

DISTRICT OF COLUMBIA
Office of Administrative Hearings
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G.S.

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES
&
REHABILITATION SERVICES
ADMINISTRATION
Respondent

Case No.: 2011-DDS-000XX

FINAL ORDER

I. Introduction

In this case, Petitioner G.S. seeks relief from this administrative court with regard to the Rehabilitation Services (“RSA”) program. Three issues were defined for hearing, and a motions hearing was held on August 10, 2011.

For the following reasons, I conclude:

(1) That Respondent District of Columbia Department on Disability Services (“DDS”) – Rehabilitation Services Administration, has properly determined that it will pay Ms. G.S.’s tuition at Marymount College for the 2011-12 school year, at an amount equal to the rate charged by the University of the District of Columbia (“UDC”) for District-resident criminal justice majors. Respondent has properly applied amendments to its regulations regarding

payments to District- resident students who elect to attend local private universities, where the same program is available at a local public institution; 29 DCMR 122.5; but

(2) That Respondent improperly deemed Ms. G.S.'s private grant from Marymount as a comparable service or benefit, used to offset Respondent's payment of tuition costs, because the private grant does not meet the definition of "comparable services and benefits." 34 C.F.R. § 361.5(b)(10); and

(3) That Respondent improperly offered Ms. G.S. an IPE for only the Fall 2011 Semester. This action placed an undue hardship upon Ms. G.S. and failed to meet Respondent's obligations to provide RSA services, under various provisions of 29 DCMR 110, 111, 122, and 124.

II. Procedural History

A. The Hearing Request and July 20, 2011 Status Conference

On June 20, 2011, Petitioner G.S., through counsel, requested a hearing regarding the Rehabilitation Services ("RSA") program, administered by Respondent District of Columbia Department on Disability Services ("DDS") – Rehabilitation Services Administration.

Both parties filed pre-status conference statements. As part of its pleadings, Respondent filed a Motion to Show Cause, seeking an order to show cause why this case should not be dismissed.

An initial status conference was held on July 20, 2011. Joseph R. Cooney, Esq., appeared on behalf of Ms. G.S., who attended the status conference. Shakira D. Pleasant, Esq.,

appeared on behalf of Respondent. Also in attendance were: B.L., Ms. G.S.'s friend; G.T., Ms. G.S.'s mother; and Danae Williams, Vocational Rehabilitation Specialist.

Ms. G.S. has been attending Marymount University under an individualized plan for employment ("IPE"). Her employment goal is Protective Services Occupations. Among other things, Respondent has implemented changes to the IPE based on the provisions of 29 DCMR 122.5. This section states in essence that, if a public institution in the District of Columbia area offers an academic program necessary to achieve the RSA client's vocational goal, but the RSA client chooses to attend a private post-secondary institution that is also in the area, Respondent will pay the published tuition rate of the University of the District of Columbia.

The parties met during a recess in the status conference. They agreed that Ms. G.S. would provide certain documents to Respondent by Friday, July 22, 2011. Respondent would provide a response by no later than Tuesday, July 26, 2011.

With the parties' consent, I converted the July 27, 2011 hearing to a second status conference. The purpose for the second status conference was to discuss whether the case has been settled, and if not, to establish the issues for hearing, and any necessary procedures. The parties also agreed to set a new evidentiary hearing date of August 10, 2011. On July 20, 2011, I issued an Order After First Status Conference, summarizing these rulings.

B. The Status Conference on July 27, 2011

The second status conference was held on July 27, 2011. Mr. Cooney again appeared on behalf of Ms. G.S., who attended the status conference. Ms. Pleasant again appeared on behalf of Respondent. Ms. G.S.'s mother and father, and Ms. Williams attended the status conference.

The parties reported that Ms. G.S. has provided the requested information, and Respondent has informed Ms. G.S. that, pursuant to 29 DCMR 122.5, it will pay \$3,499 toward the cost of tuition at Marymount for the Fall 2011 Semester; this amount represents the comparable tuition for a District-area resident at UDC.

The parties defined three issues that were unresolved:

(1) Whether, in lieu of the \$3,499 resident tuition rate, Respondent should instead pay the greater metropolitan rate required by UDC for its students who do not reside locally;

(2) Whether Respondent should exclude a grant award, which Ms. G.S. claims is a religious grant award, from the amounts of comparable benefits that Respondent requires to be used to reduce the costs of the educational program. Respondent has required verifications to support the character of this grant award¹; and

(3) Whether Respondent should be required to enter into an IPE for a full calendar year, or, alternatively, whether Respondent may enter into an IPE solely for the Fall 2011 Semester.

