

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT, a minor, by and through
his Parent¹

Petitioner,

v

Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

OSSE
STUDENT HEARING OFFICE
2012 MAY 17 AM 9:10

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On March 2, 2012 Parent, on behalf of her child (“Student”), filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,² requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Parent’s Administrative Due Process Complaint Notice (HO 5) on March 13, 2012 and an amended Response was filed on April 4, 2012.³ A resolution meeting was held on March 14, 2012. The parties were not able to reach an agreement and

¹ Personal identifying information is provided in Appendix A, attached hereto.

² Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

³ This amended Response was filed pursuant to my Prehearing Conference Order of April 3, 2012 requiring the amended response be filed by April 4, 2012.

executed a Resolution Period Disposition Form on the same date so indicating. HO 6. The 45 day timeline began to run on April 2, 2012, and my Hearing Officer Determination is due on May 16, 2012.

I held a telephone prehearing conference on April 3, 2012. HO 8. By agreement of the parties, the hearing was scheduled for April 13 and 14, 2012. The hearing was held as scheduled in Room 2003 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE(S)

The issues are:

Whether DCPS denied Student a FAPE by:

- 1) Refusing to re-evaluate Student after parent requested a reevaluation at the January 19, 2012 IEP meeting. At the January 19, 2012 meeting parent requested a comprehensive evaluation specifically including a comprehensive psychological, a speech/language evaluation and an occupational therapy evaluation;
- 2) Failing to timely conduct a triennial evaluation by August 2011;
- 3) Failing to evaluate Student's need for services before significantly reducing or eliminating speech/language services and occupational therapy services required by Student's IEP. The February 7, 2011 IEP reduced Student's speech services from 30 minutes per week to 90 minutes of consultative speech services per month. Student's occupational therapy services were discontinued at the February 7, 2011 meeting;
- 4) Failing to develop appropriate IEPs at the February 7, 2011 and January 19, 2012 IEP meetings. Neither IEP includes occupational therapy services. The transitions plans included in each IEP are not appropriate in that there are insufficient goals addressing independent living skills and post high school education;

- 5) Failing to implement the independent living goal requiring DCPS assist Student in obtaining his learner's permit for driving as provided in the transition plan of the February 19, 2010;⁴ and
- 6) Failing to provide Student with a hearing assessment as recommended by Student's speech/language therapist at the February 7, 2011 IEP meeting.

SUMMARY OF THE EVIDENCE

A. **Exhibits**

Exhibits admitted on behalf of Petitioner are:

- P-1 March 20, 2012 Advocate Meeting Notes;
- P-2 January 19, 2012 Individualized Education Program;
- P-3 January 19, 2012 Analysis of Existing Data;
- P-4 January 19, 2012 Advocate Meeting Notes;
- P-5 January 23, 2012 Email Correspondence;
- P-6 February 7, 2011 Individualized Education Program;
- P-7 February 7, 2011 DCPS Meeting Notes;
- P-8 February 19, 2010 Individualized Education Program;
- P-9 February 19, 2010 Student Annual Progress Summary;
- P-10 September 21, 2009 Occupational Therapy Report;
- P-11 April 17, 2009 Comprehensive Therapy Evaluation;
- P-12 2011 Progress Summary;
- P-13 February 17, 2010 MDT Meeting Notes;
- P-14 August 28, 2008 Speech and Language Evaluation Report;
- P-15 September 30, 2010 Health Encounter Tracking form;
- P-16 February 28, 2011 Health Encounter Tracking form;
- P-17 February 28, 2011 Health Encounter Tracking form;
- P-18 September 30, 2010 Progress Notes;
- P-19 2011-2012 Second Quarter Report Card;
- P-20 November 9, 2011 Student Transcript;
- P-21 November 9, 2011 Letter of Understanding;
- P-22 Student Cumulative Scholastic Record;
- P-23 2006-2007 Primary Progress Report;
- P-24 June 15, 2009 Student Scholastic Record;
- P-25 April 5, 2012 Compensatory Education Proposal;
- P-26 Curricula Vitae for
- P-27 Curricula Vitae for

⁴ Please see FN 16, *Infra*, for clarification on the IEP addressed by this issue.

