

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE**

STUDENT, ¹)	
By and through PARENT,)	
)	
<i>Petitioner,</i>)	Case No.
)	
v.)	Bruce Ryan, Hearing Officer
)	
DISTRICT OF COLUMBIA)	Decided: October 28, 2010
PUBLIC SCHOOLS,)	
)	
<i>Respondent.</i>)	

HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND AND RECORD

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations. It concerns a year old student (the "Student") who resides in the District of Columbia, attends a D.C. public charter school (the "Charter School"), and has been determined to be eligible for special education and related services as a child with a disability under the IDEA.

Petitioner filed the original Complaint in this matter on July 29, 2010, against Respondent District of Columbia Public School ("DCPS"), which acts as the LEA for the Charter School. The Complaint alleged that DCPS denied the Student a free appropriate public education ("FAPE") by: (a) failing to comply with a May 3, 2010 Settlement Agreement; (b) failing to review and revise the Student's individualized educational program ("IEP") annually; (c) failing to convene an appropriate MDT/IEP Team meeting on July 20, 2010; and (d) failing to develop an IEP containing appropriate measureable transitional or vocational goals. Petitioner sought, *inter alia*, compensatory education and a full-time residential placement.

¹ Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

DCPS filed its Response on August 12, 2010, which asserted (*inter alia*) that on August 5 DCPS issued an IEE letter for an independent vocational assessment and sent a letter of invitation to reconvene the MDT/IEP Team meeting for August 27. A resolution meeting was held on August 17, 2010, and the parties agreed in writing that no agreement was possible. *See Due Process Complaint Disposition*, filed Sept. 1, 2010.

At a September 9, 2010 prehearing conference (“PHC”), the parties reported that a further MDT/IEP Team meeting had taken place on 08/27/2010 and that, as a result, the facts had changed since the filing of the original Complaint. DCPS issued a PNOP placing the Student at the Charter School on an interim basis, with the MDT/IEP Team agreeing to reconvene within 30 days for a follow-up discussion regarding residential placement/location of services for the 2010-11 School Year. The parties agreed that it would be appropriate for Petitioner to amend her Complaint to clarify the issues and add any new claims resulting from the 08/27/10 MDT meeting, and for DCPS to have a further opportunity to respond before proceeding to a due process hearing. The parties also agreed that they did not wish to have any further opportunity to resolve an Amended Complaint through a resolution meeting.

Accordingly, with the consent of both parties, the Hearing Officer granted permission for Petitioner to amend the Complaint by 09/13/2010, which restarted the applicable timelines under the IDEA pursuant to 34 C.F.R. 300.508(d)(4). Both parties also agreed to waive the resolution meeting with respect to the Amended Complaint pursuant to 34 C.F.R. 300.510, such that the 45-day timeline for the due process hearing began immediately upon filing of the Amended Complaint. *See Order*, issued Sept. 9, 2010.

Petitioner then filed an Amended Complaint on or about September 13; DCPS responded on September 28; and another PHC was held on September 28, 2010. DCPS’ Response to the Amended Complaint asserts (*inter alia*) that it has complied with the May 2010 SA, which settled a prior due process complaint filed 01/26/2010 (Case No. 2010-0097).

The parties subsequently reported that a further MDT/IEP Team meeting took place on October 4, 2010, which resulted in DCPS’ issuing a PNOP proposing placement at a Residential Treatment Facility located outside the District (the “RTF”). DCPS also issued Compensatory Education Authorization Letters to fund 40 hours of counseling services and 20 hours of mentoring services by independent providers of Parent’s choice.

In light of the 10/04/2010 Team meeting and DCPS actions, Petitioner withdrew the claim that DCPS failed to convene an appropriate IEP Team meeting and also withdrew her requested relief of a full-time residential placement. *See Prehearing Order* (Oct. 7, 2010), p. 2. Petitioner elected to proceed to hearing on her remaining claims that DCPS denied a FAPE to the Student, which she alleges entitle the Student to compensatory education relief in excess of what DCPS has already authorized. *Id.* Five-day disclosures were filed on October 7, 2010.

The Due Process Hearing was held on October 14, 2010. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-18.

DCPS' Exhibits: DCPS-1 through DCPS-18.

In addition, the following Witnesses testified on behalf of each party:

Petitioner's Witnesses: (1) Parent-Petitioner; (2) Educational Advocate ("EA"); (3) evaluating Psychologist; (4) Charter School Asst. Principal & Special Education Coordinator ("SEC"); and (5) Community Support Worker ("CSW").

