

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

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

PETITIONER, on behalf of
[ADULT STUDENT],¹

Date Issued: June 26, 2012

Petitioner,

Hearing Officer: Teron Galloway Lee

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

OSSE
STUDENT HEARING OFFICE
2012 JUN 27 AM 9:00

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by ADULT STUDENT ("Student"), 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 ("Complaint"), Student alleges that District of Columbia Public Schools ("DCPS") failed to provide Student a Free Appropriate Public Education ("FAPE") because DCPS' Prior Written Notice, as detailed below, and any meeting it referenced, were defective. Student also contends DCPS failed to implement her November 9 and 22, 2010 and January 7, 2011 IEPs. Further Student contends she was denied a FAPE at a December 15, 2011 IEP

¹ Personal identification information is provided in Appendix A.

meeting for the reasons noted below and because DCPS failed to conduct triennial and vocational evaluations.

For relief Petitioner seeks an order from the Hearing Officer directing DCPS to (i) fund an independent Vocational Assessment III at the market rate, (ii) reimburse Student for private school tuition and the cost of transportation already incurred by Student attending the private school; and (iii) place Student at New Beginnings Vocational School. Petitioner also seeks an award of compensatory education.

Student, an adult, is a resident of the District of Columbia. On or about October 17, 2007, Student was found eligible for special education services under the disability category, Emotional Disturbance (Emotional Disability). (P-23, p. 1). Student's Complaint named DCPS as respondent. The Hearing Officer was appointed on April 13, 2012. The parties met to discuss resolution on May 1, 2012; however, settlement was not reached. The parties did not waive any portion of the resolution period. Thus, the 30 day resolution period under 34 C.F.R. § 300.510 applied in this case.

A prehearing conference ("PHC") was held on May 8, 2012, and it was determined that the 45 day due process hearing time period commenced on May 12, 2012. Also during the PHC, other matters related to managing the case and the due process hearing were discussed, as well as the issues. Regarding the latter, the Hearing Officer determined that additional information was needed to clarify the issues. Thus, the Hearing Officer issued a preliminary order instructing counsel for the parties to provide that information forthwith. Upon receipt of the clarifying data, the Hearing Officer issued her Prehearing Conference Summary and Order. The order certified five issues, noted below, for adjudication; summarized the PHC discussions; and set forth the Hearing Officer's expectations of the parties.

The Hearing Officer held the due process hearing on May 29, 2012, at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public by Student's choice, was recorded on an electronic audio recording device. Petitioner was represented by an attorney at the hearing as well as DCPS. On behalf of Student, four witnesses testified – Adult Student, the educational advocate, one of _____ directors, and one of Student's teachers at

On behalf of DCPS one witness testified – the progress monitor. The Hearing Officer admitted Student's Exhibits P-1 through P-29.² She also admitted DCPS' exhibits R-1 through R-20.³

II. ISSUES

The issues presented to the Hearing Officer to be determined are as follows:

A. Did DCPS deny Student a FAPE when it issued a Prior Written Notice (“PWN”) on February 23, 2011 for the following reasons:

- i. DCPS failed to have the proper persons pursuant to 34 C. F. R. § 300. 116 (a) at the February 24, 2011 meeting;
- ii. The notice was not a prior notice as it was not provided to Student in advance of the February 24, 2011 meeting;
- iii. The notice failed to comply with the requirements of 34 C.F.R. § 300. 503 (b);
- iv. The February 24, 2011 meeting was about informing Student about a predetermined placement which was not justified.

B. Did DCPS deny Student a FAPE because it failed to implement Student's November 9, 2010; November 22, 2010; and January 7, 2011 IEPs or make services available to Student consistent with those IEPs from November 2010 through the end of the 2010–2011 school year?

² “In this HOD, P” refers to Petitioner's exhibits, “R” to Respondent's exhibits.

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/issued would be made part of the record.

C. Did DCPS deny Student a FAPE at the December 15, 2011 IEP meeting for the following reasons:

- i. The Student was not afforded an opportunity to participate;
- ii. DCPS reduced Student's services without justification so that Student could be shoehorned into a placement at Anacostia Senior High School ("ASHS" and)
- iii. Post secondary goals are inappropriate because they are not based on any assessments, do not meet the criteria under 34 C.F.R. § 300.320(b), and are unrealistic.

D. Did DCPS deny Student a FAPE because it failed to conduct triennial evaluations of Student on or about out 2009 and 2012?

E. Did DCPS deny Student a FAPE because it has failed to provide Student with a vocational evaluation since on or about April 2010?

III. FINDINGS OF FACT

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

Findings of Fact

1. Student was initially evaluated for special education and related services in 2006. A social work evaluation report was completed on April 28, 2006; a psycho-educational evaluation was conducted on August 23, 2006; and a clinical psychological evaluation was conducted on August 23, 2006. (P-27, P-28, and P-29). Student's initial date of eligibility was October 17, 2007. DCPS identify Student's category of disability as emotional disturbance. (P-23, p. 1; R-2).
2. An October 8, 2008 clinical update report that was completed by the social worker at indicated Student's attendance has continued to be a

problem. The report noted that, at that time, outside stressors impair Student's ability to regularly attend school. (P-26).

3. During the 2009-2010 school year, DCPS administered the Woodcock Johnson III Test of Achievement (WJIII). The report indicates that the test date was April 29, 2010. (P-25).

4. During the 2009-2010 school year, Student missed 55 days from school. (Testimony of Progress Monitor).

5. On November 9, 2010, DCPS undertook an analysis of existing data. A WJIII Test of Achievement dated September 12, 2008, received by DCPS on November 5, 2010 was reviewed. Also, the WJIII conducted on April 29, 2010 was reviewed, as well as Student's disciplinary record and GED practice tests. (R-10).

6. During the 2010-2011 school year, Student remained enrolled in

which is a non-public full day school for children with disabilities.

is Student's neighborhood school. (Testimony of Progress Monitor).

7. Up to February 24, 2011 during the 2010-2011 school year, Student missed 87 days from school. (Testimony of Progress Monitor; R-12).

8. While Student was enrolled at school staff/DCPS had been contacting her on a daily basis by telephone until student changed her telephone number. She did not provide staff with her updated telephone number. (R-6)

October 28, 2010 Meeting

9. An MDT/IEP meeting was held at on October 28, 2010. Those in attendance included Student (via telephone), the assistant director of the DCPS progress monitor, and the Student's social worker who had been assigned by DCPS due to

DCPS experiencing difficulty locating Student. The primary purpose of the meeting was to discuss Student's truancy because as of October 28, 2011, Student had accumulated over 40 unexcused absences and had been tardy on three occasions. (R-6; R-12; Testimony of Progress Monitor).

