

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

Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

))
))
))
Petitioner,))
))
v.))
))
THE DISTRICT OF COLUMBIA))
PUBLIC SCHOOLS,))
))
Respondent.))

Hearing Officer: Frances Raskin

**ON REMAND FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

2012 FEB 24 AM 8:49
SSSE
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act (“IDEA”), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner is the mother of a . . . year-old special education student (“Student”). On September 22, 2010, this Hearing Officer was appointed to preside over this case pursuant to a September 13, 2010, decision and order from the United States District Court for the District of Columbia (“District Court”) remanding this case.

In its opinion, the District Court found that the District of Columbia Public Schools (“DCPS”) had denied the Student a free, appropriate, public education (“FAPE”) by failing to find him eligible for special education and related services, pursuant to IDEA, between August

19, 2004, and early 2006, when a special master placed him at a non-public school ("School") at DCPS expense.¹

The Court then found that Petitioner had failed to prove that the Student was entitled to a compensatory education award of 255 hours of additional tutoring services.² However, the Court stated, "in light of the fact that [Petitioner] has demonstrated her son's entitlement to a compensatory award, this Court is not prepared to prematurely shut the door on her claim for relief."³ To be sure, it is entirely conceivable that "no compensatory education is required for the denial of a free and appropriate public education because the alleged deficiencies suffered by [the Student] may have already been mitigated (or even totally alleviated) by his placement at the School."⁴ The Court found that a hearing officer "may 'provide the parties additional time to supplement the record' if she believes there is insufficient evidence to support a specific award."⁵ The Court concluded that this Hearing Officer should provide Petitioner "with an additional opportunity to supplement the record with evidence necessary to support a compensatory award."⁶

The parties agreed to schedule the remanded due process hearing for October 13, 2010. Because Petitioner had failed to disclose a compensatory education plan, the parties did not proceed to hearing on that date. Instead, this Hearing Officer held a prehearing conference. On November 8, 2010, this Hearing Officer issued a prehearing order.

The due process hearing convened on November 16, 2010. At the outset of the hearing, this Hearing Officer admitted into evidence each party's five-day disclosures. Petitioner called three witnesses, (1) the education director ("Education Director") of the preschool through eighth-grade program at the School, who testified about the Student's educational performance; (2) an occupational therapist ("Occupational Therapist") who provides occupational therapy services to the Student at the School and testified about the Student's performance in this area; and (3) a speech-language pathologist ("Speech Language Pathologist") who provides speech and language therapy services to the Student at the School and testified about the Student's performance in this area.

Petitioner presented a compensatory education plan authored by these witnesses and other staff at the School. After the testimony of the third and last witness Petitioner planned to present, and before Petitioner testified, this Hearing Officer informed Petitioner that, while she had established that the Student had academic, physical, and speech language deficits, she had failed to present testimony and evidence to support a compensatory education award.

This Hearing Officer then informed the parties that, in her opinion, evaluating the Student would be the only way to determine how the failure of DCPS to find the Student eligible and

¹ 736 F. Supp. 2d 240, 247 (D.D.C. 2010).

² 736 F. Supp. 2d at 247.

³ *Id.* at 249.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

provide him services from August 2004 until February 2006 contributed to the Student's current deficits. This Hearing Officer explained that she interpreted the District Court's mandate to "allow [Petitioner] to supplement the record" to grant her the discretion to order an evaluation if she believed an evaluation were necessary to determine whether the Student was entitled to compensatory education and the amount of compensatory education that would be appropriate, if any.

On November 30, 2010, this Hearing Officer issued an order ("Interim Order") that required the parties to propose three evaluators with knowledge and expertise in childhood development and neuropsychology. This Hearing Officer ordered the parties submit documentation for each proposed evaluator to show that he/she possesses the requisite knowledge and expertise to determine the causal relationship between the Student's current educational deficits and the earlier denial of FAPE. This Hearing Officer informed the parties that that she would then authorize one of the proposed evaluators (or one team of evaluators) to evaluate the Student at DCPS expense.

On December 15, 2010, DCPS filed a motion in the District Court requesting that the Court review the Interim Order. In its "Motion for Order of Clarification," DCPS asserted that this Hearing Officer "imposed new and additional relief beyond that previously authorized by [the] Court."⁷

On December 17, 2010, DCPS filed a "Motion to Stay the Interim Order Issued November 30, 2010," ("Motion to Stay") requesting that the remand proceedings be stayed until such time as the U.S. District Court ruled on the Motion for Order of Clarification.⁸ In an email to Chief Hearing Officer Merced, Domiento Hill, counsel for Petitioner stated that, while Petitioner did not oppose the Motion to Stay, she would like additional time to respond.⁹ Chief Hearing Officer Deusdedi Merced then issued an order extending to December 24, 2010, the deadline for the parties to submit their proposed evaluators.¹⁰

On December 21, 2010, the District Court issued an order upholding this Hearing Officer's Interim Order. The District Court held that "the ordering of an additional evaluation is consistent with the Court's directives as articulated in its September 13, 2010, Memorandum Opinion."¹¹ The Court further held that "[t]o ensure that the [Petitioner] has been provided an adequate opportunity to supplement the record . . . the Hearing Officer must be free to order any relief that she believes would assist the [Petitioner] in developing her case for an award of compensatory education."¹² The Court reasoned that, [i]nherent in the Hearing Officer's authority . . . is to order the parties to provide additional information that will assist her in

⁷ Respondent's Motion for Order of Clarification at 1.

⁸ Respondent's December 17, 2010, Mot. to Stay Interim Order at 2.

