DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

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STUDENT HEARING OFFICE
2012 DEC 19 AM 8:55

[redacted], on behalf of
[redacted]

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

Respondent.

Hearing Officer: Kimm Massey, Esq.

Case No: 2012-0694

Room No.: 2003

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

Student is a [redacted], who presently attends a DCPS senior high school. On October 4, 2012, Petitioner filed a Complaint against DCPS, alleging that DCPS denied Student a free appropriate public education ("FAPE") by (1) failing to provide Parent with access to educational records; (2) failing to conduct a comprehensive psychological reevaluation and/or vocational evaluation as requested by Parent and/or in a timely manner and reconvene the MDT to review and revise the IEP as appropriate; (3) failing to develop an appropriate transition plan and/or transition goals based upon age appropriate assessments; (4) failing to provide an appropriate IEP for SY 11/12 and SY 12/13 to date; and (5) failing to conduct Student's annual IEP meeting. As relief for these alleged denials of FAPE, Petitioner requested a finding in Petitioner's favor; that DCPS provide Parent through counsel with copies of all past evaluations conducted for Student and disciplinary records from SY 2010/11 to present; that DCPS fund a comprehensive psychological evaluation, vocational evaluation, and any recommended evaluations; that DCPS convene an IEP team meeting to review the results of the independent evaluations and revise Student's IEP as appropriate; that DCPS revise the IEP to provide for a full-time educational placement; that Student be awarded compensatory education; and that Parent be authorized to seek additional compensatory education based on the evaluation results and information contained in records Parent has been unable to obtain.

On October 12, 2012, DCPS filed its Response, which asserted the following defenses: (1) DCPS has no record of any parental requests for records, other than the Complaint itself; (2) Although DCPS received a 10/5/11 parental request for vocational and educational evaluations,

and a 10/24/11 parental request for a comprehensive psychological evaluation, Student stopped attending Coolidge before consent was obtained and eventually withdrew from DCPS entirely on 2/15/12; (3) the transition plan in based on age-appropriate assessments and is tailored to Student's individual preferences and goals; (4) an IEP meeting was held for Student on 11/9/11, which Parent declined to attend; and at which the team reviewed a 10/26/11 WJ III, a 10/31/11 C.I.T.E. learning styles instruction and a 10/3/11 Interest Inventory. These evaluation results were incorporated into Student's 11/9/11 IEP, which is current, appropriate and represents the LRE, and which provides more hours than the previous IEP; (5) Student is SLD and has never been found eligible for behavioral support services, and any lack of educational progress is directly related to Student's poor attendance and his voluntary withdrawal from DCPS on 2/15/12; and (6) DCPS contends that it has attempted to schedule an IEP meeting for Student for 11/7/12.

The parties concluded the Resolution Meeting process by participating in a resolution session on October 24, 2012. No agreement was reached, but the parties agreed not to shorten the 30-day resolution period. Therefore, the 45-day timeline began on November 4, 2012 and will end on December 18, 2012, which is the HOD deadline.

On November 2, 2012, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, relief requested, and other relevant topics. The hearing officer issued a Prehearing Order on November 7, 2012.

By their respective letters dated November 27, 2012, DCPS disclosed twenty-three documents (Respondent's Exhibits 1-23), and Petitioner disclosed thirty-four documents (Petitioner's Exhibits 1-34).

The hearing officer convened the due process hearing on December 4, 2012.[1] All disclosed documents were admitted without objection. Thereafter, the hearing officer received the parties' opening statements, testimonial evidence and closing statements, then the hearing was brought to a close. The hearing officer granted Petitioner's counsel permission to submit case cites subsequent to the hearing, and Petitioner did so by email on the morning of December 5, 2012.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

The issues to be determined are as follows:

1. Did DCPS deny Student a FAPE by failing to provide Parent with access to educational records?

[1] Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

2. Did DCPS deny Student a FAPE by failing to conduct a comprehensive psychological reevaluation and/or vocational evaluation as requested by Parent and/or in a timely manner and reconvene the MDT to review and revise the IEP as appropriate?

3. Did DCPS deny Student a FAPE by failing to develop an appropriate transition plan and/or transition goals based upon age appropriate assessments?

