

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

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

[Parents], on behalf of,
[Student],¹

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: May 25, 2011

Hearing Officer: Jim Mortenson

Case No:

STUDENT HEARING OFFICE
MAY 25 11 4:39 AM '11

HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed by the Petitioners on March 11, 2011. The Petitioners are represented by Alana Hecht, Esq., and the Respondent is represented by Kendra Berner, Esq. A response was filed on March 22, 2011. A prehearing conference was held on March 23, 2011, and a prehearing order issued on that date. Petitioners did not participate in the prehearing conference, nor did their attorney. A resolution meeting was held on March 25, 2011, and did not result in a settlement or any other agreements. On March 25, 2011, the Petitioners filed a motion to permit the addition of an issue that they argued was part of the complaint but not included in the prehearing order of March 23. The motion was granted in a written order on March 29, 2011.

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

The hearing was convened on May 9, 2011, in room 2004 at 810 First Street NE, Washington, D.C. The due date for the hearing officer determination (HOD) is May 25, 2011. This HOD is issued on May 25, 2011.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5, Chap. 30.

III. ISSUES & RELIEF SOUGHT

The issues to be determined by the Independent Hearing Officer (IHO) are:

- 1) Whether the Respondent failed to offer or provide the Student with an individualized education program (IEP) reasonably calculated to provide educational benefit when it lacks a dedicated aide for the Student?
- 2) Whether the Respondent failed to provide the Student with special education and related services in conformity with his IEP when it did not provide required occupational therapy, physical therapy, speech and language, or assistive technology services?
- 3) Whether the Respondent failed to provide a requested re-evaluation or failed to provide notice of its refusal to conduct a re-evaluation when requested in October 2010?
- 4) Whether the Respondent failed to provide the Student with an appropriate preschool education when it placed the Student in a program for students with autism which is located in a building that does not permit the Student to freely ambulate?

The substantive requested relief includes:

- 1) Placement at
- 2) Inclusion of a dedicated aide in the Student's IEP for the school day and on bus.

- 3) Compensatory education consisting of any and all assistive technology recommended by recent (unspecified) evaluations and a pre-school summer camp at Children of America or another comparable summer program for students with Cerebral Palsy, in order to provide him with socialization with his peers, additional therapies missed, confidence, independence, and build a foundation for pre-academic skills.

IV. EVIDENCE

Nine witnesses testified at the hearing, four for the Petitioner and five for the Respondent.

The witnesses for the Petitioner were:

- 1) Petitioner, (Mother) (P)
- 2) Admissions Coordinator,
- 3) Lawrencia Cole, Educational Advocate (L.C.)
- 4) Patrice Brown, Occupational Therapist (OT), (P.B.)

The witnesses for the Respondent were:

- 1) Special Education Coordinator,
- 2) Special Education Teacher
- 3) Michelle Brown, OT (M.B.)
- 4) Ingrid Goganious, Speech and Language Therapist (I.G.)
- 5) Special Education Coordinator,

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

Petitioner's exhibits are:

| <u>Ex. No.</u> | <u>Date</u> | <u>Document</u> |
|----------------|-----------------------|--|
| P 1 | [Undated] | Compensatory Education Proposal for [Student] |
| P 2 | May 2, 2011 | Email chain ending from Bonds to Dholakia |
| P 3 | [Undated] | National Children's Center [brochure webpages] |
| P 4 | 2003-2004 School year | Dedicated Aide Justification |
| P 5 | March 30, 2011 | Individualized Education Program (IEP) |
| P 6 | March 30, 2011 | Prior Notice Letter |
| P 7 | March 30, 2011 | Advocate's Notes |
| P 8 | March 30, 2011 | Individualized Education Program (IEP) Meeting Notes |