The parties agreed to retain the hearing date of August 10, 2011 at 1:00 PM. The parties have also agreed to submit a joint status report on or before August 8, 2011.

On July 28, 2011, I issued an Order After Second Status Conference, summarizing these procedures. This Order also established a deadline of ten (10) days before the scheduled hearing for disclosure of witnesses and documents. This Order also denied Respondent's Motion to Show Cause why this case should not be dismissed.

¹ As I will discuss later, the parties disagree about what is legally considered to be comparable benefits.

A joint status report was filed on August 8, 2011, but it reported no information. Respondent filed discovery disclosures on August 3 and 8, 2011, and requested a subpoena of an employee of Marymount.

C. The Hearing on August 10, 2011

The hearing was held as scheduled on August 10, 2011. Mr. Cooney again appeared on behalf of Ms. G.S., who attended the hearing. Ms. Pleasant again appeared on behalf of Respondent. Ms. G.S.'s mother and father, and Ms. Williams again attended the hearing.

At the outset of the hearing, Mr. Cooney objected to Respondent's untimely disclosure of documents and witnesses, and to its request for a subpoena of a Marymount employee. Ms. Pleasant said that she had complied with the general time limits stated in OAH Rule 2825, but had not noticed that the Order After Second Status Conference contained a different time limit for discovery.

Ultimately, both counsel agreed that all of the issues in this case can be decided on cross-motions for summary adjudication, as there are no disputes as to material facts. Both parties agreed to conduct the hearing as a motions hearing. All documents previously disclosed by the parties were considered for purposes of the motions.

In addition, within the three issues framed for hearing, Mr. Cooney was permitted to argue for relief contained in his original hearing petition and to present related arguments contained in his petition. Mr. Cooney maintained that, as to issue number (1), Respondent should be required to pay the tuition rate equal to three times the rate offered by UDC for its comparable program. Mr. Cooney contended that Respondent was essentially estopped from

changing the tuition rate, because this is not a permitted reason for changing the IPE under 29 U.S.C. § 722(b)(2)(E). Ms. Pleasant said she was prepared to address these arguments.

Ms. G.S. presented her arguments first, followed by Respondent.

In the next sections, I will first set forth the undisputed material facts. Then I will discuss the standard for summary adjudication. Finally, I will analyze the parties' arguments as to the three issues and make conclusions of law.

III. Undisputed Material Facts

Ms. G.S. has been a District resident and has been receiving RSA services under IPEs with Respondent since August 2009. Her employment goal is Protective Services Occupations. In pursuit of that goal, Ms. G.S. is attending criminal justice classes at Marymount. The tuition cost for a semester at Marymount is approximately \$11,700.²

The criminal justice program is available at the University of the District of Columbia ("UDC").

Prior to the 2011-12 school year, Respondent has authorized payment of three times the published tuition rate for the UDC program toward Ms. G.S.'s tuition costs. The basis for this authorization was the prior District regulation that applied this rate when a District client elects to attend private post-secondary school, when the same program is offered at UDC.

² I have omitted references to documents, because the documents have not been numbered (or have conflicting numbers). I have relied upon all of the documents submitted by Ms. G.S. with her petition, dated June 20, 2011, and initial statement; and those documents submitted by Respondent in its Agency Status Report, dated July 6, 2011, and its disclosures, dated August 3 and 9, 2011.

Prior to the 2011-12 school year, Respondent has reduced the amount of its tuition payments by several grant programs as to which Ms. G.S. has received grant awards. One of these programs is the Marymount scholarship of \$2,000 per semester awarded to students who have attended Catholic parochial high schools. Other programs include the DCTAG award and the LEAP grant; those programs are not at issue here because they are governmental programs.

Prior to the 2011-12 school year, Respondent has entered into IPEs with Ms. G.S. for a full school year, and amended the terms of the IPEs during the school year to reflect changes in the educational program.

In May 2011, Danae Williams, Ms. G.S.'s vocational rehabilitation specialist, issued a letter requesting certain verifications from Ms. G.S. to prepare an IPE for the 2011-12 school year.

