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OSSE
Office of Dispute Resolution
November 17, 2014

Confidential

<p>Parents on Behalf of Student¹,</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”)</p> <p>Respondent.</p> <p>Date Issued: November 14, 2014</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Date: October 20, 2014</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on October 20, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2003.

BACKGROUND AND PROCEDURAL HISTORY:

The student _____ receives special education and related services pursuant to IDEA. The student has an intellectual disability (“ID”) and attends a DCPS high school (School A).

An independent comprehensive psychological evaluation was conducted of the student on January 30, 2013. The student’s cognitive and academic deficits are global and consistent with the ID classification. The student’s reading abilities are below first grade level and her math abilities are at first grade level. The independent evaluator recommended the student be in a school placement that offers both academic and vocational training.

The student’s March 7, 2014, individualized educational program (IEP), prescribes the student receive 25.5 hours per week of specialized instruction, 240 minutes per month of occupational therapy and 3 hours per month of speech/language services. The IEP prescribes extended school year (“ESY”) services and has a prost secondary transition plan. The student’s long-range transition goal is enter a childcare worker-training program after completing high school.

The student’s MDT meeting was reconvened on June 12, 2014, to review an independent vocational assessment. DCPS disagreed with aspects of the independent assessment and denied Petitioner’s request at the meeting that student be removed from School A and placed in a program that included vocational training that Petitioner asserted was appropriate for the student and commensurate with her ability levels.

Petitioners filed this due process complaint on August 21, 2014, and claims that DCPS has not developed an appropriate IEP that provides vocational education during the school day and has not identified an appropriate placement that can provide the student with the necessary vocational training as part of her educational program.

Petitioners seeks as relief an order placing and funding the student at a private full time special education day school (“School B”) with transportation services and that DCPS reconvene the student’s IEP meeting at School B to review the student’s IEP goals and objectives and revise the student’s IEP as appropriate to include vocational training and that DCPS provide the student with compensatory education services.

DCPS filed a timely response to the complaint on September 2, 2014. DCPS denied any alleged violation(s) or denials of a free appropriate public education (“FAPE”) and denied it failed to provide the student with an appropriate IEP and placement.

A resolution meeting was held September 5, 2014. Nothing was resolved. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on September 21, 2014, and originally ended (and the Hearing Officer’s Determination (“HOD”) was due) on November 4, 2014. Petitioner requested a ten (10) day extension of the HOD date to allow for submission of written closing arguments. DCPS objected. Their motion was granted over objection. The HOD is now due November 14, 2014.

The Hearing Officer convened a pre-hearing conference on September 18, 2014, and issued a pre-conference order, outlining, inter alia, the issues to be adjudicated.

ISSUES: ²

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to provide the student with an IEP that is reasonably calculated to provide an educational benefit because it lacks an appropriate transition plan.³
2. Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate educational placement because the current educational placement, School A, cannot provide the student appropriate vocational services.⁴

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties’ disclosures (Petitioner’s Exhibits 1 through 21 and Respondent’s Exhibits 1 through

² The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

³ Petitioners assert the student’s current transition plan provides for her to be child care worker and Petitioners assert that such a career path required a post secondary education which is beyond the student intellectual capabilities.

⁴ Petitioners assert School A is inappropriate for the student because it only has two vocational programs: automotive technology and computer technology, both of which Petitioners assert are inappropriate for the student. Petitioners also assert DCPS promised an appropriate vocational program would be started at School A for SY 2014-2015 but no such program has materialized. (Petitioner’s Exhibit 9-2)

5) that were all admitted into the record and are listed in Appendix A.⁵ Witnesses a listed in Appendix B.