| | | |
|------|------------------|---|
| P 9 | March 9, 2011 | Observation, Advocate's Notes |
| P 10 | April 7, 2011 | Occupational Therapy Evaluation |
| P 11 | March 25, 2011 | Letter from Johnson to [Petitioners] |
| | March 25, 2011 | IEE Acceptance Form |
| P 12 | November 8, 2010 | IEP Progress Report – Annual Goals |
| P 13 | October 6, 2010 | Letter from Hecht to Principal, et.al [Request for evaluations] |
| | October 6, 2010 | Letter from Hecht to Principal, et.al [Request for records] |
| P 14 | April 8, 2010 | Individualized Education Program (IEP) |
| P 15 | [Undated] | Lawrencia Cole [Curriculum Vitae] |
| P 16 | [Undated] | Patrice Brown [Curriculum Vitae] |
| P 17 | May 2, 2011 | Email chain ending from Parker to Hecht |
| P 18 | May 2, 2011 | [webpages] |

Ten documents were disclosed by the Respondent and all of them were entered into evidence.

The Respondent's exhibits are:

| | | |
|------|-------------------|--|
| R 1 | March 25, 2011 | Letter from Johnson to [Petitioners] |
| R 2 | March 30, 2011 | Individualized Education Program (IEP) |
| R 3 | March 30, 2011 | Individualized Education Program (IEP) Meeting Notes |
| R 4 | November 8, 2010 | IEP Progress Report – Annual Goals |
| R 5 | February 17, 2011 | IEP Progress Report – Annual Goals |
| R 6 | April 12, 2011 | IEP Progress Report – Annual Goals |
| R 7 | October 31, 2010 | Service Tracker |
| | December 6, 2010 | Service Tracker |
| | December 30, 2010 | Service Tracker |
| | February 2, 2011 | Service Tracker |
| | March 2, 2011 | Service Tracker |
| | April 8, 2011 | Service Tracker |
| R 8 | January 6, 2011 | Service Tracker |
| | February 11, 2011 | Service Tracker |
| | March 4, 2011 | Service Tracker |
| | April 4, 2011 | Service Tracker |
| R 9 | December 2, 2010 | Service Tracker |
| | January 10, 2011 | Service Tracker |
| | February 1, 2011 | Service Tracker |
| | March 2, 2011 | Service Tracker |
| | March 30, 2011 | Service Tracker |
| R 10 | November 1, 2010 | Service Tracker |
| | December 6, 2010 | Service Tracker |
| | January 4, 2011 | Service Tracker |
| | February 4, 2011 | Service Tracker |

V. FINDINGS OF FACT

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

1. The Student is a year old learner with a disability enrolled in a preschool program at School for the 2010-2011 school year.² The Student has cerebral palsy and is eligible for special education and related services under the definition of developmental delay.³ The Student arrived at at the start of the 2010-2011 school year with an IEP from his prior school in Maryland.⁴
2. The Student's disability affects his participation in appropriate activities including ambulation, feeding, and manipulating objects.⁵ He has difficulty with fine and gross motor activities and cannot move around the school independently, has difficulty feeding himself, and manipulating objects.⁶ He eats only soft food.⁷
3. The Student had 11 annual goals when the 2010-2011 school year began.⁸ The IEP was revised in March 2011 and four of the goals had not been met.⁹ Many new goals were added which were more advanced than the prior goals and there was a total of 18 goals in the March 2011 revision.¹⁰ One of the goals not met was a speech and language goal (expressing need and wants by using multiple communication strategies).¹¹ The other three goals not met

² Testimony (T) of P, T of S.C.

³ T of P, T of S.C., P 14.

⁴ T of P, P 14.

⁵ P 15.

⁶ P 15.

⁷ T of P, T of D.D. (P testified that the Student's dietary needs are a reason he requires a dedicated aide – to monitor what is put in his mouth to avoid choking. While P told D.D. that Student requires soft food, there was never any issue about this raised prior to the hearing and it was not discussed more in depth with school staff or the IEP team. Thus, Petitioners' position on this point is merely a pretext for their argument that a dedicated aide is required and is not convincing.)

