

District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
810 First Street, N.E., Suite 2001
Washington, DC 20002

OSSE
Office of Dispute Resolution
August 14, 2015

<p>STUDENT¹, By and through PARENT,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>DISTRICT OF COLUMBIA PUBLIC SCHOOLS,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Case No. 2015-1099</p> <p>Date Issued: August 14, 2015</p> <p>Date of Hearing: August 7, 2015</p> <p>Hearing Room 2003</p> <p>Representatives:</p> <p>Jocelyn T. Franklin, Esq. for Petitioner</p> <p>Tanya Joan Chor, Esq. for Respondent</p> <p>Impartial Hearing Officer: Charles M. Carron</p>
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HEARING OFFICER DETERMINATION

I. BACKGROUND

The Student is male, Current Age, and attends Current Grade at a public school (the “Attending School”). The Student has been determined to be eligible for special education and related services as a child with a disability, Specific Learning Disability (“SLD”), under the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

Petitioner claims that Respondent has denied the Student a Free Appropriate Public Education (“FAPE”) by failing to update his Individualized Education Program (“IEP”) as required by the Hearing Officer Determination (“HOD”) in a prior case, by failing to reevaluate him in all areas of suspected disability, and by developing an inappropriate IEP for him, all as described in more detail in Section IV *infra*.

Respondent asserts that the undersigned lacks jurisdiction over implementation of the HOD in the prior case, that the Student has been properly evaluated, and that his IEPs have been appropriate.

II. SUBJECT MATTER JURISDICTION

This is a Due Process Complaint (“DPC”) proceeding pursuant to the IDEA. The Due Process Hearing (“DPH”) was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA’s implementing regulations, 34 C.F.R. §300.511, and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§5-E3029 and E3030. This decision constitutes the HOD pursuant to 20 U.S.C. §1415(f), 34 C.F.R. §300.513, and §1003 of the *Student Hearing Office Due Process Hearing Standard Operating Procedures*.

III. PROCEDURAL HISTORY

The DPC was filed June 5, 2015, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student’s Parent, against Respondent, District of Columbia Public Schools (“DCPS”).

On June 8, 2015, John Straus was appointed as the Impartial Hearing Officer (“IHO”).

On June 9, 2015, the undersigned was appointed as the IHO *vice* IHO Straus.

A Resolution Session Meeting (“RSM”) was held on June 12, 2015 but it failed to resolve the DPC.

On June 15, 2015, the undersigned issued an Order in Limine regarding the effect of the HOD issued September 18, 2015 by IHO Peter B. Vaden in Case No. 2014-0300 between the same parties involving the same Student (the “Vaden HOD”) on the instant proceeding.

On June 15, 2015, Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a FAPE.

On June 19, 2015, Respondent filed a motion to vacate the Order in Limine.

On June 24, 2015, Petitioner filed an opposition to Respondent’s motion.

The undersigned held a Prehearing Conference (“PHC”) by telephone on June 24, 2015, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by July 31, 2015 and that the DPH would be held on August 7, 2015. The undersigned issued a Prehearing Conference Summary and Order (“PHO”) on June 25, 2015.

On June 26, 2015, the undersigned issued an Order denying Respondent’s motion to vacate the Order in Limine, for the reasons stated in that Order.

The statutory 30-day resolution period ended on July 5, 2015.

The 45-day timeline for this HOD started to run on July 6, 2015 and will conclude on August 19, 2015.

On July 31, 2015 Petitioner filed her five-day disclosures, comprising a cover letter with lists of witnesses and documents, and 34 proposed exhibits numbered P-1 through P-34.

On July 31, 2015 Respondent filed its five-day disclosures, comprising a cover letter with lists of witnesses and documents, and 37 proposed exhibits numbered R-1 through R-11 and R-13 through R-38.

No other motions were filed by either party and the DPH was held on August 7, 2015 from 9:38 a.m. to 3:28 p.m. at the Office of Dispute Resolution, 810 First Street, NE, Room 2003, Washington, DC 20002. Petitioner elected for the hearing to be closed.

Petitioner participated in the DPH in person.

At the DPH, the following documentary exhibits were admitted into evidence without objection: Petitioner's Exhibits P-1 through P-34 and Respondent's Exhibits R-1 through R-11 and R-13 through R-38.

The following witnesses testified on behalf of Petitioner at the DPH: Petitioner; the Student; Care Manager; Education Advocate #2; and Clinical Psychologist, who was admitted over Respondent's objection as an expert in the evaluation of students with disabilities, educational programming for students with disabilities, and clinical psychology for special education students.

Attending School Local Educational Agency Representative ("LEA Rep.") testified on behalf of Respondent at the DPH.

The parties gave oral closing arguments and did not file written closing arguments or briefs.

IV. ISSUES

As discussed at the PHC and confirmed in the PHO, the following issues were presented for determination at the DPH:

(a) On or about October 3, 2014 did Respondent deny the Student a FAPE by failing to update his April 30, 2014 IEP to comply with the September 18, 2014 HOD in Case No. 2014-0300?

(b) Prior to the April 22, 2015 IEP Team meeting, did Respondent deny the Student a FAPE by failing to reevaluate him in all areas of suspected disability, specifically by failing to conduct a clinical and achievement assessment or an updated writing assessment in connection with his Woodcock-Johnson III testing?

(c) Prior to the April 22, 2015 IEP Team meeting, did Respondent deny the Student a FAPE by failing to conduct a cognitive and clinical psychological evaluation and/or an updated Adaptive Functional Behavioral Assessment (“FBA”) such as the Vineland to appropriately plan his post-secondary transition?

