

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

Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

██████████

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Hearing Officer: Kimm Massey, Esq.

Case No: 2012-0644

Room No.: 2004

2012 NOV 29 AM 8:56

OSSE
STUDENT HEARINGS OFFICE

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY**

Student is an ██████████, who presently attends a DCPS senior high school. On September 14, 2012, Petitioner filed a Complaint against DCPS, alleging that DCPS (1) failed to develop an appropriate individualized education program (“IEP”) on or about May 3, 2011, in that the IEP did not contain speech and language goals or services; (2) failed to convene a complete IEP team on or about May 3, 2011, in that the speech and language provider was not included; (3) failed to conduct reevaluations as requested by Parent on or about March 27, 2012 and/or failed to conduct triennial re-evaluations; (4) failed to discuss a transfer of Student’s educational rights prior to and/or subsequent to Student attaining the age of 18; (5) failed to allow Parent to participate in the March 27, 2012 annual IEP; (6) failed to provide Parent with a copy of the March 27, 2012 IEP; and (7) failed to provide Student with transition services as required by his May 2011 IEP. As relief for these alleged denials of a free appropriate public education (“FAPE”), Petitioner requested a finding of a denial of FAPE; that DCPS immediately amend Student’s IEP to provide for not less than 1 hour of speech and language services per week; funding for independent evaluations, including a comprehensive psychological, a speech and language evaluation, an occupational therapy (“OT”) evaluation, and a vocational evaluation; that DCPS reconvene the MDT/IEP meeting to develop an IEP and discuss compensatory education; that DCPS secure the participation of all necessary IEP team members at the reconvened meeting, to include appropriate personnel required to review assessments and develop an appropriate program; until the evaluations are completed and Student has an appropriate program and placement, that DCPS fund the provision of special education tutoring/mentoring to assist Student with preparation for post-secondary education and training

and independent living and employment; and compensatory education for denials of FAPE that have occurred in the form of independent tutoring and related services.

On September 27, 2012, DCPS filed its Response, which asserted the following defenses: (1) the IEP team agreed that speech and language goals should be removed from Student's IEP, and Parent participated in the meeting by phone while her advocate participated in person; (2) the speech/language provider was unable to attend the meeting, but the IEP team was still proper because it consisted of individuals with information and knowledge of Student; (3) DCPS never received a request from Parent for reevaluations, but the agency is willing to conduct comprehensive psychological and speech and language evaluations; (4) DCPS is willing to convene a meeting with Student to discuss the transfer of his rights, but Student has suffered no academic harm as a result of the meeting not occurring; (5) Parent was invited to attend the March 27, 2012 IEP meeting, but the agency is willing to convene an MDT meeting; (6) A copy of Student's IEP has been forwarded to Petitioner's counsel; and (7) Student was provided with transitional services as required by his IEP.

The parties concluded the Resolution Meeting process by participating in a resolution session on September 28, 2012. No agreement was reached, but the parties agreed not to shorten the 30-day resolution period. Therefore, the 45-day timeline began on October 15, 2012 and will end on November 28, 2012, which is now the HOD deadline.

On October 4, 2012, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, relief requested, and other relevant topics. Petitioner's counsel agreed to have her client sign a Consent to Evaluate form so that DCPS could move forward with the desired comprehensive psychological and speech/language evaluations. The hearing officer issued a Prehearing Order on October 10, 2012.

By letter dated November 2, 2012, DCPS disclosed eighteen documents (Respondent's Exhibits 1-18). By letter dated November 5, 2012, Petitioner disclosed thirty-six documents (Petitioner's Exhibits 1-36).

The hearing officer convened the due process hearing on November 8, 2012.¹ DCPS's disclosed documents were admitted without objection. Petitioner's Exhibits 1-11 and 13-36 were admitted without objection. Petitioner's Exhibit 12 was conditionally excluded on DCPS's objection. As a preliminary matter, Petitioner withdrew its claim alleging a failure to provide Parent with a copy of the 3/27/12 IEP. Thereafter, the hearing officer received the parties' opening statements, testimonial evidence and closing statements, then the hearing was brought to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

The issues to be determined are as follows:

