

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

Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

2011 SEP 19 AM 9:29
OSSE
STUDENT HEARING OFFICE

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

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA"), and its implementing regulations at 20 U.S.C. §§ 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title 38 of the District of Columbia Code, Subtitle VII, Chapter 25, and Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

II. BACKGROUND

Petitioner is the parent of a -year-old student ("Student") with a disability who attends a public charter school ("Charter School") in the District of Columbia. On July 22, 2011, Petitioner filed a Due Process Complaint ("Complaint") against the Charter School ("Respondent") pursuant to IDEA.

This Hearing Officer was appointed to preside over this case on July 25, 2011. Respondent filed an Answer to the Complaint on July 28, 2011.²

The parties participated in a resolution meeting on August 3, 2011. The parties were unable to resolve the Complaint and agreed to proceed to a due process hearing. The parties agreed that the forty-five day, due process hearing timeline began on August 4, 2011.

¹ Personal identification information is provided in Attachment A.

² Respondent did not challenge the sufficiency of the Complaint.

On August 9, 2011, and August 23, 2011, this Hearing Officer held prehearing conferences in which Alana Hecht, counsel for Petitioner, and Paul Dalton, counsel for Respondent, participated. On August 31, 2011, this Hearing Officer issued a prehearing conference summary and order.

The due process hearing convened at 9:00 a.m. on September 7, 2011. At the outset of the hearing, this Hearing Officer entered into evidence each party's respective exhibits.³ Petitioner testified and called one witness, her educational advocate ("Advocate"). Respondent called five witnesses, the special education coordinator ("SEC"), a general education teacher, a special education teacher, a transition coordinator, and a school psychologist ("Psychologist"). The due process hearing concluded at 3:45 p.m. on September 7, 2011.

III. ISSUES PRESENTED

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

A. Whether Respondent denied the Student a free, appropriate, public education ("FAPE") by failing to conduct a comprehensive psychological evaluation since June 2008 to determine his present levels of academic performance and cognitive and psychological functioning;

B. Whether Respondent denied the Student a FAPE by failing to conduct a vocational assessment during the 2010-2011 school year prior to developing the Student's post-secondary transition plan in May 2011;

C. Whether Respondent denied the Student a FAPE by developing an individualized educational program ("IEP") on May 4, 2011, that did not include Petitioner's input, did not include behavioral support services; and included a transition appropriate transition services plan that was not based on a vocational assessment of the Student;

D. Whether Respondent denied the Student a FAPE by failing provide him 27.5 hours of specialized instruction as required by his May 4, 2011, "IEP" because some of the Student's teachers are not licensed to provide specialized instruction.⁴

Petitioner requests relief in the form of an order requiring Respondent to fund independent comprehensive psychological and vocational evaluations. Petitioner further requests that this Hearing Officer order Respondent to review the evaluations and review and

³ This Hearing Officer entered into evidence Petitioner's exhibits 1-5 and Respondent's exhibits 1-16. Respondent's exhibits 1-14 were duplicative of Petitioner's exhibits 1-14. For ease of reference, this Hearing Officer will refer only to Petitioner's exhibits 1-14.

⁴ Petitioner presented no evidence on this claim at the due process hearing and thus this Hearing Officer will not address it herein.

revise the Student's IEP and transition plan within 15 days of receiving the independent evaluations.⁵

IV. FINDINGS OF FACT

1. The Student is a year-old, -grade student with a disability.⁶ He was found eligible for special education when he was in elementary school.⁷ During the past three school years, the Student attended the Charter School.⁸

2. On May 4, 2011, when the Student was in grade,⁹ his IEP team found that he remained eligible for special education as a student with other health impairment.¹⁰ Present at the May 4, 2011, meeting, were the Student's general education teacher, special education teacher, a psychology associate, and the SEC.¹¹ Neither Petitioner nor the Advocate were present at the meeting.¹²

