

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

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

STUDENT,¹
through the Parent

Petitioner,

v

District of Columbia
Public Schools,

Respondent.

Date Issued: April 17, 2011

Hearing Officer: James Gerl

Case No:

Hearing Date: April 6, 2011

Room: 2006

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on February 10, 2011. The matter was assigned to this hearing officer on February 11, 2011. A resolution session was convened on March 4, 2011. A prehearing conference by telephone conference call was convened on March 10, 2011. The due process hearing was convened on April 6, 2011 at the Student Hearing Office. The hearing was closed to the public. The student's parent attended the hearing, and the student did not attend

¹ Personal identification information is provided in Appendix A.

the hearing. Three witnesses testified on behalf of the Petitioner and four witnesses testified on behalf of the Respondent. Petitioner's Exhibits 1-25 were admitted into evidence. Respondent's Exhibits 1-9 were admitted into evidence. The decision of the Hearing Officer is due to be issued on or before April 18, 2011.

JURISDICTION

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

PRELIMINARY MATTERS

All proposed exhibits and testimony received into evidence and all supporting arguments submitted by the parties have been considered. To the extent that the evidence and arguments advanced by the parties

are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Petitioner's educational advocate raised some question during her testimony at the due process hearing concerning whether the student missed services that were supposed to be delivered under his IEP. The due process complaint in the instant case did not mention any issue with regard to implementation of the IEP. Accordingly, this issue was not considered in reaching this Hearing Officer Determination. IDEA § 615(f)(3)(B).

ISSUES PRESENTED

The following three issues were identified by counsel at the prehearing conference and evidence concerning these issues was heard at the due process hearing:

1. & 2. Are the May 21, 2010 IEP and the July 19, 2010 IEP for the student inappropriate because they provide an insufficient

number of hours of services, because they contain insufficient baseline data, and/or because they do not provide a sufficiently therapeutic setting?

3. Did Respondent fail to timely convene a Multi-Disciplinary Team (hereafter sometimes referred to as "MDT") to review the result of an independent educational evaluation/functional behavioral analysis conducted for the student?

FINDINGS OF FACT

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

1. An independent functional behavioral analysis has been completed and as of today's date has not yet been reviewed by a Multi-Disciplinary Team. (Stipulation by the parties on the record) (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. On May 21, 2010, an IEP team was convened by Respondent to create an IEP for the student. Present at the meeting were the student's mother, Respondent's special education coordinator, Respondent's compliance case manager, and Respondent's special education teacher. Said IEP included a discussion of the student's present levels of performance and a number of goals in the areas of mathematics, reading, written expression and emotional, social and behavioral development. Said IEP called for 12 hours per week of specialized instruction outside of the general education environment, 2.5 hours per week specialized instruction in the general education environment, 30 minutes per week of behavioral support services as a related service outside general education and 30 minutes per week of behavioral support services as a related service inside the general education environment. (P-6)
3. The student's IEP team met again on July 19, 2010. Present at the meeting were the student's mother, Petitioner's educational advocate, Respondent's special education coordinator, Respondent's social worker, Respondent's compliance case

manager, two special education teachers, an additional social worker, and Respondent's attorney. At the meeting, the team considered the parent's request that the student needed a full-time out of general education IEP, but the team rejected the request, noting the improvements in the student's academic performance. The resulting IEP included a much more detailed statement of the student's present levels of performance as compared to his previous IEP, as well as more extensive baseline data. Said IEP also contained numerous goals in the fields of mathematics, reading, written expression, and emotional social/behavioral development. The IEP calls for 12 hours per week of specialized instruction outside the general education environment, 2.5 hours per week of specialized instruction in the general education environment, as well as related services of behavioral support services 30 minutes per week outside general education and 30 minutes per week inside general education. (P-3, P-4, P-5)

4. At the July 19, 2010 IEP team meeting, Respondent authorized Petitioner to obtain an independent educational evaluation for a

functional behavioral analysis of the student. (T of Petitioner's Educational Advocate; P-5)