⁹ See December 17, 2010, interim order, issued by Chief Hearing Officer Deusdedi Merced, at 2. Chief Hearing Officer Merced administered this case from December 15, 2010, through December 20, 2010, due to this Hearing Officer's debilitating illness at that time.

¹⁰ *Id.* at 2.

¹¹ December 21, 2010, U.S. District Court order, Civil Action No. 2010-987 (RBW).

¹² *Id.* at 2.

determining whether a modification of the [Petitioner's] proposed compensatory award is appropriate, which certainly would include ordering an evaluation that would help 'determine how the failure of [the school district] to . . . provide him services from August 2004 until February 2006 contributed to [his] current deficits.'"¹³

On December 23, 2010, Daniel McCall, counsel for DCPS sent an email to this Hearing Officer in which he proposed three evaluators. Counsel for DCPS failed to provide any documentation. On December 24, 2010, counsel for Petitioner sent an email to this Hearing Officer that proposed five evaluators. Counsel for Petitioner included the required documentation in his email.

On January 21, 2011, this Hearing Officer issued an order that found that the three evaluators DCPS proposed failed to meet the criteria specified in her November 30, 2010, order that specified that the evaluators must possess knowledge and expertise in childhood development and neuropsychology. This Hearing Officer found that, of the evaluators that Petitioner proposed, only one, the Neuropsychology Expert, possessed the requisite knowledge and expertise in early child development and neuropsychology.

In the January 21, 2011, order, this Hearing Officer required the Neuropsychology Expert to evaluate the Student and provide a detailed explanation of how the Student would have been performing educationally but for the denial of FAPE. This Hearing Officer stated that this explanation may include, but is not limited to, a discussion of Student's educational deficits at the time he enrolled at the School in February 2006, and the nexus of these deficits, if any, to the denial of FAPE. This Hearing Officer ordered the Neuropsychology Expert to provide a detailed explanation of whether, and to what extent, the Student's enrollment at the School for the past five years has ameliorated any deficits that may have resulted from the denial of FAPE. Finally, this Hearing Officer ordered the Neuropsychology Expert to determine the nature and amount of compensatory education that would place the Student in the position he would have been but for the denial of FAPE. The Interim Order specified that the Neuropsychology Expert must complete the evaluation and transmit it to this Hearing Officer by close of business on March 15, 2011.

In the January 21, 2011, order this Hearing Officer also required the parties to jointly prepare a set of all relevant documents that pertain to the Student, including all evaluations and assessments of the Student, reports interpreting or summarizing those assessments, standardized tests, related-service summaries and reports, progress reports, work samples, report cards, and any other documents relating to the Student's academic performance, as well as the relevant excerpts of transcript and other documents in administrative record. This Hearing Officer ordered the parties to scan these documents, convert them to Adobe Acrobat, and submit them by close of business on January 28, 2011.

After a snowstorm led to the closure of the District of Columbia government on January 27, 2011, this Hearing Officer informed the parties by email that she would extend the deadline to submit the documents to February 1, 2011. On February 1, 2011, the parties submitted more

¹³ *Id.* at 2-3 (citing the Interim Order).

than 2,000 pages of documents to this Hearing Officer. This Hearing Officer then convened a status conference on February 3, 2011, to discuss the parties' submissions.

During the February 3, 2011, status conference, this Hearing Officer discussed with counsel the documents that the Neuropsychology Expert may require to conduct his evaluation and to develop a compensatory education recommendation. Counsel agreed to limit the documents to those relevant and necessary to the Neuropsychology Expert's evaluation and compensatory education plan. The parties agreed to jointly submit a streamlined set of documents by February 22, 2011. This Hearing Officer then informed the parties that, due to the extension of the document submission deadline, she planned to extend by about one month the deadline for the Neuropsychology Expert's evaluation and compensatory education plan. The parties agreed to this extension.

On February 22, 2011, counsel for Petitioner submitted to this Hearing Officer a joint set of documents to submit to the Neuropsychology Expert for his evaluation of the Student and potential compensatory education report. This Hearing Officer then forwarded the documents to the Neuropsychology Expert.

On March 14, 2011, the Neuropsychology Expert forwarded to counsel and this Hearing Officer his Report of Neuropsychological Evaluation. On March 21, 2011, this Hearing Officer convened a prehearing conference on the record in which Mr. Hill, counsel for Petitioner, and Mr. McCall, counsel for Respondent participated. At the prehearing conference, the parties agreed that the due process hearing would reconvene on April 8, 2011.

The due process hearing reconvened on April 8, 2011. The Neuropsychology Expert testified about his evaluation, the report he prepared, and his opinion on whether the Student was entitled to compensatory education and the amount of compensatory education he was due. The Neuropsychology Expert's report was admitted into evidence as Hearing Officer Exhibit 1.

At the conclusion of the Neuropsychology Expert's testimony, counsel for Petitioner presented invoices reflecting Petitioner's expenditures on the services she obtained for the Student between August 19, 2004, and February 2006. Counsel for Petitioner requested that this Hearing Officer order DCPS to reimburse Petitioner for these expenditures. Counsel for Respondent objected on the grounds that Petitioner should be barred from seeking reimbursement for these services because she had not raised this issue in her original complaint.

This Hearing Officer explained that she lacked the expertise to determine whether the services provided the Student were the type of services he would have received had he not been denied a FAPE between August 19, 2004, and February 2006. This Hearing Officer explained that the Neuropsychology Expert would be in the best position to determine which of the services would have been provided to the Student but for the denial of FAPE. Counsel for Petitioner agreed to procure the treatment records and submit them to the Neuropsychology Expert for his review.

