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

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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OSSE
STUDENT HEARING OFFICE

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| [Parent][1], on behalf of [Student],<br><br>Petitioner,<br><br>v.<br><br>[LEA],<br><br>Respondent. | Case<br><br>HEARING OFFICER'S DETERMINATION<br><br>March 8, 2010<br><br>Representatives:<br><br>Roberta Gambale, Petitioner<br><br>Squire Padgett, Respondent<br><br>Independent Hearing Officer:<br><br>Jim Mortenson |

## I. PROCEDURAL BACKGROUND

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 9:00 a.m. on February 18, 2010, in hearing room 4a. A continuance was granted for eight days for the purpose of permitting the parties to submit written closing statements and the record closed on February 26, 2010. The due date for the Hearing Officer's Determination (HOD) is March 8, 2010, pursuant to Standard Operating Procedure (SOP) § 1003. This HOD is issued on March 8, 2010.

[1] Personally identifiable information is attached as Appendix A to this decision and the appendix must be removed prior to public distribution.

The hearing in this matter was conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30.

Present at the due process hearing were:

Roberta Gambale, Esq., Petitioner's Counsel

Squire Padgett, Esq., Respondent's Counsel

Petitioner, Student's Father

Education Advocate

Joycelyn Eileen Euille, Respondent Representative

Nine witnesses testified at the hearing:

Education Advocate (J.K.);

Dr. Joy Nagorniak, Psychologist (J.N.);

Petitioner (P);

Dr. Kellie McCants-Price, Psychologist (K.M.);

English Teacher

Alfred Brevard, Case Manager (A.B.);

Reading Teacher

Special Education Teacher and

Dr. Angela Grice, Speech Pathologist, (A.G.).

The complaint in this matter was filed on January 12, 2010. A response to the complaint was filed by the Respondent on January 27, 2010. A prehearing conference was held on January 28, 2010. The complaint was against the Respondent and the District of Columbia Public Schools

(DCPS) where the Student attended prior to the current school year. DCPS was dismissed as a party in a prehearing order issued January 28, 2010. No resolution meeting was held.

19 documents were disclosed and filed by the Petitioner on February 8, 2010[2]. (R 1 – R 19) All of the documents were admitted as exhibits into the record. Petitioner's exhibits are:

- P 1 - Administrative Due Process Complaint Notice, January 12, 2010
- P 2 - Due Process Hearing Notice
- P 3 - Prehearing Order, January 28, 2010 (pp 1-5)
- P 4 - Letter from IHO Mortenson to Case Counsel, January 16, 2010
- P 5 - Email chain ending from Gambale to Padgett (initial email dated Tuesday, January 19, 2010)
- P 6 - Individual Education Program (IEP), January 6, 2010 (See R 2)
- P 7 - Final Eligibility Determination Report, January 11, 2010 (See R 3)
- P 8 - Multidisciplinary Team (MDT) Meeting Notes, January 6, 2010 (See R 4); Individual Education Program (IEP) Meeting Notes, January 6, 2010; email from January 6, 2010; email from , January 5, 2010; Advisory 2 Progress Report SY 2009-2010, November 3, 2009 – December 4, 2009; Receipt, October 1, 2009
- P 9 - [Handwritten notes] [Student], January 6, 2010
- P 10 - Multidisciplinary Team (MDT) Meeting Notes, October 1, 2009 (See R 5); IEP Meeting Notes, October 1, 2009; Receipt, October 1, 2009 (See R 5); Multidisciplinary Team (MDT) Student Evaluation Plan (SEP), October 1, 2009 (See R 5); [Student], October 1, 2009, Attorney Notes (See R 5)
- P 11 - IEP, February 20, 2008; Multidisciplinary Team (MDT) Meeting Notes, February 20, 2008; [Student work samples September 2009] (See R 6)
- P 12 - First Advisory Report Card, August 25, 2009 – October 30, 2009 (See R 7); Advisory 2 Progress Report SY 2009-2010, November 3, 2009 – December 4, 2009 (See R 4, R 7); Email chain ending from January 5, 2010 (See R 4, R 7); Email chain ending from January 4, 2010; Email from January 6, 2010 (See R 4, R 7)
- P 13 - Speech and Language Evaluation, December 16, 2009 (See R 8)
- P 14 - Comprehensive Psychological Evaluation, May 31, 2009 (See R 9)
- P 15 - Social Work Evaluation Report, June 6, 2009
- P 16 - Comprehensive Occupational Therapy Evaluation, November 18, 2009 (See R 22)
- P 17 - Educational Evaluation, July 24, 2007 (See R 12)
- P 18 - Email chain ending from Gambale to Euille and Padgett, December 8, 2009
- P 19 - Resume Janelle D. Knott