⁸ P 15, R 5.

⁹ P 5, P 14.

¹⁰ P 5, P 14.

¹¹ P 5, P 14.

involved motor skills (standing and pushing a ball toward target, feeding himself without spilling, and holding and drinking from a cup with a lid and/or straw).¹²

4. Special education and related services in the IEP at the start of the 2010-2011 school year included:¹³

- Classroom instruction from a special education teacher outside of the general education setting for six hours 18 times per month. (About 27 hours per week.)
- Physical education outside of the general education setting from an adapted physical education teacher for 20 minutes twice weekly.
- Occupational therapy outside of the general education setting for 30 minutes 45 times per year. (Just over once per week.)
- Physical therapy outside of the general education setting for 30 minutes 60 times per year. (About twice per week for a total of one hour.)

The occupational therapy services were to address the Student's fine motor and mealtime skills/goals.¹⁴ The physical therapy services were to develop and monitor functional mobility skills in the school environment and would include direct therapeutic intervention, positioning and equipment management, staff training, and monitoring of Student progress.¹⁵

5. Rather than 20 minutes twice weekly, adapted physical education was provided 45 minutes per week, but was not begun until mid-November 2010.¹⁶

6. The Student was provided weekly occupational therapy services, typically for 30 minutes per session, and sometimes more.¹⁷ Services were not started until the last week of October of the 2010-2011 school year.¹⁸ Most of the missed sessions for occupational therapy following its implementation were due to the Student's absence.¹⁹

¹² P 5, P 14.

¹³ P 14.

¹⁴ P 14.

¹⁵ P 14.

¹⁶ R 9.

¹⁷ R 7.

¹⁸ (M.B. testified that she began providing OT services to the Student "around the beginning of the school year." The Respondent's records show that was the last week of October, and so nearly two months of OT services were not provided to the Student.)

¹⁹ R 7.

7. Physical therapy services were not begun until mid-December, and then were provided only about 30 minutes per week rather than twice per week.²⁰
8. The Respondent provided speech and language therapy even though these services were not listed in the IEP.²¹ The IEP was revised to include speech-language pathology services of 240 minutes per month (4 hours) on March 30, 2011.²²
9. Supplementary aids and services in the IEP at the start of the 2010-2011 school year included:²³
 - Suction bowl
 - Adapted curved handle spoon
 - Cup with lid and/or straw
 - Plastic container with handles to hold a juice box
 - Slant board with a clip
 - Placing Student in a variety of positions throughout the school day
 - Extended school year
 - Lift bus
 - A gait trainer (which was recorded as part of gross motor goals as the Student's "least restrictive device," but was not otherwise listed elsewhere. This appears to have been an error as the device was clearly in use and necessary to help the Student reach the gross motor goals. The Respondent did not have a gait trainer available for the Student to use.)
10. The March 2011 revision of the IEP notes the Student only requires a bus for transportation services.²⁴ ESY services are also required, but a dedicated aide is not.²⁵
11. The Student could not access the cafeteria or library at his school, because there was no elevator to enable him to get there in his wheelchair.²⁶ As a result he eats in the classroom with an aide and cannot be in the library when stories are read to his

²⁰ R 8.

²¹ P 14, R 10. (It is suspected that the speech goals in the IEP were worked on at the prior school in Maryland by the special education teacher(s) as the IEP refers to special education classroom instruction provided in a collaborative Transdisciplinary approach. This was not explained through any testimony or argument, however, and is only a guess.)

²² P 5.

²³ P 14, R 5, T of

²⁴ P 5.

²⁵ P 5.

