

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

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

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STUDENT,<sup>1</sup>  
through the Parent

Petitioner,

v.

District of Columbia  
Public Schools,

Respondent.

Date Issued: March 18, 2011

Hearing Officer: James Gerl

Case No:

Hearing Date: March 8 & 10, 2011

Room: 2006

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STUDENT HEARING OFFICE  
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**HEARING OFFICER DETERMINATION**

**BACKGROUND**

The due process complaint in this matter was filed on January 4, 2011. The matter was assigned to this hearing officer on January 5, 2011. A resolution session was convened on February 1, 2011. A prehearing conference was convened on February 4, 2011. The due process hearing was convened at the Student Hearing Office on March 8 and 10, 2011. The hearing was closed to the public. The student's parent testified by telephone but otherwise did not attend the hearing

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

and the student did not attend the hearing. Four witnesses testified on behalf of the Petitioner and one witness testified on behalf of the Respondent. Petitioner's exhibits 1-36 were admitted into evidence. Respondent's exhibits 1-11 were admitted into evidence.

### **JURISDICTION**

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

### **PRELIMINARY MATTERS**

All 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.

Petitioner filed a motion to expedite the due process hearing on January 4, 2011. Petitioner withdrew the motion to expedite on January 10, 2011.

### **ISSUES PRESENTED**

The following one issue was identified by counsel at the prehearing conference and evidence concerning this issue was heard at the due process hearing: Did Respondent violate its child find obligations with regard to the student herein?

### **FINDINGS OF FACT**

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

1. The student was born on April 7, 1993 and was a resident of the District of Columbia for all times relevant hereto. (P-16; P-19; T of student's mother) (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 attended schools of the Respondent from early in his academic career through approximately February 4, 2009. (P-19; P-21; T of student's mother)
3. The student struggled with his school work throughout his time in Respondent's schools. He was retained in and had to repeat the 2nd grade. The student was suspended once in 5th or 6th grade for fighting. He was also reprimanded for a number of other disciplinary offenses. (P-16; P-19; P-21; R-4; T of student's mother)
4. Respondent did not evaluate the student to determine whether he was a student with a disability for purposes of special education services or otherwise determine his eligibility for special education services until January, 2011. (stipulation of counsel on the record; P-19; P-16; R-4; R-8)

5. From January 4, 2009 until approximately February 4, 2009, the student was enrolled in Respondent's junior high school. The student was enrolled in said junior high school for the entire 2008-2009 academic year up until approximately February 4, 2009 when he was removed by the court system. (P-21; P-19; P-16)
6. The student's struggles in the classroom were caused by his disabilities and would have been observable by teachers and other staff of Respondent. Likely he would have acted very withdrawn when not able to do work in the classroom. Teachers and other staff should have observed the student's withdrawn behavior and his academic struggles, and therefore, should have suspected that he had a disability. (T. of the court psychologist for the D.C. Superior Court)
7. The student was convicted, pursuant to a plea bargain, of 4th degree child sexual abuse on February 27, 2009. The student was in abscondance from January 17, 2009 to February 4, 2009. He was detained at, and educated at the beginning on approximately February 5, 2009. (P-21; P-16; P-22)

8. On March 13, 2009, the student was given a psychosexual evaluation by a psychologist employed by the Superior Court of the District of Columbia. The psychologist concluded that the student meets the criteria for dysthymic disorder. The report of the evaluation also contained the diagnoses of reading disorder, sexual abuse of a child, mixed receptive/expressive language disorder and borderline intellectual functioning. In addition to recommending treatment to avoid recidivism, and family therapy, and individual counseling, the report recommended that the student's educational team meet to determine whether he qualifies for special education under either the category of emotional disturbance or the category of specific learning disability. The report further suggested that the student would need direct individual instruction, particularly in the area of reading achievement, as well as support and accommodations with reading tasks. The report notes that with his borderline processing speed skills that the student will need additional time to complete school related tasks. The report further recommended that the student be evaluated by a speech language pathologist

because of his borderline verbal comprehension and extremely low reading skills and for evaluation of a possible language impairment. (P-16)

9. On approximately May 14, 2009, the student was placed at Residential School No. 1. He remained there until approximately January 4, 2010. (P-21; P-17; P-18)

