

**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 30, 2011

Hearing Officer: James Gerl

Case No:

Hearing Date: April 30, 2011

Room: 2006

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on February 13, 2011. The matter was assigned to this hearing officer on February 15, 2011. A resolution session was convened on March 31, 2011. Because the resolution period expired prior to the resolution meeting, the hearing officer's decision is due on or before April 30, 2011. A prehearing conference was convened on March 16, 2011. The due process hearing was convened at the Student Hearing Office on April 13, 2011. The

¹ Personal identification information is provided in Appendix A.

hearing was closed to the public. The student's parent attended the hearing and the student appeared briefly at the hearing but otherwise did not attend. Six witnesses testified on behalf of the Petitioner and three witnesses testified on behalf of the Respondent. Petitioner's Exhibits 1-45 were admitted into evidence. Respondent's exhibits 1-12 were admitted into evidence.

JURISDICTION

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

PRELIMINARY MATTERS

All 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.

Because the Petitioner requested a prospective private placement as a portion of the relief in this case, the parties were requested to file prehearing briefs concerning the issue when should a special education hearing officer issue prospective private placement as relief for a violation of IDEA. Both parties submitted briefs as to this issue and said briefs have been considered. Because no violation of the act is found herein, however, the hearing officer does not reach the question of under what circumstances the hearing officer should award such relief in the event that a violation is found.

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. Did the January 20, 2011 IEP provide FAPE to the student/was the school that the student attended able to implement the January 20, 2011 IEP?
2. Was the functional behavioral assessment conducted for the student and the behavioral intervention plan developed on January 20, 2011 appropriate?
3. Did Respondent fail to timely provide an occupational therapy evaluation and a Woodcock-Johnson III assessment?

FINDINGS OF FACT

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

1. The student is a special education student who attended one of Respondent's schools for the 2010-2011 school year. (Stipulation by counsel 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. The student had an independent psychological evaluation on May 29, 2009. (Stipulation by counsel on the record)
3. The student's most recent IEP is dated January 20, 2011. (Stipulation by counsel on the record)
4. The January 20, 2011 IEP provides that the student will receive 30 hours per week of specialized instruction outside the general education environment, plus 90 minutes per week of behavioral support outside the general education environment and 60 minutes per week of speech language therapy outside the general education environment. (Stipulation by counsel on the record; P-5)
5. There was an IEP meeting for the student on September 28, 2010 that also resulted in an IEP. (Stipulation by counsel on the record; P-8)
6. On July 12, 2010, the student's mother and Respondent entered into a settlement agreement and signed the settlement agreement

on the same date. Said settlement agreement disposed of a previous due process complaint filed by Petitioner. Said settlement agreement includes a waiver that states: “(t)his settlement agreement is in full satisfaction and settlement of all the claims contained in the pending complaint, including those claims under IDEA and § 504 the parent now asserts or could have asserted within the statute of limitations as of the date of the signed settlement agreement.” (R-2)

7. An IEP team meeting for the student was convened on January 20, 2011. Present at said meeting were the student’s grandmother, the special education teacher that worked with the student, the counselor who worked with the student, a school psychologist, the school principal, and a speech language pathologist who participated by telephone. Said IEP contains present levels of performance and goals for the student. Said IEP requires 30 hours per week of specialized instruction outside the general education setting, 90 minutes per week of behavioral support services outside the general education setting and 60 minutes per week of speech language pathology outside the

general education environment. At the meeting to develop the IEP, the student's teacher noted the student's progress with regard to his academics, and the counselor who works with the student on his behaviors noted the student's behavioral progress.

(R-5; P-7)

8. All who attended the January 20, 2011 IEP team meeting agreed that the contents of the IEP, the level of services, the goals, and present levels were appropriate. Petitioner's educational advocate did express a statement that Petitioner would prefer to have the student attend the specific private school because said private school was more likely to employ physical restraints immediately as a first course of action, but no one at the meeting disagreed with the IEP. The student's grandmother, who was acting on behalf of the parent at the meeting, signed her agreement to the IEP. (T of Respondent's special education coordinator; P-5; R-5)
9. The student made significant academic progress under his IEP. (T of Respondent's special education teacher; R-5; R-3)
10. The student made progress toward all of the IEP goals that were introduced under his January 20, 2011 IEP and his previous IEP

for the first and second advisory marking periods for the 2010-2011 school year. (R-9; R-10; T of Respondent's special education teacher)

