District of Columbia

Office of the State Superintendent of Education

Office of Review and Compliance
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OSSE
STUDENT HEARING OFFICE
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Confidential

Parent on Behalf of Student[1], Petitioner, v. District of Columbia Public Schools ("DCPS") Respondent. Case # 2012-0604	HEARING OFFICER'S DETERMINATION Hearing Date: November 6, 2012 <u>Representatives:</u> Counsel for Petitioner: Roberta Gambale, Esq. Brown & Associates 1220 L Street, N.W. Suite 700 Washington, D.C. 20005 Counsel for DCPS: District of Columbia Assistant Attorney General Lynette Collins, Esq. 1200 First Street, NW Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened for one day on November 6, 2012, at the Office of the State Superintendent ("OSSE") Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006 [2].

BACKGROUND AND PROCEDURAL HISTORY:

The student is age [redacted] in the eleventh grade and residing with his parent in the District of Columbia. He currently attends a District of Columbia Public Schools ("DCPS") high school, hereinafter referred to as "School A". The student has been determined eligible for special education with a disability classification of other health impairment ("OHI"). The student was first determined eligible while attending a DCPS elementary school. Prior to attending School A the student attended a DCPS middle school, hereinafter referred to as "School B". DCPS conducted a psychological re-evaluation of the student on January 28, 2008, while he in seventh grade at School B. The student began attending School A during school year ("SY") 2009-2010. DCPS referred the student for a triennial psychological evaluation on February 23, 2011.

On September 4, 2012, Petitioner filed the current complaint alleging DCPS failed to conduct the triennial evaluation and thus denied the student free and appropriate public education ("FAPE"). Petitioner also alleged that at the student's most recent individualized educational program ("IEP") meeting on February 21, 2012, the parent requested that DCPS conduct a psychological and vocational assessment but DCPS never complied with the request. Petitioner further alleged DCPS had failed to include in the student's IEP an appropriate transition plan and/or appropriate transition (goals based age appropriate assessment(s)). Petitioner sought as relief that the Hearing Officer order DCPS to fund independent evaluations (comprehensive psycho-educational and vocational), convene an IEP meeting to review the evaluations, review and revise the student's IEP and provide the student an award of compensatory education.[3]

DCPS filed its response to the complaint on September 10, 2012. DCPS denied any alleged denial of a FAPE and specifically denied that the student's triennial evaluation was not conducted or that the student's current IEP and transition plan are inappropriate. DCPS asserted, however, that it was willing to conduct the psychological and vocation assessments.

The resolution meeting was held October 4, 2012, and was unsuccessful in resolving the issues. The parties expressed no desire to proceed directly to hearing but to allow the full

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[2] A brief discussion on the record between the Hearing Officer and both counsel was conducted in Hearing Room 2005.

[3] Petitioner also sought funding of a speech and language evaluation but Petitioner's counsel stated at the outset of the hearing that Petitioner was no longer seeking the speech and language evaluation.

30-day resolution period to expire before the 45-day timeline began. Thus, the 45-day period began on October 4, 2012, and ends (and the HOD is due) on November 18, 2012.

The Hearing Officer conducted a pre-hearing conference on October 23, 2012, at which the issue to be adjudicated was discussed and determined. The parties acknowledged that DCPS has agreed to fund an independent comprehensive psychological evaluation and provided the parent written authorization to obtain the evaluation. On October 26, 2012, the Hearing Officer issued a pre-hearing order.

ISSUES: [4]

1. Whether DCPS violated 34 C.F.R. § 300.303 (b)(2) by failing to conduct a triennial psychological evaluation of the student by January 28, 2011, and if so whether DCPS' failure to do so denied the student a FAPE.

2. Whether DCPS violated 34 C.F.R. § 300.303 (a)(2) by failing to timely conduct the student's psychological and vocational evaluations the parent allegedly requested at and subsequent to the student's February 21, 2012, IEP meeting and if so whether DCPS' failure to do so denied the student a FAPE.

3. Whether DCPS violated 34 C.F.R. § 300.320 (b) (1) by failing to include an appropriate transition plan based upon age appropriate transition assessments, and if so whether DCPS' failure to do so denied the student a FAPE.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-32 and DCPS Exhibit 1-6)[5] that were admitted into the record and are listed in Appendix A. Any documents not admitted into the record are so noted in Appendix A. Witnesses are listed in Appendix B. DCPS disclosed a list of witnesses but presented no witnesses at hearing.

FINDINGS OF FACT: [6]

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[4] The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order do not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated. Petitioner withdrew the issue regarding the request for educational records after DCPS provided the requested records. Petitioner stated that the withdrawal was being made with the intention to reserve any potential claims that had become apparent after receiving the records.

