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

STUDENT, a minor, by and through
his Parent[1]

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Erin H. Leff, Hearing Officer

OSSE
STUDENT HEARING OFFICE
2012 OCT -9 AM 9:55

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On July 10, 2012 Parent, on behalf of her child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Parent's Administrative Due Process Complaint Notice (HO 5) on July 25, 2012, 5 days beyond the 10 day timeline. A resolution meeting was held on August 2, 2012[3]. The parties were not able to reach an agreement and executed a Resolution

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.
[3] The resolution meeting was originally scheduled for July 24, 2012, within the 15 day timeline, but Petitioner did not appear. The meeting had to be rescheduled.

Period Disposition Form on the same date so indicating. HO 6. The 45 day timeline began to run on August 10, 2012, the day after the 30 day resolution period ended. Following the Prehearing Conference held on August 15, 2012, I issued a Prehearing Conference Order on August 18, 2012. HO 7. Petitioner's counsel requested a 14 day continuance due to Petitioner's unavailability until the end of September due to illness. The request was not opposed and was granted by the Chief Hearing Officer on August 16, 2012. My Hearing Officer Determination is due on October 7, 2012.

Thereafter, Justin Douds, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for September 26 and 27, 2012. The hearing was held as scheduled in the Student Hearing Office.

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

ISSUES

The issues are:

Whether DCPS failed to provide Student a free, appropriate public education ("FAPE") when DCPS failed to:

1) Provide Student an updated clinical psychological evaluation in response to the parent's request of October 27, 2011. DCPS also has not provided Petitioner a copy of a completed psychological nor held a multidisciplinary team meeting ("MDT") to review and , if appropriate, revise Student's individualized education program ("IEP") in response to such an evaluation;

2) Convene a multidisciplinary team ("MDT") meeting to review and revise Student's IEP upon his release from residential placement in May 2012 to review the possible need for a more restrictive placement and/or services as requested by Petitioner;

3) Identify Student as eligible, in compliance with the IDEA child find requirement, for special education and related services in the 2010 – 2011 school year until May 27, 2011;

4) Develop an appropriate transition plan in February 2012. Student was not included in the drafting of the plan. It does not include independent living goals, and it is not specific enough to address the student's interests and needs. For example, the plan indicates Student will own his own business, and Student's vocational assessment shows Student has an interest in science; and

5) Implement Student's transition plan in February and March 2012, from May 2012 through the end of the school year and during summer school 2012.

RELIEF REQUESTED

Petitioner requested the following relief:

1) Private placement at the Academy including transportation;
2) A comprehensive psychological evaluation;
3) Development of an IEP that includes full time placement in a therapeutic setting and increased counseling;
4) Student's participation in the development of his transition plan; and
5) Compensatory education.[4]

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

P-1 Correspondence from Roberta Gambale to dated May 24, 2012;
P-2 Correspondence from Roberta Gambale to dated July 6, 2012;
P-3 Individualized Education Program dated February 8, 2012;
P-4 Advocate IEP meeting notes dated February 8, 2012;
P-5 IEP meeting notes undated;
P-6 Prior Written Notice dated May 6, 2011;

[4] Petitioner also requested attorney's fees. Petitioner's counsel acknowledged during the prehearing conference that this request is outside the authority of the hearing officer.

P-7 Individualized Education Program dated June 20, 2011;
P-8 IEP meeting notes dated May 6, 2011;
P-9 Advocates IEP meeting notes undated;
P-10 Final Eligibility Determination Report dated May 6, 2011;
P-11 Analysis of Existing Data dated April 28, 2011;
P-12 Student Support Team Initial Meeting Report dated February 8, 2011;
P-13 Correspondence from Dexter B. Reed, LISW dated January 10, 2011:
P-14 Psychological Evaluation dated November 11, 2009;
P-15 Psychiatric Evaluation dated February 3, 2011;
P-16 Vocational Level II Evaluation dated August 3, 2011;
P-17 Correspondence from Mrs. Zaslovsky dated February 8, 2011;
P-18 Report to Parent on Student Progress dated January 21, 2011;
P-19 Transcript dated June 20, 2011;
P-20 Letter of Understanding dated June 20, 2011;
P-21 Correspondence from Monica Smith, Attendance Counselor dated June 6, 2011;
P-22 Correspondence from Maria Mendoza dated July 28, 2011;
P-23 Email correspondence chain dated August 7, 2011;
P-24 Correspondence from Maria Mendoza dated August 31, 2011;
P-25 Correspondence from Maria Mendoza dated October 27, 2011;
P-26 Correspondence from Maria Mendoza dated October 21, 2011;
P-27 Fax Confirmation from Jayme Weber, Paralegal to Maria Mendoza dated December 6, 2011;
P-28 Email Correspondence chain from Maria Mendoza dated November 15, 2011;
P-29 Consent for Initial Evaluation/Reevaluation dated November 29, 2011;
P-30 Correspondence from Brown and Associates dated December 19, 2011;
P-31 Email correspondence chain from Maria Mendoza dated January 4, 2012;
P-32 Compensatory Education Plan from dated September 14, 2012;
P-33 Resume for MA.

