District of Columbia
Office of the State Superintendent of Education

Student Hearing Office
810 First Street, N.E., Suite 2001
Washington, DC 20002

STUDENT[1], **By and through PARENT,** *Petitioner,* v. **CHARTER SCHOOL,** *Respondent.*	Case No. 2012-0712 Impartial Hearing Officer: Charles M. Carron Date Issued: December 4, 2012 Representatives: Roberta L. Gambale, Esq. for Petitioner Paul S. Dalton, Esq. for Respondent

2012 DEC -4 PM 1:44
OSSE
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND

Prehearing Matters

This is a Due Process Complaint ("DPC") proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

The DPC was filed October 12, 2012, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student's Parent, against Respondent, Charter School.[2]

On October 17, 2012, the undersigned was appointed as the Impartial Hearing Officer.

On October 22, 2012, Respondent filed its Answer, stating, *inter alia*, that Respondent has not denied Student a free appropriate public education ("FAPE").

A Resolution Meeting was held on October 22, 2012 but it failed to resolve the DPC. The statutory 30-day resolution period ended early, on October 22, 2012, by agreement of the parties.

The 45-day timeline for the Hearing Officer's Determination ("HOD") started to run on October 23, 2012 and will conclude on December 6, 2012.

The Impartial Hearing Officer held a Prehearing Conference ("PHC") by telephone on November 7, 2012, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by November 21, 2012 and that the Due Process Hearing ("DPH") would be held on November 29, 2012.

The undersigned issued a Prehearing Order ("PHO") on November 7, 2012, confirming the agreements reached at the PHC and the obligations of the parties until the HOD is issued.

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[2] Respondent is a Local Educational Agency ("LEA") within the District of Columbia; specifically, it is an "LEA Charter" meaning that it is public charter school that has not ceded its responsibility for providing special education services to the District of Columbia Public Schools. See DCMR § 5-E3001.1, definition of Local Education Agency (LEA).

No prehearing motions were filed by either party and the DPH was held on November 29, 2012 [3] at the Student Hearing Office, 810 First Street, NE, Room 2003, Washington, D.C. 20002. Petitioner elected for the hearing to be closed.

Witnesses

The following witnesses testified on behalf of Petitioner at the DPH:

The Parent

The Student

The Student's Maternal Aunt

[redacted], M Ed, Ph.D., ABD, Special Education Advocate

[redacted], President, Seeds of Tomorrow, Inc.

Respondent's counsel objected to the qualification of [redacted] as an expert witness.[4] After *voir dire*, the undersigned qualified and accepted [redacted] as an expert in special education programming for children with Emotional Disturbance, but not as an expert in diagnosing mental illness.

In Petitioner's five-day disclosures, Petitioner indicated the intention to call [redacted] as an expert witness. However, at the DPH, Petitioner's counsel deferred qualifying [redacted] as an expert and asked her only fact questions about the services her company provides; accordingly, [redacted] was not offered as an expert witness and did not provide opinion testimony.

Respondent's only witness at the DPH was the Clinical Director of Charter School. Respondent sought to qualify the Clinical Director as an expert in testing and

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[3] The undersigned inadvertently stated on the record that the DPC was being held on November 28, 2012.

[4] Unless an educational advocate is qualified and admitted as an expert witness, the advocate's opinion testimony is "inadmissible to prove anything." *Gill v. District of Columbia*, 770 F. Supp. 2d 112 (D.D.C. 2011).

evaluation of special education students and in the development of education programs for special education students. Based upon his *curriculum vitae* and *voir dire,* the Clinical Director has no degree related to education, special education, or teaching. His only teaching experience is teaching psychology to college students. His only special education experience is developing therapeutic programs for special education students. Accordingly, the undersigned qualified and accepted the Clinical Director as an expert in child psychology and therapeutic services for special education students, but not as an expert on special education programming. The Clinical Director also testified as a fact witness on the programs offered by Charter School.

Exhibits

At the DPH, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-16 and P-23 through P-31[5]

Respondent's Exhibit: R-1

Impartial Hearing Officer's Exhibits: HO-1 through HO-7

Respondent's "Rebuttal" Documents

Prior to giving her opening statement, Petitioner's counsel advised that the Parent had unexpected transportation and family care obligations that required her to testify by telephone rather than in person. Respondent's counsel objected to the Parent testifying by telephone for two reasons: (a) because the undersigned would not be able to observe the Parent's non-verbal communication (*i.e.*, her demeanor); and (b) because Respondent's

[5] Petitioner withdrew proposed Exhibits P-17 through P-22 prior to the DPH and confirmed the same on the record at the DPH.

counsel intended on cross-examination to impeach the Parent by showing her certain "rebuttal" documents that had not been included in Respondent's five-day disclosures.

With regard to Respondent's first objection to the Parent testifying by telephone, the undersigned noted that telephonic testimony is common in these administrative proceedings, and that if there were any question as to the Parent's credibility, the undersigned would consider the lack of ability to observe the Parent's demeanor to be a factor diminishing rather than augmenting her credibility.

With regard to Respondent's second objection to the Parent testifying by telephone, the undersigned advised Respondent's counsel that he could read to the Parent from the documents in question, serving the same purpose as showing the documents to the Parent. The undersigned stated that if, at the time of cross-examining the Parent, Respondent's counsel determined that he could not effectively cross-examine the Parent by reading from the documents, he could renew his objection and the undersigned would reconsider it. When the Parent testified, and Respondent's counsel cross-examined her, he did not read from any of the non-disclosed documents, nor did he renew his objection. Accordingly, Respondent's objection was waived.

Respondent's counsel also stated that he intended to introduce the non-disclosed "rebuttal" documents into evidence as exhibits at the time of showing them to the Parent. The undersigned noted on the record that the PHO states, at page 9, that, with regard to the parties' five-day disclosures, counsel "must disclose all proposed exhibits." There is no exception for exhibits used in cross-examining a witness.

