

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
March 09, 2017

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>	)	
	)	Case No: 2016-0290
v.	)	
	)	<b>Date Issued:</b> February 28, 2017
District of Columbia Public Schools,	)	
<i>Respondent.</i>	)	

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**Amended<sup>2</sup> Hearing Officer Determination**

**SUBJECT MATTER JURISDICTION**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

**PROCEDURAL BACKGROUND**

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.*

The DPC was filed on December 15, 2016 by Petitioner (Student’s parent), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On December 19, 2016, Respondent filed its Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) in this matter on January 5, 2017. The parties did not reach an agreement during the RSM; however, they agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the parties agree that the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on January 15, 2017, and the 45-day period concludes on February 28, 2017.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) convened a Pre-hearing Conference (“PHC”) on January 18, 2017, during which the parties discussed and

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<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> This Amended HOD makes the following clerical edit: changes Order (a) to read “10 hours of specialized instruction inside the general education setting” rather than outside.

clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by February 2, 2017 and that the DPH would be held on February 9, 2017 and February 10, 2017. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued on January 18, 2017.

The DPH was held on February 9, 2017 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by [PETITIONER’S COUNSEL], Esq. and DCPS was represented by [RESPONDENT’S COUNSEL], Esq.

Petitioner’s and Respondent’s disclosures were timely filed. At the DPH, Petitioner’s exhibits P-1 through P-71 were admitted without objection. Respondent’s exhibits R-1 through R-14 were admitted into evidence without objection.

Petitioner called the following witnesses at the DPH:<sup>3</sup>

- (a) Parent
- (b) Educational Advocate
- (c) Parent’s Clinical Psychologist<sup>4</sup>
- (d) Nonpublic Director

Respondent called the following witness at the DPH:

- (a) Special Education Coordinator<sup>5</sup>

Petitioner and Respondent gave oral closing arguments.

### ISSUES

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH:<sup>6</sup>

- (a) Whether DCPS denied Student a FAPE through █ IEP from January 2016 through the present time by failing to provide sufficient hours of specialized instruction outside the general education setting; appropriate behavioral support services, including an appropriately restrictive, therapeutic, and structured LRE; a placement/setting/location of services appropriate to meet Student’s needs; and by failing to appropriately address Student’s work avoidance issues.

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<sup>3</sup> Student testified, but █ testimony will not be considered for purposes of this decision because Petitioner had not disclosed █ as a potential witness.

<sup>4</sup> Qualified, without objection, as an expert in clinical psychology with a background in evaluating students for special education.

<sup>5</sup> Qualified, without objection, as an expert in special education programming and placement.

<sup>6</sup> At the start of the DPH, Petitioner withdrew what had been included in the PHO as issue (d): “Whether, from October 2016 through the present time, DCPS denied the student a FAPE by failing to provide timely access to the student’s full cumulative and special education files, including access to █ amended/revised IEPs from fall 2016. Petitioner asserts that she has to-date not been provided the following: standardized test scores, service trackers, IEP progress reports, AEDs, MDT notes, █ grade report cards, course schedules, transcripts, teacher certifications.”

- (b) Whether DCPS denied Student a FAPE by failing to provide an appropriate, timely and accurate FBA and BIP from January 2016 through the present time.
- (c) Whether DCPS denied Student a FAPE by failing to complete an appropriate transitional/vocational assessment and failing to develop appropriate postsecondary transitional plans/goals from January 2016 through the present.
- (d) Whether during the 2015-2016 school year, DCPS denied Student a FAPE by failing to comprehensively reevaluate Student at its triennial reevaluation. Specifically, Petitioner asserts that Student should have received social emotional, cognitive and “mental health”<sup>7</sup> assessments such as an FBA, comprehensive psychological, Conners and/or similar assessments.

### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) a finding that Student has been denied a FAPE;
- (b) an Order that DCPS place and fund Student at a public or nonpublic school that can provide Student with educational benefit;
  - i. alternatively, an order that DCPS convene an MDT meeting with Parent and counsel to discuss and determine an appropriate placement/setting/location of services;
  - ii. alternatively, an order that DCPS make any placement and/or LRE referrals accessible to Parent;
- (c) an Order that DCPS devise and implement an appropriate IEP with sufficient behavioral support services, a narrowly tailored and restrictive LRE, and increased hours outside of the general education setting;
- (d) an Order that DCPS fund, devise and/or implement an appropriate FBA and BIP or modify/revise any pre-existing assessments and plans as warranted to ensure a FAPE;
- (e) an Order that DCPS fully and comprehensively triennially reevaluate Student and review the same to update Student’s IEP and services as warranted and discuss and determine compensatory education and placement;
  - i. an order that, in the alternate, DCPS fund a vocational assessment and/or appropriate transition/vocational testing, medical or vision screening/testing; mental health and/or psychiatric testing and/or screening; clinical testing of student’s socio-emotional and attentional functioning, e.g. a BASC, Conners; cognitive testing; as well as any other assessment required to ensure a FAPE and update Student’s IEP, placement and make compensatory education determinations as warranted;
- (f) an order funding compensatory education;
  - i. an order that, in the alternate, testing, observations conducted are discussed with Parent to determine appropriate compensatory education;
- (g) an Order for any other relief the hearing officer deems appropriate.

### **FINDINGS OF FACT**

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<sup>7</sup> During the PHC, counsel for Petitioner indicated that the term “mental health” was included in the student’s IEP.

1. Student is [AGE] years old and is in the [GRADE] grade. Student resides in Washington, D.C. with Parent, ■ mother. Previously, Student resided with ■ father as well as ■ mother. Once ■ parents separated, ■ shared time between their two homes each week, with ■ father's home as ■ primary residence.<sup>8</sup>

2. Student's father passed away on June ■ 2015, which has been difficult for Student to process and heal from. Additionally, Student witnessed a cousin's death between 2012 and 2013.<sup>9</sup>

3. After ■ father's death in June 2015, Student began using marijuana. ■ has indicated that ■ would like to stop, but does not need help to do so, as ■ believes ■ can stop on ■ own.<sup>10</sup>

4. Beginning with the 2016-2017 school year, Student attends District School. Prior to this current school year, including the 2015-2016 school year, Student attended City School.<sup>11</sup>

5. Since at least the 2012-2013 school year, Student has been eligible for special education services under the disability classification "Other Health Impairment" or "Other Health Impairment (Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder)."<sup>12</sup>

6. By the end of the 2012-2013 school year, Student's academic progress was being impaired by ■ failure to complete work and follow directions. ■ was also not making progress on ■ behavior goals as of this time, though ■ was receiving 11 hours of specialized instruction outside the general education setting and 10 hours of specialized instruction inside the general education setting at this time, in addition to speech and behavioral support services. Student was retained for the second time at the end of the 2012-2013 school year.<sup>13</sup>

7. In June/July 2013 (prior to Student entering City School), Student received a comprehensive psychoeducational evaluation through Children's National Medical Center ("CNMC") which found Student's overall cognitive ability, working memory and processing speed to be in the extremely low range, recommended a full-time specialized instructional program with a low student-teacher ratio, able to accommodate students with cognitive challenges and specific learning disabilities, a high degree of structure, support and positive feedback, and recommended that Student be assessed to rule out Post-traumatic Stress Disorder ("PTSD").<sup>14</sup>

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<sup>8</sup> Testimony of Parent; testimony of Educational Advocate; P-4-1; P-12-2.

<sup>9</sup> Testimony of Parent; testimony of Educational Advocate; P-4-1; P-12-2.

<sup>10</sup> P-9-9.

<sup>11</sup> Testimony of Parent; testimony of Educational Advocate; R-11-10.

<sup>12</sup> P-4 through P-7.

<sup>13</sup> P-9-3.

<sup>14</sup> P-12.

