

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
August 6, 2016

<i>Student</i> , ¹)	Date Issued: 8/6/16
through her <i>Parent</i> ,)	
<i>Petitioner</i>)	Case No.: 2016-0128
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates: 7/28/16 & 7/29/16
("DCPS"),)	Hearing Location: Rm. 2004 (7/28/16)
Respondent)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because she was not assessed in all areas of suspected disability, was not provided an Individualized Education Program (“IEP”) with sufficient hours outside general education, and did not receive an appropriate transitional/vocational assessment and postsecondary transition plan. DCPS responded that Student was properly assessed and programmed for in all areas.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

Following the filing of the due process complaint on 5/20/16, the case was assigned to the undersigned on 5/24/16. Respondent filed an untimely response on 6/3/16 and did not challenge jurisdiction. The resolution session meeting took place on 6/1/16, but the parties

¹ Personally identifiable information is provided in Appendix A, including terms initially stated in italics.

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neither settled the case nor terminated the 30-day resolution period, which ended on 6/19/16. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, as extended by a 4-day continuance granted on 8/3/16, which requires a Hearing Officer Determination (“HOD”) by 8/7/16.

The due process hearing took place on 7/28/16 (in Hearing Room 2004) and 7/29/16 (closing arguments only, by teleconference), and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present during virtually the entire hearing, apart from closing arguments.

Petitioner’s Disclosures, filed on 7/21/16, contained documents P1 through P31, which were admitted into evidence without objection.

Respondent’s Disclosures, filed on 7/22/16, contained documents R1 through R54, which were admitted into evidence without objection.

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. *School Psychologist A* (qualified over objection as an expert in School Psychology, Vocational Evaluation and Transition Planning)
2. *Educational Advocate*
3. *School Psychologist B* (qualified over objection as an expert in School Psychology and Development of Compensatory Education Plans)
4. Parent

Respondent’s counsel presented 2 witnesses in Respondent’s case (*see* Appendix A):

1. *Program Manager* (qualified without objection as an expert in Transitions/Vocation)
2. *Special Education Coordinator* (qualified over objection as an expert in IEP Programming, Evaluation and LRE)

The issues to be determined in this Hearing Officer Determination are:

Issue 1: Whether DCPS denied Student a FAPE by failing to properly evaluate her in all areas of suspected disability, despite ongoing behavioral concerns and possible decrease in cognitive ability, by failing to conduct (a) an Adaptive Functioning Assessment; (b) a Cognitive Evaluation; and/or (c) Social Emotional Testing.

Issue 2: Whether DCPS denied Student a FAPE by failing to offer an appropriate IEP on 4/28/16 when it proposed to reduce her hours outside general education despite her lack of academic and social-emotional progress.

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Issue 3: Whether DCPS denied Student a FAPE by failing to complete an appropriate Transitional/Vocational Assessment and to develop an appropriate postsecondary transition plan.

Petitioner seeks the following relief:

1. A finding that Student was denied a FAPE.
2. Within 15 business days, DCPS shall revise Student's IEP to increase specialized instruction outside general education to at least 15 hours/week in the areas of reading, math and written expression.
3. Within 10 business days, DCPS shall fund an independent Comprehensive Psychological evaluation, which is to include behavioral, cognitive, and adaptive testing, and within 10 school days after its completion, convene an IEP team meeting to review the results and update Student's IEP as needed.
4. Within 10 business days, DCPS shall fund an independent Comprehensive Vocational Level 2 or 3 Assessment/Transition Assessment and, within 10 school days after its completion, convene an IEP team meeting to review the results and develop a transition plan for Student.
5. DCPS shall fund compensatory education for any denial of FAPE due to failure to (a) conduct comprehensive evaluations; (b) develop an appropriate IEP on 4/28/16; and/or (c) conduct appropriate vocational evaluations and develop an appropriate transition plan.²

The parties were permitted to submit legal citations after the hearing, which Petitioner provided in an email on 7/29/16.

² As discussed below, the Prehearing Order stated that so far as Petitioner's request for compensatory education depends on the findings of evaluations that may be completed in the future, that portion of the compensatory education request will be reserved pending the completion of Student's evaluations and a determination of eligibility for additional special education and related services. DCPS objected at the Prehearing Conference to any compensatory education relief being reserved.