1. Did DCPS deny Student a FAPE by failing to develop an appropriate individualized education program ("IEP") on or about May 3, 2011, in that the IEP did not contain speech and language goals or services?
2. Did DCPS deny Student a FAPE by failing to convene a complete IEP team on or about May 3, 2011, in that the speech and language provider was not present?
3. Did DCPS deny Student a FAPE by failing to conduct reevaluations as requested by Parent on or about March 27, 2012 and/or failing to conduct triennial re-evaluations?
4. Did DCPS deny Student a FAPE by failing to discuss a transfer of Student's educational rights prior to and/or subsequent to Student attaining the age of 18?
5. Did DCPS deny Student a FAPE by failing to allow Parent to participate in the March 27, 2012 annual IEP meeting?
6. Did DCPS deny Student a FAPE by failing to provide Student with transition services as required by his May 2011 IEP?

FINDINGS OF FACT²

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

1. Student is an eighteen-year old male, who presently attends his neighborhood DCPS senior high school. Student turned 18 in Spring of 2012.³
2. Student's current IEP is dated March 27, 2012. The IEP identifies Student's primary disability as SLD, and it requires Student to receive 14 hours per week of specialized instruction in general education, 7 hours per week of specialized instruction outside general education, 30 minutes per week of behavioral support services outside general education, and 30 minutes per month of speech-language pathology services outside general education. The IEP contains a Post-Secondary Transition Plan which states that Student completed the following vocational assessment tools on March 23, 2012: Brigance Test/Woodcock Johnson III/C.I.T.E. Learning Style; and Work Interest Inventory on March 23, 2012. The transition plan further indicates that Student plans to enroll in a 2 year college/training program to become an electrician upon

² To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

³ See Complaint at 2; testimony of Student.

graduation and includes goals and transition services for post-secondary education and training, as well as employment.⁴

3. Student's previous IEP is dated May 3, 2011. This IEP identifies Student's primary disability as Specific Learning Disability ("SLD"). However, it requires Student to receive 7 hours per week of specialized instruction in general education, 14 hours per week of specialized instruction outside general education, and 30 minutes per week of behavioral support services outside general education with no speech and language services. The IEP contains a Post-Secondary Transition Plan, which indicates that Student wishes to enroll in a 4-year college/university after graduating from high school. The Transition Plan includes three annual goals in the area of post-secondary education and training, as well as two annual goals in the area of employment, including goals requiring Student to prepare an academic plan that prepares him for college and provides him with appropriate credits for graduation, create a step by step 1-year plan for the process of preparing for and applying to college, and complete 50 hours of community service and document the hours. The Plan indicates that the following transition assessments were administered to Student: the C.I.T.E. Academic Learning Styles, Transition Planning Inventory, and Occupational Aptitude Survey and Interest Schedule on July 28, 2010; and C.I.T.E. Academic Learning Styles and Self-Directed Search on May 2, 2011.⁵
4. The participants at Student's May 3, 2011 IEP meeting were Parent, the educational advocate, the school social worker, a special education teacher, the case manager, and the special education coordinator ("SEC"). With respect to transition, the IEP team discussed the results of Student's Learning Style and Inventory vocational assessments, and discussed the revised Transition Plan. With respect to speech and language services, the team noted that the speech language provider was not present and Student's speech language goals were not updated, and the SEC offered to send a narrative from the speech language provider. The team reviewed Student's progress and goals in math, reading, written expression and behavior. The SEC proposed switching Student's hours of specialized instruction in and outside of general education. The DCPS team members also encouraged Parent, Student and the advocate to discuss moving toward graduation.⁶
5. Although the August 12, 2010 IEP included in the administrative record is a DRAFT IEP that cannot be solely relied upon to prove whether and to what extent Student previously received speech/language services, the draft containing 60 minutes per week of speech/language services, together with the May 3, 2011 meeting notes indicating that Student previously had speech and language goals and a speech/language provider, proves that Student received speech-language services prior to the May 3, 2011 IEP.⁷

⁴ Petitioner's Exhibit 8; Respondent's Exhibit 14.

⁵ Petitioner's Exhibit 9; Respondent's Exhibit 15.

⁶ Petitioner's Exhibit 10.

⁷ See Petitioner's Exhibits 10 and 11.