On June 29, 2011, counsel for Petitioner informed opposing counsel and this Hearing Officer that he had obtained the Student's treatment records. On July 13, 2011, both counsel agreed to appear at a status conference at 10:00 a.m. on July 19, 2011.

At the July 19, 2011, status conference, which was held on the record, counsel set a timetable for the conduct of this proceeding, including time for the parties to meet to attempt to resolve this case. That same day, this Hearing Officer issued an order setting forth the agreement of the parties.¹⁴

On August 24, 2011, counsel for Respondent emailed this Hearing Officer to report that the parties agreed that, before concluding their efforts to resolve the case, both parties would like to obtain the Neuropsychology Expert's opinion on the services for which Petitioner seeks reimbursement, if any, he considered in preparing the March 14, 2011, report. The parties requested that this Hearing Officer issue a revised order that reflected their agreement.

On September 2, 2011, this Hearing Officer held a status conference in which counsel for Petitioner and counsel for Respondent participated. During the status conference, counsel for Petitioner affirmed that Petitioner is seeking reimbursement in the amount of The parties agreed that Petitioner would submit the redacted medical records to this Hearing Officer on September 6, 2011. The parties agreed that, on September 7, 2011, this Hearing Officer would issue a revised interim order and transmit the order and the records to the Neuropsychology Expert.

Counsel for Petitioner submitted the medical records on the afternoon of September 7, 2011. On September 9, 2011, the Neuropsychology Expert transmitted his report on the medical records Petitioner submitted.¹⁵

On September 23, 2011, Respondent filed a motion for directed finding. On September 28, 2011, Petitioner filed an opposition to Respondent's motion for directed finding. On October 28, 2011, this Hearing Officer issued an order denying the motion for directed finding.

The due process hearing reconvened on January 12, 2012. At the outset of the hearing, this Hearing Officer entered into evidence each party's set of supplemental disclosures. Petitioner then rested her case and Respondent renewed its motion for directed verdict. After this Hearing Officer informed the parties that she would address the renewed motion in her

¹⁴ The order required Petitioner to provide an accounting of her total expenditures between August 19, 2004, and February 2006, as evidenced in the Student's treatment records and the invoices for those treatments, on or before July 25, 2011. The order stated that, after reviewing the records and accounting, the parties must meet on or before August 8, 2011, to discuss a potential resolution of Petitioner's request for reimbursement. The order further required the parties to file all briefs or motions, on the legal issue of whether this Hearing Officer should consider Petitioner's claim for reimbursement, on or before August 19, 2011. It required the parties to file any opposition or reply to these motions/briefs/memoranda by August 26, 2011. The order specified that the this Hearing Officer would submit the Student's treatment records to the Neuropsychology Expert on or before September 27, 2011, along with an order that requires Dr. Ling to review the Student's treatment records and issue a report within fifteen calendar days of receipt of these records.

¹⁵ Neither party introduced this report into evidence. Thus, this Hearing Officer will not consider it herein.

hearing officer determination, Respondent rested on the record. After brief closing statements, the due process hearing concluded at 11:00 a.m. on January 12, 2012.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether the Student is entitled to compensatory education for the denial of FAPE between August 19, 2004, and February 2006; and

B. Whether Petitioner is entitled to reimbursement for the services she obtained for the Student between August 19, 2004, and February 2006.

Petitioner seeks relief in the form of an order requiring Respondent to fund her proposed compensatory education plan and reimburse her in the amount of _____ for the services she obtained for the Student between August 19, 2004, and February 2006.

IV. FINDINGS OF FACT

1. The Student is a _____ year-old boy who has a complicated medical history.¹⁶ The Student was born at 30 weeks gestational age, but he achieved normal developmental milestones, including walking at 12 months and talking at two years.¹⁷

2. On April 5, 2004, when the Student was three years old, he suffered a progressive loss of balance and was admitted to Children's National Medical Center ("Children's NMC").¹⁸ By the sixth day of admission, he had a seizure and a brain scan indicated lesions on his brain.¹⁹ The Student was diagnosed with encephalitis.²⁰ An April 19, 2004, biopsy revealed herpes in his brain.²¹

3. The Student remained at Children's NMC until May 2004, during which time his functioning deteriorated.²² He demonstrated a general lethargy and a flat affect.²³ His functioning was marked by limited initiative engaging with others as well as difficulties with reciprocal communication and responding.²⁴ His expressive language skills were limited.²⁵ He

¹⁶ Hearing Officer Exhibit 1 at 4 (Report of the Neuropsychology Expert's February 14, 2011, observation and March 2, 2011, evaluation); Petitioner Exhibit 12 at 4 (same).

¹⁷ *Id.*

¹⁸ *Id.* at 4, 6.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Id.* at 4.

²³ *Id.* at 5.