Exhibits⁵ admitted on behalf of Respondent are:

R-1	RSM Meeting Notes	March 12, 2012
R-2	MDT Meeting Notes	March 1, 2012
R-3	MDT Meeting Notes	January 19, 2012
R-4	Summary of Performance	January 18, 2011
R-5	IEP Progress Report	June 7, 2012
R-6	IEP Progress Report	January 20, 2011
R-7	CV Yvonne Ward-Manson	Undated
R-8	CV Deanna Moring	Undated

Exhibits⁶ admitted by the Hearing Officer are:

- 1 Administrative Due Process Complaint Notice of March 2, 2012
- 2 Notice of Hearing Officer Appointment dated March 5, 2012
- 3 Prehearing Conference Scheduling Letter dated March 6, 2012
- 4 Prehearing Conference Notice dated March 12, 2012
- 5 DCPS Response of March 13, 2012 to Administrative Due Process Complaint
- 6 Resolution period Disposition Form executed March 14, 2012
- 7 Miscellaneous emails
Email chain re my question regarding stay-put being inapposite to the instant matter
Email of 3/14/12 regarding parties' intent to continue or not the resolution period
Email chain re need to hold status conference and scheduling
Email chain re service of written closing statements⁷
- 8 Proposed Hearing Officer Exhibit List
- 9 Petitioner's written closing of April 24, 2012⁸
- 10 Respondent's closing of April 27, 2012
- 11 Petitioner's Rebuttal of May 1, 2012

B. Testimony

Petitioner testified and presented the following witnesses:

- [redacted] President and Tutor, [redacted] admitted as an expert in special education as it relates to compensatory education and the development of IEPs;
- [redacted] Educational Coordinator and Tutor,

⁵ These exhibits were provided by amended disclosure filed April 10, 2012. The only changes from the original disclosures filed April 6, 2012 to the amended disclosure were the elimination of 2 *curricula vitae* and the correction in the spelling of one name.

⁶ All documents are filed with the forwarding email attached

⁷ This email chain was added to the HO exhibits subsequent to the due process hearing

⁸ HO exhibits 9 through 11 were added subsequent to the due process hearing

- Mia Long, Educational Advocate, James E. Brown & Associates, PLLC; and
- Student.

DCPS presented the following witnesses:

- Transition Coordinator,
- Deanna Moring, Speech/Language Therapist, and
- Kim Hunter, Occupational Therapist,

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. Student is years old. He attends a non – public, special education school. He is eligible for special education as a student with a specific learning disability. P 2; P 6; P 8; R ; Testimony of Petitioner; Testimony of Student; Testimony of Moring.
2. Student speaks with a stutter, but he does not find this to be a problem at this time. His dysfluencies increase when he is stressed. His speech issues do not affect his ability to access the curriculum. Testimony of Student; Testimony of Moring.
3. Student is graduating from high school this school year. He will be allowed to walk with his class. However, he must take an additional course this summer to earn all the credits needed for graduation. Student is graduating after three years in high school. He completed extra credits through an on-line course and through summer school. Student is graduating at the top of his class. With a couple of exceptions he has earned As and Bs in

his course work. P 19; P 20; P 21; P 22; Testimony of _____ Testimony of _____
Testimony of Petitioner; Testimony of Student.

4. Student is able to learn material at the high school level with accommodations. He has particular difficulty in written language. Testimony of Moring; Testimony of _____
Testimony of _____
5. Student's current IEP, dated January 19, 2012, includes academic goals in mathematics, reading and written expression. It also includes goals in communication/speech and language and emotional, social and behavioral development. Student's program is to consist of 26 hours per week of specialized instruction outside general education, 1 hour per week of behavioral support services outside general education and 1.5 hours per month of speech/language consultation services. The IEP also includes a transition plan. The transition plan has three long range goals. The goal in post-secondary education addresses Student attending community college following graduation. The goal in employment addresses Student working in sales or manual/skilled labor. The third goal, in independent living, addresses Student obtaining a driver's license. P 2.
6. Student's February 7, 2011 IEP includes academic goals in mathematics, reading and written expression. It also includes goals in communication/speech and language, emotional and social and behavioral development. The area of motor skills/physical development notes the services were discontinued. Student's program was to consist of 26 hours per week of specialized instruction outside general education, 1.5 hours per week of behavioral support services outside general education and 30 minutes per month of speech/language consultation services. The IEP also includes a transition plan. The transition plan has three long range goals. The goals in post-secondary education address

Student learning about post secondary education programs, particularly community colleges and learning about his disability and his related rights. The goals in employment address Student defining his interests and researching jobs. The third goal area, independent living, includes a goal addressing Student acquiring a learner's permit. P 6.