[5] Petitioner's Disclosure letter misstates the order of the documents. Documents listed in Appendix A are the documents in the order in which they were actually submitted by Petitioner's cousnel.

[6] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted.

1. The student is age [redacted] in the eleventh grade and resides with his parent in the District of Columbia. He currently attends School A, a DCPS high school. (Parent's testimony)

2. The student has been determined eligible for special education with a disability classification of OHI. (Petitioner's Exhibit 2-1)

3. The student was first determined eligible while attending a DCPS elementary school. (Petitioner's Exhibit 6-2)

4. Prior to attending School A the student attended School B, a DCPS middle school. (Petitioner's Exhibit 5-2)

5. DCPS conducted a psychological re-evaluation of the student on January 28, 2008, when he was age twelve in seventh grade at School B. The student's cognitive abilities were generally found to be low average to average. (Petitioner's Exhibit 5-1, 5-5)

6. On February 5, 2008, when the student was age [redacted], in seventh grade, School B conducted an educational assessment, the Woodcock Johnson-III. The student had the following scores:

   (Petitioner's Exhibit 4-1, 4-2)

	Standard Score	RPI[7]	Age Eq.	Grade Eq.
Broad Reading	103	93/90	13-6	8.1
Broad Math	90	74/90	11-2	5.6
Broad Written Language	90	75/90	10-6	5.2
Math Calculation Skills	98	88/90	12-7	7.1
Written Expression	81	62/90	9 -8	4.2
Academic Skills	107	94/90	14-1	8.3
Academic Fluency	89	66/90	11-0	5.6
Academic Applications	91	78/90	10-11	5.5

When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

[7] RPI: The relative proficiency index - proficiency with similar tasks that average individuals in the comparison group (grade) would perform with 90% proficiency.

7. The student began attending School A during SY 2009-2010. (Petitioner's Exhibit 9-1)

8. DCPS referred the student for a triennial psychological evaluation on February 23, 2011. (DCPS Exhibit 7-1)

9. DCPS failed to ever conduct the triennial psychological evaluation. (Stipulation)

10. On September 4, 2012, Petitioner filed the current due process complaint alleging, inter alia, DCPS had failed to conduct the student's triennial psychological evaluation. Following the filing of the current due process complaint DCPS authorized the student's parent to obtain an independent comprehensive psychological evaluation. (Petitioner's Exhibit 26-1)

11. At School B the student made good academic progress. Since the student began attending School A the student had demonstrated academic difficulties and began to display patterns of truancy. The student's parent is not aware of any reevaluation that DCPS has conducted since the student began attending School A. The parent is unsure of why the student is performing so poorly academically. The parent is also uncertain about the student's transition plan and goals and what he can be expected to do if and when he completes high school. The parent is of the opinion that DCPS' failure to timely evaluate the student has hindered her ability to determine the student's educational status and allow her to fully participate in the decision making process of regarding the student's education. The parent has participated in the assessments(s) conducted by the individual evaluator that was engaged to complete the independent comprehensive psychological evaluation, but the independent evaluation has not yet been completed. (Parent's testimony)

12. During the student's first year, ninth grade, at School A during SY 2009-2010, the student was absent a total of 69 days and failed a number of classes. He earned a grade point average ("GPA") of 1.25. During SY 2010-2011, tenth grade, the student's academic performance and grades improved. He passed all classes and received "As" in a number of courses. He earned a GPA in tenth grade of 2.75. The student was absent during that school year a total of 41.5 days. However, the following year, SY 2011-2012, the student's attendance plummeted. He was absent from school 104 days. He failed a number of classes and earned a GPA that year of .94. The student currently has earned 17 credits toward his high school diploma. He requires 11 additional credits to graduate. He has a cumulative GPA of 1.64. His current class rank is 67 of 95. (Petitioner's Exhibits 8-1, 9-1)

13. The student has continued a pattern of truancy during the current school year and received the following grades during the first advisory of SY 2012-2013 at School A:

    Petitioner's Exhibits 10-1, 14-3)

    Subject: Adv 1

Academic Support HS	B
Biology	F
Algebra II & Trigonometry	F
Earth Science	F
Environmental Science	F
English III	C
Physical Education	D

14. The student's current IEP dated February 21, 2012, and completed at School A, requires that the student receive 90 minutes per day of specialized instruction outside general education which is double the amount of weekly specialized instruction in his previous IEP. The behavioral support services is 30 minutes per month, the same as the previous IEP. (Petitioner's Exhibits 1-6, 2-6)

