

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

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

STUDENT HEARING OFFICE
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through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: May 1, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Dates: April 15, 20, and 21, 2010
Rooms: 1, 5A, and 5A (respectively)

HEARING OFFICER DETERMINATION

BACKGROUND

Student is a year-old boy, who participates in the autism cluster program at a DCPS school. Student's most recent IEP, dated January 20, 2010, lists his primary disability as autism spectrum disorder (known as autism), and requires him to receive 23.5 hours per week of specialized instruction, 1.5 hours per week of adapted physical education, 1 hour per week of speech-language pathology services, and 1.5 hours per week of occupational therapy.

On March 24, 2010, Petitioner filed a Complaint against DCPS, alleging that DCPS (1) failed to timely locate, identify and fully/appropriately evaluate Student, (2) failed to provide adequate and timely evaluations in all areas of suspected disability from 2005 to present, (3) committed procedural violations that resulted in a denial of FAPE by failing to provide required reevaluations, failing to provide a copy of the IEP before seeking parental consent, failing to hold placement meetings before changing placement, and failing to issue prior notices when changing or refusing to change Student's placement or program, (4) failed to develop or timely develop appropriate IEPs, (5) failed to fully implement Student's IEPs, and (6) failed to provide or timely provide an appropriate placement from SY 2005/06 to present.

Also on March 24, 2010, Petitioner filed a Motion for Expedited Hearing, alleging that Student was in physical and emotional danger in his current placement due to illegal corporal punishment

in the form of physical discipline and restraints, and that Student was not attending school due to the failure of DCPS to provide a safe placement for him. On March 30, 2010, the hearing officer issued an Order Granting Petitioner's Motion for Expedited Hearing pursuant to § 1008(B) of the Student Hearing Office's Standard Operating Procedures.

DCPS filed its Response to the Complaint on April 5, 2010. DCPS also filed a Supplemental Response on April 13, 2010.

On April 8, 2010, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the conference, Petitioner abandoned its claim for failure to timely locate, identify and fully/appropriately evaluate Student, as well as all claims that extended beyond IDEIA's two-year statute of limitations.¹ Petitioner also clarified the specific concern(s) to be addressed with respect to each claim asserted.²

On April 12, 2010, Petitioner disclosed forty documents (Petitioner's Exhibits 1 through 40), and DCPS disclosed a total of twelve documents (DCPS-1 through DCPS-12).

The expedited due process hearings for this case were held on April 15, April 20, and April 21, 2010.³ Petitioner's Exhibits 3, 11-14, 15-20, 24 and 29 were admitted into the record over DCPS's objection, and all of Petitioner's remaining documents were admitted without objection. DCPS-7 and DCPS-12 were admitted into the record over Petitioner's objection. DCPS-13 was excluded from the record on untimeliness grounds pursuant to 34 C.F.R. § 300.512(a)(3); and at DCPS's suggestion, DCPS-10 was held in abeyance pending proof that it was actually sent to Parent. All of DCPS's remaining documents were entered into the record without objection. After all testimony had been received, the record was left open until midnight on April 21, 2010 to allow for the submission of written closing statements. Both parties submitted closing statements by or before the deadline.

The due process hearings were convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. §§ 1400 et. seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUES

The issues to be determined are as follows:

1. Did DCPS fail to provide adequate and timely evaluations by failing to conduct until November 2009 an OT evaluation that was requested by the MDT in 2007, and by failing to conduct an FBA?

¹ See Prehearing Order, fn 1.

² See Prehearing Order at 1-2.

³ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

2. Did DCPS deny Student a FAPE by committing the following procedural violations: failing to conduct reevaluations, requesting parental consent prior to providing copies of IEPs, failing to hold a placement meeting before changing placement, failing to issue Prior Notices prior to making or refusing to make changes to Student's program or placement?
3. Did DCPS fail to develop or timely develop appropriate IEPs due to insufficient speech and language services, inappropriate academic goals, the lack of a dedicated aide, the lack of adequate modifications, and the failure to provide ESY?
4. Did DCPS fail to fully implement Student's IEPs by failing to provide OT services beginning in November 2009 and failing to provide a sensory diet?
5. Did DCPS fail to provide or timely provide an appropriate placement from the end of SY 2007/08 through present?

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. Student was diagnosed with autism at or about the age of 5. As a result of this disability, Student does not sit still for long, he responds best when verbal instructions are accompanied by physical touch, he can communicate but he cannot express himself well or explain his feelings well, and he engages in self-stimulating behavior ("stimming") such as running around and flapping his hands. Student is a visual learner, but he previously had strong math skills and was able to complete 1-digit addition and subtraction problems in his head during kindergarten and first grade. However, in second grade, Student began to use his fingers to count and he currently uses his fingers to count all the time.⁴
2. As of March 24, 2008, which was two years prior to the filing of the instant Complaint, the IEP that was in effect for Student was dated March 3, 2008. That IEP listed "autism" as Student's disability classification and required Student to receive 26.5 hours of specialized instruction and 1 hour of speech/language services, for a total of 27.5 hours per week of specialized instruction and related services with 85% of Student's school time to be spent outside of a general education setting.

The IEP indicated that Student was performing below grade level in reading and math, but he could perform mental math for addition operations and could read short passages with some fluency. Moreover, Student's expressive and receptive language skills were delayed for his age, and he experienced difficulties answering questions without cues, using pronouns and labeling location of objects.

The IEP listed the following short-term objectives for Student in the area of communication: increase the use of pronouns He, She, They, It; increase the use of

⁴ See Petitioner's Exhibit 20 at 1; Testimony of Parent.

personal pronoun “I”; denote possession by using “his”, “hers”, “their”; answer a variety of “Wh” questions; denote location of people or objects in complete sentences in reply to “Where is?” questions; and increase eye contact with speaker.

The IEP listed the following short-term objectives for Student in the academic area of math, all to be performed with 80% accuracy: identify time on a clock at quarter-hour intervals; independently solve multi-digit subtraction problems; independently solve single digit multiplication problems; solve the missing variable of single digit addition problems; solve the missing variable of single digit multiplication problems; and add and subtract fractions with common denominators.

The IEP listed the following short-term objectives for Student in the academic area of reading, all to be performed with 80% accuracy: read and correctly pronounce 2nd grade Dolch sight words; use a word chunk to spell extensions of the word (i.e. ake – cake, bake, shake, flake); read with a fluency rate of at least 60 words per minute; and identify characters in a story by name, identify the setting, and give 3 details of the plot.