10. The student was placed at Residential School No. 2 on approximately January 4, 2010. He remained there until approximately January 5, 2011. (P-19; R-1; P-21; R-8)

11. Respondent was made aware of the student's two residential placements by the District of

(T. of program manager for District of

Columbia

12. Respondent was also made aware of the student's lack of an IEP by Residential School No. 2. The director of education at Residential School No. 2 sent a letter to Respondent's chancellor on March 4, 2010. Said letter called attention to the fact that the student was attending the residential school and that he was in need of an IEP and that the school would be establishing a linkage

for collaboration with Respondent in serving the student. In addition, the director of education for Residential School No. 2 sent a series of emails to Respondent's personnel specifically referring him regarding eligibility for special education services. Said emails were written between March 4, 2010 and December 13, 2010. (P-6; P-7; P-8)

13. Respondent was the agency that funded the student's educational services at the two residential placements described herein. (P-30; T. of the program manager for
14. Respondent is a public authority legally constituted in the District of Columbia to perform administrative control and direction of public schools. (Record evidence as a whole)
15. The student was evaluated by a court psychologist by order of the Superior Court of the District of Columbia on May 18, 2010. Said evaluation reported the following diagnoses: anxiety disorder, not otherwise specified; reading disorder; sexual abuse of child; mixed receptive/expressive language disorder; and borderline intellectual functioning. Among other things, the report recommended that the student's educational team meet to determine whether he

qualifies for special education services under either the category of emotional disturbance or a specific learning disability in reading. The report emphasized that the student needed direct individualized instruction, particularly in reading and that his borderline processing skills will require additional time to complete school related assignments. The evaluator also recommended a speech language evaluation of the student. (P-19)

16. The student was given a psychosexual evaluation by a psychologist of the Superior Court of the District of Columbia on January 13, 2011. The psychologist concluded that the student had the following diagnoses: Post-traumatic stress disorder; sexual abuse of a child; learning disorder not otherwise specified (characterized by significant difficulties with reading, math and written expression; slow processing speed) and mixed receptive/expressive language disorder. The report also found borderline intellectual functioning. The recommendations in the report, in addition to individual therapy, family therapy and pro-social activities included a strong recommendation that the student receive special education services pursuant to an IEP

tailored to meet his academic needs and that given his slow processing speed, he be given additional time to complete school tasks. (P-21)

17. Respondent found the student to be eligible for special education and related services on January 7, 2011. His primary disability category is emotional disturbance. No additional testing was deemed necessary to determine eligibility. (R-4; R-8; T of Respondent's school psychologist)
18. On January 7, 2011, the Respondent convened a meeting of the student's IEP team. The IEP that was developed at this meeting states present levels of performance and develops goals in the areas of mathematics, reading, written expression and emotional, social and behavioral development. The IEP provides for full-time special education services with 27.5 hours per week of specialized instruction outside the general education setting, plus three hours per week of behavioral support services outside the general education setting. These services are provided in a full-time special education school. No team member expressed any doubt

as to the student's eligibility or as to the appropriateness of the January 7, 2011 IEP.(R-8; T of Respondent's school psychologist)

19. The IEP developed by Respondent on January 7, 2011 is reasonably calculated to provide educational benefit. Respondent has provided the student with FAPE since January 7, 2011. (Record evidence as a whole; R-8; T of Respondent's school psychologist)
20. The student did not attend his current school for a few days in January 2011. The reason for his nonattendance did not involve a lack of transportation. Rather, the reason he did not attend was that he was overwhelmed by the academic requirements of the new school and needed a break. The problem has since been resolved and the student is attending regularly. (T. of assistant educational director of the student's currently school)
21. The student showed some improvement in the year 2010. From 2010 to 2011, however, the student regressed severely academically. For example, many of his Woodcock-Johnson scores decreased significantly during that timeframe. Among the biggest areas of decreased scores were passage comprehension in the area

of reading, where the student fell from a 13 year 4 month score to a 9 year 3 month score, and written fluency in the area of writing, where the student fell from a 13 year 7 month score to an 11 year 0 month score. (T. of court psychologist D.C. Superior Court; P-35)