Exhibits admitted on behalf of Respondent are:

R 01	Student Attendance Records	05/18/2011
R 02	Special Education Referral Acknowledgement	04/28/2011
R 03	Student Enrollment Documentation	09/11/2012

Exhibits admitted by the Hearing Officer are:[5]

1 Administrative Due Process Complaint Notice dated July 10, 2012
2 Notice of Hearing Officer Appointment dated July 11, 2012
3 Prehearing Conference Scheduling Letter (with attachment) dated July 13, 2012
4 Prehearing Conference Notice (with attachment) of July 17, 2012[6]

[5] Emails, constituting documents of record, forwarding the following documents to opposing counsel and the hearing officer are filed with the document unless otherwise noted.
[6] The document attached is a duplicate of the prehearing conference scheduling letter as this is the document that was provided by mistake. Attached to this document is the Prehearing Conference Checklist and the email

5 District of Columbia Public Schools' Response of July 25, 2012 to Petitioner's Due Process Complaint
6 Resolution Period Disposition Form for meeting of August 2, 2012
7 Petitioner's Motion for Continuance of August 15, 2012 with attached email chain re Motion
8 Interim Order on Continuance dated August 16, 2012
9 Prehearing Conference Order of August 18, 2012
10 Miscellaneous email
- Email chain re scheduling resolution session
- Email chain re whether DCPS response is also intended to be a Motion to Dismiss

11 Petitioner's Compensatory Education Plan
12 Proposed Hearing Officer Exhibit List of September 18, 2012

B. Testimony

Petitioner testified and presented the following witnesses:

- MA admitted as an expert in transition planning and compensatory education
- Admissions Director and Outreach Coordinator, Academy

DCPS presented the following witnesses:

- Special Education Coordinator, School
- Monica Moment, DCPS psychologist
- DCPS Special Education Teacher

FINDINGS OF FACT

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

1. Student is years old. He is in the grade at School Prior to attending Student attended School in the 2007-2008 and 2008-2009 school years. He attended

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forwarding the letter which includes the date and time for conference and identifies the letter as the prehearing notice. My error in sending the incorrect document was discussed during the prehearing conference. Counsel agreed they were prepared to proceed with the conference despite my error.

and schools and in the 2009-2010 school year. In the 2010-2011 school year he attended and in the 2011-2012 school year he attended both and P 3; P 4; P 7; P 8; P 10; P 11; P 12; P 16; P 32Testimony of Petitioner; Testimony of Testimony of Whitehead; Testimony of

2. Student repeated the grade while at He currently is enrolled in the grade for the third time. P 4; P 7; P 14; P 15; Testimony of Petitioner; Testimony of

3. Student received a psychological evaluation at the Center Clinic of George Washington University ("psychological") while he was enrolled at Student was evaluated in response to Petitioner's request. At that time Student's grades had fallen and his behavior had changed. The report from this evaluation is dated November 11, 2009. The team at reviewed this psychological but did not find Student eligible for special education services under IDEA. This is the only comprehensive psychological evaluation Student has received. P 14; Testimony of Petitioner.

4. Student has cognitive abilities in the low average to high average range. However, there is some indication that Student has higher abilities than those demonstrated during the psychological evaluation. At the time of the evaluation Student's academic achievement was at least 5 months behind in broad reading, broad math and broad written language on the Woodcock Johnson III. In some specific areas such as story recall, oral language and written expression he was two to four years behind grade level. However, in other specific skill areas such as calculation and spelling he demonstrated academic skills above grade level. P 14.

5. Student has depression with post- traumatic stress disorder features. In school, Student's disability manifests in poor attendance, inattentiveness in class, failure to participate or complete assignments on a regular basis and academic failure. He received failing grades in all subjects other than JROTC and music in the 2010-2011 school year. P 4; P 5; P 6; P 7; P 11; P 8; P 12; P 14; P 17; P 18; P 19; P 20; P 21; P 32; R 1; Testimony of Petitioner; Testimony of

6. When Student enrolled in DCPS in the 2009-2010 school year Petitioner provided DCPS a copy of the November 11, 2009 psychological evaluation. No action was taken. Student attended and Schools. At some point during the 2009 – 2010 school year he transferred to School.[7] Testimony of Petitioner.

7. In the 2010-2011 school year Student continued to attend Petitioner provided with a copy of the 2009 psychological In addition Petitioner provided copies of a letter dated January 10, 2011 from Student's counselor and a psychiatric evaluation dated February 3, 2011. Student was involved in the Student Support Team ("SST") process beginning February 8, 2011. The SST met approximately 8 times regarding Student. P 12; P 14; P 15; Testimony of Petitioner; Testimony of

8. acknowledged receipt of referral for initial evaluation on April 4, 2011, and on May 6, 2011 Student was found eligible for services under IDEA. In finding him eligible the MDT relied on the November 2009 psychological, teacher interviews, and student observation. He was classified as a student with an emotional disability. He has depression and post-traumatic stress disorder ("PTSD"). P 3; P 4; P 6; P 7; P 8; P 10;

[7] This information is provided for context. These incidents precede the two year statute of limitations applicable to this matter. *See* , 34 C.F.R. § 300.507(a)(2).