7. Student's February 19, 2010 IEP includes academic goals in mathematics, reading and written expression. It also includes goals in communication/speech and language, emotional, social and behavioral development and motor skills/physical development. Student's program was to consist of 24.5 hours per week of specialized instruction outside general education, 1.5 hours per week of behavioral support services outside general education and 30 minutes per week of speech/language pathology services. In addition, he was to receive 30 minutes per week of occupational therapy consultation services. This IEP also includes a transition plan. It has goals in the areas of post-secondary education and training addressing gathering information about post-secondary education. The employment goals address Student taking vocational assessments and defining his career and job opportunities. The goals in independent living focus on functioning in the home and community such as kitchen safety and money management and identifying how his behaviors affect his classes and looking for alternatives. P 8.
8. Student's most recent formal academic assessments were in fall 2012⁹ for math, fall 2010 for reading and December 2011 for written expression. His most recent psychological was in August 2008, and the last occupational therapy report is from September 2009. Student's last speech language evaluation was in August 2008. Student received prior academic assessments in math in both 2008 and 2010 and in reading in 2010. He was also

⁹ The IEP indicates this assessment was provided in fall 2012. As fall 2012 has not yet occurred, the 2012 date is a typographical error. Based on the other dates for formal academic assessment on the IEP it appears this date should have been either 2011 or 2010.

assessed using informal means, including classwork and related services provider report, from 2010 to the present. P 2; P 6; P 8; P 10; P 14.

9. The January 19, 2012 Multidisciplinary Team (“MDT”) meeting was both an IEP meeting and a reevaluation meeting. The team agreed Student should receive both a Stuttering Severity Index assessment and a cognitive assessment. R.3.
10. At the January 19, 2012 meeting, Petitioner requested Student be reevaluated. She requested he receive a speech assessment, a comprehensive psychological and an occupational therapy evaluation. The team did not agree to provide these assessments. The team did agree to provide a Stuttering Severity Index and a cognitive assessment. Consent for the evaluation was provided during the March 20, 2012 meeting. These assessments have not been completed. P 4; R 2; R 3; Testimony of Long; Testimony of Petitioner; Testimony of Moring.
11. One of the reasons Petitioner requested new evaluations was to have current evaluations for Student prior to his graduation. She believes this will facilitate his receipt of post high school services. Testimony of Testimony of Petitioner.
12. Student was re-evaluated in 2012. This re-evaluation did not include any of the individual assessments identified by Petitioner in her request at the January 19, 2012 meeting. R.1; R 3.
13. The speech therapist recommended Student receive a hearing assessment at the February 7, 2011 meeting. This assessment has not been completed. P 7; Testimony of Moring.

14. Petitioner does not agree with the reduction in speech services that occurred at the February 2011 IEP meeting. She also does not agree with the discontinuation of occupational therapy services at this meeting. Testimony of Petitioner; P 6; P 7.
15. Student is reliable, dependable and focuses. He works, maintains a bank account, travels independently. He is able to cook and he is able to care for his nieces and nephews. He is self-sufficient, has good decision making skills and acts as his own self advocate. He has not completed some of the goals on his transition plans because he has chosen not to do so. In doing so he has determined his priorities and acted accordingly. For example, due to his heavy course load and his job, Student did not attempt to get his learner's permit. In the last few weeks he has decided he is ready to do so and let the transition coordinator know he is ready to do so. He also has not gone on college visitations by choice. Student also has expressed disinterest in speech therapy unless he requests assistance. He does not like being pulled out of the classroom and prefers to receive his services in the classroom. Testimony of _____ Testimony of Ward-Manson; Testimony of Moring; Testimony of Student.
16. Student does not want to attend college immediately after graduation. He wants to attend a vocational school program or obtain employment. He thinks he needs a break because he has worked so hard to get all the credits he needs to graduate in 2012 after only three years in high school. He wants to attend college later to study accounting. Testimony of Student.
17. The speech/language therapist at _____ provides consultative services in the classroom. She works directly with the teacher, and she works directly with Student when he asks for assistance. Student had many absences in the 2010-2011 school year. He has

had few absences this year, and his performance has improved. The speech therapist was not able to provide the exact services required by Student's IEP this year as he refused to work on sounds. Instead she created an activity that would address the goal and relate to the classroom. Testimony of Morring.

