the student's March 3, 2010 IEP, that the student receive related services independently; and not in a group setting.[97]

20. **Failure to Provide the Student an Appropriate Placement During the 2008/2009, 2009/2010 and 2010/2011 School Years**

The Hearing Officer finds that the Petitioner presented no evidence that the location of services identified for the student during the 2008/09, 2009/10, and 2010/11 school years, is inappropriate; or that the Respondent failed to ensure the availability of a continuum of alternative services specifically designed to meet the needs of the student. [98]

The fact that the Respondent failed to provide the student a sufficient level of speech/language and occupational therapy services; and erred in its decision to remove and not provide the student a dedicated aide, does not equate to an inappropriate placement. It also does not support a finding that a private school placement, specifically designed for autistic students, is warranted in this matter.

---

[95] Petitioner's Exhibit 17.
[96] Testimony of Education Advocate and Petitioner's Exhibit 17.
[97] Petitioner's Exhibit 6.
[98] Testimony of SEC, parent, Education Advocate, Special Education Teacher.

The student is currently in a full-time special education program, specifically designed for autistic students, at a DCPS public school; and the LEA can implement the student's IEP, and provide the student educational benefit. The Petitioner also failed to present evidence that the student is not progressing and is regressing, academically and behaviorally.

The record reflects that with an increase in the level of related services; and the support of a full-time dedicated aide, the student's educational program will be enhanced, and he will receive greater benefit.

Finally, placement of the student in a private facility would only be made subsequent to an assessment of the student's needs; and upon a recommendation of the appropriate school personnel or the determination of a Hearing Officer. A private school placement is only a consideration, if the Petitioner establishes that there is no appropriate program within the District that can meet the educational needs of the student; which the Petitioner failed to establish in this case.[99]

VI. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as the Hearing Officer's review of governing legal authority and case law, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[100] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[101]

2. The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), is the federal statute governing the education of students with disabilities. The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.

3. The IDEIA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d)(I)(A)*.

   The IDEIA defines a FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary-

[99] DCMR §3013.6.
[100] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[101] 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)

school, or secondary school education in the State involved; and that the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[102]

4. Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA consists of an educational program specifically tailored to address the unique needs of the student; by means of an 'individualized education program' (IEP).[103]

   According to *Rowley,*[104] in order for FAPE to be offered a student, the school district must show it complied with the statutory elements of an IEP, and the goals and objectives in the IEP are reasonable, realistic and attainable. The special education and related services must be reasonably calculated to enable the child to receive educational benefit, and must be likely to produce progression, not regression.

5. When parents challenge the appropriateness of a program or placement offered to their disabled child by a school district under the IDEA, a Hearing Officers must undertake the following two-fold inquiry: 1) whether the State complied with the *procedural requirements* of the IDEA, in creating and implementing the student's IEP, or rendering the placement decision; and 2) whether the State complied with the *substantive requirements* of the IDEA, by developing an IEP for the student that is reasonably calculated to enable the student to receive educational benefit.

   In this matter, the parent challenges the appropriateness of the student's March 3, 2010 IEP, and placement during the 2008/09, 2009/10, and 2010/11 school years.

   (1) Procedural Compliance (Procedural FAPE).

   First, as indicated supra, the Hearing Officer must determine whether the State complied with the *procedural requirements* of the IDEIA, in creating and implementing the student's IEP, or rendering the placement decision. However, the 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, unless it can be determined that the inadequacies:

   (I) impeded the child's right to a free and appropriate public education;
   (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
   (III) caused a deprivation of educational benefit to the student.

---

[102] IDEA, 34 C.F.R. §300.17(d).
[103] Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).
[104] Id.

(2) Conferral of Some Educational Benefit (Substantive FAPE).

Second, once the Hearing Officer addresses the first criteria, it must determine whether the State complied with the *substantive requirements* of the IDEA, by developing an IEP for the student that is reasonably calculated to enable the student to receive educational benefit. While a student's IEP must be reasonably calculated to provide a student educational benefit, school districts are required to provide only a "basic floor of-opportunity." Rowley, 458 U.S. at 200-01. Thus, an "appropriate' public education does not mean the absolutely best or potential-maximizing education for the individual child. *Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314 (1987)*. However, the benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207.

The IEP ***must be appropriately designed and implemented***, emphasizing special education and related services specifically designed to meet the student's unique needs, supported by such services, as are necessary to provide the student 'meaningful', benefit.

