District of Columbia
Office of the State Superintendent of Education

Student Hearing Office
810 First Street, N.E., Suite 2001
Washington, DC 20002

STUDENT[1], **By and through PARENT,** ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	Case No. 2012-0699 Impartial Hearing Officer: Charles M. Carron Date Issued: December 3, 2012 Representatives: Joy L. Freeman-Coulbary, Esq. for Petitioner Lynette A. Collins, Esq. for Respondent

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND

This is a Due Process Complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed October 9, 2012, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student's Parent, against Respondent, District of Columbia Public Schools ("DCPS").

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

On October 10, 2012, the undersigned was appointed as the Impartial Hearing Officer.

On October 17, 2012, Respondent filed its Response, which was timely, stating that Respondent has not denied the Student a free appropriate public education ("FAPE").

A Resolution Meeting was held on November 8, 2012 but it failed to resolve the Complaint. The statutory 30-day resolution period ended on November 8, 2012. The 45-day timeline for the Hearing Officer's Determination started to run on November 9, 2012 and will conclude on December 23, 2012.

The Impartial Hearing Officer held a Prehearing Conference ("PHC") by telephone on October 26, 2012, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by November 26, 2012 and that the Due Process Hearing ("DPH") would be held on November 30, 2012. The undersigned issued a Prehearing Order ("PHO") on October 27, 2012, confirming the agreements reached at the PHC. The parties were provided three business days to bring any alleged error or omission to the attention of the undersigned. Neither party did so.

No pre-hearing motions were filed by either party, and the DPH was held on November 30, 2012, at the Student Hearing Office, 810 First Street, NE, Room 2003, Washington, DC 20002. Petitioner elected for the hearing to be closed. At the DPH, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-23

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

Impartial Hearing Officer's Exhibits: HO-1 through HO-7

The following witnesses testified on behalf of Petitioner at the DPH:

Parent

Student

Non-Public School Admissions Director

[redacted], Educational Advocate[2]

The following witness testified on behalf of Respondent at the DPH: Amber Crawford, Local Educational Agency Representative at Ballou Senior High School, District of Columbia Public Schools.

The parties did not file written closing arguments or briefs.

II. JURISDICTION

The DPH was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA's implementing regulations, 34 C.F.R. §300.511, and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029 and E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. § 1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures.*

III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT

The circumstances giving rise to the Complaint are as follows:

The Student is female, Current Age, and attends Current Grade at a public school (the "Attending School"). The Student has been determined to be eligible for special education and related services as a child with a disability, Emotional Disturbance ("ED"), under the IDEA.

This case involves the placement, location and site of services for the Student. Specifically, a month into the 2012-2013 school year, Respondent placed the Student at the Attending School. Petitioner asserts that the Attending School is unable to implement the Student's Individualized Education Program ("IEP"). Petitioner also asserts that Respondent has failed to conduct necessary evaluations of the Student, has developed

[2] Ms. Long testified as a fact witness, not an expert witness. She was not called upon to render opinion testimony.

inappropriate post-secondary transition goals for the Student, and has failed to refer the Student to an appropriate agency to implement her transition plan.

IV. ISSUES

As confirmed at the PHC, in the PHO, and in opening statements at the DPH, the following issues were presented for determination at the DPH:

(a) Has Respondent denied the Student a Free Appropriate Public Education ("FAPE") by placing the Student at a school that cannot implement her current Individualized Education Program ("IEP") dated on or about February 13, 2012?[3]

(b) Has Respondent denied the Student a FAPE by failing to reevaluate her to determine whether she continues to need speech and language services?

(c) Has Respondent denied the Student a FAPE by failing to provide her speech and language services?

(d) Has Respondent denied the Student a FAPE by failing to conduct a vocational evaluation of the Student?

(e) Has Respondent denied the Student a FAPE by failing to update and/or to narrowly tailor the goals in her transition plan?

(f) Has Respondent denied the Student a FAPE by failing to refer her to the Rehabilitation Services Administration to implement her transition plan?

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[3] Apparently, Respondent declined to participate in the development of this IEP and the funding of a vocational assessment, perhaps because the Student was attending the Non-Public School as a result of a unilateral parental placement. However, at the PHC, as confirmed in the PHO that was not challenged, Respondent's counsel agreed to this issue. The undersigned therefore accepts the February 13, 2012, as the Student's IEP effective from that date. *See,* Section VI *infra.*

V. RELIEF REQUESTED

Petitioner requests the following relief:[4]

(a) a finding in Petitioner's favor on each issue raised in the DPC;

(b) an Order that Respondent place the Student, with funding and transportation, at one of the several schools of the Parent's choice or some other appropriate public or non-public school;

(c) an Order that Respondent provide the Student with adequate counseling and therapeutic services;

(d) an Order that Respondent implement an appropriate IEP and transition plan;

(e) an Order that Respondent pay for Rehabilitation Services Administration ["RSA"] to implement the Student's transition plan;

(f) reasonable compensatory education in the form of counseling and tutoring in academic subjects;

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[4] In the DPC, Petitioner also requested the following relief which the undersigned determined to be inappropriate: (a) an order that Respondent file a Response within 10 calendar days of the filing of the DPC, which is moot because Respondent filed a timely response; (b) an order that if Respondent fails to file a timely Response, the arguments and facts averred by the Parent be deemed true and accurate and act as a waiver, on the part of Respondent, of the desire to have a Resolution Session Meeting, and that the timeline of the DPH be accelerated accordingly, which is moot because Respondent filed a timely Response; (c) an order that Respondent, within 15 calendar days of receiving the DPC, file any Notice of Insufficiency, which is not ripe because Respondent has not filed a Notice of Insufficiency; (d) an order that if Respondent fails to file a Notice of Insufficiency within 15 calendar days of receiving the DPC, that this constitute a waiver on the part of Respondent to make such an argument subsequently, which is not ripe because Respondent has not filed a Notice of Insufficiency; and (e) an Order of attorney's fees and costs, which the undersigned lacks the authority to award.