P 14; R 2; Testimony of Petitioner; Testimony of Testimony of Testimony of

9. Student's initial individualized education program ("IEP"), dated May 27, 2011, provides the following weekly services:

   - 15 hours of specialized instruction – 10 hours in general education and 5 hours outside general education;
   - 30 minutes of behavior support outside general education.

   It has academic goals in mathematics, reading and written language and goals in emotional, social and behavioral development. The IEP includes a transition plan with goals for post-secondary training and education and for employment. P 7.

10. In the fall of the 2011-2012 school year, while Student was enrolled at Student was incarcerated at the Petitioner requested an updated clinical evaluation on October 27, 2011. Petitioner signed the Consent for Evaluation on November 29, 2011. This consent was forwarded to the special education coordinator at on December 6, 2011. However, no evaluation occurred. Petitioner had made prior requests for reevaluation of Student. She first asked to reevaluate the Student when he enrolled in the 2009-2010 school year when he had not yet been found eligible for services under IDEA.[8] In early 2011 Petitioner made another request for a reevaluation. Each of these requests was verbal. P 26; Testimony of Petitioner. P 25; P 27; P 29; P 31; Testimony of Petitioner.

11. Student was placed in a group home when released from He attended during this placement. Student made progress while attending Petitioner was pleased with the program and services provided

[8] See FN 7, *Supra.*

Student. Student attended classes and participated. He completed assignments. Petitioner would like to see Student receive the supports he received at P 3; Testimony of Petitioner; Testimony of Parks.

12. An IEP meeting was held at . on February 8, 2012. Petitioner participated in this meeting by telephone. Student did not participate. The IEP developed at this meeting provides the following weekly services:

    - 15 hours of specialized instruction – 13 hours in general education and 6.5 hours outside general education;
    - 30 minutes of behavior support outside general education.

    The IEP includes academic goals in mathematics, reading, written expression and goals in emotional, social and behavioral development. The Present Levels of Performance for the academic goals reference a February 7, 2012 WRAT IV and Woodcock Johnson test results from October 2009. The IEP includes a Functional Behavior Assessment and a transition plan with goals in training and education to address Student's interest in attending college and employment goals related to Student becoming a business owner. These goals were developed based on a completed interest inventory and a student interview of February 7, 2012. P 3; P 4; Testimony of Petitioner; Testimony of .

13. Student was re-arrested in March 2012. He returned to Petitioner's home and re-enrolled in in May 2012 upon his release. Petitioner requested a multidisciplinary team ("MDT") meeting through her counsel on May 24, 2012 and again on July 6, 2012 to address Student's IEP and placement. However, the May request was faxed to and the July request was faxed to without identifying a specific intended recipient. The Special Education Coordinator ("SEC") at did not receive the

request. During a conversation regarding Petitioner's desire to have an MDT meeting, the SEC told Petitioner to call approximately one week prior to the opening of school for the 2012-2013 school year. P 1; P 2; P 32; Testimony of Petitioner: Testimony of

14. Student attended summer school in 2012. Rather than being assigned to the classes necessary for Student to move to grade, he was assigned to different classes and therefore required to repeat grade again in the 2012-2013 school year. Efforts to get him assigned to the proper classes for summer school were not successful. Testimony of Petitioner.

15. has a credit recovery program. It is a newly designed program this year. Students who successfully complete the program are able to move to the next grade the following semester. Student is not enrolled in the program. For Student to enroll in the program Petitioner must provide written consent. The program is intended for students who have access to a computer at home. Student has not been referred to the program by the SEC. Credit recovery could be discussed at Student's IEP meeting. Testimony of Whitehead.

16. Student's family life has been filled with turmoil. His father abused Student's mother, Student and his brother. His father left the family home in August 2008. Even while living with the family he had little interaction with Student. It is likely this tumultuous family environment played a significant role in Student's emotional difficulties. P 13; P 14; P 16; Testimony of Petitioner; Testimony of

17. Student is involved in family and individual counseling outside of school. He also has two mentors and receives tutoring. Testimony of Petitioner.

18. For academic success, Student requires a predictable, structured environment. He also requires educational supports and tutoring to address his educational needs and counseling to address his social/emotional needs. P 14.

19. Student has been accepted at the of Washington, D.C., a full time, private, special education school. It provides a diploma based program in which students earn Carnegie Units required for graduation with a regular high school diploma. The school has small classes with a 1 to 5 teacher student ratio. Student behavior needs are addressed by a staff of social workers as well as through point sheets. There also are services in place to address attendance issues. The school is able to provide the services identified on Student's IEP. A placement at is more restrictive than that called for in Student's IEP. Testimony of Stith-Twines.

