DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENT**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	))))))))))	**Bruce Ryan, Hearing Officer** **Issued: December 21, 2011**

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed October 7, 2011, on behalf of a year old student (the "Student") who resides in the District of Columbia and currently attends his neighborhood DCPS high school ("High School"). Petitioner is the Student's mother. She alleges that DCPS denied the Student a free appropriate public education ("FAPE") by failing to determine that he is a student with disabilities and is eligible for special education and related services under the IDEA.

DCPS filed a timely Response on October 17, 2011, which denies the allegations of the Complaint. DCPS responds *(inter alia)* that the Student does not meet the IDEA criteria to be classified as a child with either a Specific Learning Disability ("SLD") or an Emotional Disturbance ("ED"), as claimed by Petitioner. DCPS asserts that the Student thus is not eligible for special education and related services and is not owed any compensatory education.

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

A resolution session was held on October 21, 2011, which did not resolve the Complaint, and the parties did not agree to end the statutory 30-day resolution period early. The resolution period ended November 6, 2011. A prehearing conference ("PHC") was then held on November 9, 2011, at which the parties discussed and clarified the issues and requested relief.[2] On November 18, 2011, a Prehearing Order was issued; and on December 5, 2011, the parties filed their five-day disclosures as required.

The Due Process Hearing was held in two sessions, on December 12 and 13, 2011. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioners' Exhibits: -1 through -32.

Respondent's Exhibits: R-1 through R-8.

In addition, the following Witnesses testified on behalf of each party:

Petitioners' Witnesses: (1) Parent-Petitioner; (2) Educational Advocate; (3) independent Psychologist; and (4) independent Speech/Language Pathologist.

Respondent's Witnesses: (1) School Psychologist; (2) School Counselor; and (3) Special Education Coordinator ("SEC").

By agreement, the parties filed written closing statements by the end of the day on December 13, 2011.

[2] On that same date, the Hearing Officer dismissed Petitioner's due process complaint against an LEA Charter that the Student had previously attended because the Complaint failed to allege any denial of FAPE by the LEA Charter or any facts from which an alleged denial of FAPE could be inferred. *See Order of Partial Dismissal,* issued Nov. 9, 2011.

II. JURISDICTION

The Due Process Hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is December 21, 2011.

III. ISSUE AND REQUESTED RELIEF

It was determined at the PHC that the following single issue was presented for determination at hearing:

> **Eligibility Determination —** Did DCPS deny the Student a FAPE by failing to determine that he is a child with disabilities and is eligible for special education and related services under the IDEA? Specifically, Petitioner alleges that the Student should have been found eligible as a child with a Specific Learning Disability ("SLD") and/or Emotional Disturbance ("ED") at a Multi-Disciplinary Team ("MDT") meeting held September 28, 2011.

Petitioner requests that the Hearing Officer find in her favor on the above issue and order DCPS to: (a) convene an MDT meeting to develop an individualized education program ("IEP") for the Student, and to discuss and determine an appropriate educational placement; and (b) fund compensatory education services in the form of 1:1 independent tutoring from the date of the eligibility meeting on 09/28/2011 to the present.

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issue specified above. 5-E DCMR §3030.3; *see Schaffer* v. *Weast,* 546 U.S. 49 (2005). Petitioner also had the burden of proposing a well-articulated plan for compensatory education, in accordance with the standards of *Reid v. District of Columbia,* 401 F.3d 516 (D.C. Cir. 2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail.