(g) an Order that all meetings be scheduled through the Parent's counsel, in writing, via facsimile;

(h) an Order that Respondent provide the Parent the opportunity to inspect all evaluation reports and all educational records, including class schedules, on the Student;[5] and

(i) any other relief deemed appropriate.

VI. FINDINGS OF FACT

1. The Student is a female, Current Age. R-1-1.[6]

2. The Student resides in the District of Columbia. *Id.*

3. The Student has been determined to be eligible for special education and related services under the IDEA as a child with ED. *Id.*

2010-2011 School Year

4. During the 2010-2011 School Year, the Student attended the Prior Public School. P-18, Testimony of Parent.

5. The Student's behavior "was not good; she was always fighting, always getting suspended, and her grades went down." Testimony of Parent.

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[5] Petitioner's counsel withdrew the request in the DPC for an Order that Respondent provide counsel for the Parent copies of these documents.

[6] When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

6. On September 3, 2010, the Student was referred for discipline because she refused to follow staff instructions, was having difficulty with boundary (sic boundaries), and threatened staff. P-6-1, P-15-1.

7. On September 13, 2010, the Student was referred for discipline because she threw objects at her peers, began discussing a male student's genitals, and threatened him. P-6-2, P-15-1.

8. On September 21, 2010, the Student was referred for discipline because she walked out of the classroom without permission and had disruptive physical contact with a student. P-6-3.

9. On September 22, 2010, the Student was referred for discipline because she walked out of the classroom and did not return (P-6-4) and because she refused to comply with classroom assignments and rules and made excessive noise (P-6-5).

10. On September 29, 2010, the Student was referred for discipline because she threw objects at another student, left the classroom without permission, and did not return. P-6-6, P-15-1.

11. On September 30, 2010, the Student was referred for discipline because she refused to do her work and used her cell phone in class, made a sexual gesture at another student, and asked a third student to look at them. P-6-7, P-15-1.

12. On October 4, 2010, the Student was referred for discipline because she walked out of the classroom and did not return. P-6-8, P-15-1.

13. On October 8, 2010, the Student was referred for discipline because of fighting. P-15-1.

14. On October 12, 2010, the Student was referred for discipline because she argued with and threatened another student, and "swung at" the other student. P-6-10, P-15-1.

15. On October 20, 2010, the Student was referred for discipline because, after being hit by another student, she chased the student, threw objects at him, ran out of the classroom, threatened to injure the student if he returned to the classroom, passed notes back and forth with another student, took out her cell phone in class, walked out of class, turned up the radio, and sang loudly during instruction. P-6-11, P-15-1.

16. On November 5, 2010, the Student was referred for discipline because she was late to class, talked to other students in class, hugged a male student from behind, walked out of the classroom and did not return. P-6-12.

17. On November 15, 2010, the Student was referred for discipline because she was late, talked to other students in class, walked out of the classroom and did not return. P-6-14.

18. On November 16, 2010, the Student tapped her foot and umbrella during instruction, pushed items off a desk, work table and window ledge with her umbrella, and called the teacher an offensive term. P-6-15.

19. On December 6, 2010, the Student was suspended by the Prior Public School for three days for fighting. P-6-16, P-15-1.

20. On December 13, 2010, the Student was referred for discipline because she walked out of the classroom and did not return. P-6-17, P-15-1.

21. On February 18, 2011, an IEP Meeting was held for the Student to revise her December 13, 2010 IEP. P-18-1, -15; R-2-1, -15. The IEP developed at this meeting

provided for 31.5 hours per week of specialized instruction outside the general education setting, four hours per month of behavioral support services, and 30 minutes per month of Speech-Language Pathology services. P-18-8; R-2-8.

22. At the February 18, 2011 meeting, the IEP Team developed a Post-Secondary Transition Plan for the Student. P-18-12, -13; R-2-12, -13. That Transition Plan provided for the following activities and services: 30 minutes per month of school-based vocational and career presentations, 30 minutes per week of job application preparation, 30 minutes per month of job interviewing skills, and 30 minutes per week of Life Skills training. P-18-13; R-2-13.

23. At the February 18, 2011 meeting, the Parent, through her Educational Advocate, stated that the Prior Public School (the Student's then-current school) was not an appropriate placement. Respondent's representatives stated that placement was not on the agenda for that meeting. P-18-19.

24. According to the Parent, the Student never adjusted to the Prior Public School. Testimony of Parent.

<u>August 2011</u>

25. On or before August 17, 2011, Petitioner decided to place the Student unilaterally at Non-Public School. P-4-1.

26. On August 22, 2011, Petitioner gave notice to Respondent that the Parent intended to remove the Student from DCPS and unilaterally place her at Non-Public School within ten days, for the remainder of the 2011-2012 school year. P-2-1. Petitioner gave as the reason for this unilateral placement Respondent's alleged failure to provide

the Student with an appropriate placement following the closing of the Student's previous school. *Id.* The notice stated that the Parent would seek funding for the Student's placement through a due process hearing if necessary, as well as transportation services or reimbursement for the same. P-2-1 and -2.

27. On or about August 23, 2011, Petitioner's counsel was informed by Respondent's Office of Special Education that the Student had been placed at Ballou Senior High School. P-3-1.