18. There are no specific standards set to demonstrate mastery of a goal. The speech therapist recommended reducing Student's services because of the skills he demonstrated and because he was requesting less assistance in the classroom. She expects him to require some additional assistance in the classroom at the close of this academic year due to the writing assignments required. P 17; Testimony of Morring.
19. Student mastered the occupational therapy goals on his 2010 IEP to the standard set on the IEP before the IEP expired. At the 2011 IEP meeting the occupational therapist recommended discontinuing the occupational therapy goals because despite being below average in some assessed areas, he had no educationally related needs. Visual perception did not affect his academic performance. The recommendation for discontinuation was based on an informal assessment that used data such as work samples and teacher information. The team, including Petitioner, agreed to this recommendation. Testimony of Hunter.
20. During a school observation, Student was copying something from the blackboard. He repeatedly looked back and forth between the board and his paper. It is not possible to determine the basis for this behavior and whether it represents an occupational therapy need without further information. Testimony of Long; Testimony of Hunter.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

1. *Refusing to re-evaluate Student after parent requested a reevaluation at the January 19, 2012 IEP meeting. At the January 19, 2012 meeting parent requested a comprehensive evaluation specifically including a comprehensive psychological, a speech/language evaluation and an occupational therapy evaluation*
2. *Failing to timely conduct a triennial evaluation by August 2011*

The two issues above are combined for discussion herein due to the overlapping legal requirements applicable to these issues.

IDEA requires that a reevaluation of a student be conducted under the following circumstances:

- 1) at least once every three years unless the parent and public agency agree a reevaluation is not necessary;
- 2) if the public agency determines the educational or related service needs of a child warrant reevaluation; and
- 3) if the child's parent or teacher requests a reevaluation.

34 C.F.R. §300.303

A reevaluation may not occur more than once a year unless the public agency and the parent agree otherwise. *Id.* The re-evaluation is to comply with the requirements in 34 C.F.R. §§ 300.304 – 300.311. *Id.* These requirements include that the child be assessed in all areas of his/her suspected disability [34 C.F.R. § 300.304(c)(4)] and that the reevaluation may not rely on any one test, formula, or procedure for determining eligibility. 34 C.F.R. § 300.304(b)(2)

requires a school district to use a "variety of assessment tools and strategies" in conducting an evaluation and prohibits the use of "any single procedure as the sole criterion for determining whether a student is a student with a disability.

In the instant matter Petitioner asserts the last re-evaluation of Student occurred in August 2008, and, therefore, he should have received a re-evaluation in August 2011. It is clear that a comprehensive reevaluation was not completed in August 2011. Petitioner has not established, however, the date of the most recent reevaluation. While stating that last re-evaluation occurred August 2008, Petitioner has not provided evidence that this was, in fact, the date. There was a comprehensive psychological and a speech language assessment completed at that time. Since August 2008, however, other assessments have been provided Student including an occupational therapy assessment in September 2009 and formal educational assessments in 2010 and 2011. There simply is no evidence establishing the date of a comprehensive evaluation prior to 2012. Moreover, while there is evidence that a reevaluation meeting occurred in January 2012, the assessments the team agreed were to be provided to Student have not occurred.

I, therefore, find based on the preponderance of the evidence that Student has not received a comprehensive reevaluation since at least August 2008.¹⁰

Having found DCPS did not provide the reevaluation as required I must now determine whether this failure resulted in an educational harm constituting a denial of FAPE. First I look to whether the delay from August 2011 to January 2012 resulted in such harm, and I find it does. While Student has accelerated his high school program, meeting all graduation requirements in three years rather than four, including taking additional courses in order to do this has achieved

¹⁰ While there is no evidence as to when the last reevaluation took place, I do have evidence that some assessments were completed in August 2008. As the actual date of the previous reevaluation has not been established I am finding the current reevaluation was late because there is no evidence of a reevaluation occurring within the three years preceding January 2012 when the MDT notes indicate a reevaluation did occur.

high grades in the process, he continues to struggle with written language and requires assistance from a speech therapist in this area. The delay in reevaluation has not interfered with his graduating from high school, but the extent to which his access to the curriculum was impacted by his disability was not properly assessed. It is not possible to determine what Student's needs were in relation to his speech language disability without a current assessment. Therefore, the procedural violation inherent in not providing a timely reevaluation may have impacted Student's access to the curriculum. Moreover, at the January 2012 MDT meeting, the team agreed he needed two particular assessments, a Stuttering Severity Index and a cognitive assessment. Neither of these has been provided. Having found Student requires such formal assessments as part of the reevaluation process there remains some question as to whether the results of such determinations at the beginning of his senior year would have resulted in changes to his IEP. Evaluations are intended to inform the provision of FAPE. IEPs are developed to address a student's identified needs. Therefore, where, as here, the development of the most recent IEP was not based on needed assessment data, there is a denial of FAPE.

I, therefore, find by a preponderance of the evidence that DCPS denied Student a FAPE by failing to timely provide a timely reevaluation.

