OSSE
Student Hearing Office
December 02, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

Parent,[1] on behalf of,
Student,*

Petitioner,

Date Issued: November 30, 2013

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,

Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

The student is in an ungraded program at School A. The student's current individualized education program (IEP) lists Intellectually Disability (ID) as his primary disability and provides for him to receive 27.5 hours per week of specialized instruction outside of the general education environment, 120 minutes per month of speech-language pathology outside of the general education environment and 90 minutes per month of behavioral support services outside of the general education environment.

On September 18, 2013, Petitioner filed a Due Process Complaint (Complaint) against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by: failing to revise the student's transition services plan and/or transition goals as discussed at the January 24, 2013 IEP meeting and/or requested by the parent and/or recommended by the student's independent transition assessment. As relief for these alleged denials of FAPE, Petitioner requested, *inter alia*, for the student's postsecondary transition plan to be revised to include job shadowing opportunities; additional postsecondary education goals to include opportunities to research and visit community colleges, research admissions requirements, apply to colleges; additional career goals; additional self-advocacy goals; additional employment goals; additional independent living goals to include improving skills to read informative literature, managing personal finances, managing a household, caring for personal needs, raising a child, buying and caring for clothes and exhibiting responsible

[1] Personal identification information is provided in Appendix A.
*The student is a minor.

citizenship; one to two hours per week of transition services to implement the requested goals; and compensatory education.

On September 27, 2013, Respondent filed a timely Response to the Complaint. In its Response, Respondent asserted that: the student's IEP Team met on January 24, 2013 to review an independent vocational assessment; on January 24, 2013, the student's IEP Team revised the postsecondary transition plan in the student's IEP; and the goals and objectives outlined in the student's January 24, 2013 postsecondary transition plan are appropriate.

On September 26, 2013, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement however the parties agreed to continue to attempt to resolve the complaint during the remainder of the 30 day resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on October 19, 2013, following the conclusion of the 30-day resolution period, and ends on December 2, 2013. The Hearing Officer Determination (HOD) is due on December 2, 2013.

On October 28, 2013, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on November 4, 2013. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On November 15, 2013, Petitioner filed Disclosures including twenty-nine (29) exhibits and three (3) witnesses.[2] On November 18, 2013, Respondent filed Disclosures including six (6) exhibits and three (3) witnesses.

The due process hearing commenced at approximately 9:31 a.m. on November 25, 2013 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2004. The Petitioner elected for the hearing to be closed.

Petitioner's Exhibits 1-10, 13-25 and 27-29 were admitted without objection. Petitioner's Exhibits 11 and 12 were admitted, over Respondent's objection, because the documents were able to be authenticated by the parent and found to be potentially relevant. The Hearing Officer noted that Petitioner's Exhibits 11 and 12 may not be given much weight in determining findings of fact. Petitioner's Exhibit 26 was admitted, over Respondent's objection, because the document was found to be relevant. The Hearing Officer noted that Petitioner's Exhibit 26 may not be given much weight because more recent assessments of the student were included in the record. Respondent's Exhibits 1-6 were admitted without objection.

The hearing concluded at approximately 4:44 p.m. following closing statements by both parties.

[2] A list of exhibits is attached as Appendix B. A list of witnesses who testified is included in Appendix A.

Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

ISSUE

The issue to be determined is as follows:

1. Whether DCPS failed to develop an appropriate postsecondary transition plan for the student on January 24, 2013, specifically by failing to include agreed upon goals in the areas of postsecondary education, self-advocacy, employment search, career exploration and independent living; participation in job shadowing or an internship; and one to two hours per week of transition services on the student's postsecondary transition plan, and if so, whether this failure constitutes a denial of a FAPE?

FINDINGS OF FACT

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

1. The student is a student with disabilities as defined by 34 CFR §300.8. (Stipulated Fact)
2. The student is classified as a student with ID. (Petitioner's Exhibits 1, 6, 16, 21, 23, 24 and 25; Respondent's Exhibit 4; Parent's Testimony; Teacher 1's Testimony; Teacher 2's Testimony)
3. The student is at least 16 years of age and entitled to a postsecondary transition plan. (Stipulated Fact)
4. The parent and the student desire for the student to exit the educational system at the end of the 2013-2014 school year with a Certificate of Attendance. (Petitioner's Exhibits 1, 5, 6 and 16; Respondent's Exhibit 4; Advocate's Testimony; Parent's Testimony; Special Education Coordinator's Testimony)
5. The student is a soft-spoken, hard-working student who has a "remarkable" memory and is driven and eager to learn. (Petitioner's Exhibit 1 and 6; Parent's Testimony; Teacher 1's Testimony; Teacher 2's Testimony)
6. The student struggles with reading and math. (Petitioner's Exhibits 1, 2, 6, 21, 23, 24, 25 and 26; Respondent's Exhibit 4; Evaluator's Testimony; Teacher 1's Testimony; Teacher 2's Testimony)
7. The student has vocabulary and articulation speech and language deficits. (Petitioner's Exhibits 1, 6, 16, 21, 23, 24 and 25; Respondent's Exhibit 4; Parent's Testimony; Evaluator's Testimony; Teacher 1's Testimony; Teacher 2's Testimony)
8. The student often does not "speak up for himself" due to his speech deficits. (Parent's Testimony; Teacher 1's Testimony)