11. The student has made significant progress with respect to his behavioral and emotional issues under his January 20, 2011 IEP. (T of Respondent's counselor; T of Respondent's special education teacher; R-3; R-5; R-10)
12. When the student becomes frustrated, he tends to shut down and sometimes exits the classroom. (T of Petitioner's educational advocate; T of the student's mother; T of Respondent's special education teacher)
13. For the period between May 26, 2010 and December 15, 2010, the student received numerous disciplinary referrals, as well as trips to the alternative behavior classroom, a separate room used for seclusion purposes. (T of Respondent's special education teacher; T of Respondent's counselor; P-35; P-34; P-33; P-32; P-31; P-30; P-29; P-28; P-27; P-26; P-25; P-24; P-23; P-22; P-21; P-20; P-19; P-18; P-17; P-16)

14. Beginning in January of 2011, the student's behavior improved significantly. The student became less likely to walk out of the classroom when frustrated. Instead, he would ask for time out or would ask to see his counselor more frequently. The behaviors of the student have shown progress during the current school year. (T of Respondent's special education teacher; T of Respondent's counselor; R-5; R-10)
15. Respondent conducted a functional behavioral assessment upon the student on approximately January 20, 2011. (R-8)
16. Respondent developed a behavioral intervention plan for the student on approximately January 20, 2011. (R-7; T of Respondent's counselor)
17. In addition to the behavioral intervention plan, Respondent also maintained an individual crisis management plan for the student. (P-10; T of Respondent's counselor)
18. Respondent provided more emotional support services to the student than the 90 minutes per week required by the student's IEP. The extra emotional support consisted of services as needed, as well as group counseling and other services offered to all

students at the special school that the student attended. The additional services benefitted the student and did not harm him.

(T of Respondent's counselor; R-6)

19. Respondent's the special education teacher works directly with the student in a small classroom with seven students, the teacher, an instructional aide and two other aides. Respondent's the special education teacher provides one on one instructional services to the student in each of his academic areas. (T of Respondent's special education teacher).
20. The functional behavioral assessment conducted for the student by Respondent on approximately January 11, 2011 was conducted by qualified personnel. (T of Respondent's counselor; R-8)
21. The behavioral intervention plan developed by Respondent for the student on January 20, 2011 was developed by qualified personnel. (T of Respondent's counselor; R-7)
22. The IEP developed by Respondent for the student on January 20, 2011 was appropriate and was reasonably calculated to confer educational benefit. (Record evidence as a whole)

23. The behavioral intervention plan developed by Respondent for the student on January 20, 2011 was reasonably calculated to address the student's behaviors. (Record evidence as a whole)
24. On or about November 24, 2010, Petitioner's educational advocate requested that Respondent provide an occupational therapy evaluation and a Woodcock-Johnson III assessment for the student. (T of Petitioner's educational advocate; P-37)
25. The request for the assessments of an occupational therapy evaluation and a Woodcock-Johnson assessment by Petitioner included a consent form that was stale, having been signed in 2009. (T of special education coordinator; T of Petitioner's educational advocate)
26. On December 16, 2010, Respondent's special education coordinator wrote to Petitioner's attorney requesting that the parent appear in person to complete the appropriate consent form. (P-43)
27. On February 23, 2011 and February 24, 2011, counsel for Petitioner wrote to Respondent's special education coordinator to

again request the Woodcock-Johnson assessment and occupational therapy evaluation. (P-37; P-36)

28. Respondent's special education coordinator sent additional consent forms home with the student and emailed consent forms to the parent and mailed consent forms to the parent through the United States Postal Service. (T of Respondent's special education coordinator)
29. Respondent never received any current consent form from Petitioner, and Respondent has not begun to conduct the Woodcock-Johnson assessment or the occupational therapy evaluation requested by the parent. Respondent has no objection to conducting such assessments upon receipt of a current consent form. (T of Respondent's special education coordinator)
30. The student visited a private school for purposes of potential relief in this proceeding if Petitioner were to prevail. During the visit to the private school, the student got into a fight with one of the other students. The staff at the private school restrained the student. The private school has accepted the student. (T of the student; P-38)

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 provides a free and appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in 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 a child to receive some educational benefit. Bd. of Educ. etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

2. A local education agency, such as Respondent, is not required under IDEA to maximize the potential of a student with a disability; all that is required is that Respondent provide the basic floor of educational opportunity. An Individualized Educational Program is not a guarantee that the student will be successful. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).
3. 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.C. Cir. May 19, 2006); IDEA § 615(f)(3)(E)(ii).
4. A party to a due process hearing is precluded by the doctrines of res judicata and/or collateral estoppel from asserting claims that have previously been litigated or resolved through a settlement agreement. JG by Stella G v. Baldwin Park Unified Sch Dist 55 IDELR 2 (CD Calif 8/11/10); Theodore ex rel AG v. District of