In his closing argument, Respondent's counsel asserted that Respondent had not been permitted to introduce evidence that Charter School had provided counseling services to the Student. The undersigned asked Respondent's counsel for an explanation. Respondent's counsel referred back to the non-disclosed "rebuttal" documents that he had intended to introduce after using them in cross-examining the Parent. The

undersigned reiterated the requirement to disclose exhibits five business days in advance of the DPH, as confirmed in the PHO.[6]

Moreover, prior to Respondent's counsel's closing argument, [redacted] had testified regarding her unsuccessful attempts to obtain Charter School's counseling service logs in preparation for her testimony. Petitioner's counsel also requested these records on October 17, 2012. P-13. Counseling service logs constitute an education record that the Parent had the right to examine under 20 USC §1415(b)(1), 34 C.F.R. §§300.501(a) and 300.613 and DCMR § 5-E3021. Nevertheless, Respondent declined to make these records available to Petitioner's counsel or educational advocate.

Respondent's counsel did not offer the "rebuttal" documents into evidence. However, the undersigned permitted Respondent's counsel to make a proffer on the record as to what the documents would establish. Respondent's counsel stated that the "rebuttal" documents would have demonstrated that three counselors provided the Student with "various amounts of services."

Apparently Respondent's counsel's strategy was to avoid disclosing the "rebuttal" documents—either in response to the requests of Petitioner's counsel and educational advocate in advance of the DPH, or in Respondent's five-day disclosures—in order to surprise the Parent with them at the DPH, as well as to deprive Petitioner's counsel of the ability to prepare to rebut those documents. Although there is no discovery *per* se in these proceedings, litigation by ambush is inconsistent with principles of due process.

Respondent's Motion to Dismiss Petitioner's Compensatory Education Request

Also prior to Petitioner's opening statement, Respondent's counsel made an oral motion to strike Petitioner's Exhibit P-31 containing Petitioner's proposed compensatory

[6] On the record at the PHC, Petitioner's counsel declined to waive Petitioner's right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing. *See,* 42 C.F.R. § 300.512(a)(3).

education plan on the grounds that the compensatory education requested therein was inconsistent with controlling case law that precludes an order of an hour of compensatory education for an hour of special education or related services that should have been, but were not, provided.

Petitioner's counsel responded that Respondent had mischaracterized Petitioner's compensatory education plan, and that the proposed relief was reasonably calculated to address the Student's individualized need, as Petitioner would establish through testimony.

The undersigned denied Respondent's motion on the ground that Exhibit P-31 was responsive to the requirement in the PHO that Petitioner put Respondent on notice as to what compensatory education Petitioner would seek at the DPH. The undersigned noted that Petitioner had the burden, through testimony, to establish the appropriateness of the requested relief under prevailing case law.

Respondent's Motion to Strike Petitioner's Request for a Change in Placement

At the conclusion of Petitioner's case, Respondent's counsel moved to strike Petitioner's request for a change in the Student's placement.

The undersigned clarified that Petitioner has not requested that the undersigned order a change in placement; rather, Petitioner has requested that the undersigned order Respondent to advise the District of Columbia Office of the State Superintendent of Education ("OSSE") that Respondent cannot meet the Student's needs.

Accordingly, the undersigned denied Respondent's motion.

Closing Arguments

Counsel for the parties made oral closing arguments and did not file written closing arguments or briefs.

II. JURISDICTION

The DPH was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA's implementing regulations, 34 C.F.R. §300.511 and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029 and E3030. This decision constitutes the HOD pursuant to 20 U.S.C. § 1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures.*

III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT

The circumstances giving rise to the DPC are as follows:

The Student is male, Current Age, and attends Current Grade at the Charter School. The Student has been determined to be eligible for special education and related services as a child with multiple disabilities under the IDEA.

Petitioner claims that Respondent has denied the Student a FAPE by failing to do the following: (1) provide the Student with updated behavior goals, behavior plan, and/or behavioral support services; (2) provide the Student appropriate transition goals and/or services; (3) address the Student's need for Extended School Year ("ESY") services; and (4) notify the District of Columbia Office of the State Superintendent of Education ("OSSE") of Respondent's inability to implement the Student's Individualized Education Programs ("IEP"s).

IV. ISSUES

As confirmed at the PHC, in the PHO, and in opening statements at the DPH, the following issues were presented for determination at the DPH:

1. Did Respondent deny the Student a FAPE by failing to provide the Student with behavioral support services during the 2011-2012 school year as required by the

Student's IEP that was developed on or about March 25, 2011 and/or the Student's IEP that was developed on or about March 5, 2012?

2. Did Respondent deny the Student a FAPE by failing to provide him with appropriate transition goals and/or services based upon his interests and the results of his transition assessment administered in November 2011?

3. Did Respondent deny the Student a FAPE by failing to reconvene his Multidisciplinary Team ("MDT") to address his need for ESY services for the 2012 summer and/or by failing to make summer school available to the Student?

4. Did Respondent deny the Student a FAPE by failing to provide the Student with updated behavior goals and/or a behavior plan as part of his IEP that was developed on or about March 5, 2012?

5. Did Respondent deny the Student a FAPE by failing to notify OSSE of Respondent's inability to implement the Student's IEPs developed on or about March 25, 2011 and/or March 5, 2012?

V. RELIEF REQUESTED

Petitioner requests the following relief [7]:

1. a finding that Respondent has denied the Student a FAPE;

2. an order that Respondent conduct a Functional Behavioral Assessment ("FBA") of the Student and reconvene the Student's MDT to develop an updated behavior plan and/or behavior goals;

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[7] In the DPC, Petitioner also sought attorney's fees and costs; however, as the undersigned explained at the PHC, IDEA Hearing Officers lack authority to award attorney's fees or costs.

3. an order that Respondent fund a vocational evaluation and/or revise the Student's transition plan to include goals and services in the areas of interest to the Student and consistent with the Student's prior vocational testing;

4. an order that Respondent advise OSSE of Respondent's inability to meet the Student's needs and comply with all requirements for the Student's transfer to an alternate location/site of services as needed;

5. compensatory education for denials of FAPE that have occurred; and

6. an order that all meetings be scheduled through Petitioner's counsel, in writing, via facsimile.