The IEP listed the following short-term objectives for Student in the academic area of written expression, all to be performed with 80% accuracy: use lines and curves to write capital letters; use lines and curves to write lower-case letters; use lines and curves to draw squares, rectangles, circles, and triangles while showing emphasis on the corners; independently write on a straight line making sure to stay between the top and bottom lines (the ceiling and floor); consistently write first and last name on work without prompting; and appropriately choose capital and lower-case letters while writing name, date and other proper nouns.

The IEP indicates that Student was to receive the following accommodations/modifications: extended time. Moreover, the IEP indicates that transportation services were provided, but a BIP and ESY were not to be provided.⁵

3. Student’s January 16, 2009 IEP also listed “autism” as his primary disability and required him to receive 1590 minutes (26.5 hours) per week of specialized instruction outside of general education and 60 minutes per week of speech-language services outside of general education. The IEP indicated that Student could perform mental math for addition operations, could read short passages, could write simple sentences, and used complete sentences.

The IEP listed the following annual goals for Student in the academic area of mathematics, to be mastered at 80% accuracy: improve math skills by being able to: know multiplication is the result of counting the total number of objects in a set of equal groups; select appropriate operational and relational symbols to make an expression true; estimate and find area and perimeter of a rectangle and triangle using diagrams, models, and grids or by measuring; and use the commutative and identify properties of addition and multiplication on whole numbers in computations and problem situations.

The IEP listed the following annual goals for Student in the academic area of reading, to be mastered at 80% accuracy: improve reading by being able to: use context of the sentence to determine the intended meaning of an unknown word or a word with multiple meanings; identify the elements of stories and analyze how major events lead from problem to solution; and identify personality traits of characters and the thoughts, words, and actions that reveal their personalities.

⁵ Petitioner’s Exhibit 4.

The IEP listed the following annual goals for Student in the academic area of written expression, to be mastered at 75% accuracy: improve written language skills by being able to: write legibly leaving spaces between words in a sentence; identify three basic parts of speech (adjective, noun, verb); and capitalize geographical names, holidays, historical periods and special events.

The IEP listed the following annual goals for Student in the area of communication/speech and language: increase receptive and expressive language skill to an age-appropriate level at 80% accuracy; increase use of pronouns He, She, They, It; increase the use of personal pronoun "I"; denote possession by using "his", "hers", "their"; answer a variety of "Wh" questions; denote location of people or objects in complete sentences in reply to "Where is?" and increase eye contact with the speaker.

The IEP indicated that Student needed support from the autism cluster program, that he would take the Alternative Assessment and required special transportation services. However, the IEP stated that ESY services were not required for Student.⁶

4. Student's November 2, 2009 listed his primarily disability as "Autism Spectrum Disorder (Known as Autism)" and required him to receive 23.5 hours of specialized instruction, 1 hour of speech-language pathology, 1.5 hours of occupational therapy, and 1.5 hours of orientation and mobility, with all specialized instruction and related services to be provided in an outside of general education setting. As with previous IEPs, this IEP indicated that Student could perform mental math for addition operations, could read short passages, could write simple sentences, and used complete sentences.

The IEP listed the following annual goals for Student in the academic area of mathematics: improve math skills by mastering all short term objectives with 80% accuracy. The short term objectives for math were as follows: explain that multiplication is the result of counting the total number of objects in a set of equal groups; select appropriate operational and relational symbols to make an expression true; estimate and find area and perimeter of a rectangle and triangle using diagrams, models, and grids or by measuring; and use the commutative properties of addition and multiplication on whole numbers in computations and problem situations.

The IEP listed the following annual goals for Student in the academic area of reading, to be measured at 80% accuracy: read 3rd grade level sight words; extend a word chunk to create new words; demonstrate comprehension of written information; demonstrate comprehension of verbal information; read aloud from familiar literary and informational text fluently, accurately, and with comprehension, using appropriate timing, change in voice, and expression; and make informal presentations that have a recognizable organization, using clear enunciation and adequate volume.

The IEP listed the following annual goals for Student in the academic area of written expression, to be measured at 75% accuracy: improve written language skills by being able to: write legibly leaving spaces between words in a sentence; identify three basic parts of speech (adjective, noun, verb); and capitalize geographical names, holidays, historical periods and special events.

The IEP listed the following annual goals for Student in the area of communication/speech and language: answer wh-questions pertaining to events/activities/short stories with 80% accuracy (baseline was 40% accuracy); follow 1-

⁶ Petitioner's Exhibit 5.

2 step directions containing spatial, conditional, and temporal concepts with 80% accuracy with modeling and pictorial cues (baseline was 0% accuracy); state similarities and differences between 2 objects with 80% accuracy (baseline was 30% accuracy); formulate grammatically correct sentences when presented with pictures with 80% accuracy with modeling (baseline was 50% accuracy with verbal prompting); remain on topic during conversation in 4/5 trials with modeling (baseline was 0% accuracy); use pronouns he, she, it, they, I, me with 80% accuracy with minimal verbal prompting/modeling (baseline was 60% accuracy); and denote possession by using his, hers, their when presented with pictures with 80% accuracy with modeling (baseline was 40% accuracy).

The IEP listed the following annual goal for Student in the health/physical area: be able to perform the following objectives according to what is expected at his age in 4 out of 5 consecutive trials. The objectives were as follows: catch a tossed tennis ball with one hand; perform sit-ups, v-ups or push-ups; dribble a ball with alternating hands; jump forward more than 36 inches from a stationary start; and complete a 100-foot shuttle run course in less than 13 seconds.

The IEP listed the following annual goals for Student in the area of motor skills/physical development: demonstrate improved visual motor integration skill by copying various overlapped shapes with 80% accuracy within adequate time independently (baseline stated Student could copy various simple shapes accurately within adequate time independently); demonstrate improved visual motor coordination by copying sentences from a near point model with correct letter formation 80% of the time with verbal cues (baseline stated Student could perform the goal less than 50% of the time with verbal cues); demonstrate improved fine motor skills and visual motor integration skills by cutting various shapes within ¼ inch margins 80% of the time (baseline stated Student could cut various shapes within ¾ inch margins 80% of time); demonstrate improved fine motor skills by tracing lines within 1/8 inch margins 80% of the time (baselines stated Student could not meet goal); demonstrate improved fine motor skills by holding a pencil using tripod grasp 80% of the time with modeling assistance (baseline stated Student could hold a pencil using quadrupod grasp independently); demonstrate improved fine motor skills by writing 5 sentences using distal movement at the wrist and fingertips 80% of the time with minimal assistance (baseline stated Student could write 2 sentences in manner stated); and require no more than 2 breaks in a 30-minute session of physical activity 4 out of 5 trials (baseline stated "30 seconds").