If a State satisfies the procedural and substantive requirements of the IDEA, it has complied with the obligation imposed by Congress, and the courts can require no more.

6. **Failure to Develop an Appropriate IEP for the Student on March 3, 2010, By Failing to Ensure an Appropriate Level of Occupational and Speech Language Therapy Services**

The Petitioner satisfied its burden of proof by presenting sufficient evidence that the Respondent failed to ensure that the ***level of occupational therapy and speech and language services,*** in the student's March 3, 2010 IEP, is sufficient to meet the student's speech/language and occupational therapy needs, enable the student to receive access to the general education curriculum, and receive educational benefit, in violation of the 20 U.S.C. §1414(a)(i) and the IDEA, at 34 C.F.R. §300.320, entitling the student to compensatory education services from September 24, 2009, the dates of the independent evaluations, through the date of this decision.

7. **Failure to Reevaluate the Student to Determine Whether the Student No Longer Required a Dedicated Aide**

The Petitioner satisfied its burden of proof by presenting evidence that the Respondent failed to comply with the substantive requirements of the IDEA, by reevaluating the student to determine the needs of the student; and whether the student no longer required a dedicated aide, prior to removing the dedicated aide from the student's educational program; in violation of the IDEA, at 34 C.F.R. §300.303, and 300.305(a) (1) (i) (ii) (iii) (2)(i)(B)(ii)and(iv), entitling the student to compensatory educations services from February 2, 2010, the date the aide was removed from the student's educational program, through the date of this decision.

The LEA is responsible for overseeing and managing the provision of special education services to students at its school; ensuring IEP development and implementation; the provision of a FAPE to the students; and in reviewing and revising a student's IEP, ensuring that the team carefully considers the strengths of the student, concerns of the parent for enhancing the student's education, results of recent evaluations, and the academic, developmental and functional needs of the student, which failed to occur in this instance.[105]

The LEA failed to comply with the procedural and substantive requirements of the IDEA, by ensuring that once it received notice that the OSE determined that the student required a dedicated aide; the student's IEPs accurately reflected that the student received the support services of a dedicated aide; even if it was not the decision of the LEA, or it disagreed with the OSE's decision to provide the student a dedicated aide.[106]

The LEA also failed to comply with the procedural and substantive requirements of the IDEA, by ensuring that once it received notice that the OSE was conducting a classroom observation and/or proposed to remove the dedicated aide from the student's educational program, the parent received prior written notice of the intended change in the student's educational program, and the opportunity to provide "meaningful" input in decisions regarding the student's educational program and the provision of a FAPE to the student.[107]

The SEC's testimony that the student's IEP did not provide for a dedicated aide because the schools' IEP team did not recommend a dedicated aide for the student; and the Office of Special Education (OSE's) Autism Department assigned the dedicated aide to the student, is irrelevant. The fact remains that since attending the LEA, the student received the support services of a dedicated aide and the LEA had notice and knowledge that the student's educational program included a dedicated aide; whether initiated by the local education agency (LEA), or OSE; and on or about February 2, 2010, the OSE removed the aide from the student's program.

It is also a fact that on March 3, 2010, the SEC as the designated and authorized representative of the LEA; and serving on behalf of the Respondent, unilaterally decided that the student failed to meet the criteria for a dedicated aide; and would not receive a dedicated aide.

The Respondent is responsible for ensuring the provision of a FAPE to the student, and compliance with the procedural and substantive requirements of the IDEA. The Respondent failed to fulfill its responsibilities under the IDEA.

---

[105] IDEA, at 34 C.F.R. §§300.17, 300.18, 300.101, 300.324.
[106] Testimony of SEC, parent, and Education Advocate.
[107] Id.

8. **Failure to Implement the March 3, 2010 IEP, by Providing the Student the Occupational and Speech Language Services Recommended in the IEP**

The Petitioner failed to satisfy its burden of proof by presenting evidence that the Respondent failed to implement the student's March 3, 2010 IEP, by failing to ensure that as soon as possible following development of the student's March 3, 2010 IEP, the student received the occupational and speech language services, as recommended in his IEP; in violation of the D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003); and the IDEA at 34 C.F.R. §300.323 (c) (2).

