

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

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

RECEIVED
JUN 16 2010

STUDENT,¹
through the Parent

Petitioner,

Hearing Officer: James Gerl

v.

District of Columbia
Public Schools,

Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on March 31, 2010. The matter was assigned to this hearing officer on April 5, 2010. A resolution session was convened on April 30, 2010. A pre-hearing conference by telephone conference call was convened on April 23, 2010. One continuance of four days was granted upon the unopposed motion to continue filed by counsel for the Petitioner. The due process hearing was convened at the Student Hearing Office on June 7 and 8, 2010. The

¹ Personal identification information is provided in Appendix A.

hearing was closed to the public; the student's parent attended the hearing; and the student did not attend the hearing. Three witnesses testified on behalf of Petitioner, and one witness testified on behalf of Respondent. Petitioner's Exhibits 1 through 10 and 16 were admitted into evidence. Petitioner's Exhibits 11 through 15 were withdrawn by Petitioner at the hearing, but because they were disclosed they are included with Petitioner's disclosures in the administrative record. Petitioner's Exhibits 11 through 15 were not considered in reaching the hearing officer's determination in this case. Respondent's Exhibits 1 through 11 were admitted into evidence.

JURISDICTION

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

PRELIMINARY MATTERS

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

The Petitioner requested as relief in this case that Respondent fund a prospective private placement. The hearing officer asked the parties to submit pre-hearing briefs regarding the following issue: under what circumstances, if any, should a hearing officer exercise his discretion to award a prospective private placement as relief. Both parties submitted briefs on the issue. The question regarding relief, however, was not reached in this decision because the hearing officer did not find any violation of IDEA or the federal regulations or the DC statute or regulations.

The Petitioner requested that a Spanish-English interpreter be present during the hearing to interpret the testimony for the parent, as well as to provide an English version of the parent's own testimony. Due to a series of clerical errors, there was no interpreter present on the first day of the hearing. Counsel for Petitioner and counsel for Respondent stipulated and agreed that that hearing could proceed on the first day without the interpreter present. Petitioner's attorney and an educational advocate for Petitioner volunteered to interpret the proceeding for the parent on the first day of the hearing. Breaks in the testimony were taken to permit the above-described procedure. Two interpreters were present on the second day of the hearing and they interpreted the testimony for the parent, as well as interpreted the parent's own testimony into English on the record at the hearing. All parties agreed to this procedure and stipulated that they preferred to proceed with the hearing using the procedure outlined above rather than continue the hearing.

ISSUE PRESENTED

The following one issue was identified by counsel at the pre-hearing conference and evidence concerning this issue was heard at the due process hearing:

Is the March 26, 2010 individualized educational program (hereafter sometimes referred to as "IEP") developed for the student by Respondent appropriate? Petitioner contends that the level of services set forth by said IEP are inadequate and accordingly that the placement is inappropriate. Respondent contends that said IEP provides a free and appropriate education (hereafter sometimes referred to as "FAPE") for the student.

FINDINGS OF FACT

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

1. The student is attending a school operated by Respondent. (Stipulation by counsel on the record.)

2. The student's current individualized educational program (hereafter sometimes referred to as "IEP") calls for 15 hours of specialized instruction in a combination setting (that is, some of his instruction is received in the general education setting and some is in pull-out/special education setting.) The IEP also provides for one-half hour weekly of behavioral support services. (Stipulation by counsel on the record.)
3. On November 6, 2009, Respondent's special education teacher, administered an educational evaluation of the student. The evaluation found that the student's ability to apply academic skills is within the low average range; his academic skills and fluency with academic tasks are both within the low average range. The evaluation also found that the student's performance is average in mathematics and math calculation skills, low average in broad reading and very low in written language and written expression. (Petitioner's Exhibit 7) (references to exhibits shall hereafter be referred to as "P-1," etc. for the Petitioner's exhibits; "R-1," etc. for the Respondent's exhibits and "HO-1," etc. for the hearing officer

exhibits; references to testimony at the hearing is hereafter designated as "T".)

4. On November 12 and 20, 2009, the student was given a psychological evaluation. The evaluating psychologist found that the student meets the criteria for attention deficit hyperactivity disorder-combined type. The psychologist recommended that the student receive proximity seating close to the teacher; small group settings and breaks during work. The report of the evaluation was issued on December 14, 2009. (P-5).
5. On December 14, 2009, the report of a social work assessment of the student was issued. The evaluator recommended a medical consultation because of the student's headaches and because of his hearing voices. In addition, the evaluator recommended that the student receive behavioral support services and small group educational settings. (R-4).
6. On December 15, 2009, an MDT team determined that the student was eligible for special education and related services under the other health impaired category. The team then prepared an IEP for the student providing for 15 hours of specialized education, to

be provided as follows: 5 hours per week in the general education setting, and 10 hours per week outside general education in a pull-out setting. The IEP also provided for behavioral support services for the student for 30 minutes per week. (P-9).