Additionally, at the January 2012 MDT meeting Petitioner requested Student receive a reevaluation to include a speech assessment, a comprehensive psychological and an occupational therapy evaluation. This request was denied with the exception of the stuttering index and the cognitive assessment which have not yet been provided as noted above. Under IDEA, the team must provide a reevaluation when requested by a parent. *See, Cartwright v. District of Columbia*, 267 F. Supp. 2d 83 (D.D.C. 2003). Thus the team did not have the authority to limit the assessments provided in the reevaluation.

I, therefore, find by the preponderance of the evidence that DCPS denied Student a FAPE when they failed to provide him a reevaluation as requested by Petitioner at the January 19, 2012 MDT meeting.

3. *Failing to evaluate Student's need for services before significantly reducing or eliminating speech/language services and occupational therapy services required by Student's IEP. The February 7, 2011 IEP reduced Student's speech services from 30 minutes per week to 90 minutes of consultative speech services per month. Student's occupational therapy services were discontinued at the February 7, 2011 meeting.*

It is clear that Student's speech services were reduced from 30 minutes per week of direct service to 30 minutes per month of consultative services at the February 7, 2011 IEP meeting. At the same meeting Student's occupational therapy services were discontinued. Petitioner argues IDEA requires a speech language assessment prior to a reduction in service and an occupational therapy assessment prior to the discontinuation of this service. In support of this position Petitioner cites 34 C.F.R § 300.305(e)(1) which requires a public agency to evaluate a child with a disability before determining the child is no longer eligible for services under IDEA. This provision, therefore, does not address the situation before me. The issue here is not a team determination that Student is not eligible for services. Rather it is a team decision regarding what services Student requires in order to receive a FAPE. As Respondent points out, OSEP has stated

Part B and its implementing regulations do not specify criteria for discontinuing a particular service or services included in the IEP of a child with a disability; rather, these determinations must be made on an individual basis for each child with a disability through the IEP process, in accordance with 34 CFR §§ 300.320 through 300.324.

Letter to Koscielniak, 58 IDELR 168 (Dec. 11, 2011).

It is this individualized decision making process that occurred when Students speech language services were decreased and his occupational therapy services discontinued at the February 7, 2011 IEP meeting. The meeting notes from that meeting as well as the testimony of

the speech and occupational therapists who worked with Student at the time of this meeting provide support for the changes to Student's services. The speech therapist testified Student showed progress on his goals. He had developed necessary skills in expressive and receptive language and was able to request assistance when he needed it. The speech therapist recommended Student's services be changed, as indicated in the IEP, and the team, including Petitioner, agreed. The process followed that required by IDEA.¹¹

Petitioner now argues Student had not demonstrated mastery of the expressive/receptive language skills because he had shown such mastery for only a few weeks. Student's speech language therapist uncontroverted testimony is that there is no standard time frame for demonstrating mastery of a goal. Petitioner presented the testimony of [redacted] and Sharon Pecover in support of her position Student had not mastered the relevant goals. However, neither of these witnesses is a speech therapist and neither provided an established standard time frame for establishing mastery of a goal. [redacted] the founder and owner of

[redacted] a private program providing tutoring and speech services to Student relied on a one page, undated summary of Student's needs provided by a [redacted] speech therapist contractor when testifying as to Student's speech needs. I find this testimony to be less persuasive than Student's current speech therapist's testimony due to the contractor's summary's short length and because it is undated. The testimony of [redacted] also was not persuasive in that she stated she did not know how Student's speech was affecting his reading.

The testimony of Student's occupational therapist regarding the discontinuation of Student's occupational therapy services was persuasive. She stated he had reached the standard set in his IEP when she recommended discontinuing service. She also explained that some

¹¹ I note a similar process was followed at the January 2012 meeting when Student's speech services were increased to 90 minutes of indirect service per week.

activities could occur in the classroom and that while Student still had some deficits they did not affect his ability to access his education. Again, Petitioner's witness did not provide testimony that would support a finding to the contrary. Petitioner's strongest argument was that the services the occupational therapist recommended be provided in the classroom were not being so provided. There was, however, no evidence other than this assertion supporting this claim. Student was not asked about these activities and none of his teachers testified. There is no reliable evidence supporting a finding that the services the occupational therapist recommended occur in the classroom were not occurring.

I therefore find, by a preponderance of the evidence, Student was not denied a FAPE by the decrease in speech language services and the discontinuation in occupational therapy services without reevaluation at the February 7, 2011 IEP meeting.