15. The student's February 21, 2012, IEP includes a post-secondary transition plan. The plan states in the section entitled "Age-Appropriate Transition Assessment Results" that the plan was based on two assessment tools: a teacher made checklist and Sun Raye Vocational Interest inventory. Both the assessments were conducted on January 25, 2012. The transition plan includes goals in the areas of post secondary educational training and employment. There is one long-range goal in each area: (1) the student applying to two trade schools and (2) the student completing three job applications independently. (Petitioner's Exhibit 2-10, 2-11)

16. At the student's most recent IEP meeting on February 21, 2012, the student's parent and her educational advocate requested that DCPS conduct a psychological evaluation and a vocational assessment. DCPS has not conducted a vocational assessment since the February 21, 2012, IEP meeting. (Petitioner's Exhibit 3-1)

17. On a number of occasions following the February 21, 2012, IEP meeting the student's parent, through counsel, made requests that DCPS conduct the requested psychological and vocational evaluations. (Petitioner's Exhibits, 21, 22, 23)

18. The student's IEP indicates in the "Present Level of Educational Performance" section that the student completed a Brigance Comprehensive Inventory of Basic Skills in math on January 4, 2010, that was used to create baselines for the student's IEP math goals. The IEP states that in the area of reading the student completed the Gates-MacGinitie Reading Test on January 4, 2010, and that indicated the student was reading at a grade level equivalency of 9.9. However, there was no baseline data in the IEP for the student's reading goals. The IEP states that one of the student's writing samples was evaluated using the Northwest Regional Educational Laboratory's 6+1 Traites Rubric and

his writing abilities were at the developing level. This comment was noted in the IEP as the baseline for the student's written expression goals. (Petitioner's Exhibit 1-2, 1-3, 1-4)

19. Petitioner engaged the services of an educational consultant to develop a compensatory education plan. The consultant reviewed the student's academic records and evaluations, spoke with the student and his parent, and proposed a plan designed to compensate the student for DCPS' failure to conduct the student's triennial psychological evaluation and failure to conduct the requested vocational assessment. In addition, the consultant proposed services that were allegedly designed to compensate the student for DCPS' prescribed appropriate transition plans and/or goals based on age appropriate assessments and failure to provide the student the full level of services prescribed by his IEP. However, the consultant erroneously concluded the student had missed services thus the recommendation for tutoring services were erroneously based on the student having missed services which was not a claim raised in the complaint or proved during the hearing. The student expressed to this consultant that he is motivated and willing to participate in any program that will assist him academically. (Ms. Debeauville's testimony[8], Petitioner's Exhibit 31-6, 31-8)

20. The plan made the following recommendations: (1) 240 hours of tutoring of approximately 4 hours per week for "maximum remedial gains" based on formula of one hour for every day of specialized instruction prescribed that she believed the student was not being provided, (2) 45 to 60 minutes of counseling and/or behavioral support per week until the end of the SY, (3) attendance evaluation, intervention and monitoring, (4) transition programming consisting of a comprehensive transition assessment and vocational services, and (4) graduation academic credit recovery services through an online program. ([redacted] testimony, Petitioner's Exhibit 31-8)

21. Petitioner has explored the possibility of the student receiving additional out of school services to assist the student in making academic and behavioral progress from the educational consulting firm, Seeds of Tomorrow. Seeds of Tomorrow offers a number of programs, including tutoring and a program entitled "Stay Connected" which addresses school truancy for which the firm contracts with OSSE, DCPS and D.C. Department of Youth Services. These and others of the company's programs are available, including transition assessments and transition planning, and can be provided to the student with modifications if the Hearing Officer determines the student should be provided compensatory education services. Seeds of Tomorrow provides a comprehensive transition assessment at an approximate cost of $2,000.00. ([redacted] testimony, Petitioner's Exhibit 29-1, 29-2)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

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[8] The witness was proffered as an expert witness. However, the Hearing Officer did not grant the expert designation because the area in which the witness was proffered, special education, was overly broad.

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS's] procedural violations affected the student's *substantive* rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means 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 Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. [9] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

ISSUE 1: Whether DCPS violated 34 C.F.R. § 300.303 (b)(2) by failing to conduct a triennial psychological evaluation of the student by January 28, 2011, and if so whether DCPS' failure to do so denied the student a FAPE.

Conclusion: The student's last comprehensive psychological evaluation was conducted in January 2008 and the reevaluation should have been conducted by January 2011. The parties stipulated that DCPS failed to conducted the triennial evaluation. There was sufficient evidence based on the parent's testimony and the student poor academic performance that DCPS' failure to timely conduct the student's triennial psychological evaluation significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE. Petitioner sustained the burden of proof by a preponderance of the evidence.