The Prehearing Order also noted that with regard to any remaining request for compensatory education, Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was encouraged to be prepared to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact³ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁴ Student is *Age*, completed *Grade* at *Public School* in 2015/16,⁵ and was promoted to the next grade.⁶

2. Student is classified as having a Specific Learning Disability ("SLD") in mathematics, reading, and written expression; Student was confirmed on 4/28/16 as still eligible for special education and related services.⁷ On her 5/13/15 IEP, Student received 15 hours/week of specialized instruction outside general education, along with 120 minutes/month of Behavioral Support Services ("BSS").⁸ On 4/28/16, Student's IEP was modified: she continued to receive 15 hours/week of specialized instruction, but with only 7.5 hours outside general education and 7.5 hours inside; BSS did not change.⁹

3. Standardized testing of Student shows that academically she is very far behind her same-grade peers.¹⁰ Her scores on the Woodcock-Johnson IV ("WJ-IV") on 4/4/16 indicate that in math Student is about 5 to 8 grades behind; in reading, 4 to 7 grades behind; and in written language, 3 to 5 grades behind.¹¹ Student's PARCC tests for both math and English language in 2014/15 indicated that she was at Level 1, far below where she should be.¹² Student's Fall 2015 PSAT scores were at the 3rd percentile for reading and writing and 15th percentile for math.¹³

³ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. 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, 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.

⁴ Parent.

⁵ All dates in the format "2015/16" refer to school years.

⁶ Parent.

⁷ P9-1,4,5,6,7; R44-5; R46; P8-6.

⁸ P7-10; Parent.

⁹ P10-11.

¹⁰ Educational Advocate; School Psychologist B.

¹¹ P10-3,5,6; P13-1.

¹² P18-1,3; School Psychologist B.

¹³ P19-1; School Psychologist B.

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4. Cognitively, there is a large gap between Student and her peers.¹⁴ Student was administered the Reynolds Intellectual Assessment Scales (“RIAS”) as part of a 1/16/14 psychological reevaluation, which found that her Composite Intelligence Index was 56, which is significantly below average and exceeds the performance of less than 1% of individuals Student’s age.¹⁵ The 2014 scores were notably lower than Student’s intelligence scores on the WISC-IV on 4/17/08, which included a Full Scale IQ of 65.¹⁶ A large decrease in scores is unusual, which might indicate something happened between the tests in 2008 and 2014.¹⁷

5. The psychological evaluation triennial completed for Student on 4/17/16 did not include any new cognitive testing or social emotional testing, although it did incorporate the WJ-IV from 4/4/16.¹⁸ On 5/18/16, Parent through counsel requested an independent comprehensive psychological evaluation due to disagreement with the 4/17/16 triennial.¹⁹ A comprehensive psychological evaluation with social-emotional assessment is sought to provide insight into Student’s cognitive abilities and engagement with school.²⁰ Student continues to demonstrate a discrepancy between her intellectual functioning and her academic background, with academic skills higher than her cognitive level.²¹ The 4/17/16 triennial found that Student’s course grades demonstrate some academic strengths when material is modified and presented in a manner she can grasp.²²

6. The psychological evaluation triennial noted that Student has developed an attendance problem; she had 14 unexcused absences and had been tardy 45 times in 2015/16 (as of 4/17/16).²³ Teachers noted Student’s lateness as a factor in missing key information in class.²⁴ Student involving herself in other peers’ problems impacts her arriving to class on time.²⁵ A conduct attendance sheet was suggested on 4/28/16, but it lasted only about 2 weeks.²⁶ Student chooses to be late to her classes, as she lives only 5 minutes away and could easily be on time every day.²⁷

¹⁴ School Psychologist B.

¹⁵ P11-5; School Psychologist A.

¹⁶ P14-2; School Psychologist A; School Psychologist B.

¹⁷ School Psychologist B.

¹⁸ P24-1; P14-2; P13-1.

¹⁹ P24-1.

²⁰ School Psychologist A; School Psychologist B.

²¹ P14-2; R49-3.

²² P14-2.

²³ R35-1; P14-3; School Psychologist B (being tardy over 50 times in a school year is an issue).

²⁴ P8-3.

²⁵ P8-4.

²⁶ P8-6; Parent.

²⁷ Parent.