(d) On or about April 22, 2015, did Respondent deny the Student a FAPE because the IEP developed then (i) has an inappropriate post-secondary transition plan that lacks transit training, (ii) provides insufficient behavioral support services to address the Student’s expressed depression and classroom distraction, (iii) does not address the Student’s attendance, and/or (iv) provides insufficient hours of specialized instruction?

V. RELIEF REQUESTED

Petitioner requests the following relief:

- (a) a finding that Respondent denied the Student a FAPE;
- (b) an Order that Respondent revise the Student’s IEP to increase the hours of behavioral support services and to include strategies to address attendance, homework completion, distractibility and lack of focus issues;
- (c) an Order that Respondent conduct or fund a comprehensive clinical psychological evaluation and report to include academic testing in writing, a cognitive assessment, a speech and language evaluation, and an adaptive behavior assessment such as the Vineland, a Vocational II evaluation and report, and all other reasonable evaluations and/or reevaluations recommended by the foregoing;

(d) An Order that Respondent convene a meeting of the Student's IEP Team within 10 days of receiving the completed assessments to review and revise the Student's IEP accordingly, including discussing and determining placement; and

(e) an Order that all meetings be scheduled through Petitioner's counsel.

In the DPC, Petitioner also requested the following relief that the undersigned determined to be inappropriate: (a) an Order that the Student's IEP Team discuss and determine compensatory education, which an IHO cannot order because controlling case law precludes deferring a compensatory education remedy to any body that includes representatives of the public agency; (b) a finding that Petitioner is the prevailing party, which only a court can find; (c) an Order that Respondent pay Petitioner's attorney's fees and costs, which only a court can award; (d) an Order that if Respondent failed to respond to the DPC within 10 calendar days, the arguments and facts averred therein be deemed true and accurate and act as a waiver of the RSM, which was moot because Respondent filed a timely Response; and (e) an Order that Respondent file any notice of insufficiency within 15 calendar days of receiving the DPC or be deemed to have waived such a notice, which was not ripe because Respondent did not file such a notice.

Also in the DPC, Petitioner requested an award of compensatory education. At the PHC and in Paragraph 13 of the PHO, the undersigned directed Petitioner to email Respondent's counsel, with a copy to the undersigned, no later than 5:00 p.m. on July 8, 2015, a statement of what compensatory education Petitioner was seeking, or this request for relief would be considered waived. No such email was received by the undersigned; accordingly, the request for compensatory education was waived.

VI. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

However, pursuant to the Order in Limine issued June 15, 2015 herein, for the reasons stated in that Order, the undersigned has applied a rebuttable presumption of harm to the Student from failure timely to implement the Vaden HOD.²

VII. CREDIBILITY

The undersigned found all of the witnesses to be credible, to the extent of their firsthand knowledge or professional expertise. However, Petitioner's recall of specifics was deficient, rendering her testimony of limited value.

² The Order in Limine noted that this presumption was incorporated into the consent decree in *Blackman v. District of Columbia*, 2006 WL 2456413 (D.D.C. 2006). That consent decree has been vacated. Nevertheless, the undersigned finds this presumption to be necessary to give *res judicata* effect to IHO Vaden's conclusion that the Student's IEP needed to be updated to provide him a FAPE.

VIII. FINDINGS OF FACT³

Facts Related to Jurisdiction

1. The Student is a male of Current Age. P-17-1.⁴
2. The Student resides in the District of Columbia. *Id.*
3. The Student has been determined to be eligible for special education and related services under the IDEA as a child with SLD. *Id.*

Spring 2012 Cognitive Testing

4. In the spring of 2012, a psychological evaluation of the Student calculated his Full Scale Intelligence Quotient (“FSIQ”) on the Wechsler Intelligence Scale for Children IV (“WISC-IV”) to be in the Extremely Low range.⁵ P-3-4 and -5.

March 21, 2014 Evaluation

5. On March 21, 2014, Respondent evaluated the Student by administering the Woodcock Johnson III (“WJ-III”) Normative Update Tests of Achievement (R-7) and an inventory of the Student’s post-secondary interests and choices (R-6).

³ The record includes documentary evidence from years prior to the events challenged in the DPC which are immaterial to determination of the issues in this matter and have not been summarized in this HOD.

⁴ When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

⁵ Clinical Psychologist testified that she was “quite concerned” about this evaluation, and doubted the diagnosis of SLD, because the evaluation was not comprehensive, it lacked academic tests and tests to assess the Student’s behavior and possible depressive disorder, it failed to address the Student’s inattentiveness during testing, and it failed to discuss the Student’s possible intellectual disability. Testimony of Clinical Psychologist.

April 15, 2014 Request for Evaluation

6. On April 15, 2014, Petitioner, through counsel, requested that the Student be evaluated, including a comprehensive psychological reevaluation with clinical components in all areas including a social history, speech and language. P-6-1.

7. Respondent's alleged failure to evaluate the Student fully in the spring of 2014 was an issue in Case No. 2014-0030 (P-3-3), and IHO Vaden concluded that Petitioner had not met her burden of proof on this issue (P-3-11).⁶

April 30, 2014 IEP

8. The Student's IEP developed on or about April 30, 2014 stated that his primary disability was SLD. P-18-1.

9. Education Advocate #1 requested, *inter alia*, that the Student be assessed for Attention Deficit Disorder ("ADD"), that he be provided direct speech services, and that he be placed in a full-time learning disabled program. P-3-9, R-15-1.