28. On August 23, 2011, Petitioner's counsel asked Respondent's Office of Special Education for information about the Student's placement at Ballou Senior High School. *Id.*

2011-2012 School Year

29. During the 2011-2012 school year, the Student attended Non-Public School. Testimony of Parent; testimony of Student.

30. Initially, the Student was not fully invested in the Non-Public School program (Testimony of Non-Public School Admissions Director); she was "in the hallways a lot" (*Id.*); she had a lot of conflicts with other students (*Id.*); she often walked out of class (Testimony of [redacted]); she "was terrible" (Testimony of Parent); she had behavioral problems (*Id.);* and she had to adjust (*Id.)* which took three or four months (*Id.).*

31. After the Winter Break, the Student became invested in the program (Testimony of Non-Public School Admissions Director); she had significant growth (*Id.)*; she improved (*Id.*, Testimony of Parent); she engaged in less fighting (Testimony of Parent); she had an improved attitude and behavior (*Id.)* and she advanced from Non-

Public School's lowest behavior levels (red and yellow) to its highest levels (blue and gold) (Testimony of Non-Public School Admissions Director). Non-Public School staff members commented how much the Student had improved. *Id.*

32. The Student received counseling at the Non-Public School. Testimony of Student. The counselors would come to her classroom to get her, and then they would talk to her. *Id.*

33. The Student was reevaluated in December 2011. Testimony of Parent.

34. The Student testified that she was "tested" in the area of speech and language during the 2011-2012 school year but the Non-Public School Admissions Director and [redacted] testified that the Student was not "evaluated" in speech and language.

35. According to [redacted], the Student has not been "evaluated" in speech and language since 2008. Testimony of [redacted].

36. The undersigned finds that at least an informal assessment of the Student's speech and language abilities and needs was conducted during the 2011-2012 school year.

37. The Student received "consultative" speech and language services at the Non-Public School. Testimony of Non-Public School Admissions Director.

38. "Consultative" services means that a student meets with a speech language pathologist, for example, once per month for 30 minutes, to assess the student's speech language needs and to decide whether to change the frequency of the consultation.

39. The Student was given a written "test" of her vocational interests during the 2011-2012 school year. Testimony of Student.

40. During the first grading period of the 2011-2012 school year at the Non-Public School, the Student had a grade point average of 1.39. P-6-18.

41. During the second grading period of the 2011-2012 school year at the Non-Public School, the Student had a grade point average of 1.34. *Id.* She was disruptive, did little work, had difficulty staying in class, refused to complete assignments, and avoided class. *Id.*

42. During the third grading period of the 2011-2012 school year at the Non-Public School, the Student had a grade point average of 1.29. P-14-3.

43. During the fourth grading period of the 2011-2012 school year at the Non-Public School, the Student had a grade point average of 2.66. *Id.* She had shown great improvement in her participation and class work. *Id.,* testimony of Parent, testimony of Student.

44. For the 2011-2012 school year at the Non-Public School, the Student had a grade point average of 1.56.[7] P-13-1, P-14-3.

February 13, 2012 IEP Meeting

45. On February 13, 2012, an IEP Meeting was held for the Student to develop her annual IEP. P-8.

46. The IEP developed at this meeting provided for 26 hours per week of specialized instruction outside the general education setting and 1.5 hour per week of

[7] Contrary to this documentary evidence, the Parent testified that the Student was making C's when she began attending the Non-Public School, and that her grades "went up"; and the Student testified that she made C's and B's at the Non-Public School. Both the Parent and the Student may have been recalling the fourth grading period.

behavioral support services. P-8-8. This constitutes 100 percent of the Student's educational time. P-8-9.

47. The IEP Team determined that the Student required a "separate school," *i.e.*, a full-time placement in an educational environment specifically designed to address the needs of students with disabilities within a special educational school. *Id.* The IEP Team agreed that Non-Public School continued to be the appropriate location of services for the Student. P-8-10.

48. At the February 13, 2012 meeting the IEP Team developed a Post-Secondary Transition Plan for the Student. P-8-17 through -22.

49. The Transition Plan was based on an informal career interest inventory rather than a formal vocational assessment. Testimony of Non-Public School Admissions Director.

50. A formal vocational assessment would have been conducted, except Respondent was not providing funding to the Non-Public School for such an assessment. *Id.*

51. The Transition Plan provided for the following services: one hour per year of Career Day, 30 minutes per month of Career Exploration, one hour per year of College/Trade School Fair, two hours per year of Post-Secondary Tours, 30 minutes per month of Post-Secondary Advisement, 30 minutes per month of Interviewing Skills, 30 minutes per month of Job Prep, five hours per year of Community Service, one hour per month of School-to-Work, and 30 minutes per month of Banking and Budgeting Skills. *Id.*

52. The goals and services in the Student's Transition Plan were not tailored to the Student's interests and needs because no vocational evaluation had been conducted. Testimony of [redacted].

Discontinuation of Speech and Language Services

53. On or about February 13, 2012, the speech and language clinician who had been providing speech and language services to the Student signed a document stating that, after consultation with the Student's classroom teachers and an observation of the Student in the classroom, the clinician felt confident in discontinuing the Student's speech and language services because she had maximized the benefit from such services. P-10-1. The clinician also expressed her point of view that the Student's distractibility and behavior adversely affected her ability to participate appropriately in speech therapy sessions. *Id.*

54. On May 30, 2012, the same clinician sent the Parent a "completion of services" form for her signature, stating that the Student no longer would receive speech and language services. P-12-1.

55. On June 21, 2012, the Parent agreed with the proposed termination of speech and language services. P-11-1.

2012-2013 School Year

56. The Student returned to Non-Public School for the beginning of the 2012-2013 school year. Testimony of Parent; stipulation of counsel at DPH.

57. At the beginning of the 2012-2013 school year at Non-Public School, the Student was at the two highest of that school's five behavior levels. Testimony of Non-Public School Admissions Director.

58. On or about September 24, 2012, Non-Public School declined to continue the Student's unilateral parental placement (HO-1-2 n.1) and Respondent placed the Student at the Attending School (Stipulation of counsel at DPH).