6. In the Spring of 2012, in or about March of 2012, Parent, through her advocate and/or counsel, requested reevaluations for Student.⁸ However, there is no evidence of record indicating exactly what evaluations were requested, and there is no direct or unbiased evidence indicating the exact date of the request for evaluations.
7. On March 22, 2012, Student's received an educational evaluation that consisted of the Woodcock-Johnson III Tests of Achievement. Student was [REDACTED] old, and in the 11th grade at the time. Student's results were at the 4th grade level in reading and at the 8th grade level in math.⁹
8. On March 23, 2012, Student completed the following vocational assessments: an Interest Inventory, a Brigance Transition Skills Inventory, and a C.I.T.E. Learning Styles Instrument.¹⁰
9. Student's most recent speech-language evaluation report is dated October 25, 2012. The report reveals that Student received scores within the Average range for all Core Language and Index scores on the Clinical Evaluation of Language Fundamentals-4, except that he received a score well below average on the Language Content Index (score =76; average = 85-115). Student had the most difficulty with the Sentence Assembly subtest for the Language Content Index, but his scores on the other subtests for that index were within normal limits. Student also received a below average standard score on the Word Classes-Receptive subtest, but his score on the Receptive Language Index was within the average range.

Based on these results, the evaluator determined that Student no longer requires speech/language services because, overall, his language skills are in the average range. The evaluator also took into account the fact Student felt he didn't require the services anymore. The primary area of difficulty revealed by the assessment is in the area of vocabulary, and Student's difficulty with vocabulary is a lack of exposure. Given Student's performance on the assessment, his lack of speech/language services during SY 2011/12 did not hinder his progress in any way.¹¹
10. Student's previous speech language evaluation was conducted on August 28, 2009. The evaluation results revealed that student had Below Average core communication skills within the severe range of functioning.¹²
11. Student received the following additional evaluations in 2009: clinical psychological evaluation, neuropsychological evaluation, psychoeducational evaluation, and Lindamood Bell evaluation. Student also received an OT evaluation on February 19, 2010, which revealed that Student did not require OT services, and he received a comprehensive Vocational Evaluation on July 28, 2010. The comprehensive vocational evaluation was conducted when Student was 16 years and 3 months old,

⁸ See Petitioner's Exhibit 5 at 6; Petitioner's Exhibit 1 at 1.

⁹ Respondent's Exhibit 13; Petitioner's Exhibit .

¹⁰ Respondent's Exhibits 2 and 11; Petitioner's Exhibit 20.

¹¹ Respondent's Exhibit 1; Petitioner's Exhibit 22; testimony of speech/language pathologist.

¹² See Petitioner's Exhibit 14.

and it included clinical observations, an interview with Student, a consultation with Parent, a review of records, the Occupational Interest Schedule, the Occupational Aptitude Schedule, the Transition Planning Inventory, Self-Assessment Exercise-Holland Occupational Themes, the C.I.T.E. Learning Styles Instrument, and informal handwriting samples.¹³

12. Before Student turned 18 in Spring 2012, no one from DCPS talked to him about his educational rights transferring from Parent to Student once he turned 18. However, at a September 2012 meeting at his current school, Student's special education teacher explained the transfer of rights to him and said that he no longer had to have his mother present at his IEP meetings and could make decisions on his own. Parent was not present at this meeting. The special education teacher gave Student a document to read and sign, but he didn't sign the paper on his attorney's advice and decided to talk about with his attorney later. In any event, the school has always allowed Student to provide input at his IEP meetings, and he even provided input for a written Summary of Performance form completed in March of 2012.¹⁴
13. Student is interested in attending a trade school to become an electrician after he graduates from high school. Last year, during SY 2011/12, no one helped Student with college applications, making sure he received all required credits, researching different career fields or applying to schools. Although Student did receive help at school last school year with community service hours, he did not complete any community service hours last year. This year, during SY 2012/13, with the help of his teacher, Student applied for a community college that provides hands-on experience in the electrician/engineering field.¹⁵
14. As of June 2012, Student's cumulative GPA was 2.09, he ranked 64 of 169 students in his class, and he had earned 21.5 Carnegie units and needed to earn an additional 9.5 units to graduate since some of his units were not in the subjects needed to graduate.¹⁶
15. In 2009/10 for 9th grade final grades, Student earned three As, four Bs, and one C. In 2010/11 for 10th grade final grades, Student earned five Cs, three Ds and one F in Health Education. In 2011/12 for 11th grade final grades, Student earned one A, two Bs, five Cs, two Ds and Fs (two) in Phys Ed I and English III.¹⁷
16. Student failed English in SY 2011/12 because he wasn't attending regularly and when he arrived late, he wouldn't have a note and couldn't attend. However, in the current school year, SY 2012/13, Student is taking English IV and he's also taking English III for credit recovery. Nevertheless, it is unclear whether Student will have the required credits to graduate at the end of the current school year, because his 9/19/12 Letter of

¹³ See Petitioner's Exhibits 15-19, and 21.