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7. Student earns reasonably good grades at Public School, notwithstanding her very low standardized test results, because the environment is different and she receives various accommodations in the classroom, such as extra time.²⁸ Standardized tests are often timed and students cannot go back to review and check their work; some students are not good at taking standardized tests.²⁹ Testing scores can go up and down for students with SLD; fluctuations may result from changes in mood or other issues on a particular day.³⁰

8. Parent has been seeking to increase Student's hours of special education and would prefer fulltime services, but Student has resisted and worked hard to stay in general education.³¹ Student likes to be challenged and works hard to be as successful and accepted as possible.³² Student is very social and values her involvement in "college bound" and mentorship programs where other students look up to her.³³

9. The 2015/16 school year went much better for Student than her previous year at Public School.³⁴ Student's behavior was better; her grades were better, although she had a dip that she wanted to bring up.³⁵ As of 4/7/16, shortly before modification of her IEP, Student's grades included 4 "As" (in General Exploration I, Geometry, Geometry³⁶ and Chemistry) and 1 "F" (in Health Education), plus a "B" and 2 "C-s."³⁷ Student worked hard and received 3 "As" in core subjects on her final exams covering the entire year.³⁸ Student can be successful in general education classes with accommodations and modifications of her instruction.³⁹ DCPS is doing well in delivering services to Student, such as "chunking down" Shakespeare to a level Student can understand in a general education class; Student can access the academic environment at Public School.⁴⁰ Student's IEP Progress Report for 4/21/16 showed that she was progressing in all her math, reading, and written expression goals.⁴¹

10. At the 4/28/16 IEP meeting, Public School proposed that it would be helpful to divide her 15 hours of specialized instruction to give Student support inside general education as well as outside, based on the data reviewed, as Student had shown a great

²⁸ Special Education Coordinator.

²⁹ *Id.*

³⁰ P8-6; Special Education Coordinator.

³¹ Special Education Coordinator; R49-3.

³² Special Education Coordinator.

³³ R49-3; Special Education Coordinator.

³⁴ Special Education Coordinator; P8-1 (Student).

³⁵ P8-4; Special Education Coordinator.

³⁶ Student had two Geometry classes, one a general education class and the other outside general education.

³⁷ P16-1,2.

³⁸ Special Education Coordinator; P17-2.

³⁹ Special Education Coordinator; R49-3.

⁴⁰ Educational Advocate.

⁴¹ R26-7,8,9.

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degree of independence.⁴² In developing her 4/28/16 IEP, the team relied on Student's GAIN, WJ-IV, attendance records, quarterly progress reports, student transcripts, teacher observations, her success in the classroom, and other student data.⁴³ The IEP team discussed how Student was advocating better for herself, had good rapport with teachers, and was attending the after-school "Power Hour" to get more support at school.⁴⁴ The IEP team took into account the change in Student's achievement scores and increasing gap between Student's grade level on standardized tests and her actual grade at school.⁴⁵

11. An IEP continuing to provide all her specialized instruction each week outside general education might be emotionally detrimental to Student and cause her to "shut down."⁴⁶ Having 15 hours outside general education is not warranted, as Student benefits from co-taught classes (which contain both disabled and nondisabled students).⁴⁷ Student is in a "college bound" group and does want to continue on to college, so needs to prepare by spending more time in general education.⁴⁸ Student likes to be challenged and is more successful by being a little more challenged than being in a "self-contained" classroom with only disabled students.⁴⁹ It would do Student a disservice to take away the challenge.⁵⁰

12. Student's post-secondary transition plan in her 4/28/16 IEP included results from age-appropriate transition assessments, specifically the WJ-IV, O*NET Interest Profiler and the Casey Life Skills Assessment.⁵¹ Each of the transition assessments was completed within a year of the IEP, which is sufficiently recent to be appropriate.⁵² The transition assessments succeeded in obtaining information about Student for her transition plan, including her interests, challenges and history.⁵³ Parent is aware of Student's interests and helped her prepare a resume.⁵⁴ Cognitively, Student was able to interact and is very vocal about her interests, although her transition goals may continue to change as she narrows down what she wants to do.⁵⁵

⁴² P8-8,9.

⁴³ P9-3; Special Education Coordinator.

⁴⁴ P8-1 (meeting notes from Parent's counsel); Parent.

⁴⁵ Special Education Coordinator.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ P8-2; Special Education Coordinator.

⁴⁹ R49-3; Special Education Coordinator.

⁵⁰ *Id.*

⁵¹ P10-15; School Psychologist A.

⁵² Program Manager.

⁵³ School Psychologist A; Program Manager; P12; R30; R24.

⁵⁴ Parent.

⁵⁵ R49-4; Program Manager.