Columbia 55 IDELR 5 (D DC 8/10/10); See also UNPUBLISHED Davis v. Hampton Public Schs 55 IDELR 122 (4th Cir 10/1/10)(Note this decision is **unpublished**, and although on point may not have precedential value.) When the parties to an IDEA due process complaint enter into a settlement agreement, the parties must comply with the terms of said settlement agreement. State of Missouri ex rel St Joseph's Sch Dist v. Missouri Dept of Elementary & Secondary Educ 54 IDELR 124 (Missouri Ct App 3/30/10); Springfield Local Sch Dist Bd of Educ v. Jeffrey B 55 IDELR 158 (ND Ohio 10/25/10). See, IDEA §§ 615(e), 615(f)(1)(B); and 34 CFR §§300.506(b)(7),300.510(d).

4. Except for certain cases involving improper discipline, IDEA does not require a local education agency, such as Respondent to develop a behavioral intervention plan for a student with a disability. IDEA §615(k)(1)(F); 34 C.F.R. §300.530(f); Lathrop R-II Sch Dist v. Gray ex rel DG 611 F.3d 419, 54 IDELR 276 (8th Cir 7/2/10). Where a student with a disability has behaviors that impede his learning or that of others, the student's IEP team must consider the use of positive behavioral interventions and supports

and other strategies to address those behaviors. IDEA §614(d)(3)(B)(i); 34 C.F.R. §300.324(a)(2)(i); Lathrop R-II Sch Dist v. Gray ex rel DG 611 F.3d 419, 54 IDELR 276 (8th Cir 7/2/10)

6. After a parent request for a reevaluation, a school district must either provide the evaluation or issue a prior written notice within a reasonable period of time. IDEA § 614(c); 34 CFR § 300.303, 300.305; See, Analysis of comments on federal regulations 71 Fed. Register No 156 at page 46640 (August 14, 2006). Before a reevaluation may be conducted, the parent must provide consent for the evaluation. IDEA §614(a); 34 CFR § 300.300. Here the parent failed to provide consent for the evaluation.

DISCUSSION

Merits

Issue No. 1: Was the January 20, 2011 IEP for the student appropriate/was the school at which Respondent assigned the student able to implement his IEP?

Petitioner has phrased this issue differently throughout the case. In closing argument, counsel for Petitioner argued that the student has attended the particular school he is now at for four years and he has

made little to no progress. Also in support of his argument, Petitioner has cited the evaluation reports by a social worker and a psychologist from 2009, as well as the testimony of the social worker and the psychologist.

The United States Supreme Court has established a two-part test for determining whether a school district has provided FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the Individuals with Disabilities Education Act and an analysis of whether the Individualized Educational Plan is reasonably calculated to enable a child to receive some educational benefit. Bd. of Educ, etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

Petitioner presented the testimony of the social worker who evaluated the student in 2009. She testified that the student's educational placement was not appropriate because he may not be working to his "fullest potential." Similarly, her report recommended that the student's educational placement be reviewed because he might

not be working to his fullest potential. Also, the psychologist who evaluated the student in 2009 testified that a more therapeutic program with more supports might be "better equipped" to address the student's emotional issues. The psychologist's report noted that the student should receive additional accommodations in order to make his academic experience "as meaningful as possible."

The credibility of Petitioner's witnesses in this regard is diminished by virtue of the fact that they have employed the wrong standard. IDEA does not require that a school district such as Respondent maximize the potential of a student with a disability, or that it provide the best program, rather all that is required is that an IEP be provided that is reasonably calculated to provide educational benefit. The United States Supreme Court has established a two-part test for determining whether a school district provides a free and appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in 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 a child to receive some educational benefit. Bd. of Educ. etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

Moreover, to the extent that, assuming arguendo, the 2009 reports by the social worker and psychologist offered by Petitioner, and the accompanying testimony from the witnesses to support said exhibits, were to be deemed to support an alleged denial of FAPE, such evidence is nonetheless stale. On July 12, 2010, the student's mother and Respondent entered into a settlement agreement. As a part of said settlement agreement, Petitioner agreed to waive certain rights. The waiver states as follows: "(t)his settlement agreement is in full satisfaction and settlement of all the claims contained in the pending complaint, including those claims under IDEA and § 504 the parent now asserts or could have asserted within the statute of limitations as of the date of the signed settlement agreement." Said settlement agreement was signed on July 12, 2010. Accordingly, assuming

arguendo that the reports of the psychologist and the social worker might support a denial of FAPE, said evidence existed before July 12, 2011, and, therefore, is stale, and Petitioner has waived any right to claim a violation of the Act based thereupon.

