

**DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
OFFICE OF COMPLIANCE & REVIEW  
STATE ENFORCEMENT & INVESTIGATION DIVISION  
STUDENT HEARING OFFICE**

**CONFIDENTIAL**

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STUDENT HEARING OFFICE

**HEARING OFFICER'S DETERMINATION**

IN THE MATTER OF:	)	
	)	
<b>DOB</b>	)	<b>DATE OF HEARING</b>
	)	December 16, 2009, January 7, 2010, Rm. 1
Student I.D.	)	
Petitioner	)	<b>DATE OF COMPLAINT</b>
	)	November 13, 2009
V.	)	
	)	
<b>The District of Columbia</b>	)	<b>ATTENDING SCHOOL:</b>
<b>Public Schools,</b>	)	
<b>Respondent</b>	)	

**COUNSEL FOR PARENT/STUDENT:** Zachary Nahass  
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STUDENT<sup>1</sup>, by and through his Parent

Petitioners,

v.

DCPS

Respondent.

HEARING OFFICER'S  
DETERMINATION

January 17, 2010

Representatives:

Petitioner – Zachary Nahass  
DCPS – Kendra Berner

Hearing Officer:

Jane Dolkart

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

# HEARING OFFICER'S DECISION AND ORDER

## I. INTRODUCTION

This is a    year old student who has been found eligible for special education under the classification of Mental Retardation (MR). The student's most recent IEP completed on April 22, 2009, provides for 30.6 hours of specialized instruction and .75 hours of behavioral support services per week in an outside general education classroom. The student is in a self-contained MR classroom at a high school she is presently attending for the 4<sup>th</sup> year. An HOD was issued on August 28, 2009, finding that, *inter alia*, Petitioner had failed to meet her burden of proof that the student's IEP was inappropriate or that the student's placement was inappropriate. The Hearing Officer did find that the student was in need of a Level III vocational assessment and ordered an independent vocational assessment and an IEP meeting within 15 days of DCPS' receipt of the assessment. It was anticipated that revisions to the student's IEP might be necessary. The Hearing Officer found that "the transition plan in [the student's] April 22, 2009 IEP is virtually useless. The student does not have specific functional goals."

A due process complaint was filed on November 13, 2009, alleging a violation of the August 28, 2009 HOD because DCPS had failed to convene an IEP meeting within fifteen days of DCPS' receipt of the Level III vocational assessment and further alleging that the student's IEP and placement are inappropriate. A response was filed by DCPS on November 18, 2009, asserting that the student's IEP and placement were appropriate and that DCPS was attempting to convene a meeting to review the vocation assessment and revise the student's transition plan, if necessary. The parties agreed to waive a resolution session.

A pre-hearing conference was held on November 30, 2009, and a pre-hearing order was issued on December 3, 2009.

The hearing commenced on December 16, 2009. Due to a family medical emergency, the Hearing Officer had to end testimony that day before the hearing was completed. The hearing was continued until January 7, 2010, when it was completed.

## II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

## III. ISSUES

Has DCPS denied the student FAPE by



parent cancelled the meeting and it was rescheduled and held on December 9, 2009.  
(DCPS 1, 2, 3, 4)

3. The vocational evaluation was conducted \_\_\_\_\_ and \_\_\_\_\_ both of whom are certified employment training specialists and occupational therapists working for Conaboy and Associates. It was noted that the student's general adaptive functioning is low and that her interest areas are low. The student's highest areas of interest fell within Business Detail, Accommodating, and Humanitarian arenas. The student also expressed an interest in working as a nail technician.

The student was administered The Occupational Aptitude and Interest Schedule OASIS-3:AS, a test which measures aptitude and is used as a tool to assist in career, vocational, and transition planning. The student's scores within all areas of performance were low to very low, except for perceptual aptitude where the student was in the average range. These included verbal, numerical, spatial, perceptual, and manual aptitude. The student would likely have difficulty with independent, work related areas and requires a high level of support and supervision. The student may be successful with supported jobs and extensive training. The student will be most successful with routine, predictable, concrete work related tasks.

Items from the Transition Planning Inventory (TPI) were used. The inventory assesses employment, further education/training, daily living, leisure, community participation, health, self-determination, communication, and interpersonal relationships. The student completed the student form of the TPI and her grandmother completed the home version. Based on the results, the student will likely work full-time in a supported work environment. The student's school program must make plans for post-secondary experiences and goal development. She needs continued remediation and accommodations in her academic arena and concrete, structured community work experiences.

