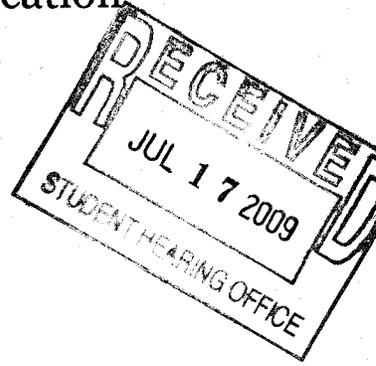


DC Office of the State Superintendent of Education  
Office of Compliance and Review  
Student Hearing Office

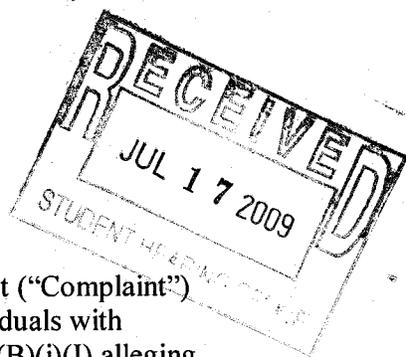
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**Confidential**

<p>STUDENT<sup>1</sup>, by and through Parent Petitioners,  v.  District of Columbia Public Schools  Respondent.</p>	<p><b>HEARING OFFICER'S DETERMINATION</b></p> <p>Date: July 17, 2009</p> <p><b><u>Hearing Officer: Wanda I. Resto, Esquire</u></b></p>
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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.



## I. PROCEDURAL BACKGROUND

On May 4, 2009, the Petitioner, through counsel, filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter "IDEIA"), 20 U.S.C. §1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to implement the Student's May 13, 2008, individualized education plan ("IEP"), failing to develop a new IEP or issue a notice of non-eligibility within 30 days of receiving the IEP; failing to comprehensively evaluate the Student for suspected disabilities; and by determining the Student ineligible for special education and related services.

The Petitioner requested the Respondent be deemed to have denied the Student a FAPE and as a relief ordered to fund independent comprehensive evaluations including a psycho-educational, neuropsychological, speech and language evaluations, convene a multidisciplinary team meeting to review the evaluations, discuss and determine eligibility, develop an appropriate IEP if necessary, determine and provide an educational placement with appropriate special education and related services. Additionally the Petitioner requests that the Respondent fund a compensatory education plan.

On May 6, 2009, the Respondent filed a Motion pursuant to 34 C.F. R. §300.510 agreeing to waive the resolution session and requesting that the case proceed to a due process hearing on the merits.

On May 21, 2009, the DCPS filed a Response to the Parent's Administrative Due Process Complaint. The Respondent asserted it has not denied the Student a FAPE. It alleged that it convene an eligibility meeting on February 19, 2009 in which the Parent participated and base on the Student's assessment the Student was found ineligible for special education services. The Respondent further asserted it did not have information at the Student's enrollment of the existence of an IEP or that the Student was in need of special education services. The Respondent alleged the Student was comprehensively evaluated and it was determined that the Student did not have a disability that impacted his academic achievement. The Respondent asserted there are some concerns regarding occupational therapy needs, but there was no disability academically. The Respondent contends that the Student has been receiving educational benefit at the school. The Respondent asserted the Student has been referred to a Student Support Team which is developing a 504 plan to address the recommended occupational therapy concerns.

On June 15, 2009 the parties agreed to a Continuance and the Complaint was reassigned to the undersigned, on June 16, 2009. The undersigned held a pre-hearing conference call with Counsel for both parties on June 19, 2009 at 3:30 PM. During that conference call, the matters addressed and determined were as follows:

On June 22, 2009 an Order required the Petitioner at the hearing July 8, 2009 at 1:00 PM, to demonstrate why there must be a formal assessment of the speech and language, why the observation was not sufficient. The Petitioner had to demonstrate that prior evaluations were not reviewed and that the Respondent must address seizure problems, of the Student. Additionally, the Petitioner has the obligation to show that a FAPE was not provide and how the Student or the Petitioner were harmed

The Respondent had to demonstrate that it did not have information at the Student's enrollment of the existence of an IEP or that the Student was in need of special education services. The Respondent had to demonstrate that the Student does not require additional evaluations. The Respondent also had to

show the Student has been receiving educational benefit at the school and that the team acted appropriately when it determined the Student not eligible for special education services.