In addition, Petitioner argues that the IEP is not appropriate because Respondent provides more behavioral and emotional support services than the IEP calls for. Although this argument seems to be inconsistent with Petitioner's request for a prospective private placement and a more restrictive setting, the argument is nonetheless considered. It was the testimony of Respondent's counselor that the student does in fact receive more emotional support than is required by his IEP. The school the student attends is a full-time special education school primarily serving students with emotional and behavioral problems. Accordingly, there are a number of services that the student receives, such as group counseling or other emotional support services, that are not counted toward the 90 minutes per week of emotional support services, or counseling, that the student receives pursuant to his IEP. Petitioner provides no explanation as to how the student's receiving additional emotional support harms him. It is concluded

emphatically that Respondent's providing more help to the student with regard to his behaviors is not a violation of IDEA.

Even assuming arguendo, however, that Respondent's providing more emotional support to the student than the number of hours stated on his IEP is somehow a procedural violation of the Act, it is nonetheless not actionable. A procedural violation of IDEA is not actionable without a showing of either educational harm to the student or an injury to his parent's right to participate in the process. Lesesne ex rel BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006); IDEA § 615(f)(3)(E)(ii). In the instant case, Petitioner has showed no harm to the student as a result of Respondent giving him more emotional support services. In addition, Petitioner has not alleged any impairment of the student's mother's right to participate in the IEP process. Accordingly, this argument is rejected.

Although the due process complaint alleges that the school attended by the student cannot implement his IEP, Petitioner presented no evidence concerning this issue. It is assumed, therefore, that Petitioner has abandoned this issue.

In contrast to the testimony of Petitioner's witnesses, Respondent called witnesses who testified persuasively and credibly that the student is making educational progress. The counselor who works directly with the student to provide his emotional support services testified that the student is making educational progress, as well as significant progress with regard to his behavioral and emotional issues. In addition, the testimony of the special education teacher who works directly with the student in a small classroom with seven students, the teacher, an instructional aide and two other aides, and provides one on one instructional services to the student in each of his academic areas, testified that the student is making progress on his academic goals. The testimony of Respondent's witnesses in this regard is supported by the documentary evidence in the record. The progress reports for the first advisory and second advisory marking periods for the student, as well as two sets of meeting notes from the IEP/MDT team kept by Respondent all support that the student is making significant progress on his behavioral and emotional goals and is making some progress on his academic goals. To the extent that the testimony of Respondent's witnesses conflicts with the testimony of Petitioner's witnesses, it is

deemed that the testimony of Respondent's witnesses is more credible and persuasive because of the factors outlined above.

Accordingly, it is concluded that the student made progress on his academic goals and emotional issues under the IEP developed for him on January 20, 2011. The arguments raised by Petitioner with regard to this issue are rejected.

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

Issue No. 2: Is the functional behavioral assessment in the behavioral intervention plan that was developed for the student on or about January 20, 2011 appropriate?

Petitioner argued in closing argument that the functional behavioral assessment and behavioral intervention plan prepared by Respondent are not appropriate because they were not developed by the counselor who works directly with the student in providing his emotional support services. Petitioner contends that they were not appropriate because they were not written or conducted by the person most qualified to do so. This argument makes no logical sense and it is not supported in any way by caselaw, statutes or regulations. A school

district is not required to conduct assessments or develop behavior plans by hiring the person most qualified to do so. So long as the person who conducts the assessments and develops the plans are qualified to do so, Respondent has complied with the law. 34 C.F.R. § 300.304(c)(iv). Petitioner's argument with respect to the most qualified evaluator or plan developer is rejected.

The argument that seems to be presented by Petitioner, or at least which may be surmised from the questioning of Petitioner's educational advocate, is that the behavioral intervention plan, and the underlying functional behavioral assessment are not appropriate because the student's behaviors continued after the documents were developed. IDEA does not require a local education agency such as Respondent to guarantee the results of an IEP or a behavioral intervention plan. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkham v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). Instead, what is required is that an IEP, or a BIP, be reasonably designed to address the student's behaviors. IDEA §614(d)(3)(B)(i); 34 C.F.R. §300.324(a)(2)(i); Lathrop

R-II Sch Dist v. Gray ex rel DG 611 F.3d 419, 54 IDELR 276 (8th Cir 7/2/10)

