DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E.; Second Floor
Washington, D.C. 20002

OSSE STUDENT HEARING OFFICE 2010 OCT -5 A 9:36

Petitioner , on behalf of STUDENT,[1]	)	**Case Number:**
Petitioner,	)	**Hearing Date: September 23, 2010**
	)	**Room: 4A**
v.	)	
	)	**Date Issued: October 5, 2010**
PUBLIC CHARTER SCHOOL,	)	**Hearing Officer: Frances Raskin**
Respondent.	)	

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*; federal regulations implementing IDEA, 34 C.F.R. Part 300; D.C. Code § 38-2561.01 *et seq.*; and D.C. Mun. Reg. § 5e-3000 *et seq.* On September 21, 2010, this Hearing Officer was appointed to preside over this case, consistent with 34 C.F.R. § 300.511.

II. BACKGROUND

Petitioner is the parent of a -year-old student ("Student") who attends a District of Columbia public charter school ("Charter School" or "Respondent") that serves as its own local education agency ("LEA"). Both Petitioner and the Student reside in the District of Columbia.

On July 22, 2010, Petitioner filed a Due Process Complaint Notice ("Complaint"). On July 30, 2010, the Charter School filed a Response to Due Process Complaint Notice ("Response").

[1] Personal identification information is provided in Attachment A.

In the Complaint, Petitioner alleges that the Charter School denied the Student a free, appropriate, public education by failing to develop a timely and appropriate individualized educational program ("IEP") for the Student. Petitioner alleges that the Charter School failed to timely update the Student's June 4, 2009, IEP. In the alternative, Petitioner alleges that the Charter School denied the Student a FAPE by failing to include Petitioner as a member of the IEP team when it developed an IEP for the Student in May 2010, thereby denying Petitioner an opportunity to participate in the educational decision-making process for the Student. Respondent asserts that Petitioner participated by telephone in the May 14, 2010, meeting at which the IEP team developed an IEP for the Student. Respondent asserts that this IEP was developed within the timelines mandated by IDEA.

Petitioner alleges that the Charter School denied the Student a FAPE by failing to develop an appropriate IEP on May 14, 2010. Petitioner alleges that the Charter School failed to include his special education and general education teachers, and a school psychologist in the IEP team. Petitioner alleges May 14, 2010, IEP lacks baseline data for the Student's goals in written expression, and fails to provide adequate levels of instruction and related services.[2] Petitioner further alleges that the Charter School failed to evaluate the Student before removing counseling services from his IEP. Respondent asserts that it developed an appropriate IEP for the Student on May 14, 2010.

As a remedy for the alleged denials of FAPE, Petitioner seeks compensatory education. Respondent asserts that, because Petitioner enrolled the Student in a District of Columbia Public Schools ("DCPS") high school following the May 14, 2010, IEP meeting (and DCPS is a different LEA from the Charter School), any claims regarding the appropriateness of his IEP should be brought against DCPS. The Charter School requests dismissal of the Complaint.

The parties participated in a resolution meeting on August 4, 2010. They were unable to resolve the Complaint. The parties agreed to attend an IEP meeting on August 19, 2010, in an effort to resolve the Complaint. At this meeting, the parties were unable to resolve the Complaint and agreed to proceed to a due process hearing.

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[2] Petitioner also alleges that the Charter School denied the Student a FAPE by failing to "provide an appropriate placement," i.e., "make a placement decision," "discuss a proper placement," and "ensure that a continuum of alternative placements was available to [the Student] when he moved on to high school." This Hearing Officer interpreted this claim as subsumed by the issue of whether the Charter School failed to develop an appropriate IEP for the Student on May 14, 2010. The term "educational placement" refers to the type of educational program prescribed by the IEP, i.e., the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school. *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

On September 15, 2010, counsel for Respondent filed a Motion to Dismiss the Complaint ("Motion"). In the Motion, Respondent argues that, because the Student is now enrolled in a different LEA, it is no longer required to provide the Student a FAPE. The Charter School further argues that, if Petitioner is dissatisfied with the Student's IEP, she should bring a due process complaint against DCPS. Finally, the Charter School argues that the Complaint should be dismissed because no remedy that can be ordered against the Charter School.