VI. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a male, Current Age. P-1-1.[8]

2. The Student resides in the District of Columbia. *Id.*

3. The Student has been determined to be eligible for special education and related services under the IDEA as a child with Multiple Disabilities. *Id.*

January 2007 Evaluation

4. In January 2007, two of the Student's teachers at the Previous Charter School, and the Parent, completed the Behavior Assessment System for Children, Second Edition ("BASC-2") as a means of identifying emotional or behavioral issues the Student might be experiencing. P-23-1, -2.

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[8] When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

5. The BASC-2 indicated that the Student exhibited clinically significant levels of the following:

(a) hyperactivity, risking impairing his academic performance;

(b) aggression that may be disruptive at school;

(c) disruptive behaviors at school;

(d) anxious behavior, risking more serious impairment;

(e) depressive symptoms;

(f) somatization, risking a more serious condition;

(g) attention problems in school;

(h) impaired ability to learn in school;

(i) unusual behaviors, risking his functioning in the academic setting; and

(j) avoidance behaviors.

P-23-2 through -5.

6. Based upon the results of the BASC-2, the examiner, a clinical psychology extern at the Previous Charter School, recommended a formal assessment of the Student's depression and that the Student's MDT determine whether an FBA and a Behavior Intervention Plan ("BIP") should be implemented (or reviewed and revised if already administered). P-23-5, -6.

March 2007 Functional Behavioral Assessment and Intervention Behavior Plan

7. In March, 2007, while the Student was attending the Previous Charter School, an FBA of the Student was conducted because the Student's behavior and refusal to complete assignments, class work and homework interfered with his learning. P-24-1.

8. An Intervention Behavior Plan[9] for the Student was developed. P-24-2.

April 2007 Evaluation

9. In April 2007, the Student was evaluated by a Psychology Associate at "interdynamics, inc.," under the supervision of a Licensed Clinical Psychologist. P-28-1.

10. The Psychology Associate interviewed the Student, reviewed BASC-2 reports completed by the Student and the Parent, a Conners' parent rating scale completed by the Parent, and several instruments administered to the Student (Beck Youth Inventory—Second Edition ("BYI-II"), Sentence Completion Test, Robert's Apperception Test for Children and Adolescents, and Graphic Projective Drawings). *Id.*

11. The Psychology Associate and Licensed Clinical Psychologist concluded that the Student has Oppositional Defiant Disorder and Attention Deficit Disorder, Combined Type. P-28-7.

12. The Psychology Associate and Licensed Clinical Psychologist recommended that the Student receive therapy focused on social skill training and appropriate conflict resolution, adequate intervention, close monitoring, continuation and revision of the Student's BIP, and evaluation by a psychiatrist to determine the appropriate need for psychopharmacological treatment. *Id.*

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[9] Although this document is entitled "Intervention Behavior Plan," throughout the DPH counsel and witnesses referred to this as BIP, which terminology the undersigned has adopted in this HOD.

March 2011 IEP

13. During the 2010-2011 school year, the Student attended Charter School. P-3, testimony of Parent.

14. On March 25, 2011, the Student's MDT met to develop his annual IEP. P-3.

15. At that time, the Student's disability limited his access and success in the general education classroom. P-3-2, -3.

16. The Student was distractible, struggling with staying on task and finishing work. P-3-3.

17. The Student rarely participated in written assignments. P-3-4.

18. The Student did not complete class work or assignments on a consistent basis. *Id.*

19. The Student's IEP effective March 25, 2011, provided 25 hours per week of specialized instruction outside the general education setting and one hour per week of behavioral support services outside the general education setting. P-3-6.

20. According to the Student's March 25, 2011 IEP, his long range post-secondary goal was to join the military, postponing college. P-3-10.

21. The Student's annual measurable goals for post-secondary transition were to explore the various branches of the military and identify the branch that he would join. *Id.*

22. The Student's March 25, 2011 IEP provided the following transition services: 30 minutes per year related to graduation requirements, 30 hours per year of summer youth employment, and 25 hours per year of community service. P-3-11.

2011-2012 School Year

23. As a result of failing to earn full credit in the 2010-2011 school year, the Student did not advance a full grade from his 2010-2011 School Year Grade; rather, during the 2011-2012 school year, he continued to take some classes at the 2010-2011 School Year Grade and some classes at the next higher grade.[10] Testimony of Parent.

24. According to the Parent and the Student, during the 2011-2012 school year, the Student did not receive the counseling services provided in his IEP. *Id.*; testimony of Student.

25. According to the Student, he never was introduced to a counselor. Testimony of Student.

26. According to the Parent, the Student never spoke to her about having been assigned a counselor, and Respondent never gave her the name(s) of any counselor(s). Testimony of Parent.

27. According to the Clinical Director, based upon his review of records, the Student had three or four "documented contacts" with counselors during the 2011-2012 school year. Testimony of Clinical Director.

28. The Clinical Director did not specify whether the two counselors provided counseling or some other service, nor for how long. *Id.*

29. The Clinical Director testified that no "service tracker" forms existed that would confirm the services the Student received. *Id.*

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[10] Respondent's counsel repeatedly argued on the record that the Student had never been "retained" a grade. However, the net effect of this "hybrid" school year is that the Student fell behind a grade, which, for purposes of this case, the undersigned finds to be tantamount to having been "retained."

30. The undersigned finds that Respondent did not provide the Student any counseling services during the 2011-2012 school year.

31. According to the Parent, the Student's behavior "was not good; he stayed in trouble and was being disciplined all the time." *Id.*

32. The Parent testified that Respondent contacted her once or twice a week about a problem with the Student, and the Student was "sent home" "a couple of days every two weeks." *Id.*

33. The Parent testified that when the Student was "sent home," Charter School did not provide him with homework or "make up" work. *Id.*

34. The Parent testified that the Student sometimes was sent home without Respondent sending her a letter stating that the Student had been suspended, although the Parent could not recall how many times this occurred. *Id.*

35. In November, 2011, a vocational assessment of the Student determined that the Student's highest levels of interest were in the areas of Medical, Business and Science. P-1-10.

