

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

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

OSSE
STUDENT HEARING OFFICE
2012 JAN 31 AM 9:10

Parent, on behalf of
Student,¹
Petitioner,

Date Issued: January 30, 2012

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,

Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

The student is an _____ year old male, who is currently a _____ grade student attending School A. The student's current individualized education program (IEP) lists Specific Learning Disabled (SLD) as his primary disability and provides for him to receive fifteen (15) hours per week of specialized instruction outside of the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting, and one (1) hour per week of behavioral support services outside of the general education setting.

On November 17, 2011, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by: (1) failing to develop appropriate IEPs for the student on March 3, 2010, February 25, 2011 and November 9, 2011, specifically by not including sufficient instructional services and accommodations, supports and services to address the student's academic deficits and behaviors, evaluation recommendations, teacher reports and lack of appropriate progress and placement in the least restrictive environment (LRE); (2) failing to conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP) for the student; (3) failing to consider the need for extended school year (ESY) for the student for the 2011 summer; and (4) failing to conduct a triennial speech-language evaluation. As relief for these alleged denials of FAPE, Petitioner requested, *inter alia*, an appropriate IEP which provides for increased instructional services, counseling as a related service, a BIP and

¹ Personal identification information is provided in Appendix A.

ESY; a private placement, including transportation, funded by the District of Columbia; an independent FBA; an independent speech-language evaluation; and compensatory education.

On November 29, 2011, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that the IEPs developed for the student on or about March 3, 2010, February 25, 2011 and November 9, 2011 were/is reasonably calculated to provide educational benefit at the time of the development of the IEPs; DCPS has obtained parental consent to conduct an FBA and cannot develop a BIP until the FBA has been completed; the student does not meet the eligibility requirements for ESY; DCPS is not required to conduct a reevaluation in the area of speech-language until May 1, 2012; and the student has not been denied a FAPE and the complaint is devoid of any substantive educational harm to the student.

On December 12, 2011, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement. Accordingly, the 45-day timeline began to run on December 18, 2011 and ends on January 31, 2012.

On December 15, 2011, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on December 16, 2011. The Prehearing Order clearly outlined the issue to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On January 4, 2012, Petitioner filed Disclosures including twenty-three (23) exhibits and five (5) witnesses.² On December 29, 2011, Respondent filed Disclosures including ten (10) exhibits and five (5) witnesses.

The due process hearing commenced at approximately 9:00 a.m. on January 11, 2012 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2003. The Petitioner elected for the hearing to be closed. Petitioner's exhibits 1-2, 5-6, and 9-23 were admitted without objection. Respondent's exhibits 1-10 were admitted without objection.

The hearing officer did not admit Petitioner's Exhibit 3 because neither the advocate who wrote the notes nor any person present at the meeting was listed as a witness for Petitioner or Respondent. The hearing officer admitted Petitioner's Exhibit 4, over the objection of the Respondent, because while the author of the meeting notes was not listed as a witness, Petitioner indicated that the student's mother attended the meeting. The hearing officer admitted Petitioner's Exhibit 7, over the objection of the Respondent, because the student's October 21, 2009 IEP is relevant in determining whether the student's March 3, 2010 IEP was appropriate. The hearing officer admitted Petitioner's Exhibit 8, over the objection of the Respondent, because the evaluation is relevant in determining whether the Respondent conducted a triennial speech-language reevaluation.

² A list of exhibits is attached as Appendix B. A list of witnesses is included in Appendix A.