4. *Failing to develop appropriate IEPs at the February 7, 2011 and January 19, 2012 IEP meetings. Neither IEP includes occupational therapy services. The transitions plans included in each IEP are not appropriate in that there are insufficient goals addressing independent living skills and post high school education*

As I discussed the appropriate process used to discontinue Student's occupational therapy services at the February 7, 2011 IEP meeting when addressing Issue 3, *supra*, I will not address it again here. Further, to add occupational therapy services to Student's IEP at January 19, 2012 meeting would have required an evaluation establishing his need for such services to receive a FAPE. While it is true I have found there was a delay in reevaluating Student, the first suggestion he might need a new occupational therapy evaluation and the possible reinstating of services occurred during the January 2012 meeting when Petitioner requested an occupational therapy evaluation. Petitioner was able to request such an evaluation any time after the February 7, 2011 meeting and did not do so until January 2012.

I therefore find by the preponderance of the evidence, Student was not denied a FAPE by the failure to include occupational therapy services on his 2011 and 2012 IEPs. I note this is not intended to suggest that a subsequent occupational therapy evaluation may or may not establish such a need. It is simply a finding that there was no such evidence at the time either of these IEPs was developed.¹²

Petitioner also alleges the transition plans included in the February 2011 and January 2012 IEPs are not appropriate. She claims they do not have sufficient goals addressing independent living and post high school education.

There is one independent living goal on the February 2011 IEP. It is that Student will obtain his driving learner's permit. There are 5 post-secondary education goals on this IEP. They are:¹³ 1) Student will attend post-secondary fairs and research 3 local community colleges; 2) Student will describe his disability in terms of learning strengths and weaknesses; 3) Student will be able to explain differences among IDEA and Section 504 and ADA protections; 4) Student will attend a College/Trade School Fair and complete a questionnaire; and 5) Student will complete a community service verification log.

The January 2012 IEP has one long term independent living goal. It is to obtain a driver's license. There is one related short term goal which is to obtain his driver's permit. He also is to take a driver's education class in the community. This IEP includes one long term post-secondary education goal. It is to attend a community college. There is one related short term goal which is to complete college applications with teacher assistance. There also is reference to participation in senior advising for completing applications.

¹² If DCPS had provided the reevaluation requested at the January 2012 MDT meeting, the team would have reconvened to review the results of the evaluations and determine whether there should be any changes to Student's IEP based on these results.

¹³ The following are summaries of the goals as written on the IEP.

Petitioner relied on the testimony of _____ of _____ regarding this issue. _____ who was qualified as an expert in special education as it relates to the development of IEPs, testified that the two transition plans at issue here were not appropriate because they were not based on comprehensive evaluation of Student's transition needs and that the plans, as written, had not been implemented, suggesting that the lack of implementation resulted from the failure to develop appropriate transition plans. The lack of implementation of the plans, however, was based only on report of Student. _____ stated she had not discussed the plans with anyone at _____. She noted that Student works best with a comprehensive plan that helps him work through a process. It is her view that the assessments used to develop the transition plan were inadequate in that he did not receive an interest inventory, the assessments used (a psychological, Woodcock-Johnson) do not correlate with entry into college or vocational training, the career decision making test used cannot be used to develop goals as it only identifies interests, and an interview is not structured. As a result the plan to prepare student for post-secondary education and/or employment is not laid out in a cohesive, step by step manner. Long's testimony also supported Petitioner's contention that the transition plans were not appropriate because they did not lay out a step by step process for Student to follow to gain admittance to college.

In contrast, _____ the transition coordinator at _____ who testified she has extensive experience and training¹⁴ in developing transition plans, has been working with Student for the last two years. She stated Student is very self-sufficient, and it was her opinion that obtaining his learner's permit was the only age-appropriate, independent living skill he had not yet mastered. Her testimony was that additional daily living skills identified as needs Student has by Petitioner's witness, such as learning about leases or renting his own apartment,

¹⁴ She is certified by Office of the State Superintendent of Education in this area.

are not age appropriate, that these are skills he will address when he is a little older. She also credibly testified to her efforts to address Student's post-secondary education goals. She discussed his goals with him and made recommendations regarding possible options such as Job Corps or community college – specifically recommending Montgomery Community College due to its exceptionally good support for students with disabilities. Student, again, appears to have been a major driver in how the transition plans were developed and the transition plans reflect his views as understood by his transition coordinator.

The testimony suggests there is some confusion and lack of cooperation between _____ and _____ perhaps resulting from their agreement that Student is a competent and capable individual who is a strong self-advocate. Each witness appears to have relied on Student's report of what has or has not occurred in reaching decisions about his needs for transition. For example, _____ knew that Student was able to use public transportation independently but did not know _____ had helped him learn to do this.