22. The educational harm to the student, reflected in part by the decreased Woodcock-Johnson scores, was caused by the failure of Respondent to provide the student with an IEP or specialized instruction targeting important individualized needs, which he would have received if respondent's personnel had evaluated him and found him eligible for special education. (T. of court psychologist D.C. Superior Court; T. of assistant education director of student's current school)
23. Academic tutoring in the affected areas, functional math, reading and/or writing skills, would help remedy the educational harm suffered by the student as aforesaid. (T. of court psychologist D.C. Superior Court; T. of assistant education director of student's current school; P-34)
24. The provision of a laptop computer and academic software, specifically "Encore (Passport to Math)," would help remedy the

educational harm suffered by the student as aforesaid. (T. of assistant education director of student's current school; P-34)

25. An independent speech language evaluation would help remedy the educational harm suffered by the student as aforesaid. (T. of court psychologist D.C. Superior Court; P-34)
26. Vocational skills, life skills and job coaching would likely benefit the student but would not likely remedy the educational harm he has suffered. (T. of court psychologist D.C. Superior Court; T. of assistant education director student's current school)

### CONCLUSIONS OF LAW

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

1. Under Individuals With Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA"), a state must ensure that children with disabilities are identified, located and evaluated and that a practical method is developed and implemented to determine which children with disabilities are

currently receiving need special education services. IDEA § 612(a)(3); Title 5-E, D.C.M.R. § 3002.1(d). To comply with this child find obligation, states must have in effect policies and procedures to ensure that all children with disabilities who are in need of special education and related services are identified, located and evaluated and that a practical method is developed and implemented to determine which children are currently receiving special education and related services. Such policies and procedures must include children who are suspected of being a child with a disability and in need of special education even though they are advancing from grade to grade or are highly mobile children. 34 C.F.R. §§ 300.111(a) and (c).

2. In Washington D.C., municipal regulations have placed the responsibility on local education agencies, such as Respondent, to ensure that procedures are implemented to identify, locate and evaluate all children with disabilities residing in the district that are in need of special education and related services. The child find obligation provisions of IDEA impose an affirmative duty on the local education agency to identify, locate and evaluate such

students. Hawkins v. District of Columbia, 539 F. Supp. 2d 108, 49 IDELR 213 (D.D.C. 2008); Title 5-E, D.C.M.R. § 3002.1(d).

3. The standard for triggering the child find duty is suspicion of disability rather than actual knowledge of a qualifying disability. Regional School District No. 9, Bd. of Educ. v. Mr. and Mrs. M ex rel MM, 53 IDELR 8 (D. Conn. 2009); Torrance United School District v. EM, 51 IDELR 11 (N.D. Calif. 2009).
4. IDEA defines a local education agency as “a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision...” The definition of an LEA includes an educational service agency and any other institution or agency having administrative control and direction of a public elementary school or secondary school. IDEA § 602(19); 34 C.F.R. § 300.28.
5. In the instant case, Respondent was the “local education agency” responsible for conducting child find and for meeting the student’s special education needs for all times relevant to this matter.

6. In the instant case, Respondent violated its child find duty by failing to evaluate the student for eligibility for special education and related services despite having been presented with a number of reasons to suspect that the student had a disability.
7. 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 schools have complied with the procedural safeguards as set forth in IDEA and an analysis of whether the Individualized Educational 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); Kerkham v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). In the instant case Respondent denied FAPE to the student by failing to evaluate the student and by failing to provide him with and IEP for a substantial period of time.

8. Awards of compensatory education should be flexible and qualitative in nature so that they compensate a student for the educational harm caused by a violation of the Act. A compensatory education award with the following components will rectify the harm to the student caused by Respondent's violation of its child find obligations and its denial of FAPE to the student: an order requiring funding for two hours per week of individual academic tutoring in functional math, reading and writing skills for the remainder of the 2010-2011 school year and the 2011-2012 school year at current market rate; funding for academic software "Encore (Passport to Math)" and the provision of or funding for a laptop computer; and funding for an independent speech language evaluation. Reid ex rel Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. March 25, 2005).

## DISCUSSION

Issue No. 1: Did Respondent violate its child find obligations with respect to the student?

## 1. Threshold LEA Issue

Respondent asserts as a defense in this case that it is not the local education agency (hereinafter sometimes referred to as "LEA") responsible for the student's education in this case. Respondent argues that the student was placed in a residential placement by the court and that the placement was facilitated by the

but that the Respondent did not make the placement, was not made aware of the placement, and was not in control of the placement.