The IEP also indicated that Student required support from the Autism Cluster Program, that he would take an alternative assessment, and that transportation services were required. However, the IEP indicated that ESY services were not required, and no accommodations were listed on the IEP.⁷

5. Student's most recent IEP is dated January 20, 2010. This IEP lists "Autism Spectrum Disorder (Known as Autism) as Student's primary disability and requires Student to receive 23.5 hours per week of specialized instruction, 1.5 hours per week of adapted physical education, 1 hour per week of speech-language pathology services, and 1.5 hours per week of occupational therapy services.

⁷ Petitioner's Exhibit 8; DCPS-4.

In the academic area of math, the IEP indicates that Student has shown improvements in manipulating numbers including finding the variable of addition problems, fact families, and reading and writing large numbers up to 5 digits, and that Student also understands the concept of multiplication using a fact chart. The IEP lists the following annual goals in the area of mathematics: exhibit an understanding of the base 10 number system by reading, modeling, and writing whole numbers to at least 100,000, demonstrating an understanding of the values of the digits, and comparing and ordering the numbers; use pictures, models, tables, charts, graphs, words, number sentences, and mathematical notations to interpret mathematical relationships; and identify and use appropriate metric and U.S. customary units and tools (e.g., ruler, protractor, graduated cylinder, thermometer) to estimate, measure, and solve problems involving length, area, volume, weight, time, angle size, and temperature.

In the academic area of reading, the IEP indicates that Student demonstrates a broad vocabulary and ability to read 3rd grade material, demonstrates stronger listening comprehension skills than reading comprehension skills but they are cresting, has recently taken an interest in higher level reading material such as Captain Underpants chapter books but does not demonstrate much comprehension of information read, and has solid phonemic awareness and understands most rules of the English language. The IEP lists the following annual goals in the area of reading: recognize and use words with multiple meanings (e.g. sentence, school, hard) and determine which meaning is intended from the context of the sentence; describe a character's traits, relationships, and feelings, using evidence from the text (e.g., thoughts, dialogue, actions); identify cause and effect relationships stated and implied; and read a book/passage independently for at least 10 minutes a day and demonstrate comprehension by explaining characters, plot, and solution with 80% accuracy.

In the academic area of written expression, the IEP indicates that Student can write simple sentences using punctuation and capitalization. The IEP contains the following annual goal: use the writing process (brainstorm, draft, edit, final draft) to complete a 3-paragraph essay (not to exceed 12 sentences) on a topic of choice.

In the area of communication/speech and language, the IEP indicates that Student uses complete sentences to describe and answer questions, has mastered the use of pronouns (he, she, his, her, they), and has improved his ability to stay on topic of conversation with fewer verbal prompts, but he continues to need occasional reminders. The IEP lists annual goal in the area of communication: increase expressive and receptive language skills by mastering the following short-term objectives with 80% accuracy: increase ability to compare and contrast 2 objects/pictures/characters by stating a minimum of 3 differences/similarities with 80% accuracy over 4/5 trials; answer wh-questions about events/activities/short stories with 80% accuracy over 8/10 trials; and increase ability to stay on topic for 3+ exchanges over 4/5 trials with fading cues.

In the health/physical area, the IEP contains the same annual goal and objectives as the previous IEP. Similarly, in the area of motor skills/physical development, the IEP contains identical annual goals and baseline information as the previous IEP. Once again, the IEP indicated that Student requires support from the Autism Cluster Program, that he will take an alternative assessment, that transportation services are required, and that ESY services are not required. However, in addition to indicating that Student will

be allowed the accommodation of taking breaks during class work, this IEP also indicates that a noise buffer will be provided to Student.⁸

6. As a general rule, Parent has always attended Student's IEP meetings. While there, she has signed Student's IEP and received the first page only, and the remainder of the given IEP has been sent home in Student's backpack a few days later.⁹
7. The only psychological evaluation for Student that has been included in the record is a March 1, 2006 evaluation.¹⁰
8. On July 3, 2008, Parent obtained an independent Pediatric Physical Therapy Evaluation for Student. The evaluator noted that Student responded to the examiner when his name was called in the waiting room, easily transitioned with Parent to the examination room, made eye contact with the examiner, was able to follow two-step and at times multi-step commands when given appropriate breaks, but was occasionally distractible and needed encouragement to redirect to the task at hand. Based on Student's performance during the evaluation, the evaluator found that Student presented with decreased balance, bilateral coordination, and running and agility performance for his age. Moreover, Student's "evident toe walking pattern" was of concern to the evaluator, who recommended serial casting and lower orthotic use to increase the length of bilateral heelcords and teach/reinforce a heel-toe gait pattern. The evaluator recommended private weekly physical therapy to start, school-based therapy in the fall for maintenance and carryover, and the continuation of Student's regular exercise program at home.¹¹
9. On July 9, 2008, Parent obtained an independent Occupational Therapy Evaluation for Student. Based on Student's performance on the assessments administered, the evaluator concluded that, overall, Student demonstrated delays with regard to postural control, balance; motor planning, sequencing, body awareness, endurance, fine motor skills/handwriting, sensory modulation, self-regulation, and bilateral coordination. The evaluator recommended that Student receive at least two 45-minute school-based OT sessions per week and one 45-minute private OT session per week, in addition to participating in a social skills group and Tae Kwon Do or swimming. The evaluator further opined that Student would benefit from placement with same-age peers in the classroom setting, ample one-to-one assistance, and opportunities to move and take breaks throughout the day as needed.¹²
10. Student's private occupational therapist has been providing individual services to Student in the amount of one 45-minute session per week since Fall 2008. Medical OT goals are not used to establish OT goals for school because school goals must be catered to academic performance. However, medical OT tests are generally the same as school tests, so medical tests can be used to develop school goals. The provider has found that

⁸ Petitioner's Exhibit 9; DCPS-5.

⁹ Testimony of Parent; testimony of special education teacher.