20. Student's compensatory education plan, developed by recommends Student receive the following:

- Truancy assessment
- Stay Connected: a six week program provided through to address attendance issues
- Either a credit recovery program or a GED prep program depending on the results of updated evaluations
- 50 hours of counseling
- 8 week summer program including intensive career exploration/employment readiness, personal and social skills for employment and daily living skills.

The total cost of these recommendations, if provided through would be between and plus tuition and expenses for the 8 week summer program. The recommendations can be implemented by service providers other than The compensatory education plan is intended to compensate the student for the following alleged denials of FAPE: failure to find the student eligible for services in the 2010-2011 school year; requests for reevaluations and MDT meetings that

never occurred; failure to address student's behavioral issues; and development of an inappropriate transition plan. P 32; Testimony of

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

1) Whether DCPS failed to provide Student a FAPE when DCPS failed to provide Student an updated clinical psychological evaluation in response to the parent's request of October 27, 2011. DCPS also has not provided Petitioner a copy of a completed psychological nor held a multidisciplinary team meeting to review and, if appropriate, revise Student's individualized education program in response to such an evaluation

The IDEA requires a local education agency, here DCPS, to ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the parent and public agency agree one is not necessary. 34 C.F.R. § 300.303(b). A public agency also must ensure that a reevaluation occurs if the child's educational or related service needs warrant a reevaluation or if the child's parent requests a reevaluation. 34 C.F.R. § 300.303(a). This reevaluation is to be conducted in accordance with regulations establishing the requirements for evaluation and reevaluation. 34 C.F.R. §§ 300.304 through 300.311. *Id.* These regulations require, among other standards, that the student be evaluated in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4).

In the instant matter, Student received a psychological evaluation in November 2009. Petitioner asked for a reevaluation when Student enrolled at in the 2009-2010 school

year.[9] In May 2011 Student was found eligible for special education and related services under IDEA. In reaching this determination the MDT relied on the November 2009 psychological, teacher interviews and observations of Student. No psychological or educational evaluation occurred. Since Student's enrollment at Petitioner has requested Student receive a clinical psychological reevaluation more than once. A written request was sent by Petitioner's attorney to the special education coordinator at the on October 27, 2011. This request specified that the request for evaluation included a specific request for a clinical evaluation. No evaluation occurred. Petitioner also made a verbal request. Not only di Petitioner request a new evaluation upon Student's entering Petitioner repeated the request in early 2011, but no re-evaluation occurred. Instead, when ultimately finding Student eligible for services under IDEA in May 2011, DCPS relied on the pre-existing psychological from November 2009.

Respondent argues that there was no request for reevaluation until October 2011 and that the consent for this evaluation was not received until November 2011. It is Respondent's position that the WRAT, a test of academic achievement, administered in February 2011, constitutes the reevaluation conducted pursuant to Petitioner's request and that this is an adequate evaluation.[10] Setting aside the earlier verbal requests for evaluation, Respondent's argument that the WRAT constitutes the reevaluation must fail. IDEA requires that a reevaluation be conducted when a parent requests. There is no ambiguity in this requirement. As stated by the Court in *Cartwright v. Dist. of Columbia*, 267 F. Supp.2d 83 (D.D.C. 2003) the plain language of the IDEA regulation is that a local education agency must comply with a parent's request to reevaluate. *See*, 34 C.F.R. § 300.303(a)(2). It is axiomatic that a child must be

[9] While this request precedes Student's initial determination of eligibility it is relevant to the discussion here because Petitioner was concerned about Student's emotional needs at the time of enrollment, and made them clear to the school. The lack of response to Petitioner's request is discussed further under Issue 3, below.
[10] I note Student completed a transition survey (interest inventory) in this process.

evaluated in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4). Here Student is classified as having an emotional disability. The last evaluation of this disability occurred in November 2009. Conducting an evaluation of Student's academic achievement with the WRAT cannot be deemed to have assessed the child in all areas of disability. He simply was not assessed in the area of his defined ability.[11] Moreover, Petitioner specifically requested a psychological evaluation be part of the evaluative process. Assuming, *arguendo*, that DCPS decided not to provide the psychological requested and that despite the finding in *Cartwright*, DCPS could choose not to provide the psychological requested by Petitioner, a notification of the refusal and the basis for the refusal pursuant to 34 C.F.R. § 300.503(a)(2) would have been required. This notification was not provided.

I, therefore, find by a preponderance of the evidence that DCPS failed to provide Student a FAPE when DCPS failed to provide Student an updated clinical psychological evaluation in response to the parent's request of October 27, 2011.

2) Whether DCPS failed to provide Student a FAPE when DCPS failed to convene an MDT to review and revise Student's IEP upon his release from residential placement in May 2012 to review the possible need for a more restrictive placement and/or services as requested by Petitioner.