DCPS' Witnesses: (1) DCPS' Placement Specialist (Deidre Council-Ellis); and (2) DCPS' Compliance Case Manager (Ashley Lozano).

Pursuant to the IDEA, the Hearing Officer must make a determination within 10 school days after the hearing. *See* 34 C.F.R. § 300.532 (c) (2). This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures* ("SOP").

II. ISSUES AND REQUESTED RELIEF

A discussion at the prehearing conferences of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

- (1) **Failure to Comply with May 2010 Settlement Agreement.** – Did DCPS fail to comply with the May 2010 SA at the 07/20/2010 and/or 08/27/2010 MDT/IEP Team meetings by failing to discuss and determine location, to review and revise the Student's IEP, and to discuss and determine appropriate compensatory education?
- (2) **Failure to Provide Appropriate Placement.** – Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement and/or location of services for the 2010-11 School Year, *prior to October 4, 2010*?
- (3) **Failure to Conduct Annual Review.** – Did DCPS deny the Student a FAPE by failing to review and revise the Student's IEP annually, as required by the IDEA?
- (4) **Failure to Develop an IEP Containing Appropriate Measureable Post-Secondary Goals.** – Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP that contains transitional and/or vocational goals that are appropriate and measureable? Specifically, Petitioner alleges that DCPS should have conducted a vocational assessment of the Student *prior to August 5, 2010*, and that the Student has not received required transition services because she has had no transition plan in her IEP.

As relief for the alleged violation of the SA and denials of FAPE, Petitioner requests, *inter alia*, that DCPS be ordered (1) to convene an MDT/IEP Team meeting to review the results of a vocational assessment and FBA, and to develop a viable post-secondary transition plan; and (2) to provide compensatory education in the form of funding a vocational program that will result in the Student's certification as a cosmetologist, plus no more than _____ in equipment and supplies for her cosmetology program. *See Amended Complaint*, p. 14.²

As a result of discussions at the PHCs and at hearing, the specific time period for which compensatory education relief is requested was clarified and confirmed as October 14, 2009 (the date of Petitioner's original request for evaluations) through May 18, 2010 (the date of the parties' SA). This essentially tracks the allegations of Petitioner's prior 01/26/2010 complaint, claiming a failure to conduct re-evaluations, which was settled through the 05/18/2010 SA.

² As noted above, Petitioner's counsel confirmed that, in light of DCPS' 10/04/2010 actions, Petitioner no longer seeks any private placement relief in this case.

III. FINDINGS OF FACT

1. The Student is a -year old student who resides in the District of Columbia and attends the School, a public charter school in D.C. for which DCPS serves as the LEA. She is currently attending the grade for at least the third consecutive school year. *See Petitioner Testimony; SEC Testimony.*
2. The Student has been identified and determined to be eligible for special education and related services as a child with a disability under the IDEA. Her primary disability is learning disabled (“LD”), and she has been provided with essentially a full-time IEP. *See P-12 (05/07/2008 IEP, providing 25 hours per week of specialized instruction, plus one hour/week of counseling and one hour/week of speech/language services in a special education setting).*
3. On or about October 14, 2009, Petitioner requested that the School re-evaluate the Student “in order to address her lack of academic progress and behavior deficits in the classroom setting.” *P-11.* Petitioner specifically requested that the re-evaluation include a comprehensive psychological evaluation and a functional behavior assessment (“FBA”). *Id.* The letter enclosed a signed consent form for the evaluations. *Id.*
4. On or about January 26, 2010, Petitioner filed a due process complaint against DCPS alleging that DCPS had denied the Student a FAPE by failing to provide the parent access to educational records and failing to conduct re-evaluations as requested by Petitioner. *See P-9.* The complaint claimed that the Student was entitled to compensatory education for DCPS’ failure to conduct re-evaluations. *Id.*, p. 6. The complaint also requested that DCPS fund independent evaluations, including a comprehensive psychological and FBA. *Id.*, p. 7.
5. On March 3, 2010, the Hearing Officer issued an Order of Withdrawal due to Petitioner’s voluntary withdrawal of the 01/26/2010 complaint based on the parties having reached an agreement to settle the matter as of February 25, 2010. The Order of Withdrawal dismissed the complaint with prejudice, stating that “the claims contained in the complaint may not be reasserted; subject, however, to enforcement of

the Settlement Agreement.” *Order of Withdrawal, Case No. 2010-0097* (March 3, 2010).