IV. FINDINGS OF FACT

Based upon the evidence presented at the due process hearing, this Hearing Officer makes the following Findings of Fact:

1. The Student is a -year old child who resides in the District of Columbia. He attends his neighborhood DCPS high school (the "High School"). Petitioner is the Student's mother. *See Parent Test.;* *-6.*
2. During the 2010-11 school year, Petitioner became increasingly concerned regarding the Student's progress in school. *See Parent Test.;* *-6.*
3. On or about January 19, 2011, Petitioner requested that DCPS conduct an initial evaluation of the Student to determine eligibility for special education and related services. *-7,* pp. 4-5.
4. On or about May 23, 2011, Petitioner filed a due process complaint alleging that DCPS failed to respond to Petitioner's request for initial evaluation in a timely manner. *See MD-7*, pp. 1, 5.
5. On or about June 3, 2011, in response to the 05/23/2011 complaint, DCPS authorized Petitioner to obtain an independent psychological assessment, including cognitive, educational and clinical components, as well as a social history. *See* *-7*, p. 5. DCPS subsequently provided another authorization for additional assessments, including a speech/language assessment and functional behavioral assessment ("FBA"). *Id.*
6. On or about July 13, 2011, a comprehensive psychological evaluation was completed by Petitioner's independent clinical psychologist. *13.* The evaluation found that the Student presented with deficits in reading, math, and written language, as well as a history of negative behaviors. *Id.; Indep. Psych. Test.* She recommended additional assessments, including a psychiatric assessment for possible psychotropic medication and a neuropsychological assessment to examine the Student's executive functioning and related processing weaknesses. *Id.; see also* *-7,* pp. 5-6.
7. On August 5, 2011, an HOD was issued by Hearing Officer Jim Mortenson in Case No. 2011-0549, which decided that DCPS had failed to conduct the Student's initial evaluation within 120 days of the referral by Petitioner. *-7.* The HOD ordered DCPS to provide the Student with a neuropsychological assessment to be completed no later than

September 9, 2011, and to make an eligibility determination and develop an IEP by no later than September 30, 2011. *Id.,* pp. 8-9.

8. On or about August 19, 2011, a speech and language evaluation was completed by Petitioner's independent speech/language pathologist. *-12.* The results of the evaluation indicated that the Student has expressive language communication deficits that are below average. The evaluator concluded that "[h]is weaknesses are displayed across specific language areas including his difficulty to recall sentences of increasing length; formulate sentences of increasing length and complexity; and identify and verbalize relationships amongst words." *Id.,* p. 5. The evaluator also concluded that "[t]hese weaknesses impact his ability to access the general education curriculum" and recommended that the Student receive speech and language therapy for 30 minutes per week. *Id. See also SLP Test.*
9. On or about September 9, 2011, DCPS completed a neuropsychological evaluation of the Student. *-11.* The evaluation revealed, among other things: (a) a "consistent pattern of difficulty with [Student's] fine grapho-motor speed (impacting especially the production part of his cognitive effort)" and "input process of incoming information"; (b) "combined with his difficulty dividing attention and processing through multiple modalities, [Student's] auditory perseverative tendency and slow rate of discarding previously introduced information seem to further compromise [his] ability to take in incoming information and encod[e] it into his memory system"; and (c) 'in relation to visual-spatial processing, [Student] may tend to focus on a smaller work area of his entire visual fields." *Id.,* p. 16. *See also 9* (09/28/2011 meeting notes), pp. 1-2.
10. On the basis of her findings, the DCPS psychologist conducting the 09/09/2011 neuropsychological evaluation concluded as follows: "Based on the information provided to the examiner and assessment data gleaned during today's evaluation, it is the examiner's clinical impression that [Student's] unique set of difficulty [sic] is similar to that of individuals with Specific Learning Disability (SLD). However, it is premature to make this eligibility determination without sufficient documentation on pre-referral interventions or improved attendance (exposure to the instruction)." *-11,* p. 16.
11. On or about September 28, 2011, DCPS convened a meeting of the Student's MDT/IEP team to (a) review the July 2011 independent psychological evaluation, DCPS' September

neuropsychological evaluation, and the August 2011 independent speech/language evaluation, (b) determine the Student's eligibility for special education, and (c) develop an IEP if the Student were determined eligible. *-9.* The team reviewed the evaluations and determined that the Student did not meet the eligibility criteria for special education. *Id.*

