

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

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of
[STUDENT],¹

Date Issued: March 24, 2012

Petitioner,

Hearing Officer: Ternon Galloway Lee

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

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STUDENT HEARING OFFICE
2012 MAR 26 AM 8:42

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by PARENT (“Parent”), through her attorney, under the Individuals with Disabilities Education Act, as amended (the “IDEA”), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In her Due Process Complaint, Parent alleges that DCPS failed to provide Student a Free Appropriate Public Education “FAPE” because it refused to provide Student with related services. Petitioner identifies those related services as (i) therapeutic recreation, (ii) parent counseling and training, (iii) assessment of leisure functioning, (iv) rehabilitation services, (v) transportation support, (vi) and medication management. Parent also contends that DCPS failed to provide FAPE because it did not present a DCPS representative at Student’s MDT/IEP meetings on September

¹ Personal identification information is provided in Appendix A.

20, 2011, and November 21, 2011, who was qualified to interpret the results of evaluations and who could identify appropriate services for Student.

For relief, Petitioner seeks an order (1) for DCPS to convene an MDT/IEP meeting at the Student's placement within 5 days of the determination in this case to review and revise Student's IEP to include as related services those set forth above and (2) for DCPS to immediately begin funding independent service providers to provide the above-noted related services. Petitioner also seeks an award of compensatory education.

Student, a teenager, is a resident of the District of Columbia and is eligible for special education services under the disability category, emotional disturbance. Parent's Due Process Compliant, filed on January 9, 2012, named DCPS as respondent. The Hearing Officer was appointed on January 9, 2012. The parties were scheduled to meet for a resolution meeting on January 26, 2012, but two hours before the meeting, because DCPS was unprepared, it cancelled the meeting. The meeting was not rescheduled. No request was made to adjust the resolution period and counsel for the parties agreed during the January 27, 2012 telephonic prehearing conference ("PHC") that the 45 day due process hearing time period would begin on February 9, 2012. Also during the PHC, the issues were determined and other matters.

The Hearing Officer held the due process hearing on February 15, 2012, at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Counsel represented Parent at the hearing. Counsel also represented respondent DCPS. On behalf of Parent, four witnesses testified – Parent, a Ms. AG who was referred to as Student's counselor,² an educational expert, and a psychiatrist also

² Ms. AG testified by telephone briefly. Petitioner's disclosures identified her as a fact and expert witness. However, she provided no substantive testimony. Initially, Ms. AG was sworn during the morning portion of the hearing. At that point, she testified confirming some information that was provided on her resume. She then indicated someone had entered the room she was in and she could no longer testify in a confidential setting. A request was made to call

was presented as an expert. On behalf of DCPS, two witnesses testified – the Residential Program Manager, Ms. B, and the Progress Monitor Mr. L. Parent’s Exhibits P-1 through P-30 were admitted, as well as, DCPS’ Exhibits R-1 through R-11.³

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES

The issues to be determined are as follows:

A. Whether Respondent denied the Student a free, appropriate, public education (“FAPE”) fall 2011 by failing to provide Student with related services: therapeutic recreation; parent counseling and training; assessment of leisure functioning; rehabilitative services; transportation support; and medication management;

B. Whether Respondent denied the Student a FAPE by failing to have a DCPS representative at Student’s MDT/IEP meetings on September 20, 2011, and November 21, 2011, who is qualified to interpret the results of evaluations and indentify appropriate services for Student.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer’s Findings of Fact are as follows:

1. Student is age seventeen and has received special education since primary school.

the witness later. Several attempts were made later during the course of the hearing to allow Ms. AG to complete her testimony. In fact, the hearing was held up for about 30 minutes to allow Ms. AG to testify. The Hearing Officer then offered to permit this witness to testify at the conclusion of DCPS’ presentation of its case. Counsel for the Petitioner later stated she would not be calling Ms. AG as a witness for Parent.

³ At least five business days prior to the hearing, the Hearing Officer had informed counsel that all emails, correspondence, documents, notices, and orders she had received would be made part of the record.

He has a diagnosis of Mood Disorder and Attention Deficit Hyperactivity Disorder ("ADHD"). Academically student functions on grade levels 5.9 in mathematics, 6.1 in reading comprehension, 3.8 in basic reading skills, and 3.5 in written expression. (P-2, pp.1-4; P-18, p.3; R-8; Testimonies of Treating Psychiatrist ("Psychiatrist") and Dr. B).

2. Student's disability classification is emotional disturbance ("ED"). Student exhibits some impulsive behavior and when receiving difficult information shuts down and withdraws. He does have periods of sadness and irritability but not for long periods of time. In the past Student has also exhibited "acting out behaviors" such as throwing things. At times Student also needs redirecting due to his ADHD. Due to social emotional and behavior challenges student's MDT/IEP teams have determined he is unable to access his education in the general education setting. (Testimonies of Psychiatrist and Dr. B; R-8, p. 13).