²⁶ T of P, T of

peers.²⁷ He requires someone to push him around in his wheelchair because he is not yet able to push himself.²⁸ The Student did not have a dedicated aide in his prior school in Maryland.²⁹

12. School, another of the Respondent's schools, is fully accessible and can provide the services in the Student's IEP.³⁰
13. The Student enjoys school and likes books in particular.³¹ His preschool teacher uses Applied Behavioral Analysis (ABA) with the students in the class.³² ABA uses discrete trials and intensive data collection on the imparting of skills to students.³³ The Student has progressed well on his pre-academic skills and has met most of his annual goals, indicating success with the teaching method used.³⁴
14. The Student is in a preschool class fully segregated from non-disabled peers, and there are a mixture of students with various disabilities in the class.³⁵
15. The Petitioner, through her counsel, sent the Respondent a request to evaluate the Student on October 6, 2010.³⁶ The Respondent failed to respond to the request.³⁷

²⁷ T of

²⁸ T of

²⁹ P 14, T of P.

³⁰ T of U.T.

³¹ T of S.C.

³² T of S.C., T of

³³ T of S.C.

³⁴ T of S.C., P 5 (The academic goals in the IEP were revised in March to be more challenging; a sign the prior goals were met.)

³⁵ T of S.C.

³⁶ P 13.

³⁷ T of D.D. (This witness testified that the request for evaluation was never received. However, the request was sent to not only her, but the school principal and another named person, as well as copied to the Director of Special Education and the Office of Legal Counsel. Someone in the school district surely received the request and should have made sure it went to the appropriate person.)

VI. CONCLUSIONS OF LAW

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

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

special education and related services that –

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

34 C.F.R. § 300.17.

2. Federal regulations at 34 C.F.R. § 300.320 lists the required contents of an IEP:

(a)(1) A statement of the child's present levels of academic achievement and functional performance, including —

- (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(3) A description of — (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
 - (A) The child cannot participate in the regular assessment; and
 - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

3. “Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability[.]” 34 C.F.R. § 300.39(a)(1). Federal Regulations at 34 C.F.R. § 300.39(b)(3) defines “specially designed instruction” as:

adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child’s disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

4. Related services include transportation services which includes:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 C.F.R. § 300.34(c)(16).

5. The Student requires transportation services because he cannot independently move around a school building or to or from the building. He also needs equipment to move around with. Sufficient transportation services are not provided for in the current revision of the IEP. The IEP must address the transportation services, including equipment, to assist the Student in moving around the school and to and from the school. A dedicated aide may be provided as a transportation service, but is not necessary as other means of providing transportation services may be used. The frequency, location, and duration of transportation services must be listed so as to provide clear instructions to staff and information to the parent as to what and how the Student’s ambulatory needs will be met, pursuant to 34 C.F.R. § 300.320(a)(7).
6. The IDEA “is violated when a school district deviates *materially* from a student’s IEP.”

Wilson v. D.C., C.A. 09-02424, p 7 (D.D.C. 2011), *citing*: Van Duyn ex rel. Van Duyn v.

Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”); *accord* S.S. ex rel. Shank v. Howard Road Acad., 585 F. Supp. 2d 56, 68 (D.D.C. 2008); Catalan ex rel. E.C. v. District of Columbia, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff’d sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C. Cir. Sept. 11, 2007). “[T]he materiality standard *does not require that the child suffer demonstrable educational harm* in order to prevail” on a failure-to-implement claim. Wilson, at p 7 (emphasis in original), *citing*: Van Duyn, 502 F.3d at 822 (emphasis added); *cf.* MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 537 n.17 (4th Cir. 2002) (rejecting the argument that parents must show actual developmental regression before their child is entitled to ESY services under the IDEA). “Rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” Id., *See, e.g.*, Van Duyn, 502 F.3d at 822; S.S., 585 F. Supp. 2d at 65–68; Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115–16 (D.D.C. 2008); Catalan, 478 F. Supp. 2d at 76.