FINDINGS OF FACT:⁶

1. The student _____ receives special education and related services pursuant to IDEA. The student has an ID disability classification and attends School A. (Petitioner’s Exhibit 6-1)
2. On November 29, 2012, DCPS convened an IEP meeting while the student was in ninth grade at School A to discuss additional evaluations. The team agreed to conduct a psychological and speech language evaluations. At the time the student was one of 14 students in School A’s ID program. During the IEP meeting the student’s classroom teacher stated that she attempted to tie some of the academics taught in the class to pre-work or vocational pursuits including work on computer and filling out applications. The student’s teacher also stated the student is provided travel training once per month. The parent’s educational advocate participated in the meeting and requested that the student be traveled trained more frequently and asked whether School A had any “hands on” vocational training. He was informed that School A only had two formal vocational tracts: automotive and computer technology. None of the team members disputed that neither of these programs was appropriate for the student. (Witness 1’s testimony)
3. An independent comprehensive psychological evaluation was conducted of the student on January 30, 2013. The evaluator who conducted the psychological evaluation noted that the student’s cognitive and academic deficits were global and pervasive and that the student had an intellectual disability. The student’s reading abilities are below first grade level and her math abilities are at first grade level. The evaluator determined that the student would have difficulty expressing her needs and remembering tasks, would be slow to start and slow to complete tasks. The evaluator obtained a BASC-2 survey from the student’s teacher that indicated mild depression and the evaluator therefore recommended the student be provided counseling in the school setting. The evaluator recommended the student have a placement in a school that offers both academic and vocational training. (Witness 2’s testimony, Petitioner’s Exhibit 14-1, 14-4, 14-7, 14-8 14-9, 14-13)
4. On March 21, 2013, DCPS convened an IEP meeting at which the student’s independent psychological evaluation was reviewed. During this meeting the parent’s educational advocate requested that the student’s IEP be amended to, inter alia, prescribe for the student a program that is vocationally oriented or that she receive a placement that

⁵Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁶ The evidence that is the source of the Finding of Fact (“FOF”) is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party’s exhibit.

provides the specialized instruction, related services and vocational training. The DCPS team members stated there might be some future vocational opportunities at School A but nothing specific was offered. The parent's educational advocate requested a least restrictive environment ("LRE") review. DCPS did not agree. (Witness 1's testimony, Petitioner's Exhibit 14)

5. On June 4, 2013, DCPS conducted an adaptive behavior assessment (Vineland) of the student. The student's overall adaptive behavior skills fell in the extremely low range of functioning and her intellectual disability was confirmed by the assessment. On June 14, 2013, the student's IEP team convened to review the Vineland and discuss the student's placement at School A. The review of the Vineland led to discussion of vocational offerings and the educational advocate requested that a program designed for ID students with a strong vocational component such as School B be considered. The DCPS members of the team stated that the student was making progress at School A and a community based program with vocational and pre-vocational training would be coming to School A the falling school year. (Witness 1's testimony, Petitioner's Exhibits 10, 13-4, 13-5)
6. DCPS later conducted an occupational therapy evaluation and the student's IEP team met on October 30, 2013, to discuss the occupational therapy assessment and the student's vocational needs. The parent's educational advocate at this meeting requested that DCPS either conduct or fund a vocational III assessment. (Petitioner's Exhibits 12-1, 16)
7. DCPS later issued an authorization to conduct an independent evaluation vocational assessment that was conducted on April 25, 2014. (Witness 1's testimony, Petitioner's Exhibit 15)
8. The student's IEP annual review was conducted on March 7, 2014, prior to the independent vocational assessment being completed. The student's parent and educational advocate participated in the meeting and discussed their ongoing concern about the student's lack of vocational training and the frequency of travel training. At that time the student's parent was concerned that the student was not getting any hands on training other than the monthly travel training. The team agreed the student would participate in ESY and would be on certificate track. (Witness 1' testimony Petitioner's Exhibits 7)
9. The student's March 7, 2014, IEP prescribes the student receive 25.5 hours per week of specialized instruction, 240 minutes per month of occupational therapy and 3 hours per month of speech/language services. The IEP prescribes ESY and has a prost secondary transition plan. The transition plan states that the student's employment interests are: soccer coach, teacher's aide, dance teacher, childcare worker. The transition plan indicates that the C.I.T.E. Learning Styles Instrument and a Brigance Transition Skills Inventory were administered to her by her classroom teacher on February 28, 2014. The student's long-range transition goal upon graduating high school is to enter a childcare worker- training program. (Petitioner's Exhibits 6-15, 6-21, 6-22, 6-23, 6-24, 6-25, 6-26, 6-27)

