

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

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

Student,<sup>1</sup>

Petitioner,

Date Issued: February 3, 2012

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,  
Respondent.

OSSE  
STUDENT HEARING OFFICE  
2012 FEB 6 AM 8:51

**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is an \_\_\_\_\_ year old male, who is currently a \_\_\_\_\_ grade student attending School A. The student's current individualized education program (IEP) lists Emotional Disturbance (ED) as his primary disability and provides for him to receive twenty-six (26) hours per week of specialized instruction outside of the general education setting, and sixty (60) minutes per day of behavioral support services outside of the general education setting.

On November 30, 2011, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by: (1) failing to develop an appropriate transition plan based on age appropriate transition assessments including a vocational assessment for the student; (2) failing to develop an appropriate IEP which includes a dedicated aide and behavior support services for the student; (3) failing to conduct evaluations as necessary to determine the student's current functioning and needs; and (4) failing to conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP). As relief for these alleged denials of FAPE, Petitioner requested, *inter alia*, independent evaluations including a vocational assessment, an educational assessment and an FBA; an appropriate IEP including an appropriate transition plan and behavioral support services; an appropriate BIP; a dedicated aide; and compensatory education.

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<sup>1</sup> Personal identification information is provided in Appendix A.

On December 8, 2011, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that during the time period in question, the student was enrolled in another local educational agency (LEA); the provision of a dedicated aide would further restrict the student's environment and/or a dedicated aide is not appropriate for an adult student; the Petitioner did not make a request for a reevaluation; the student has an appropriate BIP; the student's IEP is reasonably calculated to provide educational benefit and that it has not denied the student a FAPE; and the student has suffered no harm.

On December 15, 2011, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement. Accordingly, the 45-day timeline began to run on December 30, 2011 and ends on February 13, 2012.

On January 5, 2012, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on January 9, 2012. The Prehearing Order clearly outlined the issue to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On January 13, 2012, Petitioner filed Disclosures including twenty-two (22) exhibits and seven (7) witnesses.<sup>2</sup> On January 17, 2012, Respondent filed Disclosures including thirteen (13) exhibits and four (4) witnesses.

The Petitioner elected for the hearing to be closed. Petitioner's exhibits 1-22 were admitted without objection. Respondent's exhibits 1-13 were admitted without objection. Petitioner objected to three (3) of Respondent's four (4) disclosed witnesses, arguing that the witnesses did not have personal interactions with the student. Respondent withdrew one (1) of the three (3) objected witnesses. The Hearing Officer allowed the remaining two (2) witnesses over the objection of the Petitioner because the witnesses are the direct supervisor and the program manager of the DCPS representative working directly with the student. Ultimately, only one (1) of the witnesses of which the Petitioner objected to testified.

Prior to opening statements, the Hearing Officer went off of the record in order to give the parties an opportunity to discuss any agreement related to Issue #3 (failing to conduct evaluations as necessary to determine the student's current functioning and needs). After a short recess, the parties informed the Hearing Officer that they had reached an agreement with regard to vocational and educational evaluations. Per the agreement, DCPS will issue an authorization for the Petitioner to receive independent vocational and educational evaluations. This provision will be included in the Order.

The hearing concluded at approximately 1:57 p.m. following closing statements by both parties.

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<sup>2</sup> A list of exhibits is attached as Appendix B. A list of witnesses is included in Appendix A.

## Jurisdiction

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

## ISSUES

The issues to be determined are as follows:

1. Whether DCPS failed to provide the student a FAPE by failing to develop an appropriate transition plan based on age appropriate transition assessments including a vocational evaluation?
2. Whether DCPS failed to provide the student a FAPE by failing to develop an appropriate IEP which includes a dedicated aide and appropriate behavior support services?
3. Whether DCPS failed to provide the student a FAPE by failing to conduct a FBA and develop an appropriate BIP?

## FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is a student with disabilities as defined by 34 CFR §300.8. (Petitioner's Exhibit 11)
2. The student's January 20, 2011 IEP was in effect on the date that the Due Process Complaint was filed. During the pendency of the Due Process case, DCPS met and revised the student's IEP on January 12, 2012. The Respondent entered a September 14, 2011 IEP into the record however there is no evidence that an IEP Team meeting was held to develop this IEP or that this IEP was ever finalized by the student's IEP Team. (Petitioner's Exhibit 11; Respondent's Exhibits 1, 2 and 6)
3. The student is placed in a private special education school. (Petitioner's Exhibit 11; Clinical Therapist Testimony; Program Manager Testimony)
4. The student has difficulty establishing relationships and trusting others. (Clinical Therapist Testimony; Student Testimony)
5. The student has oppositional, impulsive, disrespectful and hyperactive behaviors that interfere with his learning and that of others. (Petitioner's Exhibits 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21; Clinical Therapist Testimony; Grandmother Testimony; Student Testimony)
6. The student does not consistently attend school or classes. For the first quarter of the 2011-2012 school year, the student had fifteen (15) unexcused absences and was late for school thirteen (13) days. The student does not remain in class during the

- required time period, often leaving the classroom for breaks in excess of fifteen (15) minutes. (Petitioner's Exhibits 8, 13, 14, 19, 22; Respondent's Exhibit 2, 3 and 4; Clinical Therapist Testimony; Student Testimony)
7. The student is not progressing in School A's behavior management program. (Clinical Therapist Testimony)
  8. DCPS requested that School A conduct an FBA for the student. The FBA was not conducted therefore the student does not have a current FBA. (Program Manager Testimony)
  9. The student's current BIP is inappropriate and ineffective. (Petitioner's Exhibit 18; Clinical Therapist Testimony; Advocate Testimony; Program Manager Testimony)
  10. The student's IEP includes a behavior goal of "improving his inattention and impulsiveness by utilizing effective coping strategies to manage impulsive behavior; complying with redirection from Teachers/Staff; and remaining on task, while completing assignments in 4 out of 5 times." (Petitioner's Exhibit 11)
  11. The student is not receiving the behavior support services listed on his January 20, 2011 or January 12, 2012 IEPs. At times, the student has chosen not to participate in behavior support services. (Petitioner's Exhibit 7; Respondent's Exhibits 2 and 4; Student Testimony; Program Manager Testimony)
  12. The student's January 12, 2012 IEP Team changed the student's behavioral support services from sixty (60) minutes per day to sixty (60) minutes per week. The sixty (60) minutes per day listed on the January 12, 2012 IEP is a typographical error. The student is "insightful and does well when engaged in therapy" and needs a daily connection to facilitate improved behavior. The reduction in behavioral support services is not designed to meet the student's unique needs. (Respondent's Exhibits 1, 2 and 4; Clinical Therapist Testimony; Program Manager Testimony)
  13. The majority of the student's November 21, 2011 IEP Team agreed that the student needs a dedicated aide. The IEP Team consisted of the student's grandmother, the student's advocate, eight (8) staff members from School A and a DCPS representative. (Petitioner's Exhibits 6 and 7; Clinical Therapist Testimony; Grandmother Testimony)
  14. School A did not document interventions used before requesting a dedicated aide for the student. (Program Manager Testimony)
  15. For the first quarter of the 2011-2012 school year, the student received the letter grade "D" in World History; the letter grade "E" in Earth & Space Science; the letter grade "D" in US/LSN Government; the letter grade "D" in Spanish 2; the letter grade "E" in English 11; the letter grade "E" in Food & Nutrition; the letter grade "E" in Algebra 2; and the letter grade "E" in Geometry. (Petitioner's Exhibit 22)
  16. The student is \_\_\_\_\_ years old and entitled to a transition plan based on age-appropriate transition assessments. The student's transition plan in his January 20, 2011 IEP was based on a Student Postsecondary Transition Interview reportedly conducted on December 22, 2010. The transition plan does not include the results from this tool. The transition plan in the student's January 20, 2011 IEP contains the measureable goals of investigating three vocational training programs in the category of automotive study, completing 25 of 100 service learning hours, participating in a Life Skills Training/Employment Readiness Session Class for 30 minutes per day,