3. The Charter School attempted to invite Petitioner to the May 4, 2011, IEP meeting.¹³ On April 1, 2011, the Charter School sent a letter of invitation to Petitioner¹⁴ at the home address Petitioner had provided the Charter School when she enrolled the Student for the 2010-2011 school year.¹⁵ On April 14, 2011, the Charter School sent a second letter to this address.¹⁶ On the day of the May 4, 2011, meeting, the Charter School twice attempted to reach Petitioner by telephone.¹⁷ When the Charter School called Petitioner's home phone, it learned that the phone was disconnected.¹⁸ When the Charter School, called Petitioner's alternate number, an automated message stated that the person at that number was not accepting phone calls.¹⁹

⁵ Petitioner reserved the right to bring a claim for compensatory education. At the due process hearing, counsel for Petitioner stated that she was reserving this claim due to the lack of recent assessments of the Student, she lacked sufficient data to determine the compensatory education to which the Student may have been entitled. Respondent raised no objections in response to Petitioner's request.

⁶ Testimony of Petitioner; Respondent Exhibit 15 (May 4, 2011, Final Eligibility Determination Report).

⁷ *Id.*

⁸ Petitioner Exhibit 11 (May 13, 2009, IEP); Petitioner Exhibit 5 (May 4, 2011, IEP); testimony of Petitioner.

⁹ Testimony of Petitioner.

¹⁰ Respondent Exhibit 15 at 1.

¹¹ *Id.* at 2.

¹² *Id.*; testimony of Petitioner, Advocate.

¹³ Testimony of SEC.

¹⁴ *Id.*

¹⁵ Testimony of Petitioner.

¹⁶ Testimony of SEC.

¹⁷ *Id.*

¹⁸ Petitioner Exhibit 5 at 1 (May 4, 2011, IEP).

¹⁹ *Id.*

4. The Charter School did not send a letter of invitation home with the Student.²⁰ The Charter School also did not ask the Student for Petitioner's current phone number and address.²¹

5. At the May 4, 2011, meeting, the IEP team conducted a "re-evaluation," which was a review of existing data.²² The IEP team reviewed the Student's most recent formal assessments, which were conducted in 2008.²³ Neither assessment contained a Woodcock-Johnson or similar assessment of the Student's academic achievement.²⁴ The IEP team was unable to determine if the Student had a learning disability without these achievement scores.²⁵

6. They discussed his progress and determined that no further testing or assessment was required.²⁶ The IEP team did not conduct further assessments because the members of the team did not believe they were necessary to determine the Student's disability classification.²⁷ The IEP team also did not believe further assessments were necessary because the Student had no other areas of suspected disability.²⁸

7. The Charter School administered the wide-range achievement test ("WRAT") to all students, including the Student, at the beginning of the 2010-2011 school year.²⁹ This test assessed only the Student's performance in sentence completion and math calculation.³⁰ The form of the WRAT the Charter School administered to the Student did not assess his writing abilities or his performance in other areas of mathematics.³¹ The WRAT revealed that the Student made one year's progress in reading and three month's progress in math during the 2009-2010 school year.³²

8. The Woodcock-Johnson III test of academic achievement and the Wechsler Individual Achievement Test ("WIAT") are much more comprehensive tests of a student's academic achievement than the WRAT.³³ The Woodcock-Johnson and the WIAT are the most widely used tests of academic achievement.³⁴ Both of these tests assess standard skills and allow the examiner to assess a student's academic achievement over successive administrations of the

²⁰ Testimony of SEC.

²¹ *Id.*

²² Testimony of Advocate, Psychologist.

²³ Testimony of SEC; Petitioner Exhibit 13 (December 12, 2008, Brief Confidential Cognitive Evaluation); Petitioner Exhibit 14 (June 18, 2008, Clinical Psychological Evaluation).

²⁴ *Id.*

²⁵ Testimony of SEC.

²⁶ Testimony of Advocate, Psychologist.

²⁷ Testimony of Psychologist.

²⁸ *Id.*

²⁹ Testimony of Psychologist.

³⁰ Testimony of Psychologist.

