

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

Parent, on behalf of,  
Student,<sup>1</sup>

Petitioner,

Date Issued: June 6, 2012

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,  
Respondent.

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is a \_\_\_\_\_ year old male, who is currently a \_\_\_\_\_ grade student attending School A. The student's current individualized education program (IEP) lists Specific Learning Disability (SLD) as his primary disability and provides for him to receive twenty-six (26) hours per week of specialized instruction outside of the general education setting, and four (4) hours per month of behavioral support services outside of the general education setting.

On March 27, 2012, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by: (1) failing perform a vocational assessment for the student; (2) failing to develop an appropriate IEP with a transition plan based on an age-appropriate vocational assessment for the student; (3) failing to convene an IEP Team meeting, with all relevant and necessary IEP Team members to review the evaluation report and revise the student's IEP; and (4) failing to invite the student and the parent to a meeting. As relief for these alleged denials of FAPE, Petitioner requested, *inter alia*, a vocational assessment and any other evaluations recommended by the vocational assessment; an IEP Team meeting with all relevant and necessary team members within 30 days from the date of the hearing to review the evaluation report and revise the student's IEP; and compensatory education.

On April 24, 2012, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that the student's IEP contains appropriate measureable postsecondary goals

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<sup>1</sup> Personal identification information is provided in Appendix A.

based on appropriate transition assessments; and that Petitioner's Issues 3 & 4, as stated in the due process complaint, do not provide an issue upon which relief can be granted.

On April 10, 2012, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement however the parties agreed to continue to attempt to resolve the complaint during the remainder of the 30 day resolution period. Accordingly, the 45-day timeline began to run on April 27, 2012, after the expiration of the 30 day resolution period, and ends on June 10, 2012.

On April 26, 2012, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. During the Prehearing Conference, the parties stipulated that the student is \_\_\_\_\_ old and entitled to appropriate measurable postsecondary goals based upon age appropriate transition assessments. The Hearing Officer issued the Prehearing Order on April 30, 2012. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On May 23, 2012, Petitioner filed Disclosures including five (5) exhibits and three (3) witnesses.<sup>2</sup> On May 23, 2012, Respondent filed Disclosures including three (3) exhibits and eleven (11) witnesses.

The due process hearing commenced at approximately 9:30 a.m. on May 31, 2012 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2006. The Petitioner elected for the hearing to be closed. Petitioner's exhibits 1-4 were admitted without objection. Respondent's exhibits 1-3 were admitted without objection. The Respondent objected to Petitioner's Exhibit 5 on the grounds that the exhibit was not relevant to deciding the issues as outlined in the Prehearing Order. The Hearing Officer did not admit Petitioner's Exhibit 5.

At the close of Petitioner's case, the Respondent moved for a Directed Verdict. Respondent argued that Petitioner had not met his burden with the evidence presented. Based on the fact that the Hearing Officer had not yet had the opportunity to review all of the exhibits admitted into evidence, the Hearing Officer reserved ruling on Respondent's motion.

The hearing concluded at approximately 12:14 p.m. following closing statements by both parties.

### Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

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<sup>2</sup> A list of exhibits is attached as Appendix B. A list of witnesses is included in Appendix A.

## ISSUES

The issues to be determined are as follows:

1. Whether DCPS failed to provide the student a FAPE by failing to conduct age appropriate transition assessments, specifically, a vocational assessment?
2. Whether DCPS failed to provide the student a FAPE by failing to draft an appropriate transition plan based on age appropriate transition assessments for the student on May 11, 2011?
3. Whether DCPS failed to conduct an IEP Team meeting, with all relevant IEP Team members, to review the results of the vocational assessment and revise the student's IEP, as necessary, based on the results of the vocational assessment?

