

On March 23, 2012, DCPS filed a late Response to the Complaint, which denied the allegations. DCPS further responded, *inter alia*, that it had provided all required elements of an appropriate IEP and that it had implemented all components of the Student's IEP.

On March 29, 2012, a Prehearing Conference was held to discuss and clarify the issues; and a Prehearing Order was issued on April 9, 2012. The parties then filed their required five-day disclosures by April 23, 2012.

The Due Process Hearing was held on April 30, 2012, in Hearing Room 2004. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-17.

Respondent's Exhibits: DCPS-1 through DCPS-4.

In addition, the following Witnesses testified on behalf of each party:

Petitioner's Witnesses: (1) Parent; (2) Educational Advocate ("EA"); and (3) Petitioner/Student.

Respondent's Witnesses: (1) Special Education Coordinator ("SEC"); and (2) Director of Transition Services ("Trans. Dir.").

Following the testimony, the parties presented oral closing statements.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* 5-E DCMR §§ 3029, 3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). The statutory deadline for issuance of the HOD is *May 16, 2012*.

III. ISSUES AND REQUESTED RELIEF

The following issues were presented for determination at hearing:

(1) Failure to Develop Appropriate IEPs (Post-Secondary Transition Plan) — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP (*i.e.*, one that is reasonably calculated to confer educational benefit), with

respect to the Post-Secondary Transition Plan portion of the IEP, as of **May 2010** and/or **April 2011**?

Specifically, Petitioner alleges that the Post-Secondary Transition Plan in the above IEPs: *(a)* “fails to consider the recommendations of the most recent vocational evaluation conducted for the student; and *(b)* fails to contain adequate goals in the areas of post-secondary education, employment, and independent living skills.” *Complaint*, p. 4, Issue 1; *see also id.*, pp. 5-7 (Discussion of Issues).

(2) Failure to Implement IEPs (Post-Secondary Transition Plan) – Did DCPS deny the Student a FAPE by failing to implement the Post-Secondary Transition Plan portion of the IEPs during the 2010-11 and 2011-12 school years?

Specifically, Petitioner alleges that: *(a)* DCPS “fail[ed] to implement the transitional plan’s only goal related to the development of independent living skills”; *(b)* “no one has worked with the student towards achieving his identified goals”; and *(c)* “he has been enrolled in courses that hold absolutely no interest to him and do not further his vocational goals or ambitions.” *Complaint*, p. 8.

As relief, Petitioner requests that the Hearing Officer make appropriate findings and order DCPS: *(a)* amend the IEP to include an updated transition plan based on the goals outlined in his 2010 vocational assessment; and *(b)* fund compensatory education for the denials of FAPE, to consist of independent tutoring and/or mentoring services.

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. 5-E DCMR §3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Petitioner also had the burden of proposing a well-articulated plan for compensatory education, in accordance with the standards of *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

IV. FINDINGS OF FACT

Based upon the evidence presented at the Due Process Hearing, this Hearing Officer makes the following Findings of Fact:

1. Petitioner is a -year old student who is a resident of the District of Columbia. He has been determined to be eligible for special education and related services as a child with a disability under the IDEA. His primary disability is Emotional Disturbance. *See P-3; DCPS-1.*
2. On or about March 3, 2010, an independent vocational evaluation was completed for the Student. *P-7.* The evaluation included clinical observations, interview of the Student, interests and aptitude assessments, and transition planning inventory. *Id.* It concluded

with a set of recommendations for developing and implementing appropriate post-secondary transition planning. *Id.*, pp. 9-14.