³¹ *Id.* The WRAT contains a spelling test but the Charter School does not administer this portion of the test. *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

test.³⁵ The Charter School did not assess the Student's performance using the Woodcock Johnson or WIAT as the members of the IEP team did not think it was necessary because all agreed that he continued to require specialized instruction in reading, writing and math.³⁶

9. The Woodcock Johnson and WIAT would have produced data that could be used in developing present levels of performance ("PLOPs") on the Student's IEP.³⁷ They also would have identified specific deficit areas that the Student's teachers could target in the classroom.³⁸

10. At the May 4, 2011, meeting, the IEP team discussed the Student's performance in school.³⁹ His teachers reported that he received an F in geometry, and a D in English II.⁴⁰

11. The Student's May 4, 2011, IEP does not reflect the grade equivalent of his academic performance in mathematics, reading, or written expression.⁴¹ The PLOPs do not provide specific data on the Student's performance.⁴² The PLOP for mathematics states only that the Student "demonstrates some level of difficulty in geometry."⁴³ The baseline for goal number one in mathematics states only that the Student "understands basic arithmetic and it able to use it to solve math problems and equations."⁴⁴

12. Baselines on an IEP are supposed to be more specific than the PLOPs.⁴⁵ On the Student's May 4, 2011, IEP, the baseline for annual goal number two in mathematics states that the Student "demonstrates difficulty with writing paragraphs using topic sentences."⁴⁶ It further states that he "has difficulty with writing sentences using correct spelling and grammar mechanics."⁴⁷ Finally, it states that he "has difficulty with writing sentences and as a result he struggles with writing cohesive paragraphs."⁴⁸

13. On the May 4, 2011, IEP, the Student's PLOP in reading states only that his academic skills are limited in this area.⁴⁹ It states that he has difficulty with reading comprehension, can read simple and complex sentences with minimal support, and will sound out unfamiliar words.⁵⁰ The PLOP does not indicate the grade level on which the Student is reading.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Testimony of SEC.

⁴⁰ *Id.*

⁴¹ Testimony of SEC.

⁴² Petitioner Exhibit 5 at 2-4.

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ Testimony of Advocate.

⁴⁶ Petitioner Exhibit 5 at 2.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

14. On the May 4, 2011, IEP, the baseline for goal number one in reading states only that the Student reads aloud in class, and if he is unsure of a word, will take the time to try to sound out the word.⁵¹ It states that he is able to recognize some multisyllabic words.⁵² The remaining baselines are similarly vague.

15. The Student has low motivation to perform academically.⁵³ When presented with an assignment, he delays working on it. He arrives late to class and is not ready to begin working.⁵⁴

16. The Student does not exhibit behavioral difficulties in the classroom.⁵⁵ He is quiet and often does not speak up when he needs assistance.⁵⁶ The special education teacher regularly checks on him to ensure he is keeping up with the class and redirects him if he is off-task.⁵⁷ Although his ADHD affects his functioning in the classroom,⁵⁸ the Student's need for redirection did not impede his academic performance.⁵⁹

17. In October 2010, the Student took an interest inventory to determine which vocational pursuits would interest him.⁶⁰ This inventory revealed that he was interested in mechanical jobs, including auto mechanics and computer programming.⁶¹ It also revealed that the Student wants to attend _____ school after he graduates from high school.⁶² The interest inventory did not reveal the Student's aptitude for the vocational school, auto mechanics, or computer programming.⁶³

18. The Advocate provided credible testimony. She easily recalled the details of the meetings she attended and the contents of the Student's IEP. Her testimony was uncontroverted and supported by the documentary evidence.

19. Petitioner was a credible witness. She was forthright about the Student's difficulties in school and low academic performance. She also provided an accurate recollection of the meetings she attended. Her testimony was uncontroverted.

20. The Psychologist provided in-depth testimony about the nature of the discussions at the May 4, 2011, meeting and the considerations of the IEP team. He testified credibly about the information possessed by the IEP team and the attributes of the assessments that the team could have requested.

⁵¹ *Id.* at 3.

⁵² Testimony of Advocate.