36. The Student's BIP dated March 24, 2007 (P-24-2) was not updated prior to or during the 2011-2012 school year, nor was there any discussion of updating that BIP.[11] Testimony of Parent.

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[11] On cross-examination, the Parent acknowledged that in a Resolution Session Meeting to discuss resolution of the instant DPC, Respondent offered to conduct an FBA and implement a BIP if the Parent consented. Respondent's counsel stated that the Parent had not provided written consent for the Student to be evaluated. The Parent testified on redirect examination that she had not been asked to sign a consent form and would not have refused to sign such a form if asked. The Parent also testified that prior to the Resolution Session Meeting, Respondent had not proposed conducting any evaluations of the Student. On re-cross examination, the Parent gave her consent to Respondent conducting an FBA. Any suggestion by Respondent's counsel that the Parent has

March 5, 2012 MDT Meeting

37. On March 5, 2012, the Student's MDT met to develop his annual IEP. P-1.

38. The Student's disability limited his access and success in the general education classroom. P-1-2, -3.

39. The Student's poor attendance affected his ability to learn new math concepts and practice basic math skills. P-1-2.

40. The Student required frequent one-on-one assistance to reiterate and break down concepts just taught. P-1-2, -3.

41. The Student lacked effort and motivation in math. P-1-2.

42. The Student was often distracted. P-1-3, P-2-5.

43. The Student distracted his peers, preventing them from completing their work. *Id.*

44. The Student would walk out of class without permission. P-2-3.

45. The Student was disrespectful to teachers. *Id.*

46. The Student made some sexual comments towards females. *Id.*

47. The Student did not complete class work or assignments on a consistent basis. P-1-4, P-2-5, P-2-6.

48. According to Maternal Aunt, the Student was lazy and did not make a connection between his school and his future. P-2-3.

49. The Student was failing his classes. P-1-4.

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withheld consent for any evaluation or reevaluation of the Student is entirely unsupported by the record evidence. In any event, Respondent's offer to conduct an FBA and update the Student's BIP in resolution of this DPC has no bearing on whether Respondent denied the Student a FAPE by failing conduct an FBA and update the Student's BIP at any time between March 24, 2007 and the date the DPC was filed, October 12, 2012.

50. According to the Parent, at the March 5, 2012 IEP Meeting, the Student's teachers stated that he was a good student but there were situations where he would act out, disrupt the class, or not do the work that day. Testimony of Parent.

51. According to the Parent, the Student's Special Education Coordinator ("SEC") reviewed notes and stated that she did not see any note that a counselor had even been assigned to the Student. *Id.*

52. According to the Parent, the Student stated at the MDT meeting that he had never met a counselor. *Id.*

53. According to the Student's Maternal Aunt, the Student stated at the MDT meeting that he had not seen a counselor, and that one of Respondent's administrators responded that "they would find out who the counselor was and let us know, but they didn't." Testimony of Maternal Aunt.

54. The notes of the MDT meeting state that the Student "doesn't know who his counselor is" and "Mom stated that some of his issues could be addressed in counseling but [the Student] doesn't know who his counselor is." P-2-3.

55. According to the Student's March 5, 2012 IEP, the Student expressed the following as his employment interests: playing football, working construction, or doing manual labor. P-1-10.

56. According to the Student's March 5, 2012 IEP, his long range post-secondary goals were to be trained in carpentry by attending a trade school (P-1-11) and to gain employment as a construction worker in the Washington, D.C. area (P-1-12).

57. The Parent testified that she did not agree with these goals because the Student had never mentioned that he wanted to be a construction worker; rather, he had

talked about being a firefighter or Emergency Medical Technician ("EMT"). Testimony of Parent.

58. The Student's Maternal Aunt testified that the Student had told her he wants to be a business owner. Testimony of Maternal Aunt.

59. The Student testified that he is "looking into" being a firefighter, and that he never told Respondent he was interested in construction work. Testimony of Student.

60. The Parent testified that, at the MDT meeting, she expressed her surprise that the transition goals related to construction work, stating "I don't believe [the Student] chose to be a carpenter or construction worker," or words to that effect. *Id.*

61. The Parent testified that, at the MDT meeting, she stated that the Student wanted to be a firefighter or EMT. *Id.*

62. The Student's Maternal Aunt testified that, at the MDT meeting, there was no discussion of the Student wanting to be a business owner, a firefighter or an EMT. Testimony of Maternal Aunt.

63. The notes of the MDT meeting do not reflect any discussion of the Student's vocational interests or transition goals. P-2.

64. The Parent read the notes of the MDT meeting but did not ask Respondent to correct those notes; rather, she contacted counsel. Testimony of Parent.

65. The undersigned is unable to resolve the discrepancy between the IEP (P-1) and the somewhat inconsistent testimony of Petitioner's witnesses regarding the Student's transition goals, particularly in view of the lack of any mention of this issue in the meeting notes (P-2). The undersigned does not find the differences in the testimony of Petitioner's witnesses on this issue to affect their credibility. *See* Section VIII *infra.*

66. Based upon the entire record, the undersigned finds that Charter School's understanding of the Student's vocational goals (construction and carpentry) were at variance with the Student's actual vocational goals (firefighter, EMT, or business owner), but Charter School may not have been made aware of the Student's goals.

67. According to the Student's March 5, 2012 IEP, the Student's short-term measurable goals to achieve his long range post-secondary goals were to use a computer to research and identify three local carpentry trade schools to which he would like to apply to attend after graduating high school (P-1-11) and with the guidance of his counselor, to use the internet to fill out three online job applications in the area of construction (P-1-12).

68. The Student's IEP effective March 5, 2012 provided the following transition services: 30 minutes per year related to graduation requirements, three hours per year related to campus tours, 60 minutes per year related to a college fair, 30 hours per year of summer youth employment, 25 hours per year of community service, and 60 minutes per year related to a career day. P-1-11, -12.

69. The Student's IEP effective March 5, 2012, provided 25 hours per week of specialized instruction outside the general education setting and one hour per week of behavioral support services outside the general education setting. P-1-6.

