

**DC Office of the State Superintendent of Education**  
 Office of Review & Compliance  
 Student Hearing Office  
 1150 5<sup>th</sup> Street, SE  
 Washington, D.C. 20003  
 CONFIDENTIAL

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 OSSE  
 STUDENT HEARING OFFICE

<p>[Parent], on behalf of [Student],</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools,</p> <p style="text-align: center;">Respondent.</p>	<p>Case</p> <p style="text-align: center;">HEARING OFFICER'S DETERMINATION</p> <p>June 25, 2009</p> <p><u>Representatives:</u></p> <p>Zachary Nahass, Petitioner</p> <p>Laura George, Respondent</p> <p><u>Independent Hearing Officer:</u></p> <p>Jim Mortenson</p>
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**I. PROCEDURAL BACKGROUND**

This matter came before Independent Hearing Officer (IHO), Jim Mortenson, at 3:00 p.m. on June 17, 2009. The hearing concluded and the record closed on that date. The due date for the Hearing Officer's Determination (HOD) is June 27, 2009, in accordance with the Blackman/Jones Consent Decree. This HOD is issued on June 25, 2009.

The hearing in this matter was conducted and this decision is written pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., and D.C. Mun. Regs. tit. 5, Chap. 30.

Present at the due process hearing were:

Petitioner's Counsel, Zachary Nahass, Esq.

Respondent's Counsel, Laura George, Esq.

The Petitioner, Student's Guardian.

One witness, the Petitioner (P) testified at the hearing

The complaint in this matter was filed on May 11, 2009. The resolution period was waived on May 13, 2009. A prehearing conference was held on May 21, 2009, and a prehearing order was issued on that date. A response to the complaint was filed by the Respondent on May 21, 2009. Respondent's Counsel, at the hearing, informed the IHO that the response filed was based, in large part, on incorrect facts and would not be helpful to the IHO in rendering a decision in this matter. Petitioner's Counsel, at the hearing, informed the IHO that of the requested relief the Petitioner was no longer seeking an educational assessment, only a vocational assessment.

Eight documents were disclosed and filed by the Petitioner on June 10, 2009. There were no objections raised to the admission of any of the disclosed documents and they were all admitted as exhibits into the record. (P 1 – P 8). Petitioner's exhibits are as follows:

- P 1 - Administrative Due Process Complaint Notice, May 11, 2009
- P 2 - Prehearing Order, May 21, 2009
- P 3 - Summary and Score Report, May 16, 2007
- P 4 - Reading Assessment Report, February 6, 2009
- P 5 - Independent Education Program (IEP), March 5, 2009
- P 6 - MDT (IEP team) Meeting Notes, March 5, 2009
- P 7 - Student Evaluation Plan (SEP), undated
- P 8 - Quarter 3 Progress Report, March 4, 2009

One document were disclosed and filed by the Respondent on June 11, 2009. No objection was raised to the admission of the disclosed document and it was admitted into the record. (R 1). Respondent's exhibit is a letter from Nyankori to Nahass, June 10, 2009.

## II. ISSUE

Whether the Respondent failed to timely and comprehensively reevaluate the Student? Specifically, whether the IEP team determined, on March 5, 2009, that additional assessments of the Student were necessary and that no additional assessments were subsequently proposed or conducted? Further, whether an age appropriate transition assessment has been conducted?

## III. FINDINGS OF FACT

1. The Student is a     year old learner currently at a public charter school. Testimony (T) of P, P 5. The Student is eligible for special education and related services under the definition of other health impairment (OHI). P 5.
2. The IEP team met on March 5, 2009, and agreed that an educational assessment and vocational assessment were to be completed with the Student. P 7, T of P.
3. The Student's IEP, revised at the March 5, 2009, IEP team meeting, includes no measurable post-secondary goals<sup>1</sup>. P 5. The purported post-secondary goal statements were based on a student questionnaire completed on March 4, 2009<sup>2</sup>.
4. None of the annual goal statements in the revised IEP include benchmarks or short-term objectives. P 5. The annual goal in the core academic subject of

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<sup>1</sup> There is a statement incorporated into one of the goal areas, employment, that "Student wants to be a Nurse." While this, itself, is a measurable post-secondary goal it is buried in unclear statements that are not measurable: "Full-Time Competitive Employment" and "Student wants to be a good person within her community."

<sup>2</sup> No copy of this questionnaire was offered into evidence for review.

mathematics indicates the Student is working on seventh grade math skills. P 5.

The other two core academic subjects - reading and written expression – include goal statements that attempt and fail to include measurable annual goals because it cannot be determined when each goal would be achieved<sup>3</sup>. P 5.