10. The October 28, 2010 meeting was initially scheduled to take place on October 25, 2010, but Student failed to attend. On October 25, 2010, several attempts were made via of telephone to contact Student so she could attend and participate in the October 25, 2010 meeting. Locating Student was difficult because she had failed to provide with her current contact information. For example Student's prior telephone number provided to DCPS had been disconnected. Further, when Student's sister was contacted by DCPS on October 25, 2010, in an attempt to locate Student for the scheduled meeting, the sister informed DCPS that she was unaware of Student's whereabouts. An attempt was made to hold the meeting on October 25, 2010, after the scheduled time when Student called in an hour late; but Student declined to attend the meeting by telephone. Student provided no explanation for not being able to participate in the October 25, 2010 meeting. The meeting was then rescheduled for October 28, 2010. (R - 6)

11. Student did not disclose during the October 28, 2011 meeting, or any time during the 2010 2011 school year, that she was pregnant, placed on bed rest, and therefore unable to attend HRUS. (Testimony of Progress Monitor).

12. During the October 28, 2010 meeting, Student displayed an attitude indicating that she did not care whether she attended school, that she did not desire to attend and that because she was 18 years of age her attendance should not have been of concern to the school/DCPS. (Testimony of Progress Monitor; R - 6, p.2).

13. In addition to discussing Student's school attendance on October 28, 2010, an inquiry was made about Student taking the GED test. Student indicated she could master the test. Progress Monitor then took steps to enable Student to take the test. He caused _____ to pay the cost required for Student to be administered the test and for Student's transportation to and from the testing location. Student failed to take the test because on the date of testing, she arrived too late for it to be administered to her. (Testimony of Progress Monitor; R-5; R-6).

14. During the October 28, 2010 meeting, a decision was made that Student would be transferred to her neighborhood school, _____. In protest of this decision, Student disconnected herself from the meeting by hanging up the telephone.

15. Prior to the meeting, Progress Monitor had sent Student's IEP, Student's most recent psychological assessment, and attendance record to the special education coordinator ("SEC") at Student's neighborhood school, _____ for her review. The SEC then informed Progress Monitor that Student's IEP could be implemented at _____. (Progress Monitor; R-6, p.2).

November 2, 2010 Prior Written Notice and Attendance Contracts

16. Following the October 28, 2010 meeting and on or about November 2, 2010, Student was mailed a prior written notice ("PWN") of DCPS' proposal to change Student's location of services from _____ to _____. Student was informed of this proposed change at the October 28, 2010 meeting. (Testimony of Progress Monitor; R - 8)

17. The PWN indicated that the reason for the proposed action was Student had missed a total of 44.5 days of the 2010- 2011 school year, it was difficult to reach Student, and there had been multiple attempts to correct Student's negative attendance. The PWN also indicated that Student was offered the option to attend another non-public school, but Student refused. (Testimony of Progress Monitor; R - 8).

18. Soon after Student received the PWN, she discussed her attendance with Progress Monitor and requested that she be allowed to remain at Student was then placed on an attendance contract requiring her to attend eight out of the next 10 school days. (Testimony of Progress Monitor).

19. Two IEPs were then developed for Student, one on or about November 9, 2010, and the other on November 22, 2010. Thereafter, another IEP was developed on or about January 7, 2011. More specifics are noted about these three IEPs in "Findings of Fact" ("FF") 21 through 23 below.

20. Regarding the attendance contract referenced in FF# 18, Student breached it. Student was then placed on a second attendance contract on or about January 18, 2011. Student failed to honor the attendance contract terms again by being absent the first few days during the contract period. Student was given a 10 day extension of the second contract because she informed Progress Monitor that her absences were due to illness. Student then promised to provide a doctor's note to substantiate her absences. Student failed to submit any doctor's note. (Testimony of Progress Monitor; Testimony of Student; R-5; P-17).

November 9 and 22, 2010 IEPs and January 11, 2011 IEP

21. Student's November 9, 2010 IEP, noted Student needs a small classroom environment, one on one assistance and individualized instruction in mathematics, reading and written expression. It was also noted that Student needs a small and supportive learning environment for her social, emotional, and behavior development. The IEP reflected that she would receive specialized instruction outside the general educational setting for 28 hours per week. Further, it indicated Student would receive behavior support services outside the general educational setting

for two hours per week. Accommodations included allowing Student to write in tests books and use calculators. (P-19, pp. 2, 3, 5, 6, and 8-10).

22. Student's November 22, 2010 IEP and January 11, 2011 IEP, noted Student needs a small classroom environment, one on one assistance and individualized instruction in mathematics, reading and written expression. It was also noted that Student needs a small and supportive learning environment for her social, emotional, and behavior development. The IEP reflected that she would receive specialized instruction outside the general educational setting for 25.5 hours per week. Further, it indicated Student would receive behavior support services outside the general educational setting for two hours per week. Accommodations included allowing Student to write in test books and use calculators. (P-19, pp. 2, 3, 5, 6 and 8-10; P-18, pp. 2,3,5, 6 and 8-10).

Post secondary transition activities and services reflected on the January 7, 2011 IEP are as follows:

Career Day	1 hr per yr
Career Exploration	30 min per mon
College/ Trade School Fair	1 hr per yr
Post-secondary tours	2 hr per yr
Post-secondary advisement	30 min per mon
SAT, PSAT, ACT, Wonderlic Testing	2 hr per yr
Community Service	10 hr per yr
Interviewing Skills	1 hr per yr
Job Prep	30 min per mon
School-to-Work/ Hair Salon	30 min per mon
Banking and Budgeting	30 min per mon

(P-18, p.14).

23. From, November 1, 2010, to February 24, 2011, Student accumulated 45 unexcused absences and had been tardy to school 17 times. (R-12).

**February 24, 2011 Meeting, February 28, 2011
Prior Written Notice, and Services**

24. On February 15 and 22, 2011, DCPS attempted to notify Student of a meeting it had scheduled for February 24, 2011. Two attempts were made by telephone on February 15 and 22, 2012, to invite Student to the meeting. An invitation was mailed to Student on February 22, 2011. DCPS did not receive a response to any of the three invitations. (R-15). On or about February 23, 2011, a second PWN was prepared by Progress Monitor for Student indicating the location of her services would be changed from _____ to _____. The evidence does not demonstrate Student received it. (P-16).

25. By February 24, 2011, during the 2010-2011 school year, Student had been absent for _____ 87 days and tardy 20 days. From on or about January 24, 2011, to February 24, 2011, Student had accumulated 13 unexcused absences. (Testimony of Progress Monitor; R-5; P-17).

26. On February 24, 2011, another IEP/MDT meeting was held regarding Student's attendance. Those in attendance were Student, DCPS Progress Monitor, and the social worker. At the meeting Student was again informed that the location of her services would be changed from _____ to _____ (R-5; P-17; Testimony of Progress Monitor).

27. From about February 25, 2011 to the end of the 2010-2011 school year, Student did not attend school. Student did not receive services when she was absent from school. (Testimony of Student).