⁵³ Testimony of general education teacher.

⁵⁴ *Id.*

⁵⁵ Testimony of special education teacher.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Testimony of Psychologist.

⁵⁹ Testimony of special education teacher.

⁶⁰ Testimony of transition coordinator.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*; testimony of Advocate.

21. Both the general education and special education teachers were credible witnesses. They provided general information on the IEP team's deliberations on May 4, 2011, and the reasoning of the team's decisions.

V. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.⁶⁴ FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."⁶⁵ It "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."⁶⁶

Each local education agency ("LEA") is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."⁶⁷ In deciding whether an LEA provided a FAPE to a student, the inquiry is limited to (a) whether the LEA complied with the procedures set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable him/her to receive educational benefits.⁶⁸ The IEP is the centerpiece of special education delivery system.⁶⁹

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.⁷⁰ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive rights*.⁷¹

⁶⁴ 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1).

⁶⁵ 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, D.C. Mun. Reg. tit. 30 § 3001.1.

⁶⁶ *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).

⁶⁷ 34 C.F.R. § 300.101.

⁶⁸ *Rowley* at 206-207.

⁶⁹ *Lillbask v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).

⁷⁰ 20 U.S.C. § 1415 (f)(3)(E)(ii).

⁷¹ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). See also *C.M. v. Bd. of Educ.*, 128 Fed. Appx. 876, 881 (3d Cir. 2005) (per curiam) ("[O]nly those procedural violations that result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable."); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc) ("[P]rocedural flaws do not automatically render an IEP legally defective") (citations omitted); *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992) (rejecting the proposition that procedural flaws "automatically require a finding of a denial of a FAPE"); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) (rejecting an IDEA claim for technical noncompliance with procedural requirements because the alleged violations did not result in a "substantive deprivation" of

The burden of proof is properly placed upon the party seeking relief.⁷² A petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.⁷³ The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.⁷⁴ In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.⁷⁵ Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,⁷⁶ except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.⁷⁷

VI. DISCUSSION

Each public charter school shall elect to either serve as a dependent charter of the District of Columbia Public Schools local education agency (LEA) for purposes of the IDEA, or function as an independent charter LEA ("LEA Charter").⁷⁸ Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEA and its implementing regulations, and local laws, regulations, and policies.⁷⁹ Respondent is an LEA Charter.

A. Petitioner Proved that Respondent Denied the Student a FAPE by Failing to Conduct a Comprehensive Psychological Assessment since June 2008 to Determine His Present Levels of Academic Performance and Cognitive and Psychological Functioning.

An "evaluation" means "procedures" used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.⁸⁰ An LEA must ensure that a re-evaluation of each child with a disability is conducted at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary.⁸¹ To conduct an evaluation, the IEP team shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical

student's rights); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990) (refusing to award compensatory education because procedural faults did not cause the child to lose any educational opportunity).

⁷² *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

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

⁷⁴ *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).

⁷⁵ *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), aff'd, 512 U.S. 246 (1994).

⁷⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

⁷⁷ *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

⁷⁸ D.C. Mun. Regs. tit. 5-E § 3019.2 (2009).

⁷⁹ *Id.* at 3019.3.

⁸⁰ 34 C.F.R. § 300.15.

⁸¹ 34 C.F.R. § 300.303 (b)(2).

condition, social or cultural background, and adaptive behavior; and carefully consider and document information used as a basis of the team decision.⁸²

A public agency must ensure that a re-evaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation.⁸³ Re-evaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case.⁸⁴ The parent of a child with a disability has the right to obtain an independent educational evaluation ("IEE") at public expense if the parent disagrees with the evaluation obtained by the public agency.⁸⁵

As part of any re-evaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or state assessments, and classroom-based observations; and observations by teachers and related services providers.⁸⁶ On the basis of that review, and input from the child's parents, the LEA must identify what additional data, if any, are needed to determine whether the child continues to have a disability, the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child, and to participate, as appropriate, in the general education curriculum.⁸⁷ The LEA must administer such assessments and other evaluation measures as may be needed to produce this data.⁸⁸