_____ knew Student had not attended college visits but did not appear to know this was his choice and not a result of inaction by _____. Student appears to have clearly expressed his desire to attend a vocational training program to _____ but been less clear with Seeds of Tomorrow.

It is clear that the transition plans included in the 2011 and 2012 IEPs were developed in compliance with IDEA. The plans were developed at IEP meetings held in compliance with 34 C.F.R. §§ 300.320 through 300.324. There are measurable goals in all required areas including post-secondary education, employment and independent living, and the goals that are written are appropriate. Petitioner alleges the goals in independent living and post-secondary education are not appropriate and by this, the testimony indicates she means insufficient. The independent

living goals cannot be so construed. A student who everyone agrees is focused, competent and motivated, who has completed high school in three years, has obtained a job (albeit with assistance), maintains a bank account (albeit with assistance), travels by Metro independently and is able to cook, clean and care for his nieces and nephews cannot be said to be in need of additional services in this area. Appropriate does not mean that he is to achieve all that is possible. It means he is to achieve some educational benefit, *See, Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982), and he has received such benefit.

The post-secondary education goals also cannot be deemed inappropriate due to insufficiency or any other reason. Student's transition plans have included goals in identifying colleges, visiting colleges and completing applications, among other items. This is a standard process that would have provided Student educational benefit had he participated in the process. His refusal to do so cannot be a basis for finding Respondent did not develop appropriate goals. Petitioner's position that the assessments used to develop the goals on the transition plan apply more to the assessment of student's future employment goals than to the post-secondary education goals as the possible vocational programs suggested to Student were not based on a specific career goal and would have allowed him to develop and follow his interests. Respondent cannot be found to have provided inappropriate post-secondary education goals because Student expressed different interests at different times.

I therefore find by a preponderance of the evidence DCPS did not fail to provide Student a FAPE by developing inappropriate independent living goals and post high school education goals in the transition plans included in Student's February 2011 and December 2012 IEPs.

5. *Failing to implement the independent living goal requiring DCPS assist Student in obtaining his learner's permit for driving as provided in the transition plan of the February 19, 2010 IEP*¹⁵

The independent living goal in the transition plan of Student's February 7, 2011 IEP (See FN 15) states Student "will acquire his driving license permit by the end of school year, June 2011." Petitioner presented the testimony of _____ and Student on this subject. This testimony established this goal has not been met. The question is whether the failure to meet this goal should be attributed to the school district and therefore be deemed a denial of FAPE.

The thrust of the testimony presented by _____ is that the school has not been implementing the goals included in Student's transition plans (in addition to her assertion the transition plan is not adequate as discussed under Issue 4, *Supra.*) specifically noting Student has not obtained his learner's permit. This is an uncontroverted fact. Testimony, however, makes it clear that Student has not obtained his learner's permit because he has chosen not to do so. The transition coordinator from _____ credibly testified Student chose to delay obtaining the permit in the 2010-2011 school year due to his busy schedule, and she agreed to continue the goal in his next IEP. Student himself testified that this year he wanted to begin to study for the test to get the learner's permit after he completed the on-line course he was taking this semester for credit needed for graduation. He recently completed the on-line course and indicated he is ready to begin to study for the test required to get the permit. The witnesses in this case have

¹⁵ Petitioner's original complaint indicated this issue was the failure to implement the transition plan in the 2010-2011 school year. During the prehearing conference and at the due process hearing this issue focused on the failure to assist Student in obtaining his driver's permit. Student's 2010 IEP does not contain a transition goal addressing his obtaining a learner's permit. His 2011 IEP includes a transition goal addressing his obtaining a driver's permit. As the evidence provided at hearing regarding the failure to implement Student's transition plan focused on the obtaining of the permit and as there was some confusion in the discussion at the prehearing conference regarding the February 19, 2010 IEP as distinguished from the February 7, 2011 IEP, I will address the learner's permit issue here as it relates to the 2011 IEP. I note the 2011 IEP goal on obtaining the driver's permit set June 2011, the end of the 2010 - 2011 school year as the date for achievement of the goal. The independent living transition goals in the 2010 IEP addressed daily living skills such as cooking and money management, behavior and identifying alternative solutions to school problems,

almost uniformly testified to Student's maturity, self-sufficiency, responsibility and goal directedness. For Petitioner to now argue that Student's decision not to engage in the learner's permit process due to his other obligations appears to suggest Student either could not or should not make a decision regarding obtaining his learner's permit. Clearly an individual with the capabilities demonstrated by Student is able to make such decisions and it is appropriate to encourage him to do so.

I therefore find, by a preponderance of the evidence that DCPS did not deny Student a FAPE when it did not ensure Student obtained his learner's permit. Rather than a failure to implement Student's IEP, this was based on Student's own decision not to engage in this process.