> 34 C.F.R.§ 300.303 provides:
> (a) General. A public agency must ensure that a re-evaluation of each child with a disability is conducted in accordance with Sec. Sec. 300.304 through 300.311--
> (1) 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
> (2) If the child's parent or teacher requests a reevaluation.
> (b) Limitation. A reevaluation conducted under paragraph (a) of this section--

[9] The burden of proof shall be the responsibility of the party seeking relief. 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.

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

DCPS acknowledged it did not conduct the student's triennial psychological evaluation. The student's dismal academic performance since attending School A and the parent's credible testimony[10] about her lack of information as to why the student is performing so poorly academically is sufficient evidence that DCPS' failure to conduct the student's triennial evaluation significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE. DCPS presented no witnesses to refute the evidence regarding the student's poor academic performance at School A or the parent's expressed concern about the impact of DCPS' failure to evaluate the student. There was also no evidence presented by DCPS that the parent agreed that re-evaluation was unnecessary and should not be conducted. The Hearing Officer concludes DCPS' failure to conduct the reevaluation significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE to the student.

ISSUE 2: Whether DCPS violated 34 C.F.R. § 300.303 (a)(2) by failing to timely conduct the student's psychological and vocational evaluations the parent allegedly requested at and subsequent to the student's February 21, 2012, IEP meeting and if so whether DCPS' violation denied the student a FAPE.

Conclusion: DCPS' failure to conduct the triennial psychological evaluation by January 2011 and the resulting denial of FAPE decided in the issue above renders DCPS' alleged failure to conduct that evaluation based upon the parent's request a year later at the student's IEP meeting a moot issue. However, the requested vocational evaluation is a different matter. There was sufficient evidence the request was made at the student's February 21, 2012, IEP meeting and on subsequent occasions and there was sufficient evidence that DCPS' failure to timely conduct that evaluation significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE. Petitioner sustained the burden of proof by a preponderance of the evidence.

As previously stated 34 C.F.R.§ 300.303(a) requires a public agency to ensure that a re-evaluation of the student occurs ... if the child's parent or teacher request a reevaluation, as long as the reevaluation has not occurred in less than a year prior to the request.
The evidence demonstrates that the parent and her advocate requested at the student's February 21, 2012, IEP meeting and on subsequent occasions that a vocational evaluation be conducted.[11] The parent credibly testified about her lack of information and resulting uncertainty about the student's transition plan and goals and what he can be expected to do if and when he completes

[10] The witness' testimony was found credible based upon her forthrightness and demeanor during the hearing.
[11] FOF #s 16 & 17

high school. That testimony is sufficient evidence that DCPS' failure to conduct the requested vocational assessment significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE.

DCPS presented no witnesses to refute the evidence regarding the student's poor academic performance, truancy, or plans for post high school completion[12] or the parent's expressed concern about the impact of DCPS' failure to conduct the requested vocational assessment. The first request the parent made for the evaluation was at the February 21, 2012, IEP meeting. More than six months had passed by the time Petitioner filed the current complaint and the requested evaluation remained uncompleted. The Hearing Officer concludes that this period was beyond a reasonable time[13] for DCPS to have conducted the requested evaluation and concludes DCPS' failure to conduct the evaluation significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE to the student.

ISSUE 3: Whether DCPS violated 34 C.F.R. § 300.320 (b) (1) by failing to include an appropriate transition plan based upon age appropriate transition assessments, and if so whether DCPS' failure to do so denied the student a FAPE.

Conclusion: There was sufficient evidence that the transition plan in the student's IEP was appropriate and based on appropriate transition assessments. Petitioner did not sustain the burden of proof that the student student's IEP did not contain appropriate transition goals and the student was thus denied a FAPE.

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also *Scott v. District of Columbia,* (D.C. Cir.) 03-1672 DAR (March 31, 2006); and *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

An IEP that will be in effect when a student turns 16 is to include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related training,

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[12] FOF #s 11, 12, 13

[13] Smith v. District of Columbia, 55 IDELR 219 (D.D.C. 2010) "IDEA and its implementing regulations do not set a time frame within which an LEA must conduct a reevaluation after one is requested by a student's parent. See *Herbin ex rel. Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005). In light of the lack of statutory guidance, *Herbin* concluded that "[r]eevaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." Id. (quoting Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone, 21 Individuals with Disabilities Education Law Report 1127, 1129 (1995)).

education, employment, and where appropriate, independent living skills." 20 U.S.C. § 1414 (d) (1) (A) (i) (VIII); 34 C.F.R. § 300.320 (b); 34 C.F.R. § 300.43 (transition services are part of special education).