In evaluating each child with a disability, the LEA must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and services needs, whether or not commonly linked to the disability category in which the child has been classified.⁸⁹

Here, Respondent conducted a re-evaluation that consisted of a review of the Student's existing records and reports from his teachers. Respondent declined to conduct an assessment of the Student even though his existing assessments included no data on his academic performance. Apparently, the employees of the Charter School believe that a re-evaluation is necessary only to determine that a student continues to be eligible for specialized instruction and/or related services.⁹⁰ This ignores the plain language of the statute, which states that the purpose of a

⁸² D.C. Mun. Regs. tit. 5-E § 3005.4.

⁸³ 34 C.F.R. § 300.303 (a)(2).

⁸⁴ *Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005) (upholding hearing officer's determination that four-month delay in reevaluating a student with a current IEP was not unreasonable) (citations omitted).

⁸⁵ 34 C.F.R. § 300.502 (b)(1).

⁸⁶ 34 C.F.R. § 300.305 (a)(1).

⁸⁷ 34 C.F.R. § 300.305 (a)(2).

⁸⁸ 34 C.F.R. § 300.305 (c).

⁸⁹ D.C. Mun. Regs. tit. 5-E § 3005.9 (h).

⁹⁰ Testimony of Psychologist, general education teacher, special education teacher.

reevaluation is to determine the “extent of the special education and related services that the child needs.”⁹¹

Here, the Student’s prior evaluations, and the other data the IEP team reviewed, failed to provide the information necessary to determine the “extent of the special education and related services that he needs.” The Student’s December 12, 2008, assessment was two pages long, consisting of behavioral observations and a discussion of his IQ score.⁹² It contained no cognitive performance discussion and no data on his academic achievement.⁹³ Similarly, the Student’s June 24, 2008, clinical psychological evaluation contained no cognitive performance or academic achievement data.⁹⁴

Due to this paucity of data, the Student’s May 4, 2011, IEP contains vague and inaccurate PLOPs in all areas. For example, the PLOP for mathematics simply states that he has some level of difficulty in geometry. This provides little useful information for the Student’s teachers, who must understand his weaknesses in order implement the goals on his IEP.

More egregious is the baseline for an annual goal in mathematics, which requires the Student to simplify rational expressions in order to solve rational equations and inequalities.⁹⁵ The baseline states only that he demonstrates difficulty with writing paragraphs using topic sentences, writing sentences using correct spelling and grammar mechanics, and that he struggles with writing cohesive paragraphs.⁹⁶ This baseline is unrelated to the goal and makes it impossible to determine whether he made any progress on this goal.

The Student’s PLOPs and baselines in the areas of written expression and reading are similarly vague. This is a glaring omission considering that, at the time it developed the May 4, 2011, IEP, the IEP team knew that Student had failed English II during the 2010-2011 school year.⁹⁷ Considering that, at the May 4, 2011, meeting the special education teacher reported that Student had failed geometry and received a D in English, the IEP team would have had current, detailed information to include in his IEP. Yet, it included little detail on his IEP regarding his level of performance in mathematics, reading, and writing.⁹⁸

This Hearing Officer concludes that these deficiencies in the Student’s IEP resulted from the failure of the IEP team to conduct psychological and educational assessments of the Student. These deficiencies are so numerous as to render the IEP meaningless.

Because the IEP is central to the provision of FAPE to a Student, this Hearing Officer concludes that these are not mere procedural deficiencies. Thus, Petitioner proved that Respondent denied the Student a FAPE by failing to conduct a comprehensive psychological

⁹¹ 34. C.F.R. § 300.15.

⁹² Petitioner Exhibit 13 at 2.

⁹³ *Id.*

⁹⁴ Petitioner Exhibit 14.

⁹⁵ Petitioner Exhibit 5 at 2.

⁹⁶ *Id.*

⁹⁷ Respondent Exhibit 15 at 4.

⁹⁸ Petitioner Exhibit 5 at 2-4.

assessment since June 2008 to determine his present levels of academic performance and cognitive and psychological functioning.