8. In February 2014, DCPS' Least Restrictive Environment Team observed Student and recommended that ■ receive a functional behavior assessment ("FBA") and a behavior intervention plan ("BIP").<sup>15</sup>

9. Student received a Behavior Intervention Plan ("BIP") on November 20, 2015 targeting the following behaviors: failure to complete work in class, completing little to no work in class/school, engaging in off-task behaviors during instructional time, and exhibiting work/task avoidance.<sup>16</sup>

10. On December 18, 2015, DCPS issued a confidential psychological triennial reevaluation report for Student. The evaluation included administering to Student the Woodcock-Johnson Tests of Achievement, but otherwise no new assessments. It is likely that Student was under the influence of marijuana at the time of the evaluation; however, ■ scores were consistent with ■ 2013 scores from CNMC. Among the report's recommendations were for specialized instruction for Student in reading, math and written expression, behavioral support services, a structured learning environment with clear expectations, that Student look to the behavior of ■ peers as an example of what is expected, and that Student receive grief and substance abuse counseling outside of school.<sup>17</sup>

11. When assessed with an internalizing/externalizing disorder screening tool during the 2015-2016 school year, Student reported significant problems with feeling trapped, sad, depressed and hopeless about ■ future, as well as having a hard time paying attention at school, listening to instructions at school and waiting ■ turn.<sup>18</sup>

12. In January 2016, Student began receiving grief counseling services in school. Student also received individual and group counseling during the 2015-2016 school year, and at times made progress on some of ■ social-emotional goals utilizing these services.<sup>19</sup>

13. Student had an IEP dated January 5, 2016 that provided ■ 5 hours of specialized instruction inside the general education setting, 5 hours of specialized instruction per week outside the general education setting, 120 minutes per month of speech-language pathology outside the general education setting, and 120 minutes per month of behavioral support services outside the general education setting.<sup>20</sup>

14. Student has an IEP dated December 8, 2016 which maintained ■ services at 5 hours per week of specialized instruction inside the general education setting, 5 hours per week of specialized instruction outside the general education setting, 120 minutes per month of speech-language pathology outside the general education setting, but reduced ■ behavioral support services to 45 minutes per month of behavioral support services on a consultative basis.<sup>21</sup>

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<sup>15</sup> P-9-4.

<sup>16</sup> P-10.

<sup>17</sup> P-9-12.

<sup>18</sup> P-4-10.

<sup>19</sup> P-9-5.

<sup>20</sup> P-5-10.

<sup>21</sup> P-4-12.

15. Student's January 2016 and December 2016 IEPs contain transition plans that are substantially similar. Each contains extremely limited and broad goals that are not entirely consistent throughout the plan. For example, a goal is listed for Student to become a mechanic, but the steps underneath it refer to becoming a construction worker or a pursuing a sports career. The transition plans were based in part on a Casey Life Skills Assessment Student took on January 2016.<sup>22</sup>

16. Student's IEP team at District School did not have most of Student's relevant educational records at the time it prepared [REDACTED] December 8, 2016 IEP, nor did they have much knowledge of Student, because [REDACTED] had not been attending the school. The team largely based the December 2016 IEP off Student's previous IEP.<sup>23</sup>

17. The social-emotional goals in Student's December 8, 2016 IEP included: (1) that Student will arrive to class on time with all materials required for daily assignments, (2) that Student would utilize counseling sessions and develop appropriate coping/problem solving skills to address situations [REDACTED] identifies as stressful or negatively impacting [REDACTED] in school, home or in the community, and (3) that Student will identify signs of stress and use strategies for reducing it.<sup>24</sup>

18. Student has a history of frequent school absences from as early as [REDACTED] second year of second grade (which [REDACTED] repeated), when [REDACTED] had 26 absences, 27 tardies and 4 days of suspension. [REDACTED] attendance has gotten progressively worse until at this point [REDACTED] is attending little to no school.<sup>25</sup>

19. For the most part, Student has earned "No Mark" or "Fs" throughout the current school year.<sup>26</sup>

20. Throughout the 2016-2017 school year, District School has made multiple outreach attempts to Parent and Student's family regarding [REDACTED] attendance, including phone calls, correspondence, an attempted home visit, a meeting and requests to set up meetings with Parent, providing Parent with information for a different school in which Parent and Student expressed interest, and truancy referrals to the District of Columbia Superior Court.<sup>27</sup>

21. A major factor in Student's lack of attendance at District School is [REDACTED] fear for [REDACTED] safety. Walking to District School for Student involves walking through gang areas, and Student which causes Student to feel afraid. Student had not made District School aware of this fear.<sup>28</sup>

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<sup>22</sup> P-4-18; P-5-16.