3. Student has attended numerous schools in the past due to his behavior/emotional problems. He was admitted to a residential facility, ASY, January 2011. (Testimony of parent; P-18).

4. ASY is a highly structured residential program that is located in the District of Columbia. The purpose of the program at ASY is to work with students who are emotionally disturbed and help them grow socially and emotionally so that they can be reintegrated to their home community and school. (Testimonies of Dr. B and treating psychiatrist).

5. ASY notes a student's progress and readiness to be discharged from the facility using six levels. Levels six is the highest and indicates a student is well enough to be discharged. The clinical team at ASY meets monthly to assess a student's progress. (R-8; Testimony of Psychiatrist).

6. Prior to Student's entry in ASY Student's grade reports indicated his progress ranged from failing to poor. Student was also involved in criminal activity. He had been cutting classes, skipping school, and using illegal drugs during the time he attended his home school. (Testimonies of Psychiatrist and Dr. B; P-11, p.6, P-18).

7. During Student's early enrollment at ASY his progress was slow. (Testimony of Parent).

8. By August 9, 2011, Student had reached level 5, and by September 13, 2011, Student's treatment team determined he had reached level 6 and was ready for discharge. (R-8, pp. 5-8).

9. The MDT team met on September 20, 2011 to identify a potential educational placement for Student, discuss related services, and develop a draft IEP. (P-5).

10. Although several weeks before the meeting a DCPS representative had agree to attend, no one from DCPS was present during the September 20, 2011 meeting ("September meeting"). On September 20, 2011, when the meeting was held, the DCPS representative who agreed that a representation from DCPS would be present at the meeting was no longer employed by DCPS. (P-26; P-5; Testimony of Dr. B).

11. Those in attendance at the September MDT meeting were Student, Parent, Dr. B (Consultant at ASY and leader of IEP meetings), ASY Special Education teacher ("Ms. W"), and Student's therapist at ASY ("Mr. Wh. Student's therapist had only recently begun to provide Student therapy as Ms. AG had previously provided Student therapy. (Testimonies of Dr. B; P-5).

12. The draft IEP resulting from the September meeting noted Student needed specialized special education instruction outside the general education setting for 25.5 hours a

week. The drafted IEP reflected the MDT agreed Student required related services to transition to his home, school, and community. As drafted on IEP, those related services recommended appear below:

Service	Setting	Begin Date	End Date	Time/Frequency
Behavioral Support Services	Outside general Education	03/02/2010	03/01/2011	30 min per wk
Occupational Therapy	Outside general Education	9/20/2011	9/20/2012	45 min per wk
Parent Counseling and Training	Outside general Education	9/19/2011	9/20/2012	60 min per wk
Recreation	General Education	9/20/2011	9/20/2012	120 min per day
Rehabilitation Counseling	Outside general Education	9/20/2011	9/20/2012	2 hr per day

(P-4, p. 6; Testimony of Dr. B).

13. Family counseling was provided while Student was enrolled at ASY. Student received counseling/therapy by counselors/social workers at ASY. (Testimony of Psychiatrist).

14. Not all the related services recommended by the MDT were provided to Student during his enrollment at ASY. Psychiatrist was head of the clinical treatment team at ASY. She was unsure who provided recreational therapy. ASY's staff did not consist of a licensed recreational therapist. The evidence is insufficient to determine if Student received recreational therapy at ASY. (Testimony of Psychiatrist).

15. The September MDT, to include Dr. B, recommended the above listed services based on two letters from Psychiatrist, clinical treatment team notes, an October 26, 2011 psychological assessment, and discussions during the September meeting. (Testimony of Dr. B).

16. In letters dated May 31, 2011, and September 1, 2011, Psychiatrist recommended Student receive the related services listed below for five hours, five days a week to transition from the residential setting to his home, community, and school:

- (i) school support;

- (ii) assessment of leisure function;
- (iii) therapeutic recreation;
- (iv) socialization/community integration;
- (v) tutoring services; and
- (vi) family support (family counsel, parent training, and guidance)

Psychiatrist stated the related services were critical for Student to access specialized instruction in the school. (Testimony of Psychiatrist).

17. A psycho-educational assessment of Student was conducted on October 26, 2011. The reason for the evaluation was Student was before a court on charges of Simple Assault and Felony Threats. The court had ordered the evaluation to assess Student's current levels of cognitive, academic, and personality functioning and identify treatment recommendations. In the recommendation section of the report, the evaluator suggested, among other things, the following:

[Student] would likely benefit from continued academic and mental Health wraparound services to improve his school performance. Mixing Traditional classroom instruction with more hands on instruction May improve [Student's] attitude towards school.

