

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

Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

Parent on behalf of STUDENT,¹)	
)	
Petitioner,)	Case Number:
)	
v.)	
)	
)	
PUBLIC CHARTER SCHOOL,)	Hearing Officer: Frances Raskin
)	
Respondent.)	

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act of 2004 (“IDEA”), codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; the federal regulations at 34 C.F.R. §§ 300.1 *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioner is the parent of a _____-year-old student (“Student”) with a disability who attends _____ (“Charter School”) in the District of Columbia. On January 10, 2011, Petitioner filed an Administrative Due Process Complaint (“Complaint”) against the Charter School, which serves as its own local education agency (LEA).

This Hearing Officer was appointed to preside over this case on January 11, 2011. Respondent _____ filed a timely response to the Complaint on January 20, 2011.²

¹ Personal identification information is provided in Attachment A.

² On January 20, 2011, Respondent filed its “Objections to the Sufficiency, and Motion to Dismiss, and Response to the January 10, 2011, Due Process Complaint.” On January 25, 2011, Petitioner timely filed an “Opposition to Respondent’s Notice of Insufficiency and Motion to

The parties participated in a resolution meeting on January 28, 2011. They were unable to reach an agreement on any of the claims in the Complaint and agreed to proceed to a due process hearing. Accordingly, the parties agreed that the due process hearing period began on January 29, 2011.

On February 1, 2011, this Hearing Officer held a prehearing conference in which counsel for Petitioner and counsel for Respondent participated. On February 7, 2011, this Hearing Officer issued a Prehearing Conference Summary and Order.

The due process hearing commenced at 9:00 a.m. on February 23, 2011. Petitioner testified and presented the testimony of one other witness, her educational advocate. Respondent presented the testimony of two witnesses, an occupational therapist/employment training specialist and the special education coordinator ("SEC") for the Charter School. This Hearing Officer admitted into evidence Petitioner's exhibits 1-13, Respondent's exhibits 1-24, and the parties' joint exhibits 1-8. The testimony concluded at 5:00 p.m. on February 23, 2011. The parties each submitted written closing arguments on March 4, 2011. Thus, the record in this case closed on March 4, 2011.

III. ISSUES PRESENTED

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether [redacted] denied the Student a free, appropriate, public education ("FAPE") by failing to notify Petitioner before convening a meeting of Student's individualized educational program ("IEP") team on November 23, 2010, to review the Student's psycho-educational evaluation, thereby denying her an opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; and

B. Whether [redacted] denied the Student a FAPE by developing an IEP on February 26, 2010, that fails to include a transition plan that addresses his unique needs.

IV. FINDINGS OF FACT

1. Petitioner is an [redacted] year-old, special-education student who attends the Charter School.³ The Student was first identified as requiring special education in June 2002.⁴ He is currently eligible to receive specialized instruction and related services with the disability classification of multiple disabilities.⁵

Dismiss" ("Opposition"). On January 27, 2011, this Hearing Officer issued an order denying Respondent's Notice of Insufficiency and Motion to Dismiss.

³ Respondent Exhibit 7 at 1 (August 10, 2010, Psycho-educational Evaluation).

⁴ *Id.* at 2.

⁵ Joint Exhibit 2 at 1 (February 26, 2010, IEP); Joint Exhibit 8 at 1 (February 7, 2011, IEP).

2. The Student verbal intelligence is in the tenth percentile, which is in the low average range.⁶ His performance IQ is in the thirty-ninth percentile, which is in the average range.⁷ Thus, his full-scale IQ is 87, which is in the low average range.⁸

3. The Student performs at the first grade level in reading, which is below the first percentile of his same-age peers and in the lower extreme.⁹ In written language, he performs at the first grade level, which is in the first percentile and in the lower extreme.¹⁰ In math, he performs at the fourth-grade level, which is in the seventh percentile of his same-age peers and below average.¹¹

4. The Student has the cognitive ability to achieve at a higher level.¹² However, he has been hindered by his significant deficits in language arts skills.¹³ While he has phonological knowledge, he uses this ability in an inefficient manner.¹⁴ He may have a retrieval deficit linked to his reading disability that is preventing him from making greater progress in reading and spelling.¹⁵

5. The Student's highest level of vocational interest falls within the mechanical, industrial, and selling areas.¹⁶ The Student has expressed interest in becoming a mechanic or an engineer.¹⁷ He is uncertain whether he wants to attend a vocational/technical school or a college or university.¹⁸

6. Interests in the mechanical arena could include applying mechanical principals and using tools or machines.¹⁹ Jobs associated with this area may involve activities such as engineering and related scientific-technical work, operating and maintaining mechanical equipment in a factory or a laboratory, operating land or water vehicles, or building and repairing things on a large or small scale.²⁰

⁶ Respondent Exhibit 7 at 3. 6.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3-4.