<sup>23</sup> Testimony of Special Education Coordinator.

<sup>24</sup> P-4-9 through P-4-11.

<sup>25</sup> P-9-2; P-14.

<sup>26</sup> P-15.

<sup>27</sup> R-2 through R-8.

<sup>28</sup> Testimony of Parent; testimony of Educational Advocate.

22. In December 2016, Student's IEP team recommended that ■ receive a functional behavior assessment ("FBA"), but indicated that it will not be able to conduct one if Student is not attending school. It does not appear that Student has had an FBA in the past.

23. Nonpublic School serves only special education students of varying disability classifications. Each of its classrooms has ten or fewer students, and there is a teacher and an assistant teacher in each class.<sup>29</sup>

24. Nonpublic School offers DCPS' core curriculum, along with therapeutic support and vocational training along with a full-time transition counselor.<sup>30</sup>

25. Student was accepted to Nonpublic School on January 30, 2017.<sup>31</sup>

26. When any of its student's presents with work/class avoidance issues, Nonpublic School addresses such issues by way of the full-time social worker it has on staff who provides therapy. They also call the parent. When its van is working (which it was not as of the DPH), it assists with transporting the student to and from school.<sup>32</sup>

27. Nonpublic School does not have a formal substance/drug intervention program. It addresses substance abuse issues through its staff social worker and male mentoring program.<sup>33</sup>

28. Tuition at Nonpublic School is approximately \$40,000-50,000 per student, per year. It has a certificate of approval from OSSE.<sup>34</sup>

29. District School is able to provide up to 25 hours of specialized instruction per week outside the general education setting.<sup>35</sup>

30. DCPS has the capacity to provide transportation services for Student; however, had not yet authorized such services as of the DPH.<sup>36</sup>

31. DCPS has the capacity to make a safety transfer available to Student so that ■ can attend another school; however, Student nor ■ advocates or Parent had requested such a transfer or made DCPS aware of the need for one during most of the 2016-2017 school year, leading up to the DPH.<sup>37</sup>

## CONCLUSIONS OF LAW

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<sup>29</sup> Testimony of Nonpublic Director.

<sup>30</sup> Testimony of Nonpublic Director.

<sup>31</sup> Testimony of Nonpublic Director; P-67.

<sup>32</sup> Testimony of Nonpublic Director.

<sup>33</sup> Testimony of Nonpublic Director.

<sup>34</sup> Testimony of Nonpublic Director.

<sup>35</sup> Testimony of Special Education Coordinator.

<sup>36</sup> Testimony of Special Education Coordinator.

<sup>37</sup> Testimony of Parent; testimony of Educational Advocate; testimony of Special Education Coordinator.

“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 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *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).

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 student’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).

- (a) Whether DCPS denied Student a FAPE through [REDACTED] IEP from January 2016 through the present time by failing to provide sufficient hours of specialized instruction outside the general education setting; appropriate behavioral support services, including an appropriately restrictive, therapeutic, and structured LRE; a placement/setting/location of services appropriate to meet Student’s needs; and by failing to appropriately address Student’s work avoidance issues.**

An “IEP must, at a minimum, ‘provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). While an LEA is not required to maximize a student’s educational potential, it also cannot “discharge its duty under the [IDEA] 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 order for an IEP to be appropriate, (1) the LEA must have complied with IDEA’s administrative procedures and (2) the IEP must reasonably calculated to provide some educational benefit to Student. *See N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003); *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 322 (D.D.C. 2010). The appropriateness of an IEP must be assessed as of the time the IEP was developed. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir.2008) (“Because the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the [IDEA] nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.”) Petitioner does not assert that DCPS failed to comply with the administrative procedures attendant to developing

Student's IEP. Rather, Petitioner claims that Student's IEP is not reasonably calculated to provide Student educational benefit.