10. The April 30, 2014 IEP provided 10 hours per week of specialized instruction in the general education setting, five hours per week of specialized instruction in the outside of general education setting, 240 minutes per month of behavioral support services, and 60 minutes per month of speech and language services on a consultative basis. P-3-8 and -9.

11. The Student did not require a Level II or Level III vocational assessment as of April 30, 2014. P-3-11.

⁶ Consistent with the principle of *res judicata*, the challenge in the instant case to Respondent's failure to conduct evaluations requested by Petitioner is limited to requests subsequent to Case No. 2014-0030.

12. The transition plan in the Student’s April 30, 2014 IEP was adequate as of that date. P-3-12.

13. The consultative speech-language pathology services in the Student’s April 30, 2014 IEP were adequate as of that date. P-3-16.

14. The April 30, 2014 IEP failed to address the Student’s lack of progress under the prior IEP and therefore was not reasonably calculated to provide educational benefit to the Student—and denied him a FAPE—because it failed to revise (*i.e.* increase) the Student’s hours of specialized instruction and behavioral support services, and failed to provide him a more restrictive placement. P-3-14 through -16.

15. The Vaden HOD did not indicate how many hours of specialized instruction or related services the Student required, how many of those hours should be in the outside of general education setting, or how restrictive the Student’s placement should be—except to note that there was no credible evidence that he required a full-time special education placement. P-3-17.

Vaden HOD Order

16. The Vaden HOD ordered Respondent to convene the Student’s IEP Team within 15 school days of the Order (*i.e.*, approximately October 9, 2014) to “review Student’s needs that result from his disability and revise his IEP, as appropriate, in accordance with this decision and 34 CFR §300.324(b), including, but not limited to, providing an appropriate placement.” P-3-18.

17. Because Petitioner had not established that the Student required a full-time special education placement (Finding of Fact 15, *supra*), the placement required by the

Vaden HOD was something more than five hours per week of specialized instruction in the outside of general education setting, but *not* a separate special education program or school.

September 30, 2014 Request for Evaluations

18. On September 30, 2014, Petitioner reiterated her April 15, 2014 request that the Student receive a comprehensive psychological evaluation with clinical components including a social history, and a speech and language evaluation, asserting that these evaluations were needed “as a result of the student’s ongoing academic difficulties.” P-5-1.

19. The Vaden HOD, issued September 18, 2015, based upon the DPH held September 10, 2014, had found such evaluations *not* to be required. P-3-1 and -11.

20. The Student’s private non-school therapist had the ability to refer the Student for evaluations including psychiatric, psychological and psychoeducational evaluations, the cost of which would be covered by insurance; however, the therapist did not refer the Student for any such evaluations. Testimony of Care Manager.⁷

21. Although the Student did not like the large class size at Attending School (Testimony of the Student), there is no evidence in the record that he experienced

⁷ On direct examination, when asked what evaluations she would recommend for the Student, Care Manager, who had worked with the Student since the spring of 2014, replied that it did not appear that the Student had recent psychological or psychoeducational evaluations to determine his academic abilities; however, upon redirect examination, she acknowledged that she had not indicated to the therapist that the Student required more evaluations. Testimony of Care Manager. Thus, neither Care Manager nor the Student’s private non-school therapist recommended additional evaluations for the Student.

academic or behavioral difficulties between the beginning of School Year (“SY”) 2014-2015 and September 30, 2014.

22. Based upon the entire record, the undersigned finds that there was no change in the Student’s circumstances since April 2014 supporting the need for additional evaluations as of September 30, 2014.

23. Moreover, the Student had been evaluated on March 21, 2014 (Finding of Fact 5, *supra*), which was less than one year prior to the September 30, 2014 request for evaluations.

October 5, 2014 IEP Team Meeting

24. Respondent convened a meeting of the Student’s IEP Team⁸ on October 5, 2014. R-2-3.

25. From the beginning of SY 2014-2015 to October 5, 2014, the Student’s grades had improved substantially from SY 2013-2014; he was earning all As and Bs except one C and earned a personal i-Pad from Attending School as a reward. Testimony of the Student; testimony of Care Manager.

26. The Student was performing on grade level. Testimony of Clinical Psychologist.

27. At the October 5, 2014 meeting, Petitioner expressed no concerns and the Team agreed that the Student’s current hours of instruction were appropriate, that Attending School could implement the Student’s IEP, and that the current (*i.e.*, April 30, 2014) IEP would remain in place. R-2-1 and -2, testimony of LEA Rep.

⁸ The meeting sign-in sheet refers to this as a Multi-Disciplinary Team (“MDT”) meeting. The difference is not material to deciding the issues in the instant case.

28. There is no evidence in the record, such as correspondence from Petitioner's counsel to Respondent after the October 5, 2014 meeting, indicating that Petitioner disagreed with the decision to continue without amendment the Student's April 30, 2014 IEP.

29. Based upon the entire record, the undersigned finds that the Student was not being harmed by the failure to amend his IEP pursuant to the Vaden HOD (rebutting the presumption of harm set forth in the Order in Limine), and that Petitioner waived the change in placement prescribed by the Vaden HOD.

The Student's Progress on His IEP Goals From August 25, 2014 through April 3, 2015

30. From August 25 through October 31, 2014, the Student made strong progress on the mathematics goals in his IEP; great progress on his speech and language, reading, and written expression goals; and progress on his transition and emotional, social and behavioral development goals. P-31.

31. From November 3, 2014 through January 23, 2015, the Student made excellent progress on the mathematics, reading, and written expression goals in his IEP; and progress on his speech and language, transition, and emotional, social and behavioral development goals. P-30.

