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: August 14, 2011

Hearing Officer: Jim Mortenson

Case No:

2011 AUG 15 AM 9:50

HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed by the Petitioner on May 31, 2011. The Petitioner is represented by Domiento Hill, Esq., and the Respondent is represented by Laura George, Esq.

A response to the complaint was timely filed on June 9, 2011. A prehearing conference was held on June 13, 2011, and a prehearing order issued on that date. A resolution meeting was held June 13, 2011, and the parties did not reach a settlement or any other agreements changing the 30 day resolution period.

The hearing was convened and held on August 4, 2011, in room 2004 at 810 First Street NE, Washington, D.C. The due date for the hearing officer determination (HOD) is August 14, 2011. This HOD is issued on August 14, 2011.

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

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. 5, Chap. 30.

III. ISSUES and RELIEF SOUGHT

The issues to be determined by the IHO are:

(1) Whether the Respondent refused to provide the Petitioner with access to requested educational records since July 19, 2010, and whether such refusal has significantly impeded the Petitioner's opportunity to participate in the decision making process regarding the provision of a free appropriate public education (FAPE) to the Student?

(2) Whether the Respondent has failed to offer or provide the Student with an individualized education program (IEP) reasonably calculated to provide educational benefit when the IEP proposed May 23, 2011:
   a) lacks full-time special education services;
   b) lacks a low student to teacher class ratio;
   c) lacks a therapeutic environment; and
   d) lacks transition services?

(3) Whether the Respondent has failed to provide the Student an appropriate secondary school education when it continually removed the Student from classes for disciplinary reasons?

The substantive requested relief at the time of hearing included:

(1) A determination that the Student was denied a FAPE because the Petitioner was significantly impeded from participating in the decision making process.

(2) Revisions to the Student's IEP including:
   1) 26.5 hours per week of specialized instruction
   2) 60 minutes per week of speech and language services
   3) 60 minutes per week of behavioral support services
   4) Transition services
   5) A behavioral intervention plan (BIP)

(3) Compensatory education (unspecified due to alleged lack of access to records)

(4) Placement at School with transportation, a segregated private special education day school.

IV. EVIDENCE

Five witnesses testified at the hearing, four for the Petitioner and one for the Respondent.

The witnesses for the Petitioner were:

1) The Petitioner (P)

2) Dori Cook, Educational Advocate (D.C.)

3) Natasha Nelson, Psychologist (N.N.)

4) Executive Director,

The witness for the Respondent was Special Education Teacher/Case Manager,

22 documents were disclosed by the Petitioner and 19 were admitted into evidence.[2] The Petitioner's exhibits are:

Ex. No.	Date	Document
P 3	June 13, 2011	Resolution Period Disposition Form
P 5	November 27, 2010	Comprehensive Psychoeducational Evaluation
P 6	November 17, 2010	Speech & Language Evaluation
P 7	December 2, 2010	Part II Career Exploration Assessment For [Student]
P 8	March 14, 2011	Functional Behavioral Assessment
P 9	March 13, 2009	Academic Evaluation
P 10	July 22, 2011	Letter from Davis to Parent/Guardian
P 11	October 18, 2010	Proposed Settlement
P 12	February 17, 2010	IEP
P 13	February 3, 2011	IEP, Advocate's meeting notes, IEP Team Meeting Notes
P 14	May 23, 2011	IEP, [IEP Team] Meeting Notes, Advocate's meeting notes, IEP Team Meeting Notes
P 15	June 10, 2011	Notice of Final Disciplinary Action [for incident on September 16, 2010], Notice of Final Disciplinary Action [for incident on October 13, 2010], Notice of Final Disciplinary Action [for incident on December 7, 2010], Notice of Final Disciplinary

[2] P 1, P 2 and P 4 were not admitted as they were pleadings and orders already part of the record.