The Petitioner was reminded that to sustain the request for a compensatory education award the Petitioner must prove (1) that as a result of Respondent's violation of the IDEIA, Petitioner suffered an educational deficiency, (2) that but for the violation, the Student would have progressed to a certain academic level, and (3) that there exists a type and amount of compensatory education services that could bring the Student to the level the Student would have been but for the Respondent's violation. The Petitioner has an obligation to establish the need and reasonableness of the amount of compensatory education requested and how the hours will be integrated into the Student's current educational program.

A hearing was held on July 8, 2009. The Petitioner presented a disclosure letter dated June 30, 2009, to which twenty-two documents were attached, labeled P#1 through P#22 and which listed five witnesses. Four witnesses testified. The Respondent presented a disclosure letter dated June 5, 2009, identifying nine witnesses and to which twelve documents were attached, labeled DCPS 1 through 12. No witnesses testified. The documents were admitted without objection. The hearing commenced 30 minutes behind schedule because Counsel for the Respondent was held back in a prior hearing, at the end of the presentation of the Petitioner's case; the Respondent could not reach witnesses and requested a continuance of the hearing; the Petitioner opposed the request. The undersigned did not find good cause in the request and denied the continuance. Counsels were allowed to submit written closing statements and both did.

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

## II. ISSUE(S)

1. Did the Respondent fail to implement the Student's May 13, 2008 IEP, and to issue a notice of non-eligibility within 30 days of receiving the IEP?
2. Was the Student comprehensively evaluated for suspected disabilities?
3. Did the Respondent fail to find a qualified child eligible for special education and related services?
4. Did the Respondent fail to develop a new IEP?
5. Whether the Student was denied a FAPE?

## III. FINDINGS OF FACT

1. The parties stipulated the Student's date of birth, he attends a DCPS, and that along with the Petitioner he is a resident of the District of Columbia <sup>2</sup>

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<sup>2</sup> Stipulation of the parties at the prehearing conference.  
HOD

2. The parties agreed that the Student was found ineligible on February 19, 2009. The Respondent conducted an occupational therapy ("OT") evaluation in January 16, 2009, that recommended O.T. services 60 minutes per week to increase his independence in completing classroom assignment and activities effectively.<sup>3</sup>
3. An October 2, 2007, IEP was crafted for the Student by the District of Columbia Early Childhood Development Program it identified the child with a Speech & Language Impairment; it prescribed occupational therapy services for 30 minutes a week and 30 to 45 minutes weekly of speech/language pathology. Another IEP dated May 2008, identifies goals on speech and language, however the pages indicating the amount of hours of services are missing.<sup>4</sup>
4. A July 2008 Cognitive evaluation indicates the Student has significant difficulties with motor skills and will require continuing occupational therapy and speech/language services.<sup>5</sup>
5. An Occupational Therapy evaluation conducted by the Respondent in January 2009, recommended direct O.T. services 60 minutes per week to increase his independence in completing classroom assignment and activities effectively. The Respondent has not provided these services.<sup>6</sup>
6. From September 2008 through April 2009 - the attendance record corroborates the fact the Student has from 3 to 10 illness or medical excused absences from school.<sup>7</sup>
7. At the beginning of the 2008-2009 school year the Petitioner provided the school with a sealed packet containing the Student's educational and services documents given to her by the Disability Coordinator at Bright Beginnings. She testified that she was directed from the main office to the special education coordinator's office and that she handed the packet to a woman who stated she was not the actual special education coordinator but would make sure that the packet was given to the special education coordinator. The Petitioner also testified that she advised the administrator in the front office of the school who she believed to be the Vice Principal that the Student would not be at school on the first day as he to undergo surgery for the seizures he was having. She stated that upon the Student's return to school, she provided the School with the Student's discharge papers from the hospital. She stated the School was on notice that Student had undergone brain surgery due to seizures and that he continued to have seizures and was missing a significant amount of school. The Student missed approximately 40 days of school because of seizures, and because the School called the Petitioner regularly to go to the school and take the Student home. She testified that she spoke to the Student's Doctor and that he faxed a protocol to the School to follow with the Student in the event of seizures. The Petitioner was at the February 2009 meeting where the Student was deemed not eligible, she was surprised, confused and did not question the appropriateness of the decision.<sup>8</sup>

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<sup>3</sup> DCPS #7 January 2009, Occupational therapy evaluation, and stipulation of the parties during the prehearing conference.