32. From January 26 through April 3, 2015, the Student made progress on all of the goals in his IEP. R-35.

December 8, 2014 Progress Report

33. According to the Student's December 8, 2014 progress report, the Student did not do his homework or participate in his Spanish class, and he lacked initiative in his Test Taking and Remedial Corrective Reading classes. P-8.

February 27, 2015 Progress Report

34. According to the Student's February 27, 2015 progress report, he had earned the following grades during Term 3:

English	66
Chemistry	77
[General Education] Geometry	30
World History/Geography	13
Spanish	65
[Resource] Geometry	91
SAT Preparation	61
Study Skills Development	86

P-9-1.

35. The Student had good participation and excellent participation in resource Geometry, but he did not do his homework in his English, general education Geometry, World History, and Spanish classes, and he did not participate in his SAT Preparation class. *Id.*

The Student's Attendance From August 18, 2014 to April 8, 2015

36. From August 18, 2014 to April 8, 2015, the Student was absent 19 out of 139 school days and was late 13 times. P-27.

37. The Student's absences and tardiness occurred primarily when his mother was in the hospital. Testimony of LEA Rep.

38. The Student did not, and does not, have a truancy problem. *Id.*

39. Based upon the entire record, the undersigned finds that the Student's absence problem was unrelated to his disability, and was limited to the period of time when his mother was hospitalized.

April 10, 2015 Academic Achievement Testing

40. On April 10, 2015, the WJ-III Tests of Achievement were administered to the Student.⁹ P-12-1.

41. The Student's [Math] Calculation Skills raw score was 20, equivalent to six years below his age and five years below Current Grade. P-12-2. This was a decrease from his raw score of 22 when tested on March 21, 2014. P-13-2.

42. The Student's Math Fluency raw score was 72, equivalent to six years below his age and five years below Current Grade. P-12-2. This was an increase from his raw score of 66 when tested on March 21, 2014. P-13-2.

43. The Student's Applied [Math] Problems raw score was 36, equivalent to six years below his age and six years below Current Grade. P-12-2. This was an increase from his raw score of 34 when tested on March 21, 2014. P-13-2.

44. The Student's Passage [Reading] Comprehension score was 30, equivalent to seven years below his age and six years below Current Grade. P-12-2. This was a decrease from his raw score of 27 when tested on March 21, 2014. P-13-2.

⁹ Because the March 21, 2014 WJ-III test was normed based upon the Student's then-current grade (P-13-2), while the April 10, 2015 WJ-III test was normed based upon the Student's then-current age (P-12-2), the standard scores are not reliably compared. Testimony of LEA Rep. Accordingly, the undersigned has relied upon the Student's raw scores rather than his standard scores.

45. The Student's Reading Fluency raw score was 56, equivalent to four years below his age and three years below Current Grade. P-12-2. This was an increase from his raw score of 53 when tested on March 21, 2014. P-13-2.

46. The Student's Letter-Word Identification raw score was 62, equivalent to three years below his age and three years below Current Grade. P-12-2. This was an increase from his raw score of 58 when tested on March 21, 2014. P-13-2.

47. LEA Rep., who administered the WJ-III to the Student when she was his teacher during SY 2013-2014, testified credibly that the Student's WJ-III scores did not match what he was doing in the classroom, because he did not want to take the WJ-III. Testimony of LEA Rep.

48. LEA Rep. testified credibly that the Student's academic achievement was better measured by day to day data including teacher reports, IEP progress reports, and report cards, all of which were consistent with academic growth. *Id.*

49. Clinical Psychologist acknowledged that a child's skill level measured on the WJ is different from his performance in class. Testimony of Clinical Psychologist.

50. Based upon the entire record, in particular the Student's grades in his courses and the fact that he is on grade level, the undersigned discounts the results of the WJ-III as an indicator of the Student's academic achievement.

51. In any event, children with low IQ, like the Student (Finding of Fact 4, *supra*), typically make slower academic progress than children with higher IQ. Testimony of Clinical Psychologist.

The Student's Academic Performance as of April 9, 2015

52. As of April 9, 2015, which was just prior to spring break when students were tired, the Student was exhibiting lack of engagement in some of his classes. Testimony of LEA Rep.

53. Specifically, in Chemistry, the Student was very quiet; rarely participated in class; tended to “shut down,” putting his head down “all of the time”; rarely completed classwork, assignments, projects or homework; stated that assignments were too hard; would complete half of an assignment with the teacher’s one-on-one assistance; and failed to do “any work.” R-29-1.

54. However, in Mathematics, the Student performed well on his classroom-based assignments, averaged “A/B” on quizzes and tests in resource Geometry and “C” in general education Geometry, was engaged and paid attention to lectures, participated in classroom activities, asked relevant questions, and always asked for help and extra work when he had difficulty; and although he had trouble remembering steps and required hints on how to solve problems when tested on concepts covered in much earlier class sessions, he compensated by getting help when necessary. R-30-2.

55. Similarly, in English, the Student had great behavior, produced good classwork, turned in more reading homework when interested in the book, performed strongly on tests and project assignments, was very creative, was writing a novel with insightful character development and sophisticated sentence structure, and had a grade of “C” in his general education English class and a “B” average in his remedial corrective reading class—all despite “bad mood days when he does not do much work,” withdrew his attention and shut down. R-30-3.

56. In Written Expression, the Student was able to express his thoughts on a topic in written form using good syntax, subject/verb agreement, punctuation and capitalization. R-30-4.