5. The student's mother agreed to the educational program set forth in the July 19, 2010 IEP, at least for a trial period. (T of Petitioner's Educational Advocate; T of student's mother)
6. The student has made progress from the beginning of the current school year on all of the IEP goals in academic areas that have been introduced. In addition, he mastered two of his behavioral goals. (R-7)
7. During the current school year, the student receives reading, math, and written language in a pull-out setting through the special education teacher. The student is making progress in reading, especially in the area of vocabulary, fluency and comprehension. He is also making great progress in mathematics, especially with regard to the memorization of multiplication and division tables, as well as the ability to divide two-digit numbers by one-digit numbers, and the ability to read information from graphs. Although the student is a reluctant writer, his writing skills have improved and he can structure a sentence with the use

of a graphic organizer. (T of Respondent's special education teacher; R-10; R-7; R-4; R-3)

8. During the current school year, the student receives science and social studies, as well as homeroom in the general education environment. In the general education classes, the student completes his assignments independently and he completes his classwork most of the time. When he has difficulties, he asks the teacher for help. The student has made progress in his general education classes this year. (T of Respondent's general education teacher)
9. The 2009-2010 school year was stressful for the student, as well as his classmates. The teacher assigned to the student's classroom was out of the class most of the year and substitute teachers were in charge of the class for most of the school year. (T of Respondent's social worker)
10. The student's behaviors have greatly improved this school year. The student has made progress with regard to each of his emotional/social/behavioral goals. The student's self-esteem is better this year. The student participated on the school basketball

team this year, and the team was successful. The basketball experience positively affected the student and his self esteem, and his behavior has been better since the basketball experience. (T of Respondent's social worker; T of the student's mother)

11. In the past, the student had experienced a number of behavioral issues at school. The student's behaviors have improved recently. The student's mother attributes the improvement in the student's behavior to her placing the student in a marine-style boot camp, as well as the work of the social worker of Respondent who provides counseling to the student at school, as well as the interventions of one of the school's teachers. (T of student's mother)
12. The student was administered a Woodcock-Johnson assessment twice, once in February 2009 and once in February 2011. Between 2009 and 2011, the student's scores on the Woodcock-Johnson assessment showed some progress across the board, but in some areas he showed substantial progress. His scores on the subtest of passage comprehension were up almost two grade levels. His written expression subtest scores were up 1.7 levels. The student

made substantial academic progress between February 2009 and February 2011. (R-1; R-2; T of Respondent's school psychologist; T of Petitioner's education advocate;)

13. The student's scores in reading and math on the DC-BAS assessment improved on the assessments dated March 30, 2011. His scores on the DIBELS assessment of reading fluency increased between September 2010 and March, 2011. (R-9; R-10)
14. The student made academic progress and behavioral progress under his May 21, 2010 IEP and his July 19, 2010 IEP. (Record evidence as a whole)
15. The IEPs developed by Respondent for the student on May 21, 2010 and July 19, 2010 were reasonably calculated to provide education benefit. The goals and baseline data contained in said IEPs are appropriate. The setting in which said IEPs was provided was appropriate. (Record evidence as a whole; P -7; P - 3)
16. On August 30, 2010, an independent educational evaluation/functional behavioral assessment of the student was conducted. The report of the evaluation was issued on August 31, 2010. The FBA report notes that the student suffered adjustment

problems following the separation of his parents and that said separation has had an impact upon the student's behavior. The report notes that it is difficult to deescalate the student once he becomes agitated. The report also noted that the student has a tendency to shut down when presented with difficult tasks. The report states that the student has a history of acting out impulsively, and that he frequently gets into fights with other students when he gets angry. The report of the functional behavioral assessment contains suggestions for interventions when the student has angry outbursts or when he shuts down or avoids tasks, as well as other useful recommendations for the student's educational team. (P-10)