<sup>4</sup> P# 7 and IEP Bright Beginning-Head Start and P# 10, May 13, 2009, IEP-Bright Beginnings

<sup>5</sup> DCPS #4, July 7, 2008- Cognitive evaluation.

<sup>6</sup> DCPS #7 January 2009, Occupational therapy evaluation and testimony of the Petitioner.

<sup>7</sup> P#18 April 4, 2009 -Attendance Report

<sup>8</sup> P#18, April 4, 2009 -Attendance Report, testimony of the Petitioner and P#13 December 1, 2008-Letter from Neurologist.

8. The Respondent conducted a Speech and Language Evaluation on November 18, 2008. The therapist noted that the Student has been receiving speech-language and occupational therapy per cognitive evaluation dated 6/2007 and speech –language evaluation dated 5/2007. The evaluation indicates the Student was found to have adequate expressive language, vocabulary skills and weaknesses with receptive language. <sup>9</sup>
9. The Respondent held an eligibility meeting February 19, 2009, the notes mention that the Student has average language abilities for his age; he was found to be intelligible to teacher and has demonstrated weaknesses in the area of fine motor skills.<sup>10</sup>
10. The social worker from Bright Beginnings responsible for coordinating and referring students for special education services or to the schools at the start of the school year compiled a packet with the Student's evaluations and IEP's in July or August 2008 and gave it sealed to the Petitioner. <sup>11</sup>
11. The Respondent acknowledged the Student has an attendance problem because of his illness and that it was impacting his work in January 2009. From September 2008 through April 2009 - the attendance record corroborates the fact the Student had from 3 to 10 illness or medical excused absences from school. <sup>12</sup>
12. An interdisciplinary evaluation performed in September 2006, recommended the child receive monthly monitoring and consultation therapy to ensure the Student 's motor planning deficiency do not interfere with his abilities to keep up with the fine motor, gross motor and adaptive demands. In April 2007 the Student was evaluated there were concerns about motor planning and sequencing , and a recommendation was made for occupational therapy to assist him in his educational goals and objectives. In June 2009 an assessment of the Student showed he failed to progress with regard to his fine and gross motor skills. Now the Student walks with a shuffling gait and has observable hand tremors and the failure to provide services to him has affected his self esteem. The Student's cognitive abilities are in the average range so he is cognizant of the fact that he is not able to perform even the simplest of tasks like being able to unfasten his pants to use the restroom that other typically developing five year olds are able to do. The Student does not have the fine and gross motor skills that a typically developing 5 year old should have in a pre-kindergarten academic setting. The OT opined that in order for the Student to begin to catch up for the O.T. services he missed for the 2008/2009 school year, he would require intensive daily O.T. services (at least one hour per day) from now until the end of the summer and even then he may not have the fine and gross motor skills necessary for Kindergarten. She recommended that additional assessments be done at the conclusion of the intensive daily services to determine what additional services are necessary.<sup>13</sup>
13. An interdisciplinary team evaluated the child in 2006; assessed the Students abilities to respond to nonverbal and development of symbolic play. There were meetings in 2007 and 2008 where IEPs were developed for the Student which included speech/language and occupational therapy services. The Student's most recent Speech and Language evaluation conducted at Bright Beginnings occurred prior to the Student undergoing brain surgery and a comprehensive Speech &

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<sup>9</sup> DCPS # 8 - November 18, 2008, Speech & Language Evaluation/Re-Evaluation

<sup>10</sup> DCPS #2, February 19, 2009-Eligibility meeting report.

<sup>11</sup> Testimony the LGSW and P#10 Id.