57. Based upon the entire record, the undersigned finds that the Student was making meaningful academic progress as of April 9, 2015.

April 27, 2015 Eligibility Meeting

58. Respondent convened a meeting of the Student's IEP Team on April 27, 2015 to determine whether he remained eligible for special education. P-10-1.

59. There is no evidence that Petitioner or her representatives stated that the Student required more evaluations to determine his eligibility.¹⁰

60. There is no evidence in the record that Petitioner or her representatives disagreed with the evaluation conducted by Respondent or requested an Independent Educational Evaluation ("IEE").¹¹

61. The Team determined that the Student failed to achieve adequately or make sufficient progress to meet age or grade-level standards in written expression, reading

¹⁰ At the DPH, Clinical Psychologist testified that based upon her review of records and interviews of the Student and Petitioner, she recommends a new comprehensive psychological evaluation, a nonverbal IQ test, a more full vocational evaluation, a written expression evaluation, and an updated speech-language evaluation. Testimony of Clinical Psychologist. However, these *post hoc* recommendations were not available to the Student's IEP Team in April 2015. Moreover, Clinical Psychologist did not know the Student's grades for SY 2014-2015. *Id.*

¹¹ In closing argument, Petitioner's counsel asserted that the notation of her agreement with the Draft Eligibility Determination Report (R-33-1) was not inserted by her because she participated in the meeting via telephone. Regardless, the Student and Educational Advocate #2 signed the form indicating that they agreed with that Report (*Id.*) and there is no evidence in the record that Petitioner's counsel disagreed. Accordingly, the undersigned finds that all Team members were in agreement.

comprehension, mathematics calculation, and mathematics problem solving despite being provided with appropriate learning experiences and instruction. P-26-2.

62. The Team determined that the Student demonstrated a discrepancy between achievement and measured ability of two years below his chronological age and/or at least two standard deviations below his cognitive ability.¹² *Id.*

63. The Team determined that the Student remained eligible as a child with SLD. P-10-1.

April 27, 2015 IEP Team Meeting¹³

64. The Student's IEP Team met on April 27, 2015 for the annual review of his IEP. P-17-1.

65. Education Advocate #2 requested a comprehensive psychological evaluation, a speech and language evaluation, and a vocational assessment. Testimony of Education Advocate #2.¹⁴

66. Respondent refused to perform any of the requested evaluations. *Id.*

67. The Student's grade point average had increased from 1.63 at the end of School Year ("SY") 2013-2014 to 2.4 (P-17-10, R-18-1), his written expression skills

¹² Given the Student's Extremely Low IQ (Finding of Fact 4, *supra*), the discrepancy in this case apparently is based upon the "two years" discrepancy as measured by the WJ-III rather than the "two standard deviation" discrepancy.

¹³ Apparently this meeting was a continuation of the eligibility meeting.

¹⁴ Education Advocate #2 was not qualified or admitted as an expert witness; accordingly, his opinion testimony is "inadmissible to prove anything." *Gill v. District of Columbia*, 770 F. Supp. 2d 112 (D.D.C. 2011). Moreover, Education Advocate #2 admitted on cross examination that he was not familiar with the tools used by Respondent to assess children for transition. Testimony of Education Advocate #2.

were showing improvement (P-17-8), he had made great gains in the area of communication/speech and language and was able independently to formulate oral complex sentences during structured and unstructured conversation (P-17-9, R-20-1 and -2, R-24-1), he was able independently to use compensatory strategies and self-advocacy skills to improve classroom performance (R-22-1, R-24-1), and he had made gradual growth in emotional, social and behavioral development, having learned some strategies “to fight through periods where he wants to avoid social interaction,” rarely receiving behavioral reports although he sometimes exhibited a lethargic/apathetic attitude (P-17-10).

68. The Student had a 91 percent average in resource Math and a 75 percent average in Geometry (R-34-5), an improvement from his “C” average in Math at the same time the previous school year (P-18-3).

69. The Student had a 72 percent average in English and an 85 percent average in Corrective Reading (R-34-7), an improvement from his “F” average in English at the same time the previous school year (P-18-5).

70. Education Advocate #2 requested an increase in the amount of “resource services,” *i.e.*, specialized instruction in the outside of general education setting.

Testimony of Education Advocate #2.

71. The Team determined that the Student’s tendency to put his head down (“shut down”) in some of his classes was best addressed through his behavioral support services, *i.e.*, counseling. *Id.*

72. The Student’s IEP developed on April 27, 2015 continued the hours of specialized instruction, the setting of those hours, and the minutes of behavioral support

services in the April 30, 2014 IEP, and reduced the hours of speech-language pathology from 60 minutes per month to 30 minutes per month. *Compare P-17-11 with P-18-10.*

73. Based upon the entire record, the undersigned finds that despite his difficulties in some classes, the Student had developed effective coping strategies and was making more progress as of April 27, 2015 than he had been making as of April 30, 2014; accordingly, the undersigned finds that the Student's need for specialized instruction or a more restrictive setting had declined over that time period.

74. Based upon a questionnaire completed by the Student (R-27-1), the Student's April 27, 2015 IEP contains the following Post-Secondary Transition Plan activities for post-secondary education and training:

Post-Secondary Goal(s): Upon graduation from high school [the Student] will attend trade school or college for a degree or certification in computer programming or writing.

* * *

Measurable Annual Transition Goal: [The Student] will identify 2 trade schools and 2 colleges that offer a degree or certification for computer programming with 100% accuracy.

P-17-16.