Student's Attendance at

28. Student was scheduled to attend _____ for the 2011 - 2012 school year. Student's only attendance at _____ was one full day and two half days during the 2011-2012 school year. The first day of school Student reported, she remained the entire school day. On the second and third days of school, Student carried her daughter to school with her and remained at school for only half days. Student essentially dropped out of school after the third day at _____ (Testimony of Student; R-20).

December 15, 2011 meeting and IEP

29. DCPS prepared an invitation to an IEP meeting scheduled for December 15, 2011 IEP meeting. Student's signature does not appear on the invitation to the December 15, 2011 IEP meeting. The evidence is insufficient to determine if the Student received the invitation to the December 15, 2011 IEP meeting. (P- 5).

30. An IEP meeting was held on December 15, 2011. Student did not attend this meeting. Those in attendance included a special education teacher, an evaluator/individual who could interpret assessment results, the LEA school representative, and a general education teacher. The resulting IEP reflected that Student would receive specialized instruction of 19.50 hours per week and behavior support services of 30 minutes per month. These services were less than those provided under Student's January 7, 2011 IEP. The MDT/IEP team did not justify the reduction in services reflected in the December 15, 2011 IEP. Further the developed IEP indicated Student's accommodations would allow her to write in test books and use calculators in class and during statewide assessment testing. At the time this IEP was developed Student had not attended _____ since the beginning of the 2011-2012 school year. (P - 14, pp. 7-9, and 11).

Student never consented to the December 15, 2011 IEP that was developed. The last IEP she agreed to was the January 7, 2011 IEP. (P-18). Thus, the operative IEP at the time the December 15, 2011 IEP was developed was the January 7, 2011 IEP.

31. The IEP reflected that Student's placement was considered and it was determined that Student should be offered an alternative placement due to Student being 20 years of age. (P-14, p. 6).

Post-secondary goals on the December 15, 2011 IEP

32. The post-secondary transition plan on the IEP indicated that there was no Student input because Student had only attended school once during that school year and therefore there was no information available on her interest or future career choices. (P-14, p. 11).

33. The IEP reflected that regarding age-appropriate transition assessment results. Data was not available because Student had only attended school once during the 2011-2012 school year. (P - 14, p. 11).

34. The IEP also indicated that no educational, functional, and vocational assessments had been conducted at the time because Student had not been available for testing due to her absences from school. (P - 14, pp. 11-12).

35. The post-secondary education and training goals noted on the IEP are as follows:

AREA: POST-SECONDARY EDUCATION AND TRAINING

Long Range Goal: After graduation, [Student] will attend a Bennett Beauty School and participate in the cosmetology program, meeting the requirements to become a cosmetologist.

Short-term measurable goal: [Student] will attend and participate in at least two post-secondary options, fairs, events and group sessions provided by the school with 100% participation and completing a teacher created questionnaire with 80% accuracy.

Baseline: [Student] has participated in one group sessions here at

Anticipated date of achievement: 12/14/2012

Short-term measurable goal: [Student] will communicate and describe at least (3) accommodations/modifications available to her in post-secondary settings with 100% accuracy based on a teacher created checklist.

Baseline: Currently, [Student] has not communicated to staff at HR you ask any accommodations/modifications available and post-secondary settings.

Anticipated date of achievement: 12/14/2012

Short-term measurable goal: [Student] will receive direct skills training in becoming a positive self-advocate by describing and demonstrating (3) behaviors and attitudes needed in order to become a successful student with 100% accuracy based on the teacher created checklist.

Baseline: [Student] currently has not demonstrated the necessary skills needed to become a successful student.

Anticipated date of achievement: 12/14/2012.

(P-14, pp. 12-14).

36. The IEP indicated that transition services for post-secondary education and training included a career day at community for one hour per year. This service was projected to begin on December 15, 2011 and end December 14, 2012. (P-14, p. 13).

37. Regarding extracurricular activities and community participation, the IEP indicated that as of December 15, 2011, Student had only attended school one day during the 2011 2012 school year and therefore no information was available on Student's interest or future career choices.

(P-14, p. 13).

38. The employment goals on the December 15, 2011 IEP are as follows:

AREA: EMPLOYMENT

Long Range Goal: After graduation, [Student] will work in a hair salon until she is able to manage her own.

Short Term Measurable Goal: [Student] will participate in (3) school based mock-employment interviews with 100% participation and with a score of 32 or above based on a teacher created rubric.

Baseline: [Student] participated in one school based interview with a score of 30.

Anticipated Date of Achievement: 12/14/ 2012

Short Term Measurable Goal: [Student] will complete (5) various applications and documents with 100% accuracy on 9/10 trials.

Baseline: [Student] has successfully completed High Road's school-to-work employment application with 90% accuracy.

Anticipated Date of Achievement: 12/14/2012

Short Term Measurable Goal: [Student] will be able to identify (5) qualities that employers commonly seek in job applicants 4/5 trials.

Baseline: [Student] is familiar with using the Internet and the library to research different occupations. Currently, [Student] can effectively identify (2) of these qualities.

Anticipated Date of Achievement: 12/14/2012

(P-14, pp. 13-14).

39. The December 15, 2011 IEP noted that the transition service for employment was community service at 'Community for 10 hours per year with plans for the service to start on December 15, 2011 and end December 14, 2012.

(P-14, p. 14)

40. The independent living goals set forth on the IEP are as follows:

AREA: INDEPENDENT LIVING

Long Range Goals: Upon graduation, [Student] expressed an interest in living on her own and being independent.

Short Term Measurable Goal: Provided with a dollar amount and a scenario, [Student] will develop a monthly budget with teacher guided instruction with 100% accuracy.

Baseline: [Student] has created a monthly budget with staff with 90% accuracy

Anticipated Date if Achievement: 12/14/2012

(P-14, pp. 14-15).

41. The IEP indicated transition services for independent living included banking and budgeting at Community for 30 minutes per month. This service was scheduled to begin on December 15, 2011 and end of December 14, 2012. (P-14, p, 15).

42. Regarding extracurricular activities and community participation in the independent living area, the IEP indicated that as of December 15, 2011, Student had only attended school one day during the 2011 2012 school year and therefore no information was available on Student's interest or future career choices. (P-14, p. 15).

43. The Post-secondary Transition Plan long range goals found on the December 15, 2011 IEP are identical to the Post-secondary Transition goals found on the January 7, 2011 IEP except on the December 15, 2011 IEP (i) the phrase "Vocational training" is not included in the section stating Student's post-secondary education and training long range goal; (ii) the phrase "Living alone, with friends, self-advocate" is not included in the section stating Student's long range goal for independent living; and (iii) the phrase "full-time competitive employment" is not included in the section stating Student's long-range employment goal. The Hearing Officer finds the meaning of these phrases can be inferred from the stated goals in the December 15, 2011 IEP. Thus, she finds the post-secondary goals set forth in the December 15, 2011 IEP are the same as those set forth in the January 7, 2011 IEP. (P-14, pp. 12-15; P-18, pp. 12-13).