6. On or about May 18, 2010, the parties executed a written Settlement Agreement (“SA”) relating to the underlying complaint filed on or about 01/26/2010. The 05/18/2010 SA was entered into to replace the earlier February 2010 settlement, which the parties were unable to locate.³
7. In the 05/18/2010 SA, the parties agree that: (a) DCPS will fund an independent FBA, Speech and Language Evaluation, Psychiatric Evaluation, and Comprehensive Psychological Evaluation of the Student; and (b) “within twenty business days of receipt of the last evaluation, DCPS will convene an IEP meeting to review the evaluations, review and revise the IEP, if necessary, discuss and determine location of services, [and] discuss and determine compensatory education, if warranted.” *P-8*, pp. 1-2, ¶ 4. The 05/18/2010 SA also provides that the SA “is in full satisfaction and settlement of all claims in the pending [01/26/2010] Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement.” *Id.*, p. 2, ¶ 10. The SA was executed by Petitioner on 05/15/2010 and by DCPS on 05/18/2010. *Id.*, p. 3.
8. On or about July 14, 2010, Petitioner through counsel forwarded the completed evaluation reports to DCPS. *Complaint*, p. 3, ¶ 9; Stipulation at 10/14/2010 hearing. The evaluation reports included a Comprehensive Psychological Evaluation dated 06/18/2010 (*P-14*), an FBA dated 06/17/2010 (*P-15; DCPS-4*), a Psychiatric Evaluation dated 06/18/2010 (*DCPS-1*), and a Speech and Language Evaluation dated July 8, 2010 (*DCPS-2*).
9. On or about July 20, 2010, DCPS convened a meeting of the Student’s MDT/IEP Team (including Petitioner) to review the evaluations and take the other actions specified in the 05/18/2010 SA. *See P-7* (MDT meeting notes); *see also DCPS-5*. The Team reviewed each of the submitted evaluations and recommended a full-time

³ See Email correspondence from Petitioner’s counsel dated Oct. 7, 2010; Stipulation at 10/14/2010 due process hearing.

- therapeutic setting for the Student. *DCPS-5-2*. The Compliance Case Manager (“CCM”) also indicated that DCPS would issue an Independent Educational Evaluation (“IEE”) Authorization for a Vocational Evaluation. *Id.* The Team agreed to reconvene to complete the steps required by the SA. *Id.*; see *Lozano Testimony*.
10. On or about August 5, 2010, DCPS issued an IEE letter authorizing an Independent Vocational Assessment of the Student, at the expense of the District of Columbia. See *P-6*; *DCPS-11*. This evaluation is still outstanding. *SEC Testimony*. DCPS also sent a Letter of Invitation for an MDT meeting to take place on August 27, 2010. *P-5*.
 11. On or about August 27, 2010, DCPS convened another meeting of the Student’s MDT/IEP Team (including Petitioner) to review and revise the IEP, discuss and determine location of services, and discuss and determine compensatory education. See *P-3*; *DCPS-6*. August 27 is approximately 32 business days (*i.e.*, week days excluding holidays) after July 14, 2010.
 12. At the 08/27/2010 meeting, the MDT/IEP Team revised the Student’s disability classification to Multiple Disabilities (“MD”), to include both LD and ED, and it revised the goals in the IEP. See *DCPS-6*; *DCPS-7*. It also increased the counseling and speech/language services to two hours per week for each service. *DCPS-7*. With respect to location of services, the Team agreed that the Student would remain at the School on an interim basis and that they would reconvene in 30 days to discuss a residential placement/location of services. *DCPS-6-1*. DCPS then issued a Prior to Action Notice that date specifying a continued interim placement at the School. *P-4*.
 13. At the 08/27/2010 meeting, the MDT/IEP Team also discussed compensatory education. Petitioner’s counsel requested funding for a cosmetology training program, and DCPS offered 40 hours of counseling @ /hour and 20 hours of mentoring @ /hour. *DCPS-6-1*.
 14. On or about October 4, 2010, DCPS convened another meeting of the Student’s MDT/IEP Team (including Petitioner) in order to complete its discussion and determination of placement/location of services. *DCPS-18*. It was determined that the Student will attend the RTF, and DCPS issued a PNOP confirming that change in placement the same date. *DCPS-13*.

