

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

OSSE
Office of Dispute Resolution
August 25, 2014

STUDENT, ¹)	
through the PARENT,)	
)	Date Issued: August 25, 2014
<i>Petitioner,</i>)	
)	Hearing Officer: NaKeisha Sylver Blount
v.)	
)	
District of Columbia Public Schools,)	
)	
<i>Respondent.</i>)	

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 June 11, 2014, by Student (a non-minor and the Petitioner), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”).

On June 13, 2014 the undersigned was appointed as the Impartial Hearing Officer (“IHO”). On June 19, 2014, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The undersigned IHO held a Pre-hearing Conference (“PHC”) by telephone on July 9, 2014, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by Tuesday, July 31, 2014 and that the Due Process Hearing (“DPH”) would be held on August 19, 2014. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued July 9, 2014.

¹ Personal identification information is provided in Appendix A.

Hearing Officer Determination

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-1 through P-31 and Respondent's exhibits R-1 through R-15 were admitted without objection.

The following witnesses testified on behalf of Petitioner at the DPH:

- (a) Student/Petitioner (a non-minor bringing the petition on his own behalf);
- (b) Parent;
- (c) Parent's Educational Advocate;
- (d) Parent's School Psychologist Expert (a school psychologist – qualified as an expert in school psychology);
- (e) Transition Planning Consultant (a consultant - qualified as an expert in transition planning).

The following witness testified on behalf of Respondent at the DPH:

- (a) Special Education Coordinator at District High School.

The parties 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.

- (a) Whether DCPS denied the student a free appropriate public education ("FAPE") by exiting him out of special education services without an evaluation or a regular diploma and without providing a summary of the child's academic achievement and function performance.
- (b) Whether DCPS denied the student a FAPE by failing to review the student's 2/8/2012 IEP (which ran until 2/7/2013) as appropriate to determine whether the annual goals for the child are being achieved and by failing to revise the IEP to take into consideration any lack of expected progress toward the annual goals, information about the child provided by the parents or the child's special needs.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) findings in favor of Petitioner on all issues;
- (b) an Order that Respondent fund an independent Vocational Level II evaluation for the student;
- (c) an Order that Respondent fund compensatory education for the student in the form of a Vocation Level II evaluation, full tuition for at least 600 hours in a vocational training program (preferably an auto mechanic program that will allow ASEC Certification) that will allow Student a means of employment; and a total of 440 hours of specialized academic tutoring.

Hearing Officer Determination

FINDINGS OF FACT

Background

1. Student is a non-minor, he is the Petitioner in this action.²
2. Student resides in Washington, D.C.³
3. Student has been determined to be eligible for special education and related services under the IDEA, with the disability classification “Intellectual Disability (or Mental Retardation).”⁴
4. During the 2011-2012 school year, Student attended District High School.⁵
5. In June 2012, Student participated with his District High School classmates in the school’s graduation ceremony. Student was awarded a certificate of completion rather than a diploma.⁶ A certificate of completion can be obtained by a student classified with Intellectually Disabled when he has met his IEP goals. As opposed to a student receiving a high school diploma, a student receiving a certificate of completion does not need to earn academic credits (“Carnegie Units”). A Student’s IEP team decides whether a student would be best suited for a certificate of completion or a high school diploma, based on the student’s disability classification, their IQ, and their level of performance.⁷
6. Student had IEP team meetings at District High School in February 2010,⁸ February 2011,⁹ and February 2012¹⁰. Each time his IEP team met, it agreed that it would not be productive for Student to remain in high school beyond age 18, and that Student’s would exit high school prior to age 21 to seek employment.¹¹ As members of the IEP team, neither Parent nor Student disagreed with this decision.¹² Student and Parent could have changed this decision at any time.¹³
7. Student’s eligibility for special education services did not end with his receipt of his certificate of completion.¹⁴ Neither Parent nor Student understood that Student remained eligible for special education services and could re-enroll in school and receive special education services until age twenty-two.¹⁵

² Testimony of Petitioner.

³ Testimony of Petitioner.

⁴ Testimony of Parent’s School Psychologist Expert; R-7-1.

⁵ Testimony of Parent.

⁶ Testimony of Student; testimony of Parent;

⁷ Testimony of Special Ed Coordinator at District High School.

⁸ R-1-1.

⁹ R-2-1.