44. December 15, 2011 post-secondary long-range goals are also based on assessments, albeit not new assessments. Those assessments included the Mecca career interest/the Mecca career interest inventory, and a student interview on September 9, 2010. (R-18; R-19)

45. The Mecca career interest assessment indicates the following:

[T]he interest inventory suggest that [Student's] highest level of interest was in humanitarian and her lowest area of interest within physical

performing. It also suggests that [Student] should explore careers as a case aide, daycare worker, EMT, health care, home health care aide, nursing, physical.

(R-18).

46. The assessment conducted by way of an interview with Student indicates the following:

During the interview [Student] expressed an interest in working at a beauty salon after getting her certification at Bennett Beauty School. She also stated that she would like to have a family consisting of two kids and a husband and live in Washington, DC.

(R-19).

47. DCPS was precluded from conducting new assessments during the 2011-2012 school year as Student was voluntarily absent from school except for the first day of school and two half days immediately following the first day of school. (Testimony of Student indicating she elected not to attend school).

Notices and unilateral placement and private school

48. On or about February 1, 2012 Student, through her attorney, provided DCPS with notice of Student's intent to unilaterally place herself in a private school in 10 business days. (P-12).

49. By letter dated February 3, 2012, DCPS responded to Student's February 1, 2012 letter indicating DCPS' position was it could provide Student a FAPE at (P-11).

50. Student was accepted at on or about February 1, 2012. (P-13).

Other

51. Progress Monitor initially became familiar with Student while he was assigned as the Progress Monitor for during the 2010-2011 school year. Progress Monitor holds bachelor and masters degrees in clinical psychology. He has worked in school systems as a counselor and been a service provider of counseling in several school districts. As a progress monitor with DCPS his responsibilities include, but are not limited to, monitoring the implementation of IEPs

for Students placed in non-public schools by DCPS, facilitating IEP meetings regarding, among other matters, the educational placement and location of services for students. His position as progress monitor at [redacted] ended March 2011. He was reassigned as progress monitor for [redacted] effective March 5, 2011. (Testimony of Progress Monitor).

52. Student became pregnant on or about September 2010 and her child was reportedly born June, 2011. (Testimony of Student). Progress Monitor learned by happenstance that Student was pregnant after Student's child was born while he was visiting [redacted] in 2012 in his capacity as progress monitor and encountered Student. (Testimony of Progress Monitor). Student did not provide Progress Monitor documentation that she was placed on bed rest for the period November 2010 through June 2011. (Testimony of Student; Testimony of Progress Monitor).

53. Student obtained an educational advocate on or about January 2012, once Student retained the law firm for representation in this dispute she has with DCPS. The educational advocate has been employed as an educational advocate since January 2011. Prior to that employment, she taught in DCPS as a special education teacher for two years. In addition to teaching in DCPS, the educational advocate administered assessments utilized in developing IEPs. The educational advocate has not had much involvement in Student's special education case. She came to know Student on or about January 2012 once the law firm she is employed with was retained to represent Student's interest in this dispute with DCPS. The educational advocate observed one special education class for about 20 minutes at [redacted]. She has also spoken to staff at [redacted] to include the SEC about services for a special education student. (Testimony of Educational Advocate).

IV. BURDEN OF PROOF

The Burden of proof in a due process hearing is the responsibility of the party seeking relief, in this case, adult Student. *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.

V. 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, the undersigned Conclusions of Law are as follows:

A. ISSUE 1

Did DCPS deny Student a FAPE when it issued a Prior Written Notice ("PWN") on February 23, 2011 for the following reasons:

- i. DCPS failed to have the proper persons pursuant to 34 C. F. R. § 300. 116 (a) at the February 24, 2011 meeting;
- ii. The notice was not a prior notice as it was not provided to Student in advance of the February 24, 2011 meeting;
- iii. The notice failed to comply with the requirements of 34 C.F.R. § 300. 503 (b);
- iv. The February 24, 2011 meeting was about informing Student about a predetermined placement which was not justified.

1. Were the proper persons in attendance at the February 24, 2011 meeting.

Student contends that the February 24, 2011 meeting constituted a meeting that determined Student's placement. A decision about the educational placement of a child with a disability must be made by persons (including Student in this case) knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300. 116(a). Student, her DCPS social worker, and Progress Monitor attended the meeting. Progress Monitor had been working with Student regarding her attendance at since the beginning of the 2010-2011 school year. His job tasks included, among others, monitoring the implementation of

Student's IEP and participating in IEP meetings. Those meetings could include discussions about Student's placement. Student's social worker was assigned to locate Student/keep in contact with Student as a result of Student's excessive absences. As a result of her association with the student she too would have been knowledgeable about Student, evaluation data, and placement options by virtue of her working with children with disabilities such as Student. She also participated in at least one IEP meeting prior to the February 24, 2011 meeting regarding Student and her placement/location of services. Considering the above, assuming Student correctly characterized the nature of the February 24, 2011 meeting as a placement meeting, the Hearing Officer finds proper individuals attended the meeting.

DCPS contends that Student's placement was not changed but Student's location of services were. Further, the evidence shows that before the February 24, 2011 meeting, Progress Monitor had sent Student's IEP and other data regarding Student to [redacted] for review. The SEC had determined Student's IEP could be implemented at [redacted]

Of note, DCPS can change a Student's physical placement so long as the new placement does not amount to a fundamental departure from the student's IEP. *See Morris Johnson, et al. v. District of Columbia*, 112 LRP 1338, Civil Action No. 12-303 (D.D.C. Mar. 16, 2012).

The Hearing Officer now examines whether Student has met her burden and shown that relocating Student to [redacted] was a change in placement. Although not a current teacher in the DCPS school system, Student's advocate had taught as a special education teacher for two years in DCPS. She was also familiar with [redacted] by being an advocate for other students with disabilities who attend DCPS. The educational advocate testified that [redacted] could not implement Student's November 9 and 22, 2010 and January 7, 2011 IEPs. Her testimony indicated that she formed this opinion based on knowledge she had obtained through her former

teaching experience with DCPS, conversations she had with some staff, and advocating for students with disabilities. Moreover, Student contends she gave a try and only then determined it was not an appropriate educational setting. She contends the classes were too large and students regularly disrupted classes.

The Hearing Officer does not find the educational advocate's opinion/testimony nor that of Student sufficient to show that Student's relocation to was a change in placement. This is so for several reasons. The educational advocate did not begin her advocacy role for Student until 2012, which was about the time Student enrolled in . Further, the educational advocate has not conferred with anyone at about Student or whether Student's November 9 and 22, 2010 and January 7, 2011 IEPs could be implemented. The educational advocate has only observed one special education class at and that was for no more than 20 minutes. Moreover, the evidence shows her testimony is based in part on speculation.