¹⁴ Testimony of Student; testimony of special education teacher; see Respondent's Exhibits 3 and 10.

¹⁵ Testimony of Student.

¹⁶ Petitioner's Exhibit 26.

¹⁷ Petitioner's Exhibit 25; Respondent's Exhibit 4.

Understanding indicated that he would need an additional 2.5 credits beyond the classes he is currently taking to graduate.¹⁸

17. Petitioner has requested the following forms and amounts of compensatory education in this case: 30 hours of vocational assistance to assist Student in applying for colleges, solidifying his post-secondary plans, and/or executing the plan; 40 hours of speech/language services; the necessary programming to fully complete credit recovery for the two credits Student will need to graduate on time; and 40 hours of tutoring to help Student made adequate progress during the school year and to address deficits revealed by his most recent educational evaluation.¹⁹
18. During the first three reporting periods of SY 2010/11, Student Mastered two math goals, was otherwise generally Progressing on his math, reading and written expression goals, but made No Progress on communication/speech-language and emotional/social/behavioral development goals. During the fourth reporting period of SY 2010/11, Student was generally Progressing on his math, reading, written expression, communication/speech-language and emotional/social/behavioral development goals, although two math goals were Just Introduced and one reading goal was Not Introduced. During the first reporting period of SY 11/12, Student was generally Progressing on his math, reading and written expression goals, but his communication/speech-language and emotional/social/behavioral development goals were either Not Introduced or he was making No Progress.²⁰
19. Parent had a practice of scheduling Student's IEP meetings through the advocate. Parent does not understand what goes on at the meetings, so she relies on the advocate and counsel to help her understand. Parent also had a practice of participating in Student's IEP meetings. However, Parent did not participate in the IEP meeting for Student that was held in Spring 2012 because the school called Parent directly to say that a meeting was about to be held that very day. Parent called the advocate to tell her about the meeting, and the advocate said she would get back to Parent. Parent did not attend the meeting.²¹
20. On March 28, 2012, the day after DCPS held an IEP meeting for Student on March 27, 2012, Petitioner's educational advocate advised DCPS by email that Parent and the office of Petitioner's counsel were not advised of the meeting in advance, and that Parent objects to the scheduling of IEP meetings without notifying Parent's representation in advance. The advocate also asked to have the meeting rescheduled.²² As of the date of the due process hearing in this case, the meeting had not been reconvened.

¹⁸ Testimony of Student; *see* Respondent's Exhibit 26.

¹⁹ Petitioner's Exhibit 33.

²⁰ Petitioner's Exhibit 31; Respondent's Exhibits 8, 9 and 17.

²¹ Testimony of Parent.

²² Testimony of advocate; Petitioner's Exhibit 6.

21. Parent does not understand Student's evaluations, so she relies on the advocate to look out for Student's best interest and she asked for evaluations to see how Student is performing now that he is about to graduate.²³
22. Parent attended the due process hearing in this case with Student.

CONCLUSIONS OF LAW

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

1. Alleged Failure to Develop an Appropriate IEP on May 3, 2011

The FAPE required by IDEA is tailored to the unique needs of a handicapped child by means of an IEP. Board of Education of the *Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982). IDEA charges a disabled student's IEP team with the task of developing, reviewing and revising the student's IEP. See 34 C.F.R. § 300.324. In determining whether a Student's IEP is appropriate, the hearing officer must determine (1) whether the LEA has complied with the procedures set forth in IDEA, and (2) whether the IEP developed through IDEA's procedures was reasonably calculated to provide Student with educational benefits. *Id.* In determining whether an IEP is reasonably calculated to provide educational benefits, the measure and adequacy of the IEP is to be determined as of the time it was offered to the student. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir. 2008), *cert. denied*, 555 U.S. 1173 (2009).

In the instant case, Petitioner has alleged that DCPS failed to develop an appropriate IEP for Student on May 3, 2011 because the IEP did not contain speech and language goals or services. DCPS asserts that the removal of speech and language services from Student's May 3, 2011 IEP did not result in any harm because 2012 speech-language evaluation indicates that he no longer needs those services.