¹⁰ P-5-1; R-7-1.

¹¹ Testimony of Special Ed Coordinator at District High School; R-1-11; R-2-12.

¹² Testimony of Parent; testimony of Special Ed Coordinator at District High School.

¹³ Testimony of Special Ed Coordinator at District High School.

¹⁴ Testimony of Special Ed Coordinator at District High School.

¹⁵ Testimony of Student; testimony of Parent.

Hearing Officer Determination

8. Prior to receiving his certificate of completion at the June 2012 graduation ceremony, Student's most recent IEP meeting was February 8, 2012.¹⁶
9. Student has not attended District High School or any public school since receiving his certificate of completion in June 2012.¹⁷
10. No IEP team has reviewed and/or revised Student's IEP since February 2012.¹⁸
11. Other than receiving the Brigance Transition Skills Inventory on February 7, 2012 and a functional skills assessment on December 15, 2011, Student was not evaluated immediately prior to receiving his certificate of completion.¹⁹
12. A Summary of Performance was prepared for Student prior to his receiving his certificate of completion in June 2012; however it is unsigned by Student or Parent.²⁰
13. No evidence was presented at the DPH that Student (or Parent) ever sought to re-enroll Student at a DCPS school after Student received his certificate of completion in June 2012.
14. No evidence was offered that Student (or Parent) ever requested an IEP/MDT meeting be convened for Student after Student received his certificate of completion in June 2012.
15. Testimony and evidence offered at the DPH regarding the quality and sufficiency of Student's transition services was not relevant to either of the two issues before the hearing officer in this matter.

CONCLUSIONS OF LAW

“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 child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making

¹⁶ Testimony of Parent; testimony of Special Education Coordinator at District High School.

¹⁷ Testimony of Student; testimony of Parent.

¹⁸ Testimony of Parent; testimony of Special Ed Coordinator at District High School.

¹⁹ P-5.

²⁰ P-11;R-8.

Hearing Officer Determination

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).

I. Whether DCPS denied the student a free and appropriate public education ("FAPE") by exiting him out of special education services without an evaluation or a regular diploma and without providing a summary of the child's academic achievement and function performance.

Prior to determining that a student is no longer a child with a disability, DCPS must evaluate the student, unless the student's eligibility has terminated for one of two reasons: (1) the student has graduated from high school with a regular diploma, or (2) the student exceeds the age of eligibility for FAPE under District of Columbia law.²¹ In this case, the evidence is clear that: (1) Student received a certificate of completion upon leaving high school, and did not graduate with a regular diploma and (2) Student remains within the age of eligibility for FAPE under District of Columbia law.²² This issue, therefore, turns on whether Student's receipt of a certificate of completion in June 2012 constituted a determination by DCPS that Student "is no longer a child with a disability."

At the DPH, DCPS took the position that a student's receipt of a certificate of completion is not a termination of eligibility and that, provided a student remains within the eligible age range and is a District of Columbia resident, a student can re-enroll as a DCPS school and resume access to special education and related services (subject to new assessments, as appropriate). Student took the position that receipt of his certificate of completion did in fact constitute a termination of eligibility, or at least a constructive termination of eligibility. The IHO credits testimony from of Special Education Coordinator at District High School that students can, and at times do, re-enroll in DCPS special education services after receiving certificates of completion, and that receipt of a certificate of completion does not constitute a termination of eligibility. This type of scenario has been documented in some published decisions.

For instance, *District of Columbia v. West*, 699 F.Supp2d 273 (D.D.C. 2010) is a case in which the District of Columbia was to recover attorneys fees from plaintiff's counsel. While the legal issues differ from those in the instant case, one of the underlying facts in the case was that the student plaintiff's counsel represented had received a certificate of completion from DCPS, but later re-enrolled in a DCPS school. Another example of a student re-enrolling in a DCPS school after receiving a certificate of completion is reflected in a 2008 hearing officer determination reported at 110 LRP 28962. One of the underlying facts in that case was that the student had received a certificate of completion, but later re-enrolled in a DCPS school, and his multi-disciplinary team met in part to reverse his certificate of completion. Even more to the point is the fact that District of Columbia law specifies that leaving high school with certificate rather than a regular diploma does not terminate special education eligibility. See 5E DCMR 3002.2(c) ("The LEA shall not be obligated to provide FAPE to children with disabilities who have graduated from high school with a regular high school diploma. This provision *does not*

²¹ 34 CFR 300.305(e)(2).