Structured activities will be helpful in reducing [Student's] Opportunity to re-offend or engage in inappropriate activities. He should continue with football; additionally, expanding his ROTC involvement should be explored.

(P-18, pp 10-11).

18. Treatment team notes from ASY regarding Student's education dated October 4, 2011, note Student has shown self-discipline in the classroom, is an independent worker, and surpasses all his classmates. Treatment team notes about his school progress dated September

13, 2011 reflect that Student progressed well, put forth good effort, and was an independent worker. Treatment team notes about Student's academics, dated August 9, 2011, note Student was performing well academically, he puts forth good effort, and was becoming an independent worker. Treatment notes reflecting the clinical treatment team meeting on July 5, 2011, showed Student making consistent progress academically. Further, Student was generally a good student but he was talkative and needed to pay more attention to detail. (R-8, pp.1, 5, 8, and 11).

19. MDT notes from the September meeting indicated Student participated in therapy, and his therapist determined Student understood what Student's needs are and maintains appropriate interaction. The notes also indicated Student was able to self monitor when presented with difficult situations and he exhibited appropriate behavior in the academic setting. (P-5, p. 3).

20. The MDT team reasoned that Student needed a highly structured therapeutic educational placement with a low teacher ratio of 10:2. According to the MDT notes this placement was needed due to Student's "inconsistent internal regulation, mood disorder, and inability to consistently exercise control with his impulse behavior." The MDT also recommended that Student receive the related services recommended by Psychiatrist in her May 31, 2011, and September 1, 2011 letters. The MDT notes listed those services as therapeutic recreation, parent training, assessment of leisure function, rehabilitation services, transition support, and medication management. (P-5,pp.3-4)

21. During the September meeting, Parent was provided the names of two related service providers. They are identified in the draft IEP as First Home Care and Independence Dependence. First Home Care is the provider that DCPS usually offers to parents/students to supply related services deemed appropriate for a Student. Independence Dependence is also a

provider of related services that Dr. B is familiar with. At times, Dr. B provides consulting work for Independence Dependence and she is compensated/receives an economic benefit for the consultation she provides. Dr. B supplied the name of Independence Dependence to Parent during the September meeting. (Testimony of Dr. B; P-5, p.5. (Testimony of Dr. B).

22. After parent interviewed with Independence, she selected this provider to supply related services recommended in the September 2011 draft IEP. DCPS has no information regarding Independence Dependence's qualifications to provide related services and DCPS has not approved this provider to supply such services to students. (Testimony of DCPS Residential Program Manager).

23. Another MDT meeting was held on November 21, 2011. Those in attendance were ASY general science teacher, Parent, Student, Dr. B, Mr. Wh (the ASY therapist), ASY special education teacher (Ms. W), DCPS Residential Program Manager, and DCPS Progress Monitor. (P-3).

24. MDT notes from that meeting prepared by ASY staff reflect that Student was doing well academically and that he independently initiated his work. The notes also indicated that being patient was a challenge for Student. The notes also reflected that Student's therapist reported that Student shuts down when receiving difficult information and is respectful in most academic setting. Additional notes regarding what the therapist reported also indicated that Student had not been as productive with the Social/Emotional Goals at ASY, Student needed 30 minutes to be redirected and at least 20 minutes to become refocused. The MDT notes from the meeting reflected that the MDT recommended again the related services noted in Student's draft September 20, 2011 IEP. According to the MDT notes prepared by ASY, the DCPS Residential Program Manager denied the related services because as proposed in the IEP, the services were

to be provided outside school hours. School hours were determined as 9:00 a.m. to 3:00 p.m. (P-3).

25. MDT notes from the November meeting prepared by DCPS Progress Monitor, Mr. L, indicated that in Environmental Science, Student was considered a top student with no behavior problems. The notes also described Student as a fast worker who took initiative to complete tasks, and a student who asked for assistance when needed. Notes reflected he no longer needed 1:1 assistance. His ability to focus was reported to have increased. A behavior problem noted was Student continues to shut down for up to an hour at school. At home it was noted that Parent reported Student withdraws from family. The notes also indicated that the purpose of Parent Training was to work with Student's withdrawing, disability, and following home rules. Also noted was that Dr. B stated therapeutic recreation and rehabilitative recreations are warranted for all students with emotional disturbance. (R-2).

26. Student received the following grade reports during his enrollment at ASY from January 2011 until his enrollment at High Roads on or about February 2012.