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13. Interests, values and goals are key to transition plans.⁵⁶ No one should tell students what they should and shouldn't pursue, but help them explore their interests.⁵⁷ For most special needs students, a Vocational Level I assessment is sufficient.⁵⁸ Vocational Level II assessments are used when there are no results from a Vocational Level I, for those students more impacted by cognitive disabilities who are unable to identify what their interests are after high school.⁵⁹

14. Student wishes to attend college after high school, among other interests.⁶⁰ Additional assessment, such as relating to college applications, is not need needed at this time, as Student is still exploring what she wants to do.⁶¹ Further assessment will not clarify what Student wants to do; exploration of her interests will do that.⁶² Where Student is in the process now is where she should be for her grade level.⁶³ Post-transition goals were discussed at the 4/28/16 IEP meeting.⁶⁴ None of the goals on the 4/28/16 IEP are unrealistic or inappropriate for Student; she is on track vocationally with appropriate transition services given her time until graduation.⁶⁵ Student going to college is reasonable; no goals contradict Student's interests.⁶⁶ Student's IEP Progress Report for 4/21/16 showed that she is progressing in all her transition goals.⁶⁷

Conclusions of Law

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

The overall purpose of the IDEA is 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." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"[T]o further Congress' ambitious goals for the IDEA, the Supreme Court has focused on the centrality of the IEP as 'the centerpiece of the statute's education delivery

⁵⁶ Program Manager.

⁵⁷ *Id.*

⁵⁸ R50-8; Program Manager.

⁵⁹ Program Manager; R49-4.

⁶⁰ P10-16.

⁶¹ Program Manager.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ P8-7,8.

⁶⁵ Program Manager.

⁶⁶ *Id.*

⁶⁷ R26-11.

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system for disabled children.” *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988).

Once a child who may need special education services is identified and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

As discussed below, the Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. Congress, however, “did not intend that a school system could discharge its duty under the [Act] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

In addition, Respondent must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114.

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights.

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3. The burden of proof is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

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Issue 1: *Whether DCPS denied Student a FAPE by failing to properly evaluate her in all areas of suspected disability, despite ongoing behavioral concerns and possible decrease in cognitive ability, by failing to conduct (a) an Adaptive Functioning Assessment; (b) a Cognitive Evaluation; and/or (c) Social Emotional Testing.*

Petitioner carried her burden of demonstrating that Student has not received the comprehensive psychological evaluation, including cognitive and social-emotional testing, that she should have had as part of her triennial reevaluation. The IDEA requires a reevaluation of each student with a disability at least once every three years, or sooner if the student's parent or teacher requests a reevaluation, or if the Local Educational Agency ("LEA") determines that the needs of the student warrant a reevaluation. 34 C.F.R. 300.303. In considering a reevaluation, the IEP team (and other qualified professionals as appropriate) must review existing evaluation data and, with input from the student's parents, identify what additional data, if any, are needed to determine whether the student continues to have a disability, and the educational needs of the student. 34 C.F.R. 300.305(a). Of course, the IDEA does not require a public agency to administer every test requested by a parent, as the public agency has the prerogative to choose assessment tools and strategies to gather relevant information.

Here, the psychological evaluation triennial completed for Student on 4/17/16 did not include any new cognitive testing or social emotional testing, as it merely relied on earlier assessments and a WJ-IV from 4/4/16. Given the discrepancy between Student's 2008 and 2014 cognitive evaluations, along with Student's frequent tardiness to class and unexcused absences, Petitioner's experts credibly testified that Respondent should have conducted at least cognitive and social-emotional testing. A comprehensive psychological evaluation with at least cognitive and social-emotional testing may well provide useful insight into Student's engagement with school, and how to tailor her IEP to her evolving needs. The Court recently emphasized that "a reevaluation requires a new round of tests and analysis to evaluate the child" in *James v. Dist. of Columbia*, 2016 WL 3461185, at *9-10 (D.D.C. June 21, 2016), explaining that

The failure to conduct a new comprehensive psychological evaluation of [student] means that her IEP might not be sufficiently tailored to her special and evolving needs. This potentially compromises the effectiveness of the IDEA's protections as they pertain to [student]. Accordingly, Defendant DCPS is ordered to provide and fund a full comprehensive psychological evaluation....

Moreover, Petitioner expressly requested an independent evaluation on 5/18/16 through counsel due to disagreement with the triennial reevaluation, which provides another basis on which DCPS should have conducted a comprehensive psychological evaluation. See 34 C.F.R. 300.502(b); *Letter to Baus*, 65 IDELR 81 (OSEP 2015) (parent may request a publicly-funded IEE to assess an area that wasn't covered by the district's evaluation).

