

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

Student Hearing Office
810 1st Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,¹
through the Parent

Petitioner,

v

District of Columbia
Public Schools,

Respondent.

Date Issued: October 1, 2011

Hearing Officer: James Gerl

OSSE
STUDENT HEARING OFFICE
2011 OCT -3 AM 9:11

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on July 18, 2011. The matter was assigned to this hearing officer on July 20, 2011. A resolution session was convened on August 1, 2011. Although no resolution was reached at the resolution session, the parties agreed to continue to negotiate through the 30-day resolution period. A prehearing conference was convened by telephone conference call on August 24, 2011. The due process hearing was convened by agreement of the

¹ Personal identification information is provided in Appendix A.

parties at the Student Hearing Office on September 21, 2011. The hearing was closed to the public. The student's mother attended the hearing and the student attended the hearing. Four witnesses testified on behalf of the petitioner. One witness testified on behalf of the Respondent. Petitioner's exhibits 1-18 were admitted into evidence. Respondent's exhibits 1-7 were admitted into evidence. The decision of the hearing officer is due to be issued on or before October 1, 2011.

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 proposed 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.

Approximately ten days prior to the hearing, previous counsel for Respondent filed a motion to continue the hearing. The basis for the motion was that the previous attorney for Respondent would not be able to participate in the hearing because she would no longer be employed in her capacity as an attorney for Respondent. The motion was denied by separate order which is incorporated by reference herein.

ISSUE PRESENTED

The following issue was identified by counsel at the prehearing conference and evidence concerning this issue was heard at the due

process hearing: Did Respondent violate IDEA by failing to amend the student's IEP to a full-time special education program and by failing to timely select a location to implement the student's IEP?

FINDINGS OF FACT

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

1. The student's date of birth is (P-4) (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".)
2. The student was given a comprehensive psychological evaluation on February 1, 2010. The evaluator found the student's cognitive ability to be within the average range. The evaluator found that the student had a specific learning disability in the area of mathematics and that the student met the criteria for attention deficit hyperactivity disorder, combined type. The evaluator recommended that the student receive counseling to address his

aggression, hyperactivity and conduct problems in the school setting. (P-7)

3. The student's IEP team met on January 10, 2011. Present at the meeting were the student's mother, the student's educational advocate, a case manager for Respondent, a social worker for Respondent, Respondent's special education coordinator, a general education teacher, the student's tutor pursuant to a previous settlement, the dean of students at the high school attended by Respondent, and Respondent's compliance specialist. The purpose of the meeting was to review the student's academic and behavioral progress in order to comply with a previous settlement agreement. The team discussed the implementation of an attendance contract agreement to improve the student's attendance and it changed in his mode of transportation to ensure his arriving at school on time. The team discussed a list of community agencies that could provide mentoring support to the student. The IEP lists the student's primary disability as multiple disabilities. The IEP includes present levels of educational performance and goals in the areas of mathematics, written

expression, and emotional/social/behavioral development. The IEP purports to provide 24 hours per day (sic) of specialized instruction outside the general education environment, as well as 120 minutes per month of behavioral support services. The IEP includes a post-secondary transition plan. The student's mother noted her agreement with the IEP on January 13, 2011. (P-4; R-3)

4. There is a typographical error in the student's January 10, 2011 IEP. The IEP team agreed that the student needed 24 hours per week (not per day) of specialized instruction outside the general education environment. (T of Petitioner's educational advocate, T of Respondent's special education coordinator; R-3)
5. Following a functional behavioral assessment, Respondent developed a behavioral intervention plan for the student on March 21, 2011. Said behavioral intervention plan targets the following behaviors: cutting class, walking out of school, using profanity, disrespecting others, and failing to complete assignments. The behavioral intervention plan provides for various strategies and positive behavior supports to change such bad behaviors. The plan sets a time for it to be reviewed. (R-5)

6. The student received grades of D in English I and Learning Lab for the 2010-2011 school year. In all of his other courses, he received a grade of F. (P-8)
7. The student was disciplined by Respondent for various incidents on October 20, 2010; January 7, 2011; February 17, 2011; March 29, 2011; and on September 1, 2011. (P-9, P-10, P-12, P-13, P-14; T of student's mother)
8. The student's IEP team met on June 14, 2011. Present were the student's mother, Petitioner's educational advocate, Respondent's case manager, Respondent's special education coordinator, the dean of students at the high school attended by the student, Respondent's social worker, a general education teacher, and a special education teacher. The IEP team reviewed the student's poor grades for the first three advisory periods and noted that the student was currently enrolled in all self-contained special education classes for his core classes (history, science, english and math). The student's teachers noted that he does not come to class. The team discussed the student's "walking the halls," and his wearing a hat and sunglasses while in school. Respondent's