		Action [for incident on February 7, 2011], Notice of Final Disciplinary Action [for incident on March 21, 2011], Notice of Final Disciplinary Action [for incident on May 12, 2011].
P 16	June 10, 2011	Student Discipline Report
P 17	June 10, 2011	Attendance Summary
P 18	May 2, 2011	Discipline Referral Form
P 19	May 12, 2011	[Discipline report]
P 20	May 2, 2011	Discipline Referral Form [See P 18]
	May 12, 2011	[Discipline report, See P 19]
	May 31, 2011	Student Discipline Report
P 21	[Undated]	Resume of Heather A. Jackson-Peña
P 22	[Undated]	Curricula Vitae of Dr. Natasha Nelson

Nine documents were disclosed by the Respondent and all were admitted into evidence. The Respondent's exhibits are:

Ex. No.	Date	Document
R 1	May 23, 2011	IEP
R 2	March 14, 2011	Functional Behavioral Assessment
R 3	May 23, 2011	[BIP]
R 4	May 23, 2011	IEP Team Meeting Notes
R 5	June 10, 2011	Transcript, Letter of Understanding
R 6	March 25, 2011	Report to Parents on Student Progress
R 7	May 12, 2011	[Discipline report]
	May 2, 2011	Discipline Referral Form
	May 31, 2011	Student Discipline Report
	May 2, 2011	Discipline Referral Form
	May 31, 2011	Student Incident History
R 8	May 31, 2011	Attendance Summary
R 9	June 10, 2011	Student Schedule

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 year old learner with a disability.[3] She currently attends School and will be entering the grade for the 2011-2012 school year.[4]

[3] Testimony (T) of P, R 1/P 14.

2. The Student has been determined eligible for special education and related services under the definition of mental retardation (referred to as intellectual disability by the Respondent).[5] The Student's verbal comprehension skills are in the borderline range.[6] Her perceptual reasoning, working memory, and processing speed are all in the extremely low range.[7] Her academic skills are primarily in the second to third grade range.[8] Her vocabulary skills are in the moderately to severely below average range, but her articulation, oral motor, fluency, and vocal skills are normal.[9] The Student understands right from wrong and lacks the ability to regulate her sexual and aggressive impulses, often reacting quickly and aggressively.[10] She has difficulty with unstructured settings and can get off-task, becomes aggressive, and talks back to teachers.[11]
3. At least since the IEP team meeting on February 3, 2011, the Petitioner requested records concerning discipline of the Student.[12] The Respondent provided reports of discipline that occurred in September and October of 2010.[13] At the resolution meeting held June 13, 2011, addition discipline records created in May 2011 were provided to the Petitioner.[14] No additional discipline records exist, but Petitioner believes they should.[15]
4. As part of the prehearing order for this matter, the IHO ordered the Respondent to, among other things, "**provide to the Petitioner:** a list of the types and locations of all education

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[4] T of P, T of L.W.
[5] T of P, R 1/P 14
[6] P 5.
[7] P 5.
[8] P 5.
[9] P 6.
[10] P 5.
[11] P 8.
[12] P 13, T of D.C., T of P. (February 3, 2011 is the earliest identified date such records were requested from the Respondent.)
[13] P 3.
[14] P 3.
[15] T of D.C.

records collected, maintained, or used by the Respondent concerning the Student, pursuant to 34 C.F.R. § 300.616[.]"[16] The Respondent never complied with this order.

5. The Student's IEP, as revised in February 2010, included academic goals in the areas of math, reading, and writing, and functional goals in the areas of communication/speech and language and emotional, social, and behavioral development.[17] The math goal included standards largely on the fourth grade level, and one on the first grade level.[18] The reading goal was based on first, fourth, and sixth grade standards.[19] The writing goal was based on third and fifth grade standards.[20]

6. The special education and related services in the IEP revised February 2010 included the following:[21]

   A) Specialized instruction outside the general education setting for 20 hours per week.

   B) Specialized instruction inside the general education setting for 6.5 hours per week.

   C) Speech and language services outside the general education setting for 30 minutes per week.

   D) Behavioral support services outside the general education setting for 30 minutes per week.

7. The supplementary aids and services in the IEP revised February 2010 included the following:[22]

   A) Classroom accommodations consisting of:[23]
      1) Repetition of directions
      2) Simplification of oral directions

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[16] Prehearing Order, June 13, 2011, ¶ 4.
[17] P 12.
[18] P 12.
[19] P 12.
[20] P 12.
[21] P 12.
[22] P 12.
[23] These accommodations are identical to the accommodations listed for the Student's participation in the DC-CAS testing. The frequency and duration of these services were not recorded in the IEP, as required by 34 C.F.R. § 300.320(a)(7).