70. The weekly behavioral support services in this IEP were to consist of "60 minutes of Counseling Services." P-2-1.

End of 2011-2012 School Year

71. During the 2011-2012 school year, the Student had 46.5 days of unexcused absences. P-5-1.

72. The Student's final grades for the 2011-2012 school year were as follows: "F" in Geometry; "D" in Biology, English I, first semester PE/Health, and Spanish I; "C" in World History I; and "B" in second semester Health/PE. *Id.*

73. The Student's overall Grade Point Average ("GPA") for the 2011-2012 school year was 1.087. *Id.*

74. Despite the Student's grades, the Clinical Director stated that he could not determine whether the Student had experienced academic regression without more data from standardized test scores to indicate the Student's academic and behavioral functioning, quarterly progress reports, and observation of the student's behaviors, antecedents and consequences, and responses to interventions. Testimony of Clinical Director.

75. The undersigned finds that the Student's behavior problems and grades were sufficient to put Respondent on notice of the need for assessments, including an FBA, by the end of the 2011-2012 school year, if not earlier.

2012-2013 School Year to Date

76. During the 2012-2013 school year, the Student is in Current Grade, which is one grade above the grade he attended in the 2010-2011 school year. Testimony of Parent; testimony of Student.

77. According to the Student, he has received no counseling services during the 2012-2013 school year to date[12], and has not been introduced to a counselor. Testimony of Student.

78. On cross-examination, the Student denied being introduced to a counselor on October 13, 2012, or having a one-hour session with that counselor on October 20, 2012.[13] *Id.*

79. On cross-examination, when asked whether he recognized the names of certain counselors, the Student stated, "I don't know who those people are," and that he had not been assigned a counselor for the 2012-2013 school year. *Id.*

80. In response to a follow-up question by the undersigned regarding counseling sessions, the Student stated that he had attended one group session with "two ladies who played a game." *Id.*

81. According to the Parent, the Student never spoke to her about having been assigned a counselor, and Respondent never gave her the name(s) of any counselor(s). Testimony of Parent.

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[12] The only issue in this proceeding regarding Respondent's alleged failure to provide counseling services is whether Respondent failed to provide the Student with behavioral support services during the 2011-2012 school year (HO-7-8). Accordingly, the undersigned has not addressed whether any failure by Respondent to provide such services during the 2012-2013 school year denied the Student a FAPE. However, the extent to which the Student has received counseling services during the 2012-2013 school year is relevant to determining appropriate compensatory education. *See*, Sections IX and X *infra.*

[13] These dates are after the filing of the DPC in the instant case. The undersigned infers that Respondent's counsel asked these questions in an attempt to impeach the Student's credibility. *See* Section VIII *infra.* In any event, counseling sessions provided (or not provided) during the 2012-2013 school year are only relevant to determining appropriate compensatory education. *See,* note 12 *supra*, and Sections IX and X *infra.*

82. According to the Clinical Director, the Student had two 60-minute counseling sessions during the 2012-2013 school year, and the Student missed five sessions due to absence. Testimony of Clinical Director.

83. The Clinical Director testified that no "service tracker" forms exist that confirm the counseling sessions. *Id.*

84. The undersigned finds that, whether or not the Student had any contacts with any counselor(s) during the 2012-2013 school year, he was not informed that they were his counselor(s), and he did not understand the contact(s) to be counseling sessions.

85. The undersigned finds that if any counseling services provided to the Student, they were no more than two, and they were provided after the DPC was filed on October 12, 2012.

86. In September and October, 2012, the Student was repeatedly non-compliant with classroom and school rules. P-4-1, P-6; testimony of Parent.

87. The Student was placed in Charter School's Alternative Learning Center ("ALC") on September 10 and 11, 2012, as a result of his noncompliance with rules. P-4-1.

88. The Student served 14 days in Charter School's Positive Alternative School System ("PASS") program. *Id.*

89. While serving in PASS, the Student was written up on September 13, 20 and 27, and on October 10, 2012. *Id.*, P-6-1.

90. Charter School contacted the Parent by telephone on September 13 and 20, and in person on September 27, 2012. P-4-1.

91. According to the Parent, Charter School sent the Student home "a couple of times" because he was "not having a good day and they didn't want him to get into any more trouble." Testimony of Parent.

92. According to the Student, he has been sent home three times during the 2012-2013 school year because of his behavior. Testimony of Student.

93. According to the Student, he has served one long in-school suspension during the 2012-2013 school year to date, during which he received "a couple of sheets a week" but received no instruction. *Id.*

94. According to the Clinical Director, in-school suspensions are served in Charter School's ALC, in which students receive behavioral supports and specialized instruction. Testimony of Clinical Director.

95. However, the Clinical Director does not have first hand knowledge of what services, if any, the Student received while serving his in-school suspension. *Id.*

96. The undersigned finds that the Student received no services or instruction while serving his in-school suspension.

97. According to the Parent, the Student was suspended once during the 2012-2013 school year to date, for three days. Testimony of Parent.

98. According to the Parent, in a telephone conversation, Charter School's dean of students stated that he did not think Charter School could meet the Student's requirements and that Charter School was looking into alternative schools, including "a school down the street." *Id.*

99. According to the Clinical Director, Charter School's dean of students probably was referring to another school run by Charter School, at a separate location,

which is a more restrictive environment for students with aggressive behaviors—an environment that the Clinical Director considers too restrictive for the Student. Testimony of Clinical Director.

