DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT,[1]

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

SHO Case No:
Erin H. Leff, Hearing Officer

2011 AUG -5 AM 11: 21

HEARING OFFICER DETERMINATION

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STATEMENT OF THE CASE

On May 23, 2011 Petitioner ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A) (Supp. 2010). Respondent filed a Response to

[1] Personal identifying information is provided in Appendix A, attached hereto. Student is of age and brought this matter on his own.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

Parent's Administrative Due Process Complaint Notice (HO 4) on June 3, 2011. A resolution meeting was held on June 3, 2011. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on July 11 and July 12, 2011 so indicating. HO 7. By email dated June 21, 2011, Petitioner's counsel notified me the parties wanted to extend the resolution period by two weeks. I responded on the same date, indicting such an extension was not possible under the IDEA and suggesting they continue to work toward resolution of the complaint despite the resolution period ending on June 22, 2011. (HO 9) The parties did not respond to my email. As a result, the 45 day timeline began to run on June 23, 2011, and my Hearing Officer Determination is due on August 5, 2011.

At all times relevant to these proceedings Petitioner was represented by Carolyn Houck, Esq., and Laura George, Assistant Attorney General, represented DCPS. I held a telephone prehearing conference on June 29, 2011. HO 7. By agreement of the parties, the hearing was scheduled for July 29, 2011. The hearing was held as scheduled in Room 2003 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE(S)

The issues are

1) Whether DCPS denied the student a free, appropriate public education ("FAPE ") by failing to develop a current IEP for the student;

2) Whether DCPS denied the student a FAPE by failing to provide him an appropriate placement for the 2010 - 2011 school year. This claim includes an

allegation that DCPS did not issue a prior Notice of Placement for the 2010-2011 school year;

3) Whether DCPS denied the student a FAPE by failing to re-evaluate him in all areas of suspected disability for over three years.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner found in Appendix A are:

P – 1	07/22/11	Disclosure Letter
P – 2	03/29/08	Psychological Evaluation Report
P – 3	06/30/08	Vocational Report
P – 4	12/11/09	30-Day Review IEP
P – 5	05/23/11	Stay Put Letter.

Exhibits admitted on behalf of Respondent found in Appendix B are:

R – 1	2008 HOD
R – 2	2008 Academic Assessment
R – 3	Letter of Invitation to IEP Meeting 05/5/10
R – 4	Letter of Invitation to IEP Meeting 05/27/10
R – 5	2008 Social History
R – 6	Notice of Placement to 5/27/10
R – 7	8/31/10 Progress Reports.

Exhibits admitted on behalf of Hearing Officer found in Appendix C are:

HO – 1	Administrative Due Process Complaint Notice dated May 23, 2011
HO – 2	Notice of Hearing Officer Appointment dated May 24, 2011
HO – 3	Prehearing Conference Scheduling Letter and Timeline Order of May 26, 2011
HO - 4	DCPS Response dated June 3, 2011 to Administrative Due Process Complaint
HO - 5	Prehearing Conference Notice of June 5, 2011
HO – 6	Prehearing Order dated June 30, 2011
HO - 7	Resolution Period Disposition Form Executed July 11 and July 12, 2011
HO – 8	Multidisciplinary Team Prior to Action Notice of May 27, 2010
HO – 9	Miscellaneous emails
HO – 10	Proposed Hearing Officer Exhibits List.

B. Testimony

Petitioner testified and presented the following witnesses:

- Director,
- Special Education Teacher,

DCPS presented the following witness:

- Special Education Coordinator,

FINDINGS OF FACT

Based upon the evidence presented, I find[3] the following facts by a preponderance of the evidence:

1. Student is years old. His last school of attendance, prior to filing this due process complaint, was a private, special education school for students between the ages of 16 and 22 requiring full time special education programs and services. Testimony of Petitioner; Testimony of Speede; R – 7.