On September 17, 2010, Petitioner filed an Opposition to the Motion to Dismiss ("Opposition"). In her Opposition, Petitioner avers that she has requested compensatory education, which is an appropriate a remedy for the Charter School's past denials of FAPE. Petitioner avers that dismissal on the pleadings is inappropriate.

Hearing Officer Terry Banks, who previously presided over this case, held a prehearing conference on September 16, 2010. The hearing officer issued a prehearing order on September 20, 2010. In the prehearing order, the hearing officer certified two issues for the due process hearing: (1) whether the Charter School denied the Student a FAPE by failing to develop a timely and appropriate IEP on May 14, 2010 by failing to include baseline data for the Student's goals in written expression and failing to conduct evaluations before terminating the Student's counseling services; and (2) whether the Charter School denied the Student a FAPE by failing to include Petitioner, the Student's special education and general education teachers, and a school psychologist in the IEP team that developed the Student's May 14, 2010, IEP.

Hearing Officer Banks did not rule on the Charter School's Motion. For the reasons explained below, this Hearing Officer denied the Motion at the outset of the due process hearing.

On September 22, 2010, this Hearing Officer held a second prehearing conference to discuss Petitioner's claims and the parties' five-day disclosures. During the prehearing conference, the parties agreed that the resolution period concluded on August 19, 2010. Counsel for Petitioner represented that, at the due process hearing, Petitioner would not be pursuing her claim that the Charter School failed to provide the Student a "continuum of alternate placements." The parties also discussed their respective five-day disclosures and reached agreements on which documents would be excluded from evidence at the due process hearing.

The due process hearing convened on September 23, 2010. At the outset of the due process hearing in this case, pursuant to the agreement of the parties, this Hearing Officer excluded all of the documents Respondent disclosed on the grounds that they were duplicative of Petitioner's disclosures. This Hearing Officer excluded Petitioner's Exhibits 6- 9, 12-20, 22-25, and 27- 31, without objection, on the grounds that they were hearsay, irrelevant, or not probative of the issues. This Hearing Officer admitted Petitioner's Exhibit 1-5, 10-11, 21, and 26.

At the conclusion of Petitioner's testimony, counsel for DCPS orally moved for a directed verdict. For the reasons explained below, this Hearing Officer granted the motion for directed verdict.

IV. ISSUES PRESENTED

A. Whether the Charter School denied the Student a FAPE by failing to develop a timely and appropriate IEP on May 14, 2010 by failing to include baseline data for the Student's goals in written expression and failing to conduct evaluations before terminating the Student's counseling services; and

B. Whether the Charter School denied the Student a FAPE by failing to include Petitioner, the Student's special education and general education teachers, and a school psychologist in the IEP team that developed the Student's May 14, 2010, IEP.

V. FINDINGS OF FACT

1. Petitioner is the mother of a -year-old, ninth-grade student with a disability who attended the Charter School during the 2009-2010 school year.[3] The Student currently attends a DCPS senior high school.[4]

2. The Student was found eligible for special education in 2007.[5] The Student has learning difficulties that warrant specialized instruction.[6]

3. The Student exhibits borderline abilities in verbal comprehension.[7] He experiences particular difficulty understanding and applying knowledge about social situations.[8] He also has difficulty with verbal instruction and cultural knowledge, which could impact his performance on tasks that require knowledge of historical events or generating alternative concepts.[9]

4. The Student's perceptual reasoning abilities fall in the extremely low range.[10] He has poor spatial ability and difficulty with part-whole relationships.[11] He likely struggles with tasks that require non-verbal perception, the ability to differentiate between essential and non-essential details, or recognizing details in novel situations.[12]

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[3] Testimony of Petitioner.
[4] *Id.*
[5] *Id.*
[6] Petitioner Exhibit 26 (March 31, 2009, Report of Comprehensive Psychological Evaluation).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

5. The Student's working memory abilities, i.e., his ability to sustain attention, concentrate, and exert mental control, are in the low average range.[13] Although he is capable of storing and working with simple and relatively artificial information in his short-term memory, his working memory abilities decrease as the information becomes more complex or requires knowledge of numerical reasoning, computation, and arithmetical processes.[14]