7. Industrial job paths may include repetitive, regular work activities in a factor setting such as sorting, inspecting, and weighing manufactured goods.²¹ The Student also may enjoy machine set-up and operation or supervision of workers.²²

8. The Student's high interest in the selling area shows that he enjoys persuading people to purchase goods or services.²³ Jobs that satisfy this interest involve selling products or services in stores, offices, or customers' homes.²⁴ The Student may also satisfy this interest through participating in business negotiations, advertising, or buying and selling products at a profit.²⁵

9. The Student's overall aptitude functioning, as it relates to work-related arenas, is in the low to very low range.²⁶ His highest performance is in the area of spatial aptitude, although his scores in this area are in the low range.²⁷ His ability to perform independent work-related tasks is also low, and thus he requires a high level of support and supervision.²⁸ While he may be able to initiate most tasks presented to him, he most likely will require verbal cues to problem-solve and sequence through the steps required to engage in work-related tasks.²⁹ He requires extended time on most tasks.³⁰

10. The Student requires assistance in the areas of employment as it relates to identifying jobs based on his interests and abilities, as well as demonstrating work behaviors and attitudes desired by employers.³¹ The Student also requires assistance in identifying jobs based on his interests and abilities.³²

11. The Student requires assistance in household maintenance and money management.³³ He is able to use the public transit system.³⁴ While he has some age-appropriate leisure skills, he has some difficulties interacting with his peer group.³⁵ He also lacks knowledge of his basic legal rights, his role as a citizen, and of the available community services and resources.³⁶

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

12. The Student requires a comprehensive transition plan to achieve success in transitioning from adolescence to young adulthood.³⁷ He will benefit from continued academic support to assist him in achieving his vocational goals.³⁸ He should participate in a regular transition services class with a transition specialist who can explore appropriate interests and job opportunities, and provide work-related opportunities.³⁹ He should receive transition support and exposure to occupational choices and experiences.⁴⁰

13. The Student should participate in activities requiring use of resource materials such as dictionaries, encyclopedias, community resources, maps, and phone books.⁴¹ He should engage in internet research, which requires a great deal of sequencing and attention to task.⁴² The Student also should participate in functional math activities, including making small purchases, using mock bank forms and coupons, and making basic money calculations.⁴³

14. The Student should engage in a variety of pre-vocational activities to assist him with sharpening related skills as he transitions into young adulthood.⁴⁴ These activities may include exposure to filling out various applications and paperwork legibly and accurately; recognizing his needs and requesting assistance (self-advocacy); and participating in work-related tasks that will address work readiness behavior such as punctuality, proper dress, coworker interactions, and self-evaluation.⁴⁵

15. The Student also should work with school staff to gain awareness and seek opportunities to visit career days/fairs and technical schools.⁴⁶ He should search the internet and explore various secondary education and training options, including researching mechanical and industrial pursuits such as carpentry, automotive, computers, and electronics.⁴⁷

16. On February 26, 2010, the Charter School convened a meeting of the Student's IEP team.⁴⁸ The Student was _____ years old at the time of this meeting.⁴⁹ The Student, Petitioner, and the Educational Advocate attended this meeting.⁵⁰

³⁷ *Id.* at 7.

³⁸ *Id.* at 9.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 9.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 10.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Respondent Exhibit 2 (February 26, 2010, IEP Meeting Notes).

⁴⁹ Joint Exhibit 2 at 1.

⁵⁰ Respondent Exhibit 2 at 1 (February 26, 2010, IEP).