12. During the 2010-11 school year at High School, the Student had an extremely poor attendance record. *See -11,* p. 1 (81 missed days); *18* (97.5 unexcused homeroom absences). He failed the majority of his classes and was retained in the 9th grade for the 2011-12 school year. *-11; -18; R-7* (transcript). He also has a history of engaging in substance abuse (*i.e.,* marijuana and alcohol) and delinquent behaviors (with recent court involvement). *-11*, pp. 1, 4; *Parent Test.*
13. During the 2011-12 school year, the Student's attendance problems have continued, with 83 unexcused class absences through December 5, 2011. *R-8.*
14. Prior to attending High School, the Student did not experience similar attendance problems while enrolled at the LEA Charter for 7th and 8th grades during the 2008-09 and 2009-10 school years. *See -23* (six total absences during 2009-10 SY, and 9 total absences during 2008-09 SY). He also attended after-school tutoring, Saturday sessions, and summer school. *Parent Test.* The Student still struggled academically, failing four subjects in 8th grade (English Language Arts, Reading, Pre-Algebra 8, and Physical Science) and three subjects (English Language Arts, Pre-Algebra, and Spanish) in 7th grade. *-22; -25. See also EA Test.; -9* (meeting notes).
15. On or about December 5, 2011,[3] the evaluating DCPS school psychologist issued an Addendum to her 09/09/2011 neuropsychological evaluation in order to document additional information made available to her after the eligibility meeting, including attendance records from the 2008-09 and 2009-10 school years and interviews with the Student's former teachers at LEA Charter. *R-3.* The evaluator also noted various post-eligibility meeting interventions developed by the Student Support Team ("SST"), which were in the process of being monitored. *Id.,* pp. 2-3. The evaluator did not alter her overall conclusions based on the new information. *Id.; School Psych. Test.* She continues to have the clinical impression that the Student's "unique set of difficulty [sic] is similar to that of

[3] The Addendum to the Neuropsychological Evaluation is dated 12/15/2011, but the parties stipulated at hearing that the correct date was 12/05/2011.

individuals with Specific Learning Disability (SLD)," but she believes that "it is still premature to make this eligibility determination without information on the effectiveness of the interventions being implemented or improved attendance." *R-3,* p. 3.

V. DISCUSSION AND CONCLUSIONS OF LAW

Based on the evidence presented in this proceeding and the applicable law, the Hearing Officer concludes that DCPS has erred in not finding the Student to be eligible for special education and related services under the IDEA. Petitioners have proved by a preponderance of the evidence that the Student qualifies as a child with a Specific Learning Disability ("SLD"), as defined in federal and State regulations, who by reason thereof needs special education and related services.[4]

Eligibility Requirements for Specific Learning Disabilities

The IDEA and its implementing regulations define "child with a disability" to mean (in relevant part) "a child evaluated in accordance with §§300.304 through 300.311 as having...a specific learning disability, ... or multiple disabilities, and who, by reason thereof, needs special education and related services." 34 C.F.R. 300.8 (a). "***Specific learning disability***," in turn,

> "means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, or do mathematical calculations...."

Id., 300.8 (c) (10) (emphasis added). *See also* 20 U.S.C. §1401; *Kruvant v. District of Columbia,* 99 Fed. Appx. 232 (D.C. Cir. 2004); *Nguyen v. District of Columbia,* 681 F. Supp. 2d 49, 52 (D.D.C. 2010).

