

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

Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

[Parent/Guardian], on behalf of,
[Student],¹

Petitioner,

v

District of Columbia Public Schools (DPCS),

Respondent.

Date Issued: March 25, 2011

Hearing Officer: Jim Mortenson

Case No:

OSSE
STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed by the Petitioner on February 11, 2011. A response to the complaint was filed on February 17, 2011. The Petitioner is represented by Domiento Hill, Esq., and the Respondent is represented by Harsharen Bhuller, Esq. A resolution meeting was held February 24, 2011, and did not result in a settlement. The parties did agree to proceed to hearing and the 45 day hearing timeline began February 25, 2011, pursuant to 34 C.F.R. § 300.510(c)(2). A prehearing conference was held with counsel on February 24, 2011, and a prehearing order was issued on that date. The hearing was convened on March 17, 2011, in room 2004 at 810 First Street, NE, Washington, D.C. The due date for the hearing officer's determination (HOD) is April 10, 2011. This HOD is issued on March 25, 2011.

¹ Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30.

III. ISSUES, RELIEF SOUGHT, AND DETERMINATION

The issue to be determined by the Independent Hearing Officer (IHO) is:

Whether the Respondent failed to offer or provide an individualized education program (IEP) reasonably calculated to provide educational benefit when it refused to include a dedicated aide during the Student's school day?

The substantive requested relief is a dedicated aide during the Student's school day.

Based on the findings of fact and conclusions herein, this IHO has determined that the Student does not currently require the supplementary service of a dedicated aide during his school day to meet the current annual goals in the IEP.

IV. EVIDENCE

Four witnesses testified at the hearing, three for the Petitioner and one for the Respondent.

The witnesses for the Petitioner are as follows:

- 1) Petitioner (P)
- 2) Educational Advocate, Kevin Carter (K.C.)
- 3) Special Education Teacher,

The Witness for the Respondent is:

- 1) DCPS Progress Monitor, Amanda Kascic (A.K.)

14 documents were disclosed by the Petitioner and all were admitted into evidence. The

Petitioner's exhibits are:

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
P 1	October 21, 2010	HOD, IHO Ruff
P 2	June 22, 2010	HOD, IHO Ruff
P 3	February 24, 2011	Due Process Complaint Disposition/Resolution Meeting Notes
P 4	April 12, 2010	MDT [IEP team] Meeting Notes
P 5	July 7, 2010	IEP Meeting Notes
P 6	September 28, 2010	Meeting Notes
P 7	January 5, 2011	IEP
P 8	January 5, 2011	Meeting Notes
P 9	January 4, 2011	Clinical Update
P 10	January 31, 2011	MDT [IEP team] Meeting Notes [Three sets]
P 11	October 23, 2010	[Psychiatric assessment report]
P 12	January 6, 2011	[Student Observation Report]
	January 10, 2011	[Student Observation Report]
	January 19, 2011	[Student Observation Report]
	January 28, 2011	[Student Observation Report]
P 13	January 21, 2011	Quarter 2 Report Card
P 14	[Undated]	Curricula Vitae of

Nine documents were disclosed by the Respondent and eight were admitted into evidence.

The Respondent's exhibits are:

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
R 2	January 5, 2011	Meeting Notes
R 3	January 6, 2011	[Student Observation Report]
R 5	January 31, 2011	MDT [IEP team] Meeting Notes
R 6	February 24, 2011	Resolution Meeting Notes
R 7	January 10, 2011	[Student Observation Report]
R 8	January 19, 2011	[Student Observation Report]
R 9	January 28, 2011	[Student Observation Report]
R 10	January 31, 2011	Meeting Notes

V. FINDINGS OF FACT

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

1. The Student is a _____ year old learner with a disability currently attending _____ grade at _____
The Student receives special education and related services as a result of eligibility under the definition of intellectual disability.³
2. The Student is impulsive and has difficulty accepting responsibility for his actions.⁴ This impacts his ability to function effectively in a general education setting.⁵ His low cognitive ability impacts his academic skill development and, even with special education and related services, he has not been able to progress at grade level.⁶ He performs academically at the second grade level in reading, writing, and math skills.⁷ His motor skills are underdeveloped and impact his ability to read (visual scanning), write and use a keyboard.⁸ It is unknown whether the Student has reached a plateau in his ability to learn.⁹ The IEP team has determined he will be academically assessed using the regular state-wide assessment with accommodations.¹⁰ The student requires extra teacher support in a small group setting or one to one assistance to develop his academic skills.¹¹ Student is currently in a fully segregated special education school in classes with five to eight students and two adults per class.¹²

² Testimony (T) of _____ Undisputed Fact (UF).

³ P 7, T of _____

⁴ P 7.

⁵ P 7.

⁶ P 7, T of _____ T of _____

⁷ P 7.

⁸ P 7.

⁹ T of _____ T of _____ T of P, P 7.

¹⁰ P 7.

¹¹ P 7.