In May 2011, Respondent notified Ms. G.S. of the following plans for the 2011-12 school year:

(1) Respondent would implement its new regulation, 29 DCMR 122.5, which provides that for District residents who attend private post-secondary schools in the District area, even though UDC offers a comparable program, Respondent will only pay for tuition at the rate of one time the UDC resident tuition rate. This represents a change from prior policy, although the net amount of money Respondent contributes to tuition has only been reduced by approximately \$200;

(2) Respondent would reduce the tuition payments by \$2,000 based upon Ms. G.S.'s receipt of the Marymount grant award to former Catholic parochial high school students, as

Respondent deems this grant award to be a comparable benefit. Respondent would only exempt this grant award if it was awarded for scholastic merit. This does not represent a change from prior policy; and

(3) Respondent would enter into an IPE for the Fall 2011 Semester only, and not for the full calendar year. This represents a change from prior policy.

In July 2011, Respondent issued a proposed IPE under these terms. Ms. G.S. has not signed the IPE, and she does not agree to the three terms described above. Respondent will not authorize expenditure of funds for Ms. G.S.'s 2011-12 school year program until she signs the IPE. Respondent has determined that it is willing to expend \$3,499 in tuition to Marymount for the Fall 2011 Semester.

On November 21, 1991, the United States Department of Education's ("USDE") Rehabilitation Services Administration has issued Policy Directive RSA-PD-92-02, addressing state programs' requirements to provide financial assistance for post-secondary education to clients who have been refused Pell Grants because the clients defaulted on student loans. Among other things, the USDE declared that state RSA agencies, including Respondent, must ensure that "maximum efforts" are made to apply for grants and awards to offset the cost of the educational programs. 34 C.F.R. § 361.42(a)(4). The use of student loans is not favored, but permitted under this directive. Pell grants and student loans are supported or guaranteed by federal funding.

IV. Analysis and Conclusions of Law

A. Standard for Summary Adjudication

OAH Rule 2801.1 provides that where a procedural issue is not specifically addressed in the OAH Rules of Procedure, an administrative law judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure.

Each party has orally moved for a decision in their respective favor. In support of the respective motions, each party has also relied upon documents that are outside the scope of the pleadings. Therefore, it is more appropriate to consider the motions as akin to a motion for summary judgment or summary adjudication, than a motion for dismissal. *Compare* D.C. Superior Court Rules 12-I(k) and 56 [summary judgment] *with* D.C. Superior Court Rule 12(b)(6) [dismissal for failure to state a claim].

Under Rule 56, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Kissi v. Hardesty*, 3 A.3d 1125, 1128 (D.C. 2010).

I will address each of the three issues in turn.

B. Respondent Has Properly Implemented its New Tuition Policy

Respondent seeks to apply its amended policy for payment of tuition. Respondent maintains that, under its new regulation, it is only required to pay the District-resident tuition rate for UDC's criminal justice program. Respondent contends that UDC's program is comparable to that of Marymount, which is a private post-secondary school in the District area.

The new regulation, 29 DCMR 122.5, provides:

122.5 If a public institution located in the Area offers an academic program necessary to achieve the consumer's vocational goal, but the consumer chooses to attend a private post-secondary institution ("private institution") that is also located in the Area, the Rehabilitation Services Administration shall pay the published tuition rate of the University of the District of Columbia[.]

Under the prior policy, Respondent would pay three times the tuition rate for the comparable UDC program. This is still the policy regarding out-of-area post-secondary institution programs, under 29 DCMR 122.6.

Ms. G.S. contends that Respondent may not implement this new policy for two reasons: (1) Respondent is not permitted to change an IPE for this purpose, under the Rehabilitation Act (the "Act"), 29 U.S.C. § 722(b)(2)(E), and Respondent failed to collaborate with Ms. G.S. in reaching this decision; and (2) § 122.5 is ambiguous as to whether it applies the UDC resident rate or the higher metropolitan rate, and Ms. G.S. is entitled to receive the benefit of this ambiguity. In this case, I must disagree with Ms. G.S.'s arguments.

First, as Respondent has shown, the RSA program is not an entitlement program. *See* 34 C.F.R. § 361.42(a)(5). Ms. G.S.'s eligibility for RSA services depends on the availability of funds, and there are many provisions of the Act that place restrictions on the expenditure of funds for RSA services. *E.g.*, 34 C.F.R. § 361.42(g) [providing for order of selection where a state agency has limited RSA funds]; 34 C.F.R. § 361.5(b)(10) [defining comparable benefits that must be used to limit expenditure of RSA funds].