social worker who was working with the student informed the team that School No. 1 is too stimulating for the student. The social worker warned that it could become a safety issue for the student because he is able to roam through the building and the parking garage. The social worker claimed that the attendance issues impacted the student's ability for academic success. Reviewing the student's attendance record, the team discovered that the student had attended school 113.5 out of 177 school days as of that time. He had accumulated a total of 362 absences from his classes with 93 of those having been authorized due to suspensions and 45 being excused, leaving 224 unexcused absences. In addition, he had been late to school 32 times during that timeframe. After a lengthy discussion of the attempts made to secure the student's attendance and his unwillingness to adhere to school rules and policies, his refusal to attend class and to arrive at school on time and the safety concerns regarding his inability to attend class while wandering through various parts of the school building, it was the consensus of the student's IEP team that he needed a more restrictive learning environment in order to

address the behavioral challenges he was exhibiting. The IEP team agreed to submit appropriate documentation to Respondent's central office in order to place the student in a more restrictive learning environment than School No. 1 for the 2011-2012 school year. (R-4; T of Petitioner's educational advocate)

9. A resolution meeting was held pursuant to the filing of the instant due process complaint on August 1, 2011. Present at the meeting were Respondent's compliance case manager, the student's mother (via telephone) and the student's educational advocate. The representative of Respondent stated that determining a location at which the student's IEP could be implemented involved a process. The representative stated that Respondent's "LRE review team" needed to observe the student in his current location, School No. 1. Because the student's IEP team met on June 14, 2011, which was the last day of school, the team had been unable to observe him because of summer vacation. It was noted that after school reconvened in a couple of weeks, it would be possible for the review team to conduct its observations. (P-3)

10. On September 14, 2011 Respondent issued a prior written notice stating that the student had been assigned to the full-time ED program at the _____ at School No. 2. On the same date, respondent issued a letter of invitation inviting Petitioner to attend an IEP/MDT Team meeting at which any questions the Petitioner had concerning the new program could be discussed. (R-6, R-7; T of Respondent's special education coordinator)

11. Petitioner's educational advocate attempted to visit the _____ ED program at School No. 2 after receipt of said prior written notice. The educational advocate was not permitted to view the program or meet with staff because he had not received prior approval from Respondent's special education coordinator. Respondent's special education coordinator attempts to prevent observations of the program because of the emotional disabilities of the students involved and their reactions to other observers. Petitioner's educational advocate and the student's mother returned after having made an appointment to visit with Respondent's special education coordinator and discussed said

program on the day prior to the due process hearing. (T of Petitioner's educational advocate, T of Respondent's special education coordinator)

12. Prior to determining that the student would be a good fit at Respondent's ED program at School No. 2, Respondent's special education coordinator observed the student in his classes at School No. 1. (T of Respondent's special education coordinator)

13. Respondent's ED program at the is located in the newest part of the building of School No. 2. The program is a full-time special education program. It has a separate entrance in the rear for students to use. It is in a newly renovated area that is a bright and aesthetically pleasing environment. Most classes at the have two teachers, plus one paraprofessional and one behaviorist. In addition, a social worker comes in and out of the classrooms. At present, there are up to ten students in each class, although at capacity there could be between 16 to 18 students per class. Most classes at the Academy have four or five

adults and up to 16 to 18 students. Some smaller classes have only two or three students, but every class has at least two teachers. When students are prone to leave their classes at the
at least one staff member is positioned near the door. Staff members are strategically positioned throughout the building to keep an eye on students who might leave or walk the halls. In addition, staff members are stationed by all entrances to the building, and if they see a student attempting to leave, they can try to escort the student back to his classroom. All electives are offered at the
including physical education, art and music. Music and art teachers are transitioned to the Arts and Tech program in order to teach these classes. Individual student behavioral intervention plans are implemented at the in addition to a program-wide behavioral system, which is a points based system for behaviors. All students at the participate in extracurricular activities including: PSAT preparation, student government, a wide variety of sports, and various clubs. (T of Respondent's special education coordinator)

14. Respondent's ED program at the _____ at School No. 2 is able to implement a more restrictive, full-time special education IEP that meets the needs of the student as identified by his IEP team, and it is well designed to deal with the student's inappropriate behaviors in walking the halls and failing to attend class. Respondent's ED program at the

_____ at School No. 2 provides FAPE to the student. (Record evidence as a whole)

15. Respondent has never changed the student's IEP to reflect the more restrictive learning environment that his IEP Team determined that he needed on June 14, 2011. (T of Petitioner's educational advocate)

