DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT,[1] **By and through PARENT,**	)	
Petitioner,	)	**Case No.**
v.	)	**Bruce Ryan, Hearing Officer**
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	**Issued: October 16, 2010**
Respondent.	)	

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HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND AND RECORD

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations. The Complaint was filed August 11, 2010, against Respondent District of Columbia Public School ("DCPS"). It concerns a ·year old student (the "Student") who resides in the District of Columbia, attends her neighborhood DCPS senior high school (the "School"), and has been determined to be eligible for special education and related services as a child with a disability under the IDEA. Petitioner is the Student's parent.

Petitioner alleges that DCPS has failed to comply with a prior Order dated 03/28/2010, has committed certain procedural violations, and has denied the Student a free appropriate public education ("FAPE") in the respects specified under the issues below. The Student has a primary disability of Specific Learning Disability ("SLD") and a current individualized education program ("IEP") that provides for seven (7) hours of specialized instruction in a setting outside

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

general education, 14 hours of specialized instruction in a general education setting, and one hour of counseling services per week.

DCPS filed a Response on or about August 24, 2010, which asserts that the Hearing Officer should deny all requested relief. A Prehearing Conferences ("PHC") was held on September 15, 2010, at which the parties discussed and clarified the issues and requested relief. *See DCPS-2* (Prehearing Order, issued 09/29/2010), ¶ 5 (statement of Issues and Requested Relief). The 45-day HOD timeline following the resolution period expires 10/16/2010.[2]

Five-day disclosures were thereafter filed by both parties as directed on September 29, 2010; and the Due Process Hearing was held as scheduled on October 6, 2010. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence:

Petitioner's Exhibits: P-1 through P-13. [3]

DCPS' Exhibits: DCPS-1 through DCPS-15.

Hearing Officer Exhibit: HO-1. [4]

In addition, the following Witnesses testified on behalf of each party:

Petitioner's Witnesses: (1) Parent-Petitioner; (2) Student; and (3) Admissions Director, of Washington, D.C. The Student also testified in rebuttal.

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[2] It was discovered at the PHC that the parties had agreed in writing on 08/24/2010, that no resolution agreement was possible and that they wished to proceed to a due process hearing. However, contrary to written instructions from the SHO and the Hearing Officer, the parties had not notified the Hearing Officer of this fact or filed the DPC Disposition form executed by both parties. As a result, it was determined at the PHC that the resolution period had actually ended on August 24 (three weeks prior to the PHC), which necessitated an adjustment in the HOD timeline to 10/08/2010. Petitioner's counsel then filed a consent motion for continuance to permit the parties to schedule the Due Process Hearing on the first mutually agreeable date of October 6, 2010, and still allow sufficient time for any closing statements and issuance of an HOD. The consent motion was granted.

[3] P-13 (Student Timetable dated 08/30/2010) was not included in Petitioner's five-day disclosures, but was admitted over DCPS' objection since it is an official DCPS school record and indicates the Student's class schedule at the beginning of the 2010-11 School Year. P-12 (CV of expert psychologist) also was not included in disclosures and was admitted over DCPS' objection, but this witness did not end up testifying.

[4] HO-1 (Student Timetable dated 10/06/2010) is the Student's updated class schedule.

DCPS' Witnesses: (1) Special Education Coordinator ("SEC"); and (2) DCPS School Psychologist.

This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures ("SOP").*

II. ISSUES AND REQUESTED RELIEF

A discussion at the prehearing conferences of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

(1) **Procedural – MDT Placement Determination.** – Did DCPS fail to properly review and determine placement at the 06/21/10 and/or 07/13/10 MDT meetings, in violation of the 03/28/10 Consent Order of Dismissal and 34 CFR 300.327? And did such procedural violation result in a denial of FAPE or otherwise satisfy the criteria specified in 34 CFR 300.513(a)?

(2) **Inappropriate Placement.** – Did DCPS deny the Student a FAPE by failing to provide an appropriate placement and/or location of services for the 2010-11 School Year?

(3) **Procedural – MDT Members.** – Did DCPS fail to convene an MDT/IEP Team meeting with all relevant and necessary team members? Specifically, Petitioner alleges that the meeting did not include the participation of a general education teacher. – And did such procedural violation result in a denial of FAPE or otherwise satisfy the criteria specified in 34 CFR 300.513(a)?