Ms. G.S. contends that 29 U.S.C. § 722(b)(2)(E) prohibits a change in the IPE solely based on the new tuition policy. This statute provides in pertinent part:

The individualized plan for employment shall be—

- (i) reviewed at least annually ...
- (ii) amended, as necessary, by the individual... in collaboration with a representative of the designated State agency or a qualified vocational rehabilitation counselor ..., if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual... and by a qualified vocational rehabilitation counselor employed by the designated State unit).

However, Ms. G.S.'s counsel reads this statute out of context. The same statute includes the mandatory requirements of the IPE, including "the responsibility of the eligible individual with regard to applying for and securing comparable benefits." 29 U.S.C. § 722(b)(3)(E)(ii)(III).

Respondent's new policy regarding tuition rates is consistent with its obligation to ensure that comparable benefits are used, under 34 C.F.R. § 361.46(a)(6). The policy places limits on expenditures of funds where the client elects to attend a more expensive institution, when an appropriate program is available at the less expensive public institution. There is no dispute in this case that UDC offers a criminal justice program. Ms. G.S. is free to choose to attend Marymount, but this policy properly restricts Respondent's use of RSA funding to that of the comparable benefit, in this case the public institution that charges a lower rate.

Since the RSA program is not an entitlement program, Ms. G.S. has no vested right to receive the greater benefit that she has received in the past.

Second, I disagree with Ms. G.S. that she is entitled to receive the metropolitan rate of tuition offered by UDC. This rate is offered only to non-District residents, and there is no

dispute that Ms. G.S. is a District resident. Therefore, Respondent has committed no error in applying the UDC tuition rate for District residents.

I do agree with Ms. G.S. that Respondent is required to collaborate with her in formulating the new IPE. This does not mean that Respondent must expend greater funds than those that are allowed by its regulation, even if it has done in the past. Respondent's obligation is to explore all options with Ms. G.S., in light of the new policy. Respondent offered to do that, and so no error occurred.

I note that, in *C.W. v. DDS*, OAH Case No. 2011-DDS-00007 (Final Order, August 4, 2011), this administrative court concluded that Respondent did not establish that it was appropriate to apply 29 DCMR 122.5. However, in that case, Respondent failed to show that the program offered by UDC was comparable to the program selected by C.W. By contrast, in this case, both parties agree that UDC offers a comparable program to the one at Marymount attended by Ms. G.S..

For all these reasons, I conclude that Respondent has properly implemented its new tuition rate applicable to Ms. G.S., under 29 DCMR 122.5.

C. Respondent Improperly Deemed the Award to be a Comparable Benefit

Ms. G.S. urges that her grant award issued by Marymount is not considered to be a comparable benefit that is used to offset RSA funds for education. Her position is that the term, "comparable benefits," does not include private grants or awards.

Respondent counters that this position is erroneous. Grants and awards are excluded from "comparable benefits," only if they are awarded based on merit.

Ms. G.S.'s position is correct. The use of comparable benefits is limited to grants and awards that are publicly funded. The limitation based on merit applies to publicly funded awards and grants.

29 U.S.C. § 722(a)(8) sets forth the requirements for comparable benefits:

(8) Comparable services and benefits.

(A) Determination of availability.

(i) In general. The State plan shall include an assurance that, prior to providing any vocational rehabilitation service to an eligible individual, except those services specified in paragraph (5)(D) and in paragraphs (1) through (4) and (14) of section 103(a) [29 USCS § 723(a)], the designated State unit will determine whether comparable services and benefits are available under any other program (other than a program carried out under this title [29 USCS §§ 720 et seq.]) unless such a determination would interrupt or delay--

(I) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment of the individual in accordance with section 102(b) [29 USCS § 722(b)];

(II) an immediate job placement; or

(III) the provision of such service to any individual at extreme medical risk.

(ii) Awards and scholarships. For purposes of clause (i), comparable benefits do not include awards and scholarships based on merit.

The federal regulations provided more detail on what constitutes a “comparable benefit.”

34 C.F.R. § 361.5(b)(10)(i) defines “comparable services and benefits:”

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

- (B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and
- (C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

Section 361.5(b)(10)(ii) then states that, "For purposes of this definition, comparable benefits do not include awards and scholarships based on merit."

Thus Respondent was only partially correct when it applied the definition of "comparable benefits" to the Marymount grant. The clear reading of § 361.5's definition shows that Respondent may only apply, as "comparable services," publicly funded benefits and services, or health insurance, or employee benefits. The Marymount grant does not fit any of these categories. Therefore, it is immaterial whether the grant was a scholarship based on merit.