7. On March 2, 2010, the student received a psychiatric evaluation. The evaluator noted that the student is currently receiving his IEP and improving his reading; and that the student has responded well to small group settings. The psychiatrist recommended further medical testing including a neurological consultation; medication management with the possibility of changing the medication prescribed for the student; that a speech language evaluation be conducted; and that the student continue to receive IEP services preferably in a small class with front row seating. (P-8).
8. On April 22-23, 2010, the student received a speech/language evaluation. The evaluator found that the student's articulation, hearing ability, fluency pattern, pragmatic skills, and voice quality were within the normal limits for his age. His test scores for expressive and receptive vocabulary were in the average range,

and his test scores in the expressive and exceptive language index, language content index, working memory index, language structure index were in the above-average to average range.(P-6).

9. On March 26, 2010, the student's MDT team met. The student's regular education teacher stated at the meeting that seating the student in the front of the classroom closer to her during instruction has proven effective and causes the student to focus better. The student's other regular education teacher said that the same is true in her classroom. The general education teachers noted that since working with the special education teacher in the small group instruction, they have notice positive growth in the student's self-esteem. The MDT team noted that the student needs to spend time with his non-disabled peers; that he seems to enjoy their company; that he has made friends and that in so doing his self-esteem is improving. (R-3).

10. On March 26, 2010, the student's IEP team met. Attending and participating in the meeting were the student's mother; Petitioner's educational advocate; Respondent's special education coordinator; Respondent's special education teacher that worked

with the student; both of the general education teachers of Respondent that work with the student; and the psychiatrist who evaluated the student. The student's IEP gives a detailed statement of his present levels of performance and establishes four goals in the area of mathematics, four goals in the area of reading, two goals in the area of written expression, and four goals in the area of emotional, social, and behavioral development. The IEP calls for 15 hours per week of specialized instruction to be delivered 10 hours per week in the general education setting and 5 hours per week in pull-out/outside the general education setting. The IEP calls for 30 minutes per week of behavioral support services. The IEP incorporates the recommendations of many of the evaluators who conducted evaluations on the student. The IEP calls for the following accommodations to be made both in the classroom and on assessments: reading of test questions (math, science, and composition only); location with minimal distractions; small group testing; flexible scheduling; test administered over several days; breaks during a sub-test.(R-2)

11. During the IEP team meeting on March 26, 2010, the parent's educational advocate told the team that the student is making good progress with the special education teacher and it was the desire of the parent for the student to have more hours with the special education teacher. All participants in the IEP team meeting were of the opinion that the student was making academic and behavioral progress under his IEP. (R-3; R-2; T of Petitioner's educational advocate; T of the student's mother; T of Respondent's special education teacher.)
12. At the IEP team meeting on March 26, 2010, the Petitioner's educational advocate asked the psychiatrist who had evaluated the student what would be "most beneficial" for the student. The psychiatrist stated in response to the question- number one, the student should be put on medication. But number two, if the parent refuses to medicate the student, the best thing for him would be a full-time special education placement. (T of Petitioner's educational advocate.)
13. The student has made progress on each of his IEP goals that had been introduced since his first IEP took effect in the third

reporting period. (R-8; T of Respondent's special education teacher.)

14. The student also made progress in his general education classes since his March 26, 2010 IEP was implemented. (T of Respondent's special education teacher; T of the student's mother; R-3;R-9.)

15. The student's report card for the third grade shows that he is generally receiving grades of B in reading and English language arts, mostly B's but some D's in mathematics; B's in science and social studies; D's in art and music; and B's in health and physical education. Although the report card shows that his work is below the standard and that his work habits and social skills needed improvement, the comments for the third advisory reporting period, which is the period after the students IEP first began to be implemented, describes some of the student's progress, noting that the student has been interacting more in class with his peers and during instructional time; that his preferential seating arrangement in the front of the class and near the teachers has

been positive; and that he is completing more of his class work and turning in homework with more frequency. (R-9).