[2] There was some discussion at the hearing over the timing of the Petitioner's disclosures and filing after the exhibits were admitted. The disclosures were made electronically on February 8, 2010, as established upon review of the IHO's email records.

16 documents were disclosed and filed by the Respondent on February 16, 2010. (R 1- R16). Five additional documents were disclosed and filed on February 18, 2010. (R 17-R 22, with R 20 being blank). R 2 through R 14 were admitted into the record, R 16 was admitted into the record, and R 22 was admitted into the record.[3] The documents admitted into the record are:

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| R 2 | - | IEP, January 6, 2010 (See P 6); Email from OSSE, January 13, 2010 |
| R 3 | - | Final Eligibility Determination Report, January 11, 2010 (See P 7) |
| R 4 | - | Multidisciplinary Team (MDT) Meeting Notes, January 6, 2010 (See P 8); Email from January 6, 2010 (See P 12); Email chain ending from January 5, 2010 (See P 12); Advisory 2 Progress Report SY 2009-2010, November 3, 2009 – December 4, 2009 (See P 12) |
| R 5 | - | Multidisciplinary Team (MDT) Meeting Notes, October 1, 2009 (See P 10); Receipt, October 1, 2009 (See P 10); Multidisciplinary Team (MDT) Student Evaluation Plan (SEP), October 1, 2009 (See P 10); [Student], October 1, 2009, Attorney Notes (See P 10) |
| R 6 | - | IEP, February 20, 2008; Multidisciplinary Team (MDT) Meeting Notes, February 20, 2008; [Student work samples September 2009] (See P 11) |
| R 7 | - | First Advisory Report Card, August 25, 2009 – October 30, 2009 (See P 12); Advisory 2 Progress Report SY 2009-2010, November 3, 2009 – December 4, 2009 (See P 12); Email chain ending from January 5, 2010 (See P 12); Email chain ending from January 4, 2010; Email from January 6, 2010 (See P 12) |
| R 8 | - | Speech and Language Evaluation, December 16, 2009 (See P 13) |
| R 9 | - | Comprehensive Psychological Evaluation, May 31, 2009 (See P 14) |
| R 10 | - | Educational Evaluation, July 24, 2007 (See P 17) |
| R 11 | - | Letter from to Gambale and Letter of Invitation, September 21, 2009 |
| R 12 | - | Letter from to Gambale and Confirmation of Meeting Notice, September 23, 2009 |
| R 13 | - | Letter from to Gambale, October 9, 2009, and Letter of Invitation, October 13, 2009 |
| R 14 | - | Letter of Invitation and Letter from to Gambale, October 28, 2009 |
| R 16 | - | Confirmation of Meeting Notice and Letter from Euille to Gambale, December 17, 2009 |
| R 22 | - | Comprehensive Occupational Therapy Evaluation, November 18, 2009 (See P 16) |

[3] Objections were raised due to the un-timeliness of disclosure. The objections were upheld except were the documents disclosed were already reasonably in the Petitioners possession and thus were not a surprise.

## II. ISSUE

Whether the Respondent has proposed an individualized education program (IEP) reasonably calculated to provide the Student with educational benefit? Specifically, whether the proposed IEP:

1) includes specialized instruction sufficient to enable the Student to be involved in and progress in the general education curriculum; and

2) includes related services and supplementary aids and services necessary to enable the Student to be involved in and progress in the general education curriculum?

## III. FINDINGS OF FACT

1. The Student is a year old learner in the LEA and is enrolled in the grade.[4] The Student has attended the LEA since the start of the 2009-2010 school year.[5] The prior two years the Student attended a District of Columbia Public School (DCPS) middle school.[6] Because the Student's English teacher at the LEA was concerned about the Student's writing, he was brought to the attention of the special education department the second week of school.[7] The Student's complete education records were not transferred from DCPS to the LEA and the LEA did not know the Student had an IEP until one was provided to it by the Petitioner's Counsel's Office about October 1, 2009.[8]

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[4] Testimony (T) of P, P 6/R 2, P 7/R 3.