17. On September 3, 2010, Petitioner's attorney faxed the report of the independent educational evaluation/functional behavioral assessment to Respondent. (P-11)
18. Respondent did not convene, or offer to convene, a meeting to review the independent educational evaluation/functional behavioral assessment of the student until March 29, 2011, after the complaint in the instant case had been filed. Respondent's

letter of invitation to convene a meeting to discuss the independent educational evaluation/functional behavioral assessment was not issued until approximately six and one-half months after the report of the functional behavioral assessment had been provided to Respondent. The delay by Respondent in convening a team to review the report of the functional behavioral assessment was unreasonable. (R-8; T of Petitioner's educational advocate)

19. The nature of the student's disability, an emotional disturbance, as well as the long delay by Respondent in offering to conduct the MDT to discuss the functional behavioral analysis, coupled with the student's previously behavioral issues, amounts to a denial of free and appropriate public education. (Record evidence as a whole)
20. A summer camp with a team-related theme, such as a sports camp or a military camp, and with an adult figure as a coach or a leader, would provide the student with opportunities for globalizing skills that he has been working on in the area of social/emotional/behavioral functioning. By providing said

summer camp, Respondent will appropriately compensate the student and ameliorate the harm caused by its failure to timely consider the functional behavioral assessment of the student. (T of Petitioner's educational advocate; P-25)

CONCLUSIONS OF LAW

Based upon the evidence in the record, the arguments of counsel, as well as my own legal research, I have made the following Conclusions of Law:

1. The United States Supreme Court has established a two-part test for determining whether a school district has provided a free and appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in The Individuals With Disabilities Education Act, 20 U.S.C. §§1400 et seq. (hereafter sometimes referred to as "IDEA") and an analysis of whether the Individualized Educational Plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to receive

some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

2. In order to provide FAPE, a school district is not required to maximize the potential of a student with a disability. Instead, a school district is required to provide the basic floor of educational opportunity. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).
3. In determining the placement for a child with a disability, a school district is required to the maximum extent appropriate to ensure that the child is educated with children who are not disabled, and that any removal from the regular education environment must occur only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. IDEA § 612(a)(5); 34 C.F.R. §§ 300.114, 300.115.

4. The IEP development process is designed to be a collaborative process involving cooperation between the parent and the school district. Shaffer v. Weast, 546 U.S. 49; 44 IDELR 150 (U.S. 11/14/2005).
5. In the instant case, the IEPs developed by Respondent for the student on May 21, 2010 and July 19, 2010 were reasonably calculated to provide educational benefit. The student progressed under said IEPs. Said IEPs provided FAPE to the student in the least restrictive environment.
6. When a parent obtains an independent educational evaluation, a local education agency such as Respondent must consider the results within a reasonable period of time. 34 C.F.R. §300.502(c); Harris v. District of Columbia 561 F.2d 63, 50 IDELR 194 (D. D.C. June 23, 2008). Respondent's failure to timely and properly consider the independent educational evaluation/functional behavioral assessment contained in the report issued on August 31, 2010 for the student, coupled with the nature and severity of the student's disability, and the student's previous history with regard to behavioral issues amounts to a denial of FAPE. Bd. of

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

7. All relief under IDEA is equitable in nature. Compensatory services, or compensatory education, for a violation of IDEA should be flexible and designed to remedy the harm caused by a violation of the Act. Relief under IDEA should be tailored to the specific facts and circumstances of a particular case, the nature and severity of the violation, and the nature and severity of the student's disability. Reid ex rel Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32, (D.C. Cir. March 25, 2005). In the instant case, an award of compensatory services involving a team oriented summer camp will appropriately redress the violation of the Act committed by Respondent herein.

DISCUSSION

Merits

Issue No. 1 & 2: Are the May 21, 2010 IEP and the July 19, 2010 IEP for the student inappropriate because they contain insufficient

numbers of hours of service, because they do not contain sufficient baseline data and because they do not provide a sufficiently therapeutic setting:

Petitioner alleges that the two IEPs in question are not appropriate. Petitioner asserts that said IEPs have an insufficient level of services, inappropriate present levels of performance and an insufficiently therapeutic setting.