16. The DIBELS-Progress Monitoring Report for the student shows that his oral reading fluency improved dramatically since his IEP has been in effect. On September 30, 2009 the student was reading 20 words per minute. As of December 15, 2009, the student was reading 34 words per minute. The measurement has generally progressed upward until the student was reading 54 words per minute on May 7, 2010 and 47 words per minute on May 26, 2010. (R-10).

17. The student has made academic progress under the March 26, 2010 IEP. Under his IEP, the student's reading has improved, his vocabulary has improved, his decoding of regular and irregular words has improved. The student has also made progress on all IEP goals that were introduced. (T of Respondent's special education teacher; R-8.)

18. The student's attention and behavioral issues have improved under the March 26, 2010 IEP. The student has less trouble staying on task and finishing and completing his work. He no

longer falls asleep in class; he remains alert. He is able to generally sustain his effort and finish his work. He is less distracted than he has been in the past. He has calmed down a lot since his IEP has been implemented. (T of Respondent's special education teacher.)

19. Respondent's special education teacher works with the student every school day and has the opportunity to observe the student every school day. (T of Respondent's special education teacher.)

20. The level of services provided in the student's March 26, 2010 IEP is adequate. (T of respondent's special education teacher.)

21. The March 26, 2010 IEP was reasonably calculated to, and in fact did, lead to educational benefit for the student. (Record evidence as a whole.)

22. The student's parent participated meaningfully in the student's IEP development. (T of the student's mother; T of Petitioner's educational advocate; T of Respondent's special education teacher; R-2).

23. The full-time special education school proposed by the Petitioner would provide the student with no interaction at all with is non-disabled peers. (T of Petitioner's witness-admissions coordinator at the private school.)
24. On April 30, 2010 as a part of the resolution process, the student's IEP team met and altered his IEP. The IEP retains 15 hours per week of specialized instruction but switches the format back to 5 hours per week in the general education setting and 10 hours per week in the pull-out/outside general education setting. The IEP makes no other changes to the student's educational program. The changes to the student's IEP on April 30, 2010 were primarily made to accommodate the schedule of the student's special education teacher. (P-16; T of Respondent's special education teacher.)

CONCLUSIONS OF LAW

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

1. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA"), and an analysis of whether the individualized educational plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).
2. The student's parent actively and meaningfully participated in the development of the March 26, 2010 IEP for the student, and the

parent's input was duly considered by the team. 34 C.F.R. §300.322; TT v. District of Columbia, 48 IDELR 127 (D.D.C. July 23, 2007).

3. The IEP developed by Respondent for the student on March 26, 2010 was reasonably calculated to provide education benefit for the student in the least restrictive environment. The March 26, 2010 IEP contains a sufficient level of services, an appropriate placement and appropriate accommodations for the student and it appropriately addresses his needs. IDEA §§612(a)(1) and (5); 34 C.F.R. §§300.101, 300.114, 300.320 to 300.324; Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).
4. IDEA does not require a school district to maximize the potential of a child with a disability; rather, it requires that an IEP be reasonably calculated to confer some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

5. In determining the placement for a child with a disability, a school district is required to the maximum extent appropriate to ensure that the child is educated with children who are not disabled, and that any removal from the regular education environment must occur only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. IDEA §612(a)(5); 34 C.F.R. §§300.114, 300.115. The placement of the student contained in the March 26, 2010 IEP developed by Respondent for the student was the least restrictive environment appropriate for the student.
6. A procedural violation of IDEA only results in actionable relief when the violation substantively affects the student by causing educational harm or where it seriously impairs the parent's right to participate in the IEP process. Lesesne ex rel B.F. v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006); IDEA §615(f)(3)(E)(ii).
7. The March 26, 2010 IEP developed for the student by Respondent provides the student with a free and appropriate public education.

Bd. of Educ. etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); See, Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

DISCUSSION

Merits

The sole issue in this case is whether the March 26, 2010 IEP for the student provides a free and appropriate public education. IDEA requires school districts, such as Respondent, to provide a child with a disability, such as the student in the instant case, with a free and appropriate public education (hereafter sometimes referred to as "FAPE") IDEA §§612(a)(1) and (5); 34 C.F.R. §§300.101, 300.114.

The United States Supreme Court has established a two-part test for determining whether a school district has provided FAPE to a student. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in IDEA and an analysis of whether the IEP is reasonably calculated to enable the child

to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); See, Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

In the instant case the record evidence is abundantly clear that the March 26, 2010 IEP was reasonably calculated to, and in fact did, confer educational benefit upon the student. Indeed, this is a rare case where all of the witnesses who testified at the due process hearing agreed that the student was making good educational progress under his IEP. Petitioner's advocate testified that the student was doing very well with his special education teacher; so well in fact, that Petitioner wanted more hours with the special education teacher. Similarly, this student's mother testified that because the student was making such good progress with the special education teacher that she wanted him to have more time with the special education teacher. In addition, the mother testified that one of the student's general education teachers had told her approximately a month before the hearing that the student had been improving in his general education classes.