15. Also at the 10/04/2010 meeting, the MDT/IEP Team again discussed compensatory education. DCPS' CCM stated that she would provide Petitioner with Compensatory Education Authorization letters, rather than include compensatory education in a settlement agreement. *DCPS-18-2*. The parties then discussed Petitioner's proposal for DCPS to fund tuition at Hair Academy, Inc., a local cosmetology school selected by Petitioner, and CCM requested clarification regarding the amount of tuition. Petitioner's counsel clarified that the amount of tuition was [redacted]. In response, the CCM stated that DCPS was willing to fund tuition at a cost not to exceed [redacted] plus [redacted] in supplies, in order to resolve the dispute over compensatory education. *Id.* Petitioner's counsel stated that they were not in agreement and would proceed to hearing. *Id.* The CCM then stated that she would re-authorize the compensatory education discussed at the 08/27/2010 Team meeting. *Id. See also Lozano Testimony.*
16. On or about October 6, 2010, DCPS issued Compensatory Education Authorization letters in accordance with the prior discussions at the August 27 and October 4, 2010 MDT meetings. *See DCPS-15; Lozano Testimony.* DCPS authorized the funding of 40 hours of counseling services to be completed by an independent provider of the parent's choice, at a rate not to exceed [redacted] per hour, and to be completed no later than 08/27/2014. *DCPS-16.* DCPS also authorized the funding of 20 hours of mentoring services to be completed by an independent provider of the parent's choice, at a rate not to exceed [redacted] per hour, and to be completed no later than 08/27/2014. *DCPS-17.*

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *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. *See* DCMR 5-3030.3. The normal standard is preponderance of the evidence. *See, e.g., 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).

B. Issues/Alleged Denials of FAPE

The Hearing Officer concludes that Petitioner has failed to meet her burden of proof on any of the specified issues and alleged denials of FAPE.

1. Failure to Comply With May 2010 SA

In relevant part, the May 18, 2010 SA provides: “Within twenty business days of receipt of the last evaluation, DCPS will convene an IEP meeting to review the evaluations, review and revise the IEP, if necessary, discuss and determine location of services, [and] discuss and determine compensatory education, if warranted.” *P-8*, pp. 1-2, ¶ 4. Petitioner claims that DCPS breached the SA by addressing only the first of these items (*i.e.*, review of evaluations) at the July 20, 2010 MDT/IEP meeting. *See Amended Complaint* (Sept. 13, 2010), pp. 5-6; *Prehearing Order* (Oct. 7, 2010), ¶ 5. In addition, as clarified at the PHC and in the opening statement of Petitioner’s counsel at hearing, Petitioner claims that DCPS then violated the SA at the August 27, 2010 meeting when it failed to provide an appropriate compensatory education plan directed to the unique needs of the Student. Neither argument withstands scrutiny. Accordingly, Petitioner has failed to meet her burden of proof on Issue 1.

(a) With respect to the timeliness issue, DCPS was required to hold a meeting within 20 business days (*i.e.*, week days, excluding holidays) from its July 14, 2010 receipt of the last evaluation, which would have been August 11, 2010. The evidence shows that DCPS convened an MDT meeting on July 20, 2010 – within only four (4) business days – for the stated purpose of completing all of the items specified in the 05/18/2010 SA. *See DCPS 5-1*. The meeting then lasted approximately six hours because it involved a “quite careful and quite deliberate” review of several evaluations, as well as discussion and agreement regarding the need for an independent vocational evaluation. *SEC Testimony; see also Ellis Testimony*. Having run out of time that day, the Team agreed that it would be appropriate to reconvene at a later date to complete the IEP review and other remaining items. *See DCPS-5; P-3; SEC Testimony*. On August 5, the same date it issued an IEE for a vocational evaluation, DCPS then scheduled the next meeting for August 27, 2010. *See P-5*. It is undisputed that the August 27 MDT/IEP meeting included a discussion and determination of all of the items specified in the SA, except for the identification of a specific residential placement, which all members agreed would be completed at a follow-up meeting within approximately the next 30 days. *See P-3*.

Under the circumstances, the Hearing Officer concludes that DCPS did not commit any material violation of the 05/18/2010 SA when it failed to discuss and determine all required issues (evaluation, IEP, location of services, and compensatory education) before the August 27 meeting. The 08/27 meeting took place only 12 business days after the 08/11 deadline, and was scheduled in part in the expectation that the vocational evaluation might be available by that date. *See, e.g., SEC Testimony*. Moreover, even assuming *arguendo* that a technical procedural violation was committed, Petitioner has not shown that it resulted in any educational harm to the Student.⁴ Thus, the Hearing Officer concludes there was no denial of FAPE in this respect. *See* 34 C.F.R. 300.513 (a); *Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006).