Petitioner responds firstly that the Respondent failed to raise this defense in its response to the complaint. The rules of civil procedure do not apply to administrative hearings such as this one. It is clear that the issue was properly before the hearing officer inasmuch as Respondent's counsel raised the issue at the prehearing conference. Because of the novel nature of the defense, the hearing officer required both parties to brief the issue prior to the due process hearing. Both parties submitted briefs pertaining to the issue, and said briefs have been considered.

IDEA defines a local education agency as “a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision...”. The definition of an LEA includes an educational service agency and any other institution or agency having administrative control and direction of a public elementary school or secondary school. IDEA § 602(19); 44 C.F.R. § 300.28.

In the instant case, the record evidence shows that the student was enrolled in one of Respondent’s junior high schools for at least some period of time prior to his incarceration and placement at Residential School No. 1. The complaint in this matter was filed on January 4, 2011. By agreement of the parties, the statute of limitations period relevant to this case extends back to January 4, 2009. IDEA §§ 615(b)(6)(b); 615(f)(3)(C). At that time, the student was enrolled in Respondent’s junior high school. At least for that short period of time, it is beyond doubt that Respondent was the LEA responsible for the student.

For the period from February, 2009 to approximately May 14, 2009, the student was assigned to the schools run by the court system. After a brief period of detainment and evaluation, the student began attending Residential School No. 1 in approximately May, 2009. Beginning in about January 2010, the student began attending Residential School No. 2.

It was the uncontroverted testimony of the program manager for the \_\_\_\_\_ for the District of Columbia that at the beginning of each placement, he informed the residential schools that they needed to be in touch with Respondent concerning both billing and enabling a smooth transition when the student was ready to return from the residential placement. In addition, documentary evidence in this case indicates that Residential School No. 2 contacted Respondent in March 2010 in writing regarding the student's special education needs and in particular the need for a determination of eligibility and an IEP. There is no evidence in the record that Respondent ever denied or otherwise responded to the correspondence objecting to the request that it submit documentation concerning the educational needs of the student. Although it is clear

that the Respondent was treated as the LEA by the court system and the provider residential treatment facilities, it is clear that Respondent has provided no evidence to rebut the understanding of these entities. The testimony and the documentary evidence in the record also indicate that Respondent was billed for the educational services received by the student at the residential placements. Thus, it is clear from the record that Respondent had notice of the student's residential placements, that Respondent was asked by the residential schools and the court system to participate in evaluating the student for special education and in developing an IEP, and that Respondent exercised control and supervision over the facilities that provided educational services to the student. Accordingly, Respondent meets the IDEA definition of an LEA and Respondent is the LEA for purposes of this student.

## 2. Merits

Because Respondent is the LEA responsible for the student, it follows that Respondent had a child find duty to determine whether there was a reasonable suspicion that the student may have been a student with a disability, as defined by IDEA. In the instant case, there were numerous red flags that the student had a disability. The fact

that the student got into trouble with the law while attending one of Respondent's junior high schools should, in itself, have been a red flag causing Respondent to suspect that the student may have had a disability. It is clear certainly that not every student who violates the law has a disability. However, trouble with the law should be one of many red flags that a school district such as Respondent should be aware of in terms of suspecting the presence of a disability.

The most significant evidence that demonstrates that the student should reasonably have been suspected by Respondent of having had a disability is the court ordered psychosexual evaluation of the student that was conducted on March 13, 2009. In the portion of the report discussing the student's educational history, the evaluator notes that the student has struggled throughout his schooling in respondent's schools. The student had been retained in 2nd grade. In addition, the report notes that the student had been suspended in 5th or 6th grade for fighting and reprimanded for disciplinary offenses on several other occasions. The report notes that "despite this, he has not been evaluated for nor has he received special education services." The evaluator goes on to recommend that the student's educational team

determine his need for special education based on a possible emotional disturbance or specific learning disability or a language impairment, and describes his need for specialized instruction particularly to address his reading problems and his borderline processing speed skills. Similar subsequent evaluations on May 18, 2010 and on January 13, 2011 reached similar conclusions and made similar recommendations. The record is clear that Respondent never acted upon these clear signals that the student should have been evaluated for special education.