4. Did DCPS deny Student a FAPE by failing to provide an appropriate IEP for SY 11/12 and SY 12/13 to date?

5. Did DCPS deny Student a FAPE by failing to conduct Student's annual IEP meeting?

FINDINGS OF FACT[2]

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is a [redacted] male who presently attends a DCPS senior high school.[3]

2. Student's October 26, 2010 IEP was prepared at an IEP meeting that Parent attended. That IEP indicates that Student was in 9th grade and identifies Student's primary disability as Specific Learning Disability ("SLD"). The IEP requires Student to receive 7.5 hours specialized instruction in general education and contains academic goals in the areas of mathematics, reading and written expression. The Present Level of Educational Performance ("PLOP") in math states that Student was "functioning below ninth grade level" based on a Pre-Algebra I assessment from 9/2010. The reading PLOP states that Student was reading at beginning 4th grade level according to a McLeod assessment for which no date is given. The written expression PLOP states that Student was "functioning at or below a ninth grade level as assessed by the 6 + 1 Trait Writing Assessment" for which no date was given.[4]

3. The October 26, 2010 IEP contains a Post-Secondary Transition Plan that lists "Student Interview" on 10/3/2010 as the sole "assessment tool," although "North Carolina Assessment" with no evaluation data is listed under "Baseline" in several sections of the Plan. Student's post-secondary education and training goals were to "develop an appropriate plan to achieve vocational goals as measured by a complete plan" and "list 6 number of causes and consequences of unemployment." Student's employment goals required him to identify and use employment resources available

[2] To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.
[3] *See* Complaint.
[4] Petitioner's Exhibit 7, pp. 1-3.

to assist in finding a job and to identify, access and use community services and support services appropriately with assistance.[5]

4. Parent attended the October 5, 2011 IEP meeting DCPS convened to review Student's draft IEP. Parent noted that Student does not understand the work, and the team discussed how Student sometimes uses avoidance strategies such as asking to go to the bathroom to avoid work he doesn't understand. The team determined to finalize the IEP after completion of Student's educational evaluation. On October 20, 2011, DCPS sent a Letter of Invitation to an IEP meeting to Parent and/or her representative(s).[6]

5. Student's November 9, 2011 IEP ultimately was finalized at a meeting that Parent did not attend. The IEP identifies Student's primary disability as SLD and requires Student to receive 12 hours per week of specialized instruction in general education and 6 hours per week of specialized instruction outside general education. The mathematics and written expression sections of the IEP contain the same PLOP, baselines, goals, needs and impact as the 2010 IEP. Although the reading goals, baselines, needs, impact and PLOP contain the same information as the 2010 IEP, the PLOP includes an additional paragraph which indicates that Student took an informal assessment, the Holt Diagnostic Assessment for Reading Intervention, on September 30, 2011, which showed he was Below Basic for Total Reading Comprehension.[7]

6. To create Student's 2011 IEP, Student's special education teacher merely changed the dates on the 2010 IEP.[8]

7. The November 9, 2011 IEP contains a Post-Secondary Transition Plan which is based on the following assessments: 10/26/11 Woodcock-Johnson III educational testing; 10/3/11 QuickBook of Transition Assessments functional skills testing; and 10/3/11 Interest Inventory vocational testing. Student's short term goals are as follows: Post-secondary education and training: describe how the skills he is developing in school relate to employment and explain how recommendations influence post-secondary school admissions and employment; Employment – describe how the skills he is developing in school relate to employment and identify one or more action steps necessary to pursue his future career goals; and Independent living – identify, access and use community services and support services appropriately with assistance.[9]

8. On October 4, 2012, DCPS sent a Letter of Invitation to Parent for an 11/7/12 IEP meeting for Student. On November 8, 2012, DCPS sent a Letter of Invitation to Parent's attorney for an 11/7/12 IEP meeting for Student.[10]

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[5] Petitioner's Exhibit 7, pp. 9-10.
[6] Respondent's Exhibit 3; Petitioner's Exhibit 5.
[7] Respondent's Exhibit 9.
[8] Testimony of special education teacher.
[9] Respondent's Exhibit 9.
[10] Respondent's Exhibits 17, 19 and 23 at 5.