The assessment recommended that the student have an opportunity to explore interests, job/volunteer opportunities, and work-related opportunities, participate in functional math activities such as making small purchases, and basic money calculations, participate in activities requiring the use of resource material such as dictionaries, map reading and phone books, and use a calculator. Pre-vocational activities should include things like reading basic maps, planning bus routes, making change, knowing where doctors are, filling out applications, and participation in work-related tasks addressing work readiness behavior.

(P 8)

4. One of the student's two special education teachers, \_\_\_\_\_ testified concerning the student's current schedule and curriculum. \_\_\_\_\_ is in his first year as a special education teacher for DCPS. He graduated from College in 2006, and is presently obtaining his masters degree in special education at Howard University. He previously worked with MR adults in a residential setting and in the Guilford, N.C.

school system as a special education teacher working with MR students. He is qualified as a special education teacher in DC because he passed a special DCPS qualification exam and is working towards his masters in special education. had a thorough knowledge of the MR program at and of the student. He was a credible witness.

The student's class has 27 students, all with mild to moderate mental retardation. There are two lead special education teachers and 6 assistant teachers in the class. The assistant teachers have two or four year college degrees. The program concentrates on practically focused reading and math, and life skills training. The life skills training covers such areas as writing personal information, money management, transportation, and community service. In terms of life skills, the first unit this year was learning personal information such as height, weight, name, social security number, and filling out job applications. The students have just completed a transportation unit focused on riding the metro. They were taught how to read metro maps, how to obtain metro tickets, and took one trip into the community riding metro. In the Spring a similar transportation unit will cover buses. Currently the students are learning how to describe themselves to someone else, what to do if they get lost, and what to do in emergencies. They have also been going over safety signs such as hazard signs. The student is learning how to use a calculator to do division and multiplication. The class has not begun a unit on money management as yet, but will do so.

Additionally, the students spend part of one morning in a special art program outside the school setting, and one morning with Special Olympics. Presently the students are bowling, but they will also do volleyball and basketball, and have already covered golf.

The students go to Food and Friends for three hours an afternoon one day every other week where they learn to read labels and package bags of groceries. Food and Friends personnel discuss hygiene, food preparation, and safety with the students. They go to Food and Friends in two groups of approximately 13 at a time alternating weeks. One special education teacher and several assistants accompany the students.

(Testimony of

5. The student's educational advocate observed the student at school on December 1 & 2, 2009. The advocate's testimony about the content of the student's day was consistent with the description provided by The advocate observed on the two days when the students spend most of the morning in art or Special Olympics. She did not observe on Monday or Friday when they are in the classroom all day or when the students were at Food and Friends. (Testimony of Educational Advocate)

6. A meeting to review the vocational assessment and revise the student's transition plan was held on December 9, 2009. Attending the meeting were the student's grandmother, the educational advocate, the SEC, the school psychologist, the social worker, DCPS counsel, the speech and language pathologist, and the student's case manager/special education teacher. Only one change was made to the student's transition plan, the

addition of a goal stating that the student “will plot her beginning and ending destinations with support from staff.” (DCPS 4)

Additionally, at the meeting DCPS team members discussed that the student will be starting an intensive reading program and offered to provide tutoring for the student. The team also indicated that a representative of a beauty school will be coming to the school to work with the student on basic skills to become a nail technician. (DCPS 4)

7. A December 9, 2009, letter from Jessica Roche, Project Coordinator at DCPS to the student’s grandmother authorized the grandmother to obtain tutoring services in reading for the student through DCPS for four one hour sessions per week up to 52 hours, to be completed by April 30, 2010. If DCPS does not provide a tutor by January 19, 2010, the guardian is authorized to obtain her own tutor at DCPS expense. (DCPS 5)

8. The student’s educational advocate testified concerning the appropriateness of the student’s present transition plan. The advocate was a special education teacher for five years, and has an MA in special education. She worked with students who were MR, ADHD, LD, and autistic. She has been involved in developing many IEPs, two thirds for high school students involving transition plans. The advocate was knowledgeable about transition services and was generally credible although clearly biased in favor of the student. (Testimony of educational advocate)

9. The advocate noted that the student requires a structured environment with intensive vocational planning and life skills development. On December 3, 2009, the educational advocate wrote a letter to the SEC proposing certain transition oriented goals for the student. The SEC denies ever having received the letter and there is no indication in the documents that the letter was sent. The educational advocate had the letter at the December 9, 2009, MDT meeting, but did not provide the letter to the other members of the team. There are six listed goals in the letter. The last four goals are clearly relevant and appropriate for the student’s transition plan. The second goal is not consistent with the fact that the student will likely be in a supported employment setting. The first goal addressed exposing the student to work environments. It calls for exposure in 3 vocational settings, working with a career counselor at least once a week, visiting vocational sites with a job coach on a weekly basis, and discussing her vocational experiences with a career counselor or job coach to adjust the student’s vocational opportunities. There is insufficient evidence in the record to support this extensive a vocational experience during this IEP year. (Testimony of educational advocate, P 10)