¹⁰ Petitioner's Exhibit 13.

¹¹ Petitioner's Exhibit 15.

¹² Petitioner's Exhibit 16.

Student is a sensory seeker, in that he seeks out forms of sensory input to help him self-regulate. When the provider sees Student after he has been to school, he is usually quite disregulated and is pacing around, talking to himself, and clapping his hands. These are signs of his stress level. When the provider sees Student on days when he has not been to school, he is calmer. Student always says he feels "good," even if he is pacing and crying; however, once he is calm, he can usually identify when he was upset and talk about it. Student has problems with sensory integration, which can seem like, but is not, oppositional disorder. The provider uses the "How Does Your Engine Run?" sensory diet, as well as heavy work activities and a brushing program to help Student recognize how he feels and use different activities to self-calm and regulate his emotional state. Student needs lots of visuals to help him figure out how he feels. The provider created the sensory diet in 2008 for her to use with Student and for Parent to use with Student at home. The sensory diet has lots of pictures for Student to choose from. If Student can self-calm, he can work in school longer and transition better. Student has not yet mastered looking at pictures and picking out how he feels, but he can probably learn the skill with consistent assistance. The private OT provider has reviewed the sensory diet that was prepared by the DCPS OT and feels that the sensory diet is insufficient because it is very vague, too broad and lacking in detail, and Student cannot use it. The DCPS sensory diet seems more like a review of activities that could be done, as opposed to something that can actually be implemented. The private OT provider also reviewed the DCPS OT evaluations conducted in 2007 and 2009. The provider found the 2007 DCPS evaluation to be inadequate, in that there was not enough testing and the information provided was very vague. The 2009 DCPS evaluation is much more thorough, but it fails to identify Student's sensory modification deficits. Although the provider is of the opinion that individual pullout OT services in school would help Student meet his goals, Student may be able to progress if he is provided group services with only 1 or 2 other students. The provider continues to recommend the school-based services listed in the independent evaluation, and she would have recommended those services going back to 2008 because Student has always had the same diagnosis. In terms of classroom accommodations, the provider recommends seating to the side of the class or close to teacher, movement breaks, heavy work activities, the use of a laptop with a typing program in school and at home, and an air-filled seat cushion. Had Student been receiving the services since March of 2008, the private provider would expect that he would be much more capable of recognizing his feelings, much more regulated, and much further along in meeting his academic goals. At this point, the recommended services and accommodations, as well as 1-to-1 tutoring and any recommended equipment would help Student reach that level.¹³

11. Parent gave Student's independent PT and OT evaluation reports to Student's teacher in August of 2009, at the beginning of the 2008/09 school year. Student receives independent PT and OT services. In his private OT sessions, the therapist uses a sensory diet to calm down Student in an attempt to reduce his self-stimulating behaviors ("stimming"). Parent also uses a sensory diet for Student at home. Parent received this sensory diet from the private OT provider. No sensory diet is being used with Student at school. Student's DCPS OT provider has developed a sensory diet for him. However,

¹³ Testimony of private OT provider.

the provider gave the diet to Parent to be used at home, even though Parent already has a sensory diet for use at home. Student's current teacher uses three or four items from the sensory diet for all students in her class, but the DCPS-created sensory diet is not otherwise being used.¹⁴

12. On February 25, 2009, when Student was at the 3.6 grade level, DCPS administered the Woodcock-Johnson III Tests of Achievement to Student as part of an Educational Evaluation. Student scored at the following grade equivalencies ("GE") on the three clusters: oral language – K.2 GE, with a standard score of 65, which was in the Very Low range; broad reading – 2.0 GE, with a standard score of 75, which was in the Low range, and academic fluency – 1.7 GE, with a standard score of 73, which was in the Low range. The evaluator, who was Student's teacher, concluded that Student was performing at least one grade level below his then grade level in all areas. However, the evaluator noted that Student's test scores, alone, could be deceiving because some of them were due to Student's hastiness during testing and due to the lack of extended time during math. The evaluator also noted (1) that academically, part of Student's reading struggles were due to his tendency to phonetically decode words, as Student showed no real knowledge of the rules of the English language in written form or in terms of grammar and syntax, (2) that Student often spoke in the third person, especially when upset, and (3) that during math testing, Student was performing math operations in his head. The evaluator ultimately recommended that Student remain in his educational placement for implementation of listed goals in the areas of reading, math, communication, and social-emotional skills.¹⁵
13. On March 6, 2009, DCPS issued a Speech and Language Reevaluation report for Student based upon testing administered in February 2009. The report notes that Student's initial speech and language evaluation took place on November 10, 2005. The evaluator determined, based upon Student's performance, that Student's voice and fluency were within normal limits, and his overall speech was intelligible, but his expressive and receptive vocabulary skills were below average, and he had a lisp. Student exhibited difficulties following simple and multi-step directions, recalling sentences of increasing length, formulating grammatically correct sentences, identifying and explaining relationships between words, answering questions about spoken paragraphs, and maintaining and contributing to topics during conversation. The evaluator recommended continued speech and language intervention for Student, in the amount of 60 minutes per week. The evaluator also recommended the following IEP goals for Student: following 1-2 step directions containing spatial, temporal, and conditional concepts; explaining similarities and differences between objects; formulating simple and compound sentences containing adjectives, and conjunctions; recalling sentences of 6 or more words; answering wh-questions pertaining to spoken paragraphs/information presented orally; and improving topic maintenance during conversation.¹⁶
- 14.

¹⁴ Testimony of Parent; Testimony of DCPS OT provider; Testimony of special education teacher; Petitioner's Exhibit 30.

¹⁵ Petitioner's Exhibit 17; DCPS-2.

¹⁶ Petitioner's Exhibit 18; DCPS-3.