6. The Student's nonverbal reasoning abilities are in the extremely low range of intelligence.[15] His processing speed, i.e., his ability to process simple or routine visual material without making errors, is in the low average range.[16] His nonverbal intelligence is in the very poor range.[17]

7. The Student's achievement skills in reading range from borderline to extremely low.[18] He has difficulty actively reading for meaning and comprehension.[19] His mathematics skills are in the borderline range, as are his oral and written language skills.[20] However, his overall oral language abilities are significantly higher than his overall mathematics, reading, and writing abilities.[21]

8. The Student has difficulties with visual-motor integration, is easily distracted, and tends to overlook detail and miss social cues.[22] The Student also exhibits impulsive behavior in the classroom, rapidly providing answers and then correcting himself after reviewing the information further.[23] He was exposed to alcohol and crack cocaine in utero, and has experienced whiplash, which could be associated with his neuropsychological difficulties.[24]

9. The Student also exhibits symptoms associated with depression.[25] He experiences worry, nervousness, low self-esteem, and negative self-thoughts that likely distract him in the classroom and manifest as somatic symptoms.[26] He lacks adequate psychological resources and coping skills, resulting in difficulties making decisions or handling stress.[27]

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

10. The Student's June 4, 2009, IEP prescribed fifteen hours per week of specialized instruction in the general education setting.[28] This IEP also prescribed one hour per week of behavioral support services outside the general education setting.[29]

11. The Student's May 14, 2010, IEP provides fifteen hours per week of specialized instruction in the general education setting.[30] It does not provide behavioral support services.[31] Petitioner believes that this IEP, like the June 4, 2009, IEP, should provide one hour of behavioral services to the Student.[32] Petitioner does not know whether the Student received counseling services between May 14, 2010, and June 2, 2010, the Student's last day of classes that school year.[33]

12. On the Student's May 14, 2010, IEP, there is no baseline data for his annual goals in mathematics.[34] This IEP also contains no baseline data for the annual goals in reading.[35] In the area of emotional, social, and behavioral development, the Student's present level of educational performance indicates that he no longer requires school-based counseling services.[36]

13. The participants in the May 14, 2010, meeting at which the Student's IEP was developed were the Charter School Special Education Director and the Inclusion Specialist.[37] Petitioner attended the meeting by phone for only three to five minutes because she had to leave for work.[38] Petitioner had received no notice of the meeting.[39]

14. The Student may need an updated clinical evaluation.[40] He continues to exhibit behavioral difficulties in school.[41] He has difficulty paying attention for long periods of time, needs breaks, and needs to walk around the classroom.[42] He scratches his arms with his fingernails when he is frustrated.[43]

15. The Educational Advocate developed a compensatory education plan for the Student on the premise that he was denied counseling services from May 14, 2010, to

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[28] Petitioner Exhibit 11 (June 4, 2009, IEP).
[29] *Id.*
[30] Petitioner Exhibit 10 (May 14, 2010, IEP).
[31] *Id.*
[32] Testimony of Petitioner.
[33] Testimony of Petitioner. The parties stipulated that June 2, 2010, was the last day of classes for the Student.
[34] Petitioner Exhibit 11; Testimony of Educational Advocate.
[35] *Id.*
[36] Petitioner Exhibit 11.
[37] Petitioner Exhibit 10.
[38] Testimony of Petitioner.
[39] *Id.*
[40] Testimony of Educational Advocate.
[41] *Id.*
[42] *Id.*
[43] *Id.*

September 2010.[44] This compensatory education plan calls for the Student to receive nine hours of one-on-one behavioral support services on the grounds that the "harm he incurred is substantial and shall likely cast a shadow over future efforts to recoup what he has lost on the academic and social emotional skills."[45] The plan also recommends private clinical and educational evaluations of the Student.[46]

16. Petitioner's compensatory education plan provides no explanation of how the Educational Advocate arrived at the conclusion that the Student was entitled to nine hours of compensatory behavioral support services.[47] The plan fails to establish that the Student failed to make social emotional progress as a result of the IEP team's decision to omit behavioral support services from the Student's May 14, 2010, IEP.[48] Nor does the plan indicate whether nine hours of behavioral support services will compensate the Student for any denial of FAPE that resulted from the lack of behavioral support services on this IEP.[49]