16. Twelve hours of individual one-on-one tutoring in the student's academic subjects will adequately compensate the student for the educational harm he has suffered as a result of the denial of FAPE by Respondent herein. The student has received tutoring previously and he has worked well with the tutor. The student needs the additional support that will be provided by the tutoring, and 12 hours is a reasonable amount of tutoring to compensate

the student for his educational loss. (T of Petitioner's educational advocate)

CONCLUSIONS OF LAW

Based upon the evidence in the record, the arguments of counsel, as well as my own legal research, I have made 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 (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be a determination as to whether the school district has complied with the procedural safeguards as 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 Education Plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable a child to receive some educational benefit. Bd. of Educ, etc. 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).

2. Changes to a student's individualized educational plan must be made by his IEP team through the IEP process. IDEA § 614; 34 C.F.R. §§ 300.320 – 300.324. In the instant case, Respondent denied FAPE to the student by failing to change his IEP and by unreasonably delaying the change after the IEP Team determined that the student needed a more restrictive educational environment.
3. A parent of a student with a disability has a right to actively and meaningfully participate in the IEP development process. 34 C.F.R. § 300.322; TT v. District of Columbia, 48 IDELR 127 (D.D.C. July 23, 2007).
4. Placement for purposes of IDEA does not refer to the location at which a student's IEP will be implemented; rather, placement means the educational setting where the services will be delivered or the educational program. TY and KY ex rel. TY v. New York City Department of Education, 584 F.3d 412, 53 IDELR 69 (2d Cir. October 9, 2009); AW by Wilson v. Fairfax County Sch Bd 372

F.2d 674; 41 IDELR 119 (4th Cir. June 24, 2004); Lunceford v. District of Columbia 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. October 16, 1984); NS ex rel. JS v. State of Hawaii, Department of Education, 54 IDELR 250 (D. Haw. June 9, 2010); CR by Russell v. Water Valley School District, 44 IDELR 243 (N.D. Miss. March 17, 2008).

5. A due process hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates IDEA. School Committee Town of Burlington v. Department of Education, 471 U.S. 358, 369, 105 S. Ct. 1996, 55 IDELR 389 (1985); Forest Grove Sch. Dist. v. T. A., 129 S. Ct. 2484, 52 IDELR 151, n.11 (June 22, 2009); Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. March 25, 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. March 25, 2008); Los Angeles Unified School District v. DL, 548 F. Supp. 3d 815, 46 IDELR 252 (C.D. Calif. March 10, 2008); Bishop v. Oakstone Academy, 47 IDELR 125 (S.D. Ohio 2007); In re Student with a Disability, 108 LRP 45824 (SEA WV June 4, 2008).

6. Under IDEA, the clear preference is for a placement in public school; placement in a private school is the exception. RH by Emily H and Matther H v. Plano Independent School District, 54 IDELR 211 (5th Cir. May 27 2010). A hearing officer or court should only award prospective private placements as relief to ensure that a child receives the education required by IDEA in the future where a balance of the relevant factors justifies such a placement. In addition to the conduct of the parties, which is always relevant in fashioning equitable relief, the following factors must be balanced before awarding perspective private placements: the nature and severity of the student's disability; the student's specialized individualized educational needs; the link between those needs and the services offered by the private school; the private school placement's cost; and the extent to which the placement represents the least restrictive environment. Branham ex rel. Branham v. District of Columbia, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. October 25, 2005).
7. All relief under IDEA is equitable in nature. Compensatory services or compensatory education for a violation of IDEA should

be flexible and designed to remedy the harm caused by the violation of the act. Relief under IDEA should be qualitative and tailored to the specific facts and circumstances of a particular case, the nature and severity of the violation, and the nature and severity of the student's disability. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. March 25, 2005).

DISCUSSION

Merits

Issue No. 1: Did Respondent violate IDEA by failing to amend the student's IEP to provide for a full-time special education program and by failing to timely select a location to implement the student's IEP?

Petitioner contends that respondent violated IDEA by failing to amend the student's IEP to provide for a full-time special education program. The student's IEP team met on June 14, 2011. The team noted that although all of the student's core classes were self-contained special education classes, the student continued to make bad grades and that he exhibited bad behavior, such as walking the halls and failing to attend class. The social worker of Respondent who worked

with the student stated that School No. 1, his then current school, was too stimulating for him and that it could be a safety issue for the student because he roams the building and the parking garage. After a lengthy discussion of the student's unwillingness to adhere to school rules, his refusal to attend class, and arrive on time and the safety concerns related to his wandering through the building, the team developed a consensus that the student needed a more restrictive learning environment in order to address his behavioral challenges. Thus, in this case, Respondent has conceded that the student needed a more restrictive learning environment than his educational program at School No. 1 was providing him.