The testimony of parent's witnesses is corroborated in this regard by the testimony of Respondent's witness. Respondent's special education teacher testified that since his first IEP and after the March 26, 2010 IEP, the student had improved in many areas. With regard to his behavior in particular, he has calmed down a lot. He was also doing much better in terms of staying of task and finishing his work. Concerning academics, the student improved in many areas including: reading, vocabulary, decoding regular words, and decoding irregular words. The special education teacher also testified that the student has made progress in that he no longer falls asleep in class, he remains alert, he processes information better, he is better able to sustain effort and finish his work. The special education teacher based his conclusions in this regard upon his working with and observing the student in the classroom on a daily basis. In addition, the special education teacher testified that in working with the student every day he had occasion to talk to the student's general education teachers who told him that the student was also making progress in their classes.

The testimony of the witnesses for both parties that the student was making progress, and thus was receiving academic benefit, under

his IEP is further corroborated by the documentary evidence submitted in this case. The IEP progress report for the student shows that for the third reporting period, which was the first reporting period after his first IEP had been developed and implemented, the student was progressing on all of his IEP goals that were introduced during that period. The MDT report from the March 26, 2010 meeting quotes his general education teachers as saying that he has been making progress since working with the special education teacher in the small group setting. The MDT report also noted that preferential seating in the general education classes was also working well. Similarly, the student's report card shows that he made mostly B's in his academic subjects with the exception of a few D's in mathematics. Although the report card does reflect that the student continues to struggle with some work habits and personal and social skills and that his work is below the standard, the report card does show that the student has made progress since he was put on an IEP which is reflected in the third advisory marking period. In particular, the teacher comments section of the report card for the third advisory shows that the student has been interacting more in class with his peers that his preferential

seating assignment in the front of the class has had positive results; that he is completing more class work; that he is turning in homework with more frequency and that his reading level is somewhat higher. In addition, the progress monitoring data compiled by the special education teacher demonstrates that the student has made great progress with regard to reading. The DIBELS-Progress Monitoring Report shows that on September 30, 2009, the student was reading 20 words a minute. Those numbers increased consistently after his IEP was implemented from December 2009 through May 2010 when the student's oral reading fluency had increased to between 47 and 54 words per minute.

The witnesses for Petitioner and the witness for Respondent did disagree concerning whether the level of services provided in the March 26, 2010 IEP was adequate. To the extent that the witnesses disagree, the testimony of respondent's witness is more credible and persuasive than the testimony of Petitioner's witnesses. This conclusion is based upon the demeanor of the witnesses as well as the other factors discussed in this decision. More importantly, the conclusion by Petitioner's witnesses that the level of services was inadequate is based

upon the improper use of a potential-maximizing standard. (See discussion later in this decision). All witnesses agree that the student was making good progress, and thus receiving educational benefit, under his IEP. Thus when applied to the correct legal standard, the level of services under the March 26, 2010 IEP was clearly appropriate given the student's progress. When the correct legal standard is applied, the witnesses are really in agreement- the student made progress and received educational benefit under his IEP. Additional services might be the "best" thing for the student, but Respondent is not required to provide the best education, only an appropriate one.

Any fair reading of the evidence in this case necessitates a conclusion that the student's March 26, 2010 IEP was reasonably calculated to provide educational benefit and that the IEP did provide educational benefit to the student.

Indeed, the only evidence in the record concerning an allegation that the student needs a higher level of services involves the testimony provided by Petitioner's educational advocate who stated in response to a question by the hearing officer that at the March 26, 2010 IEP meeting he asked the psychiatrist who had evaluated the student what

would be "most beneficial" for the student. The advocate stated the in response to his question the psychiatrist said number one, the student needs to be on medication. But, number two, if the parent refuses to medicate the student, then he would benefit from a full-time special education placement. The testimony of the student's mother attributed a similar quote to the psychiatrist at the IEP meeting. The special education teacher for Respondent who attended the meeting did not recall any such statement. In any event, the student's alleged need for a full-time special education placement is tainted by the potential maximizing question which the advocate posed to the psychiatrist. The law does not require a school district to do what is most beneficial for or to maximize the potential of a student with a disability; rather, IDEA requires that an IEP be reasonably calculated to confer some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). Thus, the fact that the statement attributed to the psychiatrist was elicited based upon the advocate's question concerning what would be "best" for the student diminishes the value of the statement. The school district

is not required to do the best possible thing for a student with a disability.