3) Interpretations of oral directions
4) Calculators
5) Write in test books
6) Small group testing
7) Location with minimal distractions
8) Breaks between subtests
9) Extended time between subtests

B) Bus transportation.

8. During the 2010-2011 school year the Student was in a cluster program consisting of a group of four teachers with four classes of students with intellectual disabilities.[24] This model will be used in the 2011-2012 school year.[25] The class sizes are 12 students to two or three adults (a teacher, aide, and intern if available).[26]

9. A November 2010 psychoeducational assessment report recommends the Student be provided the following "interventions:"[27]

A) Classroom with very low teacher/student ratio
B) Longer assignments broken down to smaller units
C) Active involvement (hands on) with as many classroom assignments and activities as possible
D) Therapeutic school environment (counseling immediately upon behavioral disruption)
E) Positive reinforcement for gradual successful attainment of incrementally set objectives

10. A March 2011 functional behavioral assessment report recommends the following to address the Student's behavior:[28]

A) A BIP
B) Highly structured classrooms with low student to teacher ratio
C) Instructions given one step at a time
D) Strict set of consequences for off-task behavior, including calling her mother
E) Positive reinforcements[29]

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[24] T of L.W.
[25] T of L.W.
[26] T of L.W.
[27] P 5.
[28] P 8.
[29] L.W. testified that the Student responds well to positive reinforcements.

11. The IEP was reviewed in February 2011, and discussion of the IEP revision occurred until the proposed revision in May 2011.[30] The IEP proposed in May 2011 included three math goals based on standards in the approximate 4th and 6th grade levels.[31] There were three reading goals that were not based on state standards.[32] The IEP indicated some assessments of the student's reading were done in December 2010, and her reading skills showed no growth on the Woodcock Johnson III and some growth on the Running Record Assessment, both remaining around the second to third grade level at that time.[33] Her reading skills were still at elementary levels in the proposed IEP.[34] The writing goals were revised as three goals and one (goal 2) was based on a third grade standard while the first and third goals were based on fifth grade standards.[35] The communication/speech and language goals were not changed.[36] The emotional, social, and behavioral development goals were reworded but not significantly different, dealing with avoiding distractions, following rules, and appropriately addressing her concerns.[37]

12. The special education and related services in the IEP revised May 2011 included the following:[38]

    A) Specialized instruction outside the general education setting for 19.5 hours per week.

    B) Speech and language services outside the general education setting for 240 minutes per month (≈ 60 minutes per week).

    C) Behavioral support services outside the general education setting for 240 minutes per month (≈ 60 minutes per week).

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[30] P 13, R 1/P14.
[31] R 1/P 14.
[32] R 1/P 14.
[33] P 12, R 1/P 14.
[34] R 1/P 14.
[35] R 1/P 14.
[36] R 1/P 14.
[37] R 1/P 14.
[38] R 1/P 14.

D) Extended school year services for reading, writing, and math for five hours per day for about four weeks in July 2011, and behavioral support services outside of the general education setting for 30 minutes per week during this time.

E) Classroom accommodations consisting of:[39]
   1) Repetition of directions
   2) Simplification of oral directions
   3) Interpretations of oral directions
   4) Calculators
   5) Write in test books
   6) Small group testing
   7) Location with minimal distractions
   8) Breaks between subtests
   9) Extended time between subtests

F) Bus transportation.

13. Elective mainstream courses without specialized instruction were proposed to enable the Student to work on her functional skills and be in a less restrictive environment.[40] The Respondent intends to provide the Student with the support of a classroom aide during her elective mainstream courses, for about six and a half hours per week, but did not put this in the IEP because the aide is not "dedicated" to the Student.[41]

14. The proposed IEP lacks measurable postsecondary goals.[42] The IEP lists "Apprenticeship," "Vocational Training," "Full-Time Supported Employment," "Part-Time Supported Employment," "Living Alone, With Friends," "Living with Family," "Supported Living."[43] Transition services include: vocational preparation, career exploration, daily living skills (all provided by the Respondent); and the following courses of study: Reading Resource, Writing Resource, Math Resource, Daily Living Skills, and Career Skills.[44]

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[39] As in the prior IEP, these accommodations are identical to the accommodations listed for the Student's participation in the DC-CAS testing. The frequency and duration of these services were not recorded in the IEP, as required by 34 C.F.R. § 300.320(a)(7). They are unchanged from the prior IEP revision.
[40] T of L.W.
[41] T of L.W.
[42] R 1/P 14.
[43] R 1/P 14.
[44] R 1/P 14. (It appears that the service and course called "Daily Living Skills" is one and the same.)