75. Based upon a questionnaire completed by the Student regarding his career interests (R-27-2 and -3), the Student's April 27, 2015 IEP contains the following Post-Secondary Transition Plan activities for employment:

Post-Secondary Goal(s): Upon graduation from high school, [the Student] will complete three applications for employment in computer technology with 100% accuracy.

P-17-7.

76. Based upon an “Independent Living Postsecondary Goal IEP Team Decision Assistance Form” (R-26-1) indicating that the Student independently and consistently performed all applicable skills and knowledge in the areas of home living, household and money management, transportation, law and politics, and community involvement (R-26-1), the Student’s April 27, 2015 IEP contains the following Post-Secondary Transition Plan activities for independent living:

Post-Secondary Goal(s): Upon graduation from high school, [the Student] will live on campus or authorized housing of a trade school or college.

* * *

Measurable Annual Transition Goal: By 04/21/2016 [the Student] will identify 2 apartments within walking distance from the metro and complete 1 apartment application.

P-17-18.

77. The Student knows how to ride Metro although he does not like to do so (R-1-3); accordingly, the undersigned finds that the Student does not require transit training.

78. There is no evidence in the record that the Student’s transition plan was not reasonably calculated to confer educational benefit.¹⁵

79. Based upon the entire record, including the years the Student has before high school graduation, the undersigned finds that the transition plan in his April 27, 2015 IEP

¹⁵ Clinical Psychologist testified that the transition plan was inadequate because it was not sufficiently specific, did not identify specific “providers” of transition services, and did not provide the Student with the necessary skills to gain employment in computer technology. Testimony of Clinical Psychologist. However, Clinical Psychologist does not have experience in transition planning. P-34, *passim*.

is sufficient for him to progress toward his goal of a computer-related career.¹⁶

80. Based upon the entire record, the undersigned finds that the Student's April 27, 2015 IEP was reasonably calculated to confer educational benefit.¹⁷

Petitioner's Perspective

81. Petitioner is concerned that the Student is distracted in large classes, that he needs therapy, and that he might need "some tutoring in certain things." Testimony of Petitioner.

82. Petitioner wants the Student to have more evaluations. *Id.*

83. Petitioner does not recall what IEP Team meetings she attended or what changes in the Student's IEP she wanted. *Id.*

¹⁶ The Student may wish to apply for Respondent's Competitive Employment Opportunities ("CEO") Program, which "provides high school-age students with disabilities the opportunity to connect with professional mentors who work in a range of competitive occupations. CEO mentors expose students to the world of competitive employment and help guide students through the career exploration process. Program coursework includes paid weekly professional development classes, guided correspondence with mentors, and career-focused capstone projects. Upon completion of the program, mentors assist participants in obtaining paid summer internships at their place of employment." P-33-29. This program was not available to the Student in April 2015 because he had not completed Current Grade, which is a CEO Program prerequisite. *Id.*

¹⁷ Although IEPs are to be judged prospectively (*see*, Conclusion of Law 14, *infra*), the appropriateness of the Student's IEPs during SY 2014-2015 is confirmed by the fact that the Student passed all of his classes, earning a B in Geometry with the help of his teacher showing him how to do the work better and an A- on his final examination in Chemistry, raising his overall grade to a B+. Testimony of the Student. The Student had improved so much in English by the end of SY 2014-2015 that his teacher recommended him for Advanced Placement or Honors English for SY 2015-2016. Testimony of LEA Rep. His grade point average for the fourth term of SY 2014-2015 was 2.43. *Id.* The undersigned finds that these results reflected both the Student's hard work and the effectiveness of the special education supports in place.

84. Petitioner did not assert that the Student requires more specialized instruction or more segregation from his non-disabled peers.

The Student's Perspective

85. The Student articulated clearly that he does not like Attending School because he feels most of the people are disrespectful and the class size of 20-22 students makes it difficult for him to get the attention of the teacher, sometimes leading him to shut down and not do much work. Testimony of the Student.

86. The Student believes he would benefit from an additional teacher in the classroom and more assistance on his career goal of working with computers. *Id.*

87. However, the Student believes that he has done “good” academically at Attending School with the “little” help he has received, and that he has a good rapport with his school counselor and is doing “good” in his counseling sessions.¹⁸ *Id.*

88. The Student did not assert that he requires more specialized instruction or more segregation from his non-disabled peers.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended “(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education

¹⁸ The Student testified that his counseling sessions were about an hour in length, once or twice a month. Testimony of the Student. His IEPs for SY 2014-2015 prescribed 240 minutes per month of behavioral support services. P-17-12, P-18-10. “Service Trackers” indicate that the Student did receive weekly sessions of 60 minutes each. P-20. Inasmuch as failure to implement the Student’s IEP was not raised as an issue in the DPC, it is not necessary for the undersigned to resolve this discrepancy.

and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C. §1400(d)(1), *accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education (“FAPE”). FAPE means:

special education and related services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

Reevaluation

3. Unless the parent and the Local Educational Agency (“LEA”) agree that a reevaluation is unnecessary, a reevaluation of a child with a disability must be conducted at least once every three years, or more frequently if conditions warrant reevaluation, if the child’s parent or teacher requests a reevaluation, or before determining that a child is no longer a child with a disability; but no more frequently than once a year unless the

parent and the LEA agree otherwise. 20 U.S.C. §1414(a)(2); 34 C.F.R. §300.303; DCMR §5-E3005.7.

4. The September 30, 2014 request for evaluation was less than a year after the Student's last evaluation on March 21, 2014, and Respondent therefore was not required to conduct an evaluation at that time. 20 U.S.C. §1414(a)(2); 34 C.F.R. §300.303; DCMR §5-E3005.7.