(b) With respect to the appropriateness of the compensatory education plan, recent case law recognizes that a parent may challenge the appropriateness of an MDT's determination of a compensatory education plan under a settlement agreement like the one at issue here.⁵ However, this would appear to present the issue in a somewhat different posture than where compensatory education is initially requested at a due process hearing as an equitable remedy for an adjudicated denial of FAPE. While the same standards should properly govern the analysis, *see Reid v. District of Columbia*, 401 F. 3d 516 (D.C. Cir. 2005), the difference is that here Petitioner agreed to settle – rather than litigate – her previous claims in Case No. _____ in exchange for DCPS' agreeing to hold an MDT meeting that would “discuss and determine” any compensatory education. In this case, Petitioner has not shown that the Team failed to discuss and determine compensatory education (at least as of the 08/27 meeting), and she also has not shown that the resulting decision was contrary to the principles articulated in *Reid*. Thus, the MDT's determination should dispose of any claim for compensatory education based on alleged denials of FAPE that were settled in the May 2010 SA.

⁴ The Hearing Officer notes that DCPS schools were not even in session during the first seven business days after 08/11/2010, and that the Student has continued to receive services at the School since the beginning of the 2010-11 School Year.

⁵ *See, e.g., Gregory-Rivas v. District of Columbia*, 108 LRP 51949 (D.D.C. Sept. 8, 2008) (affirming HO decision that reviewed and upheld MDT's determination not to award compensatory education services; entitlement to compensatory education ruled properly before HO where settlement agreement required MDT to “discuss and determine” the amount, if any, that the student was due).

Moreover, even approaching the issue *de novo*, the Hearing Officer concludes that Petitioner has not met her burden of demonstrating that the specific form of compensatory education she has requested (*i.e.*, vocational training tuition and equipment) is “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,” 401 F.3d at 524. Petitioner never demonstrates (1) what specific educational benefits would have accrued to the Student had DCPS provided the FAPE that Petitioner previously alleged it denied – *i.e.*, had it conducted timely re-evaluations following parent’s 10/14/2009 request, *see P-9*, pp. 4-7 (01/26/2010 complaint); or (2) how the vocational training would restore those particular educational benefits. *Cf. Gregory-Rivas v. District of Columbia*, 108 LRP 51949, slip op. at 5 (parent “did not show the educational level [the student] would have progressed to but for DCPS’ alleged violation or that the desired compensatory education services would bring [him] to that educational level.”).

Instead, Petitioner’s compensatory education plan largely makes general assertions of educational deficits that it fails to connect to her specific request for cosmetology training. *See, e.g., P-1*, pp. 1-2 (citing “academic challenges” as well as “significant psychological challenges that affect her ability to learn and operate as a productive member of society” noted in June 2010 comprehensive psychological evaluation). The plan also asserts that DCPS’ failure to conduct earlier re-evaluations has had the effect of delaying the Student’s entry into residential placement. *Id.*, p. 3. However, Petitioner did not show how her vocational training proposal would address any harm resulting from that delayed entry. Indeed, the evidence shows that such vocational benefits could not be expected to be provided in a residential setting, and that the Student’s academic and psychological challenges will likely need to be addressed before the Student can access and benefit from vocational training. *See, e.g., Testimony of Ellis, Advocate, and Psychologist; see also P-14*. Thus, the MDT/IEP Team reasonably could have determined that tutoring and mentoring services would better remediate the harm caused by any prior denials of FAPE, including the failure to re-evaluate previously alleged by Petitioner as well as any missed services. *See, e.g., Ellis Testimony; Lozano Testimony; SEC Testimony*.

Accordingly, the Hearing Officer concludes that Petitioner has not met her burden of proof on Issue 1 and has not demonstrated entitlement to her requested compensatory education relief.

2. Failure to Provide Appropriate Placement

Petitioner claims that DCPS denied the Student a FAPE by failing to provide an appropriate educational placement and/or location of services for the 2010-11 School Year. Since all prior claims were settled,⁶ and since DCPS has now offered a specific residential placement acceptable to Petitioner, this claim can relate only to the time period *after May 18* and *prior to October 4, 2010*. See *Prehearing Order*, ¶ 5.