²⁴ *Id.*

exhibited weak physical functioning and limited stamina.²⁶ He had difficulties with postural control as well as difficulties with movement and balance.²⁷ He exhibited generally poor coordination, limited manual dexterity, and decreased ability to use both hands.²⁸ He had general difficulty with oral motor coordination and tone.²⁹

4. In May 2004, the Student was transferred to Hospital for Sick Children (“HSC”) and stayed there for three to four months.³⁰ During this time, he received one to two sessions of speech and language services five days a week.³¹ By August 2004, he had improved in his ability to eat and drink.³² He was able to speak in full sentences and respond to questions appropriately.³³ He continued to have difficulties with concentration, syllable reduction, blending, and omission of sounds.³⁴

5. He was discharged from HSC on August 10, 2004.³⁵ At this time, his range of movement in his upper extremities was normalized, although he had continuing difficulties with tone.³⁶ He was able to get around with the aid of a rolling walker but had to use a wheelchair to travel long distances.³⁷ He continued to have slurred speech, and impaired overall speech and language functioning, although he was able to use words to express his wants and needs.³⁸ He was able to follow one- and two-step directions and freely interact with other children.³⁹

6. Thirteen days later, on August 23, 2004, the Student was readmitted to the hospital after he sustained a high fever.⁴⁰ He was diagnosed with rhomboencephalitis, seizure disorder, left-sided hemiparesis, and hypertension.⁴¹ Within five days he had slipped into a coma.⁴²

7. In September 2004, the Student was again hospitalized after experiencing fever.⁴³ By October 2004, he was transferred to HSC.⁴⁴ Fevers continued through the month of

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 5.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 5, 7.

³⁶ *Id.* at 6.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 5.

⁴¹ *Id.*

⁴² *Id.* at 7.

⁴³ *Id.* at 7.

September and he experienced increasing extremity pain.⁴⁵ Ultimately, he was diagnosed with juvenile rheumatoid arthritis.⁴⁶ Over the next four months, he continued to experience a fever.⁴⁷ By November 2004 he was wheelchair bound.⁴⁸ Ultimately, the Student was diagnosed with juvenile rheumatoid arthritis.⁴⁹

8. The Student's herpes infection resulted in regression in his functioning.⁵⁰ The changes to his brain, including general loss of brain matter and the enlargement of major spaces in his brain, which will have an enduring impact on function.⁵¹

9. By November 2004, the Student's cognitive functioning was at the same levels, in the average range, as before the onset of his illness.⁵² His basic language functioning also was in the average range.⁵³ He exhibited only mild weaknesses in visual motor coordination.⁵⁴ However, he exhibited higher-order processing weaknesses, including difficulties with receptive language and articulation.⁵⁵ In other words, he had benefited from the intensive therapy he received while at Children's NMC and there were no significant differences in his functioning in November 2004 and before the onset of his illness.⁵⁶

10. From October 2004 through January 2005, the Student remained at HSC, where he received services to address his speech, occupational, and physical issues.⁵⁷ By January 2005, he continued to exhibit limitations associated with juvenile rheumatoid arthritis, including limitations in flexibility, range of motion, and fine-motor coordination.⁵⁸ In January 2005, he was discharged to the _____ where he remained until February 2006.⁵⁹

11. During his enrollment in the _____ the Student was identified as a student with the disability of other health impairment.⁶⁰ His individualized educational program ("IEP") included goals for improving his math skills, writing skills, reading skills, and gross motor skills.⁶¹ This IEP was not implemented because DCPS had not determined that the

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 7.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 7.

⁴⁹ *Id.*

⁵⁰ Testimony of Neuropsychology Expert.

⁵¹ *Id.*

⁵² Hearing Officer Exhibit 1 at 27; Petitioner Exhibit 12 at 27.

⁵³ *Id.* at 28.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 28.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 9.

⁶¹ *Id.* at 9.

Student was eligible for specialized instruction and related services.⁶² Nonetheless, the Student received some specialized instruction.⁶³ He also continued to receive speech, occupational therapy, and physical therapy services three to four times a week on an outpatient basis through HSC.⁶⁴

12. During the period from August 2004 to February 2006, the Student manifested significant developmentally based issues related to his encephalitis.⁶⁵ These issues should have resulted in his identification as a student with developmental delay.⁶⁶ He exhibited physical and language-based disabilities that would require speech and language, occupational, and physical therapy interventions.⁶⁷

13. From August 2004 through February 2006, the Student received about 120 minutes per week each of speech therapy, occupational therapy, and physical therapy on an outpatient basis at HSC.⁶⁸ These levels of service are consistent with the levels of service the Student would have received pursuant to an IEP had he been found eligible for special education and related services in 2004.⁶⁹ There weren't any discernible differences between the services the Student received at HSC and those he would have received in school.⁷⁰

14. In February 2006, a federal the Student began attending the School pursuant to an injunction issued by a federal magistrate judge.⁷¹ The School is a non-public, self-contained special education program that serves students between the ages of four and twenty-one.⁷² It provides an integrated approach to specialized instruction and related services.⁷³ Each student is taught by a certified special education teacher.⁷⁴ Physical therapists and speech language pathologists are assigned to each classroom.⁷⁵

⁶² *Id.* at 27.

⁶³ Testimony of Neuropsychology Expert.

⁶⁴ Hearing Officer Exhibit 1 at 9, 27; Petitioner Exhibit 12 at 9, 27. He received sixty minutes of physical therapy twice a week and sixty minutes of speech-language therapy once a week. *Id.*

⁶⁵ *Id.* at 29.

⁶⁶ *Id.* at 28.

⁶⁷ *Id.* at 29.

⁶⁸ *Id.*; testimony of Neuropsychology Expert.

⁶⁹ Hearing Officer Exhibit 1 at 29; Petitioner Exhibit 12 at 29; testimony of Neuropsychology Expert. The neuropsychology expert's opinion that these were the levels of service the Student would have received had he been found eligible was based on his review of the 2004 and 2005 IEPs that were proposed for the Student.

⁷⁰ Testimony of Neuropsychology Expert.

⁷¹ Stipulation of parties. See also Petitioner Exhibit 7 at 1 (Compensatory Education Plan)(noting that the Student started preschool at the School in February 2006).