- and identifying three community agencies that will assist in securing affordable housing. (Petitioner's Exhibit 11)
17. The student is interested in carpentry and has performed well in this class. (Clinical Therapist Testimony; Student Testimony)
  18. The student's current location of services is not providing the student with a FAPE. DCPS is in the process of removing the fifteen (15) DCPS students enrolled at School A to other locations. DCPS has attempted to identify an appropriate location of services for the student however the student has been uncooperative in this endeavor. (Petitioner's Exhibit 8; Respondent's Exhibit 5; Grandmother Testimony; Student Testimony; Program Manager Testimony)

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

#### Burden of Proof

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

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The Court in *Rowley* stated that the Act does not require that the special education services "be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Instead, the Act requires no more than a "basic floor of opportunity" which is met with the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 200-203. Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, *citing Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Board of Education v. Rowley*,

458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

IDEA regulations at 34 CFR §300.304(c)(6) require the public agency to ensure that evaluation of a child is sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. An FBA is an educational evaluation. *See Harris v. District of Columbia*, 561 F. Supp. 2d 63 (D.D.C. 2008). "The IDEA...recognizes that the quality of a child's education is inextricably linked to that child's behavior" and "[an] FBA is essential to addressing a child's behavioral difficulties, and, as such, it plays an integral role in the development of an IEP." *Id.* at 68.

Pursuant to 34 CFR §300.324(a)(2)(i), in the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other behavioral strategies, to address that behavior. The IEP must, at a minimum, provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) (quoting *Bd. Of Educ. Of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203 (1982)).

In the present case, the student has oppositional, impulsive, disrespectful and hyperactive behaviors. The student also has significant issues with attending class and remaining in the classroom during class time. It is uncontested that the student needs an FBA, a BIP and behavioral support services in order to benefit educationally from the instruction included in his IEP. The DCPS Program Manager testified that DCPS requested that School A conduct an FBA in order to develop an appropriate BIP. There was no evidence presented to confirm that the FBA has been conducted. It is also uncontested that the student's current BIP is inappropriate and ineffective.

The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met. 20 U.S.C. § 1415. The IDEA regulations at 34 CFR §300.513(a)(2) state that in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. While DCPS requested School A to conduct an FBA for the student, DCPS remained responsible for the compliance with the IDEA requirement to conduct the evaluation. *See* 34 CFR §300.325(c). The failure of School A, under the authority of DCPS, to conduct an FBA impeded the child's right to a FAPE and caused a deprivation of educational benefit.

The student's January 20, 2011 and January 12, 2012 IEPs prescribe sixty (60) minutes per day of behavioral support services. The DCPS Program Manager testified that the sixty (60) minutes per day prescribed on the student's January 12, 2012 IEP was listed in error because students in a private special education day school "usually" get sixty (60) minutes per week of behavioral support services. The record contains five (5) incident reports, two (2) behavioral management reports, two (2) teacher academic narratives and meeting notes from three (3) IEP

Team meetings which describe the student's inappropriate behaviors and need for behavioral support services. The student and the Clinical Therapist testified that the student has difficulty establishing relationships and needs an extended period of time to trust others. The Clinical Therapist indicated to DCPS that the student is insightful and does well when engaged in therapy. She also noted that the student needs daily support to serve as a "connection to facilitate and promote improved academic and behavior support that this student needs." While the Clinical Therapist was speaking of a dedicated aide, the Clinical Therapist misstated that the student's IEP prescribed sixty (60) minutes of therapy weekly instead of the required sixty (60) minutes per day.