In the May 2010 SA, the parties agreed on a process going forward which called for DCPS to fund independent evaluations and then convene an MDT/IEP meeting to consider the results of the evaluations, the IEP, and an appropriate placement/location of services. When the team was unable to complete all of these tasks at the July 20 meeting DCPS convened for such purposes, the parties agreed to reconvene and subsequently did so on August 27. When they reconvened on August 27, the team then determined that a residential placement was needed, but also agreed that the Student should be placed at the Charter School on an interim basis pending identification of a specific RTF appropriate to meet the Student's unique needs. That agreed process was ultimately concluded at the October 4 meeting.

In sum, the evidence shows that DCPS acted in a reasonably prompt and appropriate fashion in implementing the steps called for under the May 2010 SA and subsequently agreed to by the parties. In these circumstances, there is no basis for finding that DCPS denied the Student a FAPE by failing to provide an appropriate residential placement any earlier than 10/04/2010. The Hearing Officer concludes that Petitioner has not carried her burden of proof on Issue 2.

3. Failure to Conduct Annual Review

Petitioner next claims that DCPS denied the Student a FAPE by failing to review and revise the Student's IEP annually, as required by the IDEA. Again, the SA settled all claims arising prior to 05/18/2010 by creating an agreed process and timetable for updating the IEP. Thus, Petitioner cannot now allege a failure to review and revise the IEP dating as far back as

⁶ As noted above, the 05/18/2010 SA provides that it "is in full satisfaction and settlement of all claims in the pending [01/26/2010] Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement." P-8, p. 2, ¶ 10. The claims asserted in the 01/26/2010 complaint were also dismissed with prejudice. See *Order of Withdrawal, Case No. 2010-0097* (March 3, 2010).

January 2010. *See Amended Complaint*, pp. 9-10. Nor can Petitioner claim a “continuing violation” of the IDEA after 05/18/2010 (*see Petitioner’s Opening Statement*) when DCPS acts pursuant to the terms set forth in the SA. DCPS ultimately did review the IEP and substantially revise its goals at the 08/27/2010 meeting. *See DCPS-6; DCPS-7*. Accordingly, the Hearing officer concludes that Petitioner did not meet her burden of proof on Issue 3.

4. Failure to Develop an IEP Containing Appropriate Measureable Post-Secondary Goals

Finally, Petitioner alleges that DCPS denied the Student a FAPE by failing to develop an appropriate IEP that contains transitional and/or vocational goals that are appropriate and measureable. Specifically, Petitioner alleges that DCPS should have conducted a vocational assessment of the Student *prior to August 5, 2010*, and that as a result the Student has not received required transition services because she has had no transition plan in her IEP. *See Prehearing Order*, ¶ 5.

As with Issues 2 and 3, since the January 2010 complaint was dismissed with prejudice and the May 2010 SA expressly settled all other claims Petitioner could have asserted as of the date of the signed agreement, this claim may not be asserted for any time period prior to May 18. Thus, the relevant issue is limited to whether DCPS’ failure to conduct a vocational assessment and/or to develop appropriate transition goals and services *between 05/18/2010 and 08/05/2010* has resulted in a denial of FAPE. Because DCPS appears to have acted reasonably promptly in issuing an IEE letter for this purpose once this additional evaluation issue surfaced at the July 20 meeting, and Petitioner has not shown any specific educational harm to the Student from what is at most an approximately 2 ½ month period of delay,⁷ the Hearing Officer concludes that Petitioner has failed to meet her burden of demonstrating a denial of FAPE under Issue 4.

⁷ The Hearing Officer notes that, as of the date of hearing, the IEE letter had been outstanding for over two months, but Petitioner still had not completed and returned the evaluation to the Team to enable it to review and update the Student’s post-secondary transition plan. *See Advocate Testimony*. In addition, the Hearing Officer asked Petitioner’s counsel if Petitioner wished to defer any compensatory education claims until the results of the independent vocational evaluation could be considered, but counsel took the position that the evaluation had no bearing on the issue of compensatory education.

Of course, once the vocational evaluation results are received, DCPS should reconvene the MDT/IEP Team to consider such information in structuring the Student's post-secondary transition plan, particularly with respect to her vocational training goals and interests.

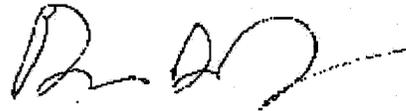
V. **ORDER**

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

1. Petitioner's requests for relief in her Due Process Complaint are **DENIED**.
2. The Complaint is **DISMISSED, With Prejudice**; and
3. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: October 28, 2010



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States, without regard to the amount in controversy, within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).