Rather than change the student's IEP, however, his IEP team provided documentation to Respondent's central office concerning a more restrictive environment for the student. The Petitioner contends that Respondent violated IDEA by failing to change the student's IEP to reflect the IEP Team decision. Respondent contends that it needed to do an observation of the student in his learning environment before determining the location at which the student would receive services.

It is true, as Respondent contends, that the location at which a student's IEP is implemented is not the same thing as placement. A parent has a right to be an integral part of placement decisions made by an IEP team. The location of the implementation of an IEP, however, is a matter within the discretion of the local education agency. TY and KY ex rel. TY v. New York City Department of Education, 584 F.3d 412, 53 IDELR 69 (2d Cir. October 9, 2009); AW by Wilson v. Fairfax County Sch Bd 372 F.2d 674; 41 IDELR 119 (4th Cir. June 24, 2004); Lunceford v. District of Columbia 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. October 16, 1984); NS ex rel. JS v. State of Hawaii, Department of Education, 54 IDELR 250 (D. Haw. June 9, 2010); CR by Russell v. Water Valley School District, 44 IDELR 243 (N.D. Miss. March 17, 2008).

In the instant case, however, it is significant that the student's IEP has never been amended to reflect the decision of his IEP team that he needs a more restrictive placement. As of June 14, 2011, the student was receiving 24.5 out of 27.5 hours per week in separate special education classes. The IEP team specifically determined that not only did the student need a more restrictive placement, but also that the

student was unsafe having his IEP implemented in the less restrictive environment at School No. 1. Respondent called no witnesses to explain the decision to defer changing the student's IEP despite such a strong finding by the student's IEP team. Because IEPs are written by the IEP Team, Petitioner's argument is sound. Accordingly, it is concluded that Respondent denied FAPE by failing to amend the student's IEP to require a full-time special education placement. The order portion of this decision shall amend the student's IEP to so require.

Moreover, Respondent failed to determine the location of the more restrictive placement that would implement the student's IEP until September 14, 2011. Respondent provides no explanation for this delay.

It is not clear from the evidence in the record whether Respondent's "LRE Review Team" had the authority to overrule the IEP Team's decision as petitioner argues. This would be a gross violation of IDEA. The evidence, however, does not reveal that the review team had such power. Nonetheless, the notion that the student had to spend additional time, even a small amount of time, in an educational environment that his IEP Team had determined to be inappropriate and possibly unsafe is not acceptable.

Petitioner's educational advocate testified credibly and persuasively that the delay in determining a location for the implementation of the student's IEP was unreasonable. It is concluded that Respondent denied FAPE to the student from the beginning of the 2011-2012 school year until September 14, 2011 when Respondent declared an educational environment that would be more restrictive and that could implement the student's IEP.

On September 14, 2011, the Respondent notified the Petitioner that the student's IEP would be implemented at the ED program of the Arts and Tech Academy at School No. 2. Petitioner contends that this program is also inappropriate, but the record reveals that said program can clearly meet the student's unique needs.

The small class sizes and low student to teacher ratio in said program will benefit the student. The positioning of staff of Respondent at the entrances to the building, as well as having staff keep their eye on students who might have a tendency to leave, will help deal with the student's attendance and hall wandering issues at the school. Respondent's special education coordinator testified credibly and persuasively that the program to which the student was assigned on

September 14, 2011 by Respondent could effectively implement the more restrictive IEP determined by his IEP team as necessary to meet his needs. The new program at School No. 2 is appropriate to deliver the student's educational program in a more restrictive environment. It is concluded that Respondent has provided FAPE to the student since the offer on September 14, 2011 of the program at School No. 2.

To the extent that the due process complaint alleges a denial of FAPE because Respondent failed to amend the student's IEP and because Respondent unreasonably delayed until September 14, 2011 the designation of a new learning environment to implement the student's IEP, Petitioner has met her burden and Petitioner has prevailed in this matter. To the extent that the Petitioner alleges that the location designated by Respondent on September 14, 2011 denies FAPE to the student, Petitioner has not met her burden of persuasion, and Respondent has prevailed.

Relief

A due process hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates IDEA.