3. On or about May 17, 2010, DCPS convened a meeting of the Student's Multi-disciplinary Team ("MDT") and developed an IEP for the Student. *See P-5; DCPS-3.* The 05/17/2010 IEP provided 29 hours per week of Specialized Instruction in an Outside General Education setting, along with one (1) hour per week of Behavioral Support Services in an Outside General Education setting. *P-5, p. 7.* The 02/23/2010 IEP also included a Post-Secondary Transition Plan. *Id.*, pp.11-13. The Student was years old at that time, and his Parent attended the meeting. *DCPS-3, p. DCPS-000040.*
4. On or about April 26, 2011, DCPS convened an MDT/IEP Team meeting and developed an updated IEP for the Student. *See P-3; DCPS-2.* The 04/26/2011 IEP provided 26.5 hours per week of Specialized Instruction in an Outside General Education setting, along with one (1) hour per week of Behavioral Support Services in an Outside General Education setting. *P-3, p. 6.* The 04/26/2011 IEP also included an updated Post-Secondary Transition Plan. *Id.*, pp.10-12. Both Student and Parent attended this meeting. *DCPS-2, p. DCPS-000024.*
5. Approximately six months later, on or about October 14, 2011, the Student's prior educational advocate emailed the SEC requesting "to schedule an MDT meeting to discuss [Student's] Transition plan." *P-10.* The advocate wrote that "[w]e have some concerns that his current plan is not thorough enough." *Id.* The advocate did not specify what those concerns were. *Id.; see also EA Test; SEC Test.*
6. On or about January 31, 2012, the educational advocate again wrote the SEC saying she "wanted to get in touch with you to schedule a meeting for [Student] so we can review his transition plan." *P-11.* The advocate stated that "we just want to see where he is at in his process of preparing for life after high school." *Id.* The advocate proposed February 17, 2012, as a meeting date. *Id.*
7. On or about February 17, 2012, a meeting was held at Parent's request to discuss transition services and "how close [Student] is to graduating." *P-2* (advocate meeting notes), p. 1. The Student stated that he had visited and applied to Shaw University in North Carolina. *Id.* The SEC indicated that the Student was on track to graduate this year, and she discussed ways to improve his grade point average ("GPA") for college

admissions including coming to school on time. *Id.*, pp. 1-2. The SEC suggested that the Student also apply to the University of the District of Columbia (“UDC”) and Prince Georges County Community College as back-ups. *Id.*, p. 3. The 02/17/2012 meeting also included review of his transition goals, steps to be completed by the Student pursuant to the transition plan (e.g., identifying three schools and three job titles), his tardiness and missed assignments in English class, and assistance with proposed make-up assignments to raise his English grade from D to B. *Id.*, pp. 4-6.

8. On March 2, 2012, the Student filed the instant due process complaint.
9. On or about March 14, 2012, DCPS convened a resolution meeting to discuss the issues presented in the complaint. *See DCPS-4* (RSM Notes). The SEC and Transition Coordinator discussed why they believed the Student’s transition plan was appropriate, but the meeting was unsuccessful in resolving the complaint. *Id.* DCPS also stated that the next annual MDT/IEP meeting was scheduled for March 16, 2012, and that the MDT would “have further discussion on this matter as the transition plan is part of the IEP that the team will review/revise as necessary.” *Id.*, p. 3, *DCPS-000056*.
10. On or about March 16, 2012, DCPS convened an MDT/IEP Team meeting and developed an updated IEP for the Student. *See DCPS-1*. The 03/16/2012 IEP continues the same level and setting of special education and related services as the 04/26/2011 IEP had provided. *Id.*, p. 6 (*DCPS-000007*). The 03/16/2012 IEP also includes a revised and updated Post-Secondary Transition Plan. *Id.*, pp.11-14 (*DCPS-000012-15*). Among other things, since the Student was behind on the college admissions process, short-term goals were added to increase school applications, to assist with writing a personal statement, and to address identifying majors and careers. *See P-1* (advocate meeting notes), p. 2; *DCPS-000013*.
11. At the March 16, 2012 MDT/IEP team meeting, DCPS’ Transition Coordinator reported that the Student had earned a total of 24 credits toward graduating with a high school diploma and was currently finishing his remaining credits this semester. *DCPS-1*, p. *DCPS-000021*. She also reported that the Student had completed 56 hours out of the 100 hours of community service required for graduation; that he had expressed interest in attending one of three colleges (South Carolina State University, Bowie State University,

and Shaw University), though he had not yet completed applications; and that he was given a checklist for completion for each of the schools. *Id. See also Trans. Dir. Test.*

V. DISCUSSION AND CONCLUSIONS OF LAW

For the reasons discussed below, the Hearing Officer concludes that Petitioner has failed to meet his burden of proving by a preponderance of the evidence that DCPS has denied the Student a FAPE² under the specified Issues.