17. At the February 26, 2010, meeting, the IEP team reviewed the Student's February 24, 2010, vocational assessment.⁵¹ The Vocational Specialist reviewed the Student's transitional needs as well as his vocational interests and needs.⁵² Petitioner suggested that the Student return to his previous summer job in carpentry, which is one of his areas of interest.⁵³

18. At the February 26, 2010, IEP team meeting, the team developed an IEP for the Student.⁵⁴ The IEP provides that the Student would receive thirteen hours per week of specialized instruction in the core subjects of English, math, science, and social studies.⁵⁵ The IEP also provides that the Student would receive five hours and thirty minutes per week of math support, one and a half hours per week of behavioral support services, and forty-five minutes per week of speech-language pathology.⁵⁶ The IEP further provides that the Student would receive extended school year services.⁵⁷

19. On February 26, 2010, the IEP team also developed a post-secondary transition plan for the Student.⁵⁸ The transition plan, which was included in the Student's IEP, provides that the Student's long-term, post-secondary education and training goal is to enter an eighteen-month vocational mechanical engineering program.⁵⁹ The transition plan reflected that the Student's long-term employment goal is to own his own auto-repair business.⁶⁰

20. The transition plan specified that the Student would receive two hours per month of pull-out transition services between February 26, 2010, and February 25, 2011.⁶¹ From February 26, 2010, through February 7, 2011, the Student actually received two hours per week of pull-out transition services.⁶²

21. The February 26, 2010, transition plan provided two annual goals.⁶³ The first annual goal anticipated that the Student would begin to research vocational schools in the

⁵¹ *Id.* at 2; Joint Exhibit 1 (February 24, 2010, Career/Vocational Evaluation). The IEP team also reviewed the Student's recent speech-language assessment. *Id.*; Respondent Exhibit 2 at 4.

⁵² *Id.* at 3.

⁵³ *Id.* at 7.

⁵⁴ Joint Exhibit 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 11.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 12; testimony of SEC

⁶² Testimony of SEC.

⁶³ Joint Exhibit 2 at 11; testimony of SEC.

Maryland and Washington, D.C., areas.⁶⁴ The transition plan indicated that the Student would achieve this goal by February 25, 2011.⁶⁵ It did not include a baseline for this goal.⁶⁶

22. The second goal on the February 26, 2010, transition plan anticipated that the Student would look for mechanical apprenticeship opportunities for the 2010 summer.⁶⁷ The transition plan indicated that the Student would achieve this goal by June 18, 2010.⁶⁸ The transition plan also did not include a baseline for this goal.⁶⁹

23. On June 11, 2010, Petitioner filed a due process complaint against the Charter School.⁷⁰ Petitioner filed an amended complaint on July 13, 2010.⁷¹ Petitioner alleged that the Charter School failed to develop an appropriate IEP for the Student on February 26, 2010.⁷² In his Hearing Officer Determination (“HOD”), issued on October 8, 2010, the hearing officer found that Petitioner failed to provide that the Charter School failed to develop an appropriate IEP on February 26, 2010.⁷³ The hearing officer found Petitioner failed to prevail on any of the claims in the complaint and dismissed the complaint with prejudice.⁷⁴

24. Although Petitioner did not raise any issue regarding the February 26, 2010, transition plan, In the October 8, 2010, HOD, the hearing officer nonetheless found that the transition plan failed to reflect the findings and recommendations of the Student’s vocational assessment.⁷⁵ The hearing officer further found that the transition plan lacked measurable postsecondary goals, transition services, and courses of study.⁷⁶ The hearing officer noted that the Student had not yet turned sixteen years old, and recommended that the Charter School reconvene the Student’s IEP team prior to his sixteenth birthday to revise the transition plan.⁷⁷

25. On July 27, 2010, Petitioner provided written consent for the Student to be reevaluated.⁷⁸ Petitioner consented to a psycho-educational assessment of the Student.⁷⁹ The Student’s psycho-educational assessment was conducted on August 10, 2010.⁸⁰

⁶⁴ Joint Exhibit 2 at 11.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Petitioner Exhibit 1 at 1 (October 8, 2010, Hearing Officer Determination).

⁷¹ *Id.* at 2.

⁷² *Id.* at 8, 12.

⁷³ *Id.* at 12.

⁷⁴ *Id.* at 15.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Respondent Exhibit 6 at 1 (July 27, 2010, Consent for Evaluation).

⁷⁹ Respondent Exhibit 5 at 1 (July 15, 2010, Referral Form).