10. The student is current receiving no training at School A specifically in preparation to be a child-care worker. The student's educational advocate believes that the student's academic goals are not tied to vocational tasks. (Witness 1's testimony, Petitioner's Exhibit 6-6, 6-7, 6-8, 6-9)
11. On March 10, 2014, and March 13, 2014, the educational advocate emailed a response to the annual review meeting expressing concern the vocational programs at School A were inappropriate for the student. DCPS did not respond to the correspondence. (Witness 1' testimony, Petitioner's Exhibit 8, 12-3)
12. The independent vocational assessment report was completed on April 25, 2014, and consisted of interviews with the student and her classroom teacher and assessments, taking into account the student's cognitive abilities. The assessment indicated the student had high interest for was food service, housekeeping and material handling. The assessor noted the student was enrolled in two transition specific classes Life Skills and Self-Advocacy exploring careers of interest and going on field trips to expose the student to different career and life experiences. The assessment recommends that the student would best benefit from a vocationally oriented program with hands on life skills training and job shadowing and work internships. The assessment also recommended the student be provided keyboarding tutorial software to increase her word processing and data entry skills for both post-secondary education/training and the workplace. The assessment notes that the student's keyboarding skills and the information as to what the teacher reported was being provided at School A. (Witness 3's testimony, Petitioner's Exhibit, 15-9, 15-10, 15-11)
13. The student's IEP team reconvened on June 12, 2014, to review the vocational assessment. A DCPS transition coordinator reviewed the independent vocational assessment at the meeting and read the review of by another member of the DCPS transitional team who took issue with the independent assessment. The report stated that the independent assessment was not as comprehensive as he would have liked. The parent's educational advocate expressed his disappointment that the written review of the assessment was not provided to him and the parents prior to the meeting so the issues could be adequately addressed. He reiterated his request for the student to be provided a full time vocational program. (Witness 1's testimony, Petitioner's Exhibit 12-18)
14. The student's DCPS case manger and the DCPS transition coordinator participated in the IEP meeting for the student to review a level three vocational assessment on June 14, 2014. DCPS team members rejected the independent vocational assessment because they believed the assessment should be a hands-on assessment to complete job tasks gauging the student's job readiness and there was none of this in the assessment. DCPS was of the opinion that the independent vocational assessment did not tell DCPS anything they did not already know about the student. DCPS offered to conduct its own assessment of the student. (Witness 5's testimony, Witness 6's testimony)

15. DCPS indicated at the June 12, 2014, meeting that it planned to conduct its own assessment and would reconvene the IEP meeting after that assessment was completed. However, that assessment has not done and no meeting has been convened although a subsequent meeting was scheduled for June 20, 2014, but not held. The student later assigned to a summer job site for summer 2014. However, the student could not participate because she was not sufficiently travel trained. (Witness 1's testimony)
16. At School A the student is currently being provided a life skills training and self-advocacy skills training. The student earned a grade of "B" in the self-advocacy course. School A staff have also indicated the student is being provided some training in handling bulk mail for DCPS. As for travel training, the student is not yet able to travel on her own. (Witness 1's testimony, Petitioner's Exhibit 6-27)
17. While at School A during SY 2013-2014 the student has researched the requirements for child-care worker and did so and reported her results to her classmates. The student is progressing on the completing job applications. (Respondent's Exhibit 2-10, 2-11)
18. In ninth, tenth and eleventh grades students at the School A program ID student focus of soft skills and pre-vocational skills including career awareness, self awareness and self advocacy. In twelfth grade training is all career based with community business partners sending students to job sites to get real world exposure. The new School A building will open in January 2015 and will have online job shadowing that walks students through different careers and gives them interactive exposure to real life job skills. (Witness 6's testimony)
19. The student has been accepted to School B a full time special education day school for ID students on certification tract. Students in this program stay until age 21 and receive transitional skills, life skills and academic skills. Student's age 14 and above have internships 2 to 4 hours per day. There is also job club that develops interview skills, application completion skills and resumes and cover letter preparation. Students are also trained for independent travel by the School B vocational coordinator. There are three separate classes at School B determined by a student's age and ability level. Students rotate classes and there are 6 to 7 students per class on average. The teachers are certified in special education. School B offers related services and has an OSSE certificate of approval. The cost of attendance is \$220 per day. School B's tuition and related services costs are approved by OSSE. (Witness 4's testimony, Petitioner's Exhibit 17)
20. The student's parent has concerns about the student's program at School A. The student reads at first grade level and with assistance she can read basic texts that interest her. The student's parent is not as concerned with the student's academic instruction at School A but the student's parent is dissatisfied with the level of vocational training available to the student at School A. The parent is also concerned that the student is not sufficiently traveled trained. As result of the lack of sufficient travel training the student was not able to take advantage of a job-training program last summer. The student has said that she would like to work with children. At the student's most recent IEP meeting the parent talked to the student's teacher about vocational training for the student. The parent