9. Student's November 8, 2012 IEP was also developed without Parent's participation. This IEP identifies Student's primary disability as SLD and requires him to receive 15 hours of specialized instruction in general education. All academic areas include the same PLOP, needs, impact, and baseline information as the 2010 and 2011 IEPs, except that Student's age and some dates have been changed. The math goals are exactly the same as in the previous two IEPs, the first two reading goals are unchanged as well but a third goal was added, but Student's written expression goals were revised.[11]

10. The November 8, 2012 IEP contains a Post-Secondary Transition Plan which purports to be based on an 11/1/12 Brigance Transition Inventory Skills assessment and an 11/1/12 Student Personal Interview, but no evaluation data from the Brigance is included. Student's short-term goals are: Postsecondary education and training – enroll in academic classes that will prepare him for his post secondary education and complete the classes with 80% accuracy; Employment – complete a minimum of two job reports on occupational interests; and Independent living – be able to manage a bank account in both checking and savings by balancing his accounts.[12]

11. On October 3, 2011, DCPS administered the C.I.T.E. Learning Styles Instrument and the Interest Inventory to Student. Each instrument consists of a two-page questionnaire with a worksheet for scoring.[13]

12. On October 26, 2011, when Student was 16.5 years old and in the ninth grade, DCPS administered an Educational Evaluation to Student, which consisted of the Woodcock-Johnson III Tests of Achievement ("WJ III"). Student's written language skills were at the second grade level, his reading skills were at the third grade level, and his math skills were at the fourth grade level.[14]

13. The administrative record for this matter contains no assessments or evaluations for Student, other than the October 2011 educational evaluation and C.I.T.E. and Interest Inventory questionnaires. Of the three, only the educational evaluation is a standardized assessment.

14. No comprehensive transition testing has been done for Student. The WJ-III is not the best type of testing for transitional purposes, as there are other existing assessments that are better suited for that purpose. Moreover, the C.I.T.E. and Interest inventory instruments are self-discovery tools that do not produce the data needed to develop baselines that will allow a student's progress to be tracked.[15]

15. At Student's October 5, 2011 IEP meeting, Parent, through her advocate, requested educational and vocational assessments. Parent also requested evaluations in writing,

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[11] Petitioner's Exhibit 20.
[12] Petitioner's Exhibit 20.
[13] Respondent's Exhibits 1-2; Petitioner's Exhibits 25-26.
[14] Respondent's Exhibit 6.
[15] Testimony of Owner and Founder of private program.

through her attorney, on August 30, 2011, October 24 and 26, 2011. The letters were directed to the Principal of Student's previous DCPS senior high school, as well as to the Principal of Student's current DCPS senior high school, and they requested a comprehensive psychological evaluation. One letter also requested an FBA. Petitioner's counsel followed up with DCPS by asking about the status of the requested evaluations in an email dated October 3, 2012.[16]

16. By letters to DCPS dated August 30, 2011 and October 12, 2012, Petitioner, through her attorney, requested a copy of Student's educational records. One letter was sent to the Principal of Student's previous DCPS school, and the other to the Principal of Student's current DCPS school. By emails dated October 13, 2012 and October 25, 2012, Petitioner's counsel again requested, on Parent's behalf, an opportunity to review and/or a copy of Student's educational records. Both Parent and her advocate have visited Student's school in an attempt to obtain records but were unsuccessful. To date, Parent has not been provided with access to or a copy of Student's educational records.[17]

17. Student has experienced some truancy issues, which had included avoiding class when he does not understand the work. Student has also exhibited behaviors in school that were significant enough to warrant a long-term suspension as well as several shorter term suspensions in the current school year.[18]

18. As of the start of SY 2011/12, Student had earned only 7 of the 24 Carnegie units he needs to graduate.[19]

19. As of December 7, 2012, Student is earning an "I" in Algebra I, Ds in Biology I and English II, and a B- in Computer Literacy. For SY 2010/11, Student earned the following final grades: three Fs, five Ds, five Cs, one B (in Music), and an "L."[20] The record does not include Student's final grades for SY 2011/12.