IDEA regulations further provide that an IEP team "may determine" that a child has an SLD as defined in §300.8 (c)(10) if three requirements are met. First, the child "does not achieve adequately for the child's age or to meet State-approved grade-level standards" in one or more

[4] The Hearing Officer agrees with DCPS that the evidence was insufficient to prove eligibility under the classification of "Emotional Disturbance," as that disability is defined under the IDEA. Petitioner failed to prove that the Student exhibited one or more of the specified statutory criteria over a long period of time and to a marked degree that adversely affects his educational performance. *See* 34 C.F.R. 300.8 (c) (4); *N.C. v. Bedford Central School Dist.,* 51 IDELR 149 (2d Cir. 2008); *Nguyen v. District of Columbia,* 681 F. Supp. 2d 49 (D.D.C. 2010); *N.G. v. District of Columbia,* 556 F. Supp. 2d 11 (D.D.C. 2008). However, the Student need only qualify for special education and related services under one of the disability categories.

basic academic skill areas (*e.g.,* written expression, reading comprehension, mathematics calculation, etc.). 34 C.F.R. 300.309 (a)(1). Second, the child "does not make sufficient progress" to meet such standards "when using a process based on the child's response to scientific, research-based intervention" ***or*** the child "exhibits a pattern of strengths and weaknesses" in relevant areas. *Id.,* §300.309 (a)(2). Third, the team determines that such findings are not primarily the result of other factors such as a visual or hearing disability, emotional disturbance, or environmental or cultural factors. *Id.,* §300.309 (a)(3).

In addition, each State must adopt criteria (consistent with 34 C.F.R. §300.309) for determining whether a child has an SLD as defined in §300.8 (c)(10), and all LEAs must use the State criteria. *See* 34 C.F.R. §300.307. The criteria adopted by the State, *inter alia*: (1) "must not require" the use of a "severe discrepancy" model, and (2) "must permit" the use of a "response to intervention" model. 34 C.F.R. §300.307 (a) (1), (2).[5] The Office of the State Superintendent of Education ("OSSE") has implemented these requirements in the District of Columbia by adopting the rules contained in 5-E DCMR Section 3006.

Tracking the federal statutory definition, the OSSE regulations provide that the "IEP team shall determine that a child has an SLD if: a disorder is manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, or do mathematical calculations" 5-E DCMR §3006.4 (a). The rule goes on to provide that LEAs "may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedure" (*i.e.*, a "response to intervention" model). *Id.,* §3006.4 (d). In addition, LEAs must prepare a written evaluation report that includes the basis for making the determination regarding SLD, as well as a "statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services." *Id.,* §§3006.5 (g) (2), (6).

Finally, with respect to any eligibility determination (not just SLD), the OSSE regulations provide that the "IEP team may not determine that a child is a child with a disability if it determines that the determinant factor for the child's eligibility determination is: (a) lack of

[5] A "severe discrepancy" model generally analyzes whether there is a significant difference between measured cognitive ability and measured academic performance on comparable standardized testing for a particular child. A "response to intervention" model analyzes whether a student has failed to make adequate progress despite being provided with research-based educational interventions.

instruction in reading or mathematics; or limited English proficiency; and (b) the child does not otherwise meet the eligibility criteria." *Id.,* §3006.6. This latter rule mirrors the federal requirements in 34 C.F.R. §300.306(b).

Determination of the Student's Eligibility and Appropriate Relief

The determination of a child's eligibility for special education under the SLD classification is a primarily fact-based inquiry. *See, e.g., Michael P. v. Dept. of Educ., State of Hawaii,* 656 F. 3d 1057 (9th Cir. 2011). In this case, the facts show that the Student meets the requirements for eligibility as a child with an SLD, and hence qualifies for special education services.

To begin with, both the DCPS and independent evaluative data reflect well-documented findings supporting the existence of a disorder that appears to involve "one or more of the basic psychological processes involved in understanding or in using language, spoken or written," and which "manifests itself in the imperfect ability to listen, think, speak, read, write, or do mathematical calculations." 34 C.F.R. §300.8 (c) (10); 5-E DCMR §3006.4 (a). *See MD-11* (neuropsychological evaluation); *MD-12* (speech and language evaluation); *MD-13* (comprehensive psychological evaluation); *Indep. Psych. Test.; School Psych. Test.; Findings of Fact,* ¶¶ 6, 8-9. Among other things, the testing reveals "difficulty with the input process of taking in information," sensorimotor functioning problems, and other neurocognitive weaknesses that impact every aspect of his learning. *-11,* pp. 9, 13-14; *Indep. Psych. Test.*