26. On August 13, 2010, the Charter School mailed to Petitioner a letter of invitation for a meeting on August 17, 18, or 19, 2010, to review the Student's August 10, 2010, psycho-educational evaluation, review his IEP, discuss his levels of service and placement, discuss his transition services needs, and review his behavior plan.⁸¹ The Charter School received no response to this invitation from Petitioner.⁸²

27. On August 28, 2010, the Charter School sent an identical invitation by mail to Petitioner for a meeting on September 7, 8, or 10, 2010.⁸³ Again, the Charter School received no response from Petitioner.⁸⁴ On August 29, August 30, and September 1, 2010, The Charter School then left three messages on Petitioner's voicemail informing her that it was attempting to schedule the meeting of the Student's IEP team.⁸⁵ The Charter School spoke to Petitioner by telephone on September 1, 2010, and Petitioner she would contact the Charter School after September 7, 2010, to set up a meeting.⁸⁶

28. After Petitioner failed to contact the Charter School as promised, the Charter School sent a letter of invitation by courier to Petitioner on September 28, 2010.⁸⁷ This letter of invitation listed the potential meeting dates as October 8, 12, and 13, 2010.⁸⁸ In addition to the topics of discussion identified in the previous letters of invitation, this letter indicated that the IEP team planned to discuss the Student's quarterly IEP report card.⁸⁹ Petitioner received this letter of invitation and signed for it.⁹⁰

29. The Charter School also faxed a copy of the September 28, 2010, letter of invitation to counsel for Petitioner.⁹¹ The Charter School also sent a copy of this letter by courier to Petitioner's counsel.⁹² Petitioner's counsel responded by letter to confirm the IEP meeting for October 8, 2010.⁹³

⁸⁰ Respondent Exhibit 7 at 1.

⁸¹ Respondent Exhibit 8 at 1 (August 13, 2010, Letter of Invitation); testimony of SEC.

⁸² Testimony of SEC.

⁸³ Respondent Exhibit 9 at 1 (August 28, 2010, Letter of Invitation); testimony of SEC.

⁸⁴ Testimony of SEC.

⁸⁵ Respondent Exhibit 10 at 1 (Communication Log); testimony of SEC.

⁸⁶ *Id.*; testimony of Petitioner.

⁸⁷ Respondent Exhibit 11 at 1 (September 28, 2010, Letter of Invitation); Respondent 12 at 1 (electronic record of courier delivery); testimony of SEC.

⁸⁸ Respondent Exhibit 11 at 1.

⁸⁹ *Id.*; testimony of SEC.

⁹⁰ Testimony of Petitioner, SEC.

⁹¹ Respondent Exhibit 13 at 1-3 (September 28, 2010, Letter to Pamela Halpern, Letter of Invitation, and fax confirmation sheet); testimony of SEC.

⁹² Respondent Exhibit 14 at 1 (electronic record of courier delivery); testimony of SEC.

⁹³ Joint Exhibit 3 at 1 (September 29, 2010, Letter from Pamela Halpern to SEC); testimony of SEC.

30. On September 30, 2010, the Charter School also sent a letter to Petitioner's counsel confirming the IEP meeting for October 8, 2010.⁹⁴ The Charter School sent a copy of this letter of confirmation to Petitioner by courier.⁹⁵ The courier dropped the letter in Petitioner's mail slot.⁹⁶

31. Petitioner canceled the October 8, 2010, IEP meeting because she had to appear in court.⁹⁷ On October 1, 2010, the Charter School sent Petitioner by mail a letter of invitation for a meeting on November 23, 2010.⁹⁸ The letter stated that that, if the Charter School did not receive a response to the letter from Petitioner or her counsel, they would proceed with the IEP meeting without their participation.⁹⁹

32. The Charter School sent subsequent letters of invitation to Petitioner on October 22, 2010, and October 28, 2010.¹⁰⁰ Because the Charter School had received a copy of the October 8, 2010, HOD, it indicated in the letters of invitation that it planned to review the Student's transition plan.¹⁰¹ The Charter School received no response to its October 1, October 22, and October 28, 2010, letters of invitation.¹⁰²

33. The Charter School held a meeting on November 23, 2010, to review the Student's August 10, 2010, psycho-educational evaluation.¹⁰³ The IEP team did not review the Student's IEP because Petitioner did not attend the meeting.¹⁰⁴ After the IEP meeting, the Charter School mailed Petitioner a copy of the meeting notes.¹⁰⁵

34. On February 7, 2011, the Charter School convened a meeting of the Student's IEP team, updated the Student's IEP, and developed a new transition plan.¹⁰⁶ Petitioner and her Educational Advocate participated in this meeting.¹⁰⁷

⁹⁴ Joint Exhibit 4 at 1 (September 30, 2010, Letter to Pamela Halpern); Joint Exhibit 5 at 1 (September 30, 2010, Confirmation of Meeting Notice); testimony of SEC.

⁹⁵ Respondent Exhibit 15 at 1.

⁹⁶ *Id.*

⁹⁷ Testimony of Petitioner; testimony of SEC.