20. In its written compensatory education proposal, Petitioner requested 48 hours of tutoring in two 2-hour sessions per week for 12 weeks; twelve sessions of counseling/behavioral support; a comprehensive transition assessment and vocational services in one of several specified programs or a similar program; and a credit recovery program to recover an unspecified number of credits.[21]

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[16] Petitioner's Exhibits 5, 8, 9, 11, and 12; Respondent's Exhibit 3.
[17] Petitioner's Exhibit 10, 12, 14, and 15; testimony of advocate; testimony of Parent.
[18] Petitioner's Exhibits 3, 14, and 21; testimony of Parent; testimony of advocate.
[19] Petitioner's Exhibit 20.
[20] Respondent's Exhibit 22; Petitioner's Exhibit .
[21] Petitioner's Exhibit 31.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. Alleged Failure to Provide Access to Educational Records

IDEA requires public agencies to provide parents of a child with a disability with an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. 34 C.F.R. § 300.501(a).

Petitioner argues that DCPS has failed to provide Parent with access to Student's educational records, despite repeated requests. DCPS contends that there is no evidence that Parent requested records from Student's current school, and that DCPS has kept Parent informed of what's going on with Student. A review of the evidence in the instant case reveals that Parent has repeatedly requested, both verbally and in writing, and from Student's current and previous DCPS schools, that DCPS provide her with access to and/or a copy of Student's educational records. However, as of the date of the due process hearing, DCPS had failed to provide either. Hence, Parent has not been provided with an opportunity to review Student's initial evaluations, his discipline records, and other relevant documents from Student's file. As a result, Parent is unsure of exactly what are Student's educational and transition needs, whether or not his needs are being met, and whether or to what extent he is making progress. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving a denial of FAPE in connection with this claim. *See, e.g.,* 34 C.F.R. § 300.513(a)(2) (hearing officer may find denial of FAPE where procedural inadequacies impeded child's right to FAPE, impeded Parent's opportunity to participate in decision-making, or caused deprivation of educational benefit); *Lesesne v. D.C., 447 F.3d 828 (D.C. Cir. 2006)* (procedural violations that result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable). The hearing order will, therefore, order DCPS to promptly provide Parent with access to Student's educational records.

2. Alleged Failure to Reevaluate/Evaluate Upon Parental Request and/or in a Timely Manner

Under IDEA, a public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a)(2). Moreover, a reevaluation may occur not more than once per year and must occur at least once every three years, unless the parent and public agency agree otherwise. 34 C.F.R. § 300.303(b). In conducting an evaluation or reevaluation of a disabled child under IDEA, the public agency must ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. *See* 34 C.F.R. § 300.304(b)(1). The public agency must also ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4).

A review of the evidence in the instant case reveals that despite repeated requests for a reevaluation of Student dating back to at least August 30, 2011, DCPS has administered only an educational assessment and two self-discovery questionnaires to Student. As a result, Parent lacks sufficient evaluation data to effectively participate in the decision-making regarding the provision of a FAPE to Student because, as noted above, she is unsure of exactly what are Student's educational and transition needs, whether or not his needs are being met, and whether or to what extent he is making progress. Indeed, it appears that the entire IEP team is lacking sufficient evaluation data to properly program for Student, because his last three annual IEPs contain substantially the same baseline data, annual goals, and needs and impact statements, as well as transition plans that set forth very vague and general goals that are not based upon age appropriate transition assessment data. Moreover, as a result of DCPS's failure to conduct assessments designed to determine the cause of and possible solutions for Student's truancy and behavior issues, Parent and the other members of the IEP team have not had sufficient evaluation data to permit a discussion and determination of whether and/or to what extent Student may require behavioral support services or other related services to receive a FAPE. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of demonstrating a denial of FAPE in connection with this claim. *See, e.g.,* 34 C.F.R. § 300.513(a)(2), *supra*; *Lesesne v. D.C., supra*, (IDEA claim viable where procedural violations affect student's substantive rights); *Suggs v. District of Columbia,* 679 F.Supp.2d 43, 51-52 (D.D.C. 2010) (failure to conduct recommended assessments may be deemed a denial of FAPE where it appears that IEP is not reasonably calculated to provide educational benefit). As a result, the hearing officer will order DCPS to fund an independent comprehensive psychological evaluation and an independent comprehensive vocational evaluation for Student, and the hearing officer will order DCPS to conduct an FBA for Student, and if necessary, develop a BIP for him.