10. There was testimony from \_\_\_\_\_ and the educational advocate that the student’s IEP goals do not provide for any way to measure progress. There is no baseline data and no measurable indicia of progress. The student’s IEP report card lists the IEP goals and simply says progressing after each goal. \_\_\_\_\_ testified that most assessments are done orally and student work is given back to the student’s at the end of a unit. \_\_\_\_\_ agreed that none of the progress the student made is documented. (Testimony of \_\_\_\_\_ educational advocate)

11. The SEC agreed that at present there is no way to measure the student's progress. The SEC agreed that a chart or form could be created to monitor the student's progress on a weekly basis. The SEC also agreed that more specific IEP goals could be developed tailored to the life skills, academic skills, and vocational training the student is actually receiving. (Testimony of SEC)

12. \_\_\_\_\_ the Assistant Educational Director at \_\_\_\_\_ testified. \_\_\_\_\_ is a private special education school with small classes. The school has a program for MR students. The student has been accepted at \_\_\_\_\_. She would be the lowest functioning student in the class.

\_\_\_\_\_ teaches functional academic skills, such as words and math needed for a job. There is basic life skills training including basic math and reading, how to read maps, bus schedules, and menus, how to look at a prescription bottle and call the doctor, how to pay bills, etc.

\_\_\_\_\_ has a five persons in its vocational department who work as job coaches. The job coaches ascertain a student's strengths and desires and go out in the community and find appropriate job training opportunities. A job coach accompanies each student to a job and remains throughout the employment experience or until no longer needed. The school has a cooperative program with Marriott. The school maintains connections with the Department of Rehabilitative Services and other relevant DC agencies to get students ready to transition from school to the workplace.

\_\_\_\_\_ suggested that the student could obtain employment experience by setting up dinners for a church, working in a child care center, doing cleanup at a hair and nail salon, or working as a shopper at Giant Foods. Additionally there are on campus jobs in the school store and in the office doing filing and mailings.

(Testimony of \_\_\_\_\_)

## **VI. DISCUSSION AND CONCLUSIONS OF LAW**

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.*, guarantees "all children with disabilities" "a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency..., (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEAs guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped

child.” *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a “basic floor of opportunity” for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3<sup>rd</sup> Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See*, 20 U.S.C. ¶ 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See*, 20 U.S.C. ¶ 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include “a statement of the child’s present levels of educational performance, ... a statement of measurable annual goals, [and] a statement of the special education and related services ... to be provided to the child...” 20 U.S.C. ¶ 1414(d)(1)(A).

Pursuant to IDEA § 1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEA § 1415 (f)(3)(E)(ii), 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.

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast*, 546 U.S. 49 (2005).

### **Violation of the August 28, 2009 HOD**

It is true that a meeting was not convened by November 10, 2009, the last day within 15 days of DCPS’ receipt of the Level III Vocational Assessment. However, DCPS sent out a Letter of Invitation on November 13, 2009, for a meeting on November 16, 2009. A meeting was actually scheduled for December 3, 2009, but was cancelled by Petitioner, and a meeting was held on December 9, 2009. This is a procedural violation of such short duration that it did not deprive the student of educational benefits or constitute a denial of FAPE to the student.

### **Appropriateness of the Student’s Transition Plan**

The IDEA and its implementing regulations state that “Beginning not later than the first IEP to be in effect when the child turns 16..., and updated annually, thereafter, the IEP must include

1. Appropriate measurable post secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills.
2. The transition services...needed to assist the child in reaching those goals. 34 CFR § 300.320 (b)(1, 2).

The IDEA and its regulations do not further define what an age appropriate transition assessment should include. However, one definition of transition assessment is an "...ongoing process of collecting data on the individual's needs, preferences, and interests as they relate to the demands of current and future working, education, living, and personal and social environments. Assessment data ... form the basis for defining goals and services to be included in the Individual Education Program (IEP)". Sitlington, Neubert, & Leconte, "Transition Assessment: The position of the Division on Career Development and Transition", 1997, p. 70-71. This definition has been approved by the OSEP, US Department of Education.