Regarding Student's assessment of whether could have implemented her November 2010/January 2011 IEP, Student only attended one full day. This was the first day of school. Then she attended a half day on the two days immediately following the first day of school. The Hearing Officer finds Student's attendance as noted above provided inadequate time to determine if Student's special education and related services as reflected in her IEP at the time could be implemented. Also, the Hearing Officer notes that historically Student has shown a "don't care" attitude about attending school.

Further, the Hearing Officer notes, as mentioned previously, Progress Monitor had prior to holding the February 24, 2011 meeting, provided with Student's IEP and evaluation data for review. He had then been informed by the SEC of that Student's IEP could be implemented.

Considering the above, the Hearing Officer can not find that Student has met her burden and shown that her transfer to _____ was a change in placement.

2. Was the notice a prior notice?

Student contends the notice was not provided in advance. Under the IDEA, a PWN must be given to, in this case, the adult Student with a disability in a reasonable time before the agency proposes to change the identification, evaluation, or educational placement of the child; or the provision of FAPE. 34 CFR § 300.503(a). The evidence shows that the PWN was dated one day before the February 24, 2011 IEP meeting. Based on the date of the letter and the date of the meeting, the Hearing Officer finds that it is reasonable to infer that even if the letter was mailed to Student on the same day it was dated, Student likely would not have received it prior to the next day which was February 24, 2011, and the date of the meeting. Thus, the Hearing Office finds Student was not provided the February 23, 2011 notice within a reasonable time before DCPS proposed to change the location of Student's services. This failure was procedural and as discussed below, the Hearing Officer does not find it denied Student any substantive rights.

3. Did the PWN meet the requirements of 34 C.F.R. § 300.503 (b)?

Student contends the PWN failed to meet the requirements of IDEA.

Under the IDEA, the PWN must include the following:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

34 CFR § 300.503(b).

The Hearing Officer has reviewed the PWN and finds DCPS defined the proposed action as changing the location of Student's services to _____ because Student failed to meet the attendance contract terms. Evaluation procedures/assessments and other data on which DCPS based its decision was also provided on this notice. The notice also provided information regarding Student's protection under the procedural safeguards and how Student could obtain a copy of a description of those safeguards. Further it noted a source Student could contact to obtain help in understanding her Part B of the IDEA. In addition, notice indicated that no other options were considered by the IEP and that there were no other factors related to the proposal to change Student's location of services. Thus, the Hearing Officer finds DCPS complied with 34 CFR § 300.503(b).

4. Was the February 24, 2011 meeting about informing Student about a predetermined placement that was unjustified?

Previously, the Hearing Officer found that the evidence was insufficient to show that ASHS could not fundamentally implement Student's November 2010/January 2011 IEP. Without finding that the transfer to _____ was a change in placement, the Hearing Officer does not find the evidence shows DCPS predetermined Student's placement.

As noted above, the Hearing Officer did find DCPS' notice dated February 23, 2011 failed to constitute a PWN for the above stated reason. Considering whether this violation denied Student FAPE, the Hearing Officer considers the function of the PWN. The purpose of the PWN "is to provide sufficient information to protect the parents' rights under the [IDEA] and to enable parents to make an informed decision whether to challenge the DCPS' determination and to prepare for meaningful participation in a due process hearing on their challenge." *Kroot v. District of Columbia*, 800 F.Supp. 976, 982 (D.D.C. 1992). Ultimately, Student filed her request for a due process hearing, where she was represented by capable counsel. Accordingly, any failure by DCPS to provide the notice in advance of the February 24, 2011 meeting did not affect Student's primary procedural protection and, therefore, did not violate her rights under the IDEA.

DCPS therefore prevails on this issue.

B. ISSUE 2

Did DCPS deny Student a FAPE because it failed to implement Student's November 9, 2010; November 22, 2010; and January 7, 2011 IEP's or make services available to Student consistent with those IEPs from November 2010 through the end of the 2010-2011 school year?

Student's attendance at _____ was extremely sporadic from August 23, 2010, to February 24, 2011. By October 15, 2011, Student had accumulated 33 unexcused absences. Therefore, DCPS had scheduled a meeting for October 25, 2011, to address her truancy. Prior to the scheduled date of the meeting Student was informed of it. In fact, daily contact had been made with the Student until her telephone number was changed and she failed to provide the school with her new telephone number. Student did not attend the October 25, 2011 meeting, but

called in an hour after its scheduled time. She declined to participate by telephone on that day; thus, the meeting was rescheduled for October 28, 2011. Student gave no explanation for not attending the October 25, 2011 meeting.

On October 28, 2011, the rescheduled meeting was held to primarily address Student's truancy. By then, Student had accumulated at least 40 unexcused absences. She had also been tardy on three occasions. Those in attendance included Student who participated by way of telephone, the DCPS progress monitor, DCPS social worker assigned to Student, and the assistant director. Student did not disclose during the October 28, 2011 meeting or any time thereafter that she was pregnant, placed on bed rest, and therefore unable to attend

During the October 28, 2010 meeting, Student displayed an attitude indicating that she did not care whether she attended school, that she did not desire to attend and that because she was 18 years of age her attendance should not have been of concern to the school/DCPS.

Prior to this meeting, Progress Monitor had been informed by the SEC at Student's neighborhood school, that Student's IEP could be implemented. During the October 28, 2010 meeting, a decision was made that Student would be transferred to her neighborhood school, ASHS. DCPS described this transfer as a change in the location of Student's services. In protest of this decision, Student disconnected herself from the October 28, 2011 meeting by hanging up the telephone.

Following the October 28, 2010 meeting, on or about November 2, 2010, Student was mailed a prior written notice ("PWN") of DCPS' proposal to change Student's location of services from to . The PWN indicated that the reason for the proposed action was Student had missed a total of 44.5 days of the 2010- 2011 school year, it was difficult to reach

Student, and there had been multiple attempts to correct Student's negative attendance. The PWN also indicated that Student was offered the option to attend another non-public school, but Student refused.

Thereafter Student contacted Progress Monitor and expressed a desire to continue her schooling at The DCPS progress monitor attempted to work with Student by placing her on an attendance contract. The contract required Student to attend eight out of the next 10 school days.

Next a November 9, 2010 IEP was developed. That IEP was replaced with an IEP developed November 22, 2010. Thereafter, an IEP dated January 7, 2011 was developed.

During the period that the above-mentioned IEPs were in effect, Student failed two attendance contracts, of which the latter one was extended. Thus, DCPS transferred the provision of Student's services to Regarding the contracts, after Student breached the first contract she was placed on a second one on January 18, 2011. The second one was extended after Student failed to meet the attendance requirements again. After the second contract was breached, Progress Monitor extended it by 10 days because Student informed Progress Monitor that her absences during the period of the contract were due to illness. Student then promised to provide a doctor's note to substantiate her absences. Student never provided the doctor's note.