3. <u>Alleged Failure to Develop Appropriate Transition Plan/Goals</u>

Under IDEA, beginning not later than the first IEP to be in effect when a disabled child turns 16, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. 20 U.S.C. § 1414(d)(1)(A)(i) (VIII). IDEA defines "transition services" to mean a coordinated set of activities for a disabled child that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, and is based on the individual child's needs, taking into account the child's strengths, preferences and interests. *See* 34 C.F.R. § 300.43(a).

In the instant case, Petitioner argues that Student's transition plan and goals must be revised based upon appropriate transition data, while DCPS insists that Student's transition plans are tailored to Student's interests and based upon a multitude of assessments. A review of the evidence reveals, however, that DCPS has failed to conduct a comprehensive transition assessment of Student, even though he is now 17 years old. Moreover, Student's last three annual transition plans contain goals that are so vague and generalized as to be of no assistance in helping Student acquire skills and knowledge that he needs to transition into post-secondary employment or education. Hence, the goals require Student to, for example, develop an appropriate plan to achieve vocational goals, or describe how the skills he is developing in

school relate to employment, or enroll in academic classes that will prepare him for his post-secondary education. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proof on this claim. *See, e.g., Marple Newtown School District v. Rafael N.*, 48 IDELR 184 (E.D Pa. 2007) (transition plan determined inadequate where, *inter alia*, goals were vague and did not capitalize on student's strengths or specific interests); 34 C.F.R. § 300.43(a), *supra* (transition services must be results-oriented and facilitate the child's movement from school to post-school activities). To compensate Student for DCPS's failure to provide him with appropriate transition goals and services, the hearing officer will order DCPS to provide funding for Student during Summer 2013 one of the vocational programs listed in Petitioner's compensatory educational proposal. *See Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005) (hearing officers may award educational services to be provided prospectively to compensate for a past deficient program).

4. **Appropriateness of IEPs for SY 2010/11 and SY 2011/12**

IDEA provides that an IEP is a written statement for each child with a disability that must include, *inter alia*, a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general educational curriculum; a statement of measurable annual goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and to meet each of the child's other educational needs resulting from the disability; and a statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or personnel supports that will provided to enable the child to advance appropriately, to be involved in and make progress within the general education curriculum and participate in nonacademic activities, and to be educated and participate with other disabled and nondisabled children. 34 C.F.R. § 300.320(a). Moreover, in developing a child's IEP, the IEP team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i).

Indeed, the FAPE required by IDEA is tailored to the unique needs of a disabled child by means of the IEP. Board of Education of the *Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982). Hence, the IEP, and therefore achieve passing marks and advance from grade to grade the personalized instruction, should be reasonably calculated to enable the child to. *Id.* In determining whether a Student's IEP is appropriate, the hearing officer must determine (1) whether the LEA has complied with the procedures set forth in IDEA, and (2) whether the IEP developed through IDEA's procedures was reasonably calculated to provide Student with educational benefits. *Id.* However, the measure and adequacy of the IEP is to be determined as of the time it was offered to the student. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir. 2008), *cert. denied*, 555 U.S. 1173 (2009).

As noted above, Student's last three annual IEPs contain substantially the same baseline data, annual goals, and needs and impact statements. Indeed, a DCPS special education teacher testified at the due process hearing in this case that she created Student's 2011 IEP by merely