7. Occupational therapy (OT), physical therapy (PT), speech and language services (S/L), and assistive technology (AT) were not provided in conformity with the Student’s IEP. OT services, despite being required when the school year began, were not provided until late in October. The Student missed at least nine weeks of OT or approximately four and a half hours worth of service. Nine weeks is a material failure as indicated by at least two OT goals that were not met by March, 2011 (drinking and feeding). The Student missed at least 16

weeks of PT until mid-December, and then was provided only about 30 minutes per week rather than an hour per week. This is a material failure as the Student was not provided, at least until the IEP was revised at the end of March, more than half the PT services the IEP team had determined necessary.³⁸ While the IEP had speech and language goals, it did not call for the services of a speech and language pathologist. While providing these services may have been appropriate, the IEP was not revised until March 30, 2011, to reflect this. Prior to that time, the speech and language therapy services were not provided in conformity with the IEP. This is a material discrepancy with the IEP and, if nothing else, removed the Parent from the decision making process as she was not on notice of the change in service and did not have the opportunity to participate in decision making until March, 2011. Finally, the IEP required the use of a gait trainer or other device for the Student even though the frequency, location, and duration of this service was not documented properly in the IEP. The Respondent failed to provide the assistive technology necessary to aid the Student in reaching the IEP goals, which was a material failure to implement the IEP. Furthermore, failure to revise the IEP to address the flaw in documentation to make clear what services were to be provided is a violation of 34 C.F.R. § 300.324(b).

8. A reevaluation of a Student must be conducted when a parent requests. 34 C.F.R. § 300.303(a)(2). This requirement is not without exception, as the school district may have good cause to refuse (for example, if an evaluation was recently completed). If the school district refuses (as well as when it agrees to or proposes a reevaluation) it must provide written notice of its refusal and the reasons. 34 C.F.R. § 300.504.

³⁸ While the IEP was formulated by a team, including the Parent, in Maryland, the Respondent's staff did not seek to revise the IEP until March, 2011.

9. The Parents, through counsel, requested a reevaluation of the Student in October 2010, and the District never responded. Without written notice of its position on the reevaluation, the Petitioners' opportunity to participate in the decision-making process concerning the provision of a FAPE to the Student was significantly impeded. *See* 34 C.F.R. § 300.513(a)(2)(ii).

10. The concept of "least restrictive environment" (LRE) is defined in Federal Regulations as:

(2) Each public agency must ensure that —

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114(a)(2).

11. 34 C.F.R. § 300.117, Nonacademic settings, states:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

12. Despite the primarily academic gains made by the Student in the preschool program at Tyler, he could not access the cafeteria or library to eat and participate in readings with his non-disabled peers as a result of the building's limitations, not his own. Thus, he was not in the least restrictive environment. This exclusion of the Student from meals with his peers and library time renders the preschool program inappropriate under 34 C.F.R. § 300.17(c).

13. Compensatory education is an equitable remedy that may be provided as relief in disputes under the IDEA. Reid ex rel. Reid v. District of Columbia, 401 F.3rd 516, ___, 43 IDELR 32, (p 5, p 6) (D.C. Cir. 2005), *citing* G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003), and Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16 (1993). If, in the hearing officer's broad discretion, compensatory education is warranted, the "goal

in awarding compensatory education should be ‘to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.’” Wilson, at p 9, *citing Reid*, 401 F.3d at 518, and Carter at 15-16. “Once a student has established a denial of the education guaranteed by the IDEA, the Court or the hearing officer must undertake ‘a fact-specific exercise of discretion’ designed to identify those services that will compensate the student for that denial.” Id., *citing Reid*, 401 F.3d at 524; *see Stanton ex rel. K.T. v. District of Columbia*, 680 F. Supp. 2d 201, 207 (D.D.C. 2010); Phillips ex rel. T.P. v. District of Columbia, 736 F. Supp. 2d 240, 247 (D.D.C. 2010).