The only evidence offered by Respondent to contradict Petitioner's evidence that Respondent should have suspected the student of having a disability was the testimony of Respondent's school psychologist, who stated that she saw no red flags that would cause a school district to suspect a disability based on her review of the documentary evidence. The testimony of Respondent's school psychologist is not persuasive or credible. The knowledge of the student by Respondent's school psychologist is limited to the period after January 2011 when the student returned to attend school again in Respondent's school system. The school psychologist relied on grades stated in one of the

documentary exhibits that the student earned one A, two B's, two C's and two F's in the first school year after he was incarcerated. Two F's out of five grades does not seem like evidence of academic success. Indeed, the standard for triggering the child find duty is suspicion of disability rather than actual knowledge of a qualifying disability. Regional School District No. 9, Bd. of Educ. v. Mr. and Mrs. M ex rel MM, 53 IDELR 8 (D. Conn. 2009); Torrance United School District v. EM, 51 IDELR 11 (N.D. Calif. 2009).

Moreover, the documentary evidence showing that the student struggled academically throughout his entire educational career is more persuasive than the testimony of Respondent's school psychologist, who had not even met the student at that time. To the extent that the testimony of Respondent's witness contradicts the testimony of Petitioner's witnesses concerning this issue, it is concluded that the testimony of Petitioner's witnesses is more credible and persuasive for the reasons stated above. In any event, even if the student's grades for one year were not a red flag, Respondent provide no explanation for its failure to convene an eligibility committee in response to evaluations by a series of court psychologists referring the student for special

education evaluations or for its failure to convene an eligibility committee after specific written requests by Residential School No. 2 to do so and to provide the student with an IEP. Respondent did not respond to these communications. It appears that Respondent forgot about this child.

Under the facts of this case, the violation by Respondent of its child find duty rises to the level of a denial of FAPE. First, the extremely long period of time during which the respondent violated its child find duty is an important factor. Here the evidence reveals that the student struggled throughout his school career. Beginning in the relevant time period under the statute of limitations, the student struggled first in Respondent's junior high school, then in the court system and then at two residential schools. Second, three evaluations, beginning on March 5, 2009, found a clear basis for a special education referral, suggesting likely disability classifications.

Third, when the eligibility/IEP team for the student finally met on January 7, 2011, the student was not referred for further evaluation, eligibility was based solely upon the documentary evidence referred to above. No member of the team expressed any doubts as to the eligibility

of the student. An IEP was immediately developed. In other words, the student's eligibility and need for an IEP was immediately obvious once respondent convened a committee to review the matter. It is clear from the facts that the student was obviously eligible and in need of an IEP from the beginning point of this analysis based upon the statute of limitations, January 4, 2009, until his current IEP was developed on January 11, 2011. Thus, in this case, the facts require a conclusion that Respondent denied FAPE to the student during this period of time. Bd. of Educ. etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

It is concluded that the Petitioner has prevailed with regard to this issue and that Petitioner has met her burden of persuasion.

### **RELIEF**

Compensatory education awards are equitable in nature. They should be flexible and they should be qualitative (that is, crafted so as to address the educational harm suffered by the student as a result of the violation of IDEA.) Petitioner must establish through evidence that the

student suffered educational harm as a result of the violation of the Act and the Petitioner must establish through evidence the nature of the compensatory education program that would rectify the educational harm suffered by the student. 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 has met her burden of establishing the harm caused by the violation of the Act and of proposing a compensatory education plan that remedy the harm. As to the issue of educational harm, the student presented the testimony of the court psychologist who evaluated the student on January 13, 2011. The psychologist testified that the student actually made some progress in 2010 but that from 2010 to 2011 suffered significant academic harm. One sign of his lack of academic progress was the decrease in his test scores. In particular, his passage comprehension scores in reading decreased by a level of over four years. Over the same timeframe, his written fluency scores in writing decreased by nearly a year and a half. It was the credible and persuasive testimony of both the court psychologist and the assistant educational director at the student's current school that the educational harm suffered by the student was a

direct result of his not having an IEP during the time period relevant to this case, January 4, 2009 until January 11, 2011, and the corresponding failure to receive targeted individualized instruction during that time period. Respondent denied FAPE to the student from January 4, 2009 until January 11, 2011, a substantial period of time, and the long denial of FAPE caused severe educational harm to the student.