Moreover, recent academic testing shows that the Student does not achieve adequately for age or grade-level standards in one or more basic academic skill areas listed in 34 C.F.R. §300.309 (a) (1), in particular: Math Calculation Skills (SS=55; 4.2 Grade Equivalent); Written Expression (SS=67; 3.7 Grade Equivalent); and Reading Fluency (SS=74; 4.4 Grade Equivalent). As the independent clinical psychologist noted in her report, the Student's "scores on all academic tasks are below age and grade expectancy, and suggest the need for special education supports in all academic areas (Reading, Math, Written Expression)." *MD-13,* p. 11; *see also Indep. Psych. Test.* [6] The Student also exhibits a pattern of strengths and weaknesses in

[6] A number of scores also appear to be significantly below measured intellectual functioning levels, in the independent psychologist's expert opinion. While the Student's full-scale IQ was measured at 75, an examination of domains and specific subtests presents a clearer picture of his overall cognitive strengths and weaknesses. He scored an 85 on Verbal Comprehension, 82 on Perceptual Reasoning, and 80 on Working Memory. The FSIQ is

performance and/or achievement, 34 C.F.R. §300.309 (a) (2), according to the evaluations and expert testimony.

Finally, DCPS' own School Psychologist who conducted the neuropsychological evaluation concluded that the Student's "unique set of difficult[ies] is similar to that of individuals with Specific Learning Disability (SLD)." *MD-11,* p. 16*; R-3,* p. 3. She reached this clinical impression both in September 2011 and again in December 2011, based on additional information regarding the Student's pre-referral educational experiences at his prior school. *Id.* In terms of educational impact, she testified that "he may be lost" in class and "does not seem to know what to do," or how to adjust his approach or strategies, in a new learning environment. *School Psych. Test.*

DCPS' primary defense of its non-eligibility decision is its position that "the [IEP] team could not find him eligible because of his poor attendance." *DCPS Closing,* p. 1. *See also SEC Test.; School Psych. Test.* DCPS argues that the Student's truancy during the 2010-11 school year disqualifies him from special education eligibility because it establishes a "lack of appropriate instruction" in reading and math under 34 C.F.R. 300.306 (b) and 5-E DCMR 3006.6. *See DCPS Closing,* p. 1 (Student's "truancy means that he is not exposed to appropriate instruction in reading and math.") (emphasis in original). The problem with this argument is that there is no evidence to suggest that the Student failed to receive appropriate instruction during his entire pre-high school career, including during 7th and 8th grades in the immediately preceding 2008-09 and 2009-10 school years. In fact, the record shows that he earned failing grades despite regularly attending school throughout this period. *See Findings of Fact,* ¶14; *22; -23; -25.*[7] Even assuming that DCPS did not have such pre-referral information at the time of the 09/28/2011 meeting, its School Psychologist subsequently obtained the information for the purpose of completing an addendum to her neuropsychological evaluation. Despite learning these facts, DCPS appears to continue to adhere to the untenable position that eligibility is "premature" due to a "lack of appropriate instruction." *R-3; School Psych. Test.*

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pulled down by an extremely low score (65) on the Processing Speed index. *See MD-13,* pp. 3-5*; Indep. Psych. Test.; MD-9* (School Psychologist noted processing speed was significantly lower than other IQ scores).

[7] The School Psychologist also conceded on cross examination that the Student had certain processing and sensorimotor deficiencies affecting his educational performance that she would not expect to be corrected by increased attendance. *See School Psych. Test.; Petitioner's Closing Argument,* p. 6.