<sup>12</sup> DCPS #3, Teachers Comments 10/24/08 and 6/15/09 and P#18 April 4, 2009 -Attendance Report.

<sup>13</sup> P#2, 4, 7, 8 and testimony of the Occupational Therapist

Language evaluation should have been performed in order to determine what effects if any the Student's seizure and subsequent brain surgery have had on his speech/language abilities. Students who have undergone brain surgery or trauma to their brain require Neuropsychological evaluations in order to determine the Student strengths, weaknesses and ability to learn. It's the Psychologist's opinion the Speech and Language evaluation conducted by the Respondent was not sufficient since it consisted of only a review of Student's prior records and an observation. No formal or informal assessment was conducted of the Student. An assessment of Student in June 2009, revealed difficulty with auditory comprehension. The evaluation also determined the Student was behind in his receptive language skills, has inability to follow directions; has deficient fine and gross motor skills, problems with motor planning and sequencing and phonemic awareness skills. The Student's overall scores dropped and it was likely as a result of the brain surgery. The Student cannot recognize numerals or count. A look at where the Student was prior to entering Pre-Kindergarten and where he is currently functioning showed the gap has widened. In order to remediate this gap, she testified that he would need daily intervention of 3-4 hours a day (which would incorporate the O.T. intervention for the fine and gross motor skills) from now until the end of the summer. She further recommended that Student be reassessed at the end of receiving the compensatory services to determine whether additional services are required. In her opinion that the Student qualifies for special education and related services under the diagnosis mixed developmental disorder, motor coordination disorder, Dyspraxia, Language Disorder, Seizure Disorder and a history of neurosurgical resection of Dysplasia, and Left Frontal Lobe. The Student's profile is of a student with Learning Disabilities. She recommended that he be placed in a classroom appropriate for students with learning disabilities with services of occupational therapy and speech & language fully integrated into his program.<sup>14</sup>

14. The Respondent alleged in their answer that it did not have prior information at the Student's enrollment of the existence of an IEP or that the Student was in need of special education services. The Respondent also alleged the Student was referred to a Student Support Team which is developing a 504 plan to address the recommended occupational therapy. The Respondent did not present a witness to support any of its alleged defenses.

#### IV. CONCLUSIONS OF LAW

##### **Burden of Proof**

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a FAPE.

The Respondent has not met its legal obligation under the IDEIA. Here is why.

The Petitioner alleged that the Respondent failed to implement the Student's May 13, 2008, individualized education plan ("IEP"); failed to develop a new IEP; to comprehensively evaluate the Student for suspected disabilities; and determining the Student ineligible for special education and related services, although the Student qualified.

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<sup>14</sup> P# P#2, 6, 7, 11, 12 and, 19 and testimony of Dr. Jacobstein, a Clinical Psychologist.  
HOD

The IDEIA at 20 U.S.C. 1412(a)(3), and its regulations at § 300.111 , require that the Respondent have in effect policies and procedures to ensure that, among other things, all children with disabilities residing in the District of Columbia, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

### **Individualized Education Program**

Pursuant to 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Programs or IEP “means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

- aa. 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
- bb. Meet each of the child’s other educational needs that results from the child’s disability.”

An October 2, 2007, IEP was crafted by the District of Columbia’s Early Childhood Development Program for the Student; as a child with a Speech & Language Impairment; the evidence also is that there is a May 2008 IEP, which identified speech and language goals although incomplete.

The Petitioner argued that \_\_\_\_\_ was obligated to provide the services on the Student’s IEP and convene a meeting to determine the Student’s eligible or develop their own IEP within 30 days of being put on notice that Student was a student with a disability. Further the Petitioner argued that because the parent provided \_\_\_\_\_ with the Student’s prior evaluations and IEP’s prior to the beginning of the 2008/2009 school year, the Respondent was on notice and should have implemented the Student’s May 13, 2008 IEP from the start of the 2008-2009 school year and convened a meeting within 30 days to either determine Student ineligible or develop a new IEP.

It is unmistakable to the undersigned that the Student had an IEP from a District of Columbia public agency and he was enrolled in a DCPS during the 2008-2009 school year.

