

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

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

[Parent], on behalf of
[Student],¹

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: November 29, 2012

Hearing Officer: Jim Mortenson

Case No: 2012-0649

HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed with the Respondent and Student Hearing Office (SHO) by the Petitioner on September 17, 2012. A response to the complaint was filed on September 27, 2012. A resolution meeting was held on October 2, 2012, and resulted in no agreements. The 30 day resolution period was not adjusted and the 45 day hearing timeline began on October 18, 2012. A prehearing conference was held, via telephone, on October 4, 2012, and a prehearing order was issued on October 5, 2012.

Both parties exchanged disclosures on November 8, 2012. Neither party filed a required trial brief.

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

OSSE
STUDENT HEARING OFFICE
2012 NOV 29 PM 12: 58

The hearing was convened approximately 9:00 a.m. on November 16, 2012, in room 2009 at 810 First Street NE, Washington, D.C. The hearing was closed to the public. The Petitioner was represented by Joy Freeman-Coulbary, Esq., and the Respondent was represented by Lynette Collins, Esq. The hearing concluded at approximately 3:30 p.m. The due date for this HOD is December 1, 2012. This HOD is issued on November 29, 2012.

II. JURISDICTION

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

III. ISSUES, RELIEF SOUGHT, and DETERMINATION

The issues to be determined by the IHO are:

- (1) Whether the Respondent denied the Student a free appropriate public education (FAPE) because it failed to offer or provide the Student an individualized education program (IEP) reasonably calculated to provide educational benefit when the IEP lacks: therapeutic wrap-around services to address the Student's functional needs following her release from a residential facility; appropriate measurable post-secondary goals based on an age appropriate transition assessment; and appropriate transition services including a referral to the Rehabilitation Services Administration (RSA)?

- (2) Whether the Respondent failed to ensure the Student was educationally placed based on her IEP when she was placed in the Rise program at Coolidge Senior High School?

The substantive requested relief at the time of hearing was:

- (1) A revision to her IEP to include: wrap-around therapeutic behavioral services (counseling at school and at home with family) and a transition plan, based on a Vocational Assessment (II or III) that includes a referral to RSA.
- (2) Prospective placement at Keller School for the 2012-2013 school year.
- (3) Compensatory education to address how far the Student has been set back socially and emotionally which has resulted in an increased need for therapy, poor academic performance, and truancy. The services sought included 18 hours of counseling and 168 to 200 hours of academic services to make up for the Student's lower grades at Rise than at her previous, residential, placement.

The Student was not denied FAPE. The Petitioner failed to show that the Student required and lacked therapeutic wrap-around services in order to be involved in and progress in the general education curriculum or make progress toward her IEP goals. The Student's IEP lacks appropriate measurable postsecondary goals and transition services, but the Petitioner has not shown that this violation has resulted in any harm to the Student (although the Respondent is advised to correct it). The Petitioner has not shown the Respondent failed to ensure the Student was educationally placed based on her IEP when she was placed at the Rise program at Coolidge Senior High School.

IV. EVIDENCE

Seven witnesses testified at the hearing, four for the Petitioner and three for the Respondent.

The Petitioner's witnesses were:

- 1) The Petitioner, Student's Mother (P)
- 2) [REDACTED] Principal of Keller School ([REDACTED])²
- 3) [REDACTED] Advocate ([REDACTED])
- 4) Student (S)

The Respondent's witnesses were:

- 1) [REDACTED] Special Education Teacher ([REDACTED])
- 2) [REDACTED] Behavior Intervention Counselor ([REDACTED])
- 3) [REDACTED] Student Progress Monitor ([REDACTED])

Petitioner's testimony is weighed carefully, due to inconsistencies in her story and the written records. The Student's testimony is also carefully weighed, given her admission of lying at school. [REDACTED] largely provided opinions and speculation which carry little weight from a lay advocate. Other witnesses testified credibly.

14 exhibits were admitted into evidence of 37 disclosures from the Petitioner. The

Petitioner's exhibits are:

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
P 5	November 7, 2012	Progress Report August-October 2012
P 6	November 8, 2012	Letter from Garrett to Freeman-Coulbary
P 9	[Undated]	Ackerman Academy Student Report Card [2011-2012]
P 10	September 27, 2012	Report to Parents on Student Progress

² This witness was permitted to testify via telephone. The Respondent objected due to the Petitioner not moving for permission for telephone testimony within the timelines under Standard Operating Procedure § 401, as adopted by the undersigned in the prehearing order. Counsel for the Petitioner advised that she did not have confirmation of the witness's availability until after the disclosure due date. The witness was asked, under oath, by the undersigned why she could not be physically present to testify. The witness stated she was an administrator of a small school for students with emotional disabilities and due to the school being temporarily short-staffed, she could not be away from campus. The undersigned found this was good cause for being permitted to testify via telephone, and advised counsels that this was highly unusual for such a determination to be made at such a late date.