B. Petitioner Failed to Prove that Respondent Denied the Student a FAPE by Failing to Conduct a Vocational Assessment During the 2010-2011 School Year Prior to Developing His Post-Secondary Transition Plan on May 4, 2011.

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals.⁹⁹

Transition services include a coordinated set of activities for a child with a disability, designed within an outcome-oriented process, that promote movement from school to post-school activities including post-secondary education; vocational training; integrated employment, including supported employment; continuing and adult education; or independent living.¹⁰⁰ Transition services include activities based on the individual child's needs, taking into account the child's preferences and interests including instruction, related services, community experiences, development of employment and other post-school adult living objectives; acquisition of daily living skills, if appropriate; and a functional vocational evaluation, if appropriate.¹⁰¹ Transition services for children with a disability may be special education, if provided as specially designed instruction, or related services, if required to assist a child with a disability to benefit from special education.¹⁰²

Here, Petitioner established that Respondent failed to conduct the assessment required by IDEA prior to developing the transition plan in the Student's May 4, 2011, IEP. Considering that the Student's birthday is in October, this is the IEP that will be in effect when he turns sixteen, Respondent would be well advised to conduct a vocational assessment of the type contemplated by the IDEA regulations within the next thirty days.

However, Petitioner failed to show how Respondent's failure to conduct this assessment, and reliance on the interest inventory, harmed the Student. Petitioner failed to introduce any evidence of the services, training, or education the Student would have received had Respondent conducted a proper transition assessment. For this reason, Respondent's failure to conduct this assessment amounts to a procedural violation.

Thus, Petitioner failed to prove that Respondent denied the Student a FAPE by failing to conduct an appropriate transition assessment prior to developing the Student's May 4, 2011, transition plan.

⁹⁹ 34 C.F.R. § 300.320 (b).

¹⁰⁰ D.C. Mun. Regs. tit. 5-E § 3001.

¹⁰¹ *Id.*

¹⁰² *Id.*

C. Petitioner Failed to Prove that Respondent Denied the Student a FAPE by Developing an IEP on May 4, 2011, Without Petitioner's Input, that Failed to Provide Behavioral Support Services.

The IEP is the centerpiece of special education delivery system.¹⁰³ The adequacy of the student's IEP is determined by whether the student has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."¹⁰⁴ IDEA does not require that the services provided maximize each child's potential.¹⁰⁵

In developing an IEP, the IEP team must consider the strengths of the student; the parents' concerns for enhancing the education of the student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.¹⁰⁶ An IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects his involvement and progress in the general education curriculum.¹⁰⁷ An IEP also must include a statement of measurable annual goals.¹⁰⁸

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,¹⁰⁹ establishes annual goals related to those needs,¹¹⁰ and provides appropriate specialized instruction and related services.¹¹¹ The IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the child's involvement and progress in the general education curriculum.¹¹²

The services provided in the IEP must address all of the student's identified special education and related services and must be based on the student's unique needs and not on his disability.¹¹³ For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."¹¹⁴

¹⁰³ *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).

¹⁰⁴ *Rowley*, 458 U.S. at 201 (1982).

¹⁰⁵ *Id.* at 198.

¹⁰⁶ 34 C.F.R. § 300.324 (a).

¹⁰⁷ 34 C.F.R. § 300.320 (a) (1); 5 D.C.M.R. § 3007.2 (a).

¹⁰⁸ 34 C.F.R. § 300.320 (a) (2) (i); 5 D.C.M.R. § 3007.2 (b) (annual goals must include short-term instructional objectives).

¹⁰⁹ 34 C.F.R. § 300.320 (a) (1).

¹¹⁰ 34 C.F.R. § 300.320 (a) (2).

¹¹¹ 34 C.F.R. § 300.320 (a) (4).

¹¹² 34 C.F.R. § 300.320 (a) (1); D.C. Mun. Regs. tit. 5-E § 3009.1.