9. The student is able to appropriately interact with both disabled and nondisabled peers. (Petitioner's Exhibits 23, 24 and 25; Parent's Testimony; Teacher 1's Testimony)
10. The student is interested in helping others and desires to become a police officer. (Petitioner's Exhibits 1, 2, 6, 16, 23 and 24; Respondent's Exhibit 4; Advocate's Testimony; Parent's Testimony; Evaluator's Testimony; Teacher 1's Testimony; Special Education Coordinator's Testimony; Teacher 2's Testimony)
11. During the summer of 2012, the student held a summer job at Providence Hospital and was successful in this position. (Petitioner's Exhibits 23 and 24; Parent's Testimony)
12. On October 12, 2012, a transition plan was developed for the student using the results of an October 10, 2012 Brigance Secondary Transition Skills Inventory. (Petitioner's Exhibit 1)
13. The student's October 10, 2012 transition plan indicated that the student desired to attend some form of postsecondary education. (Petitioner's Exhibit 1)
14. The student's October 10, 2012 transition plan indicated that the student desired to become a police officer or obtain employment in the field of civil service. (Petitioner's Exhibit 1)
15. In the student's October 10, 2012 transition plan, the student had a long-range goal in postsecondary education and training of using the internet to research career options in law enforcement and/or public service, with the short-term goal of completing a career assessment to identify areas of interest and one hour per month of transition services to assist the student in reaching the goal. (Petitioner's Exhibit 1)
16. In the student's October 10, 2012 transition plan, the student had a long-range employment goal of seeking part-time employment upon completion of a vocational training program; short-term goals of learning how to complete various applications on paper and on the internet, exploring careers during job shadowing and mentoring opportunities offered at school and participating in mock interviews; and two hours per month of transition services to assist the student in reaching the goals. (Petitioner's Exhibit 1)
17. In December 2012, the student participated in independent transition assessments. (Petitioner's Exhibit 2; Advocate's Testimony; Parent's Testimony; Evaluator's Testimony; Special Education Coordinator's Testimony; Teacher 2's Testimony)
18. Overall, the December 2012 independent assessments indicated that the student was in need of goals and objectives for academic, employment readiness, functional academic, daily living, career decision, career planning, independent living and career exploration areas. (Petitioner's Exhibit 2; Advocate's Testimony; Evaluator's Testimony)
19. Within the student's December 27, 2012 Transition Assessment Report, the Evaluator recommended a long-term postsecondary education/training goal of identifying "two possible postsecondary educations [sic] or training based on his the [sic] results of his employment goal in career awareness and planning activities and be accepted to at least one of the programs before completion of high school." The short-term objectives include "locate sources of occupational and training information; investigate local occupational and training occupational [sic]; student will participate in school visit to potential postsecondary training; student will identify process for

enrollment of postsecondary training program; student will complete application process for postsecondary training program." (Petitioner's Exhibit 2)