2. Student attended in the 2009 – 2010 school year. Testimony of Petitioner; Testimony of

3. Student was unavailable to attend for an unspecified number of days at the end of May and beginning of June 2010. He did not attempt to re-enroll in school until February 2011. Stipulation of parties entered into the record at hearing on July 29, 2011.

4. In February 2011 Student attempted to enroll at Student had visited on one prior occasion to determine the paperwork required for him to enroll. When he attempted to enroll in February 2011 staff told Student he could not

[3] During the hearing on July 29, 2011, the parties entered stipulations of fact into the record. They are included in my Findings of Fact to provide a complete, logical and sequential factual context for my Conclusions of Law and Order. The stipulations are specifically identified in the Findings of Fact.

enroll because he did not have his transcript. Student informed the staff he had an IEP. Testimony of Petitioner.

5. The IEP document dated 12/11/09 identified as a 30 day review IEP includes only a cover page and a signature page. It identifies Student's attending school as

P – 4.

6. DCPS did not provide Student a current individualized educational program ("IEP") or placement from the middle of February 2011 forward. Stipulation of parties entered into the record at hearing on July 29, 2011.

7. There is an invitation to an IEP meeting dated 5/5/10 for an IEP meeting scheduled to occur on 5/6/10. The invitation is addressed to Student's mother. Student was at that time. R -3.

8. There is an invitation to an IEP meeting dated 5/27/10 for an IEP meeting to occur on the same date. The invitation is addressed to Student's mother. Student was 19 at that time. R – 4. Student's teacher at Student's school of enrollment at the time of the meeting, was unaware of and did not attend this 5/27/10 IEP meeting. Testimony of

9. A Prior Notice of Placement ("PNOP") to School was issued on March 27, 2010. It is titled a Prior to Action Notice. R – 6.

10. Student received a psychological evaluation and a social history evaluation in March 2008, an academic assessment in May 2008 and a career/vocational evaluation in June 2008. P – 2; R – 5; R – 2; P – 3.

11. does not provide high school diplomas to students who receive full time special educations services. Students receiving full time special education receive certificates and may participate in internships that can result in jobs upon school completion. There are no pupils

of Student's age receiving full time special education services at Testimony of

12. provides programs for special education students in 4 tracks. Students are grouped in classes based on their academics rather than their grades levels. Students are assessed using the Comprehensive Adult Student Assessment System ("CASAS"). In addition, there are prevocational experiences, portfolio based experiences and an external diploma program ("EDP"). Students who successfully complete the EDP receive a diploma from in the District of Columbia Public Schools. Students at receive instruction in small classes of 8 or less with one teacher. Students also receive transition planning in work and life skills. provides specialized instruction and related services as required by students' IEPs. Students move through the program offerings based on the scores they achieve on the CASAS. Testimony of Testimony of

13. Student has been attending for summer school. P – 5; Testimony of

14. Student is pursuing an external diploma. He is interested in working as an electrician or in construction. Student is currently in the pre-vocational program. His scores are just short of those needed for the EDP track. He has shown limited regression despite his absence from school for approximately one year. It is reasonable to expect he will enter the EDP track and receive his diploma in less than two years. Testimony of Testimony of Testimony of Petitioner.

15. Student is motivated to complete the program at He shows good work habits. For example, he is a kinesthetic learner who learns by doing. Recognizing this, Student does much of his written work twice. First he writes it out by hand; then he enters it electronically. Student

requires support in the classroom to assure he stays focused and on task. Testimony of Testimony of Petitioner.

16. Student does not want to attend public school. He wants to continue attending He is willing to do the work and attend regularly. Testimony of Petitioner.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. I find all witness testimony presented in this matter to be credible.

1. Whether DCPS denied the student a free, appropriate public education ("FAPE ") by failing to develop a current IEP for the student

Under the IDEA each local education agency is required to provide a FAPE to each student found eligible for special education and related services. A FAPE is:

> Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . .[a]re provided in conformity with an . . .IEP that meets the requirements of [the IDEA regulations].