17. The Educational Advocate revised her calculations of the compensatory education plan in light of the fact that the June 2, 2010, was the Student's last day of services at the Charter School.[50] The Educational Advocate recommends that the Student receive require three hours of private behavioral support services as compensatory education.[51] She calculated that the Student was entitled to three hours of counseling *because* he missed three hours of behavioral support services during the twelve school days from May 14, 2010, to June 2, 2010.[52]

18. The Educational Advocate did not discuss the Student's progress with any of his teachers prior to developing the compensatory education plan.[53] She also did not discuss his progress with the Charter School psychologist who provided the Student behavioral support services during the 2009-2010 school year.[54] The Educational Advocate observed the Student at the DCPS high school on September 20, 2010.[55] She also interviewed the Student on September 15 and 17, 2010.[56]

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[44] Testimony of Educational Advocate; Petitioner Exhibit 1 (September 17, 2010, compensatory education plan).
[45] Petitioner Exhibit 1.
[46] Petitioner Exhibit 1.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] Testimony of Educational Advocate; Stipulation of parties.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*

19. The Student has attended the DCPS high school since August 23, 2010.[57] Since the Student enrolled in the DCPS high school, Petitioner has not requested that DCPS conduct any evaluations of the Student.[58]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible. Respondent presented no testimony at the due process hearing.

VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.[59] Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[60]

IDEA requires DCPS to assure a "free appropriate public education" ("FAPE") for all disabled children.[61] FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[62]

An LEA is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."[63] In deciding whether an LEA provided the Student a FAPE, the inquiry is limited to (a) whether the LEA complied with the procedures set forth in IDEA; and (b) whether the Student's IEP reasonably calculated to enable the Student to receive educational benefits.[64]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of

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[57] Testimony of Petitioner.
[58] *Id.*
[59] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[60] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[61] 20 U.S.C. § 1412(1).
[62] *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).
[63] 34 C.F.R. § 300.101.
[64] *Rowley* at 206-207.

educational benefits.[65] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[66]

VIII. DISCUSSION

A. Petitioner Failed to Prove that the Charter School Denied the Student a FAPE by Failing to Include Petitioner in the Development of the May 14, 2010, IEP or by Failing to Develop an Appropriate IEP for the Student.

In enacting IDEA, "Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child's individual educational program."[67] The statute's emphasis on the full participation of parent(s) in the IEP process demonstrates that "adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."[68]

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.[69] One of the important policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and

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[65] 20 U.S.C. § 1415 (f)(3)(E)(ii); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc) ("[P]rocedural flaws do not automatically render an IEP legally defective") (citations omitted).

[66] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error"). *See also M.M. ex rel. D.M. v. Sch.* Dist., 303 F.3d 523, 533-34 (4th Cir. 2002) ("If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations."); *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992) (rejecting the proposition that procedural flaws "automatically require a finding of a denial of a FAPE"); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) (rejecting an IDEA claim for technical noncompliance with procedural requirements because the alleged violations did not result in a "substantive deprivation" of student's rights); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990) (refusing to award compensatory education because procedural faults committed by Board did not cause the child to lose any educational opportunity).

[67] *Rowley, 458 U.S. at 208.*

[68] *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

[69] 34 C.F.R. § 300.327; D.C. Mun. Reg. tit. 5-E § 3013.

determine if any change to the program is necessary.[70] Thus, an LEA must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.[71]

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[72] establishes annual goals related to those needs,[73] and provides appropriate specialized instruction and related services.[74] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[75]

However, IDEA "imposes no clear obligation upon an LEA beyond the requirement that [disabled] children receive some form of specialized education."[76] An LEA is required only to make available a "basic floor of opportunity" that is "reasonably calculated to enable the child to receive educational benefits . . . sufficient to confer some educational benefit upon the [disabled] child," or a program "individually designed to provide educational benefit."[77] IDEA does not require the LEA to "maximize the potential" of this Student.[78]

Here, Petitioner proved that the Charter School failed to ensure that she had meaningful participation in the development of the May 14, 2010, IEP. Petitioner also proved that the IEP lacked meaningful baseline data for the Student's mathematics and reading annual goals, and that the IEP team decided to discontinue the Student's behavioral support services.