14. The Student failed to reach four of his annual goals as a result of the denials of FAPE described herein. The appropriate relief to remedy this harm is to provide compensatory services to put the Student in the place he would have been but for the violations. Because education is an outcome-oriented process, compensatory services themselves are not the end result. Rather, the educational outcomes expected (meeting the goals that were not obtained) is the end result reasonably sought after. The compensatory education “plan” offered by the Petitioners (P 1) fails to convincingly articulate how the proposed compensatory education will make up for the denial suffered by the Student. They request “[a]ny and all assistive technology that the recent independent evaluations recommended[,]” which is a catch-all that fails to link specific necessary services to aid in making up for an unspecified deficit as a result of the denials of FAPE. The provision of a summer camp for students with cerebral palsy gets closer, as it will provide socialization with peers, but it appears too general to be of specific benefit tailored to what has been the effect of the denials of FAPE to this Student: a failure to reach the annual functional goals concerning feeding, drinking standing and rolling

a ball toward a target, and communicating with multiple strategies. The compensatory education will need to be more specifically tailored to remedy the harm to the Student.

15. The Student cannot be kept at _____ School because it is not fully accessible and therefore is not the least restrictive environment for the Student. The District's school at _____ is accessible and the Student's IEP can be implemented there. As long as the District has a facility that is accessible to the Student and can implement his IEP in the least restrictive environment, a private placement is not necessary.

VII. DECISION

1. The Petitioners prevail on Issue #1 because even though it is not clear the Student's IEP requires a dedicated aide, it does require more specific transportation services for the Student, one of the primary reasons the Petitioner complained of and sought a dedicated aide.
2. The Petitioners prevail on Issue #2 because the Respondent failed to provide the Student with special education and related services in conformity with his IEP when it did not provide required occupational therapy, physical therapy, and assistive technology services. The Respondent also failed to either revise the IEP to document the speech and language services to be provided or used another method to help the Student reach the speech and language goals in the IEP.
3. The Petitioners prevail on Issue #3 because the Respondent failed to provide a requested re-evaluation or failed to provide notice of its refusal to conduct a re-evaluation when requested in October 2010.

4. The Petitioners prevail on Issue #4 because the Respondent failed to provide the Student with an appropriate preschool education when it placed the Student in a building that does not permit the Student to freely ambulate.

VIII. ORDER

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

1. The Student will be placed in a school that is fully accessible beginning the summer of 2011.
2. The Student will be provided compensatory education services over the summer of 2011, which will not interfere with currently scheduled ESY services. The compensatory education services will include OT, PT, and speech and language therapy that will aid the Student in reaching the four goals that were not reached by March 30, 2011, before the start of the 2011-2012 school year. The compensatory education services must begin no later than June 27, 2011. The services must be monitored weekly to ensure progress is being made to reaching each of the goals. Written reports detailing the level of progress will be provided to the Petitioner at the start of the week following the week of the report. The reports must be sufficiently detailed to inform the reader of how much more progress is necessary to reach the goal.
3. Upon reaching each of the goals, the service providers will propose new annual goals which will be achieved by the end of the 2011-2012 school year. If necessary, the IEP team will meet to determine the services necessary to enable the Student reach those goals and document the goals and services in the IEP.
4. The level of OT, PT, and speech and language service will begin at four hours per week each of OT and speech and language, and 45 minutes per week of PT. These service amounts must

be adjusted by the service providers (with notice explaining reasons for changes to the Petitioners) over the course of the summer based on the progress of the Student in reaching each of the four goals by the start of the 2011-2012 school year.

5. The IEP must be revised no later than June 27, 2011, to incorporate the necessary assistive technology and transportation services for the Student as described in the findings and conclusions herein. An IEP meeting will be convened following a proposal of three dates and times to the Petitioners and the Petitioners will have the opportunity to choose one of the proposed dates. The notice will inform the Petitioners of the date and time the IEP team will meet if they fail to select one of the proposed times. This method will be used for the scheduling of any subsequent IEP team meetings necessary pursuant to this Order.

IT IS SO ORDERED.

Date: May 25, 2011



Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

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