School Committee Town of Burlington v. Department of Education, 471 U.S. 358, 369, 105 S. Ct. 1996, 55 IDELR 389 (1985); Forest Grove Sch. Dist. v. T. A., 129 S. Ct. 2484, 52 IDELR 151, n.11 (June 22, 2009); Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. March 25, 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. March 25, 2008); Los Angeles Unified School District v. DL, 548 F. Supp. 3d 815, 46 IDELR 252 (C.D. Calif. March 10, 2008); Bishop v. Oakstone Academy, 47 IDELR 125 (S.D. Ohio 2007); In re Student with a Disability, 108 LRP 45824 (SEA WV June 4, 2008).

Concerning this student's IEP, the IEP Team for the student made specific findings that the program at School No. 1 could not meet the student's needs and rendered him unsafe. Despite these facts, the IEP team did not amend the student's IEP. The first portion of relief that is required, therefore, is to amend the student's IEP to require a full-time special education program. The order shall include such a provision.

Petitioner requests a prospective private placement to a specific non-public school as relief for Respondent's actions. Under IDEA, the

clear preference is for a placement in public school; placement in a private school is the exception. RH by Emily H and Matther H v. Plano Independent School District, 54 IDELR 211 (5th Cir. May 27 2010). A hearing officer or court should only award prospective private placements as relief to ensure that a child receives the education required by IDEA in the future where a balance of the relevant factors justifies such a placement. In addition to the conduct of the parties which is always relevant in fashioning equitable relief, the following factors must be balanced before awarding perspective private placements: the nature and severity of the student's disability; the student's individualized educational needs; the link between those needs and the services offered by the private school; the private school placement's cost; and the extent to which the placement represents the least restrictive environment. Branham ex rel. Branham v. District of Columbia, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. October 25, 2005)

In the instant case, the denial of FAPE by Respondent was for a very short period of time. School was not in session from the IEP meeting on June 14 until sometime in August 2011. The denial of FAPE found in this case, therefore, only extends from the beginning of

the 2011-2012 school year through September 14, 2011. In addition, as Petitioner concedes, the number of hours per week that the student had been denied special education was no more than three. Thus, the denial of FAPE was not only for a short period of time, but also involved a relatively small number of hours of specialized instruction.

Counsel for Petitioner argues that the behavior of the parties tilts the equities in favor of a private placement for the student. This argument is rejected. Although Respondent has denied FAPE to the student, the denial of FAPE was for a short period of time and involved a small number of hours. In addition, the new program at School No. 2 is well designed to meet the student's individual needs and it constitutes the least restrictive environment that is appropriate for the student. After the denial of FAPE, Respondent behaved well by creating an appropriate program for the student. Thus, the student does not need a private school program in order to receive FAPE because the new public school program to which he is currently assigned provides FAPE. A change to the private school requested by Petitioner is not necessary to meet the student's individual needs. Accordingly, it is concluded after balancing the relevant factors that a prospective

placement is not appropriate to remedy the violation committed by Respondent herein.

Petitioner also requests compensatory education. Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. March 25, 2005).

In the instant case, Petitioner provided the testimony of Petitioner's educational advocate that 12 hours of individual one on one tutoring would remedy the harm done to the student by the denial of FAPE in this case. The testimony of Petitioner's educational advocate in this regard was persuasive and credible. In particular, the advocate took into account the student's responsiveness to previous tutoring in his academic subjects; tutoring is likely to be effective for this student. In addition, the educational advocate's testimony recognized that the student was denied FAPE for a relatively short period of time and for a relatively small number of hours. The 12 hours of tutoring was calculated in order to remedy the harm to the student in this case as a result of the denial of FAPE committed by Respondent, and the calculation was limited to what the student needs in order to be appropriately compensated. It is concluded that 12 hours of individual

tutoring will adequately compensate the student for the harm done by the denial of FAPE by Respondent in this case.

Because compensatory education awards should be flexible in nature, the parties have the option to alter the award in any manner that they may agree. If the parties do not agree to make changes to the compensatory education award, the compensatory education shall be as stated in this decision.

ORDER

Based on the foregoing, it is HEREBY ORDERED as follows:

1. The student's current IEP is hereby amended to require that Respondent provide a full-time special education program for the student; and

2. Unless the parties agree otherwise, Respondent is hereby ordered to reimburse the Petitioner for twelve (12) hours of individual one on one tutoring in the student's academic subjects by a tutor to be selected by Petitioner as compensatory education or compensatory services. Unless the parties agree otherwise, the cost of said tutoring shall not exceed the market rate for similar services in the Washington, D.C. metropolitan area. Unless the parties agree otherwise, said

compensatory education services shall be provided to the student within one year of the date of this decision; and

3. All other relief requested by the instant due process complaint is hereby denied.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Date Issued: October 1, 2011

/s/ James Gerl

James Gerl
Hearing Officer