[5] Stipulation of Counsel.

[6] T of P, T of

[7] T of

[8] T of T of

2. The Student made very little academic progress in the prior two years at DCPS.[9]

3. The Student is eligible for special education and related services because it has been determined he meets the definition of specific learning disability.[10]

4. The Student was provided a comprehensive psychological evaluation in May, 2009.[11] The evaluation found the Student has a reading disorder, written expression disorder, and borderline intellectual functioning.[12] The Student's functioning levels in reading were measured using the Woodcock-Johnson III and reflected the following data: Broad Reading grade equivalent = 2.5; Letter-Word Identification grade equivalent = 2.7; Reading Fluency grade equivalent = 2.6; and Passage Comprehension grade equivalent = 2.3.[13] The Student's functioning levels in written language were also measured using the Woodcock-Johnson III and reflected the following data: Broad Written Language grade equivalent = 2.3; Spelling grade equivalent = 1.8; Writing Fluency grade equivalent = 3.9; Writing Samples grade equivalent = 2.2; and Written Expression grade equivalent = 2.8.[14] The Student's functioning levels in math were also measured using the Woodcock-Johnson III.[15] While Student's functioning levels were also low in math, the Student was

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[9] T of P, T of P 14/R 9.

[10] P 6/R 2, P 11/R 6.

[11] P 14/R 9.

[12] P 14/R 9.

[13] P 14/R 9.

[14] P 14/R 9.

[15] P 14/R 9.

not determined to suffer from a learning disability in math.[16] The math results were as follows: Broad Math grade equivalent = 4.1; Calculation grade equivalent = 4.7; Math Fluency grade equivalent = 3.4; and Applied Problems grade equivalent = 1.5.

5. A social work evaluation report was written on June 6, 2009.[17]

6. An IEP team meeting was conducted on October 1, 2009, and resulted in a proposal to conduct a reevaluation consisting of a speech and language assessment, psychiatric assessment, functional behavioral assessment (FBA), and an occupational therapy (OT) assessment.[18] The Petitioner consented to the proposed assessments.[19] The FBA was not completed on the advice of the LEA's contracted psychologist, and the psychiatric assessment was not completed.[20]

7. A comprehensive OT evaluation was conducted on November 18, 2009.[21] That evaluation report notes, significantly, that the Student's "[d]ifficulties in visual motor integration could impact his performance on tasks related to reading, handwriting, and further development of math skills."[22] The Student has illegible handwriting, poor

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[16] P 14/R 9.

[17] P 15.

[18] P 10/ R 5.

[19] P 10/ R 5.

[20] P 7/ R 3 (These exhibits include the prior written notice that were required to include a description of each evaluation procedure, assessment, record, or report the LEA used as a basis for its proposed and refused actions, and neither they, nor any other exhibits, indicate the referred to proposed assessments were completed. Also, testified she conducted a classroom observation of the Student on October 6, 2009, but did not conduct an evaluation. Her observation report was not admitted because it was not timely disclosed and its entry was objected to is not a psychiatrist.)

[21] P 16/R 22.

[22] P 16/R 22.

mechanics, and difficulty with visual and auditory processing.[23] The Student requires the following supports to help with these difficulties: an OT sensory-motor program consisting of 30 minutes per week of direct OT services to promote overall sensory processing, handwriting skills, keyboarding, visual motor integration, visual perceptual skills, organizational skills, and self esteem building; a formalized handwriting program; handwriting practice and a checklist to use when completing writing assignments; use of a computer with word-processing software and calendar and/or scheduling software; preferential seating at front of classroom; a visual timer in the classroom; use of large, box graph paper or wide ruled lined paper turned to the side to line up math calculations and improve sizing, spacing and number alignment; use of a ruler or a guide when reading, with verbal or visual cues to move guide as he reads or listens to the teacher reading; use of textbooks he can write in; no use of unlined, unnumbered, or unstructured paper for writing answers on; limited oral directions and oral exams; providing verbal information in small "chunks" to prevent overwhelming Student; having oral direction repeated by the Student; provision of rough outlines and graphic organizers to assist with processing and writing orally presented information; and increased waiting time when Student is asked to volunteer information.[24]

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[23] P 16/R 22.