⁷² Testimony of Education Director.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

15. By the time he entered the School, the Student's overall pattern of functioning, as assessed by cognitive testing data, was normalized and within appropriate ranges.⁷⁶ However, he continued to manifest weaknesses in fine-motor function, grapho-motor function, and language-based processing, which were due to the encephalitis and juvenile rheumatoid arthritis.⁷⁷

16. The Student's current full-scale IQ is in the deficient to borderline range, which is a decline in performance from levels seen in 2007.⁷⁸ This indicates that he has a slow rate of cognitive development that is a relative deficit in comparison to his typically developing peers.⁷⁹ His low cognitive functioning is a result of his encephalitis and neurological deficits.⁸⁰ Functionally, this slow rate of development is resulting in a growing gap between the Student's cognitive capacities and those of his typically developing peers.⁸¹ Simply put, academic material becomes more complex as a student ages, which results in a decline in the Student's cognitive capacity relative to his typically developing peers.⁸²

17. However, the Student's IQ score may not accurately represent his cognitive capacities as he exhibits a marked discrepancy between his performance on tests of verbal ability and nonverbal abilities.⁸³ His verbal abilities are stronger than his nonverbal abilities.⁸⁴ His verbal cognitive abilities are similar to, if not stronger than, they were in 2007.⁸⁵ This may be because one of the primary emphases for intervention is focused on his language-based functioning.⁸⁶ In contrast, there has been little intervention to address his nonverbal processing weaknesses over time.⁸⁷ Ultimately, this pattern of weakness is likely to impair the Student's social interactions and language comprehension, leading to a pattern that is increasingly similar to that seen in individuals with a nonverbal learning disability.⁸⁸

18. The Student's weakest functioning is in perceptual reasoning, which is in the deficient range.⁸⁹ He also has weak functioning in processing speed, which is in the mildly deficient to borderline range.⁹⁰ His functioning in these areas sharply contrasts with his functioning in working memory and sequencing, which are in the low average range.⁹¹

⁷⁶ Hearing Officer Exhibit 1 at 29; Petitioner Exhibit 12 at 29.

⁷⁷ *Id.*

⁷⁸ *Id.* at 17-18.

⁷⁹ *Id.*

⁸⁰ Testimony of Neuropsychology Expert.

⁸¹ Hearing Officer Exhibit 1 at 18; Petitioner Exhibit 12 at 18.

⁸² Testimony of Neuropsychology Expert.

⁸³ Hearing Officer Exhibit 1 at 18; Petitioner Exhibit 12 at 18.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 19, 22.

⁸⁸ *Id.* at 22.

⁸⁹ *Id.* at 18.

⁹⁰ *Id.*

⁹¹ *Id.*

19. The Student's verbal comprehension is in the borderline to low-average range.⁹² His abstract verbal analysis skills are in the low average to average range.⁹³ Under certain circumstances, the Student is able to function within the range that is expected for his same-age peers.⁹⁴ However, in common areas of functioning such as vocabulary, he manifests significant and moderate weaknesses as compared to same-age peers.⁹⁵

20. The Student's encephalitis has created significant fragility in his speech and language functioning that has been evident over time.⁹⁶ This is evidenced in his continuing indications of difficulties with language-based processing.⁹⁷ Additionally, the organic injury to his brain affected his reasoning abilities.⁹⁸

21. The Student has poor impulse control and moderate difficulty with sustained attention, which are hallmarks of attention deficit hyperactivity disorder.⁹⁹ He often is easily confused by information presented to him.¹⁰⁰ He tends to lose track of information if he attempts to sustain his response in any particular task.¹⁰¹

22. The Student has significant difficulties with executive functioning, particularly with differentially and flexibly shifting his focus and responses such that behaviors are maintained in a goal-directed manner.¹⁰² In the classroom, he has difficulties independently directing his functioning and following through on tasks.¹⁰³

23. The Student continues to demonstrate problems with fine motor coordination and gross motor functioning.¹⁰⁴ These difficulties are secondary to his juvenile rheumatoid arthritis.¹⁰⁵ The combination of the encephalitis and the juvenile rheumatoid arthritis present either ongoing impediments to the Student or underlying and significant variability in his development.¹⁰⁶ The Student's fine motor deficits may be related to his brain injury.¹⁰⁷ His level

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 28.

⁹⁷ *Id.* at 18.

⁹⁸ Testimony of Neuropsychology Expert.

⁹⁹ Hearing Officer Exhibit 1 at 19; Petitioner Exhibit 12 at 19.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 23.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 28.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Testimony of Neuropsychology Expert.

of difficulty in these areas has grown over the years, despite the ongoing provision of services at the School.¹⁰⁸

24. The Student's difficulties in the areas of attention, executive functioning, language functioning, visual spatial functioning, fine-motor functioning, and gross motor functioning are fully consistent with expectations considering his early identification of encephalitis and juvenile rheumatoid arthritis.¹⁰⁹ In other words, his deficits are indications of a generalized neurodevelopmental difficulty not a lack of services.¹¹⁰

25. Currently, as compared to his typically developing, same-age peers, the Student has moderate to severe limitations in academic achievement.¹¹¹ He has a limited capacity to demonstrate appropriate letter-sound identification or sound tracking.¹¹² At times, he exhibits inappropriate or very weak letter-sound knowledge, such as reading "ocean" as "okan."¹¹³ He also exhibits difficulties with word-attack and phonemic analysis, such as reading "enough" as "najo" or "carefully" as "carefo."¹¹⁴ These difficulties with basic reading skills limited his capacity to use text as a source of information.¹¹⁵ His weak decoding and reading skills significantly interfere with his capacity to glean meaning from text.¹¹⁶

26. The Student also has severe limitations in math performance.¹¹⁷ On a functional basis, he is able to complete simple addition and subtraction problems.¹¹⁸ However, he cannot effectively complete multi-column addition and subtraction tasks as he appears to have little idea of how to accurately track the information or proceed through the problem.¹¹⁹ His maximal performance in this area is in the deficient to borderline range.¹²⁰

27. Written expression is an area of strength for the Student.¹²¹ He performs in the borderline to low-average range and shows an emerging but largely phonetically based capacity to spell simple words.¹²² He has significant problems coordinating and sequencing text, consistent with signs of weakness in language-based processing issues.¹²³

¹⁰⁸ Hearing Officer Exhibit 1 at 28; Petitioner Exhibit 12 at 28.