1. Failure to Develop Appropriate IEPs – Post-Secondary Transition Plan

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). *See also* 20 U.S.C. 1414(d)(1)(A)(i); 34 C.F.R. 300.320; DCMR 5-E3009.1. To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982); *see also Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988).

Judicial and hearing officer review of IEPs is “meant to be largely prospective and to focus on a child’s needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’” *Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207); *see also Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008) (IEP viewed “as a snapshot, not a retrospective”). An LEA also must periodically update and revise an IEP “in response to new information regarding the child’s performance, behavior, and disabilities.” *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), slip op. at p. 6; *see* 34 C.F.R. 300.324.

² Under the IDEA, FAPE means “special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...” 20 U.S.C. § 1401(9); *see* 34 C.F.R. § 300.17; DCMR 5-E3001.1.

Of particular relevance here, the IDEA also requires as follows: “Beginning not later than the first IEP to be in effect when the child turns 16... the IEP “must include – (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals.” 20 U.S.C. § 1414 (d)(1)(A)(i)(VII); 34 CFR § 300.320(b).

In this case, Petitioner claims that the May 2010 and April 2011 IEPs were not appropriate and denied him a FAPE because the Post-Secondary Transition Plan contained therein (a) “fails to consider the recommendations of the most recent vocational evaluation conducted for the student,” and (b) “fails to contain adequate goals in the areas of post-secondary education, employment, and independent living skills.” *Complaint*, p. 4, Issue 1; *see also id.*, pp. 5-7 (Discussion of Issues). The Hearing Officer concludes that Petitioner did not prove this claim by a preponderance of the evidence.

(a) First, while the 2010 and 2011 transition plans did not list the March 2010 vocational evaluation among the age appropriate transition assessments utilized to determine goals and interests, Petitioner has not shown that he suffered any harm from this procedural inadequacy. *See* 34 C.F.R. §300.513 (a) (2); *Rodriguez v. Fort Lee Board of Education*, 57 IDELR 152 (3d Cir. 2011). Petitioner’s counsel argued that the March 2010 vocational evaluation was significant primarily in terms of identifying that the Student wanted to attend college and pursue an acting career. *See Pet’s Opening Statement*. But there is no dispute that the Student’s transition plan specified a high school diploma track and post-secondary education as appropriate for the Student, and that this objective was reflected in his transition plan goals. *See EA Test. (cross examination); Pet. Test.; SEC Test*. The plan also correctly identified his career interest as “professional actor/model/entertainer” in both the May 2010 and April 2011 IEPs. *P-3, p. 9; P-5, p. 11*.³ In addition, Petitioner has not shown that any failure to incorporate specific recommendations contained in the March 2010 evaluation deprived him of educational benefit.

(b) Second, Petitioner has not demonstrated that any specific goals in the Post-Secondary Transition Plan were inappropriate or insufficiently measurable, or that the goals were not

³ The Student’s current career interests now appear to include both theater and criminal justice. *See Pet. Test; DCPS-1 (3/16/2012 IEP), p. 12, DCPS-000013*.

reasonably calculated to provide meaningful educational benefit at the time they were created. Both IEPs contained multiple goals relating to post-secondary education and training (e.g., identifying 3 schools/programs of interest, visiting and meeting admissions counselors), employment (e.g., identifying 3 job titles, locating appropriate job openings), and independent living (e.g., locating appropriate apartment vacancies, completing rental applications, identifying best practices in daily living skills). See P-3, p. 10-11; P-5, p. 11-12. To the extent transition goals were not mastered, they were appropriately carried over to the next IEP, according to DCPS' witnesses. See SEC Test.; Trans. Dir. Test.; see also EA Test. (cross examination). In addition, there is no record of either the Parent or Student objecting to the Post-Secondary Transition Plan prior to October 2011; and even the written communications from the educational advocate in October 2011 and January 2012 did not identify concerns with any specific goals or services. See EA Test. (cross examination); SEC Test.; P-10; P-11.