It is clear that the student needs sixty (60) minutes per day of behavioral support services and since October 2011, the student has received only sixty (60) minutes per week of behavioral support services. While the Petitioner argued in the Due Process Complaint that the student's behavioral support hours need to be "increased," in the Petitioner's closing argument, the Petitioner conceded that the student is in need of the prescribed services on his IEP. The evidence presented supports the conclusion that the student's behavioral support services, as listed on his IEP, are adequate to meet his needs, should they be implemented as prescribed.

The Petitioner also argued that the student needs a dedicated aide in order to receive a FAPE. The Respondent argued that the student does not need a dedicated aide but a location of services which can appropriately implement his IEP. The Respondent further argued that although the majority of the student's IEP Team agreed that the student needs a dedicated aide, (1) the IEP Team was not in a position to make this determination because the IEP Team consisted of teachers and staff members from School A which is not providing a FAPE to the student by not providing certified teachers, not implementing appropriate behavioral interventions and failed to conduct an FBA and develop an appropriate BIP; and (2) a dedicated aide would constitute a more restrictive setting for the student. The Hearing Officer is persuaded by the Respondent's arguments.

The Petitioner contends that because the majority of the participants in the IEP Team meeting recommended that a dedicated aide be added to the student's IEP, the student needs a dedicated aide in order to be provided a FAPE. While the Hearing Officer generally agrees with this position, the mere fact that all participants were in agreement at that meeting however does not translate into a substantive entitlement to a particular educational service under the Act, without a revision to the IEP. *W.A. v. Pascarella*, 153 F.Supp.2d 144, 35 IDELR 91 (D. Conn. 2001). Additionally, if a private school or facility initiates and conducts IEP meetings, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. 34 CFR 300.325(b)(2).

The majority of the participants of the IEP Team were in agreement that a dedicated aide was needed for the student to better progress in achieving his educational goals, but the best educational outcomes are not required by the IDEA. The inquiry in an IDEA case is not whether the education provided for under the IEP "maximize[s] the potential of handicapped children." *Rowley*, 458 U.S. at 197 n. 21; see also *Walczak*, 142 F.3d at 130. Rather, the purpose of the Act is "more to open the door of public education to handicapped children on appropriate terms than

to guarantee any particular level of education once inside.” *Id.* at 192, *accord Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 1583 (D.C. Cir. 1984). A school meets its obligations to provide a FAPE if the disabled student's IEP is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206-07.

In the present case, the student testified that he needs a dedicated aide in order to help him focus on his assignments and take breaks. However, the student also testified that classroom assignments are easy and teachers put answers on the board. The student frequently leaves the classroom during class time but testified that he leaves the classroom to take breaks only after the completion of his classwork. Since the student does not have a dedicated aide, he is violating school rules by being “out of location” during class time. While the student did not perform well academically during the first quarter of the 2011-2012 school year, the student has not been receiving the behavioral support services prescribed in his IEP, the student has significant attendance issues and School A has failed to implement behavioral interventions as requested by DCPS. The Hearing Officer commends the student for advocating for his own education but concludes that the student and the November 21, 2011 IEP Team used a maximizing standard when recommending a dedicated aide for the student and that the student’s IEP is reasonable calculated to enable the child to receive educational benefit.

The IDEA requires school districts to place disabled children in the least restrictive environment possible. *Roark ex rel. Roark v. District of Columbia*, 460 Supp. 2d 32, 43 (D.D.C. 2006) (citing 20 U.S.C. §1412(a)(5)); 5 DCMR §3011 (2006). In determining the least restrictive environment, consideration is given to the types of services that the child required. *Id.* In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs. 34 CFR §300.116(d). A dedicated aide may in some cases make a student's placement more restrictive by fostering over-dependence or isolating the student. However, in other cases, using a one-to-one aide can help satisfy the least restrictive environment mandate by enabling a student to participate in a regular setting.