## 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. The student is a student with disabilities as defined by 34 CFR §300.8. (Petitioner's Exhibits 3 and 4; Respondent's Exhibit 1)
2. The student is \_\_\_\_\_ years old and entitled to appropriate measureable postsecondary goals based upon age appropriate transition assessments. (Stipulated Fact)
3. On May 5, 2011, School B conducted a student interview with the student to discuss his long-range goals and interests. The interview with the student was used as the assessment tool to inform the student's May 11, 2011 transition plan. (Petitioner's Exhibit 4; Respondent's Exhibit 1; School Psychologist's Testimony)
4. The student has an interest in construction and auto mechanics and has a desire to attend college, pursue part-time employment while in college and live independently in an apartment. (Petitioner's Exhibit 4; Respondent's Exhibit 1)
5. The student's IEP Team met on May 11, 2011 and developed a postsecondary transition plan. The transition plan contains two education and training goals, two employment goals and two independent living goals related to identifying appropriate local colleges, attending a college fair, researching various types of employment, applying for a job, timely paying bills and "setting aside" money from a mock budget. Each of the goals contains the measurement "in 4 out of 5 opportunities with 80% accuracy." (Petitioner's Exhibit 4; Respondent's Exhibit 1; School Psychologist's Testimony)
6. The student's transition plan includes the transition activities and services of "college exploration," "independent living services" and "career/employment exploration" and the courses of study necessary to support the student's postsecondary transition goals. Each of the activities and/or services includes a location, time/frequency and responsible agency. (Petitioner's Exhibit 4; Respondent's Exhibit 1)

7. The student was present at the May 11, 2011 meeting and the parent participated in the meeting by telephone. Also present at the meeting were a special education teacher, the school psychologist and the special education coordinator. A regular education teacher was not in attendance. (Petitioner's Exhibit 4; Respondent's Exhibit 1; Parent's Testimony; School Psychologist's Testimony)
8. The student's May 11, 2011 IEP prescribed twenty-six (26) hours per week of specialized instruction outside of the general education environment and four (4) hours per month of behavioral support services outside of the general education environment. (Petitioner's Exhibit 3; Respondent's Exhibit 1)
9. The student's IEP was updated on September 12, 2011. (Petitioner's Exhibit 3)
10. On March 12, 2012, the student completed a vocational assessment, specifically a Microcomputer Evaluation of Careers and Academics (MECA), given by the School A Transition Director. The MECA assessed the student's interests, likes and dislikes and provides graphs and scales to assist the student in rating appropriate employment areas. The student achieved high scores in "Physical Performing" and "Leading-Influencing." (Respondent's Exhibit 3; Transition Director Testimony)
11. On May 23, 2012, DCPS sent a Letter of Invitation to the student's parent to attend an IEP Team meeting on June 5, 2012, to discuss the student's secondary transition needs. (Respondent's Exhibit 2)

### 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:

#### Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). 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 prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See 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); 20 U.S.C. §1415(i)(2)(C)(iii).

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The Court in *Rowley* stated that the Act does not require that the special education services 'be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Instead, the Act requires no more than a "basic floor of opportunity" which is met with the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 200-203. Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in

hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Board of Education v. Rowley*, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met. 20 U.S.C. § 1415. The IDEA regulations at 34 CFR §300.513(a)(2) state that in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only 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. Therefore, an "IDEA claim is viable only if ...procedural violations affected the student's substantive rights." *Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828,834 (D.C.C. 2006).

Beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR §300.320(b); see also 5 DCMR §E-3009.3.

#### Issue #1

The Petitioner alleges that DCPS denied the student a FAPE by failing to conduct age appropriate transition assessments, specifically, a vocational assessment. The Petitioner argued that the assessment tool administered to the student to develop the transition plan in the student's May 11, 2011 IEP was inadequate, in that it was not a "formal vocational evaluation," described by the Petitioner as a "Voc. 1" or a "Voc. 2." The IDEA regulations provide that the IEP Team develop postsecondary goals based upon age appropriate transition assessments. There is no requirement for a "formal vocational evaluation" in transition planning as alleged by the Petitioner.