Student has previously received many more hours of specialized instruction than the 10 hours (5 hours inside the general education setting and 5 hours outside the general education setting) currently receives, and that received in January 2016 IEP. As stated above, Student previously received 11 hours of specialized instruction outside the general education setting and 10 hours of specialized instruction inside the general education setting, in addition to speech and behavioral support services. Student's academic and behavioral performance did not improve with this higher level of services such that such a significant reduction in services has a demonstrated justification. Particularly in light of the lack of sufficient current evaluative data (as discussed with respect to issue (d) below), the 2013 psychological recommendation that Student receive a low student-teacher ratio and a high degree of structure and support and positive feedback, the 2015 psychological recommendation that Student receive a structured learning environment with clear expectations, Student's cognitive limitations and academic deficits, compounded by poor school attendance over multiple years, the undersigned does not conclude that 10 hours of specialized instruction per week, 5 of which were inside the general education setting, are adequate to meet needs or reasonably calculated to provide educational benefit.

Student has a long history of in-school behavioral challenges, and has also experienced severe emotional trauma, including father's death and witnessing cousin's death. In light of these challenges, it is unlikely that the 120 minutes per month (roughly 30 minutes per week) of behavioral support was receiving as of January 2016 IEP would be sufficient, and highly unlikely that the significant reduction in services in December 2016 to 45 minutes per month on a consultative (rather than direct) basis was reasonably calculated to provide Student educational benefit.

Student's current location of services could provide up to 25 hours of specialized instruction per week outside the general education setting. Therefore, while a sufficient level of services was not identified on IEP, the location itself would not have been *per se* inadequate, were it not for the safety concerns pertaining to Student. In light of these safety concerns, the undersigned does not find District School to be appropriate for Student. Student, Parent and their advocates did not make District School aware of the safety concern for most of this school year; therefore, the undersigned would not have ordinarily found District School to have been responsible for such knowledge. However, had the evaluations discussed with respect to issue (b) and issue (d) been fully conducted even once Student arrived at District School, DCPS may have been more likely to have known. For these reasons, the undersigned does not find Respondent to have met its burden of persuasion on this issue.

**(b) Whether DCPS denied Student a FAPE by failing to provide an appropriate, timely and accurate FBA and BIP from January 2016 through the present time.**

An LEA must ensure that students eligible for special education and related services are assessed in "all areas related to the suspected disability." 34 CFR § 300.304(c)(4). In

determining the content of a student's IEP, the LEA must conduct an evaluation that uses a "variety of assessment tools and strategies to gather relevant functional developmental and academic information about the child." 34 C.F.R. 300.304(b)(1). Here, an FBA assessment was recommended for Student as early as 2013, and given [REDACTED] history of behavioral and attendance challenges and traumas, such an assessment is warranted, yet has apparently not been completed. Though Student had a BIP in 2015, it was apparently not based on an FBA, which would have provided valuable data on which to base a BIP. Additionally, though [REDACTED] had a BIP in the 2015-2016 school year, [REDACTED] is attending a different school in the 2016-2017 school year, and [REDACTED] attendance has severely regressed. An updated BIP (based on data, such as from an FBA) is warranted.

The failure to appropriately assess a student is a procedural violation of the IDEA. In this instance, it rises to the level of a substantive violation, because it impeded the Parent's ability to fully participate in the decision-making process regarding the provision of FAPE to Student in that Parent did not have the information she needed to meaningfully participate in IEP team meetings. It also impeded Student's right to a FAPE and caused Student a deprivation of educational benefit, because had [REDACTED] been appropriately assessed and [REDACTED] needs properly determined and addressed, [REDACTED] some of the barriers to school attendance (such as [REDACTED] safety concerns) may have become apparent. While there are attendance problems that are not necessarily related to a student's special education needs or disability, with respect to this student, additional data would be needed before reaching such a conclusion, in part due to [REDACTED] emotional trauma history. For these reasons, Parent met her burden of proof on this issue.