15. Student's previous DCPS speech and language evaluation report was dated June 6, 2006 and recommended thirty minutes per week of speech services for Student.¹⁷
16. On July 14, 2009, parent obtained an independent Speech and Language Evaluation of Student. The evaluator relied upon both standardized testing and informal testing procedures, noting that standardized scores had to be interpreted cautiously due to Student's diagnosis of autism. Based upon Student's performance, the evaluator determined that Student demonstrated delayed receptive, expressive, and pragmatic language skills secondary to autism. Decoding, encoding and reading comprehension were found to be delayed, and a frontal lisp was observed. The evaluator recommended private individual speech and language therapy one time per week, in conjunction with speech therapy sessions provided at Student's school, as well as group therapy at least one time per week in school to facilitate Student's appropriate pragmatic interactions with his peers. The evaluator listed the goals that would be targeted during private therapy.¹⁸
17. Student's private speech/language pathologist is working with Student in individual therapy on long- and short-term goals designed to improve his expressive, receptive, and pragmatic language abilities, as well as his reading abilities, to a more age-appropriate level. The sessions are 45 minutes each, and the provider feels the sessions push the limits of Student's attention span. Student has made progress in reading comprehension, and he can sometimes answer questions on the 1st and 2nd grade levels. Although Student does well on structured tasks, he has a hard time generalizing the skills to other areas, and he has difficulty asking questions in an appropriate form. Moreover, Student is very easily distracted, and he needs several reminders or lots of repetition. The private service provider has been working with Student for approximately 6 months and has not seen any significant gains. Nevertheless, the provider is of the opinion that if Student had received 2.5 hours of speech services per week since March 2009, he likely would be 1 year or more ahead now with respect to progress. In terms of school services, the provider recommends that Student receive ½ hour of speech services per day in either push-in or individual form, except that push-in services would not be required if Student had a dedicated aide, and the provider also recommends 1 group session per week with peers at or above his level to allow Student to work on social interaction and language skills through modeling. In all, the provider recommends a minimum of 2.5 hours of school-based services per week. The evaluator also is of the opinion that Student could benefit from either a software program, such as ear aerobics, head sprout or fast forward, an intensive summer program or instruction through the Lindamood Bell program.¹⁹
18. Student's current DCPS speech therapist began providing Student with 60 minutes of speech services per week since August 2009. Student received those services in pullout form in a group setting with another high-functioning student from his class who had more advanced conversational skills than Student. The provider primarily worked with Student on comprehension of short stories, following directions, and time concepts.

¹⁷ Petitioner's Exhibit 13.

¹⁸ Petitioner's Exhibit 20.

¹⁹ Testimony of private speech language pathologist.

Student made progress in terms of being able to walk with his group to the sessions and in terms of expressing his anger when he lost a game instead of walking out. Student also made progress in comprehension, but he continued to have trouble remembering a sequence of directions. Since Student made steady progress toward his goals while receiving 60 minutes per week of speech services, the DCPS speech therapist does not recommend daily services for him. The therapist speaks with Student's classroom teacher daily and is in and out of the class frequently, but has not formally observed Student in his classroom. Moreover, the provider has no training in systems used for high-functioning autistic children.²⁰

19. On August 28, 2009, DCPS issued an Occupational Therapy Evaluation report for Student. The report noted Student's previous independent occupational therapy evaluation in July 2008 and the results of same. Student's performance on the assessments administered by DCPS revealed that he had, *inter alia*, average visual perception skills, significantly impaired visual-motor integration and motor coordination skills, and definite sensitivity differences in response to tactile, taste/smell, auditory, and visual sensory inputs. Student's performance also revealed that he had low energy, and that he excessively sought sensation through movement. Ultimately, the therapist opined that Student could benefit from OT intervention. The evaluator recommended *inter alia*, the provision of segmental assistance to process visual information before motor tasks are performed, the use of multi-sensory tools such as stick models and blocks, a near point model for copying, allowing Student to verbalize his mental processes during visual-motor activities, a separate work space to minimize visual and auditory disturbance and distractions during work time, and motor-based activity to improve visual-motor integration and motor coordination skills.²¹
20. Student's previous DCPS Occupational Therapy evaluation was conducted on April 25, 2007. However, it does not appear that this evaluation was ever reviewed at an MDT meeting, or that the indirect OT intervention recommended in the evaluation was ever provided for Student.²²
21. Student began receiving OT services in school on November 17, 2009. The DCPS OT provider is working with Student on handwriting skills, visual-motor integration skills, and motor coordination. As of early February 2010, Student was showing a breakthrough of sorts in the area of visual-motor integration because he was able to copy more complicated 2-D designs from paper, but then Student began missing lots of days from school. In handwriting, Student has made the most progress in endurance/tolerance, because he can now copy models for 7 to 8 minutes on average some days, whereas in mid-November 2009, he could do copy for only 3 to 4 minutes. The quality of Student's handwriting is improving, but he still needs occasional verbal cues. The DCPS OT provider is of the opinion that Student does not need a sensory diet in school or on his IEP because he's not displaying behaviors in school that call for a sensory diet. On the other hand, the OT provider admits that Student can last for only approximately 15

²⁰ Testimony of DCPS Speech Language Therapist.

²¹ Petitioner's Exhibit 21.

²² DCPS-12; testimony of Parent.

minutes without needing a sensory diet, and she admits that Student can benefit from a sensory diet. Other than the observation she conducted to create a sensory diet for Student, the DCPS OT provider has never gone to Student's class to observe him. The DCPS OT provider consults with Student's teacher weekly to discuss Student's behavior, progress, unusual situations/behavior, and sensory integration activities to be used for Student in school in the absence of a formal sensory diet.²³

22. On September 15, 2009, DCPS administered a School-Based Physical Therapy Evaluation to Student, which consisted of clinical observations, a record review, and the Bruininks-Oseretsky Test of Motor Proficiency-Second Edition ("BOT-2"). Student's performance on the BOT-2 resulted in scores in the Average range on bilateral coordination and balance, scores in the Below Average range for upper-limb coordination and strength, and scores in the Well Below Average range for running speed and agility. The evaluator concluded that Student had the ability to navigate his classroom and school environment independently, but his weakened trunk muscles and decreased endurance could impact his ability to participate in recreational activities and sports.²⁴
23. On September 24, 2009, DCPS administered an Adapted Physical Education Assessment to Student. The evaluator noted that Student was able to simple two-step directions, but he required a lot of breaks. Based on Student's performance, the evaluator determined that Student's total body coordination skills were adequate and his motor planning skills were good for the most part, but his upper and lower body strength were poor for his age and there were delays with his endurance, running speed, agility, and body strength that could affect his educational performance.²⁵
24. In February 2010, Parent obtained an independent Neuropsychological Evaluation of Student. In the resulting report, the evaluator noted that Parent had stated her beliefs that Student's academic skills were far weaker and less developed than what was being reported in his school records and IEP, that Student was failing to progress in his oral language and social/pragmatic communication skills, and that many aspects of Student's IEP were not being implemented at school. The evaluator further indicated that the evaluation was being conducted, at the request of Petitioner's counsel, to determine whether Student was actually benefiting from his IEP and whether additional changes to his academic programming were required.