5. As part of a reevaluation, the IEP Team and other qualified professionals, as appropriate, are required to:

- (A) review existing evaluation data on the child, including—
 - (i) evaluations and information provided by the parents of the child;
 - (ii) current classroom-based, local, or State assessments, and classroom-based observation; and
- (B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—
 - (i) whether the child is a child with a disability ..., and the educational needs of the child, or, in the case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
 - (ii) the present levels of academic achievement and related developmental needs of the child;
 - (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

20 U.S.C. §1414(c)(1); *accord*, 34 C.F.R. §300.305. District of Columbia regulations paraphrase these federal provisions, while adding to the role of the IEP team determining whether the child has “a particular category of disability.” DCMR §5-E3005.4(b)(1).

6. It is clear from the above-quoted provision of the IDEA that the IEP Team, not the parent, determines what additional “data” are required. The LEA “has ultimate responsibility to ensure that the IEP includes the services that the child needs” *Schoenbach v. District of Columbia*, 46 IDELR 67, 106 LRP 46342 (D.D.C. 2006).

7. IEP decisions are not made by majority vote. Rather, if the Team cannot reach consensus, the LEA decides, subject to the parent’s (or adult student’s) right of appeal by filing a DPC. *Id.*, citing 34 C.F.R. Part 300, Appendix A -- Notice of Interpretations, 64 Fed. Reg. 12,473 (1999).

8. Once the LEA decides to conduct an evaluation, as in the instant case, the parent must await the results of that evaluation. Then, if the parent disagrees with the evaluation obtained by the LEA, the parent has the right to an IEE. 34 C.F.R. §300.502(b).

9. However, there is no evidence in the instant case that after Respondent’s April 2015 evaluation, Petitioner requested an IEE or that the Student required additional assessments to determine his continued eligibility or his educational needs.

10. Accordingly, the undersigned concludes that Respondent did not deny the Student a FAPE by failing to conduct the additional evaluations requested by Petitioner.

Contents of the IEP

11. The “primary vehicle” for implementing the goals of the IDEA is the IEP which the IDEA “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)).

12. The IDEA defines IEP as follows:

(i) In general: The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(I) a statement of the child’s present levels of academic achievement and functional performance, including—

(aa) how the child’s disability affects the child’s involvement and progress in the general education curriculum;

* * *

and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to—

(aa) 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

(bb) meet each of the child’s other educational needs that result from the child’s disability;

(III) a description of how the child’s progress toward meeting the annual goals described in subclause (II) will be measured and 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;

(IV) 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 for the child—

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) 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 subclause (IV)(cc);

(VI)

(aa) 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 1412 (a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415 (m) of this title.

20 U.S.C. §1414(d)(1)(A).

Sufficiency of an IEP

13. 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*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009), quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 200, 207 (1982) (“*Rowley*”).

[T]he “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Rowley, 458 U.S. at 201.

14. The United States District Court for the District of Columbia recently summarized the case law on the sufficiency of an IEP, as follows:

Consistent with this framework, “[t]he question is not whether there was more that could be done, but only whether there was more that had to be done under the governing statute.” *Houston Indep. Sch. Dist.*, 582 F.3d at 590.

Courts have consistently underscored that the “appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so”; thus, “the court judges the IEP prospectively and looks to the IEP's goals and methodology at the time of its implementation.” Report at 11 (*citing Thompson R2-J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148-49 (10th Cir.

2008)). Academic progress under a prior plan may be relevant in determining the appropriateness of a challenged IEP. *See Roark ex rel. Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006) (“Academic success is an important factor 'in determining whether an IEP is reasonably calculated to provide education benefits.’”) (*quoting Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 522 (6th Cir. 2003)); *Hunter v. Dist. of Columbia*, No. 07-695, 2008 WL 4307492 (D.D.C. Sept. 17, 2008) (citing cases with same holding).

When assessing a student's progress, courts should defer to the administrative agency's expertise. *See Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 195 (2d Cir. 2005) (“Because administrative agencies have special expertise in making judgments concerning student progress, deference is particularly important when assessing an IEP's substantive adequacy.”). This deference, however, does not dictate that the administrative agency is always correct. *See Cnty. Sch. Bd. of Henrico Cnty., Virginia v. Z.P. ex rel. R.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the hearing officer or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate. That is, the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate The IDEA gives parents the right to challenge the appropriateness of a proposed IEP, and courts hearing IDEA challenges are required to determine independently whether a proposed IEP is reasonably calculated to enable the child to receive educational benefits.”) (internal citations omitted).

An IEP, nevertheless, need not conform to a parent's wishes in order to be sufficient or appropriate. *See Shaw v. Dist. of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002) (IDEA does not provide for an “education ... designed according to the parent's desires”) (citation omitted). While parents may desire “more services and more individualized attention,” when the IEP meets the requirements discussed above, such additions are not required. *See, e.g., Aaron P. v. Dep't of Educ.*, Hawaii, No. 10-574, 2011 WL 5320994 (D. Hawaii Oct. 31, 2011) (while “sympathetic” to parents' frustration that child had not progressed in public school “as much as they wanted her to,” court noted that “the role of the district court in IDEA appeals is not to determine whether an educational agency offered the best services available”); *see also D.S. v. Hawaii*, No. 11-161, 2011 WL 6819060 (D. Hawaii Dec. 27, 2011) (“[T]hroughout the proceedings, Mother has sought, as all good parents do, to secure the best services for her child. The role of the district court in IDEA appeals, however, is not to determine whether an educational agency offered the best services, but whether the services offered confer the child with a meaningful benefit.”).