15. The Student is not going to graduate from School because she is not being awarded Carnegie Units.[45] The Student does not have such a significant cognitive disability that she must be assessed on alternate academic achievement standards.[46]

16. The Student was accepted at Vocation Program on July 22, 2011.[47] is a non-public day school for students with disabilities and is located in the District of Columbia.[48] Academic education is provided, including the provision of Carnegie Units, as well as vocational training.[49] Academic classes are taught by certified teachers and vocational classes by master teachers.[50] There are counselors and behavioral staff who immediately address behavior problems.[51] The school has a certificate of approval from the Office of the State Superintendent of Education.[52]

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:

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* DCMR 5-E3030.14. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to meet their burden. DCMR 5-E3030.14. The recognized standard is preponderance of the evidence. *See, e.g.,*

[45] T of L.W.
[46] T of L.W., P 12, R 1/P 14.
[47] P 10.
[48] T of T.K., P 10.
[49] T of T.K.
[50] T of T.K.
[51] T of T.K.
[52] T of T.K.

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. Federal regulations at 34 C.F.R. § 300.613(a) provides:

> Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

3. Federal regulations at 34 C.F.R. § 300.616 provides:

> Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

4. The Petitioner sought disciplinary records regarding suspensions, including in-school suspensions, of her child in February 2011. The Respondent provided records of the two behavior incidents that occurred in September and October of 2010. In June 2011 additional discipline records of things that happened after the February 3, 2011, meeting were provided. The Petitioner and her advocate believed more records should have been created.

5. As part of the prehearing order for this matter the IHO ordered the Respondent to provide the Petitioner "a list of the types and locations of all education records collected, maintained, or used by the Respondent concerning the Student, pursuant to 34 C.F.R. § 300.616[.]" The Respondent failed to comply with this order. This is a procedural problem to which the IHO may only find there was a denial of FAPE to the Student if it:

> (i) Impeded the child's right to a FAPE;
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
> (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2). The failure to comply with the prehearing order, which required the Respondent to comply with 34 C.F.R. § 300.616, did not impede the Student's right to a FAPE, significantly impede the Petitioner's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or cause a deprivation of

educational benefit. It was a violation of a direct order of the IHO and may signify a larger compliance problem for the Respondent beyond the authority of this IHO to address if the Respondent cannot produce the list required.

6. 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.

7. 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).

8. The Supreme Court, in Board of Educ. v. Rowley, 458 U.S. 176 (1982), provided an analysis to examine the "basic floor of opportunity" or education benefit for children with disabilities who are mainstreamed. Id. at 201-205. However, according to the Court in Rowley:

> It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable at the other end, with infinite variations in between. . . . We do not attempt today to establish one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to that situation.

Id. at 202. Thus, Rowley does not provide the basis for the analysis in this case where the Student, while receiving substantial specialized instruction and related services, is

performing far below average and is largely segregated from her non-disabled peers. The analysis will be based solely upon the requirements stated in the IDEA.

9. Federal regulations at 34 C.F.R. § 300.320 lists the required contents of an IEP:

> (a)(1) A statement of the child's present levels of academic achievement and functional performance, including—
> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
> (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
> (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
> (B) Meet each of the child's other educational needs that result from the child's disability;
> (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
> (3) A description of— (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
> (4) A statement of the special education and related services and supplementary aids and services, based on peerreviewed 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 to enable the child —
> (i) To advance appropriately toward attaining the annual goals;
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
> (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
> (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—
> (A) The child cannot participate in the regular assessment; and
> (B) The particular alternate assessment selected is appropriate for the child; and
> (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
> (b) *Transition Services.* 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.

10. "Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability[.]" 34 C.F.R. § 300.39(a)(1). "Specially designed instruction" is specifically defined as:

> adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
> (i) To address the unique needs of the child that result from the child's disability; and
> (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. § 300.39(b)(3).

11. "Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education,. . . ." 34 C.F.R. § 300.34(a).