changing the dates on his 2010 IEP. Moreover, a review of the evidence reveals that Student had only earned 7 of the 24 credits he needs to graduate as of the start of SY 11/12, and his October 26, 2011, which was administered when he 16.5 years old in the ninth grade, revealed that his written language skills were at the second grade level, his reading skills were at the third grade level, and his math skills were at the fourth grade level. Nevertheless, his 2012 IEP contains substantially the same goals as his previous two IEPs. Finally, although Student has exhibited a pattern of engaging in avoidance behaviors such as skipping or leaving class when he does not understand the work, his last three annual IEPs have not contained any positive behavioral interventions and supports or other strategies to address that behavior. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving a denial of FAPE in connection with this claim. As the hearing officer has already determined to order DCPS to conduct comprehensive evaluations of Student, as well as an FBA and, if needed, develop a BIP, the hearing officer will order DCPS to convene an IEP meeting for Student to review the evaluation data and the BIP, if any, and to revise Student's IEP to contain appropriate goals tailored to meet Student's needs as revealed by the evaluation data, an appropriate amount of specialized instruction inside and/or outside general education to enable Student to achieve passing marks and advance from grade to grade, and sufficient support services to permit Student to benefit educationally from that instruction.

5. Alleged Failure to Conduct an Annual IEP Meeting

Under IDEA, each public agency must ensure that the IEP team reviews each disabled child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress, the results of any reevaluation, information about the child provided to, or by, the parents, the child's anticipated needs, or other matters. 34 C.F.R. § 300.324(b)(1). In this regard, IDEA requires that a disabled child's IEP team include, *inter alia*, the parents of the child, and whenever appropriate, the disabled child. *See* 34 C.F.R. § 300.321(a).

IDEA requires each public agency to take steps to ensure that one or both of the disabled child's parents are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a). Although a public agency may conduct a meeting without a parent in attendance if it is unable to convince the parent to attend, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and the responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. 34 C.F.R. § 300.322(d).

In the instant case, Petitioner initially argued that DCPS failed to convene an annual IEP meeting for Student in 2012, but upon learning that DCPS convened an IEP meeting for Student in November 2012, during the course of this case, without Parent's participation, Petitioner argued that the meeting was invalid because Parent was not there. DCPS disagrees, arguing that it gave Parent an opportunity to attend the meeting. A review of the evidence in this case reveals that DCPS sent Parent one invitation to an 11/7/12 meeting on October 4th, and sent Petitioner's

counsel one invitation to an 11/7/12 meeting on November 8th, but then proceeded with the meeting on November 8th without Parent's participation. Clearly, these two letters fell far short of the steps IDEA requires a public agency to take to ensure that a disabled child's parent attends or at least is afforded the opportunity to participate in an IEP meeting. *See* 34 C.F.R. § 300.322(a) and (d), *supra.* Hence, the hearing officer concludes that Petitioner has met its burden of proof in connection with this claim. However, as the hearing officer has already determined to order DCPS to convene another IEP meeting for Student to review evaluation data and revise Student's IEP, the hearing officer declines to award further relief in connection with this claim. *Compare Mr. I. and Mrs. I. v. Maine Sch. Admin. Dist. No. 55,* 480 F.3d 1 (1st Cir. 2007) (affirming district court denial of compensatory education request where district court reasoned IEP it ordered would necessarily take into account identified denials of FAPE).

ORDER

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

1. Within 15 school days of the issuance of this Order, DCPS shall provide Parent and/or her representatives with access to Student's educational records on a set day and time at Student's current school. In setting the day and time, DCPS shall provide Parent with three sets of day/time options, and Parent shall pick one of the options presented.

2. DCPS shall (i) fund an independent comprehensive psychological evaluation and an independent comprehensive vocational evaluation for Student; and (2) conduct a functional behavior assessment ("FBA") for Student, and if necessary, develop a behavior intervention plan for Student within 10 school days of completion of the FBA.

3. Within 15 school days of the completion of the independent evaluations and the FBA, DCPS shall convene an IEP meeting for Student to review the evaluation data and the BIP, if any, and to revise Student's IEP to contain appropriate goals tailored to meet Student's needs as revealed by the evaluation data, an appropriate amount of specialized instruction inside and/or outside general education to enable Student to achieve passing marks and advance from grade to grade, and sufficient support services to permit Student to benefit educationally from that instruction.

4. DCPS shall provide funding for Student to attend during Summer 2013 one of the vocational programs listed in Petitioner's compensatory educational proposal, and Parent shall choose which of the particular programs Student should attend.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety

(90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Date: 12/18/2012 /s/ *Kimm Massey*

Kimm Massey, Esq.
Hearing Officer