(4) **Inappropriate IEP – Transition Plan.** – Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP with a post-secondary transition plan based on an appropriate vocational assessment? [5]

(5) **Failure to Conduct Neurological Evaluation.** – Did DCPS deny the Student a FAPE by failing to perform a recommended neurological evaluation?

[5] The Complaint also included as a separate issue that DCPS allegedly failed to perform a vocational assessment for the Student, but the parties agreed at the PHC that Petitioner's request for relief on that issue would be mooted by DCPS' issuance of an IEE letter. *See DCPS-2* (Prehearing Order, issued 09/29/2010), ¶ 5, note 1. Petitioner's counsel reiterated this position at the hearing, although it now appears that the IEE letter was not actually issued until October 12, 2010, six days later. *See* email correspondence from counsel (Oct. 12, 2010).

As relief, Petitioner requests, *inter alia,* (1) funding of an appropriate placement of the parent's choice, *i.e.,* and (2) performance of necessary evaluations. Petitioner stated her intention to reserve on compensatory education relief at this time.

III. FINDINGS OF FACT

1. The Student is a year old student who resides with Petitioner in the District of Columbia and currently attends her neighborhood DCPS senior high school (the "School"). The Student has been determined to be eligible for special education and related services as a child with a Specific learning Disability ("SLD") under the IDEA. *See P-4; Parent Testimony.*

2. On March 28, 2010, Petitioner and DCPS agreed to the entry of a Consent Order of Dismissal of a prior due process complaint. The 03/28/2010 Order authorized Petitioner to obtain an independent comprehensive psychological evaluation of the Student at the expense of DCPS. *P-8,* p. 3. The Order further required DCPS to convene an MDT/IEP Team meeting within 10 school days of receiving the results of the independent evaluation, which meeting would (a) review the evaluation, (b) review and revise, as appropriate, the IEP, and (c) review and determine an appropriate placement for the Student. *Id.*

3. On or about April 20, 2010, a comprehensive psychological evaluation of the Student was completed by a licensed clinical psychologist. *P-7; DCPS-14.* The evaluator found, *inter alia,* that the Student was in the Extremely Low range of intellectual functioning (FSIQ score of 66); and that on achievement measures she was performing on 4th grade levels in reading and 3d grade levels in math, with particular weakness in mathematics reasoning tasks. *DCPS-14,* pp. 9-10. Emotionally, the Student was found to be sad and depressed, and "her relationships with some peers are strained and fraught with conflict." *Id.,* p. 10. "She also voiced hating herself and wishing she were dead." *Id.* The evaluator concluded that the Student met the diagnostic criteria for Learning Disorder, NOS, and Dysthymic Disorder, and that "immediate therapeutic support is warranted." *Id.* The evaluator's recommendations

included an immediate psychiatric consultation "to address passive suicide ideation" [6] and a Neurological Evaluation "to assess whether some of her deficits are neurologically related to low birth weight and early delays." *Id.,* p. 11.

4. On or about June 21, 2010, DCPS convened an MDT/IEP Team meeting for the purpose of reviewing the independent comprehensive psychological evaluation. The meeting was attended by Parent, Advocate, School Psychologist, SEC, Special Education Teacher, and DCPS' Compliance Case Manager. *See P-5; DCPS-8.*

5. At the 06/21/2010 meeting, the School Psychologist reviewed the results of the independent evaluation and other data, including the Student's current emotional and intellectual levels. She observed that the Student's IQ score had dropped since 2003 (when it was measured at 81) and that her potential to learn had also declined. She suggested that the 2003-2006 scores might be a more accurate depiction of her actual IQ. *DCPS-8,* p. 1. The School Psychologist rejected the recommendation of a neurological evaluation, although it was unclear on what basis. *Id.,* p. 2. She stated that the Student needed counseling hours (individual therapy) added to her IEP and "needs more emotional support in a small setting and an increase in service hours." *Id.*

6. As a result of the 06/21/2010 meeting, the MDT/IEP team discussed revising the IEP to "include 1 hour of counseling and an increase in math hours of specialized instruction, as this is where she needs the most help." *DCPS-8,* p. 3. *See also DCPS-11* (06/21/2010 Analysis of Existing Data); *DCPS-13* (IEP Progress Reports).