Each child with a disability who is found eligible for special education and related services under the IDEA is to be offered a FAPE that addresses his/her individual educational needs. 34 CFR § 300.1. An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual

[11] Petitioner raises the lack of a meeting to review the requested psychological evaluation and revise the IEP in response to the evaluation as appropriate as part of this allegation. As there is no dispute that the requested psychological evaluation was not provided, it follows there could have been no meeting to review the IEP and revise it if appropriate in response to the evaluation. Therefore, I do not address this aspect of this claim as a meeting cannot be held to discuss a nonexistent document.

academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982). Pursuant to 34 C.F.R. § 300.324(b) the local education agency must assure the IEP is reviewed at least annually to determine whether the student's goals are being achieved. Further the IEP is to be revised to address lack of expected progress, the results of reevaluations, information provided to or by the parent, the child's anticipated needs or other matters. *Id.*

In the instant matter, Student returned to in May 2012 following a two month incarceration. Prior to that incarceration Student had been attending School while residing in a group home following a prior arrest. Student had not attended since the fall of 2011. His return to occurred approximately two weeks before the end of the school year. Petitioner was concerned that arrangements be settled for Student's school program beginning in the fall of 2012. Her attorney, therefore, requested an IEP meeting by letters dated May 24, 2012 faxed to School and July 6, 2012 faxed to

School. The letter to was also sent to the Office of General Counsel. Neither letter was directed to a specific person. The special education coordinator did not receive the letter. There was no response to either letter.

DCPS argues that having a meeting at the end of May would not have benefitted Student as school was about to end for the summer, and Petitioner testimony was clear that her interest was to focus on Student's needs for the fall of the 012-2013 school year. She verbally communicated these concerns to the SEC who told her to call about one week before the start of the 2012-2013 school year. Yet the SEC testified that 30 day review meetings are held when students return to their schools after extended absences. At these review meetings the team looks at, among other items, the student's goals, progress, possible behavioral concerns and the need to adjust hours. This appears to have been the type of meeting Petitioner desired. She was particularly concerned that Student returning from incarceration might need a more restrictive placement. Yet no meeting was scheduled.

The failure to schedule a meeting is, at least in part, attributable to Petitioner's counsel who sent a fax request for the meeting to a large high school and did not identify a recipient. The failure, however, is also attributable to the SEC who having discussed the request with Petitioner responded by asking her to make another request several months in the future. If, in fact, the MDT met and agreed Student needed a more restrictive placement, delaying this meeting until the start of the new school year would have worked against Student being appropriately placed. There is nothing in IDEA or DCMR that indicates an IEP meeting cannot or should not be held during the summer. That said, Petitioner did not testify she had renewed her request for a meeting at the start of the current school year.

It is clear that DCPS was aware Student had returned to following many months of absence, and it is clear that the SEC was made aware that Petitioner was requesting an MDT meeting, however informal a verbal request may be deemed, to discuss the child's anticipated needs following his return from incarceration. Rather than delaying the response to Petitioner's request, the SEC could have initiated the required process for scheduling an MDT meeting. She chose not to do so. Further, it is clear that the SEC was aware Student had returned to due to her conversation with Petitioner, and no MDT meeting has not been held as of this date.

I therefore find, by a preponderance of the evidence, that DCPS denied Student a FAPE when DCPS failed to convene an MDT to review and revise Student's IEP upon his release from residential placement in May 2012 to review the possible need for a more restrictive placement and/or services as requested by Petitioner.

3) Whether DCPS failed to provide Student a FAPE when DCPS failed to identify Student as eligible, in compliance with the IDEA child find requirement, for special education and related services in the 2010 – 2011 school year until May 27, 2011

Child find is an affirmative obligation under IDEA. The state, here the District of Columbia, must have policies and procedures to ensure all children residing in the state who are in need of special education and related services are identified, located and evaluated. 34 C.F.R. § 300.111(a). The child find obligation is triggered where there is reason to suspect the child may have a disability and special education services may be necessary to address the disability. Schl. *Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928 (D. E. Va. 2010) *citing Dept. of Educ. State of Haw. v. Can Rae S.*, 158 F. Supp 2d 1190, 1194 (D. Haw. 2001). To establish a procedural violation of the child find requirement Petitioner "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." Schl. *Bd. of the City of Norfolk v.*

Brown, 769 F. Supp. 2d 928 (D. E. Va. 2010) *citing Bd. of Educ. of Fayette Cnty, K Bd. of Educ. of Fayette Cnty, K. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007)(remainder of citation omitted).*

In the instant matter, Petitioner provided DCPS a copy of the 2009 psychological that found Student to have depression with post- traumatic stress disorder features upon his enrollment at in the 2009-2010 school year. This psychological also revealed Student to have cognitive skills in the average range.[12] Yet he was notably behind in academic achievement. It is important to note that this psychological was the only formal evaluation used to classify student as a student with an emotional disability in May 2011. The remainder of the data used for classification was less formal, such as teacher interviews and observation of Student. Upon his enrollment Petitioner requested he be revaluated. There was no response. Student demonstrated many behaviors suggesting possible disability while at He was frequently absent, often would not participate in class and was withdrawn. Despite his cognitive abilities, Student failed the majority of his courses. He also had a history of repeating grades. In early 2011 Petitioner provided with a psychiatric evaluation and a letter from Student's counselor. It appears that this additional information which appears, at best, supplemental to the information already available to DCPS ultimately resulted in Student's being found eligible for special education and related services after some efforts to provide interventions through the SST process. An IEP was developed. It is clear that DCPS had the information necessary to evaluate this student for special education from the time of his enrollment.[13]

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[12] The evaluation revealed cognitive abilities in the low normal through high normal range. The examiner noted Student's abilities may have been higher than demonstrated based on interpretation of the raw data.