59. The Attending School does not have a full time special education environment separate from the general education environment. Testimony of [redacted]

60. The Student had, and continues to have, difficulty with the transition to the Attending School, getting used to the Attending School class schedules, teachers, and other changes. Testimony of Parent.

61. The Student considers the class size at the Attending School—12 or more students—to be too big. Testimony of Student. She finds that many students in a class to be frustrating. *Id.* She preferred the class size at the Non-Public School—seven or eight students. *Id.*

62. During the first grading period of the 2012-2013 school year, the Student earned the following grades: one B, two B-s, one C, one C-, one D+, and two Fs. P-16-1, P-20-1.

63. During August and September 2012, the Student had numerous unexcused absences, failed to submit work repeatedly, and failed to make sufficient effort. P-17, P-21-2, P-22-1.

64. According to the Parent and the Student, the Student has not received any counseling at the Attending School. Testimony of Parent; testimony of Student.

65. According to the Student, the counselor introduced himself but has not "come to get me like they're supposed to." Testimony of Student.

66. According to the Student, no counseling sessions have been scheduled for her at the Attending School. *Id.*

67. According to the Student, she has received no behavioral supports at the Attending School. *Id.* The Student understands "behavioral supports" to mean someone coming to talk to her. *Id.*

68. According to Respondent's records, during September, 2012, the Student missed three scheduled individual counseling sessions due to absence from school. R-4.

69. According to the Student, she has not received any speech language treatment sessions. Testimony of Student. According to the Student, the speech-language provider introduced himself to her but has not "come to get me like they're supposed to." *Id.*

70. According to the Student, no speech-language sessions have been scheduled for her at the Attending School. *Id.*

71. According to Respondent's records, during October, 2012, the Student missed three speech-language treatment sessions due to school-wide testing or homecoming activities, and the provider missed one session. R-5.

72. According to Respondent's records, during November, 2012, the speech-language treatment provider missed a session. R-8. When the Student and the provider met the following week, the Student stated that she no longer received services, and the provider responded that she was providing consultative services. *Id.*

73. Between October 4, 2012 and November 20, 2012, the Student had 41 unexcused class absences. R-6-1.

74. The Student has had disciplinary referrals "all the time" for rudeness and "for getting into it with people." Testimony of Student.

75. As of late November 2012, the Student is failing all of her classes. Testimony of Parent.

76. On November 29, 2012, the Student was suspended for two days due to an altercation with another student. Testimony of Parent.

77. On November 29, 2012, the Parent met with the Attending School Special Education Coordinator, who stated to the Parent that the Student "was not doing that great," "was not getting what she needed" at the Attending School, and that the Attending School "was not appropriate for her." Testimony of Parent.

78. On November 29, 2012, the Attending School Special Education Coordinator stated to the Parent that the Student was not receiving counseling services "because she was not going; she was mostly in the hallway." Testimony of Parent.

October 16, 2012 IEP Meeting

79. On October 16, 2012, an IEP Meeting was held for the Student to develop her annual IEP. R-1.[8]

80. The Parent was not invited to, nor did she attend, this IEP Meeting. Testimony of Parent.

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[8] This IEP repeats some of the wording of the Student's prior IEPs, without updates, for example, referring to her as a student in a lower grade at a school she previously attended, and giving some anticipated dates of achievement that were in the past. Inasmuch as this IEP was developed after the filing of the DPC in the instant case, it is of little, if any significance in resolving the issues in the DPC.

81. The IEP developed at the October 16, 2012, meeting provided for 31.5 hours per week of specialized instruction outside the general education setting, four hours per month of behavioral support services, and 30 minutes per month of Speech-Language Pathology. R-1-7. The IEP did not specify that the Student required a "separate school" as did the February 13, 2012 IEP.

82. At the October 16, 2012 meeting the IEP Team developed a Post-Secondary Transition Plan for the Student. R-1-11 through -14. The services provided in that Transition Plan are as follows: 60 minutes per year of attendance at all school based vocational and career presentations, 30 minutes per month of job application preparation, 30 minutes per month of job interviewing skills, and 30 minutes per month of Life Skills training. *Id.*

Ballou Arts and Technology Academy

83. Ballou Arts and Technology Academy ("Ballou ATA") is a self-contained program for students with ED. Testimony of Amber Crowder.

84. At present there are 76 students at Ballou ATA, all of whom have the special education disability classification of ED, and all of whom have IEPs providing for full-time out of general education instruction. *Id.*

85. The average class size at Ballou ATA is five students. *Id.*

86. All teachers at Ballou ATA are special-education qualified. *Id.*

87. Ballou ATA staff includes behavioral technicians, three security guards, paraprofessionals, and social workers. *Id.*

88. Ballou ATA is located on the ground floor of Ballou High School, with a separate entrance, a self-contained lunch room, and no mixing of Ballou ATA students with the rest of the Ballou population. *Id.*

89. In addition to academic programs, Ballou ATA provides vocational programs including culinary arts and digital media arts. *Id.*

VII. RESPONDENT'S MOTION FOR DIRECTED VERDICT

At the PHC, at the conclusion of Petitioner's case, Respondent moved for a directed verdict on the following two issues, which the undersigned took under advisement pending a complete review of the record:

Failure to Reevaluate the Student

Respondent's counsel argued that Petitioner had failed to introduce evidence that the Student was in need of reevaluation to determine whether she continued to need speech and language services. Because IEP Teams have a continuing obligation to reevaluate a child, as often as once a year upon request, and at least once every three years, the undersigned has addressed this issue on the merits *infra.* Accordingly, Respondent's motion for a directed verdict on this issue is *denied.*

Failure to Refer the Student to the RSA

Respondent's counsel argued that Petitioner had introduced no evidence related to the services provided by RSA or why Respondent had an obligation to refer the Student to RSA to implement the Student's transition plan. The undersigned concurs and notes

that Petitioner did not even introduce evidence as to how RSA could assist in implementing the Student's transition plan. Accordingly, the undersigned *grants* Respondent's motion for a directed verdict on this issue. However, the Prehearing Order also specified as an issue whether the Student's transition plan was updated and its goals narrowly tailored. The undersigned notes that Petitioner seeks referral to RSA as a remedy under that issue.