7. On or about July 13, 2010, DCPS convened another meeting of the MDT/IEP Team for the purpose of reviewing and revising the IEP based on its review of the independent evaluation. Placement was also to be discussed at the meeting. The meeting was attended by Parent, Advocate, SEC, Special Education Teacher, General Education Teacher, and DCPS' Compliance Case Manager. *DCPS-9.* The Special Education Teacher went through each goal and section of the IEP and reviewed them

[6] The Student also testified at hearing that she has frequent suicide thoughts while at school. *See Student Testimony.*

aloud to the Team. *Id.*, p. 1. It was also noted that the Student had missed 17.5 days of school and 10 unexcused absences can result in failing classes. She also had a large amount of tardies. *Id.*, p. 2. DCPS proposed, and the Team (absent Parent) agreed, that the School was the appropriate placement for the 2010-11 School Year. *Id.*

8. As a result of the 07/13/2010 meeting, the Team revised the Student's IEP to provide for a total of 22 hours per week of special education and related services. Specifically, the IEP provides: seven (7) hours per week of specialized instruction in math in a setting Outside General Education; 14 hours per week of specialized instruction in math in a General Education setting; and one (1) hour per week of behavioral support (counseling) services. *P-4,* p. 6; *DCPS-9,* p. 2.

9. During the 2009-10 School Year, school records show that the Student had a total of 74 class absences through 06/18/2010, including 19 in English, 17 in Geometry, and 15 in Biology during the 2d semester alone. *See P-6.* The Student also had 17.5 homeroom absences, which generally are used as a proxy for the number of missed school days. *Id.; SEC Testimony.*

10. Due in large part to her excessive absences from classes, the Student has struggled academically and received failing grades in most of her subjects in the 2009-10 SY. *See P-6; SEC Testimony; Parent Testimony; DCPS School Psychologist Testimony.*

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer* v. *Weast,* 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The normal standard is preponderance of the evidence. *See, e.g., N.G.* v. *District of Columbia,* 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw* v. *District of Columbia,* 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

B. Issues/Alleged Denials of FAPE

For the reasons discussed below, the Hearing Officer concludes that Petitioner has met her burden of proof on Issues 4 and 5, but that Petitioner has failed to meet her burden of proof on the other specified issues and alleged denials of FAPE.

1. Procedural – MDT Placement Determination

Petitioner claims that DCPS failed properly to review and determine placement at either the 06/21/10 or 07/13/10 MDT/IEP Team meetings, in violation of the 03/28/10 Consent Order of Dismissal and 34 C.F.R. 300.327.

The IDEA requires that parents have meaningful participation in the placement decisions involving their child. *See* 20 U.S.C. 1414(e); 34 C.F.R. 300.116(a) (1), 300.327. Specifically, each public agency must "ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." *Id.,* 1414(e); 300.327. The team does not have to agree with the parent's proposal or concerns,[7] but it is required to listen to the parent's concerns and consider them, rather than issuing unilateral decrees. *See, e.g., T.T. v. District of Columbia,* 48 IDELR 127 (D.D.C. 2007) ("The IDEIA requires that the parents of a student with a disability be members of any group making a decision regarding the student's placement....In [DCPS'] typical placement process, the [DCPS] placement recommendations are then "offer[ed] to the parent during an MDT placement meeting.").

The March 28, 2010 Consent Order of Dismissal required (*inter alia*) that, within 10 school days of receiving the results of the independent comprehensive psychological evaluation, DCPS "convene an MDT/IEP Team meeting to ... review and determine an appropriate placement for the Student." *P-8,* p. 3. The evidence shows that DCPS failed to convene such meeting in a timely manner, but that it did ultimately hold a team meeting to review and determine an appropriate placement on July 13, 2010. Given the team's decision to continue the Student's placement at the attending School and the finding that this decision has not been shown to be inappropriate, the Hearing Officer concludes that DCPS' procedural delay did not

[7] *See, e.g., T.Y. v. New York City Dept. of Educ.,* 2009 U.S. App. LEXIS 22238 (Oct. 9, 2009), at *5 (parents entitled to "input" into, not "veto" over, school choice).

result in a denial of FAPE or other substantive harm to the Student. *See* 34 CFR 300.513; *Lesesne v. District of Columbia,* 447 F. 3d 828 (D.C. Cir. 2006).