34 C.F.R. § 300.17. *See also*, D.C. Code § 30.3001.1.

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the affect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and

services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

The school district is required to take steps to ensure the parent of a child with a disability is present at each IEP meeting. This includes notifying the parent early enough to ensure s/he will have the opportunity to attend. 34 C.F.R. § 300.322 and D.C. Code § 30.3003.6. In the instant matter, Student, who reached the age of majority in November 2008, had been attending Building for the Future, a private, full time special education school in the 2009 -2010 school year. At the end of that school year Student was unavailable to attend school for a number of days in May and June. Respondent provided two invitations to IEP meetings that appear to have been scheduled on or around the time period during which Student was unavailable. The first invitation is dated May 5, 2010. It is addressed to Student's mother and invites her to an IEP meeting on May 6, 2010. The second invitation, dated May 27, 2010 also is addressed to student's mother and invites her to a meeting to be held that same date. There is no indication

either invitation was sent to Student who was of age.[4] Here the first notice provided only 24 hours notice and the second notice provided, at best, only a few hours notice as it was dated the same date as the meeting was scheduled to be held. Not only did DCPS fail to invite Student to the IEP meetings,[5] but the invitations also do not provide adequate notice to Student's mother. It is unlikely that a few hours notice provided her the required opportunity to attend the meeting. Furthermore, there is no evidence that either Student or his mother attended meetings to develop an IEP on either of these dates, and Student's then current teacher stated he had no knowledge of a meeting on May 27, 2010.

There is no current IEP in evidence. The only IEP document in evidence is a document dated 12/11/09 identified as a 30 day review IEP. It includes only a cover page and a signature page. It identifies Student's attending school as It does not meet the definition of an IEP. *See,* pp. 7 & 8, *supra.* There is no IEP document in evidence with a date subsequent to 12/11/09. The meetings for which there are invitations in May 2010 were meetings at which an IEP was to have been developed, but this did not occur. DCPS has stipulated it did not provide Student a current IEP from February 2011 forward. I therefore find, by a preponderance of the evidence, that DCPS denied the student a free, appropriate public education ("FAPE ") by failing to develop a current IEP for the student from May 2010 forward.

2. *Whether DCPS denied the student a FAPE by failing to provide him an appropriate placement for the 2010 - 2011 school year. This claim includes an allegation that DCPS did not issue a Prior Notice of Placement for the 2010-2011 school year*

[4] IDEA requires that when a student with a disability reaches the age of majority, the public agency, here DCPS, must provide any notice required to both the student and the parent. In addition, all rights transfer to the child. See, 34 C.F.R. § 300.520. In the District of Columbia the age of majority is 18. Title 46, Chap. 1, § 46-101.

[5] Student also should have been invited to the IEP meetings because transition was going to be discussed. 34 C.F.R. § 321(b)(1).

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The public agency is to ensure the parent[6] is a member of the team making placement decisions. 34 C.F.R. § 300.327.

The PNOP and related documents offered by DCPS in support of these efforts to reassign Student to raise many questions. Respondent has provided a PNOP[7] for dated 5/27/10. This date falls within the time period in which Student was unavailable. This document is addressed to Student, unlike the invitations to meeting. It is not, however, addressed to Student's mother.[8] Student did not receive this PNOP when it was issued and was not aware of the decision to assign him to It specifies he is to be out of general education full time. It also indicates the team making this determination consisted of Student, a principal of an unidentified school and the LEA. It does not identify who is representing the LEA at the meeting, nor does it include a representative of Student's then current placement at who would have been able to speak to his educational placement needs.

The existence of the form alone cannot meet the requirement of having provided the necessary notice of the change of placement. Neither Student nor his mother participated in the determination to send Student to and neither received notice that such a determination had occurred. Respondent argued that the hearing officer should consider that the May 27, 2010 PNOP assigning Student to was provided to Petitioner's counsel on June 29, 2011. This argument is apparently intended to advance the notion that providing the PNOP on June 29,

[6] As noted in FN 4, Student who had reached the age of majority should have been included in this decision making process.
[7] The document is titled a Prior to Action Notice.
[8] As noted above at FN 4, the notice should have been provided to both Student and his mother.