Concerning the compensatory education that would be appropriate to remedy the educational harm suffered by the student, Petitioner has presented a compensatory education plan which is, for the most part, appropriate and well-reasoned. The compensatory education plan submitted by the Petitioner requests tutoring services for two hours per week of individual academic tutoring in functional math, reading and/or writing skills for the remainder of the 2010-2011 school year and the 2011-2012 school year. This component of compensatory education is both well suited to remedy the specific educational harm suffered by the student and it is supported by the record evidence, in particular, the credible and persuasive testimony of the court psychologist and the assistant educational director of the student's current school.

Petitioner's compensatory education plan requests funding for academic software, particularly, a program called "Encore (Passport to Math)" and the provision of a laptop computer. This component of compensatory education is also supported by the evidence in the record, in particular, the credible and persuasive testimony of the assistant educational director of the student's current school, who testified that these items would relate directly to the student's current educational deficits.

Petitioner's compensatory education plan requests that Respondent fund an independent speech and language evaluation. This component of compensatory education is supported by the evidence, in particular, the credible and persuasive testimony of the court psychologist who evaluated the student, as well as the documentary evidence beginning with the report of the psychologist issued on March 13, 2009, which recommended such an evaluation for this student.

The compensatory education plan submitted by the Petitioner also requests that the student receive three hours per week of life and job coaching for the current school year and the next school year. This component of the special education compensatory education plan is not

supported by the record evidence. In particular, the court psychologist testified that the vocational training, life skills and job coaching would not remedy educational harm, but rather, would enhance skills that the student already has. Petitioner also presented the testimony of the assistant education director at the student's current school to support this component of the compensatory education plan. However, the testimony of the assistant educational director in this regard did not provide any reasoning or support linking the vocational, life skills, and job coaching requested to the educational harm suffered by the student as a result of the violation of the Act. Rather, the vocational training, life skills and job coaching was linked more to the student's current educational program and what he is doing now. Although the program is valuable and the student would likely benefit from it, the evidence in the record does not justify this type of program as compensatory education. It is concluded, therefore, that the vocational, life skills and job coaching component of the compensatory education plan submitted by the Petitioner is not appropriate to remedy the harm to the student and it will not be included in the Order herein.

Respondent presented no evidence concerning a lack of educational harm and no contrary evidence with regard to the tutoring, the software/laptop and the speech language evaluation components of the compensatory education plan submitted by the Petitioner. The testimony of the witnesses called by Petitioner with regard to the aforesaid components of the compensatory education was credible and persuasive. The compensatory education plan submitted by the Petitioner is appropriate and well-reasoned, with the exception of the vocational, life skills, job coach component, and all other components contained in the compensatory education plan shall be ordered as relief in this case.

Accordingly, the compensatory education portion of the Order in this decision shall include components involving tutoring, software/laptop, and an independent speech and language evaluation. After applying the facts of this case to the intense fact-based scrutiny required by the Reid decision, the hearing officer concludes that the compensatory education ordered herein will properly compensate the student for the harm suffered as the result of Respondent's violation of IDEA during the statute of limitations period herein.

Because compensatory education awards should be flexible, the hearing officer has structured the compensatory education award so that the parties can alter the award to make it better fit the needs of the student provided that both parties agree to any such changes or alterations of the award. By building in this flexibility, the parties can effectuate changes to the compensatory education program simply by agreeing to the changes.

### **ORDER**

Based on the foregoing, it is **HEREBY ORDERED**:

1. Petitioner is awarded compensatory education as follows:
  - a. Unless the parties agree otherwise, Respondent shall pay for individual academic tutoring services for the student in functional math, reading and/or writing skills for two hours per week for the remainder of the 2010-2011 school year and for the 2011-2012 school year at a rate not to exceed the current market rate in the District of Columbia for tutoring services, beginning within ten days of the issuance of this Order;

b. Unless the parties agree otherwise, Respondent shall loan the student a laptop computer or pay for a laptop computer and in addition, shall pay for the academic software "Encore (Passport to Math)". Respondent shall provide or pay for the said computer and software within 30 days of the date of this Hearing Officer Decision;

c. Unless the parties agree otherwise, Respondent shall pay for an independent speech and language evaluation at the current market rates for such evaluations in the District of Columbia to be completed within 45 days of receipt of a signed informed consent from the parent; and

2. All other relief requested in the foregoing 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: March 18, 2011

/s/ James Gerl

James Gerl,  
Hearing Officer