12. The Petitioner challenges the level of special education services in the IEP, the transition services in the IEP, and the educational placement, specifically whether a the Student lacks a classroom with a low student to teacher ratio and a therapeutic environment. With regard to the special education services and supplementary aids and services it must be determined whether the services provided in the IEP: a) enable the Student to advance toward attaining the annual goals in the IEP; b) enable the Student to be involved in and make progress in the general education curriculum; and c) enable the Student to be educated and participate with other children with disabilities and nondisabled children in academic and non-academic activities? *See* 34 C.F.R. § 300.320(a)(4).

    a) Are the services in the IEP reasonably calculated to enable the Student to advance toward attaining the annual goals in the IEP? The best way to examine this question for the IEP revised on May 23, 2011, is to compare it with the previous year's IEP, from February

2010 and see what has changed regarding the goals and services.[53] The goals for mathematics were increased from first and fourth grade standards to fourth and sixth grade standards, indicating academic progress in the area of mathematics during the duration of the IEP revised in February 2010. Progress on her reading goals is not as easily determined because the February 2010 IEP included reading goals based on fourth and sixth grade standards and the May 2011 IEP is not based on state reading standards. The statements of her present levels of academic achievement and functional performance show very little progress in learning to read was made over the course of the year with the services provided, however, she may have reached the goals in the IEP which were then revised. The Student made some progress on her writing goals as they were revised in the May 2011 IEP, even though they were still based on thirds and fifth grade standards. No progress was made on her goal for her receptive and expressive language skills as the goal remained identical to the prior revision of the IEP. While her goals dealing with social emotional and behavioral skills were reworded in May 2011, they are not significantly different from the prior year, indicating a lack of progress on these goals. Did the special education and related services and supplementary aids and services for the Student change in light of the lack of meaningful progress on the Student's reading, writing, receptive and expressive language, and social emotional and behavioral skills? (*See* 34 C.F.R. § 300.324(b)(1)(ii)). Yes, slightly, primarily the addition of ESY services. One change was not recorded in the IEP - that of the aide to assist the Student in the general education setting. The Student's teacher testified the Student needed the support of an aide in the general education setting and this was often

[53] The IEP was revised in February 2011, but this IEP apparently remained in dispute and was again reviewed and revised on May 23, 2011, which is the version complained of. So, it is appropriate to compare it to what was worked on over the last year.

provided but was not recorded in the IEP. Thus, the IEP is not compliant with 34 C.F.R. § 300.320(a)(4), and therefore not complaint with 34 C.F.R. § 300.17(d). Nevertheless, a procedural error such as this can only result in a determination that the Student was denied a FAPE if:

> the procedural inadequacies —
> (i) Impeded the child's right to a FAPE;
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
> (iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513(a)(2). The evidence does not show this procedural error caused any of these problems at this time. Furthermore, the evidence shows the Student's classes at did (and likely will) have a low student to adult ratio (and even a low student to teacher ratio as recommended by where there are 12 students to two or three adults, one of whom is a teacher. The Petitioner presented a recommendation from a doctor that the Student requires a "therapeutic school environment" in order to provide counseling immediately upon behavioral disruption. The immediate counseling is necessary for the Student, but this could be accomplished without a change in placement. for example, testified (and her report recommends) a BIP, which could include the support of immediate counseling when disruptive behavior occurs.

b) Are the services in the IEP reasonably calculated to enable the Student to be involved in and make progress in the general education curriculum? No. By definition, specialized instruction, a component of special education, is not only to address the unique needs of a child with a disability nut also to "ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." 34 C.F.R. § 300.39(b)(3). The services provided to this Student are not enabling her to access the general curriculum so that she can meet the

educational standards of the Respondent that apply to all children. She still reads at a second to third grade level and the proposed changes to the level of specialized instruction and supplementary aids and supports are minimal, and even reducing the support and specialized instruction she needs to learn to read. Most critically, however, is that she is not earning Carnegie Units in order to graduate. The Student has not been determined to be so cognitively impaired that her academic performance must be assessed using the alternate assessment measuring the Student's achievement with respect to alternate academic achievement standards. *See* 34 C.F.R. § 300.160.(c)(2)(iii). Therefore, it is expected that she is taught to the academic achievement standards that apply to all children, and has the opportunity to graduate with a regular diploma. The Student's IEP does not include the special education and related services to do this and so it is not reasonably calculated to provide the Student a FAPE. Furthermore, the failure of the Respondent to ensure the Student's access to the general education curriculum, including the opportunity to earn Carnegie Units for graduation, denied her an appropriate secondary education, thus another reason she was denied a FAPE. The Petitioner failed to show the Student was excessively removed from the classroom, however.