The United States Supreme Court has established a two-part test for determining whether a student has been provided a free and appropriate public education by a school district. There must be a determination as to whether the schools have complied with the procedural safeguards set forth in the law, and there must be an analysis of whether the IEP is reasonably calculated to enable the child to receive some educational benefit. Bd. of Educ. etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). In the instant case, Petitioner does not allege any violation of the procedural safeguards under IDEA. The analysis,

therefore, turns upon whether or not the IEPs were reasonably calculated to confer educational benefit upon the student.

In the instant case, Petitioner concedes that the student made progress under his IEP, but argues that the IEPs in question did not cause the student to make enough progress. Petitioner argues that the student has not made sufficient progress to close the gap between his achievement level and that of his non-disabled peers.

Petitioner misapplies the legal standard. The law does not require that in order to provide FAPE, a school district must close the “gap” between the achievement level of a student with a disability and the achievement level of his non-disabled peers. Allyson by Susan B. and Mark B. v. Montgomery County Intermediate Unit No. 23, 54 IDELR 164 (E.D. Penna. March 31, 2010); JL and ML ex rel KL v. Mercer Island School District, 55 IDELR 164 (W.D. Wash. October 6, 2010); MP by Perusse v. Poway Unified School District, 54 IDELR 278 (S.D. Calif. July 12, 2010); Montgomery Public Schools, 110 L.R.P. 28732 (SEA Md. January 14, 2010). Instead, IDEA requires only that a school district provide a student with a disability with the basic floor of educational opportunity. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102

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

Petitioner argues in closing argument that the student has made progress under his IEPs, but not enough to be really successful, and that a coming transition to middle school with possible behavioral issues could hinder future success. Once again, Petitioner misapplies the standard with this highly speculative argument. In order to provide FAPE, a school district is not required to maximize the potential of a student with a disability. Instead, a school district is required to provide the basic floor of educational opportunity.

The evidence in this case demonstrates clearly that the student did make progress under the May 21, 2010 IEP and the July 19, 2010 IEP. Respondent's special education teacher testified that the student made progress under his IEPs in reading, in particular with regard to vocabulary, fluency, and comprehension. She testified further that the student made great progress in math and in specific that he had memorized his multiplication and division tables, was able to divide two-digit numbers by one-digit numbers and to accurately read the content on graphs. The special education teacher also testified that

although the student was a reluctant writer, his writing had improved particularly with regard to the writing of simple paragraphs and that using a graphic organizer he is able to properly structure a sentence. She testified further that he is well behaved in her class and that when he does shut down, on rare occasions, he is able to be redirected and get back on track with minimal difficulty.

Respondent's general education teacher testified that the student completes his assignments independently and completes his classwork most of the time. When he has difficulties, he asks the teacher for help. She testified that he has made progress in his classwork in his general education social studies and science classes and that his behavior in such classes was good. Clearly, the goals and present levels established by the IEP are appropriate.

Respondent's social worker testified that the student has made progress on his three IEP goals in the area of emotional/social/behavioral. His behavior has improved.

The school psychologist of Respondent who is assigned to the student's school testified that she administered the Woodcock-Johnson assessment to the student in February of 2009 and February of 2011.

She testified that although the IEPs were only in place for a little over a year during the latter part of the time between the two Woodcock-Johnson assessments, that the student made great progress during that period. On some subtests, the student made nearly two years of progress, but the student made progress in nearly all areas.

The testimony of Respondent's witnesses with regard to the student's progress is corroborated by the documentary evidence. The educational evaluations by Respondent's school psychologist demonstrate the progress that the student made on the Woodcock-Johnson assessments. The DIBELS and DC-BAS testing conducted by Respondent also verified the student's progress. The IEP progress report issued by Respondent on January 27, 2011 showed that the student had mastered two of his IEP goals and that he was progressing on all of the other goals that were introduced during the reporting periods.

Moreover, the credibility of the testimony of the mother is diminished by virtue of the fact that she agreed to the July 19 IEP at the meeting conducted on that date. It is inconsistent with the collaborative spirit of IDEA for the parent to agree with the contents of

an IEP and later file a due process complaint challenging its substantive validity. See Schafer v. Weast, 546 U.S. 49; 44 IDELR 150 (U.S. 11/14/2005).