Respondent argues that the USDE Policy Directive RSA-PD-92-02 supports its position that "comparable benefits" includes private awards that are not based on merit. However, this directive concerned Pell Grants and student loans, both of which have a public funding component.

Consequently, I conclude that Respondent may not reduce its payment of tuition at Marymount based on the Marymount grant to Ms. G.S., because this grant does not qualify as a "comparable benefit." 34 C.F.R. § 361.5(b)(10)(i)(A).

D. Respondent Improperly Proposed an IPE for Only One Semester

Finally, Respondent has now proposed an IPE to cover only the Fall 2011 Semester, and not the entire 2011-12 school year. This marks a departure from prior practices.

Respondent contends that this new practice is consistent with the federal requirements that the IPE be reviewed at least annually. 29 U.S.C. § 722(b)(2)(E)(i). According to Respondent, the federal requirement does not preclude more frequent review of the IPEs. Respondent maintains that it is appropriate to issue separate IPEs for each semester, because Respondent is required to review progress after each semester, and to obtain new verifications for the next semester. Respondent contends that it places no undue hardship on Ms. G.S. because she receives her grades before the next semester begins.

Ms. G.S. argues that the new practice wreaks havoc on her ability to have continuity in her educational program. Without an IPE in place, Ms. G.S. would be locked out of Marymount's computerized system and could not access her grades, register for courses, communicate with her professors, or have any involvement with the school. Ms. G.S. suggests that she could face a situation in which she is locked out of the computer system at Marymount and cannot access or produce her grades, but Respondent will not enter into an IPE for the Spring semester until the grades are produced.

Some of these factual scenarios are in dispute, but what is not in dispute is that Respondent requires Ms. G.S. to produce copies of her grades after each semester, and that Ms. G.S. does face the possibility of being locked out from Marymount's system if she does not have some commitment that her educational bills will be paid.

It is not my role to question Respondent's policy decisions, so long as the decisions comply with Respondent's legal obligations in operating the RSA program. In this case, however, Respondent is not able to effectively provide RSA services to Ms. G.S., at least for the Spring 2012 Semester, under the new practice. Because of this problem, and because

Respondent's new practice is not consistent with its obligations under its own regulations, I must reverse Respondent's proposal to agree to an IPE for only one semester.

I will analyze Respondent's regulations, 29 DCMR Chapter 1, to illustrate how the new practice places improper barriers to the IPE process.

The general requirements for an IPE are stated in 29 DCMR 110 and 111.

29 DCMR 110.5(e) provides, consistently with federal law, that the IPE must be "reviewed at least annually" by the vocational rehabilitation counselor and the client "to assess the eligible individual's progress in achieving the identified employment outcome[.]" Respondent is correct that there is no provision of law that specifically requires that the IPE be developed for a full year. But the inquiry does not end there. The question becomes, Can Respondent meet its obligations under the RSA program if it only agrees to authorize payments for services one semester at a time?

The IPE is a written document that, among other things, obligates Respondent to pay for certain educational services. 29 DCMR 110.5(a); 29 DCMR 111.2(f)(1). If there is no IPE in place, Respondent is not obligated to pay for any educational services. 29 DCMR 122.11; *see Takahashi v. Dep't of Human Services*, 952 A.2d 869, 874-75 (D.C. 2008).

Ms. G.S.'s program at Marymount consists of a full academic year, divided into semesters and billed by semesters. Marymount issues its financial aid award letters yearly. Many of the courses have semester components and continue into the next semester.

Respondent's requirements for post-secondary education are codified in 29 DCMR 122. Section 122.8 provides that the amount of financial assistance that Respondent may provide for

post-secondary educational and training expenses for each eligible individual “shall not exceed the amount specified in the annual student expense budget” as determined by the school’s financial aid office under the Higher Education Act.

29 DCMR 122.10 states that an eligible individual shall continue to receive financial assistance if the individual meets certain criteria. Many of these criteria contain annual components: Under subsection (b), the individual must maintain a minimum cumulative grade point average of C, “computed annually.” Under subsection (c), the individual must maintain eligibility for financial aid, which is determined annually. Under subsection (d), the individual must attend only one post-secondary institution per academic year, transferring only with Respondent’s approval and amendment of the IPE. Under subsection (i), the individual must annually submit a financial aid application. Under subsection (j), the individual must annually provide Respondent a copy of the SAR Financial Aid Report.