Failing to provide Student with a hearing assessment as recommended by Student's speech/language therapist at the February 7, 2011 IEP meeting.

The February 7, 2011 IEP meeting notes indicate the speech therapist recommended Student receive a hearing assessment, and the school director agreed to determine whether the assessment could be conducted or whether a list of resources would be provided to Petitioner. While this note does not specify team agreement, as this was an IEP meeting, and there was no indication of disagreement included in the notes on the meeting, it is reasonable to conclude there was team agreement to this recommendation. One of the basic principles of IDEA is that a team of specified participants are to make decisions about the individual needs of eligible students. This includes both the content of the individual pupils' IEP and the need for assessment when additional information is required. It is the team that has the final decision making authority unless a due process complaint is filed. See, 34 C.F.R. §§ 300.301 – 306 & 300.320 –

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Here the team made a decision and the district did not act. I therefore find by a preponderance of the evidence that Student was denied a FAPE when DCPS failed to provide Student a hearing assessment as indicated in the notes of the February 7, 2011 IEP meeting

Remedy request

IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid*, a hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3e 516, 365 U.S. App. D.C. 234 (D.C. Cir. 2005) citing *G. ex RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003). According to *Reid* “. . .the inquiry must be fact-specific and . . .the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid* at 524.

In the instant matter, all findings of noncompliance are procedural in nature. Respondent did not provide Student a timely triennial reevaluation, refused to provide a reevaluation as requested by parent at the January 2012 IEP/reevaluation meeting and did not provide a hearing assessment agreed to at the February 7, 2011 IEP meeting. As any compensatory education award would be based on the results of these evaluations, I cannot determine at this time what services, if any, Student may be eligible to receive because the evaluations were not provided. I, therefore, decline to order the provision of compensatory education services.

Petitioner also has requested I order Student receive 1 hour of speech therapy services and 30 minutes of occupational therapy each week until the evaluations and meeting to review the evaluations occur. I will not so order. There is no basis to establish, at this time, that Student needs occupational therapy services as a part of a special education program as his services were

discontinued, and there is no current assessment indicating such a need. There also is no basis to order speech services. There is no allegation that Student has not been receiving the speech services on his IEP, and there is no current assessment indicating these services were not appropriate to Student's need.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS denied Student a FAPE by failing to timely provide a timely reevaluation. Student did not received a comprehensive reevaluation since at least August 2008 until January 2012;
2. DCPS denied Student a FAPE when they failed to provide him a reevaluation as requested by Petitioner at the January 19, 2012 MDT meeting;
3. DCPS did not deny Student a FAPE by decreasing his speech language services and discontinuing his occupational therapy services without reevaluation at the February 7, 2011 IEP meeting;
4. Student was not denied a FAPE by the failure to include occupational therapy services on his 2011 and 2012 IEPs;
5. DCPS did not fail to provide Student a FAPE by developing inappropriate independent living goals and post high school education goals in the transition plans included in Student's February 2011 and December 2012 IEPs;
6. DCPS did not deny Student a FAPE when it did not ensure Student obtained his learner's permit. Rather than a failure to implement Student's IEP, this was based on Student's own decision not to engage in this process; and

7. Student was denied a FAPE when DCPS failed to provide Student a hearing assessment as indicated in the notes of the February 7, 2011 IEP meeting.

ORDER

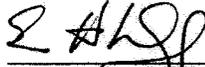
Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1. Within 10 work days of receipt of this Hearing Officer Determination, DCPS is to issue authorizations for the funding of the following independent educational evaluations: a comprehensive psychological, a speech and language, an occupational therapy, a vocational and a hearing assessment.
2. Within 20 work days of receipt of the results of last report received of the four ordered evaluations identified in the immediately preceding paragraph, i.e. all four reports are to have been received, DCPS will convene an MDT meeting to review the results and determine whether compensatory services are warranted because Student had educational needs that were not addressed due to the failure of DCPS to provide these assessments as required.
3. If it is determined compensatory services are warranted, the team, including Petitioner, Student (if he chooses to attend), Petitioner's educational advocate (if Petitioner chooses to have her attend) shall meet to develop a compensatory education plan.
4. The compensatory education plan shall be relevant to Student's activities at the time the plan is developed. It is unlikely he will have an IEP at that time as he is graduating from high school this school year. Therefore the plan is to provide services that will address the needs identified by the assessments, if any, and be relevant to Student's post high school education, training and/or employment.

IT IS SO ORDERED:

5/16/12

Date



Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).