[24] P 16/R 22. (This finding is based on a reasonable selection of the recommendations from the report. Generally, assessment reports include a list of recommendations that, if all implemented, may constitute the "best" possible program. Since this is not required, this IHO has selected those recommendations reasonable to enable the Student to be involved in and progress in the general education curriculum. It is also noted that this finding does not equate to the entire program, but rather only those components based on the OT evaluation.)

8. An IEP team meeting was convened on January 6, 2010, and an IEP proposed on that date.[25] The Student's academic performance is to be measured based on the regular State academic content standards.[26]

9. The IEP includes statements of the Student's present levels of academic achievement and functional performance.[27] These statements are not clear as to how the Student's disability affects his involvement and progress in the general curriculum, but rather focused on the impact his disability has on his involvement and progress.[28] (E.g. one of the IEP statements, regarding reading, refers to "weaknesses in the area of verbal comprehension and perceptual reasoning hinder his ability to read and comprehend at grade level in the general education curriculum." One of the assessment reports, on the other hand, describes, in part how his sensorimotor functioning/processing affects his involvement and progress in the general education curriculum by causing him to "reverse words, letters, and numbers at times and also has difficulty keeping his place when

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[25] T of P 6/R 2, P 8/R 4, P 9. (The proposed IEP was also implemented and it is unclear why as the Petitioner objected to it on January 12, 2010. Likely, the answer is that the LEA failed to provide prior written notice a reasonable time before the proposed change to the IEP (and the Student's FAPE), pursuant to 34 C.F.R. § 300.503. The IEP stated the proposed changes would occur a day before and the day of the IEP team meeting. The LEA is cautioned to comply with the requirement of 34 C.F.R. § 300.503 and give notice a reasonable time prior to proposed changes going into effect.

[26] P 6/R 2. (Note: testified that the Student was working on the same materials as the rest of his grade class, but his "output" was not expected to be the same as the rest of the class due to his learning disability. This is incongruous with the IEP which does not require the Student to be assessed using modified or alternate academic achievement standards. Thus, conclusion about expectations for the Student is not given any weight, other than it indicates either a misunderstanding of the law, low expectations for the Student, or both.)

[27] P 6/R 2.

[28] P 6/R 2.

reading. . . . Difficulties processing sensory information may impact upon [Student's] ability to respond to information within his environment effectively."[29])

10. The IEP lacks statements of measurable annual academic goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of mathematics.[30] The Student is in the grade, and his math performance is in approximately the grade range, and the goal only seeks nine months of growth over the course of a full year.[31]

11. The IEP lacks statements of measurable annual academic goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of reading.[32] The Student is in the grade, and his reading performance is in approximately the 2nd grade range, and the goal only seeks nine months of growth over the course of a full year.[33]

12. The IEP lacked statements of measurable annual academic goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of written expression.[34] The Student is in the grade, and his written expression performance is in approximately the

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[29] P 6/R 2, P 16/R 22. (This example shows the difference between merely stating where the Student is at in the curriculum and the important necessity, for the purpose of designing an educational program that can address and aid the Student in accessing and progressing in the curriculum, of describing how his disability affects his involvement and progress in that curriculum.)

[30] P 6/R 2.

[31] P 6/R 2.

[32] P 6/R 2.

[33] P 6/R 2.

[34] P 6/R 2.

2nd grade range, and the goal only seeks nine months of growth over the course of a full year.[35]

13. The IEP includes statements of measurable annual functional goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of communication/speech and language.[36]

14. The IEP includes a statement of a measurable annual functional goal designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of emotional, social, and behavioral development.[37]

15. The IEP includes statements of measurable annual functional goals designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum in the area of motor skills/physical development.[38]

16. The IEP includes descriptions of how progress toward meeting the annual goals will be measured, but fails to include a description of when periodic reports on the progress the Student is making will be provided.[39]

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[35] P 6/R 2.

[36] P 6/R 2.

[37] P 6/R 2.