Significantly, the quotes attributed to the psychiatrist are also inconsistent with her evaluation report. The report does not recommend a full time special education placement for the student. Instead, the report supports the conclusion that the student is making academic progress under his IEP. The report notes that under his IEP, the student's reading is improving. Thus the student was receiving academic benefit according to the psychiatrist. Applying the proper standard, it must be concluded that the psychiatrist's report shows that the student's IEP is appropriate.

Similarly, the testimony of the student's mother that the student would "do better" in a full-time private school with a smaller class size suffers from the same problem- it assumes a potential maximizing standard. All children would likely do better in a school with a smaller class size, but a local education agency is not required to do the best thing or even the better thing for the student. All that is required is that the school district provide a FAPE.

Moreover, IDEA requires that to the maximum extent appropriate, children with disabilities be educated with children who are not disabled, and IDEA requires that special classes, separate schooling or other removal of students with disabilities from the regular education environment occur only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aides and services cannot be achieved satisfactorily. Student placement decisions under IDEA must be made in conformity with the least restrictive environment (hereafter sometimes referred to as ("LRE")) provisions quoted above. IDEA §612(a)(5); 34 C.F.R. §§300.114 through 300.120. The admissions coordinator for the private school which Petitioner was seeking to have the student attend testified that no non-disabled children attend that school; therefore, even assuming arguendo that the record evidence could be construed to show that the student requires additional levels of services, placement in a full-time special education private school that would provide no interaction with non-disabled peers would violate the LRE requirements. The student's report card notes that under his IEP he is having better and increased interaction with his non-disabled peers.

The Petitioner provided testimony of the mother that she tries to supplement the student's interactions with non-disabled peers after school. Although these activities by the parent are clearly commendable, they do not replace the LRE requirement imposed by IDEA upon the school district. Petitioner has not demonstrated that the student cannot be appropriately educated in the combination setting his IEP currently places him in with 15 hours of special education and the remainder of time in the general education setting. Indeed, the record evidence compels the opposite conclusion, that the March 26, 2010 IEP was reasonably calculated to, and in fact did, provide educational benefit to the student. Accordingly, the placement in the student's March 26, 2010 IEP is the appropriate least restrictive environment placement for the student.

Concerning the first prong of the Rowley analysis, the record evidence reveals that the student's March 26, 2010 IEP was developed consistent with the procedural safeguards of IDEA. The student's mother and her educational advocate participated actively in the IEP process. The IEP was developed by a properly constituted IEP team.

The team incorporated many of the recommendations of the evaluators in the IEP. The IEP contains all required contents.

The only procedural violation alleged by Petitioner involves the somewhat troubling testimony by the Respondent's special education teacher that the student's IEP was switched in April, 2010 from 5 pull-out hours per week and 10 inclusion hours per week to 10 pull-out hours per week and 5 inclusion hours per week in order to accommodate the teacher's schedule rather than the student's needs. Although the teacher later changed his testimony to have the change reflect both an accommodation to his schedule as well as to better suit the student, his first testimony was that the change was solely to accommodate his own schedule.

A procedural violation constitutes a viable claim under IDEA only when the procedural violation affects the parties' substantive rights; either by depriving the student of educational benefit or by serious hampering the parent's opportunity to participate in the process. Lesesne ex rel B.F. v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006); IDEA §615(f)(3)(E)(ii). In the instant case, Petitioner has not shown that the alleged procedural violation has had

any impact either upon the student's education or upon the parent's right to participate. Indeed, the number of hours of special education to be received by the student remained the same. Accordingly, there has been no educational harm and any procedural violation here is harmless. More importantly, the change to the IEP came in April, 2010, well after the period relevant to the instant complaint, which involves the March 26, 2010 IEP for the student. See, IDEA § 615(c)(2)(E). Thus, the petitioner, has demonstrated no viable procedural violations.

The petitioner has not carried her burden on this issue. The Respondent has prevailed on this issue

ORDER

Based upon the foregoing, it is hereby ordered that the complaint in this matter is dismissed with prejudice. None of the relief requested by Petitioner is awarded.

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: June 16, 2010 _____

/s/ James Gerl _____
James Gerl,
Hearing Officer