ASY Grade Report June 17, 2011

Name: [Student] DOB: xxxxxxxx		Grade: 10				School Year: 2010-11	
Course	Teacher	Q1	Q2	Q3	Q4	Final Grade	Comments
Biology	Hill	N/A	N/A	A	A	A	1,2,3,4
Algebra	Malone	N/A	N/A	B	A	B+	1,2,3,4
English 10	Wells	N/A	N/A	A	A	A	1,2,3,4
DC History	Malone	N/A	N/A	B	A	B+	1,2,3,4

GPA: 3.8

Community Service Hours Earned: 0

Comment Codes

Legend

1	Cooperative		I	Incomplete
2	Shows good work ethic		NA	Not applicable

3	Consistently on task		P	Passing
4	Conscientious		Q	Quarter
5	Shows improvement			
6	Conduct needs improvement			
7	Disruptive			
8	Low test scores			
9	Mission/incomplete assignments			
10	Does not participate in class			

ASY Grade Report February 6, 2012

Name: [Student] DOB: xxxxxxxx			Grade: 10			School Year: 2011-12	
Course	Teacher	Q1	Q2	Q3	Q4	Final Grade	Comments
English 10	Wells	A	B			A-	1,2,3,4
Geometry	Malone	C	C			C+	1,4,8,9
World History/ Geography 2	Malone	C	C			C	1,4,8,9
Biology	Hill	A-	A			A	1,2,3,4

GPA: 2.8

Community Service Hours Earned: 0

Comment Codes

Legend

1	Cooperative		I	Incomplete
2	Shows good work ethic		NA	Not applicable
3	Consistently on task		P	Passing
4	Conscientious		Q	Quarter
5	Shows improvement			
6	Conduct needs improvement			
7	Disruptive			
8	Low test scores			
9	Mission/incomplete assignments			

10	Does not participate in class			
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(P-30:R-9).

27. The Local Educational Agency for Student is DCPS.

28. Dr. B holds a doctorate in education and a masters degree in education specialist. She has 25 years experience in the DCPS where she was employed in several capacities, to include coordinator for services for children with emotional disturbance and other disabilities; classroom teacher; and coordinator for residential treatment services. She has participated in over 300 IEP meetings for students who were in residential placements or who were transitioning from residential placement to day school programs. Her experience also includes serving as a principal and the director of a program which focused on children's emotions. Dr. B has more than nominal training working with students with emotional disturbances to include high school students. For the past 10 years Dr. B has been in private practice providing special education advocacy services to disabled individuals, to include emotionally disturbed students. In this role she consults with schools and providers of special education and related services, teach classes to help schools monitor students and maintain compliance with special education requirements, assist in developing IEPs for a student's placement both in school and in transitioning out of a particular facility or school. (Testimony of Dr. B).

29. Rarely does Dr. B not recommend related services such as therapeutic recreation, assessment of leisure function, and rehabilitative services for students 17 to 18 years of age such as Student who are transitioning out of a residential facility. This is so because she believes the services are appropriate for this age range of students. (Testimony of Dr. B).

30. Dr. B was admitted as an expert in the area of special education, particularly students with emotional disturbance. She was found to have expertise in the area of development of IEPs to include the provision of related services and in the area of determining related services necessary to transition students into and out of residential facilities. (Hearing Record).

31. Dr. T is a psychiatrist. She completed a fellowship in child psychiatry at Georgetown University. She has treated over 200 adolescent children and until December 2011, was the treating psychiatrist at ASY for 10 years. Dr. T was admitted as an expert in the area of adolescent psychiatry. (Testimony of Dr. T, psychiatrist; Hearing Record).

32. DCPS Residential Program Manager holds a bachelor degree in psychology and health science and a masters degree in developmental psychology. She has worked with the special education population for 20 years. Her responsibility, among others, include making certain that residential facilities that have been approved by the Office of the State Superintendent of Education ("OSSE") are appropriately implementing IEPs, to include providing services as set forth in the IEPs and assuring that appropriate documentation is maintained for the special education and related services provided for student's at facilities such as ASY.⁴

33. Student's current IEP is the one developed during the November 21, 2011 meeting. The IEP indicates Student is seeking a high school diploma. The IEP's post secondary and training goal is "Student will research three local community colleges or vocational schools that offer programs that interest him. Short term goals in this area include:

- (i) Student will research three local community colleges or vocational schools that offer programs to him;
- (ii) Student will identify three areas of professional or occupational interest; and

⁴ ASY is one of the residential facilities located in the District of Columbia that has been approved by OSSE as a residential facility. (Testimony of DCPS Residential Program Manager).

(iii) Student will research and identify three colleges/university programs that can provide the academic supports required for his success.

Transition services noted on the IEP for Post secondary education and training comprise College and Career training in the classroom for one hour a month. Additional activities include mock interviews and Career Research Project.

In the area of employment the IEP notes Student's goal is that he will research three fields of employment that are of interest to him. Short term goals in this are consist of the following:

- (i) Student will research three fields of employment that are of interest to him;
- (ii) Student will complete a mock job application with limited errors; and
- (iii) Student will complete job applications via computer use.

Transition services for employment noted on the IEP include Vocational services in the classroom for one hour a month. Additional activities and in the community include student participation in mock interviews and career projects.