¹¹³ D.C. Mun. Reg. tit. 30 § 3002.1(f).

¹¹⁴ *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

1. Petitioner Failed to Prove that Respondent Did Not Provide an Opportunity for Her to Participate in the Decision-Making Process Regarding the Student's May 4, 2011, IEP.

In enacting IDEA, "Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child's individual educational program."¹¹⁵ The statute's emphasis on the full participation of parent(s) in the IEP process demonstrates that "adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."¹¹⁶

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.¹¹⁷ One of the important policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and determine if any change to the program is necessary."¹¹⁸

Thus, Respondent must ensure that a parent of each child with a disability is a member of any group that makes decisions on the education of the parent's child.¹¹⁹ Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE.¹²⁰

Here, Petitioner provided the address at which she resided to the Charter School when she registered the Student for the 2010-2011 school year.¹²¹ In January 2011, Petitioner moved from that residence.¹²² Yet, Petitioner failed to inform the Charter School of her new address or phone number despite being informed that she was to ensure that the school had current contact information for her and the Student.

Respondent attempted to contact Petitioner on April 1, 2011, and April 14, 2011, to invite her to an IEP meeting to review and revise the Student's IEP.¹²³ Respondent apparently was unsuccessful in reaching Petitioner because she had failed to provide the Charter School with her new address and phone number. Finally, when Respondent attempted to contact Petitioner on the day of the IEP meeting, May 4, 2011, Respondent learned that Petitioner's phone number was no longer in service.¹²⁴

¹¹⁵ *Rowley*, 458 U.S. at 208.

¹¹⁶ *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

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

¹¹⁸ *Alfano v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Dist. Of Columbia*, 360 F. Supp. 2d 138, 143 (D.D.C. 2005)).

¹¹⁹ 34 C.F.R. § 300.501 (c)(1); D.C. Mun. Regs. tit. 5-E § 3003.6.

¹²⁰ *See, e.g., W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

¹²¹ Testimony of Petitioner.

¹²² *Id.*

¹²³ Petitioner Exhibit 4 at 1.

¹²⁴ *Id.*

This Hearing Officer concludes that, by failing to inform the Charter School of her new address and phone number, Petitioner frustrated any efforts by Respondent to include her in the May 4, 2011, IEP meeting. Thus, Petitioner failed to prove that Respondent denied the Student a FAPE by failing to ensure that she had an opportunity to participate in the May 4, 2011, IEP meeting.

2. Petitioner Failed to Establish that the Student Requires Behavioral Support Services.

Petitioner presented no testimony or documentary evidence to establish that the Student requires behavioral support services. The only evidence introduced on this subject at the due process hearing was the testimony of Petitioner that the Student has mood swings. However, Petitioner failed to establish that these mood swings occurred at school or impacted his ability to access the curriculum.

Here, the Student's most recent clinical psychological evaluation found that he was not experiencing symptoms of depression.¹²⁵ It further found that his self-concept was in the average range.¹²⁶ It found that his profile as a whole suggested that he views himself in a relatively positive light.¹²⁷

Additionally, although the Student may exhibit avoidance behavior in the classroom by taking extra time to begin assignments, Petitioner failed to show how behavioral support services would have addressed this behavior.

Thus, Petitioner failed to prove that Respondent denied the Student a FAPE by failing to provide behavioral support services to the Student.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 17th day of September 2011, it is hereby:

ORDERED that Respondent shall fund an independent comprehensive psychological assessment of the Student, to include an assessment of the Student's social-emotional functioning, cognitive functioning, and academic achievement, by a provider of Petitioner's choice, to be completed within thirty calendar days of this Order; and

IT IS FURTHER ORDERED that, within fifteen school days of receiving the independent assessment, Respondent shall review the independent evaluation and review and revise the Student's IEP in accordance with the findings of the evaluation.

By: /s/ Frances Raskin
Hearing Officer

¹²⁵ Petitioner Exhibit 14 at 3.

¹²⁶ *Id.* at 4.

¹²⁷ *Id.*

NOTICE OF APPEAL RIGHTS

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