At the close of Petitioner's case, the Respondent moved for a directed verdict. Respondent argued that Petitioner had not met her burden in the case. The hearing officer denied the motion for Issue #1 (failure to develop appropriate IEPs), Issue #3 (failure to conduct an FBA) and Issue #4 (failure to conduct a triennial speech-language evaluation). The hearing officer granted the Motion for Directed Verdict for Issue #2 (failure to consider ESY for the summer of 2011), finding that Petitioner did not introduce any evidence by testimony or in exhibits which supported the contention that Respondent denied the student a FAPE by not considering ESY for the summer of 2011. While the student's January 30, 2009 Comprehensive Psychological Evaluation noted deficits in the student's Working Memory Index, the Index is a relative strength for the student and the evaluation did not contain any recommendations regarding ESY. Likewise, the student's mother testified that the student's memory was "worse" than his siblings and stated that ESY was not discussed for summer 2011 however also testified that she did not attend the student's IEP Team meeting prior to summer 2011.

At the beginning of Respondent's case, Respondent produced an updated speech-language evaluation, dated April 20, 2009. The Petitioner moved to admit the evaluation as Petitioner's Exhibit 24, without objection by the Respondent. Based on the admission of the April 20, 2009 speech-language evaluation, the Respondent withdrew Issue #4 (Whether the Respondent denied the student a FAPE by failing to conduct a triennial evaluation in the area of speech-language for the child?).

The hearing concluded at approximately 1:45 p.m. following closing statements by both parties.

Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

ISSUES

The issues to be determined are as follows:

1. Whether the Respondent denied the student a FAPE in the LRE by failing to develop appropriate IEPs for the child on or about March 3, 2010, February 25, 2011 and November 9, 2011, including appropriate instructional services, related services and a BIP?
2. Whether the Respondent denied the student a FAPE by failing to conduct an updated FBA as needed for the child?

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 student with disabilities as defined by 34 CFR §300.8. (Petitioner's Exhibits 6 and 10)
2. The student has longstanding behavior difficulties that disrupt his learning and the learning of other students. (Parent's testimony; Teacher's testimony; Petitioner's Exhibits 2, 10, 11 and 24)
3. The student needs behavioral interventions, supports and services to address his impulsive, inattentive and disruptive behaviors within the classroom. (Parent's testimony; Teacher's testimony; Petitioner's Exhibits 2, 10, 11 and 24)
4. DCPS inappropriately addressed the student's behavior problems. During the 2009-2010 school year, the school called the student's mother three to four times per week regarding the student's disruptive and inattentive behaviors. During the 2010-2011 school year, the school called the parent "as needed" regarding the student's disruptive and inattentive behaviors and at times sent the child to the gym teacher to "calm down." During the 2011-2012 school year, the student was sent home or sent to the office at least three times per week from August 22, 2011 through mid-September 2011. These removals were not documented as formal suspensions. (Parent's testimony; Teacher's testimony; Petitioner's Exhibit 2)
5. The student was denied the right to attend his general education classes and receive specialized instruction during disciplinary removals in the 2009-2010, 2010-2011 and 2011-2012 school years. (Parent's testimony; Teacher's testimony)
6. The student's last FBA is dated February 18, 2009. The FBA was conducted by an independent evaluator. (Petitioner's Exhibit 11)
7. The November 9, 2011 IEP Team agreed that the student needs an FBA, added one (1) hour per month of social/emotional services to the student's IEP and changed the delivery of the student's specialized instruction from fifteen (15) hours in the general education environment to fifteen (15) hours outside of the general education environment. (Teacher's testimony; Petitioner's Exhibit 2; Respondent's Exhibits 3, 4, 5 and 6)
8. Prior to the November 9, 2011 IEP Team meeting, DCPS did not provide necessary behavioral support services for the student including developing and implementing a BIP as needed for the student. (Parent's testimony; Teacher's testimony)
9. The student is diagnosed with Mixed Receptive-Expressive Language Disorder; Reading Disorder; Disorder of Written Expression; Attention Deficit Hyperactivity Disorder (ADHD), Combined Type; and Disruptive Behavioral Disorder, NOS. (Petitioner's Exhibit 10)
10. Academically, the student is functioning well below grade level. The student's Verbal Comprehension Index score is in the Borderline range (5th percentile); his Perceptual Reasoning Index score is in the Borderline range (4th percentile); his Working Memory Index score is in the Low Average range (13th percentile); his Processing Speed Index score is in the Borderline range (7th percentile); and his Full