Following Student failing all the contracts, a meeting was held on February 24, 2011. Those in attendance were Progress Monitor, Student's social worker, and Student. At the meeting Student was informed that the location of her services were being transferred to ASHS. Student did not inform DCPS that she was pregnant and her doctor placed her on bed rest. After

the February 24, 2011 meeting Student did not attend any school for the remainder of the 2010-2011 school year.

Student did not receive services outlined in her IEPs dated November 9, 2010, November 22, 2010, and January 7, 2011 during her absences from school during the 2010-2011 school, to include from on or about November 9, 2010, to June 2011.

Considering the evidence, the Hearing Officer finds Student's absences were voluntary for the following reasons:

- (i) Student's "don't care" attitude about school;
- (ii) no documentation substantiating Student's doctor placed her on bed rest;
- (iii) no evidence offered by Student that her disability caused her to not attend school; and
- (iv) Student's consistent absences from school during past school years when she was not pregnant.

Moreover, even if a causal relationship existed between Student's disability and her absences (which the Hearing Officer finds none), the Hearing Officer finds that the evidence shows, DCPS tried to work with Student. At one point the DCPS telephoned Student every day when she did not attend school. Eventually they were unable to do this because Student changed her telephone number, but did not bother to provide updated contact information to DCPS. DCPS also met with Student about her truancy and entered into attendance contracts with the students over several months. Thus, the Hearing Officer does not find that DCPS denied Student a FAPE by failing to provide services under the IEPs mentioned. Instead the Hearing Officer finds Student failed to avail herself to services from November 2010 to the end of the 2010-2011 school year.

Having made this decision the hearing officer is cognizant of the testimony of Student that she was pregnant and informed by her doctor that she had to be on bed rest. Student's claim was undocumented. Moreover, I had the opportunity to observe the demeanor of this witness as she testified and found her incredible. Of note, this witness had selective memory and there is nothing in the evidence to indicate her memory is impaired. What is more, the Hearing Officer also had an opportunity to observe the demeanor of the DCPS witness, Progress Monitor and found him credible.

DCPS prevails on this issue.

C. ISSUE 3

Did DCPS deny Student a FAPE at the December 15, 2011 IEP meeting for the following reasons:

- i. The Student was not afforded an opportunity to participate;
- ii. DCPS reduced Student's services without justification so that Student could be shoehorned into a placement at _____ and _____
- iii. Post-secondary goals are inappropriate because they are not based on any assessments, do not meet the criteria under 34 C.F.R. § 300.320(b), and are unrealistic.

In effect Student argues that the December 15, 2011 IEP is inappropriate for the defects noted above.

First, Student contends she was not afforded an opportunity to participate in the December 15, 2011 meeting, which resulted in the IEP.

The IDEA requires a public agency such as DCPS to take steps to assure that a parent of a child with a disability (in this case Student because she was an adult at the time the meeting was held) is present during any IEP team meeting. 34 C.F.R. § 300.322(a).

Student did not attend the December 15, 2011 IEP meeting and contends that she was not notified about it. IDEA permits DCPS to hold a meeting without the Student upon DCPS making reasonable efforts to arrange a meeting at a mutually agreeable time and place. To prove its efforts DCPS must maintain supporting documentation. 34 CFR § 300.322(d). Other than the prepared invitation, the record is lacking of any efforts by DCPS to obtain Student's attendance at the meeting. Accordingly, this Hearing Officer finds DCPS failed to follow procedure and afford Student an opportunity to attend the December 15, 2011 IEP meeting. Whether DCPS' procedural violation denied Student a FAPE will be discussed below in conjunction with other claims of Student regarding the December 15, 2011 IEP meeting.

Second, Student contends the December 15, 2011 IEP meeting and resulting IEP denied her a FAPE because her services were reduced without justification. In considering this claim, the Hearing Officer notes that prior to the development of the December 15, 2011 IEP, the Student's last evaluation was the WJIII that was conducted on April 29, 2010 and an analysis of existing data conducted on November 9, 2010. What is more, the Hearing Officer notes that prior to the development of the December 15, 2011 IEP, Student's operating and current IEP was the January 7, 2011 one. An examination of the January 7, 2011 IEP and the IEP developed on December 15, 2011, reveals that their Present Levels of Performance ("PLOP"), needs, goals, and objectives are identical. Yet without any additional data, the IEP team in formulating the December 15, 2011 IEP reduced Student's specialized instruction by six hours per week. Student's behavior services were reduced by 75 percent. The Hearing Officer finds no evidence such as new evaluations/reevaluations to support this reduction in services. No meeting notes were presented to explain why the IEP team determined Student's services should be reduced.

The Hearing Officer now turns back to the procedural violation previously identified.

While every procedural violation of the IDEA does not render an IEP illegitimate, one that seriously infringes on the Student's opportunity to participate in formulating the IEP results in a denial of FAPE. See, e.g., *A.I ex rel. Iapalucci v. District of Columbia*, 402 F. Supp. 2d 152, 164 (D. D. C. 2005). Here, the evidence shows Student was not afforded an opportunity to participate in the December 15, 2011 meeting. Further, during that meeting the developed IEP reduced Student's services substantially without reason. The Hearing Officer does note that the December 15, 2011 IEP was not the operative IEP. This is so because Student had not consented or did not consent to it. Thus, the January 7, 2011 IEP remained the operative IEP. However, the Hearing Officer finds that DCPS' failure to provide Student an opportunity to participate in formulating the December 15, 2011 IEP which proposed major reductions in her services violated Student's substantive rights. Thus, the Hearing Officer finds a denial of FAPE.

Student also contends that Student's services were reduced so that Student could be shoehorned into a placement at ASHS. Regarding this claim, the Hearing Officer is cognizant of the testimony of the educational advocate that she is familiar with [redacted] and it could not provide the services reflected in Student's January 7, 2011 IEP. The Hearing Officer has also considered testimony of Progress Monitor. That testimony indicated that the progress monitor confirmed with the special education coordinator ("SEC") at ASHS that [redacted] could implement the Student's IEP which was dated January 7, 2011. Having considered the dueling testimony of these witnesses and for reasons previously stated, the Hearing Officer finds insufficient evidence to determine that DCPS could not implement the January 7, 2011 IEP. Also, the Hearing Officer notes Student's claim that [redacted] could not implement her IEP. The Hearing Officer did not find this testimony reliable as Student only attended one full day of school at [redacted] and two half days at the beginning of the 2011-2012 school year. Accordingly, Student did not meet her

burden and show that could not implement her January 7, 2011 IEP, and the purpose of developing the December 15, 2011 IEP was to shoehorn Student into a placement at

Third, Student alleges that the post-secondary goals are inappropriate because they are not based on any assessments, do not meet the criteria under 34 C.F.R. § 300.320(b), and are not realistic.