[13] I note there is a two year statute of limitation applicable to IDEA claims. 20 U.S.C. § 1415(f)(3)(C). I therefore limit this claim from July 10, 2010 (two years prior to the filing of the instant Complaint) through May 6, 2011, the date of Student was found eligible for services under IDEA.

DCPS argues that Student was not found eligible at previous schools, that he enrolled in DCPS as a general education student and eventually was referred to the SST who monitored his progress for some time and did not refer him for a special education evaluation. None of these rationales address Respondent's affirmative obligation to identify and evaluate Student under child find. There is no rational explanation for deciding not to evaluate. Student entered DCPS with a psychological evaluation indicating he had emotional difficulties that were affecting his school performance, his behavior continued to deteriorate while attending DCPS schools and he continued to show poor academic performance despite the ability to perform well. DCPS had every reason to evaluate Student and did not do so.

I, therefore, find by a preponderance of the evidence that DCPS failed to provide Student a FAPE when DCPS failed to identify Student as eligible, in compliance with the IDEA child find requirement, for special education and related services from July 10, 2010 through May 6, 2011.

4) Whether DCPS failed to provide Student a FAPE when DCPS failed to develop an appropriate transition plan in February 2012. Student was not included in the drafting of the plan. It does not include independent living goals, and it is not specific enough to address the student's interests and needs. For example, the plan indicates the student will own his own business, and Student's vocational assessment shows Student has an interest in science.

As noted above each student eligible for services under IDEA must have an IEP that memorializes the IEP team's FAPE determination. In addition to the content requirements already identified *Supra* at p.14, the IEP must include transition services in the first IEP in effect when the child becomes 16. Transition services are "appropriate measurable postsecondary goals based upon assessments related to training, education, employment, and, where appropriate, independent living skills." 34 C.F.R. § 300.320(b).

In the instant matter, Student became 16 on February 29, 2012. Therefore the IEP in effect on that date is required to have included transition services. Both Student's original IEP, developed on May 27, 2011 and projected to be in effect on his sixteenth birthday,[14] and his February 8, 2012 IEP include transition services in a section identified as the Post Secondary Transition Plan ("transition plan"). Each transition plan has post-secondary goals in education and training and in employment.

Petitioner alleges the transition plan in effect on Student's birthday is not appropriate for three reasons. First, Petitioner states the transition plan was developed without Student input. The evidence, however, does not support this contention. While it is true that Student did not attend the February 8, 2012 MDT meeting at which this transition plan was developed, Petitioner provided no evidence regarding the basis for Student's failure to attend this meeting. Student may not have attended this meeting because he was not invited, or he may not have attended this meeting because he chose not to do so. Without any evidence as to the reason for his non-attendance I cannot conclude Respondent precluded Student from participating in the development of the transition plan. Moreover, the evidence demonstrates Student had in-put into the development of the transition goals through completion of an Interest Inventory[15] and an interview with the special education teacher, who served as Student's case manager when he attended testified that he had administered the assessment and that he had interviewed Student regarding his interests. participated in the IEP meeting and provided the in-put from his assessment of Student for the development of these goals.

Petitioner also asserts the transition plan is not appropriate because the goals are not

[14] The May 27, 2012 IEP was not in effect when Student turned 16, and, therefore, need not have had transition services. However, when this IEP was developed the MDT was writing an IEP that could have been in effect through Student's 16th birthday and therefore was required to include transition services.
[15] Parks also had Student complete an educational assessment, the WRAT, at this time.

individualized to address Student's interests. Petitioner's expert witness, testified that the transition plan was not appropriate because the goals are generic, the survey information used to develop the goals was not sufficient and the goals did not reflect the interests identified in the Vocational Evaluation performed in July 2011. experience and knowledgeable regarding best practices in the development of transition plans was evident in her testimony, and there is no question that following best practices would benefit Student. However, transition services, like all components of an IEP, must be designed to provide some educational benefit, *See, Rowley, Supra*, not best practices, and the transition plan in contention here meets this standard. It has goals designed to help Student attend college and to begin planning for employment as a business owner upon his completion of college. testimony also distinguished between the interests identified in the 2011 Vocational Evaluation and those identified in the transition plan in the February 2012 IEP. While it is true the vocational evaluation identified Student as having interests in science and in becoming a weatherman, it was uncontroverted testimony that this evaluation had not been provided to him and, therefore, could not have been taken into consideration in determining the goals to be included in Student's transition plan in the February 2012 IEP. Moreover, even if this evaluation had been provided to it is possible that Student might have developed new career interests between the July administration of the vocational evaluation and the development of the transition plan in February 2012. Petitioner, herself, testified as to Student's multiple interests which ranged from being a weatherman to playing basketball. In this context it is not unreasonable to conclude that in addition to science Student also expressed interest in having his own business.