¹⁰⁹ *Id.* at 30.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 24.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

28. The Student's adaptive behavior is within the deficient to borderline range.¹²⁴ His strongest functioning is in the area of socialization.¹²⁵

29. The Student is currently in the _____ grade.¹²⁶ He is eligible for specialized instruction and related services as a student with other health impairment and specific learning disability.¹²⁷ As of the first day of the due process hearing, the Student's then current IEP provided that he was to receive 6.5 hours of specialized instruction per day, 90 minutes per week of occupational therapy, 60 minutes per week each of speech-language therapy, physical therapy, and counseling.¹²⁸ The IEP provided that he was to receive 90 minutes per week of occupational therapy.¹²⁹

30. At the School, the Student is educated in a classroom with ten other students.¹³⁰ He is receiving instruction at a first- to second-grade level, although he has made academic progress.¹³¹

31. At the School, the Student also has made significant progress in his fine motor skills.¹³² At the School, he receives individual occupational therapy once a week and group therapy twice a week.¹³³ He has improved his handwriting, as well as his handwriting speed, but he still has deficits in this area.¹³⁴ He writes proficiently and properly. He functions independently in a number of areas, including his self-help skills, and tying his shoes in a sitting position.¹³⁵

32. The Student also is improving his self-regulation and responds to verbal prompts half the time.¹³⁶ He no longer exhibits visual perceptive deficits. He has made significant progress with managing his clothing, such as taking his coat on and off and hanging it up, as well as with toileting.¹³⁷ He no longer requires assistance in these areas.¹³⁸ Nonetheless, he continues

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Testimony of Education Director.

¹²⁷ *Id.*

¹²⁸ *Id.*; Petitioner Exhibit 3 at 1 (January 21, 2010, IEP). This was the Student's current IEP as of the first day of the due process hearing, November 16, 2010. Testimony of Education Director. Since then, the Student's IEP was January 13, 2011. Petitioner Exhibit 72.

¹²⁹ Testimony of Education Director.

¹³⁰ *Id.*

¹³¹ *Id.* Hearing Officer Exhibit 1 at 23-24, Petitioner Exhibit 12 at 23-14.

¹³² Testimony of Occupational Therapist.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

to need occupational therapy to address his deficits, including his limited range of motion that is a result of his juvenile rheumatoid arthritis.¹³⁹

33. At the School, the Student has made slow but steady progress in expressive and receptive language.¹⁴⁰ He utilizes strategies for reading comprehension such as visualizing a story.¹⁴¹ His speech is intelligible and he has good articulation.¹⁴² He has made a lot of progress in his ability to respond to concrete questions and problem solving.¹⁴³ He has made tremendous progress in describing attributes in a text and providing information about the text.¹⁴⁴ He still has weakness in reading comprehension, using descriptive language, sequencing events, grasping the overall idea in a story, and summarizing material he has read.¹⁴⁵ They then developed a plan to address the areas in which the Student continues to have deficits.¹⁴⁶

34. In November 2010, the Educational Director, in consultation with the Occupational Therapist, Speech-Language Pathologist, a physical therapist and a social worker, developed a compensatory education plan for the Student.¹⁴⁷ As a team, the Educational Director and the four service providers examined the Student's areas of progress while at the School as well as the areas in which he is struggling.¹⁴⁸ The plan recommends that the Student receive compensatory education in the form of two hours per week of speech and language pathology, two hours per week of social activity group therapy; sixty minutes of occupational therapy, and sixty minutes of physical therapy.¹⁴⁹ While the plan asserts that these services will assist the Student in making further progress in social skills, gross motor skills, fine motor skills, and speech and language, it does not identify any deficits that resulted from the denial of FAPE between August 2004 and February 2006. Nor does the plan explain how the services it recommends will address the deficits that resulted from the denial of FAPE.

35. The team that developed the compensatory education plan looked at the Student's progress in areas in which he still has challenges and discussed the areas in which he is still struggling.¹⁵⁰ After identifying the areas in which the Student continues to struggle, the team developed a plan to address those deficits.¹⁵¹

¹³⁹ *Id.*

¹⁴⁰ Testimony of Speech-Language Pathologist.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Petitioner Exhibit 7 at 1; testimony of Educational Director, Occupational Therapist, and Speech-Language Pathologist.

¹⁴⁸ Testimony of Educational Director.

¹⁴⁹ Petitioner Exhibit 7 at 34.

¹⁵⁰ Testimony of Educational Director.