In conducting age appropriate assessments, DCPS uses three levels of transition assessment. Level 1 is a general assessment, level 2 is a more detailed assessment, and level 3 is an assessment done at the right time for students who are more significantly disabled. This level is conducted by a vocational assessment specialist. This student is 19 years old and has less than three years of special education eligibility remaining. A Level III vocational assessment was finally completed and sent to DCPS on October 26, 2009, and a meeting to review the assessment and revise the student's transition plan was held on December 9, 2009. In the August 28, 2009 HOD the hearing officer noted that the student's April 22, 2009 transition plan was totally inadequate, virtually useless, and failed to provide adequate specific goals. At the December 9, 2009, meeting the MDT team made only one change to the student's transition plan even after reviewing the detailed vocational assessment. If the plan was found inadequate in the August 28, 2009 HOD, it is equally inadequate now with even less reason since the MDT team had the benefit of the Level III vocational assessment. It lacks specific goals and completely lacks any way to measure the student's progress. The failure to provide an adequate transition plan for the student is a denial of FAPE.

Although the actual transition plan document is inadequate, the student is receiving much of the academic and life skills training which she needs. The educational advocate and testified concerning the life skills training needed by the student. All of the areas they listed are presently included in the student's program as testified to by

The student is learning how to read maps, use the metro and bus systems, how to fill out job applications, how to count out the correct amount of money, how to read signs, and many other life skills. She is also receiving pre-employment training by going to a job site at Food and Friends one afternoon every other week. The student is learning basic math and reading and how to use a calculator. DCPS has agreed to provide the student with 52 hours of private tutoring in reading and writing, and has also agreed to begin training the student in the skills necessary to work at a hair and nail salon. However, none of this appears as goals on the student's transition plan.

The educational advocate prepared a letter with six annual measurable goals for the student's transition plan. The 3<sup>rd</sup> through 6<sup>th</sup> goals are to be incorporated into the student's plan. The first proposed goal addresses job training and suggests that the student be exposed to three appropriate vocational settings, work with a career counselor once a week and participate in on-site vocational training with a job coach. This goal goes too far but it does address an area in which the student's present program appears to be inadequate. The student should be given the opportunity to participate in on-site vocational training for one afternoon each week accompanied by a teaching assistant acting as her job coach. For the spring semester of this year that training shall occur in the area of hair and nail salon skills. Training in an area of the student's interest and capabilities should occur throughout her remaining three years of schooling.

### **Placement**

Once an IEP is developed, the school district must determine an appropriate placement for the child that is designed to meet the child's needs as set out in the IEP. Placement decisions must be made in conformity with the child's IEP. 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Regs. Tit. 5 § 3013 (2006). Thus, it is the IEP which determines whether a placement is appropriate, not the other way around. *See, Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (DDC 2006).

The educational agency must provide a "basic floor of opportunity" for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3<sup>rd</sup> Cir. 1988). If there is an appropriate public placement available that is "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement. This is true even though a private placement might better serve the child, *See Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207 (1982).

Petitioner has not met her burden of proof that the student's present placement is inadequate. The student is receiving the academic and life skills training she needs to function and is receiving pre-employment vocational training. DCPS has agreed to supplement the student's academic training with 52 hours of tutoring and an intensive reading program at the school. Additionally, DCPS has agreed to develop a chart or form to track the student's progress on a weekly basis. Lastly, DCPS has agreed to provide employment skills training in the area of hair and nail care. The Hearing Officer will order additional vocational training that will meet the student's needs.

## **VII. SUMMARY OF RULING**

1. DCPS' violation of the August 28, 2009 HOD does not rise to the level of a denial of FAPE.
2. DCPS has denied the student FAPE in failing to prepare an adequate transition plan.

3. DCPS has not provided an inappropriate placement for the student.

## **VIII. ORDER**

It is hereby **ORDERED** that

1. DCPS shall add the following goals to the student's transition plan no later than 15 business days of issuance of this HOD

Goal 1: The student will perform work-related tasks with increased independence.

Goal 2: The student will utilize resource materials to increase her functional reading ability.

- The student will be able to use a Metro station map to articulate how to navigate between different subway lines with 80% accuracy.

- The student will be able to identify arrival and departure times by reading bus and metro schedules with 80% accuracy.

- The student will locate names and numbers of service providers from a phonebook or computer with 80% accuracy.

Goal 3: The student will increase her ability to perform functional math activities.

- the student will be able to count out the correct amount of mixed money needed to purchase an item up to with 3 out of 4 trials.

- The student will be able to correctly fill out a check with 80% accuracy.

- The student will be able to make change from a purchase of up to

Goal 4: The student will be able to identify various community locations and resources.

Goal 5: The student will be provided with a vocational opportunity based on her interests and abilities one afternoon a week to be accompanied by a job coach.

2. DCPS shall revise the student's transition plan to reflect the actual life skills and functional academics she is presently learning no later than 15 business days from the date of the HOD.

3. DCPS shall develop weekly forms to record the student's progress no later than 15 business days from the date of this HOD.

4. Any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, shall extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.

**This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.**

/s/ Jane Dolkart  
Impartial Hearing Officer

Date Filed: January 17, 2010