100. According to the Clinical Director, the Student could benefit from the current placement at Charter School, with some services. *Id.*

101. The Clinical Director has not participated in IEP or MDT meetings for the Student and has not been present during any of the Student's counseling services. *Id.*

Remediation of Social-Emotional, Academic, and Transition Deficits

102. According to Lisa DeBeauville, the Student suffered social-emotional deficits as a result of Respondent's failure to provide the behavioral supports (*i.e.*, one hour per week of counseling) required by his IEP. Testimony of [redacted]

103. Specifically, [redacted] testified that the Student demonstrated declining behaviors, including failure to communicate his feelings, school avoidance, class avoidance, and throwing objects; and that the lack of counseling was a contributing factor. *Id.*

104. According to [redacted], if the Student had received the counseling services required by his IEP, the counselor would have identified the need for an FBA, and the FBA would have determined any other factors contributing to the Student's declining behaviors. *Id.*

105. According to [redacted], repeated FBAs are standard special education practice for students with emotional and behavioral disturbances. *Id.*

106. According to [redacted], the behavioral supports required by the Student's IEP would have enabled the Student to progress socially, emotionally and behaviorally, and provided him with coping mechanisms. *Id.*

107. According to [redacted], due to the lack of behavioral supports, the Student's social-emotional and behavioral problems adversely affected his academic achievement, because he responded to embarrassment by misbehaving. *Id.*

108. The undersigned finds that Charter School's failure, during the 2011-2012 school year, to provide the Student with the hour per week of behavioral supports in the form of counseling services, exacerbated his social-emotional and behavior problems and adversely affected his academic achievement.

109. The undersigned finds that if Charter School had provided one hour per week of counseling during the 2011-2012 school year, the Student's social-emotional and behavior problems would have been sufficiently controlled for him to obtain educational benefit.

110. According to [redacted], the Student's social-emotional deficits incurred during the 2011-2012 school year and the 2012-2013 school year to the date the DPC was filed would be remediated by 52 counseling sessions (P-31-6) with the length of those sessions to be determined by the counselor (Testimony of [redacted]).

111. According to [redacted], the academic deficits the Student incurred during the 2011-2012 school year and the 2012-2013 school year to the date the DPC was filed would be remediated by 52 hours of tutoring with a focus on academic remediation, progress enhancement, and comprehension of curricular knowledge and information. P-31-6.

112. [redacted] based these requests for 52 counseling sessions and 52 hours of tutoring on the failure of Respondent to provide one hour per week of counseling for 40 instructional weeks during the 2011-2012 school year and 12 instructional weeks during the 2012-2013 school year to date. Testimony of [redacted].

113. [redacted] testified that she normally would recommended two hours per week of tutoring to remediate each week of counseling that had been missed, but she felt that amount of tutoring would be excessive given her parallel recommendation of 52 counseling sessions. *Id.*

114. The undersigned finds that, regardless of how many hours of counseling the Student missed that Respondent should have provided, the Student requires two hours of counseling per week for the remainder of the 2012-2013 school year to adequately address his social-emotional and behavior problems to enable him to obtain educational benefit. The Student expressed a strong desire for counseling to work through his behavior issues. The undersigned finds that one hour per week would be insufficient, and any more than two hours per week would take too much of the Student's time from his classroom work, home work and credit recovery.

115. According to [redacted], the Student's loss of graduation credits during the 2011-2012 school year and the 2012-2013 school year to the date the DPC was filed would be remediated by credit recovery services such as those provided by Seeds of Tomorrow. P-31-6.

116. According to [redacted], the Student's vocational programming was not appropriate because it was based upon a goal—construction work—in which the Student had no interest. *Id.*

117. According to [redacted], without an appropriate transition plan, the Student is at risk of a poor life outcome. *Id.*

118. According to [redacted], an appropriate transition plan cannot be prepared for the Student until he has had a thorough assessment not only of his needs, but also of his capacity for various careers, followed by guided support and assistance to engage him in an appropriate vocation. *Id.*

119. According to [redacted], the Student's deficits in post-secondary transition incurred during the 2011-2012 school year and the 2012-2013 school year to the date the DPC was filed would be remediated by the Student's participation in the Ready for Work Solutions Career Development Program, Stay Connected vocational and re-engagement service from Seeds of Tomorrow, or other similar program. P-31-6.

120. Seeds of Tomorrow, Inc. can conduct a functional vocational evaluation of the Student, to include interest inventories and career exploration assessments. Testimony of [redacted].

121. Seeds of Tomorrow, Inc. can assist the Student in understanding the current status of his personal, social, functional and life skills and employability. *Id.*

122. Seeds of Tomorrow, Inc. can assist the Student in learning about careers, including hands-on activities, internships, job coaching, and connecting the Student with the RSA. *Id.*

123. Seeds of Tomorrow, Inc. is a certified site for the Mayor's youth program,[14] which consists of a seven or eight week program of 25 hours per week. *Id.*

124. The Student could participate in the Mayor's youth program at Seeds of Tomorrow, Inc. *Id.*

125. Seeds of Tomorrow, Inc. can assist the Student in recovering credits for courses required for graduation, utilizing a computer curriculum that includes access to a general education teacher online, supplemented with "learning coach" support from a special education teacher co-located with the Student at his school or at the Seeds of Tomorrow tutoring center. *Id.*

126. According to [redacted], credit recovery is successful only if a student participates actively at least four hours per week during the school year. *Id.*

127. Respondent has its own credit recovery program. Testimony of Clinical Director.

128. There is no impediment to the Student participating in Respondent's credit recovery program. *Id.*

VII. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR § 5-E3030.3; *Schaffer v. Weast,* 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR § 5-E3022.16; *see also, N.G. v. District of Columbia,* 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

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[14] Apparently this is a reference to the District of Columbia Summer Youth Employment Program.

VIII. CREDIBILITY

The undersigned found all of the witnesses to be credible, to the extent of their first hand knowledge.

While the Parent, the Student, and the Student's Maternal Aunt had different recollections of the conversation at the March 5, 2012, MDT meeting as to who said what about the Student's vocational interests, the undersigned does not believe that these differences in recollection demonstrate any dishonesty on the part of any of these witnesses.