<u>Ex. No.</u>	<u>Date</u>	<u>Document (cont.)</u>
P 11	April 18, 2012	Psychological Evaluation
P 12	August 10, 2012	Ackerman Devereux Academy [Meeting Notes]
P 15	April 27, 2010	Suspension/Expulsion Form; Notice of Disciplinary Action
P 16	September 14, 2010	Meeting Notes
P 19	May 16, 2012	Georgia Monthly Progress Review
	April 17, 2012	Georgia Monthly Progress Review
	March 20, 2012	Georgia Monthly Progress Review
	February 21, 2012	Georgia Monthly Progress Review
	January 24, 2012	Georgia Monthly Progress Review
P 20	January 24, 2012	Devereux Georgia Treatment Network
P 25	April 28, 2010	Meeting Notes
	[Undated]	Behavior Intervention Plan for [Student]
P 31	[Undated]	Resume of [REDACTED]
P 34	August 25, 2011	Biopsychosocial Assessment
P 37	[Undated]	Compensatory Education Proposal

Six exhibits were admitted into evidence of the Respondent's eight disclosures. The

Respondent's exhibits are:

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
R 1	January 24, 2012	IEP
R 2	January 24, 2012	Intervention Behavior Plan
R 3	January 24, 2012	Transition Plan for [Student]
R 4	September 11, 2012	Prior Written Notice
R 6	November 7, 2012	Service Tracker
R 7	[Undated/various]	[Student work samples]

To the extent that the findings of fact reflect statements made by witnesses or the documentary evidence in the record, those statements and documents are credited. Any finding of fact more properly considered a conclusion of law is adopted as such and any conclusion of law more properly considered a finding of fact is adopted as such.

V. FINDINGS OF FACT

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

1. Student is a [REDACTED] learner with a disability currently attending Coolidge Senior High School.³ She has been determined eligible for special education and related services under the category of emotional disturbance.⁴ She suffers primarily from Depressive Disorder, Oppositional Defiant Disorder, and Attention Deficit Hyperactivity Disorder.⁵
2. The Student was seriously abused as a small child and was adopted by the Petitioner when she was five years of age following the death of her biological mother.⁶ The Student got along well with her adoptive family well until her teen years, when she had incidents of physical violence toward her siblings and the Petitioner.⁷ She became suicidal, homicidal, and destructive of property about the age of 13.⁸ When she was 14 years of age, she became involved with the juvenile justice system, began using alcohol and other chemicals, and began risky sexual behaviors.⁹ She received special education services at school and had behavioral problems there, too.¹⁰
3. The Student has received therapeutic interventions since she was six years of age.¹¹ She was hospitalized for psychiatric reasons four times in 2011.¹² As of the spring of 2012, she was on medication that helped stabilize her.¹³ The Petitioner placed the Student in a residential treatment facility in Georgia in August 2011, where she remained for a year.¹⁴ The Petitioner

³ Testimony (T) of P, T of S, T of R.M., T of D.J.

⁴ R 1.

⁵ P 19.

⁶ T of P, P 11.

⁷ P 11.

⁸ P 11.

⁹ P 11.

¹⁰ T of P, T of S, P 15, P 16.

¹¹ P 11.

¹² P 34.

¹³ P 11.

¹⁴ T of P, P 34.

continues to be concerned about possible behavior problems at home resulting in harm to family members.¹⁵

4. Despite being parentally placed in a facility in Georgia, and served by a local education agency there, the Respondent continued to take responsibility for the Student's special education services.¹⁶
5. The Student's IEP was last revised on January 24, 2012, while the Student was at the residential facility.¹⁷ The IEP required, among other things, specialized instruction in a special education setting for 30 hours per week, counseling in a special education setting for three hours per week, and had academic and functional goals that have not been challenged by the Petitioner.¹⁸ The IEP includes a behavior intervention plan (BIP).¹⁹
6. The Student's IEP includes a transition plan, also developed January 24, 2012.²⁰ The Student was provided an assessment called a "Career Matchmaker" that resulted in a ranked list of careers that interested the Student, and nothing more.²¹ The purported postsecondary goals in the plan are: "[Student] understands the importance of gainful employment and is getting practical experience and knowledge in salon services as well as CCAE[.]" and "[Student] will discuss educational choices with the guidance counselor or other school personnel such as special education coordinator."²² The "goals" are not postsecondary goals and the Student's transition assessment did not reflect "salon services" as an area of interest.²³

¹⁵ T of P, P 5.