¹⁵¹ *Id.*

36. In identifying the deficits that she believed the compensatory education plan was designed to remedy, the Educational Director did not distinguish between the deficits that result from the Student's disability and those that might have resulted from a denial of FAPE, in part because she cannot make such a distinction.¹⁵² Although the School has provided the specialized instruction and related services that the Student has required and currently requires to make progress, the Educational Director contributed to the compensatory education plan with the idea that students can always improve their performance.¹⁵³

37. In assisting in the development of the compensatory education plan, the Occupational Therapist considered the Student's current deficits, although she was unable to determine if some or all of these deficits were the result of his rheumatoid arthritis. The Occupational Therapist then determined what additional services the Student should receive if he had an opportunity for additional therapy beyond school-based therapy.¹⁵⁴ She decided that he needed intensive therapy to achieve greater range of motion, greater perception and balance, and more independence.¹⁵⁵ However, she was unable to determine whether the additional sixty minutes per week of occupational therapy would remedy the services she thought the Student did not receive for sixteen months.¹⁵⁶

38. In contributing to the compensatory education plan, the speech language pathologist recommended one hour of speech-language pathology twice a week to help the Student improve his vocabulary, improve his reading comprehension, and answer questions about the material he has read.¹⁵⁷ However, she was unable to determine whether the compensatory education plan would remedy any deficits that the Student would have developed during the eighteen months she believed he did not receive speech-language services.¹⁵⁸

39. The Educational Director provided credible testimony. She has ten years of experience in special education and six years' teaching experience.¹⁵⁹ She has monitored the Student's performance on a weekly basis since he enrolled in the School.¹⁶⁰ She provided in-depth testimony about the Student's deficits and the progress he has made since enrolling in the School. She was forthright about the ultimate issue in this case, i.e., whether the Student should receive compensatory education. She admitted that, while she participated in developing a compensatory education plan for the Student, she cannot discern which of the Student's deficits resulted from the denial of FAPE between August 19, 2004, and February 2006, and which of his deficits are a result of his disability.¹⁶¹

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Testimony of Occupational Therapist.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Testimony of Speech Language Pathologist.

¹⁵⁸ *Id.*

¹⁵⁹ Testimony of Educational Director.

¹⁶⁰ *Id.*

¹⁶¹ Testimony of Education Director.

40. The Occupational Therapist provided credible testimony. She has more than sixteen years of experience as an occupational therapist and provided in-depth testimony about the Student's areas of deficits in fine motor skills, balance, and other issues addressed in physical therapy. She also provided a detailed account of the progress the Student has made in these areas. She was forthright about the ultimate issue in this case, i.e., whether the Student should receive compensatory education. She admitted that the hours of physical therapy services she recommended were based upon the hours that she believed the Student missed between August 2004 and February 2006. She admitted that she is unable to predict whether the services recommended by the plan would remedy the denial of FAPE during that time.¹⁶² She also admitted that she could not distinguish which of the Student's current deficits were due to the denial of FAPE or due to his disability, i.e., rheumatoid arthritis.

41. The Speech-Language Pathologist provided credible testimony. She provided in-depth testimony about the Student's areas of deficit, as well as the areas in which he made progress. She was forthright in testifying that she did not know where the Student would be functioning had he received services from August 2004 to February 2006. She also admitted that she did not know whether her recommendation of 120 minutes per week of speech and language services would address any of the deficits that the Student may have developed between 2004 and 2006.

42. The Neuropsychology Expert was a credible witness. He had an in-depth knowledge of the Student's deficits, the organic origin of these deficits, and the ways in which the encephalitis and herpes infection impaired his functioning. The expert also exhibited an excellent recall of all of the details in this case, including the Student's complicated medical history. He also was forthright in opining that the Student was not entitled to compensatory education because, between August 2004 and February 2006, he had not missed any services that would have been on his IEP. The Neuropsychology Expert provided a detailed summary of the services the Student received during that time as well as the deficits that resulted from his illness, and the progress that resulted from the services he received.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."¹⁶³ Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.¹⁶⁴ FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an

¹⁶² Testimony of Occupational Therapist.

¹⁶³ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

¹⁶⁴ *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP).”¹⁶⁵

School districts are required only to make available a “basic floor of opportunity” that is “reasonably calculated to enable the child to receive educational benefits . . . sufficient to confer some educational benefit upon the [disabled] child,” or a program “individually designed to provide educational benefit.”¹⁶⁶

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.¹⁶⁷ In other words, an IDEA claim is viable only if those procedural violations affected the student’s *substantive* rights.¹⁶⁸

The burden of proof is properly placed upon the party seeking relief.¹⁶⁹ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.¹⁷⁰

VI. DISCUSSION

Petitioner Failed to Prove that the Student is Entitled to Compensatory Education or that She is Entitled to Reimbursement for the Services She Obtained for the Student between August 2004 and February 2006.

When a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, “i.e., replacement of educational services the child should have received in the first place.”¹⁷¹ Because compensatory education is a remedy for past deficiencies in a student’s educational program,” a finding as to whether a student was denied a FAPE in the relevant time period is a “necessary prerequisite to a compensatory education award.”¹⁷²

In other words, if a parent presents evidence that her child has been denied a FAPE, she has met her burden of proving that the child is entitled to compensatory education.¹⁷³ The parent

¹⁶⁵ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

¹⁶⁶ *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C. Cir. 1988) (citing *Rowley*, 458 U.S. at 195.

¹⁶⁷ 34 C.F.R. § 300.513 (a)(2).