The evaluator administered the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC"), the Wechsler Individual Achievement Test – Third Edition ("WIAT"), and the Gray Oral Reading Test – Fourth Edition, as well as several normed behavioral and functional rating scales and additional measures designed to assess Student's language skills. The evaluator attempted to assess Student's verbal and visual learning/memory skills using the Wide Range Assessment of Memory and Learning – Second Edition and the Children's Memory Scale, but Student was unable to fully attend to or cooperate with the assessments.

²³ Testimony of DCPS Occupational Therapist.

²⁴ Petitioner's Exhibit 23.

²⁵ Petitioner's Exhibit 22.

The evaluator observed during the evaluation that Student displayed inconsistent eye contact, impaired oral language functioning, and repeated tendency to engage in non-purposeful self-stimulating behaviors (hand flapping with grunt-like vocalizations). Moreover, although Student demonstrated fairly strong language skills for a child with autism, he was generally limited to brief statements of one to two sentences at a time, he showed virtually no ability to recognize or follow non-verbal forms of communication, he noticeably tended not to use pronouns, and his understanding of language tended to be idiosyncratic and literal. Student also had a very short attention span and was highly distractible.

On the WISC, student scored in the mildly deficient range on the Verbal Comprehension Index, but scored squarely within the mid-average range on the Perceptual Reasoning Index, which suggested to the evaluator that Student has a greater than suspected ability to think, reason, understand and learn in a visual/nonverbal manner. Student also scored in the borderline deficient range on the Working Memory Index and noticeably higher, but still below aver, on the Processing Speed Index. The evaluator was unable to determine Student's full scale IQ due to the significant discrepancy between his scores on the verbal and non-verbal portions of the assessment.

Student's performance on the WIAT resulted in a 2.0 GE in reading, a 1.9 GE in pseudoword decoding, and a 1.2 GE in reading comprehension; a 1.7 GE in numerical operations, a 2.2 GE in math problem solving and mildly deficient score in total math fluency; a 2.1 GE in spelling, a 4.7 GE in sentence composition, and a 3.0 GE in essay composition; and a 1.6 GE in listening comprehension with a 1.0 GE in oral expression.

The evaluator also reviewed the goals from Student's April 12, 2007 IEP, as well as information contained on Student's March 3, 2008 IEP, and opined that Student generally failed to make acceptable and anticipated gains from his IEP and special education services in all areas except writing, where he had achieved his goals of learning to write capital and lower case letters, to write on a straight line, and to appropriately choose capital and lower-case letters.

Ultimately, the evaluator determined that Student has high-functioning autism with associated specified deficiencies in the areas of language, academics, attention, executive, daily living, and cognitive/behavioral functioning, but with generally average visual/nonverbal reasoning and intellectual functioning.

The evaluator recommended, *inter alia*, a self-contained school program for children with high-functioning autism that offers a quiet room or time-out room or area, a one-to-one aide, an FBA and functional intervention plan, specialized instruction in reading, math and writing that includes the use of multi-modal strategies to the extent possible, occupational therapy, speech and language therapy, social/emotional therapy, therapeutic headphones, and ESY services.²⁶

25. Student's independent neuropsychological evaluator confirmed through testimony at the due process hearing that Student was extremely distractible during testing and had a very short attention span and lots of self-stimulating behavior. Student was able to work approximately 5 to 7 minutes at a time. Based upon Student's performance during testing, the evaluator opined that Student will experience difficulty with verbal learning but multi-modal learning that allows Student to show he's learning without talking is

²⁶ Petitioner's Exhibit 24.

likely to yield much better results. Hence, the use of computers, visual aids, manipulatives, and similar items would work for Student. Since language deficits are a hallmark of autism and Student's verbal deficits would have to impact his performance in the classroom, a trained teacher should have realized Student had issues with verbal learning even without the results of Student's neuropsychological evaluation. The evaluator noted that Student performed all math on his fingers during the evaluation. The evaluator also made a host of recommendations for Student, including graphic organizers for writing; the use of pictures; computer-based "visual" math instruction; a reading decoding program; intense speech therapy once or more per week; a small, self-contained program for high-functioning autistic ("HFA") students only with no interaction with non HFA students; a dedicated aide or a low student-teacher ratio of 1 to 1 or 2 to 1; a school with a quiet or time-out room; a class that focuses as much as possible on individual instruction and multi-modal instruction; an FBA; the use of techniques that utilize a behavioral approach, such as applied behavioral analysis ("ABA") or the T-E-A-C-H approach; a sensory diet; and ESY services. Finally, the evaluator opined that Student is unable to lie because he lacks the creativity needed to make up details, but the evaluator admitted that it would be a mistake to rely on Student's interpretation of someone's facial expressions, physical body language or tone of voice, because Student's abilities in these areas are impaired.²⁷

26. Student's current teacher has a Master's degree in special education and is licensed in the District of Columbia to teach all special education students. She received a provisional license in August of 2006, but as of 2009, the license is no longer provisional. She has also been trained in the Picture Explain Communication System ("PECS"). The teacher has been working with Student since he was in second grade at another DCPS school. When that school, Student and the teacher moved to Student's current school. Parent learned of the change in location of services by means of an automated telephone call from DCPS.

During 2008/09, the teacher worked with Student from 1st grade general education textbooks because her assessment of Student indicated that he was working on a 1st grade level. Student required lots of redirection and could only work for small periods of time. As the year went on, the teacher began using a token reward system that involved allowing Student time on the computer, and that system worked approximately 50% of the time. Student continues to require a lot of prompting to do class work, and the teacher also uses a timer to signal when Student can stop working and use the computer. Now that Student is starting to mature, he can communicate and interact with his classmates better. However, Student will only work independently for about 5 minutes at a time before he starts to self-stimulate and needs redirection. Student's self-stimulation includes playing with his fingers, linking objects together, bouncing around and making vocalizations, but these activities can be redirected so they don't interfere with class work. When Student attended the teacher's class, there were 8 students and five adults – the teacher, 2 instructional aides, and 2 dedicated aides – in the class. The teacher attempted to have Student take the regular DCPS standardized test during the current school year, but Student performed so poorly on the regular standardized preparatory test that the teacher abandoned that plan. The teacher uses the following