In this case, the student is \_\_\_\_\_ years old and placed in a private special education school. Even with the services of a dedicated aide, the student would not participate in a regular setting. Although the student has behaviors that interfere with his learning, he is prescribed sixty (60) minutes per day of behavioral support services to learn effective coping strategies to manage his impulsive behaviors, comply with directions and remain on-task. The student testified that he needs a dedicated aide to help him focus and take breaks however the Hearing Officer concludes that for this student, at his current age, a dedicated aide makes the student’s placement more restrictive by fostering over-dependence on a staff member to complete tasks and manage his behavior.

For the reasons outlined above, the Hearing Officer concludes that the recommendation of the November 21, 2011 IEP Team to include a dedicated aide on the student’s IEP did not create an obligation on the part of DCPS to provide this support when the behavioral support services included on the student’s IEP were sufficient to provide the student a FAPE. The Hearing Officer does not mean to suggest that a district may subvert its obligations under the IDEA simply by refusing to revise an IEP that an IEP Team has designed to enable the child to

receive educational benefit or by allowing the district to override an agreed upon IEP based solely upon administrative concerns. The Hearing Officer simply concludes that the consensus of this particular IEP Team that this particular student needs a dedicated aide did not create an obligation of the district to provide the service if an otherwise free and appropriate public education is provided by the prescribed services.

Beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR §300.320(b). The student's January 20, 2011 IEP lists a "Student Postsecondary Transition Interview" administered on December 22, 2010 as the assessment used to develop postsecondary goals. There are no results indicated for the assessment. The student was seventeen (17) years old when this assessment was reportedly administered and has since discovered his skill and passion for carpentry. While the student's January 20, 2011 IEP contains measurable postsecondary goals related to training, education and employment, the goals are neither based on age appropriate transition assessments nor tailored to assist the student in reaching his goals.

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

In the instant matter, Petitioner has established that the student was denied a FAPE when DCPS: (1) failed to conduct an FBA for the student; (2) failed to develop an appropriate BIP for the student; and (3) failed to develop an appropriate transition plan for the student. While the Respondent also failed to provide the student with sixty (60) minutes per day of behavior support services as prescribed on his IEP, the implementation of the student's January 20, 2011 was not an issue raised at the Prehearing Conference. The Petitioner did not make this argument until his closing argument therefore the Hearing Officer declines to award compensatory education for the failure of DCPS to implement the student's IEP as it relates to behavior support services. Further, the student is often absent from school and testified that he does not always take advantage of the behavioral support services that have been offered. Where a student does not avail himself of the benefits of his IEP because he is frequently absent from classes, a local education agency cannot be found to deny FAPE to the student. *Nguyen v. District of Columbia* 681 F.Supp.2d 49, 54 IDELR 18 (D.D.C. February 1, 2010).

The Respondent acknowledged that the student is not receiving a FAPE in his current location and has attempted to change the student's location of services. However the student has been uncooperative in visiting these locations.<sup>3</sup>

### **ORDER**

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

1. DCPS fund an independent vocational and educational assessment for the student, at a rate not to exceed the current established market rate in the District of Columbia for such services, as agreed upon by the parties;
2. Within 15 business days of the receipt of the independent vocational and educational assessments, DCPS hold an IEP Team meeting to develop an appropriate transition plan for the student;
3. DCPS fund an independent FBA for the student, at a rate not to exceed the current established market rate in the District of Columbia for such services;
4. Within thin 15 business days of the receipt of the independent FBA, DCPS hold an IEP Team meeting to discuss the results of the FBA and develop a BIP based on the results of the FBA;
5. DCPS immediately implement 60 minutes per day of behavioral support services as prescribed on the student's January 20, 2011 and January 12, 2012 IEPs;
6. All other relief sought by Petitioner herein is **denied**.

### **NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: February 3, 2012

  
Hearing Officer

<sup>3</sup> Placement and location of services were not at issue in this case. While the Hearing Officer declines to address location of services in the Order, the Hearing Officer suggests that the Respondent identify a location of services which is able to provide a FAPE to the student, issue a Prior Written Notice and convene the IEP Team to determine an appropriate location of services for the student.