As for the Student's testimony that he had received behavioral counseling only once (in the form of a group session) from the beginning of the 2011-2012 school year through the date of the DPH, that no counselor had introduced himself or herself to the Student, and that the Student had no idea who the counselors named by Respondent's counsel were, Respondent presented no documentary or testimonial evidence to contradict the Student's testimony. As discussed *supra* in Section I of this HOD, if Respondent had documents that demonstrated the Student had received counseling services, Respondent should have disclosed those in its disclosures prior to the DPH pursuant to the PHO. Moreover, Respondent could have called as witnesses the counselor(s) that Respondent claims provided counseling sessions to the Student. Absent any such impeaching evidence, or other reason to disbelieve the Student, the undersigned finds the Student's testimony to be credible.[15]

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[15] Although as the Clinical Director testified, some students with Emotional Disturbance may be prone to deceitfulness, [redacted] testified that the information she received from the Student was corroborated by information she received from other sources. Moreover, there is nothing in the record, including the Student's disciplinary history, to suggest that he is dishonest.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended "(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected..." 20 U.S.C. § 1400(d)(1); *accord*, DCMR § 5-E3000.1.

FAPE Requirement

2. The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

> special education and related services that –
>
> > (A) have been provided at public expense, under public supervision and direction, and without charge;
> >
> > (B) meet the standards of the State educational agency;
> >
> > (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> >
> > (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also,* 34 C.F.R. §300.17 and DCMR § 5-E3001.1.

IEP Requirements

3. The "primary vehicle" for implementing the goals of the IDEA is the individualized education program ("IEP") which the IDEA "mandates for each child."

Harris v. District of Columbia, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). The IDEA defines IEP in relevant part as follows:

> (i) In general The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—
>
> * * *
>
> (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—
>
> (aa) to advance appropriately toward attaining the annual goals;
>
> (bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and
>
> (cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;
>
> * * *
>
> (VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and
>
> (VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—
>
> (aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;
>
> (bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

> (cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415 (m) of this title....

20 U.S.C. §1414(d)(1)(A).

4. To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child ... but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.'" *Anderson v. District of Columbia*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009), quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley,* 458 U.S. 176, 200, 207 (1982)("*Rowley*").

> [T]he "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Rowley, 458 U.S. at 201.

5. The LEA "has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE." *Schoenbach v. District of Columbia,* 36 IDELR 67, 106 LRP 46342 (D.D.C. 2006). IEP decisions are not made by majority vote. Rather, "[i]f the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing." *Id., citing* 34 C.F.R. Part 300, Appendix A -- Notice of Interpretations, 64 Fed. Reg. 12,473 (1999).

Alleged Deficiencies in the Student's 2012 IEP Regarding Transition Goals and Services

6. The Student's March 5, 2012 IEP did not adequately describe appropriate measurable postsecondary goals because it was not based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. Regardless of whether the Student had indicated his career interests, Respondent had an obligation to conduct age appropriate transition assessments.

7. Because the Student's postsecondary goals were not properly developed, his March 5, 2012 IEP did not contain appropriate transition services (including courses of study) needed to assist the Student in reaching those goals.

8. These deficiencies in the Student's March 5, 2012 IEP constituted a denial of FAPE.

Alleged Deficiencies in the Student's IEPs Regarding Behavior Goals and/or Plans

9. Respondent's failure to conduct one or more FBAs during the 2011-2012 school year and the 2012-2013 school year to date, and to modify the Student's IEPs to include update BIP(s) based on the results of those FBAs, interfered with his ability to access his course work and constituted denials of FAPE.

Alleged Deficiencies in the Student's March 5, 2012 IEP Regarding ESY Services

10. The failure of the MDT to reconvene, as indicated in the March 5, 2012 IEP, to address the Student's need for ESY services for the 2012 summer, although arguably a procedural violation of IDEA, did not in this case constitute a denial of FAPE, for the reasons explained below.

11. In matters alleging a procedural violation of IDEA,

> a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -
> (I) impeded the child's right to a free appropriate public education;
> (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.

20 U.S.C. § 1414(f)(3)(E)(ii). *See also*, 34 C.F.R. § 300.513(a). *Accord, Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. 2006).

12. In the instant case, Petitioner introduced no evidence that the Student required ESY services.

13. Moreover, Petitioner introduced no evidence that the Parent followed up with the MDT to reconvene. The Parent's apparent lack of concern for ESY services strongly suggests that none were required.

14. Accordingly, the undersigned concludes that this procedural violation was not a denial of FAPE.

Alleged Failure to Implement the Student's IEPs

15. If an appropriate IEP is developed, but the LEA fails to implement the IEP fully, the failure constitutes a denial of FAPE only if the failure is "material." *See, e.g., Banks v. District of Columbia*, 54 IDELR 282, 110 LRP 39207 (D.D.C. 2010).

16. Respondent's failure to provide the Student with the counseling services required by his IEPs during the 2011-2012 school year was material and therefore constituted a denial of FAPE.

Obligation of Respondent to Notify OSSE

17. An LEA Charter such as Respondent that anticipates it may be unable to meet its obligation to provide a FAPE to a child with a disability currently enrolled in its school must contact the OSSE for technical assistance regarding the provision of FAPE to the child. DCMR § 5-E3019.8(b).

18. Although Charter School failed to provide the Student a FAPE, the testimony of the Clinical Director satisfied the undersigned that Charter School is able to meet its obligation to provide a FAPE to the Student.

19. Because Respondent has at all times been able to implement the Student's IEP, Respondent has had no obligation to contact the OSSE.

Compensatory Education

20. Under the IDEA, a Hearing Officer has broad discretion to determine appropriate relief, based upon a fact-specific analysis. *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005) ("*Reid*"). That relief may include a compensatory award of prospective services:

> When a school district denies a disabled child of free appropriate education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place.

Id.

21. In all cases, an order of relief must be evidence-based. *Branham v. District of Columbia*, 427 F.3d 7 (D.C. Cir. 2005). Educational programs, including compensatory

education, must be qualitative, fact-intensive, and "above all tailored to the unique needs of the disabled student." *Id.*

22. Mechanical calculation of the number of hours of compensatory education (a "cookie-cutter approach") is not permissible. *Reid.* Rather, compensatory awards "should aim to place disabled children in the same position they would have occupied but for the school district's violation of IDEA." *Id.* Awards compensating past violations must "rely on individual assessments." *Id.*

> Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.

Id. However, formulaic calculations are not *per se* invalid, so long as the evidence provides a sufficient basis for an "individually-tailored assessment". *Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 206-207 (D.D.C. 2010) *(citing Brown v. District of Columbia*, 568 F. Supp. 2d 44, 53-54 (D.D.C. 2008) (internal quotation marks omitted).