A review of the evidence in this case demonstrates that Student had been receiving speech and language services prior to the May 3, 2011 MDT meeting. At that meeting, the team did not determine to remove those services from Student's IEP; instead, the team determined not to update Student's speech and language goals and the SEC agreed to provide Parent with a narrative from the speech language provider, who was not present. Nevertheless, the resulting May 3, 2011 IEP DCPS prepared for Student did not include any speech and language services or goals. Based on this evidence, it is clear that DCPS did not comply with the procedures set forth in IDEA when preparing Student's May 3, 2011 IEP, because the IEP is to be developed and revised in accordance with the determinations of the IEP team, and here services were removed from Student's IEP absent a team determination to do so. Moreover, at the time it was created, the May 3, 2011 IEP was not reasonably calculated to provide Student with educational benefits because the existing data at that time indicated that Student had Below Average core

²³ Testimony of Parent.

communication skills within the severe range of functioning, and as a result, he required speech and language services.

Based on the evidence outlined above, the hearing officer concludes that Petitioner met its burden of demonstrating that DCPS failed to develop an appropriate IEP for Student on May 3, 2011 IEP. On the other hand, however, the evidence also demonstrates that Student has not suffered any educational harm as a result of DCPS's failure to follow proper procedures and produce an IEP reasonably calculated to provide educational benefits, because more than a year after the speech and language goals and services were removed from his IEP new evaluation data revealed that Student's communication skills are generally in the Average range and he no longer requires speech and language services. Under these circumstances, the hearing officer further concludes that DCPS's procedural violation in connection with this claim did not rise to the level of a denial of FAPE. *See Suggs v. District of Columbia*, 679 F.Supp.2d 43, 49-50 (D.D.C. 2010) (to succeed on an IDEA claim a party must prove that the school district denied the child a FAPE by depriving him of educational benefits to which he is entitled); *Lesesne v. D.C.*, 447 F.3d 828 (D.C. Cir. 2006) (only procedural violations that result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable); 34 C.F.R. § 300.513(a)(2) (hearing officer may find denial of FAPE only where procedural inadequacies impeded child's right to FAPE, impeded Parent's opportunity to participate in decision-making, or caused deprivation of educational benefit).

2. Alleged Failure to Convene a Complete IEP Team on May 3, 2011

Under IDEA, the public agency must ensure that a disabled child's IEP team includes, *inter alia*, "[a]t the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." 34 C.F.R. § 300.321(a)(6).

In the instant case, Petitioner has alleged that DCPS failed to convene a complete IEP team on May 3, 2011 because no speech/language provider participated in the meeting. DCPS insists that there was no requirement to have a speech/language provider at the May 3, 2011 meeting, and even if there was such a requirement, no harm has been suffered because Student tested well on his recent speech/language evaluation.

Upon consideration of the evidence and arguments in this case, the hearing officer concludes that Petitioner has met its burden of proof on this claim. The evidence demonstrates that both parties considered the presence of a speech/language provider to be necessary at the May 3, 2011 meeting, because when the provider was unable to attend, the SEC offered to send Parent a narrative from the provider later. Then, given the speech/language provider's failure to attend the meeting, the IEP team failed to update Student's speech and language goals, and speech and language services were ultimately removed from Student's IEP altogether without any team discussion even though Parent's position was that Student continued to require the services. Under these circumstances, Petitioner has met its burden of demonstrating a denial of FAPE in connection with this claim, because DCPS's failure to ensure a speech/language provider attended the May 3, 2011 IEP meeting impeded Parent's opportunity to participate in the decision-making process at that meeting. *See Lesesne v. D.C.*, *supra* (procedural violations that

seriously deprive parents of their participation rights are actionable); 34 C.F.R. § 300.513(a)(2) (hearing officer may find denial of FAPE where procedural inadequacies impeded Parent's opportunity to participate in decision-making).

Petitioner's arguments in this case reveal that even now, despite evidence consisting of evaluation results indicating otherwise, Petitioner is of the opinion that Student continues to require speech and language services. Moreover, there is no evidence that Petitioner's concerns regarding this related service were ever discussed at an IEP team meeting that included a speech/language provider. As a result, the hearing officer will order DCPS to convene an IEP meeting that includes a speech/language pathologist who can fully discuss with Student (now that his educational rights have been transferred to him) whether or not he continues to require speech and language services.