9. **Failure to Provide the Student an Appropriate Placement During the 2008/2009, 2009/2010 and 2010/2011 school years**

The Petitioner failed to satisfy its burden of proof by presenting evidence that the Respondent failed to provide the student an appropriate placement during the 2008/2009, 2009/2010 and 2010/2011 school years[108], by failing to ensure the availability of a continuum of alternative services specifically designed to meet the needs of the student; in violation of the IDEA, at 34 C.F.R. §300.115(a).

10. **Free Appropriate Public Education (FAPE)**

First, the Petitioner established that the Respondent failed to comply with the procedural requirements of the IDEA, and that the procedural violations denied the student a FAPE because the violations impeded the child's right to a free and appropriate public education; significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; and caused a deprivation of educational benefit to the student, because the student was deprived an IEP specifically tailored to address his unique educational needs, as a student presenting with autism.

Second, the Petitioner established that in reviewing and revising the student's March 3, 2010 IEP, the Respondent failed to comply with the ***substantive requirements*** of the IDEA, by ensuring that the IEP team developed an appropriate IEP for the student that is reasonably calculated to enable the student to access the general education curriculum; and receive 'meaningful' educational benefit.

Although the March 3, 2010 IEP includes special education and related services, it is not specifically designed to meet the student's unique needs; because it is not supported by the level of services and support necessary for the student to receive 'meaningful', benefit. The nature of the student's disability is such that he requires a sufficient level of speech/language and occupational therapy services, and a full-time dedicated aide, throughout each school day, which the March 3, 2010 IEP does not provide.

---

[108] The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known of the alleged action that forms the basis of the due process complaint; therefore, the two (2) year statute of limitation applies in this matter. See, 34 C.F.R. §300.507(a)(2).

For these reasons, it is the Hearing Officers' Decision that the student was denied a FAPE, and is entitled to receive compensatory education services, consistent with the Hearing Officers' findings and decision.

11. **Compensatory Education Services**

Compensatory education is 'a legal term used to describe the one form of relief under the IDEA, which requires a LEA to provide a child with appropriate educational services, to compensate for its past failure to provide a FAPE.

A ***child with disabilities*** may be able to obtain "compensatory education" –makeup services – if he/she went without an appropriate program for some period of time. This could be because the child's Individualized Education Program (IEP) was inappropriate to his/her needs, or because the IEP, though appropriate, was not fully carried out by the school. In this instance, the child's IEP was inappropriate because for an extended period of time, the student's IEP was not specifically tailored to meet the student's related and support services needs.

The courts have also held that compensatory education services may be available to a student if the court finds that there was an illegal delay in evaluating the child for special education services, ***and if***, as a result of such delay, the child failed to receive needed services. Here, the Respondent delayed in reevaluating the student to determine whether the student required a dedicated aide.

The Third Circuit has adopted the position that this remedy, that is, an entitlement to compensatory education services, accrues from the point the district actually knew of, or alternatively, should have known of, the requisite denial of a free appropriate public education. *See M.C. v. Central Reg'l Sch. Dist., 81 F.3d 389 (3d Cir. 1996)*. However, other courts have adopted the more general rule that the remedy accrues when the parents knew or should have known of the violation. *See, e.g.*, *Everett v. Santa Barbara High Sch. Dist., 32 IDELR ¶ 175 (C.D. Cal. 2000); K.P. v. Juzwic, 891 F. Supp. 703 (D. Conn. 1995).* In this matter, the Respondent initiated a change in the student's educational program on or about February 2, 2010

At a minimum, *Reid* demands that an award not be based on an arbitrary number, however, in this matter, the number of hours proposed in the Petitioner's compensatory education plan, and as offered by Petitioner's expert witness appear to be arbitrary, without any basis or foundation for the requested number of hours of tutoring.

The Petitioner submitted a compensatory education plan; recommending 1 hour per week of speech/language services and a ½ hour per week of Occupational Therapy Services, for one (1) year to be provided independently, by a provider of the parent's choice.[109]

[109] Petitioner's Exhibit 1.

The missed services identified in the student's compensatory education plan and as reported by the Education Advocate, is based on the level of speech/language and occupational therapy services recommended in the independent evaluations; and is not based on actual services recommended in the student's IEPs, however, not received by the student; because the student received the services recommended in his IEPs.

The Hearing Officer finds that the testimony of the Education Advocate regarding the services the student missed and is entitled to receive; or the student's progress, is unreliable and not credible. However, the needs of the student should not be forfeited by lawyering, when the facts and needs of this student are clearly revealed in the record and findings of the Hearing Officer. *See, Gill v. District of Columbia, (November 9, 2010)*.