The IDEIA established requirements to facilitate the transition for children with an IEPs for students who transfer from one public agency to another public agency within the same school year.<sup>15</sup>

If a child with a disability was receiving special education and related services pursuant to an IEP in a previous public agency transfers to a new public agency within the State and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must, provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either - (1) Conducts an evaluation, if determined necessary by the new public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324.

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<sup>15</sup>See: 20 USC 1414(c)(2) and 34 CFR §300.323(e), (f), and (g).  
HOD 7

The new public agency must make reasonable steps to promptly obtain the Student's record, including the IEP and any other records pertaining to the provision of special education or related services to the child, from the previous public agency.

In the case before us the uncontroverted testimony is that the Respondent should have identified the Student as a child in need of special education services when the Petitioner enrolled the Student for the 2008-2009 school year, because the Petitioner provided the school with a packet of information including the Student's record and IEP. Even if we discredited the mother's testimony and the Psychologist who attended meetings in 2007 and 2008 where IEPs were developed for the Student; and believe that the Respondent was not aware; it conducted a Speech & Language Evaluation on November 18, 2008, which recognize that the Student had been receiving speech-language and occupational therapy services.

There was no evidence of any attempt by the Respondent to locate the Student's record or implement an IEP for the Student starting August 2008.

### **Special education services**

The evidence was that the Respondent held an eligibility meeting February 19, 2009, there was no evidence or testimony of what was reviewed or discussed. There was no explanation that the Student did not meet the eligibility criteria for disabled child under the IDEIA, or that a 504 plan would be developed.

Pursuant to 34 C.F.R. § 300.301(e), a public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability.

In the case at hand, the Student's speech/language and occupational services were removed. These services were removed without a formal evaluation being administered, and without any formal finding that the Student's occupational therapy and speech/language pathology were not required. There was no formal evaluation to sustain a reduction or denial of services.

The evidence was the Respondent was on notice of the Student's brain surgery and complicating medical condition of seizures, and there was no proof that they discussed those conditions or considered the need for a Neuropsychological in order to determine whether the surgery impacted the Student's ability to be educated in a general education setting or his learning capacity.

### **Comprehensively evaluate the Student for suspected disabilities;**

Once a child has been referred to an IEP team for an eligibility determination, to determine the educational needs of such child." 20 U.S.C. § 1414(a)(1)(C)(i). The Act requires the local educational agency to:

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents, that may assist in determining - whether the child is a child with a disability . . . ;

(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability . . . ; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

No single procedure should be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.<sup>16</sup> The results of the evaluations must be given considerable weight in determining the child's eligibility for services and in the development of the child's IEP.<sup>17</sup> Here the evidence was scanty, there was no evidence of formal evaluations and the date that was used was not explained in detail to justify a reduction or no services.

According to 34 C.F.R. Sec.300.303(a)(1)(2), a public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. The Petitioner proved the Respondent failed to adequately evaluate the Student and that the Student requires evaluations.

### **FAPE Determination**

The Respondent is required to make a FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)."

The United States Supreme Court has established a two-part test to determine whether a school has fulfilled its duty to provide a FAPE was established: (1) has the school district complied with the procedures provided by the IDEA; and (2) is the student's IEP reasonably calculated to provide educational benefits. If these requirements are met, the Court explained, then defendants have "complied with the obligations imposed by Congress and the courts can require no more."<sup>18</sup>

There was evidence that the Respondent violated its procedural obligation under the IDEIA by not locating or identifying the Student in a timely manner, nor providing services per an existing IEP. The Respondent failed to provide the Student with the benefit of an IEP or properly determine if one was necessary. The Respondent failed to provide the Student with an IEP calculated to provide educational benefits.

### **Compensatory education**

The Respondent has denied the Student a FAPE. The Respondent's violation entitles the Petitioner to a compensatory education award determination to be made by the Hearing Officer. When there is a denial of FAPE a compensatory award should be granted.<sup>19</sup>

The law requires the Petitioner to demonstrate the Student's specific educational deficits resulting from a loss of FAPE and the specific compensatory measures needed to best correct those deficits, if any.

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<sup>16</sup> 34 C.F.R. §300.304(b)(2).