**(c) Whether DCPS denied Student a FAPE by failing to complete an appropriate transitional/vocational assessment and failing to develop appropriate postsecondary transitional plans/goals from January 2016 through the present.**

The IDEA requires LEAs to provide transition plans for students of Student's age with "measurable postsecondary goals based on upon age appropriate transition assessments related to training, education, employment and independent living skills where appropriate. The transition services must assist the student in reaching those goals. See 34 C.F.R. 320(b). As stated in the Findings of Facts above, the transition plans in Student January 2016 and December 2016 transition plans were based in part on administration of the Casey Life Skills Inventory. The undersigned does not find this assessment to be inappropriate. However, as stated above, the goals themselves are vague, broad and internally inconsistent. Therefore, Petitioner met the burden of proving that the plans

- (d) **Whether during the 2015-2016 school year, DCPS denied Student a FAPE by failing to comprehensively reevaluate Student at its triennial reevaluation. Specifically, Petitioner asserts that Student should have received social emotional, cognitive and “mental health”<sup>38</sup> assessments such as an FBA, comprehensive psychological, Conners and/or similar assessments.**

A student must be reevaluated at least every three years, unless the parent and LEA agree otherwise, and must be evaluated in all areas of suspected disability. While Student had a triennial evaluation in 2015, ■ did not receive any new assessments other than a Woodcock-Johnson. Given the recommendations in the 2013 psychological and the additional trauma Student subsequently suffered when ■ father died in 2015, Student should have received a comprehensive psychological or similar assessment. This is particularly true in light of the attendance and other challenges ■ was manifesting, and the concerns ■ raised through the 2015 screening assessment tool. Petitioner meets the burden of proving that Student’s triennial should have included some type of testing to assess ■ mental state. This could have helped, for example, to clarify the extent to which ■ lack of school attendance was willful or otherwise outside the LEA’s special education responsibility, or the extent to which ■ lack of attendance could potentially be disability related.<sup>39</sup>

#### **ORDER**

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

- (a) within 10 school days of this Order, DCPS shall convene Student’s MDT/IEP team to revise Student’s IEP to include at least 11 hours of specialized instruction outside the general education setting, at least 10 hours of specialized instruction inside the general education setting, at least 240 minutes per month of behavioral support services outside the general education setting, and at least 120 minutes per month of speech-language pathology outside the general education setting.
- (b) within 10 school days of this Order, DCPS shall convene Student’s MDT/IEP team to discuss and determine an appropriate location of services for Student, and to make any necessary safety plan (to include transportation services, if necessary) for Student, and to revise Student’s transition plan as appropriate.
- (c) within 40 calendar days of this Order, DCPS shall conduct an FBA
- (d) within 45 calendar days of this Order, DCPS shall prepare a BIP for Student;
- (e) within 30 calendar days of this Order that DCPS shall conduct a comprehensive psychological evaluation for Student.
- (f) within 5 school days of completion of the FBA and comprehensive psychological, DCPS shall reconvene Student’s MDT/IEP team to consider whether any further revisions to Student’s IEP and/or location of services are necessary.<sup>40</sup>

All other relief Petitioner requested in the complaint is **DENIED**.

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<sup>38</sup> During the PHC, counsel for Petitioner indicated that the term “mental health” was included in the student’s IEP.

<sup>39</sup> This type of information would be relevant, for example, to any compensatory education determination.

<sup>40</sup> Compensatory education is not ripe in this action, as the assessments ordered herein must be conducted before such a determination can be made. The parties are not prohibited from litigating compensatory education in a future action.

**IT IS SO ORDERED.**

Date: February 28, 2017 (reissued March 9, 2017)

**/s/ NaKeisha Sylvester Blount**  
Impartial Hearing Officer

Copies to:  
Petitioner (by U.S. mail)  
Petitioner's Attorney (electronically)  
DCPS' Attorney (electronically)  
OSSE-SPED (electronically)  
ODR (electronically)

**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).