2. Inappropriate Placement

Petitioner next claims that DCPS denied the Student a FAPE by failing to provide an appropriate placement and/or location of services for the 2010-11 School Year. Petitioner argues that the School is not appropriate to meet the Student's needs based primarily on the Student's poor academic performance there during the previous school year.

The IDEA requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means:

> [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)...***"

20 U.S.C. § 1401(9) (emphasis added); 34 C.F.R. § 300.17; DCMR 5-E3001.1. An IEP, in turn, "must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6, *quoting Board of Education* v. *Rowley,* 458 U.S. 176, 200, 207 (1982); *see also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988). Likewise, an appropriate placement is one that is "reasonably calculated to enable [student] to receive educational benefits," *Holdsclaw v. District of Columbia,* 524 F. Supp. 2d 43, 48 (D.D.C. 2007), and "can fulfill the requirements set forth in the IEP." *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008). [8]

In this case, the evidence shows that the School is able to implement all material requirements of the IEP, including the additional specialized math instruction and counseling

[8] *See also Branham v. District of Columbia,* 427 F. 3d 7, 12 (D.C. Cir. 2005) (affirming "placement based on match between a student's needs and the services offered at a particular school"); *Anderson v. District of Columbia, supra* (IDEA "guarantees a free appropriate education, [but] it does not ...provide that this education will be designed according to the parent's desires"); *Hinson v. Merritt Educ. Ctr.,* 579 F. Supp. 2d 89, 104 (D.D.C. 2008); D.C. Code 38-2561.02 ("DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA").

services included as a result of the recent team meetings (*P-4; P-5*). The Student does not need a full-time, self-contained classroom setting to obtain the educational benefits provided by her IEP. *See, e.g., SEC Testimony.* The main problem is that the Student is frequently absent from class and thus not available for learning. *See P-6* (listing a total of 74 class absences for 2009-10 SY, including 19 in English, 17 in Geometry, and 15 in Biology during the 2d semester alone). The excessive classroom absences are substantially contributing to the Student's failing grades in these subjects. *See Testimony of SEC and School Psychologist; P-6* (reporting F's in English, Geometry, and Biology).

Thus, Petitioner has not shown that DCPS failed to offer a school placement that is reasonably calculated to confer a meaningful educational benefit to the Student. *Cf. Hinson v. Merritt Educ. Ctr.,* 579 F. Supp. 2d 89, 104 (D.D.C. 2008) (parent "has not shown that the student's poor academic performance resulted from lack of appropriate services rather than the student's own extended absences"; thus, HO's conclusion that student "was not 'availing himself of educational benefit' under these circumstances was a reasonable determination.").[9] Moreover, the School is closest to the Student's home and provides the least restrictive environment. *See* 34 CFR 300.116; DCMR 5- E3013.1; *Roark v. District of Columbia,* 460 F. Supp. 2d 32 (D.D.C. 2006). Accordingly, the Hearing Officer concludes that Petitioner has failed to meet her burden of proof on this issue.

3. Procedural – MDT Members

Petitioner next claims that DCPS failed to convene an MDT/IEP Team meeting with all relevant and necessary team members because neither the 06/21/2010 or 07/13/2010 meetings included the participation of a general education teacher, as required by 34 C.F.R. 300.321 (a) (2) where the child participates in the regular education environment.

DCPS concedes that it failed to have a general education teacher at the 06/21/2010 meeting to review the psychological evaluation, but contends that this procedural error did not harm the Student. The evidence shows that a general education teacher did participate in the 07/13/2010 meeting which reviewed and revised the IEP. *DCPS-5,* p 1; *DCPS-9.* The Hearing Officer agrees with DCPS that the general education teacher was a more critical participant at the

[9] *See also Garcia v. Board of Educ. of Albuquerque Public Schools,* 520 F.3d 1116 (10th Cir. 2008) (affirming decision not to award denial of FAPE remedy in light of student's severe truancy).