5. The Respondent authorized independent vocational and educational assessments at public expense on June 10, 2009<sup>4</sup>. R 1.

#### IV. CONCLUSIONS OF LAW

1. A re-evaluation of a Student must be conducted within a reasonable time and “a delay in responding to a reevaluation request can be reasonable when no exigencies are present.” Herbin v. District of Columbia 362 F.Supp.2d 254, 261 (D.D.C. 2005).
2. The IEP team agreed to conduct vocational and educational assessments on March 5, 2009. On June 10, 2009, the Respondent authorized independent educational evaluations (IEEs) in both areas. No evidence explaining the reasons for the delay was offered. A delay of over three months in completing either assessment is not reasonable in this case.

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<sup>3</sup> Reading: “[Student] will demonstrate one year’s growth in Language Arts skills through the use of language development, informational text and literacy of text with 80% accuracy.”

Written Expression: “[Student] will improve her mechanics of essay writing by improving her narrative, expository and descriptive writing with 80% accuracy.”

<sup>4</sup> Counsel at the hearing stated that an educational assessment had already been completed. However, this was not stipulated too, nor was any other evidence entered into the record concerning this assertion, so no finding of fact can be made.

3. An IEP must include the following components:

- (1) A statement of the child's present levels of academic achievement and functional performance, including —
  - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
  - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
  - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
  - (B) Meet each of the child's other educational needs that result from the child's disability;
- (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (3) A description of —
  - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
  - (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (4) A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
  - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why —
  - (A) The child cannot participate in the regular assessment; and
  - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.

34 C.F.R. § 300.320(a).

4. Before a student turns 14 years of age, 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.

34 C.F.R. § 300.320(b), and D.C. Mun. Regs. tit. 5, § 3009.3.

5. District of Columbia law additionally requires measurable annual goals to include benchmarks or short-term objectives. D.C. Mun. Regs. tit. 5, § 3009.1(c).
6. The IEP lacks measurable post-secondary goals and measurable annual goals with short-term objectives or benchmarks. This may be attributable to the data being sought through the assessments at issue in this case. These errors must be resolved when the assessment data is reviewed and the IEP revised by the IEP team.
7. While the post-secondary goal statements are lacking, it cannot conclusively be determined whether the transition assessment was appropriate because that document was not provided.

## **V. DECISION**

1. The Respondent failed to conduct agreed upon assessments within a reasonable time of the determination to conduct the assessments.

## **VI. ORDER**

1. The Respondent has authorized the proposed assessments to be conducted independently at public expense (and may have already completed one). Upon completion of both assessments, the IEP team must convene within 7 calendar days to review the assessment results and revise the IEP accordingly. The Respondent must provide the Petitioner with at least three alternative times to

meet (not all consecutive) and inform her of the date, time, and location the IEP team will meet if she fails to select one of the proposed times. Her attorney must be copied on any correspondence or other notices sent or delivered to the Petitioner, unless directed otherwise by the Petitioner.

2. The IEP team must revise the IEP consistent with the findings and conclusions of this HOD including but not limited to: appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills; statements of present levels of academic achievement and functional performance including how the Student's disability affects her involvement and progress in the general education curriculum (the same curriculum as for nondisabled children); measurable annual academic goals, including short-term objectives or benchmarks, designed to meet her needs that result from her disability to enable her to be involved in and make progress in the general education curriculum and meet each of her other educational needs that result from her disability; and a description of how the Student's progress toward meeting the annual goals will be measured and when periodic reports on the progress she is making toward meeting the annual goals will be provided. All IEP requirements not specifically mentioned here must be adhered to.
3. The level of special education and related services must be designed to assist the Student to reach the annual goals which, in turn, must be designed to aid the Student in reaching the post-secondary goals. Academic goals must be aligned with D.C. content standards for the grade in which the Student is enrolled.

4. If, at the time of any progress report, the Student is not making expected progress toward a goal or goals the IEP team must meet within one week to review and revise the IEP to improve the Student's progress.
5. If the Petitioner believes the resulting proposed IEP has not complied with this order, or other requirements of this order have not been complied with, she is directed to enforce this order, including by filing a complaint with the Office of the State Superintendent of Education pursuant to 34 C.F.R. §§ 300.151-300.153.
6. Nothing in this order is intended to restrict the IEP team from making other changes to the program appropriate and necessary for the Student to be provided a free appropriate public education.

**IT IS SO ORDERED.**

Dated this 25th day of June, 2009.



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Jim Mortenson, Esq.  
Independent Hearing Officer

## **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).