¹⁶ R 1.

¹⁷ R 1.

¹⁸ R 1.

¹⁹ R 2.

²⁰ R 3.

²¹ R 3.

²² R 3.

²³ R 3.

7. While at the residential facility the Student's academic and functional performance were good without significant problems. There was no physical aggression and verbal aggression occurred about twice per month.²⁴
8. The Student was discharged from the residential facility in Georgia in August 2012.²⁵ Prior to her discharge, there was a meeting on August 10, 2012.²⁶ Five people participated in the meeting, including the Petitioner and [REDACTED] from the Respondent.²⁷ The Petitioner was concerned that the Student would have difficulty back in public school due to her past behavioral problems.²⁸ [REDACTED] advised that the Student's IEP team would determine her placement, but that she would be proposing the Rise Program as it focuses on behavioral and learning difficulties and is a small group setting out of the general education setting.²⁹
9. Rise is a full-time special education placement located at Coolidge Senior High School.³⁰ It is housed in two classrooms on the second floor, which are separated by a dividing wall with a door.³¹ The classes are taught by two special education teachers, one of whom has been out on leave resulting in coverage of the second class by the remaining teacher with substitutes performing instruction.³² A computer program based on the common core standards is also used to aid instruction and provides practice work based on student skill level (the program adapts to skill level based on the answers the student provides) and unit assessment.³³ There are 12 students currently attending the Rise program.³⁴

²⁴ T of P, T of S, P 9, P 12.

²⁵ T of P.

²⁶ P 12.

²⁷ P 12, T of P, T of D.J.

²⁸ P 12, T of P.

²⁹ P 12, T of D.J.

³⁰ T of R.M., T of D.J.

³¹ T of R.M.

³² T of R.M.

³³ T of R.M.

³⁴ T of R.M.

10. When the Student returned home from Georgia, the Petitioner did not send her to school at Coolidge Senior High School, where the Rise program is located, because she was looking for a different placement.³⁵ The IEP team agreed to place the Student at Rise on September 11, 2012, and the Student began attending September 18, 2012, a day after the complaint in this matter was filed.³⁶ All her classes are special education classes.³⁷
11. The Student has been doing very well at school since her return from Georgia.³⁸ Even though the Student was not provided the counseling services required by her IEP (an issue not specifically raised for hearing) the Student has had no behavioral problems at school.³⁹ As part of the school behavior program, the Student has the opportunity to earn a maximum of 150 points per day for meeting behavioral expectations.⁴⁰ The Student earns 140 to 150 points per day, has developed friendships in class, and has never had to be de-escalated while at Rise.⁴¹ Her academic performance has also been good, with her lowest grade being a “C” in Algebra.⁴² The Student has stated she has cheated on academic work because she does not like to ask for help.⁴³

VI. CONCLUSIONS OF LAW

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

³⁵ T of P.

³⁶ R 4, T of P.

³⁷ T of D.J., T of R.M., T of J.M.

³⁸ T of P, T of R.M, T of J.M.

³⁹ T of P, T of S, T of R.M., T of J.M.

⁴⁰ T of J.M., T of S.

⁴¹ T of J.M.

⁴² T or R.M.

⁴³ T of S.

1. The burden of persuasion in a special education due process hearing is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005), *See also* D.C. Mun. Regs. 5-E3030.14. “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.” D.C. Mun. Regs. 5-E3030.14. The recognized standard is preponderance of the evidence. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3).
2. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

special education and related services that –

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

34 C.F.R. § 300.17. A child’s potential need not be maximized as long as the child is provided some educational benefit. *Board of Educ. v. Rowley*, 458 U.S. 176, 198 & 201 (1982). Involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) is core to the IDEA’s purpose. *See*: 34 C.F.R. §§ 300.39, 300.304, 300.305, 300.311, 300.320, 300.321, 300.324, 300.530, 300.704. “[A]n IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State’s content standards.” 71 Fed. Reg. 46662 (2006). “An IEP may not be reasonably calculated to provide benefits if, for example, a child’s social behavior or academic performance has deteriorated under his current educational program, *see Reid v. District of Columbia*, 401 F.3d at 519-20; the nature and effects of the child’s

disability have not been adequately monitored, *see Harris v. District of Columbia*, 561 F. Supp. 2d at 68; or a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. *See Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006).” *Suggs v. District of Columbia*, 679 F. Supp. 2d 43, 53 IDELR 321 ((D.D.C.2010).