[38] P 6/R 2. (This is really one goal, but is listed on the IEP 13 times as a result, apparently, of staff not understanding how to document the 13 different evaluation procedures being used to measure progress toward the goal.)

[39] P 6/R 2.

17. The IEP includes a statement that the Student will be provided 15.55 hours per week of specialized instruction in the general education setting, and reading services for 2.5 hours per week in the general education setting.[40] The IEP also includes statements that the Student is in the special education setting for OT, 30 minutes per week, behavioral support services, 45 minutes per week, and speech-language pathology, 45 minutes per week.[41] Additional supplemental aids and services include: small group instruction; one on one instruction; and modified and/or shortened assignments, but the IEP does not document the anticipated frequency, location, and duration of these services.[42]

18. The IEP does not include an explanation of the extent to which the Student will not participate with non-disabled children in the regular class and in the related services and supplementary aids and services.[43]

19. Since the IEP was revised in January 2010, the Student is more engaged in school and doing better than he had been previously.[44]

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[40] P 6/R 2. (It is unclear how specialized instruction or reading instruction for this student with a learning disability in reading are provided. testified that the Student was both in rooms with co-teachers (regular and special education teachers) and also in a self-contained class room. This contradiction gives her testimony very little weight. The reading teacher, testified that she does not have a co-teacher and that she is neither a special education teacher nor a certified general education teacher.)

[41] P 6/R 2.

[42] P 6/R 2.

[43] P 6/R 2. Rather, the IEP describes the Student's problems, e.g. "weaknesses in fine motor development and organization" as opposed to an explanation why the Student must be pulled from the mainstream setting for these services.

[44] T of P, T of T of T of T of T of

## IV. CONCLUSIONS OF LAW

1. Federal regulations at 34 C.F.R. § 300.17 define a free appropriate public education (FAPE) as:

> special education and related services that –
> (a) Are provided at public expense, under public supervision and direction, and without charge;
> (b) Meet the standards of the SEA, including the requirements of this part;
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

The Supreme Court has described the purpose of the IDEA quite clearly:

> When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Board of Educ. v. Rowley, 458 U.S. 176, 203-204 (1982).

2. Federal Regulations at 34 C.F.R. § 300.320(a) requires an IEP to include:

> (1) A statement of the child's present levels of academic achievement and functional performance, including —
> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); . . .
> (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
> (B) Meet each of the child's other educational needs that result from the child's disability; . . .
> (3) A description of —
> (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

> (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
> (i) To advance appropriately toward attaining the annual goals;
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
> (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
> (A) The child cannot participate in the regular assessment; and
> (B) The particular alternate assessment selected is appropriate for the child; and
> (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

34 C.F.R. § 300.320(a), *see also*, D.C. Mun. Regs. tit. 5, § 3009.1.

3. "[A]n IEP that focuses on ensuring that a child is involved in the general education curriculum will necessarily be aligned with the State's content standards." Fed. Reg. Vol. 71, No. 156, Monday, August 14, 2006, p. 46662.

4. While the IEP includes statements of the Student's present levels of academic achievement and functional performance, it does not include a clear description of how his disability affects his involvement in and progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(1), and D.C. Mun. Regs. tit. 5, § 3009.1(a).

5. The Student's IEP does not include academic goals aligned with District of Columbia content standards for eighth grade because they only expect a nine month increase in academic performance in reading, writing and math, from a second to fourth grade level, for a student in grade. Academic goals for a student with a disability who is not so severely disabled to require assessment on modified or alternate academic achievement

standards and which do not align with the State's academic content standards for a student in that grade result in an IEP that is not reasonably calculated to provide educational benefit. The IEP is not formulated in accordance with the requirements of 34 C.F.R. § 300.20(a)(2) and D.C. Mun. Regs. tit. 5, § 3009.1(c) and is not designed to enable the student to achieve passing marks and advance from grade to grade as measured on grade-level academic content standards.

6. The IEP lacks a description of when periodic reports on the progress the Student is making toward meeting the annual goals will be provided, in violation of 34 C.F.R. § 300.20(a)(3)(ii) and D.C. Mun. Regs. tit. 5, § 3009.1(i).

7. The IEP documents the anticipated frequency, location, and duration of the special education and related services, but not the supplemental aids and services listed in the IEP, in violation of 34 C.F.R. § 300.20(a)(7) and D.C. Mun. Regs. tit. 5, § 3009.1(h).