DCPS also suggests that it may properly defer an eligibility decision while it gathers additional information about the Student's response to supports put in place by the SST. In closing, DCPS counsel attempts to equate this situation to the IEP team's permissive use of an "RTI model" (*DCPS Closing,* p. 1). This argument is legally wrong and also contrary to the facts. There is no evidence that DCPS is presently using "a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures" for this Student. 5-E DCMR 3006.4 (d); *see also* 34 C.F.R. 300.307(a)(2), 300.309(a)(2)(i); *Memo to State Directors of Special Education,* 56 IDELR 50 (OSEP 2011). DCPS' neuropsychological evaluation report includes an "Eligibility Criteria" checklist that makes clear that the basis for determining non-eligibility is the assumed "lack of appropriate instruction," not an RTI assessment process. *See R-2,* pp. 14-15. None of DCPS' witnesses testified to the contrary. Moreover, the SEC testified that the IEP team is not currently involved in structuring or assessing the effectiveness of the SST supports, and thus she does not know what interventions are being implemented or with what degree of success. Conversely, the School Counselor coordinating the SST process testified that no information exists regarding the implementation or monitoring of any of the interventions mentioned in the recent neuropsychological addendum prepared by the School Psychologist (*R-3,* pp. 2-3). *See SEC Test.; Counselor Test.* Apparently, the left hand does not know what the right hand is doing, and why.

None of this is meant to discount the importance of the Student's attending school on a regular basis. There is an obvious link between failure to attend school and failure to succeed academically. The Student has missed far too many classes over the past year, and the record suggests that the Student's own negative behaviors outside school have been a substantial contributing factor. *See Findings,* ¶¶ 12-13. [8] While DCPS is required to make a FAPE available to the Student by developing an IEP reasonably calculated to address the needs resulting from his disability, no IEP can hope to confer educational benefit if the Student is not available to receive instruction. Hence, the IEP will need to address the attendance problem too, as both Petitioner's and DCPS' witnesses recognized.

[8] As the independent clinical psychologist reported last July, the Student "reports smoking approximately six to eight 'blunts' of marijuana per day for the past year...He also reports drinking bottles of hard alcohol approximately twice per month." *P-13,* p. 10.

Under these circumstances, the only appropriate relief[9] is to order DCPS to convene an MDT meeting to develop an IEP for the Student, and to discuss and determine an appropriate educational placement. Compensatory education services are not warranted because Petitioner has not shown that DCPS' failure to determine the Student to be eligible and develop an IEP as of September 28, 2011, has resulted in educational harm to the Student given the Student's continued poor attendance record thereafter (*see R-8*). *Cf. Garcia v. Board of Educ. of Albuquerque Public Schools,* 520 F.3d 1116 (10th Cir. 2008) (affirming decision not to award denial of FAPE remedy in light of student's severe truancy); *Hinson v. Merritt Educ. Ctr.,* 579 F. Supp. 2d 89, 104 (D.D.C. 2008) (conclusion that student "was not 'availing himself of educational benefit' due to extended absences was a reasonable determination.").

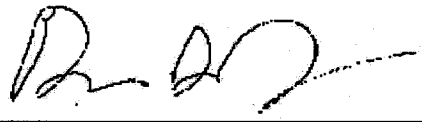
VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Within 30 calendar days of this Order (*i.e.*, by no later than **January 20, 2012**), DCPS shall convene a meeting of the Student's MDT/IEP Team, with all necessary members including Petitioner participating. The purposes of the meeting shall include: (a) to develop an Individualized Education Program (IEP) for the Student based on a disability classification of Specific Learning Disability, all completed evaluations and assessments, his academic progress, and any other relevant updated information regarding the Student's educational needs; and (b) to discuss and determine an appropriate educational placement and/or location of services to implement the IEP. The Student's IEP shall also address his school attendance and incorporate an intervention plan for improving such attendance.

2. Petitioner's other requests for relief in her Due Process Complaint filed October 7, 2011 are hereby **DENIED;** and

3. This case shall be, and hereby is, **CLOSED**.



Dated: December 21, 2011

Impartial Hearing Officer

[9] The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter,* 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia,* 401 F.3d 516, 521-24 (D.C. Cir. 2005).

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 U.S.C. §1415 (i) (2).