The Hearing Officer finds Student has not met her burden and shown the post-secondary goals are inappropriate.

The Hearing Officer has reviewed the post-secondary planning section of the January 7, 2011 IEP and the December 15, 2011 IEP. She finds the goals in this section on both IEPs are identical.⁴ While Student did not attend the December 15, 2011 IEP meeting, she was present for the January 7, 2011 IEP meeting and agreed with the resulting January 7, 2011 IEP. Consequently, the Hearing Officer finds Student agreed with the post-secondary goals in the January 7, 2011 IEP which are the same as those found in the December 15, 2011 IEP. What is more, the evidence shows that the January 7, 2011 goals were based on assessments. As these goals are the same as the December 15, 2011 secondary goals, the Hearing Officer finds the December 15, 2011 goals are also based on assessments, albeit not new assessments. Those assessments included the Mecca career interest/the Mecca career interest inventory, and a student interview which was conducted on September 9, 2010. DCPS was precluded from conducting new assessments during the 2011-2012 school year as the evidence shows and Student admits

⁴ The Hearing Officer does note that in the December 15, 2011 IEP the phrase "Vocational Training" is not included in the section stating Student's long range post-secondary education and training goal; the phrase "Living alone, with friends, self-advocate" is not included in the long range goal for independent living; and the phrase "full-time competitive employment" is omitted from the long-range employment goal. The Hearing Officer finds the meaning of these phrases can be inferred from the stated goals in the December 15, 2011 IEP. Thus, she finds her the post-secondary goals set forth in the December 15, 2011 IEP are the same as those set forth in the January 7, 2011 IEP.

she made a decision to not attend school except for the first day of school and two half days following the first day of school.

Next, with respect to the post-secondary goals in the December 15, 2011 IEP, Student claims the goals fail to meet the criteria under 34 C.F.R. § 300.320(b) and are unrealistic.

The above cited regulation provides in pertinent part that transition services addressed in the IEP must include (1) appropriate measurable post-secondary 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); *see*, 20 U.S.C. § 1414 (d)(1)(A)(i)(VII).

Having reviewed the post-secondary goals, the Hearing Officer finds this argument unpersuasive. This is so because the IEP reflects that Student's transition plan consist of long range goals for cosmetology training, working in a salon, and living on her own. The evidence reflects that these goals were based on Student's interest expressed during assessments/interview. The Hearing Officer does note the data on which the long range goals were based was approximately 15 months old at the time the December 15, 2011 IEP was developed. However, data was not updated due to Student's voluntary truancy. What is more, the evidence shows Student's interest remains the same/similar.

Also, the December 15, 2011 transition plan included measurable goals. For example in the area of education and training, the goals indicated Student would, among other things, participate in at least two post-secondary fairs/events with 100 percent accuracy and complete a teacher created questionnaire with 80 percent accuracy. Annual goals in education and training also addressed direct skills training in becoming a positive self-advocate and Student being able

to describe accommodations available to Student in a post-secondary setting. In the area of employment, goals regarding interviewing, completing applications, and identifying qualities of good job applicants were reflected in Student's transition plan, as well as a means for measuring mastery of these goals. Likewise, regarding independent living, the annual goal addressed budgeting when provided a certain amount of funds. A method of determining mastery of all the goals was also noted on the IEP as set forth in "Findings of Fact" numbers 35-40.

The Hearing Officer also finds the transition plan realistic. Student is now 21 years of age, 20 at the time the plan was developed. She has parenting responsibilities. The long range goals of cosmetology training, working in a salon, and living on her own, as well as the annual and short term goals, are consistent with the purpose of the IDEA requirement of transition planning under 34 C.F.R. § 300.320(b); that is, to prepare student for post-secondary self sufficiency.

The Hearing Officer finds it was objectively reasonable for the IEP team to conclude that the transition goals set forth in the prior IEP; that is, the January 7, 2011 IEP was appropriate and to fundamentally adopt them in the December 15, 2012 IEP. Student had not attended school since the third day of school. Therefore the IEP team had no data on her for the 2011-2012 school year. She had agreed these goals in the operative January 7, 2011 IEP.

In summary regarding this issue, for the reasons noted, the Hearing Officer finds the post-secondary goals reflected in the December 7, 2011 IEP are appropriate. However, DCPS denied Student a FAPE at the December 15, 2011 IEP meeting because Student was not afforded an opportunity to participate and her services were reduced without justification.

Student prevails on this issue.

D. ISSUE 4

Did DCPS deny Student a FAPE because it failed to conduct triennial evaluations of Student on or about out 2009 and 2012?

Student claims she was denied a FAPE because DCPS failed to conduct triennial evaluations in 2009 and 2012. Pursuant to the IDEA and District of Columbia law, reevaluations of a child with a disability must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2); D.C. Regs. § 5-3005.7. The evidence shows that DCPS initially evaluated Student for services in 2006. Student was found eligible for special education and related services on or about October 17, 2007. The evidence shows that DCPS conducted a Woodcock Johnson III test of Achievement on April 29, 2010. Moreover an analysis of existing data was performed on November 9, 2010. Accordingly, the Hearing Officer finds the DCPS reevaluated Student on or about November 9, 2010. This reevaluation occurred approximately 3.5 to 4 years after Student's initial evaluation and about 2.5 to 3 years after Student was found eligible for special education.

Considering the above, the Hearing Officer finds that any violation of DCPS was a procedural one. This is so because in order to establish a violation of the IDEA based on DCPS' failure to follow statutory procedures, Student must show that the Student's substantive rights were affected. *See Lesesne ex rel B..F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). The Hearing Officer finds that Student suffered no harm by the reevaluation occurring several months to a year after it was due. The Hearing Officer finds that Student's persistent pattern of severe truancy made it extremely unlikely that even if DCPS had timely conducted the triennial evaluation, and the IEP Team had used the data to update the Student's educational needs, the Student would have not attended class on a regular basis to avail herself to the

educational opportunities afforded her. Student thus has demonstrated no harm by the reevaluation occurring several months late.

Moreover, Student's next reevaluation is due fall 2012. Thus, a finding that DCPS failed to conduct a triennial evaluation in 2012 would be premature.

DCPS prevails on this issue.

E. ISSUE 5

Did DCPS deny Student a FAPE because it has failed to provide Student with a vocational evaluation since on or about April 2010?

A close reading of 34 C.F.R. § 300.320(b), previously discussed here does not indicate, a public agency such as DCPS is required to conduct a vocation assessment to determine Student's transitional plan/services. The Hearing Officer finds nothing in evidence mandates DCPS cause a vocational assessment to be conducted to provide Student a FAPE.

DCPS prevails on this issue.

IV. REMEDY

The Hearing Officer has determined the DCPS denied Student a FAPE when it did not afford Student a reasonable opportunity to participate in the December 15, 2011 IEP meeting and when it reduced Student's services without justification.