²⁷ Testimony of independent neuropsychologist.

sensory activities 4 times per day for all her students to calm them down: daily checklist, announce activities, deep massage of hands and forearms. At the due process hearing, the teacher testified that Student can perform operations, such as multi-digit subtraction without regrouping, single digit division using accommodations, telling time to the half hour and writing 3 sentences on a given topic, that it does not appear from all other evidence the Student is capable of performing. Therefore, the hearing officer finds that much of the teacher's testimony concerning the appropriateness of Student's IEP goals and his progress towards same was lacking in credibility and cannot be relied upon.²⁸

27. Student does not interact well with general education students. During 2008 through 2009, Student attended an arts center one time per week with the rest of his class and various general education students. Student did not do well at the arts center because he could not handle the class sizes, the noise and the amount of time spent in the setting. Student misbehaved every week and the teacher advised Parent of the misbehavior every week until Parent finally indicated that she no longer wanted Student to attend the arts center. Moreover, whenever Student would attempt to interact with general education students during lunch and recess, it did not end well.²⁹
28. Student has never had an FBA or a BIP in his current educational placement. Moreover, the only noise buffer provided to Student was a set of headphones that was used when Student was on the computer. The headphones were not used when Student was working at his desk.³⁰
29. On March 8, 2010, Student was involved in an incident with another student in school, which involved the other student scratching Student in the face. The scratches were very close to Student's eyes and quite deep, and Student had to have a tetanus shot as a result. On that same day, Student's arms were bruised in such a manner that it appeared as if someone had grabbed him near his shoulders and left 3 finger marks on each of his arms. Once Parent saw these marks, she never sent Student back to his assigned school again, and it seemed to Parent that Student did not want to go back to school. In making the decision to keep Student out of school, Parent considered the fact that the teacher had previously Student with a when Student was in grade.³¹
30. In any event, Parent has for some time been concerned about what she sees as Student's lack of academic progress and about the appropriateness of Student's educational placement. Beginning in second grade, Student was placed in a class with Students who were several years older than him, and Student would often get hurt on the playground by the older kids and/or general education students. Indeed, the March 8, 2010 incident was the second time Student got scratched in the face. The first scratching incident occurred on November 17, 2009 and also involved scratches that were quite deep.³²

²⁸ Testimony of special education teacher; testimony of Parent.

²⁹ Testimony of special education teacher.

³⁰ Testimony of special education teacher.

³¹ Testimony of Parent; Petitioner's Exhibit 29.

³² Testimony of mother; Petitioner's Exhibit 38 at 46.

31. Student's private OT provider has seen bruises on Student twice. Once incident occurred in late 2008, Student had a small bruise on his right wrist. Parent said Student had the bruise when he came home from school, and Student said it happened at school but he wasn't clear on exactly how it happened. The other incident occurred in 2010 and involved scratches on Student's face and bruises on his shoulders.³³
32. By letter dated March 16, 2010, the School: Montgomery County Campus, pending an official referral from the DPCS system. This campus services Students with autism, intellectual disabilities, and multiple disabilities. The campus offers 2 autism classes for through graders, and the students are grouped by ability, such that one class has higher functioning students than the other. There are 5 to 9 students in each class. Each class also contains, at a minimum, 1 teacher, 1 teacher's assistant, and 2 program aides. All teachers have previous experience with children with autism, and all of the teachers except 1 are certified. Most, if not all, of the assistants and aides have a college degree. The staff receives training every Wednesday, and Applied Behavior Analysis ("ABA") training is provided to all staff. The campus has 2 occupational therapists and 2 speech therapists. The related services are based on classroom observation and may include group pullout services, as well as individual inclusion services. When Student visited the school, he really liked it and said he wanted to "move in."³⁴
33. Although DCPS maintains that Student's current placement is appropriate, DCPS has proposed an alternative lateral placement for Student. This second DCPS school offers two self-contained autism classes, and the students are separated by age. Student would be in the class with the older students, and that class has almost no visuals on the wall. The teacher in the class of older students has a master's degree in special education, but the 2009/10 school year is her first year teaching and her certification in the District of Columbia is currently pending. The autism program offers no quiet room for the students, and both autism classes are located in the same area of the school as general education classes. The autistic children interact with general education students during lunch and at recess. When Student visited the school, he began stimming and humming and stayed close to Parent.³⁵
34. The special education coordinator from the lateral DCPS placement testified at the due process hearing. The SEC indicated that the school offers a full time OT provider, a full-time speech pathologist, a full-time nurse, a psychologist three times per week, an adaptive PE and PT provider two times per week, and an art therapist at least one time per week. The Complaint in the instant action is the only document the SEC had reviewed prior to the hearing, although the SEC reviewed Student's IEP at the hearing. The SEC testified that Student would be placed in a class with 5 students and 4 adults – a "highly qualified" special education teacher and 3 instructional aides. However, by "highly qualified," the SEC meant dedicated, compassionate, and similar qualities. The SEC noted that the class Student would be placed in has 1 child who is functioning on the

³³ Testimony of private OT provider.

³⁴ Petitioner's Exhibits 31 and 32; Testimony of Mother; Testimony of CLC deferred associate.

³⁵ Testimony of Parent; testimony of investigator (A.E.).

kindergarten level and three “high functioning” students, one of whom is being mainstreamed in general education classes. However, by “high functioning,” the SEC meant students who were making great improvement, not students with a diagnosis of high functioning autism.

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. Alleged failure to timely provide OT Evaluation Ordered by MDT in 2007; Alleged failure to provide FBA

Petitioner argues that DCPS failed to provide a timely OT evaluation and an FBA for Student. The undisputed evidence in this case reveals that DCPS conducted an OT evaluation for Student on April 25, 2007. However, the evidence tends to demonstrate that the evaluation was never reviewed by an IEP team and that the recommendation of indirect OT interventions were never implemented for Student. As a result, Student did not begin receiving OT services in school until November 2009, after another DCPS OT evaluation had been conducted. The undisputed evidence in this case also reveals that DCPS has failed to provide an FBA for Student, despite his frequent self-stimulation, extreme distractibility, and other behavioral issues in school. As a result of DCPS’s failure to create an FBA for Student, he has not had the benefit of a formal behavioral plan designed to meet his specific behavioral needs. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of demonstrating that DCPS’s failure to timely provide an OT evaluation for Student and to provide an FBA for Student resulted in a denial of FAPE.