Scale IQ is within the Borderline range (Standard Score = 71, 3rd percentile).
(Advocate's Testimony; Petitioner's Exhibits 10)

11. The student is in a resource classroom for reading, written expression and math. The classroom has thirteen students, one teacher and one teacher's aide for reading and written expression and twelve students, one teacher and one teacher's assistant for math. (Teacher's testimony, Petitioner's Exhibit 2)
12. The student's academic goals did not change from his October 21, 2009 IEP to the student's March 3, 2010 IEP however the student's academic goals increased in difficulty from his March 3, 2010 IEP to his February 25, 2011 IEP and his February 25, 2011 IEP to his November 9, 2011 IEP. During the 2009-2010, 2010-2011 and 2011-2012 school years, the student progressed toward the mastery of his IEP goals. (Petitioner's Exhibits 5, 6, and 7; Respondent's Exhibits 1, 8, 9 and 10; Teacher's testimony)

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:

Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Board of Education v. Rowley*, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

Procedural Safeguards

The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met. 20 U.S.C. §1415. The IDEA regulations at 34 CFR §300.513(a)(2) state that in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.

In the present case, the Petitioner alleges that the Respondent did not conduct an FBA for the student. IDEA regulations at 34 CFR §300.304(c)(6) require the public agency to ensure that evaluation of a child is sufficiently comprehensive to identify all 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. An FBA is an educational evaluation. *See Harris v. District of Columbia*, 561 F. Supp. 2d 63 (D.D.C. 2008). "The IDEA...recognizes that the quality of a child's education is inextricably linked to that child's behavior" and "[an] FBA is essential to addressing a child's behavioral difficulties, and, as such, it plays an integral role in the development of an IEP." *Id.* at 68.

On February 18, 2009, during the 2008-2009 school year, the Petitioner obtained an independent FBA. While DCPS was provided a copy of the independent FBA, DCPS did not use the results of the February 18, 2009 FBA to develop behavioral intervention and services and modification designed to address the student's behavior in the development of his March 3, 2010, February 25, 2011 or November 9, 2011 IEPs although during the 2009-2010, 2010-2011 and 2011-2012 school years, the student exhibited inattentive, impulsive and disruptive behaviors. Until the student's November 9, 2011 IEP, DCPS primarily addressed the student's inappropriate behaviors by sending the student out of the classroom or sending the student home for the day "three to four times per week" in the 2009-2010 school year; "as needed" in the 2010-2011 school year; and "every day or every other day" for the beginning of the 2011-2012 school year. These informal disciplinary removals were not documented. At the November 9, 2011 IEP Team meeting, the IEP Team agreed that the student needs an FBA.

DCPS did not perform an FBA although it was clear that the child's behavior impeded his learning and that an assessment of his behavior difficulties needed to be conducted to determine appropriate special education and/or related services. DCPS's failure to conduct an FBA or use the results of the student's February 18, 2009 independent FBA impeded the child's right to a FAPE and caused a deprivation of educational benefit in that during the student's removals from the classroom, the student was denied the right to attend his general education classes and receive specialized instruction.

For this violation, the student is entitled to compensatory education for the time the student did not receive specialized instruction. It is, of course, impossible to determine how many days the student received disciplinary removals without formal documentation. Testimony in this area was non-specific including only that the student was sent out of the classroom or sent home "three to four times per week" in the 2009-2010 school year; "as needed" in the 2010-2011 school year; and "every day or every other day" for the beginning of the 2011-2012 school year.

Educational Benefit

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." A student's IEP must be designed to meet the student's unique needs and be reasonably calculated to provide the student with some educational benefit, but the IDEA does not require school districts to provide special education students with the best education

available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. 176 at p. 200.) Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

Under *Rowley*, the factual showing required to establish that a student received some educational benefit is not demanding. A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. *Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist.*, No. 196 (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450.