K.S. v. District of Columbia, 962 F. Supp. 2d 216 (D.D.C. 2013).

When an IEP Must be Revised

15. IEPs must be reviewed and revised:

Review and revision of IEPs—(1)General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child’s anticipated needs; or

(E) Other matters.

34 C.F.R. §300.324(b).

Least Restrictive Environment

16. IDEA’s Least Restrictive Environment (“LRE”) provisions require that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. 34 C.F.R. §300.114(a)(2)(i).

[S]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when

the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. §1412(a)(5)(A); *accord*, 34 C.F.R. §300.114(a)(2)(ii) and DCMR §5-E3011.

17. Each public agency must ensure that a “continuum of alternative placements” is available to meet the needs of children with disabilities for special education and related services, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. §300.115; *accord*, DCMR §5-E3012.

18. Parental choice does not supersede the LRE requirement. *See* 71 Fed. Reg. 46541 (August 14, 2006). The same reasoning would dictate that the choice of the child with a disability does not supersede the LRE requirement.

19. The Student’s IEP in effect at the end of SY 2013-2014 placed him in “regular classes,” *i.e.*, general education, with five hours per week of “pull out” for instruction outside the general education setting. The only step along the continuum of placements between that placement and “special schools” is “special classes,” *i.e.*, a full-time outside of general education placement. Respondent refers to such a placement as a “full-time special education classroom for 20 or more hours of specialized instruction per week outside of the general education classroom within a neighborhood school.” P-33-4.

Impact of Vaden HOD on Sufficiency of the Student’s IEPs

20. A DPC may be brought alleging that an LEA has failed to implement the remedy ordered in a prior HOD. *Bd. of Educ. of Nicholas Cty. v. Monica A.*, 56 IDELR 136 (S.D.W.V. 2011), *aff’d per curiam*, 445 F. App’x 660 (4th Cir. 2011)

21. The Petitioner has the burden of proving that the prior HOD was not implemented, but not re-proving that the remedy was necessary to provide a FAPE. *Id.*

22. Failure to implement the Vaden HOD by amending the Student's April 30, 2014 IEP to increase the Student's hours of specialized instruction and behavioral support services, and to provide him a more restrictive placement raised a rebuttable presumption that the Student suffered harm. Order in Limine at 2.

23. However, that presumption was overcome because the Student made substantial academic progress (Findings of Fact 25 and 26, *supra*) and Petitioner agreed at the October 5, 2014 IEP Team meeting to continue the April 30, 2014 IEP without amendment (Finding of Fact 27, *supra*), also thereby waiving implementation of the Vaden HOD (Finding of Fact 29, *supra*).

Presumption of Continuity

24. If a child's circumstances continue unchanged,

any placement that was appropriate for him in the initial year would continue to meet his educational needs in succeeding years. Although circumstances obviously may change, and often do, the nature or direction of change is unpredictable (except for the children's inevitable aging), so that a presumption of continuity seems most practical.

Andersen v. District of Columbia, 877 F.2d 1018 (D.C. Cir. 1989).

25. In the instant case the Student made substantial progress from the April 30, IEP Team meeting until the April 27, 2015 IEP Team meeting (Findings of Fact 30-32 and 57, *supra*), which was a substantial change in circumstances breaking the presumption of continuity.

26. Because the Student was succeeding in the general education environment with five hours per week of “pull out” services (Finding of Fact 67, *supra*), changing his placement to a more restrictive setting would have violated the basic principle of LRE—to educate children with disabilities to the maximum extent possible with their non-disabled peers. 34 C.F.R. §300.114(a)(2)(i).

Summary

27. In October 2014 Respondent did not deny the Student a FAPE by failing to update his April 30, 2014 IEP to comply with the September 18, 2014 HOD in Case No. 2014-0300 because Petitioner waived such an update, and in any event the Student was not harmed by Respondent’s failure to amend his IEP because he was making meaningful academic progress.

28. Prior to the April 2015 IEP Team meeting, Respondent did not deny the Student a FAPE by failing to reevaluate him in all areas of suspected disability, specifically by failing to conduct a clinical and achievement assessment or an updated writing assessment in connection with his WJ-III testing, because Petitioner did not establish by a preponderance of the evidence that such assessments were required to determine the Student’s continued eligibility or his educational needs.

29. Prior to the April 2015 IEP Team meeting, Respondent did not deny the Student a FAPE by failing to conduct a cognitive and clinical psychological evaluation and/or an updated Adaptive FBA such as the Vineland because Petitioner did not establish by a preponderance of the evidence that such evaluations were required to appropriately plan the Student’s post-secondary transition.

30. In April 2015, Respondent did not deny the Student a FAPE because the IEP developed then (i) has an appropriate post-secondary transition plan and the Student knows how to use transit, (ii) provides sufficient behavioral support services, (iii) did not need to address the Student's attendance because his absences had coincided with his mother's hospitalization and had resolved, and (iv) provides sufficient hours of specialized instruction.

X. ORDER

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

Petitioner's DPC dated June 5, 2015, is dismissed in its entirety, with prejudice.

Dated this 14th day of August, 2015.



Charles Carron
Impartial Hearing Officer

Copies to: Petitioner's Counsel, Jocelyn T. Franklin, Esq.
Respondent's Counsel, Tanya Joan Chor, Esq.
Office of Dispute Resolution
Chief Hearing Officer Virginia Dietrich, Esq.
OSSE Division of Specialized Education