VIII. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR § 5-E3030.3; *Schaffer v. Weast,* 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR § 5-E3022.16; *see also, N.G. v. District of Columbia,* 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

IX. CREDIBILITY

The undersigned found all of the witnesses to be credible, to the extent of their first hand knowledge.

X. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended "(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further

education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. § 1400(d)(1). *Accord*, DCMR § 5-E3000.1.

Reevaluation

2. Unless the parent and the Local Educational Agency ("LEA") agree that a reevaluation is unnecessary, a reevaluation of a child with a disability must be conducted at least once every three years, or more frequently if conditions warrant reevaluation, if the child's parent or teacher requests a reevaluation, or before determining that a child is no longer a child with a disability; but no more frequently than once a year unless the parent and the LEA agree otherwise. 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; DCMR § 5-E3005.7.

3. Petitioner asserts that Respondent failed to reevaluate the Student's disability as it relates to speech and language. However, the record evidence is that the Student was assessed by the speech and language clinician in February 2012, even though this may not have been an elaborate, formal evaluation.

4. Moreover, the statutory and regulatory provisions cited in Paragraph 2 above do not require that all assessments be conducted every three years. Rather, as part of a reevaluation, the IEP Team and other qualified professionals, as appropriate, are required to:

> (A) review existing evaluation data on the child, including—
> (i) evaluations and information provided by the parents of the child;
> (ii) current classroom-based, local, or State assessments, and classroom-based observation; and

> (B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
>
> (i) whether the child is a child with a disability ..., and the educational needs of the child, or, in the case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
>
> (ii) the present levels of academic achievement and related developmental needs of the child;
>
> (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
>
> (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

20 U.S.C. § 1414(c)(1); *accord*, 34 C.F.R. § 300.305.[9]

5. The IEP Team and other qualified professionals, as appropriate, may determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs. 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d).

6. In the instant case, the IEP Team had available the statement by the clinician that, after consulting with the Student's classroom teachers and an observation of the Student in her classroom, the clinician felt confident in discontinuing the Student's speech and language services, and that the student had maximized benefit from speech and language services.

7. Moreover, a LEA such as Respondent is not required to conduct such assessments unless requested to do so by the child's parents. 20 U.S.C. § 1414(c)(4)(b);

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[9] District of Columbia regulations paraphrase these federal provisions, while adding to the role of the IEP team determining whether the child has "a particular category of disability." DCMR § 5-E3005.4(b)(1).

34 C.F.R. § 300.305(d)(2).[10]

8. In the instant case, there is no evidence in the record that the Parent requested a new speech and language assessment.

9. Finally, the Parent consented to the discontinuation of speech and language services.

10. In these circumstances, Respondent was under no obligation to conduct any additional speech and language assessment.[11]

FAPE

11. The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

> special education and related services that –
>
> > (A) have been provided at public expense, under public supervision and direction, and without charge;
> >
> > (B) meet the standards of the State educational agency;
> >
> > (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> >
> > (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also,* 34 C.F.R. §300.17 and DCMR § 5-E3001.1.

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[10] District of Columbia regulations implementing these provisions of IDEA omit the references to determining the child's educational needs. DCMR § 5-E3005.6.

[11] Notwithstanding, Respondent has attempted to provide speech and language pathology services to the Student.

IEP Requirements

12. The "primary vehicle" for implementing the goals of the IDEA is the individualized education program ("IEP") which the IDEA "mandates for each child." *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). The IDEA defines IEP in relevant part as follows:

> (i) In general The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—
>
> * * *
>
> (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—
>
> (aa) to advance appropriately toward attaining the annual goals;
>
> (bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and
>
> (cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;
>
> * * *
>
> (VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and
>
> (VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—
>
> (aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to

> training, education, employment, and, where appropriate, independent living skills;
>
> (bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and
>
> (cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415 (m) of this title.

20 U.S.C. §1414(d)(1)(A).

13. To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child ... but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.'" *Anderson v. District of Columbia*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009), quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley,* 458 U.S. 176, 200, 207 (1982)("*Rowley*").

> [T]he "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Rowley, 458 U.S. at 201.

14. The LEA "has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE." *Schoenbach v. District of Columbia,* 36 IDELR 67, 106 LRP 46342 (D.D.C. 2006). IEP decisions are not made by majority vote. Rather, "[i]f the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing." *Id.,*

citing 34 C.F.R. Part 300, Appendix A -- Notice of Interpretations, 64 Fed. Reg. 12,473 (1999).

Alleged Failure to Conduct Vocational Evaluation and Alleged Inappropriate Transition Plan Goals

15. The Transition Plan goals in the Student's February 13, 2012 IEP were developed without a formal vocational assessment, despite the fact that the Student was in the second semester of her junior year and therefore had just over one year to make the transition to post-secondary education or employment.

16. The postsecondary goals in the Student's Transition Plan were not based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and therefore denied the Student a FAPE.[12] 20 U.S.C. §1414(d)(1)(A)(i)(VIII)(aa).

Appropriateness of the Attending School

17. The Attending School is not a "separate school" as required by the Student's February 13, 2012 IEP.[13] Accordingly, the Attending School is not an appropriate placement for the Student, and placing the Student there denied the Student a FAPE.