July meeting, and that any possible harm resulting from the teacher's lack of participation in June was effectively cured when he attended the subsequent meeting and contributed to the discussion before the IEP was finalized. *See DCPS-9.*

As a result, the Hearing Officer concludes that such procedural violation did not impede the Student's right to a FAPE, significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational benefit. *See* 34 C.F.R. 300.513 (a) (2); *Lesesne v. District of Columbia,* 447 F. 3d 828 (D.C. Cir. 2006). [10]

4. Inappropriate IEP – Transition Plan

Petitioner claims that DCPS denied the Student a FAPE by failing to develop an appropriate IEP with a post-secondary transition plan based on an appropriate vocational assessment.

"Beginning not later than ***the first IEP to be in effect when the child turns 16***... the IEP "must include – (1) ***appropriate measureable 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 CFR 300.320(b) (emphasis added). *See* 20 U.S.C. § 1414 (d)(1)(A)(i)(VII). **"Transition services,"** in turn, are defined under IDEA as a "coordinated set of activities for a child with a disability that –

> (A) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities...;
>
> (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
>
> (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living

[10] *See also Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 193 (2d Cir. 2005) (no denial of FAPE where parent had attended and participated in at least two other meeting during the same school year, but did not attend an IEP meeting); *Anderson v. District of Columbia*, 2009 U.S. Dist. LEXIS 26436, at *10-11 (D.D.C. Mar. 30, 2009) (absence of regular and special education teachers did not cause denial of FAPE because there was sufficient information before the MDT).

> objectives, and, when appropriate, acquisition of living skills and functional vocational evaluation."

20 U.S.C. §1401(34) (emphasis added); *see also* 34 C.F.R. §300.43; *Virginia S. v. Department of Education*, 47 IDELR 42 (D. Haw. Jan. 8, 2007).

IDEA thus requires that a written plan be included in the IEP, containing "appropriate measureable postsecondary goals" that are geared ***specifically*** to the "individual child's needs." That plan (commonly called a "Post-Secondary Transition Plan") then serves as the guide for a coordinated set of transition activities. The primary intent underlying these IDEA provisions is to afford individual students the opportunity to reach measureable post-secondary goals of self-sufficiency as adults. Since the Student turned years old in April 2010, her January 2010 IEP was required to incorporate such a plan.

In this case, the Student's Transition Plan contained in the 01/28/2010 IEP (*DCPS-4,* pp. 9-10), and carried forward without change in the 07/13/2010 IEP (*DCPS-5,* pp. 10-11), is not based on the individual child's specific needs, and does not sufficiently take into account her particular strengths, preferences and interests. The Transition Plan appears to be no more than a "generic and somewhat vague formula of post-high school goals and services, equally applicable to almost any high school student." *Virginia S. v. Department of Education*, 47 IDELR 42 (D. Haw. Jan. 8, 2007). The Student's "Long-range Goals and Interests" simply read: "College/University" and "Full-Time Competitive Employment." *DCPS-5,* p. 9. The only annual goals provided are that the Student "will be able to obtain information about different colleges and universities in areas that interest her" and "will complete a career interest inventory." *Id.* The only courses of study identified to support her post-secondary transition goals are the courses she took during the 2009-10 SY. And, most glaringly, the Transition Plan lists no specific items whatsoever under "Post-Secondary Transition Activities and Services," contrary to the express language and intent of the statute; it simply calls for unspecified "Transition Services" of four (4) hours per year. In addition, DCPS appears not to have conducted a functional vocational evaluation – or any other age-appropriate transition assessment – to help formulate more specific transition goals and plans for the Student.

The Hearing Officer concludes that these failures amount to a denial of FAPE to the Student. At hearing, however, both parties agreed that the independent vocational assessment that DCPS has just recently authorized should first be completed before the Student's post-

secondary transition plan can be appropriately revised. Accordingly, DCPS shall be ordered to reconvene an MDT/IEP Team meeting for that purpose within 30 days of receiving the results of that independent evaluation from the parent. In devising an appropriate plan, the Team shall also be directed to discuss and determine whether any additional/compensatory transition services may be required to address the Student's unique needs, including harm resulting from any missed transition services during the 2009-10 SY.

5. Failure to Conduct Neurological Evaluation

Finally, Petitioner claims that DCPS denied the Student a FAPE by failing to perform a neurological evaluation that was recommended in the 04/20/2010 comprehensive psychological evaluation report.