¹⁶⁸ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

¹⁶⁹ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

¹⁷⁰ 20 U.S.C. § 1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

¹⁷¹ *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

¹⁷² *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

¹⁷³ *The Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland*, 534 F. Supp. 2d 109, 115 (D.D.C. 2008).

need not have a perfect case to be entitled to a compensatory education award. Additionally, a Hearing Officer may provide the parties additional time to supplement the record if she believes there is insufficient evidence to support a specific award.¹⁷⁴

An award of compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.”¹⁷⁵ It “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.”¹⁷⁶ This standard “carries a qualitative rather than quantitative focus,” and must be applied with “[f]lexibility rather than rigidity.”¹⁷⁷

Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.¹⁷⁸ Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.¹⁷⁹ However, even if a student is entitled to a compensatory education award following a denial of FAPE, it may be conceivable that no compensatory education is required.¹⁸⁰

Here, the District Court found that the Student was denied a FAPE between August 2004 and February 2006. Specifically, the District Court found that there had been an IDEA violation and a subsequent denial of a [FAPE] for the period between a DCPS school psychologist's August 19, 2004, recommendation that the Student receive special education services and the date that the federal magistrate judge placed the Student at the School in March of 2006.¹⁸¹ The District Court noted that DCPS did not find the Student eligible for special education and related services until 2008, four years after the DCPS school psychologist's recommendation.¹⁸²

At the due process hearing, Petitioner presented a compensatory education plan and testimony from three witnesses who had a hand in developing the plan. These three witnesses, the Education Director, the Occupational Therapist, and the Speech Language Pathologist, testified in detail about the Student's specific deficit areas and his progress while at the School. Each of the witnesses testified at length about the areas in which the Student requires further improvement.

Petitioner's witnesses failed to identify specific deficits that resulted from the denial of FAPE between 2004 and 2006 and that the plan was designed to address. Petitioner's witnesses were unable to explain how the compensatory education plan would remedy these deficits.

¹⁷⁴ *Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 207 (D.D.C. 2010).

¹⁷⁵ *Reid*, 401 F.3d at 518.

¹⁷⁶ *Id.* at 524.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005).

¹⁸¹ *Phillips v. District of Columbia*, 736 F. Supp. 2d 240, 248 (2010).

¹⁸² *Id.* at 245.

Instead, the Educational Director contributed to the compensatory education plan with the idea that the Student can always improve his performance. The Occupational Therapist determined the additional services that she believed the Student should receive if he had an opportunity for additional therapy beyond school-based therapy, but she did not consider whether the Student's needs, as she identified them, were related to the denial of FAPE or instead a result of his disability. Similarly, the speech language therapist made a recommendation for compensatory education but she could not determine whether the compensatory education would address any of the deficits that the Student developed as a result of the denial of FAPE.

After these three witnesses testified, it became clear that Petitioner had failed to introduce sufficient testimony and evidence to support her proposed compensatory education plan. The plan itself did not describe how the recommended services would address the deficits that resulted from the denial of FAPE, or even identify any deficits that resulted from the denial of FAPE.

To provide Petitioner another opportunity to supplement the record, this Hearing Officer informed the parties that she would order an evaluation of the Student to determine the compensatory education to which he was entitled. The parties then submitted to this Hearing Officer information about their desired evaluators.

This Hearing Officer appointed the Neuropsychology Expert, whom Petitioner had proposed, to conduct this evaluation. In conducting his assessment and writing the report, the Neuropsychology Expert examined all of the Student's medical, educational, and treatment records. In doing so, the Neuropsychology Expert found that Petitioner had obtained for the Student all of the services to which he would have been entitled had he been found eligible for special education services in August 2004.

The Neuropsychology Expert testified that the Student received about 120 minutes per week each of speech therapy, occupational therapy, and physical therapy on an outpatient basis at HSC. He opined that these levels of service were consistent with the levels of service the Student would have received pursuant to an IEP had he been found eligible for special education and related services in 2004. He testified that there weren't any discernible differences between the services the Student received at HSC and those he would have received in school. Thus, the Neuropsychology Expert opined, Petitioner ameliorated any harm from the denial of FAPE by obtaining these services for the Student.

In other words, no compensatory education is required to compensate the Student for the denial of FAPE because any deficiencies he suffered already have been mitigated.

Petitioner presented no testimony to rebut the Neuropsychological Expert's conclusions. She presented no testimony to show that the proposed compensatory education plan would remedy any past harm to the Student, or that it would address the denial of FAPE between 2004 and 2006. Rather, from the testimony of Petitioner's witnesses, it appears that the compensatory education plan was designed to maximize the Student's potential rather than remedy a harm.

Thus, despite being given ample additional time to supplement the record, Petitioner failed to prove by a preponderance of the evidence that the Student's current deficits are the

result of the denial of FAPE between August 2004 and February 2006. Petitioner also failed to prove that the services recommended in the compensatory education plan, i.e., two hours per week of speech and language pathology, two hours per week of social activity group therapy; sixty minutes of occupational therapy, and sixty minutes of physical therapy, would address any harm the Student suffered as a result of this denial of FAPE.

Finally, Petitioner presented treatment records and invoices for those treatments in an effort to establish that she is entitled to a reimbursement of _____ for obtaining the services that the Neuropsychology Expert found ameliorated the denial of FAPE. Yet, Petitioner failed to present any evidence or testimony to establish that the services described in the treatment records and invoices were provided to the Student, or that the same services that the Neuropsychology Expert found had ameliorated the harm from the denial of FAPE.¹⁸³ In other words, Petitioner failed to present any testimony to support her request for reimbursement in the amount of _____

Therefore, Petitioner failed to prove by a preponderance of the evidence that the compensatory education plan would remediate the harm the Student suffered as a result of the denial of FAPE between August 2004 and February 2006. Additionally, Petitioner failed to prove that she is entitled to reimbursement in the amount of _____

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 23rd day of February 2012 hereby ordered that this case is dismissed with prejudice.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

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

¹⁸³ Petitioner also failed to present any evidence that these services would have been provided to the Student through his IEP had he been found eligible for special education services in 2004.