⁹⁸ Testimony of SEC; Respondent Exhibit 17 (October 1, 2010, Letter of Intent to Proceed/Letter of Invitation).

⁹⁹ Respondent Exhibit 17 at 1.

¹⁰⁰ Respondent Exhibits 18 at 1, 19 at 1; testimony of SEC.

¹⁰¹ *Id.*

¹⁰² Testimony of SEC.

¹⁰³ Testimony of SEC; Respondent Exhibit 20 at 1 (November 23, 2010, Letter from Charter School to Petitioner);

¹⁰⁴ Testimony of SEC; Joint Exhibit 6 at 1-6 (November 23, 2010, Multidisciplinary Team Meeting Notes).

¹⁰⁵ Joint Exhibit 7 (November 23, 2010, Letter to Petitioner).

¹⁰⁶ Joint Exhibit 8 at 1 (February 7, 2011, IEP).

¹⁰⁷ Petitioner Exhibit 6 at 1 (Advocate's notes from February 7, 2011, IEP meeting).

35. This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony with the exception of Petitioner. Petitioner provided conflicting testimony about whether she received the notices the Charter School mailed to her. Petitioner also had difficulty remembering events that occurred, including whether she received particular notices and the dates for which meetings were scheduled. Because Petitioner's testimony was unreliable, this Hearing Officer finds that she was not a credible witness.

V. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.¹⁰⁸ FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...¹⁰⁹

In deciding whether DCPS provided Petitioner a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether Petitioner's IEP is reasonably calculated to enable Petitioner to receive educational benefit.¹¹⁰

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.¹¹¹ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.¹¹²

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.¹¹³ The court should not "disturb an IEP simply because [it] disagree[s] with its content."¹¹⁴ The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity

¹⁰⁸ 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

¹⁰⁹ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

¹¹⁰ *Rowley*, 458 U.S. at 206-207.

¹¹¹ 34 C.F.R. § 300.513 (a)(2).

¹¹² *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

¹¹³ *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).

¹¹⁴ *Id.*

that access to special education and related services provides.”¹¹⁵

The burden of proof is properly placed upon the party seeking relief.¹¹⁶ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.¹¹⁷

VI. DISCUSSION

A. Petitioner Failed to Prove that the Charter School Denied the Student a FAPE by Failing to Allow Petitioner a Meaningful Opportunity to Participate in the Development of the Student’s IEP.

In enacting IDEA, “Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child’s individual educational program.”¹¹⁸ The statute’s emphasis on the full participation of parent(s) in the IEP process demonstrates that “adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.”¹¹⁹

Before an LEA proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, it must provide prior written notice to the parent of a child with a disability.¹²⁰ This notice shall include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency’s proposal or refusal.¹²¹

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.¹²² One of the important policies underlying the need for an accurate written IEP is “to serve a parent’s interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child’s progress and determine if any change to the program is necessary.”¹²³ If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency

¹¹⁵ *Id.*

¹¹⁶ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

¹¹⁷ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

¹¹⁸ *Rowley*, 458 U.S. at 208.

¹¹⁹ *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

¹²⁰ 34 C.F.R. § 300.503 (a). *See also Letter to Lieberman*, 52 IDELR 18 (August 15, 2008) (proposal to change the type, amount, or location of the special education and related services being provided to a child, would trigger the notice requirements of 34 CFR § 300.503).

¹²¹ 34 C.F.R. § 300.503 (b); D.C. Mun. Reg. tit. 5-E § 3025.

¹²² 34 C.F.R. § 300.327; D.C. Mun. Reg. tit. 5-E § 3013.

¹²³ *Alfano v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Dist. Of Columbia*, 360 F. Supp. 2d 138, 143 (D.D.C. 2005)).

must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.¹²⁴ The LEA must document its attempts to ensure parental involvement in the process.¹²⁵

Thus, an LEA must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.¹²⁶ Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE.¹²⁷ An LEA is *not* required to include the parent in preparatory meetings in which LEA personnel develop a proposal or response to a parent proposal that will be discussed at a later meeting.¹²⁸

Here, the Charter School documented at least ten attempts to notify Petitioner of its intent to convene a meeting to review the Student's psycho-educational evaluation, revise his IEP, and ultimately, revise his transition plan. The Charter School sent the letters by mail, fax, and courier. The Charter School also made three attempts to contact Petitioner by telephone, and finally reached her on its fourth attempt.