The Hearing Officers' findings regarding compensatory education are as follows:

Speech/Language and Occupational Therapy Services.

The Hearing Officer finds that the student failed to receive a sufficient level of speech/language and occupational therapy services over an extended period of time, for a total of approximately fifteen (15) months; from September 24, 2009 through the date of this decision; and the following services are necessary and reasonably calculated to place the student to the approximate position he would have been had he received the services:

- Beginning the week of January 3, 2011 and ending the end of the 2010/2011 school year, the student shall receive *individual* speech therapy for three (3) hours per week and group therapy for 1 hour per week in order for the student to make progress towards the goals in his March 3, 2010 IEP; and beginning January 17, 2011, the student must be accompanied by a 1:1 aide in order to fully participate in speech therapy sessions;

- Beginning the week of January 3, 2011 and ending the end of the 2010/2011 school year, the student shall receive three (3) 60 minute sessions, *individual* and consultative occupational therapy services, per week for a total of 180 minutes, to address identified areas of weakness;

- For the 2011/2012 school year, the student shall receive *individual* speech therapy for two (2) hours per week and group therapy for 30 minutes per week, ***accompanied by a 1:1 aide in order to fully participate in speech therapy sessions***; and two (2) 60 minute sessions, individual and consultative occupational therapy services, per week for a total of 120 minutes.

Dedicated Aide.

The Hearing Officer finds that the student received the support of a dedicated aide since he began attending his current school; and on or about February 2, 2010, the dedicated aide was removed from the student's educational program.

The Hearing Officer also finds that although the student's teacher assumed the role and responsibility of a dedicated aide, the student was denied the full benefit of a full-time dedicated aide and special education teacher, from February 2, 2010, through the date of this decision, representing approximately ten (10) months.

The following services are intended to mitigate any harm the student may have suffered as a result of this violation:

The student shall receive the support of a full-time dedicated aide to assist the student throughout each school day, from January 17, 2011 through June 17, 2011; and from August, 2011, the beginning of the 2011/2012 school year, through December 31, 2011, representing a total of approximately 10 months of support services, from a full-time-dedicated aide. Any future revisions to the student's IEPs, specifically as it relates to the level of related services, and the support services of a dedicated aide, shall be made consistent with the findings in this decision and order; and the requirements of the IDEA.

VII. ORDER

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

1. **ORDERED**, that the Petitioner's request that the Hearing Officer issue an Order Requiring the Respondent to fund the student's placement with transportation, in a full-time special education program, at a private school specifically designed for autistic students, of the parent' election, is **DENIED**; and it is further

2. **ORDERED**, that no later than January 7, 2011, the local education agency shall revise and implement the student's March 3, 2010 IEP, consistent with the findings in this decision and order; and no later than January 12, 2011, the LEA shall provide the parent and her Attorney a copy of the revised IEP; and it is further

3. **ORDERED**, that the March 3, 2010 IEP shall be revised to reflect that beginning the week of January 3, 2011, the student shall receive *individual* speech therapy for three (3) hours per week and group therapy for 1 hour per week; three (3) 60 minute sessions, *individual* and consultative occupational therapy services, per week for a total of 180 minutes; and beginning January 17, 2011, the student shall be accompanied by a 1:1 aide in order to fully participate in speech therapy sessions; and it is further

4. **ORDERED**, that for the 2011/2012 school year, the student shall receive *individual* speech therapy for two (2) hours per week and group therapy for 30 minutes per week, *accompanied by a 1:1 aide in order to fully participate in speech therapy sessions*; and two (2) 60 minute sessions, individual and consultative occupational therapy services, per week for a total of 120 minutes; and is further

5. **ORDERED**, that the student shall receive the support of a full-time dedicated aide to assist the student throughout each school day, from January 17, 2011 through June 17, 2011; and from August, 2011, the beginning of the 2011/2012 school year, through December 31, 2011, representing a total of approximately 10 months of support services, from a full-time dedicated aide.; and it is further

6. **ORDERED**, that any future revisions to the student's IEPs, specifically as it relates to the level of related services, and the support services of a dedicated aide, shall be made consistent with the findings in this decision and order; and the requirements of the IDEA; and it is further

7. **ORDERED**, that this decision and order are effective immediately.

IIX. 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: *January 2, 2011*

Ramona M. Justice

Attorney Ramona M. Justice, Hearing Officer