In the independent living area, the IEP indicates student's goal is to explore independent living resources. The only short term goal noted is for student to identify three District of Columbia independent living resources. The transitional service noted is District of Columbia Department of Rehabilitative Services in the community for five hours a year. Additional activities and community participation are job fairs and community service projects. (P-2).

BURDEN OF PROOF

The Burden of proof in a due process hearing is the responsibility of the party seeking relief, in this case, Parent. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer*

v. Weast, 546 U.S. 49, 62, 126 S. Ct. 528 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F. Supp.2d 71, 76 (D.D.C. 2006). Below, the Hearing Officer examines the issues and evidence to determine if Parent has met her burden.

CONCLUSIONS OF LAW/ APPLICABLE LAW AND ANALYSIS

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, my Conclusions of Law are as follows:

The pivotal purpose of the Individuals with Disabilities Education Act ("IDEA") is to ensure that students with disabilities have available a free appropriate public education ("FAPE"). See *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 179-81, 200-01. A FAPE includes special education and related services planned to meet the student's unique needs and provided in conformity with a written IEP. 34 C.F.R. § 300.17[d] and 34 C.F.R. § 300.320. A school district offers FAPE to a student when the IEP is reasonably calculated to enable the child with a disability to receive educational benefits and the procedural requirements of the IDEA are met. *Rowley*, 458 at 206-07.

While school districts are required to comply with IDEA procedural requirements, not all procedural errors render an IEP legally inadequate under the IDEA. In matters alleging a procedural violation, a child with a disability does not receive a FAPE only if the procedural inadequacies (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or (3) cause a deprivation of educational benefits. 20 U.S.C. Section 1415(f)(3)(E)(ii).

The FAPE requirement is satisfied when a State provides the handicapped child with "personalized instruction with sufficient support services to permit the child to benefit

educationally from the instruction.” *Doyle v. Arlington County School Bd.*, 953 F.2d 100, 106 (4th Cir. 1991) (citing *Rowley*, 458 U.S. at 203). The statute guarantees an “appropriate education,” not an education that includes everything that a loving parent might desire. See *Walczak v. Florida Union Free Sch. Dist.*, 142 F3d 119, 132 (2d Cir. 1988) (quoting *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 (2d Cir. 1989) (citations omitted); see *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F. 3d 377, 379 (2d Cir. 2003).

In the present case, the parent desires several related services previously mentioned. Parent has brought a due process complaint, in part, because DCPS has declined to provide these related services. The Hearing Officer examines the evidence to determine if the IEP must provide the services requested.

I. ISSUE ONE

A. Whether Respondent denied the Student a FAPE fall 2011 by failing to provide Student with related services: therapeutic recreation; assessment of leisure function; parent counseling and training; rehabilitative services; transportation support; and medication management;

A related service within the meaning of the IDEA is necessary only if the service is required to aid the child to benefit from special education. *Irving Independent School District v. Tatro, et ux*, 468 U.S. 883 (1984).

1. Recreational Services

An assessment of leisure function and therapeutic recreation can be related services. 34 C.F.R. § 300.34(c)11. Parent asserts Student needs these services.

Parent contends the October 26, 2010 psychological assessment (“2010 assessment”); the treating psychiatrist’s letters dated May 31, 2011, and September 20, 2011; the treatment notes;

and discussions at the MDT meetings on September 20, 2011 and November 21, 2011, substantiate her position. The hearing officer examines each source for its validity.

First, the hearing officer considers the 2010 assessment.

The Parent's expert, Dr. B, represented that the 2010 assessment was about a year old at the time of the MDT/IEP meetings and therefore relevant in determining Student's needs.

Petitioner focused on two proposals in the assessment. The first states:

[Student] would likely benefit from continued academic and mental health wraparound services to improve his school performance. Mixing traditional classroom instruction with more hands-on instruction may improve [student's] attitude towards school;⁵

Of note, this recommendation does not mention recreational services. Further, it supports continuing services. The evidence shows that Student's services in place during the time of the assessment were listed in his March 2, 2010 IEP. A review of this IEP notes Student's services included behavior support 30 minutes per week for therapeutic intervention, not recreation. Hence the hearing officer does not find the above referenced assessment endorsed the latter service when the phrase "continued ...services" was used, but rather behavior supports:⁶

Also, the Petitioner argues that the statement below from the 2010 assessment substantiates that Student requires recreation as a related service. It reads:

Structural activities will be helpful in reducing [Student's] opportunity to re-offend or engage in inappropriate activities. He

⁵ Also, the Hearing Officer notes that no wraparound services are identified on what the evidence shows is Student's current IEP at the time of the October 26, 2010 assessment.