3. The Petitioner has failed to show that the Student was denied a FAPE as a result of a failure to offer or provide the Student an IEP reasonably calculated to provide educational benefit. The IEP was last revised in January 2012, while the Student was at a residential facility in Georgia, where she was placed by the Petitioner. The Respondent, never the less, was involved in and took responsibility for the IEP process despite another LEA implementing it. The Petitioner was concerned about bringing the Student back to the District of Columbia and where she would be going to school after a year in the residential facility. She refused to send the Student to school until mid-September, because she had been looking for a different placement from the discussed Rise program. She ultimately agreed, however, and the Student began attending September 18, 2012. Despite the Petitioner’s concerns about Rise, she admitted the Student is doing well there and additional evidence supports this.
4. “Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include —
 - (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.” 34 C.F.R. § 300.320(b)

Data must be collected on the child’s strengths, preferences, and interests. 34 C.F.R. § 300.43(a)(2). A functional vocational evaluation must be considered, if appropriate. Id.

5. The Petitioner has shown the IEP lacks appropriate measurable post-secondary goals based on an age appropriate transition assessment and that the resulting transition services may not be appropriate. However, the Petitioner has not shown the Student has been harmed by this procedural violation. The transition assessment done with the Student merely shows the Student’s career interests and does not necessarily reflect what is reasonable or appropriate for the Student, given her disabilities and educational needs. Furthermore, the IEP lacks appropriate measurable postsecondary goals concerning training, education, employment and independent living. The purported postsecondary goals are not postsecondary goals at all but directions about what the Student should do during her secondary school years. Without appropriate measurable postsecondary goals, it is not possible to devise a program of transition services to assist the Student to reach postsecondary goals. The Respondent has a responsibility to revise the IEP to include an appropriate transition plan. However, there is no evidence the Student has suffered educationally as a result of this problem – she has been doing very well academically and functionally - and thus there has not been a denial of FAPE on these grounds. *See* 34 C.F.R. § 300.513 (A determination of whether a child received a FAPE must be based on substantive grounds). The Respondent is nevertheless advised to correct the procedural error.⁴⁴

⁴⁴ The Respondent is reminded that it must also implement the IEP as written. It has not been providing counseling services required by the IEP. This is not further addressed in this HOD because it was not raised as an issue in the complaint. However, this does not excuse the Respondent’s obligation under IDEA to implement the IEP.

6. In order to implement the IEP, a team that includes the child's parent(s) determines where the child should be placed "based on the child's IEP." 34 C.F.R. § 300.116. In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home. *Id.*; see also 20 U.S.C. § 1412(a)(5). Further, mainstreaming of children eligible for special education services under the IDEA is "not only a laudable goal but is also a requirement of the Act." *Roark v. District of Columbia*, 460 F. Supp.2d 32, 43 (D.D.C. 2006) (*quoting DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 786, 878 (4th Cir. 1989)); *Rowley* at 201 ("The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible.").
7. The IEP team discussed placing the Student at the RISE program at Coolidge Senior High School. The Petitioner was not in agreement with the Respondent on this and did not initially send the Student to school. The Petitioner eventually capitulated and the Student began attending in mid September. The Petitioner has not shown this placement was not based on the Student's IEP, only that she initially disagreed with it and continues to have concerns. The Student's disabilities are behavioral in nature and the IEP requires specialized instruction in a special education setting for the full school day. The Respondent has provided to the Student specialized instruction in a special education setting for the full school day in a setting designed for students with behavioral problems with the RISE program at Coolidge. Thus, there is no failure to appropriately place the Student.

VII. DECISION

The Respondent did not deny the Student a FAPE. The Respondent failed to include appropriate measurable postsecondary goals in the Student's IEP. This has not resulted in any educational harm to the Student and the Respondent is advised to correct this as a compliance matter.

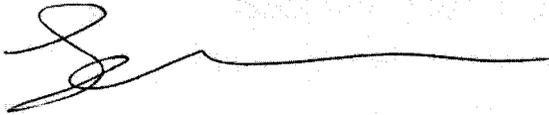
The Respondent did not fail to place the Student based on her IEP.

VIII. ORDER

The complaint is dismissed with prejudice.

IT IS SO ORDERED.

Date: November 29, 2012

A handwritten signature in black ink, appearing to read 'Jim Mortenson', is written over a horizontal line. The signature is stylized and cursive.

Jim Mortenson, Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

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