¹² P 7, T of _____ T of _____

3. The Student is respectful and sociable.¹³ He has lots of energy and requires some proximity control.¹⁴ He sometimes walks around the room, doesn't identify appropriate social cues, and requires redirection which he responds well to.¹⁵ He is able to attend to assignments and complete tasks, with redirection as needed.¹⁶ Sometimes he requires more attention from one of the two adults in the classroom than one of his teachers (one of the adults) is comfortable with.¹⁷
4. There are six measurable goals to advance the Student to third grade level math skills within a year in the IEP proposed January 5, 2011.¹⁸
5. There are five reading goals in the IEP proposed January 5, 2011, not all of which are measurable because they do not have clear baselines from which to measure or clear outcomes by which achievement can be determined.¹⁹
6. There are four measurable goals in the IEP proposed January 5, 2011, which are designed to advance the Student to third grade level written expression within a year.²⁰
7. There are four goals in the IEP proposed January 5, 2011, concerning speech and language skills, which lack specificity and are not measurable.²¹
8. There are 11 measurable functional goals in the IEP proposed January 5, 2011, which are designed to improve the Student's emotional, social, and behavioral skills.²²

¹³ T of T of

¹⁴ T of

¹⁵ T of T of

¹⁶ T of P 12, R 3, R 7, R 8, R 9.

¹⁷ T of

¹⁸ P 7.

¹⁹ P 7. (The IEP goals were not challenged in the complaint, and the adequacy of the goals will not be remedied by this HOD. It is noted that for some of the goals, there is only a "baseline" that simply refers to the Student performing at the second grade level, but does not specifically address the skill the goal is attempting to improve.)

²⁰ P 7.

²¹ P 7.

²² P 7.

9. There are five measurable functional goals in the IEP proposed January 5, 2011, which are designed to improve the Student's motor skills.²³
10. The IEP proposed January 5, 2011, provides for the following special education, related services, and supplementary aids and services²⁴:
- Specialized instruction outside of the general education setting for 24.5 hours per week
 - Behavioral support services outside of the general education setting for 1.5 hours per week
 - Occupational therapy services outside of the general education setting for one hour per week
 - Speech and language services outside of the general education setting for 30 minutes per week
 - Extended school year services
11. The Student had previously been in the general education setting with pull-out services.²⁵
12. The Student's most recent grades included the following for the first and second quarters of the current school year, respectively: Health, A and C; Language Arts, D and B; Math, F and F; Physical Education, A and A; and Social Studies, D and F.²⁶ The Student is not currently failing any classes in the third quarter.²⁷

²³ P 7.

²⁴ P 7.

²⁵ P 7.

²⁶ P 13.

²⁷ T of

VI. CONCLUSIONS OF LAW

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

1. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

special education and related services that –

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

- 34 C.F.R. § 300.17. The Supreme Court has described the purpose of the IDEA quite clearly:

When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Board of Educ. v. Rowley, 458 U.S. 176, 203-204 (1982). It is within this legal context the case at hand must be examined.

2. 34 C.F.R. § 300.513, Hearing decisions, provides, in relevant part:

- (a) Decision of hearing officer on the provision of FAPE.
 - (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
 - (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —
 - (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
 - (iii) Caused a deprivation of educational benefit.

3. An IEP must include:

A statement of the special education and related services and supplementary aids and services, based on peerreviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a

statement of the program modifications or supports for school personnel that will be provided to enable the child —

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; . . .

34 C.F.R. § 300.320(a)(4).

4. The Student is not being educated in the regular classrooms of the public education system, but rather a fully segregated school for students with disabilities in classrooms of five to eight students. However, federal regulations redundantly provide that special education is to enable a child with a disability to be involved in and progress in the general education curriculum, the same curriculum and non-disabled peers. *See*, 34 C.F.R. §§ 300.39(b)(3), 300.320(a)(1), 300.320(a)(2), 300.320(a)(4), and 300.324(b). The Supreme Court in *Rowley* echoes this. *Id.* (“Such instruction and services must. . . approximate the grade levels used in the State’s regular education, . . .”) This Student is not involved in or progressing in the general education curriculum for eighth grade as he is several years behind his same-age peers in the core academic content areas of math, reading, and writing.
5. The Student’s IEP is not failing to provide him a FAPE as a result of the lack of a dedicated aide. The services currently in the IEP are reasonably calculated to enable the Student to reach the goals in the IEP. There is a question as to whether the goals are designed to meet his needs that result from his disability to enable him to be involved in and make progress in the general education curriculum. (See Conclusion 3, *supra*.) The goals were not challenged in the complaint, however, and so this is not examined here. Furthermore, the evidence does not show what specific revisions to the IEP were made, if any, on January 5, 2011. Thus, because the Student is reported to be performing better both academically and functionally at this time, it is concluded that the services in the IEP are appropriate to meet the goals in the

IEP. Because the goals may not be designed to meet the Student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum, it is recommended the Respondent convene the IEP team to review the IEP to ensure the requirements of 34 C.F.R. § 300.320 are met.

VII. ORDER

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

The Complaint is dismissed with prejudice.

IT IS SO ORDERED.

Date: March 25, 2011



Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

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