3. Alleged Failure to Conduct Reevaluations Per Parent's March 2012 Request and/or Failure to Conduct Triennial Reevaluations

A public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines one is warranted, or if the child's parent or teacher requests a reevaluation. *See* 34 C.F.R. § 300.303(a). Moreover, a reevaluation must occur at least once every 3 years unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2).

In the instant case, Petitioner has alleged that DCPS denied Student by failing to conduct reevaluations per Parent's March 2012 request and/or by failing to conduct triennial evaluations. DCPS notes that it has already performed speech/language, educational and vocational evaluations for Student, and DCPS asserts that it is willing to conduct a comprehensive psychological evaluation, including a clinical component, for Student in accordance with the Prehearing Order issued in this case.

A review of the evidence in this case confirms DCPS's assertions with respect to this claim. Hence, Parent requested reevaluations in March 2012, and DCPS conducted educational and vocational assessments of Student in March 2012. Moreover, the evidence reveals that Student had received a comprehensive vocational evaluation less than two years earlier in July 2010. DCPS also conducted a speech/language reevaluation in October 2012, which revealed that Student's communication skills are generally in the average range and he no longer requires speech/language services. Although DCPS has not yet conducted a psychological reevaluation of Student, DCPS has indicated a willingness to do so, and Student has been making reasonable progress in school both prior to and since Parent's request for reevaluations. In addition, although Parent has included an OT evaluation in its request for relief in this case but it does not appear that DCPS has agreed to conduct an OT evaluation, there is no proof that an OT evaluation was included in Parent's reevaluation request and Student's 2009 OT evaluation determined that he did not require OT services. Under these circumstances, the hearing officer concludes that Parent failed to meet its burden of proof on this claim with respect to Parent's request for and/or Student's alleged need for triennial updates of his evaluations. *See Herbin by Herbin v. DC*, 362 F. Supp 254 (D.D.C. 2005) (delay in conducting reevaluations pursuant to

parental request was not unreasonable where parent did not contend the current placement was wrong and there was no emergency need for evaluations).

4. Alleged Denial of FAPE by Failing to Discuss Transfer of Educational Rights

Under IDEA, a State may provide that when a disabled child reaches the age of majority under State law, all rights accorded to parents under Part B of the Act transfer to the child. 34 C.F.R. § 300.520(a)(1)(ii). However, whenever a State provides for the transfer of rights in this matter, the agency must notify the child and the parent of the transfer of rights. 34 C.F.R. § 300.520(a)(3).

In turn, District of Columbia law provides that when a disabled child who has not been determined incompetent reaches the age of eighteen, the LEA shall provide any notice required by Part B of IDEA to both the child and his parents, and all other rights accorded to parents under Part B of IDEA transfer to the child. 5 D.C.M.R. § 3023.1. Moreover, whenever the LEA transfers rights consistent with § 3023.1, the LEA shall notify the child and the child's parents of the transfer of rights. 5 D.C.M.R. § 3023.2.

In the instant case, Petitioner has alleged that DCPS failed to discuss the transfer of Student's educational rights prior to and/or subsequent to Student attaining age 18, which impacted Student's participation in the educational process. DCPS counters that it discussed the transfer of Student's educational rights with Student at the September 2012 resolution session in this case, and in any event, there's been no harm because Student has always been able to participate and give input concerning his programming.

A review of the evidence in this case supports DCPS's position. *See* Finding of Fact ("FOF") 12. Hence, although DCPS did not discuss the transfer of rights with Parent and Student before Student turned eighteen in the Spring of 2012, Student discussed the transfer of rights with Student in the Fall of 2012 at the resolution session for this case. Throughout that entire time period, Parent and Student were receiving the assistance of both current Petitioner's counsel and the educational advocate. Moreover, DCPS has always allowed Student to provide input regarding his educational programming, and he even provided input for a written Summary of Performance completed in March of 2012. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving a denial of FAPE in connection with this claim. *See Lesesne, supra* (only procedural violations that result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable); 34 C.F.R. § 300.513(a)(2), *supra* (hearing officer may find denial of FAPE only where procedural inadequacies impeded child's right to FAPE, impeded Parent's opportunity to participate in decision-making, or caused deprivation of educational benefit).