It should be noted that the testimony of Petitioner's witnesses for the most part is consistent with the testimony of Respondent's witnesses in that Petitioner generally concedes that the student made progress under his IEP. To the extent that the testimony of Petitioner's witnesses is inconsistent with the testimony of Respondent's witnesses, it is concluded that the testimony of Respondent's witnesses is more credible and persuasive. The conclusion regarding credibility and persuasiveness is based upon the demeanor of the witnesses during their testimony, as well as the discussion above and the following factor: the credibility of Petitioner's witnesses is diminished because of their apparent misunderstanding of the concept of least restrictive environment, one of the core concepts under IDEA. IDEA requires that school districts educate students with disabilities, to the maximum extent appropriate, with their non-disabled peers and that any removal from the regular education environment occur only if the nature or severity of the disability is such that education in the regular classroom

with the use of supplementary aids and services cannot be achieved satisfactorily. IDEA § 612(a)(5); 34 C.F.R. §§ 300.114, 300.115. In the instant case, it was clear that the student was making progress under his IEP, and therefore, the desire by Petitioner to have the student placed in a full-time special education program, with no contact with his non-disabled peers, is inconsistent with the requirements of the law. Accordingly, it is concluded that the IEPs developed by Respondent for the student on May 21, 2010 and July 19, 2010 were appropriate and provided a free and appropriate public education to the student.

Petitioner has not met her burden with respect to this issue. Respondent has prevailed with regard to this issue.

Issue No. 3: Did Respondent fail to timely convene a meeting of the student's Multi-Disciplinary Team (MDT) to review the results of the report of an independent educational evaluation/functional behavioral analysis for the student?

At the July 19, 2010 IEP team meeting, Respondent authorized Petitioner to obtain an independent educational evaluation for a functional behavioral analysis of the student. On August 30, 2010, the

independent educational evaluation/functional behavioral analysis was conducted, and the report for the evaluation was issued on August 31, 2010. On September 3, 2010, Petitioner's attorney faxed the IEE/FBA to Respondent. Respondent did not schedule a meeting to review the independent functional behavioral analysis until March 29, 2011, after the complaint in this case had been filed.

When a parent obtains an independent educational evaluation, a local education agency such as Respondent must consider the results within a reasonable period of time. 34 C.F.R. §300.502(c); *Harris v. District of Columbia* 561 F.2d 63, 50 IDELR 194 (D. D.C. June 23, 2008). Respondent failed to consider this evaluation within a reasonable time.

During closing argument at the hearing, counsel for Respondent conceded that the 6½-month delay between Petitioner's attorney faxing the independent functional behavioral analysis report to Respondent and Respondent's action in inviting Petitioner to a meeting to discuss it was way too long. Respondent contends however that because the student made progress under his IEP, both academically and

behaviorally, that the student was not harmed by Respondent's failure to consider the functional behavioral analysis.

It is true that a procedural violation of IDEA only results in actionable relief when the violation substantively affects the student by causing educational harm or where it seriously impairs the parent's right to participate in the IEP process. Lesesne ex rel BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.D.C. Cir. May 19, 2006); IDEA § 615(f)(3)(E)(ii).

In the instant case, however, Respondent's failure to consider the independent functional behavioral analysis was not merely a procedural violation. Instead, Respondent's long and unexplained delay in failing to consider the functional behavioral analysis, coupled with the student's emotional disability and the fact that the student had suffered behavioral problems while at school, causes the violation in this case to be both a substantive violation and a denial of FAPE. After having duly considered all facts and circumstances in this case, especially the nature and severity of the student's disability, it is concluded that the failure to convene an MDT meeting to review the independent

functional behavioral analysis within a reasonable period of time is both a substantive violation of IDEA and a denial of FAPE.

Accordingly, Respondent's argument is rejected and it is concluded that Respondent violated IDEA by failing to convene an MDT team within a reasonable time after receipt of the functional behavioral analysis from Petitioner's attorney.

Petitioner has met her burden with respect to this issue. Petitioner has prevailed with regard to this issue.