<sup>17</sup> 34 C.F.R. §300.305(a).

<sup>18</sup> *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982)

<sup>19</sup> *Mary McLeod Bethune Day Academy Public Charter School v. Bland Civil* Action No. 07-1223 (D.D.C. February 20, 2008)

This jurisdiction requires a compensatory award that would place the student in the same position he/she would have occupied but for the LEA's violation of the IDEA. Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005) "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." Id. at 524.

Whichever path the court chooses, the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits. It rejected arbitrary approaches to the award of compensatory education.

At the hearing for purposes of establishing whether compensatory education is warranted, and if so, what type and amount of compensatory education is most appropriate. The Petitioner had also an obligation *inter alia* to argue the need and reasonableness of the amount of compensatory education requested and how the hours would be integrated into the Student's current educational program.

The evidence consisted of the testimony of a witness who testified that in order for the Student to begin to catch up for the O.T. services he missed for the 2008/2009 school year, he would require intensive daily O.T. services (at least one hour per day) from now until the end of the summer. There was also testimony from the Occupational Therapist who testified that based on her knowledge of where the Student was prior to entering Pre-Kindergarten and where he is currently functioning the gap has widened. In order to remediate this gap, she testified that he would need daily intervention of 3-4 hours a day. The witnesses' testimony failed to sufficiently support – under the standards of Reid, the calculation of the number of hours of compensatory education, what the compensatory plan would consist of, and what program, if any, would be used to get the Student to where he should be. Furthermore there was insufficient evidence to demonstrate where academically the Student is as compared to where he should be.

The Petitioner had the burden of showing (1) that as a result of Respondent's violation of IDEIA, Petitioner would have progressed to a certain academic level, and (2) that there exists a type and amount of compensatory education services that would bring Petitioner to the level Petitioner would have been but for the Respondent's violation.

The Reid decision demands substantial evidence of a link between the compensatory education sought and the expected educational benefit. The Petitioner had to offer an informed and reasonable exercise of discretion regarding what services the Student needs to elevate him to the position he would have occupied absent the school district's failures." The Petitioner failed to provide the hearing officer with the fact specific requirements establish in the pre-hearing order and *Reid*.

A Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides her/him with "insight about the precise types of education services [the student] needs to progress." Branham v. D.C., 427 F.3d 7, 12 (D.C. Cir. 2005).

#### IV. SUMMARY OF DECISION

The Respondent failed to identify the Student as a child in need of special education services during the 2008-2009 school year. The Student was not provided speech-language and occupational therapy services as required by an existing IEP. The Respondent was on notice of the Student's brain

surgery and complicating medical condition of seizures, and there was no proof that they discussed those conditions or consider the need for a Neuropsychological in order to determine whether the Student's ability to be educated in a general education setting was impacted.

The Petitioner did not meet the Reid decision substantial evidence standard of a link between the compensatory education sought and the expected educational benefit. The Petitioner had to offer an informed and reasonable exercise of discretion regarding what services the Student needs to elevate him to the position he would have occupied absent the school district's failures." The Petitioner failed to provide the hearing officer with the fact specific requirements establish in the pre-hearing order and *Reid*.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

## VI. ORDER

**ORDERED**, the Respondent will fund the following independent evaluations: Psycho-Educational, Neuropsychological, Speech & Language and Physical Therapy Evaluation. The Petitioner must make every effort to secure the completion of evaluations by August 31, 2009, and by September 7, 2009 send a copy of the results to the SEC at

**IT IS FURTHER ORDERED**, the Respondent will convene an MDT/eligibility meeting by September 18, 2009 with the appropriate personnel to review all prior and new evaluations determine eligibility; develop an IEP; discuss and determine placement if warranted.

**IT IS FURTHER ORDERED**, following the MDT meeting, the Respondent shall have five school days to issue a prior notice of placement to a DCPS, and 20 school days to issue a prior notice of placement to a non public or private school.

**IT IS FURTHER ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

**IT IS FURTHER ORDERED**, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

This order resolves all matters presented in the Petitioner's May 4, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

## NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



**Wanda Iris Resto - Hearing Officer**

**Date: July 17, 2009**