2011 retroactively cured the failure to provide the PNOP in May 2010. I decline to accept this position. It is abundantly clear that providing notice is intended to precede an action in order to allow an individual to respond to the proposal if s/he so wishes. Notice cannot, by its nature, effectively occur almost one year after the action it is addressing was to have begun.

Thus I find there was no PNOP for the 2010 -2011 school year. Moreover, DCPS has stipulated that from the middle of February 2011 forward it did not provide a placement for Student.[9] Therefore, I find by a preponderance of the evidence DCPS denied the student a FAPE by failing to provide him an appropriate placement for the 2010 - 2011 school year.

At hearing Respondent provided testimony suggesting a placement at would be able to provide Student a FAPE for the 2011- 2012 school year. I find, however, that the program at is not appropriate for student. First, student would be the only year old, grader receiving full time special education outside of the programs for students with autism and for students with intellectual disabilities at His classmates, therefore, would all be many years younger and he, as a result, would not have a peer group in the school. In addition Student would not be able to earn a high school diploma. In contrast, the students at are older, ranging in age from 16 to 22. They are grouped by educational skill level rather than by grade level. Student will be able to earn a high school diploma, probably in less than two years. I find, therefore, by a preponderance of the evidence that is not an appropriate placement and Building for the Future is an appropriate placement for Student.

3. Whether DCPS denied the student a FAPE by failing to re-evaluate him in all areas of suspected disability for over three years.

[9] Student has been attending BFTF for summer school. This placement was established by Petitioner's counsel's letter of 5/23/11 indicting Student had a right to attend BFTF during the due process complaint proceedings.

IDEA requires that a reevaluation of a student be conducted at least once every three years unless the parent and public agency agree a reevaluation is not necessary. 34 C.F.R. §300.303(b). Petitioner provided copies of evaluations conducted between March and June of 2008. In addition, the 12/11/09 30 day review IEP introduced by Petitioner indicates Student's last eligibility determination occurred on 5/27/09. However, no evidence, either documentary or testimonial, related to this 5/27/09 eligibility determination was introduced into evidence. Petitioner introduced no testimony regarding evaluations at all. In sum, other than the documents identified, Petitioner has not provided evidence regarding conducting an evaluation. I have no basis to determine whether an evaluation was or was not conducted subsequent to 2008. Therefore, Petitioner has failed to meet the burden of proof as to the provision of a reevaluation. I, therefore, find by a preponderance of the evidence that DCPS has not denied the student a FAPE by failing to re-evaluate him in all areas of suspected disability for over three years.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1, Student was denied a FAPE by DCPS failure to provide him a current IEP, as discussed above.

2 Student was denied a FAPE by DCPS' failure to provide him an appropriate placement in the 2010 - 2011 school year, as discussed above; and

3. Student was not denied a FAPE by DCPS' failure to reevaluate him within three years of his prior evaluation, as discussed above.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

IT IS SO ORDERED:

1. Within 10 business days of the issuance of the Hearing Officer Determination, DCPS shall provide Student a prior notice of placement to for the 2011 – 2012 school year.

2. DCPS shall provide funding for all related costs required for Student to attend Building for the Future for the 2011 – 2012 school year including related services and transportation to and from as required, for educational and IEP program purposes; and

3. DCPS is to convene an MDT meeting within 15 business days, to include relevant staff from Petitioner and his attorney, if Petitioner so desires. At the meeting the MDT including staff from Petitioner and his attorney, if Petitioner so desires, shall develop an IEP for the 2011 -2012 school year addressing all of Student's known educational needs. This IEP shall identify Building for the Future as the school Student will be attending

IT IS SO ORDERED:

August 5, 2011
Date

Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).