RELIEF

Petitioner has requested a prospective private placement as relief in this case. The parties were asked to file a brief with respect to the issue of prospective private placement prior to the hearing and both parties did file such a brief. The briefs have been considered.

Under IDEA the clear preference is for a placement in public school; placement in a private school is the exception. RH by Emily H & Matther H v. Plano Independent Sch Dist 54 IDELR 211 (5th Cir 5/27/10) A hearing officer or court should only award prospective private placements as relief to ensure that a child receives the

education required by IDEA in the future where a balance of the relevant factors justifies such a placement. In addition to the conduct of the parties, which is always relevant in fashioning equitable relief, the following factors must be balanced before awarding prospective private placements: the nature and severity of the student's disability; the student's specialized individual educational needs; the link between those needs and the services offered by the private school; the private school placement's costs; and the extent to which the placement represents the least restrictive environment. Branham ex rel. Branham v. District of Columbia, 427 F.3d 7; 44 IDELR 149 (D.C. Cir. October 25, 2005).

In this case, the evidence revealed that the student's educational needs are being met by Respondent under the current IEP as administered at the current location. In addition, it is clear that the placement established by the current IEP is the least restrictive environment appropriate for educating the student. Accordingly, after applying the Branham factors, it is clear that a prospective private placement would not be appropriate relief for the violation committed herein.

Petitioner's educational advocate presented testimony at the hearing that 80 hours of tutoring and a summer camp program would be appropriate compensatory education for the student in this case.

Awards of compensatory education under IDEA are flexible and equitable in nature. The compensatory education should be designed so as to address the harm created by the violation of the Act by Respondent. 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, the tutoring requested by Petitioner's educational advocate is clearly inappropriate. The advocate did not cogently explain how she arrived at the 80-hour figure. Moreover, the tutoring component of the compensatory education plan was designed to remedy an alleged insufficient number of hours of services. That argument has been rejected. See discussion of the merits of the case earlier herein.

In addition, Petitioner's educational advocate justified the 80 hours of tutoring requested as compensatory education based in part upon missed services. There was no allegation in the due process complaint that the Respondent failed to implement the student's IEP.

Accordingly, it is concluded that the tutoring requested is not appropriate relief to remedy the violation of the Act that has been found herein.

Petitioner's educational advocate also requested as compensatory education that Respondent fund a summer camp for the student. The notion of the summer camp was to make up for Respondent's failure to consider the functional behavioral analysis, and if appropriate to tweak or create a behavioral intervention plan for the student. The idea behind the Petitioner's advocate's recommendation of a summer camp was that the summer camp would help the student in terms of globalizing skills with regard to behavioral/social/emotional goals. It was the recommendation of Petitioner's educational advocate that in particular, the student should attend a team-oriented summer camp, such as a sports camp or a military camp, with an adult coach or leader. The testimony of Petitioner's educational advocate regarding the summer camp as relief was credible and persuasive. This testimony was not rebutted by any of Respondent's witnesses. It is concluded that the summer camp as compensatory services is appropriate relief, based upon all the facts and circumstances of this case, in order to remedy the

harm by Respondent's long delay in failing to consider the functional behavioral analysis that was done upon the student. The summer camp relief is well suited to remedy the harm caused by the violation of the act in this particular case, and therefore is appropriate as compensatory services. Because compensatory relief under IDEA should be flexible, the order portion of the decision will allow the parties to agree to alter the relief awarded in any manner upon which they agree that it may be better suited to serve the needs of the student.

ORDER

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

1. Unless the parties agree otherwise, Respondent is hereby ordered to pay for the student to attend a summer camp during the summer of 2011 as compensatory services. Said camp should be team-oriented, that is it should have a sports, military, or some similar orientation or theme. The summer camp should have an adult coach, leader, or similar job function. Unless the parties agree otherwise, the summer camp should be located in the greater Washington D.C. metropolitan area. Unless the parties agree otherwise, the cost of the

camp should not exceed the market rate for similar summer camps in the Washington D.C. metropolitan area; and

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

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).

Date Issued: April 17, 2011

/s/ **James Gerl** -
James Gerl
Hearing Officer