Although Petitioner finally confirmed that she would attend an IEP meeting on October 8, 2010, she subsequently notified the Charter School that she was unable to attend. The Charter School then sent Petitioner three additional letters of invitation proposing subsequent meeting dates. Petitioner failed to respond to any of these letters of invitation. Thus, the Charter School satisfied its obligation to provide Petitioner prior notice of the IEP meeting and use alternative methods of involving Petitioner in the IEP meeting.

Moreover, IDEA allows school districts to engage in "preparatory activities . . . to develop a proposal or response to a parent proposal that will be discussed at a later meeting" without affording the parents an opportunity to participate.¹²⁹ All that is required is that the IEP team keeps an open mind when developing the Student's IEP.¹³⁰

Thus, in reviewing the Student's psycho-educational evaluation at the November 23, 2010, meeting, the Charter School did not violate the procedural requirements of IDEA or otherwise infringe Petitioner's opportunity to participate in the development of the Student's IEP. In fact, the Charter School did not revise the Student's IEP until February 7, 2011, at a meeting in which Petitioner participated. Petitioner did not present any evidence to show that the Charter School personnel did not have an open mind at this meeting.

Thus, Petitioner failed to provide that the Charter School denied her a meaningful opportunity to participate in the development of the Student's IEP.

¹²⁴ 34 C.F.R. § 300.501 (c)(3).

¹²⁵ *Id.* at 501 (c)(4).

¹²⁶ 34 C.F.R. § 300.501 (c)(1).

¹²⁷ *See, e.g., W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

¹²⁸ 34 C.F.R. § 300.501 (b)(3) (emphasis added).

¹²⁹ *See, e.g., T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 253 (2d Cir. 2009).

¹³⁰ *Id.*

B. Petitioner Failed to Prove that the Charter School Denied the Student a FAPE by Failing to Develop an Appropriate Transition Plan that Addressed his Individualized Needs.

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, 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.¹³¹ The transition services must be based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and include instruction, related services, community experiences, the development of employment and other post-school living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.¹³²

Here, the transition plan in the February 26, 2010, IEP failed to reflect the findings and recommendations of the Student's vocational assessment. The transition plan lacked baselines, failed to address the Student's needs for preparatory transition services. The Student's transition plan should assist him in filling out various applications and paperwork legibly and accurately; provide services that assist him in recognizing his needs and requesting assistance (self-advocacy); and provide activities that allow him to participate in work-related tasks that address work readiness behavior such as punctuality, proper dress, coworker interactions, and self-evaluation.

However, the Student did not turn sixteen until December 2010. Although an LEA may provide a student transition services before he turns 16, this is not required by IDEA.¹³³ Here, the Student received transition services beginning soon after his fifteenth birthday. Thus, the Charter School chose to provide the Student more services than IDEA requires.

Petitioner also failed to demonstrate that the Student suffered any educational detriment from the inappropriate transition plan after he turned sixteen. In any event, this claim is precluded by *res judicata* as a result of Petitioner's earlier challenge to the IEP.

Claim preclusion, formerly known as *res judicata*, provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."¹³⁴ In practice, claim preclusion "bars a litigant from splitting claims into separate actions because once judgment is entered in an action it "extinguishes the plaintiff's claim . . . including all rights of the plaintiff to remedies against the defendant with respect to all

¹³¹ 34 C.F.R. § 300.320 (b).

¹³² *Dracut Sch. Comm. v. Bureau of Special Educ. Appeals of the Mass. Dep't of Elem. & Secondary Educ.*, 737 F. Supp. 2d 35, 41-42 (D. Mass. 2010).

¹³³ See Department of Education comments to IDEA regulations, 71 Fed. R. 46667.

¹³⁴ *Comm'r v. Sunnen*, 333 U.S. 591, 597 (1948) (citing *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1877)).

or any part of the transaction, or series of connected transactions, out of which the action arose."¹³⁵

Here, Petitioner had the opportunity to challenge the transition plan when she filed her June 11, 2010, due process complaint against the Charter School. Petitioner had a second opportunity when filed an amended complaint on July 13, 2010. Yet, Petitioner failed to raise these claims until the hearing officer made an issue of the appropriateness of the transition plan in his October 8, 2010, HOD.

Thus, Petitioner failed to prove that the Charter School denied the Student a FAPE when it developed the February 26, 2010, transition plan. Further, this claim is barred by *res judicata*.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, it is this 14th day of March 2011 hereby:

ORDERED that the Complaint is **DISMISSED WITH PREJUDICE**.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

Distributed to:

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Hearing Office
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¹³⁵ *Restatement (Second) of Judgments* §24 (1982).