5. Alleged Denial of FAPE by Failing to Allow Parent to Participate in March 27, 2012 Meeting

IDEA provides that the IEP team for each disabled child must include the child's parent(s). *See* 34 C.F.R. § 300.321(a)(1). Moreover, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are

afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a).

In the instant case, Petitioner argues that DCPS denied Student a FAPE by failing to allow Parent to participate in Student's March 27, 2012 IEP meeting. A review of the evidence in this case reveals that Parent did not learn of the March 27, 2012 meeting until DCPS called her directly on the day of the meeting, even though Parent had a practice of scheduling Student's IEP meetings through the advocate because Parent does not understand what goes on at the meetings and relies on the advocate and counsel to help her understand. As a result of DCPS's failure to comply with its obligation under IDEA to take appropriate steps to ensure Parent's participation in the meeting, Parent asked DCPS to call her advocate, and ultimately, neither Parent nor her advocate participated in the meeting. The advocate subsequently asked DCPS to reschedule the meeting, but the meeting has not yet been reconvened. Under these circumstances, the hearing officer concludes that DCPS denied Student a FAPE by failing to take reasonable steps to ensure Parent's participation in Student's March 27, 2012 IEP meeting, because such failure resulted in Parent's failure to attend the March 27, 2012 IEP meeting, which impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. *See Lesesne v. D.C.*, *supra* (procedural violations that seriously deprive parents of their participation rights are actionable); 34 C.F.R. § 300.513(a)(2), *supra* (hearing officer may find denial of FAPE where procedural inadequacies impeded Parent's opportunity to participate in decision-making).

Although Student's educational rights have since been transferred to Student, Parent attended the due process hearing in this case with Student and testified on Student's behalf. As a result, the hearing officer will order DCPS to invite Parent to attend the IEP meeting that will be ordered pursuant to this decision, so that Parent will have an opportunity to attend the meeting with Student if she and Student determine that it is desirable for her to do so.

6. Alleged Denial of FAPE by Failing to Provide Student with Transition Services

Under IDEA, beginning not later than the first IEP to be in effect when a disabled child turns 16, the IEP must include appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals. 34 C.F.R. § 300.320(b). However, "to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007) (quoting *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 348 (5th Cir. 2000)).

In the instant case, Petitioner has alleged that DCPS denied Student a FAPE by failing to provide him with transition services pursuant to his May 3, 2011 IEP. A review of the evidence confirms Petitioner's allegations. Hence, Student's May 3, 2011 IEP contained a transition plan that included goals requiring Student to prepare an academic plan that prepares him for college and provides him with appropriate credits for graduation, create a step by step 1-year plan for the process of preparing for and applying to college, and complete 50 hours of community service and document the hours. However, during SY 2011/12 when that IEP was in effect, Student did

not receive any assistance in school with college applications or making sure he earns all required credits, and he did not complete any community service hours. Moreover, although Student is taking English III for credit recovery now, it is unclear whether he will have the necessary credits to graduate at the end of this school year. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proof on this claim, and the hearing officer will order DCPS to provide Student with 30 hours of vocational assistance to assist Student in applying for colleges, solidifying his post-secondary plans, and/or executing the plans, and the programming necessary to fully complete credit recovery for the 2.5 additional credits he needs to graduate.

ORDER

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

1. Within 21 calendar days of the issuance of this Order, DCPS shall convene an IEP meeting that includes a speech/language pathologist who can fully discuss with Student whether or not he continues to require speech and language services. DCPS shall also invite Parent to attend the IEP meeting so that Parent will have an opportunity to attend the meeting with Student if she and Student determine that it is desirable for her to do so.
2. Beginning not later than 21 calendar days of the issuance of this Order, DCPS shall provide Student with 30 hours of vocational assistance to assist Student in applying for colleges, solidifying his post-secondary plans, and/or executing the plans.
3. Prior to the end of SY 2012/13, DCPS shall provide Student the programming necessary to fully complete credit recovery for the 2.5 additional credits Student needs to graduate.
4. All remaining claims and requests for relief in Petitioner's September 14, 2012 Complaint are **DISMISSED AND DENIED**.

NOTICE OF RIGHT TO APPEAL

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

Date: 11/28/2012

/s/ Kimm Massey
Kimm Massey, Esq.
Hearing Officer