For relief Student seeks (i) reimbursement to Student for private school tuition and the cost of transportation already incurred by Student to attend the private school; (ii) placement of Student at the private school, and (iii) funding for an independent Vocational Assessment III at the market rate. Student also prays for compensatory education. The Hearing Officer now turns to whether the relief is appropriate.

A. Reimbursement for Private School Tuition, Transportation, and Placement at

Under the IDEA, an adult student who unilaterally places herself at a private school without the consent of school officials does so "at [her] own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (quoting *Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 373-74 (1985)). While the adult student is eligible for reimbursement "if the court or hearing officer finds that the agency had not made FAPE available to the [student] in a timely manner prior to that enrollment and that the private placement is appropriate," 34 C.F.R. § 300.148(c); see also *Florence County*, 510 U.S. at 15 ([adult student] may only receive tuition reimbursement "if a federal court [hearing officer] concludes both that the public placement violated IDEA and that the private school placement was proper under the Act") (bracketed insertion added), courts and hearing officers have "broad discretion" in deciding whether such reimbursement is warranted. *Florence County*, 510 U.S. at 16 (quoting *Burlington*, 471 U.S. at 374). Even if a hearing officer concludes that a child was denied a FAPE, the cost of reimbursement may be reduced or denied "[u]pon a judicial finding of unreasonableness with respect to actions taken by the [Student]." 34 C.F.R. § 300.148(d)(3). The Hearing Officer did conclude that DCPS denied Student a FAPE because Student was not provided a reasonable opportunity to participate in the meeting on December 15, 2011, and the developed IEP reduced Student's services substantially.

The Hearing Officer notes however that the operative IEP is the January 7, 2011 IEP. Student does not contend this IEP denies Student a FAPE. When Student provided notice that she was placing herself in a private school, within two days, DCPS responded that it could provide Student a FAPE at [redacted]. The Hearing Officer finds DCPS' February 3, 2012 letter in effect indicated FAPE was available at [redacted]. This is so because if Student had returned to [redacted] after receipt of this letter, the operative IEP would have been the January 7, 2011, the one

Student concedes provides FAPE. Further, as previously discussed, Student has not shown that this IEP could not be implemented at [redacted] She has not given DCPS an opportunity to implement it due to her excessive truancy and not availing herself to the FAPE.

Also, as a practical matter, the Hearing Officer notes that the evidence demonstrated that Student did not pay any tuition to attend [redacted] Accordingly, because DCPS has made FAPE available before and after it received Student's notice and because Student has paid no tuition to [redacted] the Hearing Officer denies her request for tuition and transportation reimbursement.

The Hearing Officer also notes that even if she had found DCPS denied a FAPE and [redacted] is an appropriate placement (this finding was not made however), the Hearing Officer finds Student's actions (consistent truancy, "don't care attitude," failing to provide DCPS with contact information, and not giving DCPS a chance to implement the IEP at [redacted] unreasonable and would have denied reimbursement.

Also, because the Hearing Officer finds Student has not shown [redacted] can not provide a FAPE, her request for placement at [redacted] is denied.

B. Vocational Assessment

The Hearing Officer has found no denial of FAPE because DCPS has not provided Student a vocational assessment. Thus, the request for such an assessment is denied.

C. Compensatory Education

Student also seeks compensatory education. "Compensatory education is educational service that is intended to compensate a disabled student who has been denied the individualized education guaranteed by the IDEA." *Wilson v. District of Columbia*, 2-11 WL 971503, (D.D.C. March 18, 2011) citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education is designed "to place disabled children in the same position they

would have occupied but for the school district's violations of IDEA." *Reid*, 401 F.3d at 518. Denial of a FAPE is a prerequisite to an award of compensatory services. *Id.*

In this case, the Hearing Officer has found a denial of FAPE in that DCPS failed to provide Student a reasonable opportunity to participate in the IEP meeting on December 15, 2011, which resulted in a developed/proposed IEP that significantly reduced Student's services. Further, a finding was made that DCPS' procedural violation(s) substantially deprived Student of her rights under IDEA. Thus, this Hearing Officer determined these violations constituted a denial of FAPE.

The evidence does not show however that the IEP developed on December 15, 2011 was ever implemented. In fact, the Hearing Officer has found the operative IEP for the 2011-2012 school year is the January 7, 2011 IEP which Student contends provided her FAPE. But Student never availed herself to this IEP or gave DCPS the opportunity to implement it at . This is so because Student only attended one and two half days of school at the beginning of the 2011-2012 school year. She then dropped out of school. Further, when DCPS responded to Student's February 1, 2012 notice that Student planned to place herself at DCPS responded in two days that it could provide FAPE at Had Student returned to school the operative IEP would have been the January 7, 2011 one as noted above. Yet Student did not go back to to benefit from the educational opportunity offered. Thus, the Hearing Officer finds any educational benefit lost was by Student's truancy and refusal to return to school. Compensatory education is therefore not appropriate in this case.

VII. DECISION

The Hearing Officer has reviewed and considered all the evidence of record whether specifically mentioned in this decision or not. Based on the above Findings of Fact and Conclusions of Law, the Hearing Officer finds the following:

1. DCPS did not deny Student a FAPE when it issued a Prior Written Notice ("PWN") on February 23, 2011;
2. DCPS did not fail to implement Student's November 9, 2010; November 22, 2010; and January 7, 2011 IEPs. Further, DCPS did not fail to provide/make available services to Student consistent with those IEPs;
3. DCPS denied Student a FAPE by not providing Student a reasonable opportunity to participate in formulating the December 15, 2011 IEP which proposed major reductions in Student's services as Student's substantive rights were violated;
4. DCPS did not deny Student a FAPE because a triennial evaluation was conducted in 2010 and not 2009 and any procedural violation did not deny Student FAPE; and
5. DCPS did not deny Student a FAPE because it did not provide Student a vocational assessment.

VIII. ORDER

For the reasons stated her the Hearing Officer orders DCPS MDT/IEP team to modify the December 15, 2011 IEP such that it is identical to the January 7, 2011 IEP. No other relief is granted.

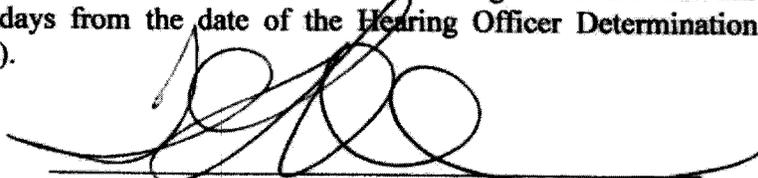
IX. PREVAILING PARTY

The prevailing party on issues 1, 2, 4, and 5 is DCPS.
The prevailing party on issue 3 is Student.

X. 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: June 26, 2012



Hearing Officer