8. The IEP does not explain why the Student will not participate with non-disabled children in the regular education classroom and other activities and related services, in violation of 34 C.F.R. § 300.20(a)(5) and D.C. Mun. Regs. tit. 5, § 3009.1(e).

9. The Student's progress, as reported by staff and is Parent, is indication only that the Student is doing better at school than he was before the IEP was revised, not that he is included in and progressing in the general education curriculum. The IEP and assessment data indicates otherwise and, based on the violations described herein, the Student is being denied a FAPE.

## V. DECISION

The Petitioner prevails because Respondent failed to propose an IEP reasonably calculated to provide educational benefit.

## VI. ORDER

1. The Student's IEP is hereby revised to reflect that the academic goals in the IEP are expected to be reached by the end of the regular 2009-2010 school year. The academic goals must be revised at that point (or before if the Student reaches more than half of them prior to the end of the school year) to reflect the anticipated outcomes by the end of the 2010-2011 school year. The revised academic goals, because the Student is so far behind grade level expectations at present, need not yet reflect the State academic standards for grade (his anticipated grade level for the 2010-2011 school year) but must be calculated to close the achievement gap between his academic performance at the end of the 2009-2010 school year and where graders are expected to be at the close of the 2010-2011 school year (or graders at the end of the 2010-2011 school year if the Student does not advance to grade).

2. The IEP must be revised to include a statement(s) of how the Student's disability affects his involvement and progress in the general education curriculum (the same curriculum as for nondisabled children). The statement(s) may be taken from assessment reports and observations from staff and the Petitioner, as reflected in existing notes, reports, and other data.

3. The special education and related services and supplementary aids and services necessary to assist the Student in reaching the current academic goals and the following year's goals must be provided. For the remainder of the current school year, these services will include, but if the IEP team determines more services are necessary are not limited to: 1) all reading, math, and written expression instruction from certified special education teachers in each of the specified areas; 2) five hours per week of one to one tutoring

services in the areas of reading, mathematics, and writing for the remainder of the current school year, including weeks with scheduled breaks; 3) an OT sensory-motor program consisting of 30 minutes per week of direct OT services to promote overall sensory processing; 4) handwriting skills, keyboarding, visual motor integration, visual perceptual skills, organizational skills, and self esteem building; 5) a formalized handwriting program; 6) handwriting practice and a checklist to use when completing writing assignments; 7) use of a computer with word-processing software and calendar and/or scheduling software; 8) preferential seating at front of classroom; 9) a visual timer in the classroom; 10) use of large, box graph paper or wide ruled lined paper turned to the side to line up math calculations and improve sizing, spacing and number alignment; 11) use of a ruler or a guide when reading, with verbal or visual cues to move guide as he reads or listens to the teacher reading; use of textbooks he can write in and no use of unlined, unnumbered, or unstructured paper for writing answers on; 12) limited oral directions and oral exams and providing verbal information in small chunks to prevent overwhelming the Student; 13) having oral direction repeated by the Student; 14) provision of rough outlines and graphic organizers to assist with processing and writing orally presented information; and 15) increased waiting time when Student is asked to volunteer information. The anticipated frequency, location, and duration of all special education and related services and supplementary aids and services must be recorded in the IEP

4. The IEP must be revised to state that periodic reports of the Student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year will be provided monthly in writing to the Petitioner.

5. The IEP must be revised to include an explanation of the extent to which the Student will not participate with nondisabled children in classes and activities and services described in the IEP.

6. The IEP revised pursuant to this order must be provided to the Petitioner no later than March 19, 2010. If the LEA believes additional changes must be made in order to assist the Student in reaching his academic goals by the end of the current school year, it must convene the IEP team, discuss, and propose what additional changes to the IEP will be made. Any additional changes resulting in an increased level of special education, related services, or supplementary aids and services are hereby authorized following the IEP team meeting and prior written notice to the Petitioner. This revised IEP constitutes the IHO's reasonable determination based on all of the evidence submitted and arguments made in this case.

**IT IS SO ORDERED.**

Dated this 8th day of March, 2010.

Jim Mortenson, Esq.
Independent Hearing Officer

## NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).