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[12] Issue (d) set forth in the PHO states: "Has Respondent denied the Student a FAPE by failing to conduct a vocational evaluation of the Student?" Issue (e) states: "Has Respondent denied the Student a FAPE by failing to update and/or to narrowly tailor the goals in her transition plan?" If, as here, a necessary vocational evaluation was not conducted, the goals cannot be found to be "narrowly tailored."

[13] Issue (a) set forth in the PHO states: "Has Respondent denied the Student a Free Appropriate Public Education ('FAPE') by placing the Student at a school that cannot implement her current Individualized Education Program ('IEP') dated on or about February 13, 2012." Respondent cannot, therefore, challenge the contents of that IEP.

Appropriateness of the School Proposed by Petitioner

18. The parties stipulated that the Non-Public School, which the Student previously attended, was and is an appropriate school for the Student and can implement her February 13, 2012 IEP. Stipulation of Counsel at DPH.

Appropriateness of Ballou Arts and Technology Academy

19. The Ballou ATA is a full-time special education school specially designed to address the needs of children with disabilities, specifically ED.[13]

20. The Ballou ATA can provide all of the services specified in the Student's February 13, 2012 IEP.

21. Accordingly, the Ballou ATA is an appropriate school for the Student.

Alleged Failure to Provide Counseling Services

22. The parties disagree as to whether the Student has received counseling services at the Attending School, and if so, how often, and whether any sessions that were missed were due to the Student's absences or some failure on the part of Respondent. However, the only issue in this case related to alleged failure to provide services specified in the Student's IEP is whether the Attending School failed to provide speech and language services.

23. Accordingly, the number of counseling sessions missed is not relevant to any of the issues in this case.

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[13] While the Student may benefit from an ED-specific program, her IEP does not require a program limited to her specific disability classification.

Alleged Failure to Provide Speech and Language Services

24. Speech and language services are not required by the Student's February 14, 2012 IEP, which is the IEP in effect when this DPC was filed.

25. Petitioner has not challenged the content of the February 14, 2012; in fact, the DPC seeks to enforce Respondent's compliance with that IEP.

26. In any event, the Parent agreed to the cessation of speech and language services.

27. Accordingly, Respondent did not deny the Student a FAPE by discontinuing her speech and language services.

Authority of Hearing Officer to Order Prospective Placement in a Private School

28. Under the IDEA, a Hearing Officer has broad discretion to determine appropriate relief, based upon a fact-specific analysis. *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005) ("*Reid*"). That relief may include an award of prospective services. *Id.* In all cases, an order of relief must be evidence-based. *Branham v. District of Columbia*, 427 F.3d 7 (D.C. Cir. 2005) ("*Branham*").

29. The appropriateness of prospective placement in a private school depends on whether the LEA can provide the Student a FAPE in a public school. As noted by the U.S. Court of Appeals for the District of Columbia Circuit:

> If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school; however, if there is an "appropriate" public school program available, *i.e.*, one "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.

Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C. Cir. 1991)(internal citations omitted); *see also, Shaw v. District of Columbia*, 238 F. Supp. 2d 127 (D.D.C. 2002) ("Although the IDEA guarantees a free appropriate education, it does not, however, provide that this education will be designed according to the parent's desires.") and *Kerkam v McKenzie*, 862 F.2d 884 (D.C. Cir. 1988) ("Thus, proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.").

30. If a public school can offer a FAPE, and the LEA has not demonstrated unwillingness or inability to modify the student's IEP, then a hearing officer may order a modification in the IEP rather than private school placement or reimbursement. *N.T. v. District of Columbia*, 839 F.Supp.2d 29 (D.D.C. 2012), *citing Jenkins v. Squillacote, supra at 305* and *School Comm. of Town of Burlington, Mass. v. Dept. of Educ. of Mass.*, 471 U.S. 359, 373-74 (1985).

31. Respondent has demonstrated willingness to modify the Student's October 16, 2012 IEP, which does not require a "separate school," to restore the provision of the February 13, 2012 IEP requiring such a "separate school," and there is at least one public school—the Ballou ATA—that can implement the Student's February 13, 2012 IEP. Accordingly, such a modification in the IEP and an appropriate change in the Student's school assignment comprise a more appropriate remedy than private school placement.

Compensatory Education

32. Under the IDEA, a Hearing Officer's broad discretion to determine appropriate relief, based upon a fact-specific analysis, may include compensatory award of prospective services:

> When a school district denies a disabled child of free appropriate education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place.

Reid at 521-24.

33. Because an order of relief must be evidence-based, educational programs, including compensatory education, must be qualitative, fact-intensive, and "above all tailored to the unique needs of the disabled student." *Branham.*

34. Mechanical calculation of the number of hours of compensatory education (a "cookie-cutter approach") is not permissible. *Reid.* Rather, compensatory awards "should aim to place disabled children in the same position they would have occupied but for the school district's violation of IDEA." *Id.* Awards compensating past violations must "rely on individual assessments." *Id.*

> Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.

Id.

35. However, formulaic calculations are not *per se* invalid, so long as the evidence provides a sufficient basis for an "individually-tailored assessment." *Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 206-207 (D.D.C. 2010) *(citing Brown v. District of Columbia*, 568 F. Supp. 2d 44, 53-54 (D.D.C. 2008) (internal quotation marks omitted).