The student's current IEP contains a post-secondary transition plan and goals. The evidence demonstrates that the IEP clearly states that the student participated in two assessments upon which the plan was based: a teacher made checklist and Sun Raye Vocational Interest inventory. Both the assessments were conducted on January 25, 2012. The transition plan includes goals in the areas of post secondary educational training and employment. There is one long-range goal in each area: (1) the student applying to two trade schools and (2) the student completing three job applications independently.[14]

Although Petitioner presented a witness who offered testimony that the transition plan was inappropriate and not based on appropriate assessments, the Hearing Officer did not find that testimony persuasive. The witness expressed an opinion but provided no legal or verifiable standard of reference as to appropriate transition assessments. The witness was not qualified as an expert so as to give her opinion any greater weight than that of a lay person. Although there could probably be more information ascertained from the student and a more thorough assessments conducted, Petitioner presented no convincing standard by which to judge to assessments DCPS has already used. The witness expressed a hope that the transition goals would be more detailed and more segmented but there was insufficient evidence from which the Hearing Officer could conclude that the goals in the current transition plan are inappropriate. In this case the student's IEP and transition plan seem reasonably calculated to provide educational benefit although the student might have in hindsight benefited from a different transition assessment and/or plan.[15]

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. 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." *Reid, 401 F.3d 522 & 524.* To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits

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[14] FOF #15

[15] In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. Bd. Of Educ. V. Rowley, 458 U.S. 176 206-07 (1982) Jolloh v. District of Columbia 535 F. Supp. 2d. 13, 16 (D.D.C. 2008). In considering the substantive validity of an IEP pursuant to the second part of this test, a number of circuits have held that a court must judge prospectively. [B]ecause the question... is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, ... the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. Neither the statute nor reason countenance "Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement. S.S. Howard Road Academy, 585 F. Supp. 2d. 56, 51 (D.D.C. 2008)

resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

Petitioner requested a number of items as compensatory education in the proposed plan and presented as a witness an educational advocate who developed the plan. The educational advocate based her recommendations on her review of the student's educational records and conversations with the student and his parent. However, in developing the proposal the witness made fundamental flaws in her assumptions about the alleged denials of FAPE to the student, including that he had not been provided special education services under his IEP at School A. There was no evidence of this fact presented and it was not an issue raised in the case. Although the consultant testified that the student's poor academic performance could be related to DCPS' failure to conduct the triennial evaluation, the IEP clearly indicates that the student was assessed academically in 2010[16] and the assessments were used to create baselines and the student's academic goals. It was difficult discern what services in the plan were being proposed for what specific denials of FAPE. The Hearing Officer has concluded that denials of FAPE are related to DCPS' failure to conduct the student's triennial evaluation and the requested vocational assessment. The Hearing Officer concludes that it is premature without the results of these evaluations to determine what if any academic loss was caused to the student as a result of the evaluations not being timely conducted. The Hearing Officer is directing DCPS to review these evaluations once they are completed to address any specific academic loss there was to the student as a result of the evaluations not being conducted. Consequently, the Hearing Officer concludes that the none of the compensatory education requested for the student, save the requested prospective increase in the student's counseling/behavioral support, which may help to address the student's truancy, is appropriate. Thus, the Hearing Officer at this juncture will direct that the student's IEP be immediately amended to increase these services and once the evaluations are completed and the student's IEP may be amended further.

ORDER:

1. DCPS shall, within thirty (30) calendar days of its receipt of the student's independent comprehensive psychological evaluation, convene an IEP team meeting to review the evaluation, review and revise the student's IEP as appropriate and for any delay in the student having been reevaluated untimely, and determine the student's educational placement and/or location of services.

2. DCPS shall fund an independent vocational and/or transition assessment at a cost not to exceed the rate allowed by OSSE or if there is no such designated rate at a cost not to exceed $2000.00.

3. DCPS shall, within thirty calendar days of its receipt of the independent vocational or transition assessment, convene an IEP meeting to review the assessment and review and revise the student's IEP as appropriate including for any delay in providing the requested assessment.

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[16] FOF #18

4. As compensatory education to the student for DCPS having failed to timely conduct the student's triennial psychological evaluation and the requested vocational assessment, the student's IEP is hereby and immediately amended to provide one (1) hour per week of counseling/behavioral support services.

5. All other relief requested by Petitioner is hereby denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Hearing Officer
Date: November 18, 2012