Respondent’s obligation to authorize and process payment of post-secondary educational and training expenses depends in part on Respondent receiving “the individual’s cumulative grade point average at the end of each academic year[.]” 29 DCMR 122.12(a).

Pursuant to 29 DCMR 124.3(b), a client’s financial need is reviewed “Annually when the IPE ... is reviewed and/or amended in accordance with Section 110 of this Chapter and 34 C.F.R. § 361.45(d)[.]”

Thus, there are many requirements for Respondent’s funding of a post-secondary institution program that require yearly review and yearly provision of information. Respondent requires the client to attend the institution for a full year, and yet now Respondent only wants to obligate itself for funding of the program for a single semester.

It is not necessary to resolve the factual disputes between the parties. It is clear from the undisputed facts that the issuance of an IPE for only the Fall 2011 Semester is likely to cause hardship to Ms. G.S. If she is locked out of the database for Marymount because Respondent has not agreed to be obligated for the Spring 2012 Semester program, there is the likelihood that Ms. G.S.'s educational program will be disrupted.

Further, there is a less disruptive alternative available to Respondent. It may issue the IPE annually as before, and conduct review of the IPE each semester to determine if Ms. G.S. is no longer in compliance with its mandates.

For these reasons, I conclude that it is improper for Respondent to seek to enter into an IPE for the single semester of Fall 2011, while it requires Ms. G.S. to qualify annually for RSA services. This new practice is not consistent with Respondent's obligations even under its own regulations, 29 DCMR 110, 111, 122 and 124.

E. Summary of This Decision and Remedy

(1) Respondent properly implemented its policy that, when a client seeks to attend a private post-secondary institution in the District metropolitan area, even though an appropriate program is available at UDC, the public local post-secondary institution, Respondent shall pay tuition at the rate of the UDC program. Respondent further correctly applied the rate for a District resident, because Ms. G.S. is a District resident. 29 DCMR 122.5.

(2) Respondent improperly deemed Ms. G.S.'s private grant from Marymount as a comparable service or benefit, used to offset Respondent's payment of tuition costs, because

the private grant does not meet the definition of “comparable services and benefits.” 34 C.F.R. § 361.5(b)(10).

(3) Respondent improperly offered Ms. G.S. an IPE for only the Fall 2011 Semester. This action placed an undue hardship upon Ms. G.S. and failed to meet Respondent’s obligations to provide RSA services, under various provisions of 29 DCMR 110, 111, 122, and 124.

I will grant partial summary decision in favor of Respondent on the first issue. I will grant partial summary decision in favor of Ms. G.S. on the second and third issues. OAH Rule 2801.1; Superior Court Rules of Civil Procedure, Rule 56; *Kissi v. Hardesty*, 3 A.3d 1125, 1128 (D.C. 2010).

As a remedy, I will order Respondent to schedule a new IPE meeting within ten (10) days of this Order. Respondent may offer to pay Ms. G.S.’s Marymount tuition for her 2011-12 school year at the applicable rate for UDC’s comparable criminal justice program. Respondent cannot deduct from its obligation the \$2,000 grant issued to Ms. G.S. by Marymount. Respondent must offer an IPE for the full year, 2011-12, if Ms. G.S. meets all other requirements of the RSA program and if she signs the IPE.

V. Order

Therefore, it is hereby, this _____ day of _____, 2011:

ORDERED, that Respondent’s motion for summary adjudication is **GRANTED AS TO ISSUE ONE AND DENIED AS TO ISSUES TWO AND THREE**; and it is further

ORDERED, that Ms. G.S.'s motion for summary adjudication is **GRANTED AS TO ISSUES TWO AND THREE AND DENIED AS TO ISSUE ONE**; and it is further

ORDERED, that, within ten (10) days of the issuance date of this Order, Respondent shall convene an IPE meeting with Ms. G.S. to develop a new IPE. Respondent may offer to pay Ms. G.S.'s Marymount tuition for her 2011-12 school year at the applicable rate for UDC's comparable criminal justice program. Respondent cannot deduct from its obligation the \$2,000 grant issued to Ms. G.S. by Marymount. Respondent must offer an IPE for the full year, 2011-12, if Ms. G.S. meets all other requirements of the RSA program and if she signs the IPE; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

/s/
Paul B. Handy
Administrative Law Judge