⁶ The hearing officer does note that the 2010 assessment does reference a 2009 psychological assessment ("2009 assessment"). In referring to the earlier assessment, the 2010 assessment states that the 2009 assessment recommended weekly therapy for Student, an updated IEP, behavior management plan, and that student enroll in additional afterschool activities and a mentoring program. No testimony was presented at the hearing regarding the 2009 assessment. Further, it was not offered or admitted as an exhibit. Thus, the hearing officer gives little weight to any representations from the 2010 assessment regarding recommendations that may be found in the 2009 assessment.

should continue with football; additionally expanding the ROTC involvement should be explored.

The argument is unconvincing. The Hearing Officer notes that the activities (football and ROTC) are voluntary and have a selection process. Thus, the inference cannot be made that they equate to therapeutic recreation. Further, the Hearing Officer finds that a reasonable interpretation of the above noted recommendation is that it is a suggestion by the evaluator that if followed would likely benefit Student by helping him avoid criminal/inappropriate behaviors.

Second, Petitioner contends that the treating psychiatrist's letters demonstrate that Student needs recreation as a related service.

In her May 31, 2011 letter, the treating psychiatrist notes Student's Axis I diagnosis, Mood Disorder NOS and ADHD. She goes on to state that as Student transitions from the residential setting to his home, he needs assessment of leisure function, therapeutic recreation, school support, socialization/community integration, and family support/parent counseling and tutoring services. The treating psychiatrist stated the services were critical for Student to access his specialized instruction. The Hearing Officer finds this evidence conclusory and unpersuasive because of (as explained below) the most recent treatment note, MDT notes, and Student's grade reports.

In the treating psychiatrist's second letter dated September 1, 2011, the hearing officer notes, the psychiatrist provided additional information. For instance, this letter notes Student has impulse behavior and poor judgment and needs "highly structured therapeutic support to master his impulsive behavior and to make good judgment." This letter also concludes that Student requires recreation as a related service, as well as the other services mentioned previously, to access specialized instruction in the school, at home, and in his community.

However, this hearing officer does not find the September 1, 2011 letter considered singularly or jointly with the prior letter justifies the related services. This is so having given serious thought to Student's most recent treatment team note, his grade reports, and MDT meeting notes.

Regarding the treatment note, the Hearing Officer does not find it shows Student requires recreational therapy or an assessment of leisure function. For the evidence shows that Student's treatment team met on October 4, 2011, and transcribed comments made during the meeting. The resulting report notes that the clinical team, to include the treating psychiatrist, supports Student being placed in a school environment which is highly structured and out side the general education setting. It was also noted that the reason for the suggested placement was because Student requires assistance with safety, security, and stabilization to access his high school IEP. But the Hearing Officer finds, the treatment team report fails to recommend or reference recreational services. And a reasonable interpretation of the failure to mention this service is it was not recommended.

Moreover, a review of Student's grade report from ASY from January 2011 to June 2011 shows Student's grade average in each class was a B+ or better. The grade report also indicated student was cooperative, showed good work ethic, and was consistently on task and conscientious in all classes. His conduct was deemed appropriate and not disruptive.

Student's grades at ASY from September 2011 to the end of the second quarter of the 2011-2012 school year demonstrated grades ranging from Cs to As. His report card indicated Student was receiving instruction in four academic areas - English 10, Geometry, World History/Geography 2, and Biology. His midterm grades were A-, C+, C, and A, respectively. Further, comments regarding Student's conduct indicated that in his English 10 and Biology

classes, Student exhibited cooperativeness, a good work ethic, consistency when working on a task, and conscientiousness. The report card indicated that in his Geometry and World history/geography classes, Student maintain C averages. It was also noted Student was cooperative and conscientious but had low test scores and missing or incomplete assignments. No disruptive behavior was noted in any of his classes. Neither was any need to improve his conduct documented.

The Hearing Officer is cognizant that the grade reports were based on Student's progress at the highly structured residential setting. However, they demonstrated Student progressed academically and provide meaningful insight about Student's behavior and emotional development and his needs. Also, the Hearing Officer notes that the evidence shows that Student made this academic progress in a highly structured environment at ASY and he is being transitioned to another highly structured program, although a day one, with a low teacher to student ratio.⁷

Turning now to notations made about the November MDT meeting, the Hearing Officer finds they too do not substantiate a need for the proposed recreational services. These notes reveal Student's behavior and progress while at ASY had vastly improved as he no longer needed a lot of one on one assistance. For instance in his Environmental Science Course Student was described as the "top student." He completed tasks on his own and had no behavior issues. Student was described as enjoyable to be around. Further, he was able to ask for assistance when

⁷ What is more, the evidence shows Student received some if not all his education in classes including general education students. This inclusion was contrary to his IEP. This is so because Student's IEP placed him in a setting with all special education students for his academic instruction. In spite of this noncompliance by ASY, Student progressed.

needed. Parent also mentioned during the November meeting that Student was focusing better. The only behavior problem she reported was Student would withdraw from the family.⁸

Further, the Hearing Officer in considering the argument for recreational services has noted that Parent failed to show that Student was receiving therapeutic recreation while at ASY.