²² In the District of Columbia, a student remains eligible for special education and related services until age twenty-two. 5E DCMR §§ 3002.1(a).

Hearing Officer Determination

apply to children with disabilities who have graduated, but who have not been awarded a regular high school diploma.”) (emphasis added). In this case, Student was ever told he was no longer eligible for specialized instruction and related services upon receiving his certificate of completion, or that he sought to access and was refused such services.

Based on testimony Respondent offered that Student’s eligibility has not been terminated, the fact students can and do re-enter special education after receiving certificates of completion (as mandated by the DCMR and as illustrated, for example, in the cases cited above), and the fact that Petitioner did not demonstrate or even assert that he was he was told he was no longer eligible for special education, the IHO concludes that Student’s eligibility for special education did not terminate when he received his certificate of completion. Therefore, Petitioner did not meet his burden of proof on this issue.

II. Whether DCPS denied the student a FAPE by failing to review the student’s 2/8/2012 IEP (which ran until 2/7/2013) as appropriate to determine whether the annual goals for the child are being achieved and by failing to revise the IEP to take into consideration any lack of expected progress toward the annual goals, information about the child provided by the parents or the child’s special needs.

Pursuant to Section 614(d)(4)(A)(i) of IDEA, a student’s IEP team must review his IEP annually to determine whether the annual goals for the child are being achieved. *See* 34 CFR § 300.324(b). The law is clear that residency, not enrollment, triggers an educational agency’s obligation to provide a FAPE. *See District of Columbia v. West*, 699 F.Supp. 2d 273 (D.D.C. 2010), *citing James ex rel. James v. Upper Arlington City School Dist.*, 228 F.3d 764, 768 (6th Cir. 2000) (“Under the IDEA, ‘the obligation to deal with a child in need of services, and to prepare an IEP, derives from residence in the district, not from enrollment.’”). In *District of Columbia v. West*, the court concluded that plaintiff’s counsel had not brought a frivolous claim for purposes of deciding whether attorneys’ fees should be awarded to respondent where petitioner was in part claiming that: (1) DCPS denied the student a FAPE by failing to grant student’s request for an MDT meeting after student received his certificate of completion and before he re-enrolled in a DCPS school, and (2) DCPS denied the student a FAPE by refusing to convene the student’s MDT after the student re-enrolled until petitioner made a specific request for an MDT meeting after the student’s re-enrollment. While the district court in *District of Columbia v. West* was focused only on the issue of attorneys fees and did not decide the merits of the case, the factual distinctions between it and the instant case are noteworthy. In *District of Columbia v. West*, the plaintiff had initially sought an MDT meeting prior to re-enrolling and DCPS refused. Then when the student did re-enroll, DCPS refused to convene an MDT until petitioner (again) requested one.

The facts before this IHO are that Student did not request an MDT, or seek to re-enter special education after receiving his certificate of completion. District of Columbia law allows a special education student to leave high school without attaining a high school diploma, provided that the decision to do so is made by the student’s IEP team, “including the parent(s) and where possible, the student. The decision shall be made no earlier than the 9th grade and shall be attached in writing to the student’s Individualized Education Program (IEP).” DCMR E-2203.06. As reflected on at least three his IEPs, Student’s IEP team (including Student and his Parent)

Hearing Officer Determination

mutually agreed that he would receive the certificate of completion rather than a diploma, and that he would leave high school prior to his twenty first birthday. While Student remained eligible for special education services, including an annual IEP team meeting (likely even without re-enrolling), it is unclear how DCPS could have known that this is what Student desired until Student notified it. A reasonable application of the limited statutory and caselaw in this area would indicate that the onus of making a request to re-access special education services after voluntarily withdrawing from them lies with the non-minor student, and that it is such a request that would re-trigger DCPS' obligation to re-convene a student's IEP team for an annual IEP review. Student here did not make such a request prior to filing his DPC. For these reasons, Student did not meet his burden of proof on this issue.

Order

Accordingly, all relief Petitioner requested in the complaint is **DENIED**.

This complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

Date: August 25, 2014

/s/ NaKeisha Sylver Blount
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination, in accordance with 20 U.S.C. §1415(i).