The failure to provide a comprehensive psychological evaluation is not merely a procedural violation, as it may mean that Student's IEP is inadequate, depriving her of educational benefit. 34 C.F.R. 300.513(a). See *James*, 2016 WL 3461185, at *10 (district

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contending that “failure to provide a comprehensive psychological evaluation was only a procedural error and not a denial of a FAPE is, to say the least, confounding”).

This Hearing Officer thus concludes that failure to conduct a full comprehensive psychological evaluation as part of Student’s triennial reevaluation is a denial of FAPE and DCPS is ordered below to fund an independent full comprehensive psychological evaluation, including cognitive and social-emotional testing. As stated in the Prehearing Order,⁶⁸ however, compensatory education is reserved until the comprehensive psychological evaluation is completed and reviewed by Student’s IEP team, as it may lead to additional services that Student should have received sooner, which would provide the basis for determining an award of compensatory education at that time. On the other hand, it may reveal that there was no impact on Student from not receiving a comprehensive psychological evaluation at the time of her triennial reevaluation and no award of compensatory education is appropriate. *See Smith v. Dist. of Columbia*, 2010 WL 4861757, at *4,5 (D.D.C. 2010) (no relief warranted where petitioner “has not shown that DCPS’ failure to conduct the reevaluations here sooner affected substantive rights” or that the child’s “education would have been different” but for the violation).

Issue 2: *Whether DCPS denied Student a FAPE by failing to offer an appropriate IEP on 4/28/16 when it proposed to reduce her hours outside general education despite her lack of academic and social-emotional progress.*

Petitioner failed to meet her burden of proving a denial of FAPE based on the IEP team modifying Student’s specialized instruction hours in her 4/28/16 IEP from 15 hours/week outside general education to only 7.5 hours/week outside general education and 7.5 hours/week inside. Based on the evidence in this case, the modification does not appear unreasonable given Student’s academic progress, as discussed below.

The applicable legal standard is whether the change in Student’s IEP from all specialized instruction outside general education to half in and half out was “reasonably calculated to produce meaningful educational benefit” and permit her to access the general education curriculum so she could advance toward meeting her annual goals pursuant to 34 C.F.R. 300.320(a)(4). *See Damarcus S. v. Dist. of Columbia*, 2016 WL 2993158, at *12 (D.D.C. May 23, 2016); *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. The measure and adequacy of the IEP are to be determined as of 4/28/16, the time it was offered to Student. *See, e.g., S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The suitability of Student’s IEP is analyzed by considering the concerns raised by Petitioner about Student having half her

⁶⁸ As noted above, the Prehearing Order issued by the undersigned on 6/9/16 stated at 3 n.2 that “[s]o far as Petitioner’s request for compensatory education depends on the findings of evaluations that may be completed in the future, that portion of the compensatory education request is reserved pending the completion of Student’s evaluations and a determination of eligibility for additional special education and related services.” DCPS’s objection to the reservation of any compensatory education relief was noted in the Prehearing Order.

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specialized instruction shifted from outside to inside the general education setting. *See* 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

Here, the 2015/16 school year went much better for Student than the previous year, as her behavior was better and her grades improved, even with a dip. When the IEP team was considering the modification of Student's specialized instruction hours, her grades at Public School included 4 "As" (in General Exploration I, Geometry, Geometry and Chemistry) and 1 "F" (in Health Education), plus a "B" and 2 "C-s." By the end of the school year she worked hard to earn 3 "As" in core subjects on her final exams covering the entire year. *See A.I. ex rel. Iapalucci v. Dist. of Columbia*, 402 F.Supp.2d 152, 168 (D.D.C. 2005) (highly relevant whether student was making progress and experiencing meaningful educational benefit from the IEP).

Further, Special Education Coordinator – who has worked closely with Student – credibly testified that Student can be successful in general education classes with accommodations and modifications of her instruction. Even Petitioner's Educational Advocate acknowledged that DCPS is doing well in delivering services to Student, such as "chunking down" Shakespeare to a level Student could understand in a general education class. Student's IEP Progress Report just before the relevant IEP meeting showed that she was progressing in all her math, reading, and written expression goals.