Transition assessment data capturing the student's interests is the common thread in transition planning and it should define the transition goals and services in the IEP, and link directly to the transition services and activities. *Brandywine Sch. Dist.*, 111 LRP 64084 (SEA DE 2011). In the present matter, the student turned 16 years old in December 2011. In May

2011, School B conducted a student interview with the student to discuss his long-range goals and interests. The student was able to articulate his interest in construction and auto mechanics and his desire to attend college, pursue part-time employment while in college and live independently in an apartment. Based on this information, the school was able to develop secondary transition goals related to identifying appropriate local colleges, attending a college fair, researching various types of employment, applying for a job, timely paying bills and “setting aside” money from a mock budget.

Both the School B School Psychologist and the School A Transition Director testified that a student interview is an age appropriate transition assessment for a year old student and was appropriate for this student specifically. The School A Social Worker stated that a student interview is of the “upmost importance” in assessing a student’s life goals and motivating the student to attend school and take steps toward obtaining goals. The Hearing Officer agrees. While there are other assessment tools that can be used to develop appropriate postsecondary goals for a student, a student interview is appropriate for a year old, who will turn years old in the next school year, and is just beginning the process of transition planning through the IEP process.

Further, the record indicates that DCPS conducted a vocational assessment for the student, at years of age, on March 12, 2012. Specifically, the School A Transition Director used the MECA to assess the student. The MECA provided a more in-depth assessment of the student than a student interview. The MECA assessed the student’s interests, likes and dislikes and provides graphs and scales to assist the student in rating appropriate employment areas. According to the MECA, the student achieved high scores in “Physical Performing” and “Leading-Influencing.” The student’s IEP Team has not yet had the opportunity to develop updated transition goals based on the student’s March 12, 2012 assessment results. The Hearing Officer finds that the MECA was also an age appropriate transition assessment administered to the student.

A district has the prerogative to choose assessment tools and strategies. *See Amanda Ford v. Long Beach Unif. Sch. Dist.*, 291 F.3d 1086 (2002) (parents did not provide any empirical grounds on which to base a challenge to the district's choice in assessment tools and strategies). Here, DCPS’ choice of a student interview on May 5, 2011 to assess the student’s long range goals and interests, and the MECA on March 12, 2012, in order to develop transition goals and services, were age appropriate choices. The district was not required to administer the specific vocational evaluations requested by the Petitioner in order to fulfill its obligation to conduct age appropriate transition assessments.

The Petitioner failed to meet its burden with respect to Issue #1.

#### Issue #2

A transition plan must include appropriate measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the child in reaching those goals. *See* 34 CFR §300.320(b). Transition services include a coordinated set of activities that promote movement from school to post-school activities and activities based on the individual child's

needs, taking into account the child's preferences and interests. Transition services for children with a disability may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education. See 5 DCMR §E-3001.1; see also 34 CFR §300.43.

The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief only upon a showing of a loss of educational opportunity or the denial of a FAPE. *Board of Education v. Ross*, 486 F.3d 267, 276 (7th Cir. 2007) (despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be "deferred" was a procedural violation); *A.S. v. Madison Metro School Dist.*, 477 F.Supp.2d 969, 978 (D. Wis. 2007) (allegation of inadequate transition plan treated as a procedural violation).

The student's May 11, 2011 transition plan includes two goals related to postsecondary education and training, two goals related to employment and two goals related to independent living. The goals are based on the long-term goals and interests the student expressed during his interview on May 5, 2011. While each of the goals contains the measurement "in 4 out of 5 opportunities with 80% accuracy," the measurement is difficult to apply to four of six of the goals. For example, one of the student's employment goals states that the student "will research various types of employment indicating his interests. [The student] will locate such opportunities and apply, in 4 out of 5 opportunities, with 80% accuracy." Although there is a "measurement," it is unclear how the accuracy of this goal will be measured. Is accuracy based on properly locating an opportunity, a complete application or an application with no mistakes? The Hearing Officer finds that although the student's transition goals include a "measurement," the measurement appears to be a default measurement and is inappropriate for both education and training goals and both employment goals.