The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996). In the present case, the student has significant academic needs and significant behavioral needs. The Petitioner contends that the student was not provided a FAPE because the student's IEP did not contain the appropriate instructional services, specifically placement in a private therapeutic setting; a BIP; and appropriate related services, specifically counseling and behavioral support services, which address the student's unique needs.

The Petitioner argued that the student's March 3, 2010, February 25, 2011 and November 9, 2011 IEPs did not contain the appropriate instructional services because the student made no progress as evidenced by his IEPs goals being repeated each year. The Petitioner further argued that since the student tested on a 1st grade level in 2009, he has been denied a FAPE because he continues to function on a 1st grade level. The record does not support these allegations.

While the student's academic goals did not change from the student's October 21, 2009 IEP to the student's March 3, 2010 IEP, less than five months elapsed between the two IEPs. The student's academic goals increased in level of difficulty from the student's March 3, 2010 IEP to the student's February 25, 2011 IEP. Likewise, the student's academic goals increased in difficulty from the student's February 25, 2011 IEP to the student's November 9, 2011 IEP. Additionally, the student's June 21, 2010, June 14, 2011 and November 15, 2011 IEP Progress Reports document that the student was progressing towards mastery of his respective IEP goals.

The student's January 30, 2009 Comprehensive Psychological Evaluation concluded that the student's performance on standardized tests indicated academic deficits in all areas measured. His basic reading and writing was at approximately the first grade three months level and his broad math at approximately the second grade one month level. The student's teacher testified that at the beginning of the 2011-2012 school year, the student was performing in reading at a beginning 1st grade level and is now performing at a 2nd grade level. At the

beginning of the 2011-2012 school year, in math the student was performing at a 2nd grade level and is now making progress toward 6th grade standards.

The student's January 30, 2009 Comprehensive Psychological Evaluation also compared the student's intellectual functioning to other students of his age. His Verbal Comprehension Index score was in the Borderline range (5th percentile); his Perceptual Reasoning Index score was in the Borderline range (4th percentile); his Working Memory Index score was in the Low Average range (13th percentile); his Processing Speed Index score was in the Borderline range (7th percentile); and his Full Scale IQ was within the Borderline range (Standard Score = 71, 3rd percentile). The student's progress may be slow but given his intellectual functioning, his failure to perform at grade level is not necessarily indicative of a denial of a FAPE.

The IDEA creates a strong preference in favor of "mainstreaming" or insuring that handicapped children are educated with non-handicapped children to the extent possible. *LaGrange*, 184 F.3d at 915. The IDEA's implementing regulations provide that "children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled." 34 CFR § 300.550(b)(1). Furthermore, children with disabilities are only to be removed from regular education classes "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 CFR § 300.550(b)(2).

On November 9, 2011, the student's IEP Team met and changed the delivery of specialized instruction to the student from fifteen (15) hours in the general education environment to fifteen (15) hours of outside of the general education environment. While it is likely that the student would have benefitted from specialized instruction outside of the general education environment before the November 9, 2011 IEP Team meeting, the Petitioner did not present sufficient evidence to support the conclusion that the student's March 3, 2010 and February 25, 2011 IEPs lacked appropriate instructional services at the time the IEPs were developed.

The evidence however did support the conclusion that the student's March 3, 2010 and February 25, 2011 IEPs did not contain appropriate behavioral supports. The student's mother stated that the student was not learning because he was not in the classroom to be taught. As discussed above, DCPS attempted to address the student's inattentive and disruptive behaviors by sending the child out of the classroom or sending the child home. The record substantiates that the student has exhibited inattentive and hyperactive behaviors since kindergarten. The student's February 18, 2009 FBA documents the evaluator's, teacher's and mother's reports of the student's impulsive, inattentive and disruptive behaviors. The student's January 30, 2009 Comprehensive Psychological Evaluation noted the student's hyperactivity, inattentive behaviors and impulsivity. The evaluator diagnosed the student with ADHD and Disruptive Behavior Disorder, NOS, in addition to other academic related diagnoses. During the 2009-2010 school year the student's mother was contacted by the school at least three (3) times per week because the student was exhibiting disruptive behaviors. During the 2010-2011 school year, the teacher called the mother "as needed" and at times sent the child to the gym teacher to "calm down." During the 2011-2012 school year, the student's teacher testified that until behavioral support