The real question, therefore, is whether the student's behavioral intervention plan and functional behavioral assessment were reasonably designed to address the student's behaviors. It was the credible and persuasive testimony of Respondent's witnesses that the student has made significant progress with regard to his behaviors. The counselor who works with the student directly on his behavioral support services testified that the student has made significant progress. In addition, the special education teacher who works directly with the student testified that he has made good progress on his behaviors since the beginning of the school year. She testified quite credibly and persuasively that at the beginning of the year, when frustrated, the student would shut down and sometimes exit the classroom. However, later in the school year, and specifically beginning in January, when the student would become frustrated, he would more likely ask to have a time out or time to talk to his counselor rather than shutting down, leaving the classroom or engaging in any type of violent behavior. Moreover, the credible testimony of the counselor and the

special education teacher in this regard is corroborated by the documentary evidence showing that the student made progress with regard to his behavioral issues. Accordingly, it is concluded that the behavioral intervention plan developed by Respondent for the student on approximately January 20, 2011 was reasonably designed to deal with the student's behavioral issues. The behavioral intervention plan developed by Respondent for the student was appropriate.

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 conduct a Woodcock-Johnson assessment and an occupational therapy evaluation within a reasonable period of time after a request by the parent?

It is uncontested that on or about November 24, 2010, Petitioner's educational advocate requested an occupational therapy evaluation and a Woodcock-Johnson III assessment for the student. On December 16, 2010, Respondent's special education coordinator wrote to counsel for Petitioner stating that Respondent was prepared to conduct the requested assessments, but requested that the parent appear in person to provide written consent on the appropriate form. The student's

mother testified that she signed a consent form at the January 2011 IEP team meeting, and that she provided a consent form with the original request for the documents. Respondent's special education coordinator testified that the consent form with the original request was stale because it was signed in 2009, and that she did not receive any consent form from the parent at the January meeting. Respondent's special education coordinator testified that she sent home consent forms with the student, and that she emailed them and mailed them through the post office to the student's mother.

On February 24, 2011 and on February 23, 2011, counsel for Petitioner sent letters to Respondent's special education coordinator inquiring regarding said evaluations. In the February 24, 2011 letter, counsel for Petitioner refers twice to correspondence from the special education coordinator dated "February 24, 2011." Inasmuch as these two references appear to be errors because the letter sent by counsel was dated the same date, it is concluded that they refer instead to the December 16, 2010 letter from the special education coordinator to counsel for Petitioner. In the February 24, 2011 letter, counsel for

Petitioner objects to the requirement that the student's mother appear in person to sign the consent forms.

The testimony and other evidence referred provided by the parties with regard to this issue is conflicting. Because the testimony of Respondent's witnesses is more credible than the testimony of Petitioner's witnesses, because of the factors outlined with regard to the previous issues, as well as the evasive demeanor of Petitioner's educational advocate on cross-examination, it is concluded that the testimony of Respondent's witness with regard to this issue is more credible and persuasive than the testimony of Petitioner's witness. It should be noted that the documentary evidence in the record does not include any of the consent forms referred to by either party with regard to this issue. Accordingly, the documentary evidence does not help with regard to resolving the potential conflict. Accordingly, based upon the credibility of witnesses and the persuasive testimony of Respondent's witnesses in general, and the demeanor of all of the witnesses who testified, it is concluded that Petitioner has not provided a valid consent for the evaluations.

In view of the fact that Respondent has agreed to conduct the assessments, however, Respondent should immediately send a the current consent form to counsel for Petitioner, and Petitioner should complete the form and submit it in order to accomplish the assessments.

That having been said, however, the hearing officer is troubled by the apparent suggestion by Respondent's special education coordinator that the student's mother must appear **in person** at the school to fill out a consent form. Parents who work for a living, such as the student's mother, may find it difficult to appear in person to fill out forms for Respondent. A requirement that the student's parent appear in person at the school does not seem to be consistent with the spirit or the letter of IDEA. The special education coordinator explained in her testimony, however, that there were other matters that the parent needed to take care of in person and that her letter mentioned an in person appearance for that reason. It should be made clear to the parent that there is no requirement that she appear at the school in person in order to provide consent. Nonetheless, the proper consent forms must be completed before the assessments can be conducted, so the parties should

accomplish this, since all apparently agree that the assessments should be conducted.

The Petitioner has failed to carry her burden with respect to this issue. The Respondent has prevailed with regard to this issue.

ORDER

Based on the foregoing, it is **HEREBY ORDERED** that all relief requested by the instant due process complaint is hereby denied, and the complaint filed herein is dismissed with prejudice.

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 30, 2011

/s/ James Gerl
James Gerl,
Hearing Officer