In addition, the Hearing Officer has considered the expert opinions of Dr. B and Dr. T. and does not give controlling weight to them. First, considering substantial evidence of record as discussed here and for the reasons previously noted, the Hearing Officer does not find Parent has met her burden and shown that recreational services are needed for Student to access his specialized instruction. Second, the Hearing Officer notes that Dr. B referred Parent to a provider of related services – Independence Dependence – for which Dr. B could receive an economic benefit. Third, Dr. B's testimony and notes from the November 2011 MDT meeting indicate that Dr. B's position is that every emotional disturbed Student transitioning from residential setting requires the recreational services as well as rehabilitative services.

Regarding this generalized assessment, the Hearing Officer notes that IDEA requires a child with a disability to receive specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. *Rowley*, 458 U.S. at 201. Basing the provision of related services on the belief that a particular kind of disability requires certain services is contrary to the "individualized instruction" mandate of IDEA. Although when testifying Dr. B stated each child is considered individually. She went on to say that usually children the age of Student and with his disability warrant the services the MDT recommended. Accordingly, the Hearing Officer finds the evidence shows Dr. B is of the

⁸ To be fair, the Hearing Officer also notes that even though Student's behavior had improved, the November meeting notes indicate that in therapy Student would shut down for up to an hour when difficult information was introduced. Further, the therapist noted that Student had not been as productive in his emotional goals and that a 30 minute therapy session for him was difficult for Student as it was taking Student at least 20 minutes to redirect.

opinion that all emotional disturbed Students in the age range of Student require recreational and rehabilitative services when transitioning from the residential setting.

Considering all the evidence, the Hearing Officer finds Parent has not met her burden and shown recreation – assessment of leisure function and recreational therapy - is a needed service to aid Student benefit from his special education.

2. Rehabilitative Services

Parent also contends Student requires rehabilitative services; specifically, rehabilitative counseling and transition services.

The IDEA mandates that the IEP for an older student include a plan for a coordinated set of services designed to successfully transition the special education student from school to a post-school setting. 34 C.F.R. § 200.1; 34 C.F.R. § 300.43; 34 C.F.R. § 300.320 (b).

Student's post secondary plan is outlined in his IEP and set forth in the "Findings of Fact" #32 in this decision. It is incorporated by reference here. The Hearing Officer has reviewed the post secondary plan and finds it meets, albeit minimally, the requirements of IDEA. This is so because the plan sets forth coordinated activities in the areas of post-secondary education and training, employment, and independent living. The specifics of the coordinated activities may be reviewed in #32 of the Findings of Fact found above. The evidence shows that the listed activities are designed to transition Student from the special education school setting to post-school setting. Further, it is to be noted that the Student's current IEP meets his need to receive special education out of the general educational setting. Further, the post secondary plan considers Student's desire to obtain a high school diploma and work.

Having considered the evidence to include the testimony and expert opinions of Parent's witnesses, the Hearing Officer does not find Parent has met her burden and shown Student requires Rehabilitative Services as a related service.⁹

3. Parental Counseling and Training

Parent also argues Student requires parent counseling and training.

This service means (i) assisting parent in understanding the special needs of their child; (ii) providing parent with information about child development; and (iii) helping parent to acquire the necessary skills that allow her to support implementation of student's IEP 34 C.F.R. § 34 (c) (8).

Parent testified that while Student was in the residential facility, family counseling was provided every other week. According to Parent, this service also included parent training. When asked if the parent training and counseling was helpful, Parent answered positively and then elaborated on her view by providing two scenarios. She explained that if Student visited their home on a pass from ASY and she was unable to determine his whereabouts, she could contact the parenting service and it would "direct [Parent]" or provide Parent with transportation to look for Student. In another example provided Parent explained that if Student desired expensive shoes and she informed Student she could not afford them, Student may shut down until the counselor explained to him why Parent was unable to provide the shoes. The Hearing Officer had an opportunity to observe the Parent's demeanor as she testified and found her credible.

Related services are those the Student needs to assist him in benefiting from special education. 34 C.F.R. § 300.34. Parent's testimony does show the service would be beneficial to

⁹ The Hearing Officer also notes that the evidence is insufficient to show Student received Rehabilitative Services while placed at ASY.

Parent. However, it fails to demonstrate that Student requires parent training and counseling to assist him in benefitting from his special education. Thus, the Hearing Officer finds the service is not required.