c) Are the services in the IEP reasonably calculated to enable the Student to be educated and participate with other children with disabilities and nondisabled children in academic and non-academic activities? Yes, this is true. The Student's IEP team made a point to ensure the Student maintained as much participation with children without disabilities as with, but to the detriment of the academic opportunities for the Student as noted supra.

13. The IEP include transition services and courses of study. What the IEP lacks regarding transition are the postsecondary goals she is trying to reach. Inexplicably, the Petitioner did not complaint about the lack of measurable postsecondary goals. Nevertheless, because the Student's IEP lacks measurable postsecondary goals, determinations about transition services, including courses of study, cannot reasonably be determined. This denial of FAPE must be corrected, and because the issue of postsecondary goals was not raised and evidence of what those goals should be presented, the IEP team will have to revisit this.[54]
14. When there has been a denial of FAPE on substantive grounds (34 C.F.R. § 300.513(a)(1)) the independent hearing officer must grant relief appropriate to ensure the Student is provided a FAPE. *See* 34 C.F.R. § 300.516(c)(3), Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985). The Petitioner has shown by a preponderance of the evidence that the Student's IEP must be revised and that New Beginnings Vocational School is an appropriate placement to provide the special education and related services the Student requires. The Student requires significant remediation to progress toward meeting State academic achievement standards and in the event she cannot reach those standards in the time she has left in the public education system, New Beginnings can offer her alternative skills that can be applied to help prepare her for further education, employment, and independent living.

VII. DECISON

The Respondent prevails on Issue #1 because the Respondent provided the Petitioner with all records requested that existed concerning discipline of the Student. The Respondent violated the

[54] P 8 provides some evidence, but this is not enough for the IHO to make a reasoned determination of what the postsecondary goals for the Student should be, particularly without an argument or demand for particular goals from the Petitioner.

IHO order to provide the Petitioner with a list of the types and locations of education records collected, maintained, or used by the agency.

The Respondent denied the Student a FAPE when it did not offer or provide the Student with an IEP reasonably calculated to provide educational benefit when the IEP revised in May 2011 failed to include special education and related services and supplementary aids and services designed to enable the Student to reach all of her annual goals and to be involved in and progress in the general education curriculum, and failed to include measurable postsecondary goals.

VIII. ORDER

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

1. The Student will be placed at New Beginnings Vocational School for the 2011-2012 school year with transportation provided or paid for by the Respondent. The Student may remain at New Beginnings until she ages out or graduates. If New Beginnings cannot or will not maintain the Student's enrollment or fails to implement the Student's IEP, the Respondent will change the Student's location of services to a substantively comparable public or private school.
2. The Student's IEP will be revised to provide increased specialized instruction as determined necessary by her IEP team, including teachers from New Beginnings, to address the unique needs of the Student that result from her disability and to ensure her access to the general curriculum, so that she can meet the educational standards of the District of Columbia that apply to all children.

3. The IEP will be revised to include all supplementary aids and services to enable the Student to advance appropriately toward attaining the annual goals in her IEP and to be involved in and make progress in the general education curriculum.
4. The IEP will be revised to include measurable postsecondary goals and the transition services, including the courses of study, necessary to enable the Student to reach her postsecondary goals.
5. This order does not limit or prohibit the team from including or addressing any other needs of the Student, and the services necessary to meet those needs, as determined by the IEP team. The LEA representative shall not have the authority to prevent the provision of the services determined necessary by the rest of the team unless there is no rational justification for the services, pursuant to IDEA and this order.
6. The IEP revision must be completed by September 16, 2011. The Respondent shall confer with and invite staff and propose three alternative meeting times to the Petitioner and inform the Petitioner of which date and time the IEP team will meet if she fails to choose one of the meeting times, which may not be consecutive. The IEP team meeting will be held at with a qualified LEA representative in attendance.

IT IS SO ORDERED.

Date: August 14, 2011

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).