However, even viewing the evidence in the light most favorable to Petitioner, she failed to prove that these procedural inadequacies denied the Student a FAPE. In other words, Petitioner failed to prove that her inability to meaningfully participate in the development of Student's May 14, 2010, IEP, or that the lack of baseline data and behavioral support services on this IEP, resulted in the Student's inability to access the curriculum or otherwise hampered his ability to progress academically.

Petitioner failed to introduce any evidence to show that the May 14, 2010, IEP was not reasonably calculated to enable the Student to receive educational benefits. Nor

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[70] *Alfano v. District of Columbia,* 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Dist. Of Columbia,* 360 F. Supp. 2d 138, 143 (D.D.C. 2005).
[71] 34 C.F.R. § 300.501 (c)(1).
[72] 34 C.F.R. § 300.320 (a) (1).
[73] 34 C.F.R. § 300.320 (a) (2).
[74] 34 C.F.R. § 300.320 (a) (4).
[75] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[76] *Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988) (citing *Rowley*, 458 U.S. at 195).
[77] *Id.*
[78] *Id.* (noting that the Supreme Court stressed the lack of any such requirement four separate times in *Rowley*, 458 U.S. at 189, 197 n. 21, 198, 199).

did Petitioner introduce even a scintilla of evidence to show that the Student did not receive behavioral support services between May 14, 2010, and June 2, 2010. Finally, Petitioner failed to show that the Student suffered any educational detriment as a result of a lack of appropriate baseline data in his IEP.

B. Petitioner Failed to Prove that the Student Is Entitled to Compensatory Education.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place."[79]An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."[80]

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."[81] Here, DCPS denied the Student a FAPE in failing to develop an appropriate IEP for the Student and failing to provide an appropriate educational placement.

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."[82] A compensatory education "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."[83] This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."[84]

Here, Petitioner introduced no evidence to show that her proposed compensatory education plan would provide the educational benefits that likely would have accrued from had the Charter School included one hour of behavioral support services in the Student's May 14, 2010, IEP. Petitioner provided no proof that the Student had suffered any educational detriment from any procedural violations in the development of this IEP. Thus, Petitioner failed to prove that the Student is entitled to compensatory education.

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[79] *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).
[80] *Reid*, 401 F.3d at 518.
[81] *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).
[82] *Reid*, 401 F.3d at 518, 523.
[83] *Reid*, 401 F.3d at 524.
[84] *Id.* at 524.

IX. DECISION.

A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.[85]

If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable fact-finder would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may (a) resolve the issue against the party; and (b) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.[86] The judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict.[87] The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.[88]

As stated above, Petitioner failed to introduce any evidence to show that the Student had been denied a FAPE. Thus, this Hearing Officer will grant Respondent's motion for directed verdict.[89]

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[85] Fed. R. Civ. P. 50 (a) (2).
[86] Fed. R. Civ. P. 50 (a) (1).
[87] *Anderson v. Liberty Lobby*, 477 U.S. 242, 250.
[88] *Id.* at 251. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict -- "whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed." *Id.* (citation omitted).
[89] If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. Fed. R. Civ. P. 52 (c). If a plaintiff fails to prosecute, a defendant may move to dismiss the action or any claim against it. Fed. R. Civ. P. 55 (b). Unless the dismissal order states otherwise, this dismissal operates as an adjudication on the merits. *Id.* A motion to dismiss (under Fed. R. Civ. P. 41) on the ground that plaintiff's evidence is legally insufficient should be treated as a motion for judgment on partial findings pursuant to Rule 52(c). Fed. R. Civ. P. 41, notes of Advisory Committee.

ORDER

Upon consideration of the exhibits and the testimony admitted at the hearing, and the Charter School motion for directed verdict, it is this 5th day of October 2010 hereby:

ORDERED that the DCPS Motion for Directed Verdict is **GRANTED**;

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss is **DENIED AS MOOT**;

IT IS FURTHER ORDERED that the Complaint is **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the 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. § 415(i)(2).

Distributed to:

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Matthew Bogin, Attorney at Law
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