23. The hearing officer must base a compensatory education award on evidence regarding the student's "specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.*

24. Equity sometimes requires "consideration of the parties' conduct, such as when the school system reasonably 'require[s] some time to respond to a complex problem," ... or when parents' refusal to accept special education delays the child's receipt of appropriate services.... In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, 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." *Id.*

25. In the instant case, the problems presented by the Student were not complex, and the Parent did not refuse to accept special education.

26. [redacted] calculation of numbers of hours of tutoring and numbers of sessions of counseling is not "specifically and individually tailored to the student to compensate the student for the educational lapse suffered in violation of the IDEIA." *Gill v. District of Columbia, supra.*

27. However, Petitioner's failure to justify a specific award does not waive the student's right to compensatory education. *Id.; see also, Henry v. District of Columbia*, 55 IDELR 187, 110 LRP 67835 (D.D.C. 2010).

28. Petitioner has not established any specific need for compensatory education services to be provided by Seeds of Tomorrow, Inc. or any other specific service provider.

29. The record provides a sufficient basis for the undersigned to determine appropriate compensatory education for the Student.

X. ORDER

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

1. No later than December 10, 2012, Respondent shall provide to Petitioner's counsel any forms that Respondent requires the Parent to sign to authorize behavioral, educational and vocational evaluations of the Student, indicating to whom the forms should be returned, and whether email or facsimile is sufficient or the original signed forms are required.

2. No later than fifteen school days after Respondent receives the signed forms referred to in Paragraph 1 above, Respondent shall complete a Functional Behavioral Assessment ("FBA") of the Student and provide copies to Petitioner's counsel and to the members of the Student's Multidisciplinary Team ("MDT"), including the Parent (if the Student is not yet 18 years old)[16] and the Student.

3. No later than ten school days after Respondent provides the copies of the FBA to the MDT, Respondent shall convene a meeting of the MDT to review the FBA and to develop a current Behavior Intervention Plan ("BIP") for the Student. If necessary, the MDT may reconvene on other date(s) to complete the BIP. However, Respondent must implement the BIP no later than ten school days after the first meeting of the MDT to review the FBA. The BIP may be incorporated into the Student's IEP.

4. (a) Between three and five weeks after the BIP is implemented, Respondent shall convene another meeting of the MDT to review the Student's behavior since the implementation of the BIP and to make any appropriate revisions. (b) Between three and five weeks after that meeting, Respondent shall convene another meeting of the MDT review the Student's behavior since the last meeting and to make any appropriate revisions to the BIP.

5. No later than fifteen school days after Respondent receives the signed forms referred to in Paragraph 1 above, Respondent shall complete a formal vocational evaluation of the Student, and provide copies to Petitioner's counsel and to the members

[16] The Student will turn 18 on April 28, 2013, at which time the Parent's rights under IDEA will transfer to the Student unless the Student has been determined to be incompetent under District of Columbia law.

of the Student's Multidisciplinary Team ("MDT"), including the Parent (if the Student is not yet 18 years old) and the Student. At the sole discretion of Respondent, in lieu of conducting such an evaluation, Respondent shall, not later than December 17, 2012, issue the Parent an Individualized Educational Evaluation letter authorizing a vocational evaluation and report, with the report to be issued to all members of the MDT.

6. No later than ten school days after the vocational evaluation report is provided to the members of the MDT, Respondent shall convene a meeting of the MDT to review the report and to update, as appropriate, the Student's transition goals and services in his IEP. If necessary, the MDT may reconvene on other date(s) to complete the transition goals and services. However, the transition goals and services must be completed, and implementation begun, no later than ten school days after the first meeting of the MDT to review the report.

7. Respondent shall provide the following services as compensatory education for the denial of FAPE to the Student:

(a) Commencing the week of December 10, 2012, and continuing for the remainder of the 2012-2013 school year, including ESY or 2013 summer school if applicable, in addition to the one hour per week of behavioral support services provided in the Student's IEP (which are to be provided in the form of individual or group counseling), Respondent shall provide the Student one hour per week of individual counseling services, which may be after school at the option of the Parent (or the Student on and after April 28, 2013, unless if the Student has been determined to be incompetent under District of Columbia law). If the counseling is conducted during the school day, the counselor or another employee or agent of

the school will go to the Student's classroom and bring the Student to the site of the counseling. If the Student misses more than two such sessions without a legitimate excuse such as being absent from school that day due to illness, Respondent's obligation under this subparagraph shall cease.

(b) Commencing the week of December 10, 2012, and continuing for the remainder of the 2012-2013 school year, including ESY or 2013 summer school if applicable, Respondent shall provide the Student with credit recovery services to be attended after the school instructional day. If in any week other than school breaks, the Student does not attend and participate actively in credit recovery for at least four hours, he must make up the deficit within the two following weeks. If the Student fails to satisfy his obligations under the above schedule, Respondent's obligation under this subparagraph shall cease. The courses to be taken for credit recovery shall be those that are required for graduation for which the Student lacks credit. If credit recovery services are provided at a location other than the Student's school, Respondent shall provide transportation if the location is more than a half mile walk from the school and more than a half mile walk from the Student's home.

(c) The Student's transition services shall include at least five hours of individualized vocational counseling, at the rate of one hour per week for five weeks unless otherwise agreed in writing by Respondent and the Parent (or the Student on and after April 28, 2013, unless if the Student has been determined to be incompetent under District of Columbia law).

8. All written communications from Respondent to the Parent and/or the Student concerning the above matters, and all invitations to MDT meetings, shall include copies to Petitioner's counsel by facsimile or email.

9. Any delay caused by Petitioner or Petitioner's representatives (e.g., absence or failure to attend a meeting, or failure to respond to scheduling requests within one business day) shall extend Respondent's deadlines under this Order by the same number of days.

10. Petitioner's other requests for relief are DENIED.

IT IS SO ORDERED

Dated this 4th day of December, 2012.

Charles Carron
Impartial Hearing Officer