In developing her 4/28/16 IEP, the team relied on Student's WJ-IV, attendance records, quarterly progress reports and transcripts, as well as teacher observations, her success in the classroom, and other student data. *See* 5-E D.C.M.R. § 3005.3. The IEP team also took into consideration that Student was advocating better for herself, had good rapport with her teachers, and was spending time at Power Hour to get more support at school. The importance of Student's academic performance in the regular classroom is emphasized by 34 C.F.R. 300.310, which expressly requires observation of students' academic performance at school. Indeed, the Public School witnesses, which the undersigned found persuasive, have the clearest sense of Student's abilities and know her situation best. Special Education Coordinator testified that the team took into account the change in Student's achievement scores and gap between Student's grade level on standardized tests and her actual grade at school. But not being close to grade level certainly does not require that a student's specialized instruction hours must all be outside general education.

Importantly, Special Education Coordinator credibly testified that an IEP with all of Student's hours each week outside general education might be emotionally detrimental to her and cause her to "shut down." Her IEP team recognized that Student benefits from co-taught classes (which contain both disabled and nondisabled students). Student is in a "college bound" group and seeks to continue on to college, so needs to prepare by spending more time in general education. Moreover, the un rebutted evidence is that Student likes to be challenged and is more successful with some challenge rather than being in a self-contained classroom.

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This Hearing Officer is persuaded by Special Education Coordinator's testimony that it would do Student a disservice to have too little challenge. Moreover, this result is what the law requires. Pursuant to 34 C.F.R. 300.114 Student must be educated with children who are nondisabled to the "maximum extent appropriate." Accordingly, this Hearing Officer concludes that the modification in Student's service hours in her 4/28/16 IEP to provide time inside general education was not a denial of FAPE.

Issue 3: *Whether DCPS denied Student a FAPE by failing to complete an appropriate Transitional/Vocational Assessment and to develop an appropriate postsecondary transition plan.*

Petitioner also failed to meet her burden on the issue of whether a Vocational Level II assessment was needed and whether the transition plan in Student's 4/28/16 IEP was adequate. As discussed below, Student has received all the transitional/vocational assessment she needs at this time and the postsecondary transition plan section of Student's IEP is sufficient.

The IDEA's transition provisions require that beginning not later than the first IEP to be in effect when the student turns 16, and updated annually, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. 300.320(b). When considering the adequacy of a transition plan, the test is "whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits." *Lessard v. Wilton Lyndeborough Coop. School Dist.*, 518 F.3d 18, 30 (1st Cir. 2008) (citations omitted).

Here, Student's postsecondary transition plan in her 4/28/16 IEP included the results from age-appropriate transition assessments, specifically the WJ-IV, O*NET Interest Profiler and the Casey Life Skills Assessment. The transition assessments succeeded in obtaining information about Student for her transition plan, including her interests, challenges and history. Student was clear about her interests, which include attending college after high school. Program Manager credibly testified that additional assessments, such as relating to college applications, are not need needed for Student at this time, as she is where she should be in this process based on her grade level. In the expert opinion of Program Manager, most special needs students need no more than a Vocational Level I assessment. Vocational Level II assessments are used when there are no results from a Vocational Level I, when students impacted by cognitive disabilities are unable to identify their interests.

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Post-transition goals were discussed in some detail at the 4/28/16 IEP meeting. None of the goals on her 4/28/16 IEP are unrealistic or inappropriate for Student, and she is on track with appropriate transition services given her time until graduation. Student's IEP Progress Report for 4/21/16 showed that she was progressing in all her transition goals.

Accordingly, this Hearing Officer concludes that Petitioner did not establish that further assessment is required or that the transition plan in Student's recent IEP was not reasonably calculated to enable her to receive educational benefits. Indeed, an IEP is not required to offer Student the "best" transition plan – but only services reasonably calculated to provide her with meaningful benefit. *See K.S. v. Dist. of Columbia*, 962 F. Supp. 2d 216, 220-222 (D.D.C. 2013).

ORDER

Petitioner has met her burden of proof on a single issue as set forth above. Accordingly, **it is hereby ordered that:**

- (1) Within 10 business days, DCPS shall fund an independent full comprehensive psychological evaluation of Student, which is to include cognitive and social-emotional testing, and within 10 school days after its completion, convene an IEP team meeting to review the results and update Student's IEP as needed.
- (2) All claims for compensatory education for the denial of FAPE found herein are reserved until after completion of Student's comprehensive psychological evaluation.

Any and all other claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
Hearing Officer

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).

Copies to:

Counsel of Record (Appendix A, by email)

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OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

Contact.resolution@dc.gov

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