Under the IDEA, DCPS must ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine (a) if the child is a "child with a disability" under the IDEA, and (b) the educational needs of the child. *See* 34 C.F.R. §§300.301 (a), 300.304 (b) (1); DCMR §5-E3005.1. As part of both an initial evaluation and any re-evaluation, DCPS must (*inter alia*) ensure that the child "is assessed in all areas related to the suspected disability," and that the evaluation is "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child [is] classified." 34 C.F.R. §300.304 (c) (4), (6); *see also id.* §§ 300.303, 300.305, 300.324; *Harris v. DC,* 561 F. Supp. 2d 63, 67-68 (D.D.C. 2008) (noting necessity and importance of continued evaluations under the IDEA).

In this case, the independent psychological evaluation recommended that a neurological evaluation be conducted in order to "to assess whether some of her deficits are neurologically related to low birth weight and early delays." The independent psychological evaluation also suggests that identification of such deficits may impact the educational needs of the Student. However, the DCPS School Psychologist rejected the recommendation, saying it was "not a DCPS issue," whatever that means. She also stated that in her view, the Student "needs more emotional support in a small setting and an increase in service hours." *P-5,* p. 3.

Recommendations of independent evaluators are not, of course, binding on DCPS or the MDT/IEP Team. However, given (a) the evaluator's finding that some of the Student's deficits

may be neurologically related, (b) the unexplained substantial decline in the Student's IQ scores, and (c) the potential impact of such issues on her educational needs, the Hearing Officer concludes that DCPS' refusal to undertake or fund a neurological evaluation was inconsistent with its comprehensive evaluation obligations under IDEA. Under the circumstances, the failure also constitutes a denial of FAPE. *See, e.g., Harris v. DC, supra.*

C. Appropriate Relief

The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter,* 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia,* 401 F.3d 516, 521-23 (D.C. Cir. 2005).

Based on the findings and record developed at hearing, the Hearing Officer has exercised his discretion to order appropriate equitable relief, as specified in the Order issued below. The Order requires DCPS to fund both an independent vocational assessment and an independent neurological evaluation, and then to reconvene a meeting of the MDT/IEP Team to review and revise the IEP as appropriate, including an appropriate post-secondary transition plan for the Student.

In addition, based on the record evidence – including the findings and recommendations of the independent evaluation, the views of the DCPS School Psychologist and SEC, and the Student's own testimony – the Hearing Officer concludes that DCPS should ensure that the Student's behavioral support services take the form of one-to-one individual counseling in order adequately to address the Student's demonstrated severe emotional needs.[11] The IEP should be revised to incorporate this requirement, along with specific goals in the area of Emotional, Social, and Behavioral Development (which do not appear to have been included in the 07/13/2010 IEP revision that added this related service).[12]

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[11] *See, e.g., SEC Testimony* (characterizing Student's emotional concerns as a "very huge issue" that impacts her education and requires significant counseling support).

[12] The IEP is not specific as to whether the counseling must be individual (one-to-one) or group, and the record reflects some confusion regarding how the services are being delivered..

With respect to the requested private placement relief, the Hearing Officer concludes that such relief is not supported by the limited FAPE denials found here, which relate solely to the transitional portion of the IEP and the need for additional evaluations. In addition, the Student's IEP does not currently provide for full-time special education, which is what High Road offers; and the proposed private placement would not be the LRE for this Student. *See Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005).

V. ORDER

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

1. Petitioner shall be authorized to obtain an **independent vocational assessment** and an **independent neurological evaluation** at the expense of DCPS and consistent with DCPS publicly announced criteria for IEEs. Upon completion, Petitioner shall cause copies of the reports to be sent directly to DCPS' Compliance Case Manager.
2. Within **20 school days** of receiving the reports, DCPS shall convene a meeting of the Student's MDT/IEP Team with all necessary members (including Petitioner) to review the results of the evaluations and to review and revise, as appropriate, the Student's IEP dated July 13, 2010, consistent with this HOD.
3. At the meeting held pursuant to paragraph 2 above, the revisions to the Student's IEP shall include, but not be limited to, the following: (a) appropriate revisions of the Post-Secondary Transition Plan; (b) appropriate Annual Goals in the area of Emotional, Social, and Behavioral Development; and (b) specifying that the Behavioral Support Services (Counseling) shall be delivered to the Student on an individual, one-to-one basis in a setting outside general education.
4. Petitioner's other requests for relief in her Complaint are **DENIED;** and.
5. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: October 16, 2010

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).