services were implemented for the student, the student was escorted out of the classroom for inattentive and distracting behaviors every day or every other day.

Pursuant to 34 CFR §300.324(a)(2)(i), in the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other behavioral strategies, to address that behavior. The IEP must, at a minimum, provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) (quoting *Bd. Of Educ. Of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203 (1982)). Clearly the IEP Team was aware of the fact that the child had behaviors which impeded his learning yet did not include behavioral interventions, support and strategies on the student's IEP until including one (1) hour per week of behavioral support services on the student's November 9, 2011 IEP. The hearing officer concludes that the student's March 3, 2010 and February 25, 2011 IEPs did not contain the necessary behavior support services to permit the child to benefit educationally from the instruction included in his IEP.

Under *Reid*, a hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. District of Columbia*, 401 F. 3d 516, 365 U.S. App. D.C. 234 (D.C. Cir 2005) citing *G.ex. RG v Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4 h Cir. 2003). IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* “. . .the inquiry must be fact-specific and . . . the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid* at 524.

In the instant matter, Petitioner has established that the student was denied a FAPE when DCPS: (1) failed to develop behavioral intervention and services and modification designed to address the student's behavior after a pattern of removals which constituted a change in placement; and (2) failed to include behavioral support services on the student's March 3, 2010 and February 25, 2011 IEPs. As a result of these failures to provide a FAPE, the student was harmed in that his significant behavioral issues were not appropriately addressed therefore the student was denied the opportunity to access the general education curriculum and benefit from instruction. The extent of the harm includes the hours of special instruction not received from November 17, 2009 through November 9, 2011 when the child was sent out of the classroom or sent home and inadequate and inappropriate responses to the student's behavioral issues thereby contributing to his minimal academic progress.

An inadequate IEP is a necessary but insufficient condition for private school placement and reimbursement. Although the District must pay for private school placement if no suitable public school is available, if there is an appropriate public school program available, the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child. *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991) (citations and quotations omitted). In the present case, while the student's March 3, 2010 and February 25, 2011 IEPs were inadequate, in that they failed to provide necessary behavioral supports for the student, the student's current public school is an appropriate program for the student and the least restrictive environment for the student. Therefore, placement in a private

therapeutic setting is an inappropriate remedy for the Respondent's failure to provide a FAPE to the student.

ORDER

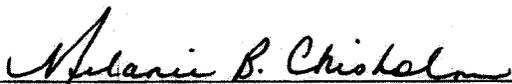
Based upon the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED:**

1. DCPS fund an independent FBA for the student, at a rate not to exceed the current established market rate in the District of Columbia for such services;
2. Within 15 calendar days of the receipt of the independent FBA, DCPS hold an IEP Team meeting to discuss the results of the FBA and develop a BIP based on the results of the FBA;
3. Within 15 calendar days of the date of this Order, DCPS hold an IEP Team meeting to develop a BIP which incorporates Recommendations 1-4 and 6-8 from the student's February 18, 2009 FBA to be implemented until such time that the parties meet to develop the updated BIP outlined in paragraph "2" above;
4. That the Respondent fund a total of 100 hours of independent one-on-one tutoring in the areas of reading, written expression and math for the student, at a rate not to exceed \$65.00 per hour, to be completed within one year of the date of this Order;
5. All other relief sought by Petitioner herein is **denied**.

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 30, 2012



Hearing Officer