36. The hearing officer must base a compensatory education award on evidence regarding the student's "specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.*

37. Equity sometimes requires "consideration of the parties' conduct, such as when the school system reasonably 'require[s] some time to respond to a complex problem," ... or when parents' refusal to accept special education delays the child's receipt of appropriate services.... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Id.*

38. In the instant case, the denial of FAPE flowed from two failures by Respondent: (a) the placement of the Student at a school that did not satisfy the IEP requirement of a "separate school," and (b) the failure to conduct a vocational evaluation and base the Student's Transition Plan on the goals derived from that evaluation.[15]

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[15] The alleged failure to provide counseling services is not an issue in this case. Therefore, the parties' dispute over the number of counseling hours provided to the Student is not material to this case, and does not enter into the determination of compensatory education. Even if the failure to provide counseling services were inferred in the issues set forth in the PHO, as of the filing of the DPC, the Student had been attending the Attending School only two weeks. The Student's February 13, 2012 IEP called for 1.5 hour per week of counseling services. At most, therefore, she missed three hours of counseling services, which the undersigned finds not to be material. The Student apparently has missed additional counseling sessions subsequent to the filing of the DPC, in most cases due to her absence from school, or school-wide testing. Even if Respondent's actions or inaction during the time period following the DPC were properly before the undersigned to adjudicate, the undersigned would find these missed counseling sessions to be predominantly caused by the Student's absences. Moreover, Petitioner's witnesses and documentary evidence did not draw any cause-and-effect connection between these missed counseling sessions and educational deficits suffered by the Student.

39. With regard to the failure to place the Student in a "separate school," Respondent argues that the evidence does not establish a cause-and-effect connection between the fact that the Attending School is not a "separate school" and the Student's educational deficits and behavior issues. Respondent points to the fact that when the Student began attending the Non-Public School—which is a "separate school" and provided a full range of counseling services—the Student still required more a semester to adjust to her new environment. Respondent infers that the Student's academic regression, and her behavior issues that have led to disciplinary action, simply reflect a period of adjustment, rather than being attributable to the fact that she was placed at a school that is not a "separate school."

40. Based upon the entire record, the undersigned disagrees with Respondent's conclusion that any change of school would have resulted in a semester of academic failure and behavior problems leading to disciplinary actions. Respondent's assumption that the Student's problems when she began attending Non-Public School were due simply to the change of schools from the Prior Public School disregards the fact that the Student was unsuccessful at the Prior Public School and brought her bad behavior to Non-Public School.

41. By way of contrast, by the beginning of the 2012-2013 school year, the Student had matured at Non-Public School, and had developed coping skills allowing her to be successful, particularly in the area of social-emotional functioning (achieving and maintaining the top two levels of a five-level behavior scale).

42. The undersigned attributes the Student's progress and good behavior in large part to the environment of a "separate school." The undersigned finds that if the Student

had been placed, even in the middle of a school year, at another "separate school," she would have been able to adapt quickly, would not have exhibited significant behavior problems or academic regression, and would have remained on her path to high school graduation.

43. The undersigned concludes that Respondent's placement of the student at a school that is not a "separate school," with the attendant reduction in individualized attention, structure and direction, caused the regression in her academic performance and behavior, leading to her failing grades and her disciplinary actions.

44. In other words, the undersigned finds that the inappropriate school placement, which is a denial of FAPE, caused the Student's educational harm.

45. The Student is entitled to an appropriate prospective placement. The Student and the Parent prefer as a remedy that she be reassigned to Non-Public School—which might well maximize her educational and social-emotional outcomes. However, under the prevailing case law, the undersigned cannot order that placement because Respondent is capable of offering, and willing to offer, an appropriate placement at a public school.

46. Nevertheless, the Student is entitled to compensatory education to restore her to the position she would have occupied academically and behaviorally if she had been placed at an appropriate school.

47. The undersigned has determined that the appropriate compensatory education for the improper school placement is additional counseling to assist the Student's adjustment to yet another school, as well as credit recovery services to enable the Student to earn credit for the courses she is failing that are required for graduation. The Student will be accountable for attending and participating in the counseling and credit recovery.

48. The undersigned has determined that the appropriate compensatory education for Respondent's failure to conduct a vocational evaluation before developing the Student's Transition Plan goals and services is a prompt, formal vocational evaluation and development of Transition Plan goals and services, as well as individualized vocational counseling.

Conclusion

49. Respondent did not deny the Student a FAPE by failing to reassess her need for speech and language services.

50. Respondent did not deny the Student a FAPE by discontinuing her speech and language services.

51. Respondent did not deny the Student a FAPE by failing to refer her to the Rehabilitation Services Administration to implement her transition plan.

52. Respondent denied the Student a FAPE by placing her at the Attending School, which cannot implement her February 13, 2012 IEP. The appropriate remedy is another change of schools. Respondent has at least one District of Columbia Public School that is appropriate for the Student and can implement that IEP. The Student will require additional behavioral support to adjust successfully and quickly to her next school.

53. Respondent denied the Student a FAPE by failing to conduct a vocational evaluation of the Student.

54. Respondent denied the Student a FAPE by failing to develop appropriate transition goals and services for her.

XI. ORDER

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

1. Not later than December 10, 2012, Respondent shall rescind the Student's Individualized Education Program ("IEP") from Meeting Date October 16, 2012 and reinstate the Student's IEP from Meeting Date February 13, 2012.

2. Not later than December 17, 2012,[16] Respondent shall send a Proposed Notice of Placement ("PNOP") to the Student (or to the Parent if the Student has been determined to be incompetent)[17], placing the Student at a public or non-public special educational school that is specifically designed to address the needs of students with disabilities, all of whose students have full-time special education IEPs. A special educational school that shares a building with a school that has non-disabled students, but which has separate entrances, hallways, lunchrooms and other facilities, such as the Ballou Arts and Technology Academy, shall be considered to be a special educational school for purposes of this placement. The PNOP shall be effective January 7, 2013. The PNOP or accompanying correspondence shall advise the Student (or the Parent if the Student has been determined to be incompetent) how she can obtain additional information about the designated school, how she can visit the school, and whom she should contact to arrange such a visit. Any request by the Student (or the Parent if the

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[16] The relatively short and specific deadlines in this Order are necessary to ensure that the Student is placed at a school that can implement her IEP by the beginning of the next semester, *i.e.*, January 7, 2013.