Having made this finding, the hearing officer has also considered 1) the testimony and opinions of Parent's experts – the Psychiatrist and Dr. B. - and 2) the meeting notes from ASY's MDT meeting recommending this service. The hearing officer is persuaded by Parent's own testimony and direct report made during the hearing, rather than the opinion or reports of someone other than the parent. This is so because the Hearing Officer finds Parent is in the best position to determine the kind of assistance this service provides.

4. Medication Management

Parent's contends medication management is required as service.

Student has been diagnosed with ADHD and Mood Disorder and has been prescribed medications to stabilize his mood. The evidence shows that for the most part Student takes his medication. Parent testified that Student needs this service because she prefers he take his medication at school rather than at home. She believes if he does so it will enhance his focus at school. Psychiatrist recommends the school administer the medication so that Student can be encouraged to take it. Dr. B recommends a medication management service that will assist in assuring Student takes his medication and will involve Parent.

The evidence shows that except for one occasion, Student has been complaint with taking his medications. The only example provided that he did not take his medication was on one occasion when the color of the medication's pill changed. Student thought because the color changed, the medication was different. Student then refused to take the pill. Other than that one instance, no evidence exists of Student being medication noncompliant.

Considering the above, the Hearing Officer finds the evidence demonstrates Student is medication complaint and does not require medication management..

5. Transportation

The evidence shows after Student was discharged from ASY, he was placed at High Roads Academy. Student was supplied transportation to and from that school. On the first day of his attendance at this school, another student threatened Student. He now fears for his safety at this school and refuses to return. Student was then placed at High Roads Beltsville, but does not have transportation to attend. Transportation is needed to enable Student to physically be present at school and benefit from his specialized instruction. Thus, I find Parent has met her burden and shown this related service is required. Thus, Student was denied a FAPE for failure to provide transportation.

Next the Hearing Officer now turns to the second issue.

II. ISSUE TWO

Whether Respondent denied the Student a FAPE by failing to have a DCPS representative at Student's MDT/IEP meetings on September 20, 2011, and November 21, 2011, who is qualified to interpret the results of evaluations and identify appropriate services for Student.

In matters alleging a procedural violation, a child with a disability does not receive a FAPE only if the procedural inadequacies (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or (3) cause a deprivation of educational benefits. 20 U.S.C. Section 1415(f)(3)(E)(ii).

At the hearing Parent presented no evidence of harm because DCPS did not have a

representative at Student's MDT/IEP meetings on September 20, 2011, and November 21, 2011, who is qualified to interpret the results of evaluations and identify appropriate services. Thus, the Hearing Officer finds Parent has not met her burden and shown harm and a denial of FAPE.

III. RELIEF SOUGHT

At the hearing, Parent presented evidence for a compensatory education award if the Hearing Officer determined Student was denied a FAPE because DCPS failed to provide rehabilitative services, therapeutic recreation, assessment of leisure function, and parent training and counseling. The Hearing Officer has found, Parent failed to meet her burden and show these services are warranted. Thus, the Hearing Officer does not award compensatory education relief.

The Hearing Officer has found Student requires transportation. The Parent seeks an order for DCPS to convene an MDT/IEP meeting at Student's placement within 5 days of the determination in this case to review and revise the IEP to include the related services Parent requested and an order for DCPS to fund providers to supply the services.

DECISION AND ORDER

I have reviewed and considered all the evidence of record whether specifically mentioned in this decision or not. Based upon the above Findings of Fact and Conclusions of Law I find the following:

(i) DCPS denied Student FAPE by failing to provide transportation as a related service;

(ii) Parent has not met her burden and shown that recreational therapy, assessment of leisure function, rehabilitative services, parent training and counseling, and medication management are required to assist Student to benefit from special education. Thus, DCPS has not denied Student a FAPE for the non-provision of the above named related services;

(iii) Parent has not met her burden and shown that there was a denial of FAPE because no representative from DCPS attended the September 20, 2011, and November 21, 2011 MDT/IEP meetings who was qualified to interpret the results of evaluations and identify appropriate services for Student;

IT IS THEREFORE ORDERED THAT

Within 10 days of the issuance of this determination DCPS must convene an MDT/IEP meeting at Student's placement and review and revise Student's IEP to include as a related service transportation. Further, if DCPS is not capable of providing the transportation, it must immediately begin funding an independent service provider to provide the service.

No compensatory education is ordered.

DISMISSALS

The Hearing Officer dismisses with prejudice issue two noted herein and also the sub-issues regarding whether DCPS denied Student a FAPE for failure to provide that therapeutic recreation, assessment of leisure function, rehabilitative services, parent training and counseling, and medication management.

PREVAILING PARTY

Further the Hearing Officer finds the Parent prevails of the sub-issue of whether Student was denied a FAPE because transportation should be included as a related service. DCPS prevails on the remaining issues and sub-issues.

NOTICE OF RIGHT TO APPEAL

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

Date: March 24, 2012


Hearing Officer