believes School B would be a good fit for student because it has more hands on vocational training and the student shared that she likes School B a lot. (Parent's testimony)

21. Petitioner educational advocate prepared a compensatory education plan to compensate the student for what Petitioners believe the student has missed as result of having an inappropriate IEP and placement. The compensatory education plan is based on alleged missed vocational services and proposed 80 hours of community access services including travel training. (Witness 1's testimony, Petitioner's Exhibit 21)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief.⁷ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to

⁷ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied the student a FAPE by failing to provide the student with an IEP that is reasonably calculated to provide an educational benefit because it lacks an appropriate transition plan.

Conclusion: Petitioner did/ did not sustain the burden of proof by a preponderance of the evidence that the student’s IEP is inappropriate.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.” *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009).

According to 34 C.F.R. § 300.320(b) of the IDEA, “...beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

The evidence demonstrates that the student’s current;y has a transition plan and the plan is based on age appropriate assesments. The transition plan states that the student’s employment interests are: soccer coach, teacher’s aide, dance teacher, childcare worker. The transition plan indicates that the C.I.T.E. Learning Styles Instrument and a Brigance Transition Skills Inventory were adminstered to her by her classroom teacher on Feburary 28, 2014. The student’s long-range transition goal upon graduating high school is to enter a childcare worker-training program.

Although DCPS authorized Petitioner to obtain a independent vocational assessment this assessment report was not available until well after the student’s IEP was developed in March

2014. In addition, there were significant concerns about the assessment by DCPS as to whether it provided DCPS any more information about the student than DCPS already had. The Hearing Officer concludes that the student's transition plan was based on appropriate assessments that were available to it at the time the IEP was developed and thus the student's IEP was reasonably calculated to provide the student educational benefit.

DCPS, however agreed to conduct its own assessment but it does not appear any action was taken to full this commitment. Based upon Petitioner's repeated concern about the appropriateness of the student transition services and the apparent lack of sufficient travel training so the student can take advantage of the job training opportunities when they become available, the Hearing Officer directs in the order below that DCPS conduct its own vocational III assessment of the student within a time certain and convene a meeting to review the assessment and update the student's transition plan as appropriate.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate educational placement because the current educational placement, School A, cannot provide the student appropriate vocational services.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's placement at School A is inappropriate.

The evidence presented demonstrated that at School A the student has been provided pre-vocational and life skill training and that she is slated to be provided real-world job skill training in the near future. Although there was testimony to support the student being provided vocational training the Hearing Officer did not find the testimony convincing that the programming that student has been and is currently being provided at School A is inappropriate. The student has made progress with the transition goals and services that she has been provided thus far. Accordingly, the Hearing Officer concludes that at this juncture without further assessment, as is directed to be provided pursuant to the order below, there is insufficient evidence to conclude that the student's current program at School A is inappropriate because it does not provide her vocational training.

ORDER:⁸

DCPS shall within thirty (30) school days of the issuance of this order conduct a vocational III assessment of the student and convene a meeting to review the assessment and update the student's transition plan as appropriate.

All other requested relief is denied.

⁸ Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.

Hearing Officer

Date: November 14, 2014