[17] The Student turned 18 on December 2, 2012, at which time the Parent's rights under IDEA transferred to the Student unless the Student has been determined to be incompetent under District of Columbia law, of which there is no record evidence.

Student has been determined to be incompetent) for information shall be responded to within one business day, and any request to visit the school shall be arranged within two business days, to facilitate the ability of the Student (or the Parent if the Student has been determined to be incompetent) to familiarize herself with the school prior to the Winter Break that begins December 24, 2012. The Student (or the Parent if the Student has been determined to be incompetent) shall not have the right to reject the school designated in the PNOP unless Respondent has offered one or more alternative(s) pursuant to Paragraph 3 below.

3. At the sole discretion of Respondent, the PNOP referred to in Paragraph 2 above may be accompanied by Respondent's offer to place the Student at one or more alternative schools (*i.e.* schools other than the one specified in the PNOP) and/or programs within those alternative schools. In that event, the correspondence shall advise the Student (or the Parent if the Student has been determined to be incompetent) how she can obtain additional information about the alternative schools and/or programs, how she can visit the alternative schools and/or programs, whom she should contact to arrange such visit(s), and whom she should contact with her choice between or among the school stated in the PNOP and the alternative(s) offered. The person(s) to contact must be employee(s) of District of Columbia Public Schools or the District of Columbia Office of the State Superintendent of Education, at least one of whom will be working every work day between the date the PNOP is issued and December 28, 2012 and who has/have the ability to process any change in the Student's school or program assignment in time for the resumption of school on January 7, 2013. Any request by the Student (or the Parent if the Student has been determined to be incompetent) for information shall be responded to

within one business day, and any request to visit school(s) or program(s) shall be arranged within two business days, to facilitate the ability of the Student (or the Parent, if the Student has been determined to be incompetent) to familiarize herself with the school(s) and/or program(s) prior to the Winter Break which begins December 24, 2012. If the Student (or the Parent, if the Student has been determined to be incompetent) chooses one of the offered alternative schools and/or programs, and notifies Respondent of her choice prior to December 28, 2012, Respondent shall revise the Student's school and/or program assignment accordingly, to be effective January 7, 2013, and confirm the same by issuing a revised PNOP no later than January 3, 2013. If no such choice is communicated by December 28, 2012, the Student shall attend the school in the PNOP effective January 7, 2013. Respondent, in its sole discretion, may extend the December 28, 2012 deadline.

4. Respondent and the Student (or the Parent if the Student has been determined to be incompetent) may mutually agree, in writing, to a different effective date for the Student to begin attending the school in the PNOP (or revised PNOP).

5. Not later than January 25, 2013, Respondent shall conduct a formal vocational evaluation of the Student, with a report. At the sole discretion of Respondent, in lieu of conducting such an evaluation, Respondent shall, not later than December 17, 2012, issue the Student (or the Parent if the Student has been determined to be incompetent) an Individualized Educational Evaluation letter authorizing a vocational evaluation and report.

6. Not later than ten school days after receiving the evaluation report referred to in Paragraph 5 above, Respondent shall convene a meeting of the Student's IEP Team[17] with all necessary members, including the Student (and the Parent, if the Student has been determined to be incompetent), to (a) review the results of the evaluation; (b) review any other updated information regarding the Student's performance, behavior, and disability(ies); and (c) review and revise, as appropriate, the Student's IEP, including transition goals and services and Extended School Year (ESY) services.

7. Respondent shall provide the following services as compensatory education for the denial of FAPE to the Student:

(a) Commencing the week of December 10, 2012, and continuing for the remainder of the 2012-2013 school year, including ESY or 2013 summer school if applicable, in addition to the counseling services provided in the Student's IEP, Respondent shall provide the Student one hour per week of individual counseling services, which may be after school at the option of the Student (or the Parent if the Student has been determined to be incompetent). If the counseling is conducted during the school day, the counselor or another employee or agent of the school will go to the Student's classroom and bring the Student to the site of the counseling. If the Student misses more than two such sessions without a legitimate excuse such as being absent from school that day due to illness, Respondent's obligation under this subparagraph shall cease.

(b) Commencing the week of December 10, 2012, and continuing for the remainder of the 2012-2013 school year, including ESY or 2013 summer school if

[17] Respondent may use a Multi-Disciplinary Team ("MDT") in lieu of an IEP Team, in which case all references to IEP Team in this Order shall be read as MDT.

applicable, Respondent shall provide the Student with credit recovery services to be attended after the school instructional day. If in any week other than school breaks, the Student does not attend and participate actively in credit recovery for at least four hours, she must make up the deficit within the two following weeks. If the Student fails to satisfy her obligations under the above schedule, Respondent's obligation under this subparagraph shall cease. The courses to be taken for credit recovery shall be those that are required for graduation for which the Student lacks credit. If credit recovery services are provided at a location other than the Student's school, Respondent shall provide transportation if the location is more than a half mile walk from the school and more than a half mile walk from the Student's home.

(c) Commencing the week after the revision of the Student's transition goals and services, Respondent shall provide the Student five hours of individual vocational counseling, at the rate of one hour per week for five weeks unless otherwise agreed in writing by Respondent and the Student (or the Parent, if the student has been determined to be incompetent).

8. All written communications from Respondent to the Parent and/or the Student concerning the above matters shall include copies to Petitioner's counsel by facsimile or email.

9. Any delay caused by the Parent, the Student, or the representatives of either of them (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests within one business day) shall extend Respondent's deadlines under this Order by the same number of days.

10. Petitioner's other requests for relief are DENIED.

IT IS SO ORDERED.

Dated this 3rd day of December, 2012

Charles M. Carron
Impartial Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial 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).