Petitioner's third basis for claiming the transition plan is not appropriate is because it does not include goals addressing independent living skills. testified regarding the many independent living goals that should have been included in the transition plan. These included, among others, goals in budgeting, household maintenance and housing. Yet, unlike the transition goals in training, education and in employment which must be included in an IEP, independent living skills need be included in a transition plan only where appropriate. 34 C.F.R. § 300.320 (b)(1). Here, the MDT determined that independent living skills were not appropriate at the time of the development of the February 2012 IEP. This does not mean the independent living goals identified by could not nor should not be considered in a future transition plan. Transition goals, like other IEP goals, are to be updated annually. 34 C.F.R. § 300.320 (b).

I therefore find by a preponderance of the evidence the transition plan developed as part of Student's February 2012 IEP was appropriate. Student had in-put to the development of the transition goals. The transition plan contains goals designed to address Student's interests and needs. The transition plan does not need to include goals for independent living. Student was not denied a FAPE when DCPS developed an appropriate transition plan in February 2012.

5) Whether DCPS failed to provide Student a FAPE when DCPS failed to implement Student's transition plan in February and March 2012, from May 2012 through the end of the school year and during summer school 2012.

As discussed above under Issue 4, Student's February 8, 2012 IEP included a transition plan. The transition plan had goals in training and education and in employment. Petitioner provided no direct evidence regarding the instant claim that this transition plan was not implemented. Petitioner appeared to rely on the cross examination of in making this claim. was asked, on cross-examination, about the implementation of the transition

plan. He stated he had no knowledge regarding the implementation of the specific transition plan goals. He added that the staff at . were focused on attempting to assure Student graduated from high school as this would form the foundation for his becoming a business owner.

I find by a preponderance of the evidence that Petitioner has not met the burden of proof as to this issue. Therefore, I find DCPS did not deny Student a FAPE by failing to implement Student's transition plan in February and March 2012, from May 2012 through the end of the school year and during summer school 2012.

The Remedy

Compensatory Education

A hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 365 U.S, App. D.C. 234 (D.C. Cir. 2005) *citing G. ex. RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir 2003). IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* ". . .inquiry must be fact specific and. . .the ultimate 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." *Reid* at 524.

In the instant matter Petitioner has established Student was denied a FAPE when DCPS failed to 1) provide Student an updated clinical psychological evaluation in response to the parent's request of October 27, 2011; 2) identify Student as eligible, in compliance with the IDEA child find requirement, for special education and related services from July 10, 2010 through May 6, 2011; and 3) convene an MDT to review and revise Student's IEP upon his

release from residential placement in May 2012 to review the possible need for a more restrictive placement and/or services as requested by Petitioner. As a result of these failures to provide FAPE, Student was harmed in that his academic and emotional/behavioral issues were not addressed appropriately. The extent of the harm includes the hours of special instruction and related services not received from the start of the 2010 – 2011 school year through May 6, 2011 when Student was found eligible for special education and related services under IDEA. The failure to identify Student and provide the required services was compounded by DCPS failure to assess the Student's social/emotional needs despite parental request of October 27, 2011. That assessment has not yet been completed and Student's current social/emotional status and its current impact on Student's education remains unclear. Finally, failing to respond to parental requests. Parental participation is a key element of IDEA, and the failure to respond to parental requests denied Petitioner this meaningful participation.

Petitioner has offered a compensatory education plan ("plan") that provides many hours of service in many programs provided by and it is in this area that I find some concern with testimony. She is the founder of and its owner. Clearly, she benefits financially from programs provided through Seeds of Tomorrow. This potential conflict was ameliorated in her testimony, at least to some degree, by her recognition that the services identified in the compensatory education plan could be provided by an agency other than . However, the plan provides, at least in some areas, services duplicative of services Student currently receives. For these reasons and for the resons discussed below, I have not accepted all the recommendations of the plan.

The need for each of the components of this plan in relation to the factors identified in *Reid* were not clearly presented. The compensatory education plan calls for a truancy assessment

followed by a six week program with established factors to address truancy, among these are mentoring and parent intervention. Student already receives mentoring and the family is involved in family therapy. While truancy has been an issue for Student it is not clear that this program will provide him the educational benefits he would have accrued had he received the special education and related services he was denied in 2010-2011. The compensatory education plan also includes 50 hours of counseling. Student has been receiving counseling in the community for some time. Adding additional hours of counseling again does not appear to be directed at compensating him for the special education and related services he was not provided. I therefore decline to adopt these two aspects of the plan.