Procedural violations raise a viable claim only if the procedural violations affect the student's substantive rights under the IDEA. *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (United States Court of Appeals, District of Columbia (2006)). The failure of DCPS to include measureable education and training and employment goals in the student's transition plan is a procedural violation that does not affect the student's substantive rights under the IDEA. The Petitioner presented no evidence of how the lack of an appropriate measurement has harmed the student. The Hearing Officer finds that the lack of an appropriate measurement in four of the student's six postsecondary transition goals neither, (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, nor (3) caused a deprivation of educational benefit for the student.

The student's transition plan also includes the transition activities and services of "college exploration," "independent living services" and "career/employment exploration" and the courses of study necessary to support the student's postsecondary transition goals. Each of the activities and/or services includes a location, time/frequency and responsible agency. While extremely basic, the services promote movement from school to post-school activities and are based on the child's needs, taking into account his preferences and interests. An IEP transition plan satisfies the requirements if, for example, it includes a "discussion of transition services under IDEA." *Pace v. Bogalusa City School Bd.*, 137 F.Supp.2d 711, 717 (E.D. La. 2001).

The Petitioner failed to meet its burden with respect to Issue #2.

Issue #3

An IEP Team includes, the parent, one regular education teacher (if the child is, or may be, participating in the regular education environment), one special education teacher, a representative of the public agency, and individual who can interpret evaluation results, and, when appropriate, the student. *See* 34 CFR §300.321(a). A public agency must ensure that the IEP Team reviews the child's IEP at least annually; and revises the child's IEP to address any lack of expected progress, results of reevaluations conducted under §300.303, the child's anticipated needs or other matters. *See* 34 CFR §300.324(b). When a student's transition goals are to be reviewed at an IEP team meeting, the public agency must invite the student to attend the meeting or, if the student does not attend, take other steps to ensure that the student's preferences and interests are considered. *See* 34 CFR §300.321(b).

In the present matter, the student was administered a student interview, as an assessment tool, on May 5, 2011. The student's IEP Team met on May 11, 2011 to determine the student's eligibility status. Present at the meeting were the student, a special education teacher, the school psychologist and the special education coordinator. The student's parent participated in the meeting via telephone. A regular education teacher was not in attendance however the student is not participating in the regular education environment. At the meeting, the IEP Team discussed the results of the student interview and developed transition goals based on the results of the student interview. The Hearing Officer finds that DCPS conducted an IEP Team meeting, with all relevant IEP Team members, following the administration of the student interview assessment tool and revised the student's IEP, as necessary, based on the results of the assessment.

DCPS conducted a vocational assessment for the student on March 12, 2012. On May 23, 2012, DCPS sent a Letter of Invitation to the parent inviting the parent to an IEP Team meeting on June 5, 2012. The Letter of Invitation states that the purpose of the meeting is to discuss secondary transition needs. The Letter of Invitation provides that a special education teacher, a general education teacher, a public agency representative and an individual who can interpret assessment results will be present at the meeting. Although the Letter of Invitation does not include the student as an invited participant, the hearing was held before the date of the scheduled meeting and there was no evidence presented that the student has not been invited to the meeting.

Neither the IDEA regulations nor the District of Columbia Code of Municipal Regulations provide a timeline by which a transition assessment needs to be reviewed by the IEP Team. The student's last IEP was developed on September 12, 2011 therefore the IEP Team was not required to review the student's secondary transition goals before September 12, 2012. To the extent that DCPS delayed any review of the transition assessment results, it is a procedural violation that has not caused harm to the child, impeded the child's right to a FAPE, 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 caused a deprivation of educational benefit for the student.

The Petitioner failed to meet its burden with respect to Issue #3.

**ORDER**

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

1. Respondent's Motion for Directed Verdict is **granted** for Issues #1 and #3.
2. The due process complaint in this matter is **dismissed** with prejudice.
3. All relief sought by Petitioner herein is **denied**.

**NOTICE OF RIGHT TO APPEAL**

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

Date: June 6, 2012

  
Hearing Officer