2. Failure to Implement IEPs – Post-Secondary Transition Plan

As the statute and regulations indicate, the failure to provide services in conformity with a student's IEP also may constitute a denial of FAPE. 34 C.F.R. § 300.17(d). In order to amount to a denial of FAPE, however, courts have held that the aspects of an IEP not followed must be "substantial or significant," and "more than a *de minimus* failure"; in other words, the deviation from the IEP's stated requirements must be "material." *Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007), quoting *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341,349 (5th Cir. 2000). See also *Wilson v. District of Columbia*, 111 LRP 19583 (D.D.C. March 18, 2011) ("Although the D.C. Circuit has not yet squarely addressed the question of what standard governs failure-to-implement claims under the IDEA, the consensus approach to this question among the federal courts that have addressed it has been to adopt the standard articulated by the Fifth Circuit in *Houston Independent School District v. Bobby R.*"); *S.S. ex rel. Shank v. Howard Road Academy*, 585 F. Supp. 2d 56, 68 (D.D.C. 2008).

As was recently confirmed by the District Court in *Wilson*, "a party challenging the implementation of an IEP must show more than a *de minimus* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEPs, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit." 111 LRP 19583,

slip op. at 5 (*quoting Bobby R*). A “material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Id.*, *quoting Howard Road Academy*, 585 F. Supp. 2d at 68.

In this case, Petitioner alleges that DCPS denied him a FAPE because (a) DCPS “fail[ed] to implement the transitional plan’s only goal related to the development of independent living skills”; (b) “no one has worked with the Student towards achieving his identified goals”; and (c) “he has been enrolled in courses that hold absolutely no interest to him and do not further his vocational goals or ambitions.” *Complaint*, p. 8. The Hearing Officer concludes that Petitioner did not prove this claim by a preponderance of the evidence.

(a) The May 2010 and April 2011 IEPs actually contain three goals in the area of independent living skills. *See P-3, p. 10; P-5, p. 12*. Petitioner testified that the Private School worked with him in connection with both the first goal (*i.e.*, locating appropriate apartment vacancies) and the third goal (*i.e.*, identifying best practices in daily living skills), and that such activities took place during both semesters of 11th grade in the 2010-11 school year. *See Pet. Test.*

(b) Over the course of the past two school years, Petitioner has also regularly worked with both the Director of Transition Services and Guidance Counselor on transition counseling, workforce readiness/job searches, and the college admissions process. *See Pet. Test. (cross examination); SEC Test.; see also Trans. Dir. Test.; P-3, pp. 11-12; P-5, pp. 12-13*. While Petitioner still needs to complete portions of his college applications, the evidence shows that Private School staff have provided required services and reasonably tried to assist him, consistent with the post-secondary education and training goals provided in his IEPs.⁴ For example, the school arranged for college visits to UDC and PG County Community College; reviewed Petitioner’s draft essay and helped him to complete his application to Shaw University; counseled him regarding financial aid; and assisted him in completing his community service

⁴ In contrast, Parent testified that she did not help the Student to complete any college applications, did not call any college admissions offices on his behalf, and did not visit any colleges with him. *Parent Test. (cross examination)*.

hours for graduation. *See Pet. Test.; SEC Test.; Trans. Dir. Test.* ⁵ There also is no dispute that the Student is currently on schedule to graduate with a regular high school diploma in June 2012.

(c) Finally, Petitioner complains that he was required to take an EMT course in which he was not interested. But the diploma track everyone agreed was appropriate for him required completion of specified academic requirements, including two courses in Career Technical Education ("CTE"). *See SEC Test.; P-12; P-13.* The EMT course was one of several CTE options, and it was considered to provide Petitioner with a viable "fall-back option" for post-secondary employment. *SEC Test.; see also Trans. Dir. Test.*

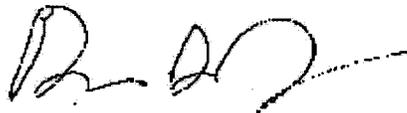
VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioner's requests for relief in his Due Process Complaint filed March 2, 2012, are hereby **DENIED**; and
2. The Complaint is **DISMISSED, With Prejudice.**

IT IS SO ORDERED.

Dated: May 15, 2012



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 U.S.C. §1415(i)(2).

⁵ *See also P-2 (2/17/2012 advocate meeting notes; discussing participation in workforce readiness classes, assistance with college admissions process, etc.); DCPS-4 (3/14/2012 RSM notes; Guidance Counselor's statements: "I have sat with him for hours. I have created checklists and set him up for the ACT and I have literally gone through the whole process with him.")*