On the other hand, the compensatory education plan includes Student being provided either a credit recovery program or a GED prep program depending on the results of updated evaluations. Student is years old and attending ninth grade for the third time. It is clear this is due, at least in part, to his not having received the clinical psychological evaluation requested by Petitioner and further to the delay in finding Student eligible for IDEA services. testimony regarding the need to find an alternative to Student's continuing to attend the grade for a third time is credible. I therefore find this component of the compensatory education plan will help place student in the position he would have been had he received FAPE. I further find the proposed 8 week summer program including intensive career exploration/employment readiness, personal and social skills for employment and daily living skills also will help place Student in the position he would have been had he received FAPE. The failure to address Student's special education and related service needs and assess him in all areas of disability as requested by Petitioner have resulted in his being far behind his peers. He is in the grade rather than the 12th grade. This program will help close that gap between Student and his age

peers and place him in the position he would have been in terms of developing a plan for his adult life had he received IDEA services and progressed from grade to grade.

Placement at the School

Petitioner has asked that Student be placed in a full time separate special education school as a remedy for DCPS failures to provide him a FAPE. I decline to do so. IDEA requires that a student's placement be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii).

In the instant matter, Petitioner has not met the burden of demonstrating the need for a highly restrictive, self-contained placement. DCPS has an IEP in place which, when implemented at addressed Student's special education and related service needs. Petitioner testified she would like Student to receive the supports that were in place at Moreover, Petitioner's own expert raised concerns about Student continuing to attend grade as a year old and recommend finding alternative approaches to education, either credit recovery or a GED program. I further note that Student's depression and related issues may be exacerbated by his being removed to a separate school. There is no evidence indicating Student's interest in such a placement and therefore no basis to determine whether he would cooperate with such a placement. I, therefore, find the School is not the least restrictive environment in which Student's IEP can be implemented and decline to provide placement at the School as a remedy in this matter.

CONCLUSIONS OF LAW

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

1. DCPS failed to provide Student a FAPE when DCPS failed to provide Student an updated clinical psychological evaluation in response to the parent's request of October 27, 2011.

2. DCPS denied Student a FAPE when DCPS failed to convene an MDT to review and revise Student's IEP upon his release from residential placement in May 2012 to review the possible need for a more restrictive placement and/or services as requested by Petitioner

3. DCPS failed to provide Student a FAPE when DCPS failed to identify Student as eligible, in compliance with the IDEA child find requirement, for special education and related services from July 10, 2010 through May 6, 2011.

4. Student was not denied a FAPE when DCPS developed an appropriate transition plan in February 2012.

5. DCPS did not deny Student a FAPE by failing to implement Student's transition plan in February and March 2012, from May 2012 through the end of the school year and during summer school 2012. Petitioner did not meet the burden of proof as to this issue.

6. Student is entitle to receive compensatory education.

7. The High Roads School is not the least restrictive environment in which Student's IEP can be implemented.

ORDER

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

1. DCPS is to provide Petitioner authorization for an independent clinical psychological assessment of Student that is to be completed at DCPS expense within the financial limits currently set. This authorization is to be provided Petitioner no later than October 23, 2012.

2. Within 10 school days of receipt of the independent psychological assessment DCPS is to convene an MDT meeting to review and revise Student's IEP to address the needs and recommendations identified in this assessment. This MDT meeting must include Petitioner, Student, if he chooses to attend, and an educational advocate of Petitioner's choice, if she so desires.

3. DCPS is to provide Petitioner with authorization for an independent educational evaluation to be completed at DCPS expense within the financial limits currently set. In addition to identifying Student's current academic strengths and needs, this evaluation is to assess whether Student would be better served through a credit recovery program or a GED program. The authorization for this evaluation is to be provided to Petitioner no later than October 23, 2012.

4. Following receipt of the results of this independent educational evaluation, DCPS is to provide funding for Student to attend either a credit recovery program or GED program as recommended by the evaluation until Student obtains either a high school diploma or a GED. The program Student attends is to be selected by Petitioner and Student with input from advisors of their choosing. If Student fails to attend the program on a regular basis, DCPS may stop funding the program after 30 day notification to Petitioner. If Student returns to the program and attends regularly within those 30 days the funding is to continue through Student's completion of the program.

5. DCPS is to fund Student's current counseling sessions provided outside of school for 9 months.

6. Student is to be provided the option of returning to Anacostia High School. If he chooses to return to Anacostia this transfer is to occur by Nov. 1, 2012.

7. The MDT of Student's school of attendance is to meet no later than November 15, 2012 to review and revise Student's IEP. The MDT must include Student, if he chooses to attend, Petitioner, and an educational advocate of Petitioner's choosing, if she so desires. The MDT is to address Petitioner's concerns about Student's IEP and to address any concerns Student might have. The IEP is to remain in effect for one year unless Petitioner agrees to an earlier change or Student chooses to attend a credit recovery or GED program outside of DCPS.

IT IS SO ORDERED:

10/6/12
Date

Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).