2. Alleged denial of FAPE due to procedural violations consisting of failing to conduct reevaluations, requesting parental consent before provide IEP copies, no placement meeting before placement change, no Prior Notice before making or refusing to make changes to program or placement

The evidence of record tends to prove that DCPS failed to conduct a required triennial psychological reevaluation for Student and that DCPS failed to conduct a placement meeting prior to changing Student’s location of services to his currently assigned school. With respect to the allegation that DCPS required parental consent prior to providing Parent with copies of Student’s IEPs, the evidence tends to prove that the contents of Student’s IEPs were agreed upon at his IEP meetings, but Parent was only provided with the first page of the IEP at a given meeting and asked to sign same, and the IEP was physically developed by DCPS later and sent to Parent in Student’s backpack. With respect to the lack of Prior Notices, the record tends to prove that DCPS failed to provide Parent with a prior notice before changing Student’s location of services to his currently assigned school. As a result of these procedural violations, Student’s November 2, 2009 and January 20, 2010 IEPs were developed without the benefit of current evaluation results, and Parent’s ability to meaningfully participate in the IEP development and placement process was hindered. Under these circumstances, the hearing officer concludes that

Petitioner has met its burden of demonstrating that DCPS's procedural violations in this case rose to the level of a denial of FAPE. *See* 34 C.F.R. § 300.513(a)(2) (hearing officer may find child did not receive FAPE if procedural inadequacies impeded child's right to FAPE, significantly impeded parent's opportunity to participate in decision-making, or caused deprivation of educational benefit.)

3. Alleged failure to develop or timely develop appropriate IEPs because insufficient speech services, inappropriate academic goals, no dedicated aide, lack of adequate modifications, and no ESY

Student had a total of four IEPs during the two-year period at issue in this case. The hearing officer will consider each IEP in turn.

Student's March 3, 2008 IEP provided Student with 26.5 hours of specialized instruction and 1 hour of speech services, with 85% of Student's school time to be spent outside of a general education setting. At the time this IEP was developed, Student's June 2006 speech and language evaluation recommended 30 minutes per week of speech services, and his April 2007 occupational therapy evaluation indicated that no direct services were warranted. The IEP contained present levels of performance, as well as detailed goals and objectives that, at the time, appeared to be attainable for Student. Under these circumstances, and given the evaluation information available to DCPS at the time the IEP was developed, the hearing officer concludes that Petitioner has failed to prove that Student's March 3, 2008 IEP was inappropriate.

Student's January 16, 2009 IEP provided the same level of services as his previous IEP. By this time, however, DCPS had been provided with copies of Student's July 2008 independent medical physical therapy and occupational therapy evaluations, both of which recommended services for Student. Nevertheless, DCPS failed to either provide such services on Student's IEP or conduct academic evaluations to determine Student's OT and PT needs. Moreover, Student's IEP goals, which required him to learn how to perform tasks such as finding the area and perimeter of a triangle, and identifying the elements of stories and analyzing how major events lead from problem to solution, were well beyond Student's level of performance and, therefore, inappropriate. Under these circumstances, the hearing officer concludes that Student's January 16, 2009 IEP was inappropriate and finds it unnecessary to determine whether further inadequacies existed.

Student's November 2, 2009 IEP included occupational therapy and orientation and mobility services in addition to the 1 hour of speech services provided in previous IEPs. Once again, however, Student's IEP goals, which required Student to make information presentations with recognizable organization and use the commutative properties of addition and multiplication, for example, were wholly inappropriate in that they were well beyond his abilities. As a result, the hearing officer concludes that this IEP was also inappropriate and finds it unnecessary to determine whether further inadequacies existed.

Student's January 20, 2010 IEP also contained inappropriate goals that required Student to read, model and write whole numbers to at least 100,000, use a protractor and graduated cylinder, and describe a character's traits, relationships and feelings, among other items. Therefore, the

hearing officer concludes that this IEP was also inappropriate and finds it unnecessary to determine whether further inadequacies existed.

4. Alleged failure to fully implement IEP by failing to provide OT services beginning in November 2009 and failing to provide a sensory diet

The evidence in this case demonstrates that DCPS began providing Student with OT services on November 17, 2009 pursuant to his November 2, 2009 IEP. Under these circumstances, the hearing officer concludes that there was no denial of FAPE with respect to the provision of OT services. On the other hand, however, the evidence in this case proves that DCPS was on notice that Student required a sensory diet but failed to provide him with one. Hence, Petitioner has met its burden of proving a denial of FAPE in that aspect.

5. Alleged failure to provide or timely provide an appropriate placement from the end of SY 2007/08 through present

Under IDEA, a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. See 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. The evidence of record demonstrates that Student's current placement is inappropriate because Student suffered significant injuries at the hands of other students, and Student is required to interact with general education students on a daily basis when he lacks the ability to do so. Moreover, because DCPS's proposed lateral placement would also require Student to interact on a daily basis with general education students, the hearing officer finds that the lateral placement is also inappropriate.

6. Relief to be Awarded

The hearing officer concludes that Montgomery County Campus is an appropriate placement for Student because, *inter alia*, it has experience with autistic students, it offers low student-teacher ratios, it has an appropriate class for Student that includes other higher functioning students, and it offers related service providers qualified to provide the services Student requires. As a result, the hearing officer will grant Petitioner's requested private placement for the remainder of the 2009/10 academic year and the 2010/11 academic year.

Moreover, to compensate Student for the various denials of FAPE found above, the hearing officer will award Student a Lindamood Bell evaluation and one year of Lindamood Bell services, as well as one year of 1-1 tutoring, to be provided in the amount of 2 hours per week. *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005) (under theory of compensatory education, hearing officers may award educational services to be provided prospectively to compensate for a past deficient program.) Upon a review of the evidence in this case, the hearing officer concludes that these services will provide Student with the educational benefit he would have received but for the violations of FAPE found above.

ORDER

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

1. DCPS shall fund Student's placement at the _____ School for the remainder of the 2009/10 academic year and the 2010/11 academic year.
2. DCPS shall provide Student with a Lindamood Bell evaluation, one year of Lindamood Bell services, and one year of 1-1 tutoring, to be provided in the amount of 2 hours per week.

NOTICE OF RIGHT TO APPEAL

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

Date: 5/1/2010 _____ /s/ Kimm Massey _____
Kimm Massey, Esq.
Hearing Officer