20. Within the student's December 27, 2012 Transition Assessment Report, the Evaluator recommended a long-term self-advocacy goal of demonstrating "self-advocacy skills in school and community setting order [sic] to communicate learning style, academic and behavioral needs." The suggested short-term objectives include, "student will appropriately confront topics/issues, which are uncomfortable, with teacher; student will plan and implement alternative solutions for school and community problems as they occur with adult guidance; student will face academic and social situations positively and appropriately and discuss feelings regarding these situations; student will accept praise and/or criticism from peers or adults and utilize this to change social and behavioral outcomes; identify a program and its possible causes; student will self-evaluate work behavior in community-based vocational settings; student will describe their [sic] disability in terms of learning strengths and weaknesses." (Petitioner's Exhibit 2)
21. The December 27, 2012 Transition Assessment Report included the suggested employment search/career exploration long-term goals of identifying "primary and secondary career goals while identifying each occupation's qualifications, training and how each might match his with his own abilities and interests" and completing "a series of activities in order to have the basic skills, habits and behaviors necessary for success in an internships [sic] and entry-level employment." The report included the short-term goals of describing the attributes of three jobs and how they relate to his own personal interests; reporting on three different occupational of [sic] interests the needed educational levels, physical demands, earnings and future outlook; choosing a career of interests [sic] and develop a career plan for himself regarding the educational expectations, timeline, training needed, experience needed, and where he needs to go to get what he needs for this position; having goals related his [sic] ability to have knowledge and performance expectations for exhibiting appropriate work habits and behaviors; completing two job shadowing experiences related to expressed interests; successfully completing one school-supervised work experience; interpreting job-related signs, charts, diagrams, forms, etc.; interpret work related vocabulary; demonstrating skills necessary to effectively locate, apply, interview and maintain employment; identify appropriate action to take if late or absent from work; listing roles and responsibilities of supervision; identify potential safety hazards on the job; applying for a real or simulated job in person or by telephone; and identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school. (Petitioner's Exhibit 2)
22. The December 27, 2012 Transition Assessment Report included the suggested independent living long-term goals of having "the independent living skills needed to live in an apartment independently or with a roommate," having "the independent living skills needed to meet and care for own personal needs" and acquiring "the necessary skills to identify and access school or community resources to help student engage in leisure or social activities with peers with or without disabilities which in high school and after high school." The suggested short-term objectives included working with metro access for discounted metro cards and receive travel training related to travel needs; identifying steps necessary to ensure a safe environment, such

as obtaining appropriate assistance during emergencies, dealing with strangers, having appropriate identification and knowing when and how to use it; performing necessary organizational techniques, such as calendar use, scheduling and record keeping; establishing a checking and savings account a completing transactions at a bank; identifying and demonstrating self-protection or self-defense behaviors and techniques; identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school; identifying and using methods to buy goods, services and make returns; locating and purchasing appropriate items in a store for meal preparation, clothing purchases, household and personal needs; understanding ways nutrition relates to health; designing a meal balanced for nutritional and caloric content; choosing the appropriate clothing to be worn; can [sic] washing and care for clothes; identifying dosage information from a medicine bottle label; identifying leisure activities to enjoy free time; identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school; identifying and participating in two extracurricular activities/clubs in the school and community to interact with peers and make friends. (Petitioner's Exhibit 2)

23. The student's IEP Team reviewed the student's December 27, 2012 independent vocational assessment on January 24, 2013. (Stipulated Fact)
24. Present at the January 24, 2013 IEP Team meeting were the Parent, the student, Teacher 2, the Special Education Coordinator, the Evaluator, a social worker and the Advocate. (Petitioner's Exhibits 5 and 6; Advocate's Testimony; Parent's Testimony; Evaluator's Testimony; Special Education Coordinator's Testimony; Teacher 2's Testimony)
25. On January 24, 2013, all Team members participated in the discussion regarding the student's transition plan. (Petitioner's Exhibit 5; Advocate's Testimony; Parent's Testimony; Evaluator's Testimony; Special Education Coordinator's Testimony; Teacher 2's Testimony)
26. The student's January 24, 2013 IEP Team developed postsecondary education and training long-range goals related to explaining steps to begin shadowing a security guard or police officer, making a visit to a postsecondary institution and using the internet to research career options in law enforcement or public service; with the short-term goals of completing a career assessment to identify areas of interest and researching and finding three postsecondary education options that are available and accessible to the student. (Petitioner's Exhibit 6)
27. The student's January 24, 2013 IEP Team developed the short-term goal of "self-advocating by discussing his needs related to his education and future goals." (Petitioner's Exhibit 6)
28. The student's January 25, 2013 Amended IEP Team developed postsecondary education and training long-range goals related to explaining steps to begin shadowing a security guard or police officer, making a visit to a postsecondary institution and using the internet to research career options in law enforcement or public service; with the short-term goals of completing a career assessment to identify areas of interest and researching and finding three postsecondary education options that are available and accessible to the student. (Petitioner's Exhibit 6)

29. The student's January 25, 2013 Amended IEP Team developed a postsecondary employment long-range goal related to seeking part-time employment upon completing a vocational training program; with the short-term goals of learning how to complete various applications on paper and the internet, exploring careers during job shadowing and mentoring opportunities offered at school, participating in mock interviews and keeping a detailed list of jobs and positions held to act as a resume. (Petitioner's Exhibit 6)
30. The student's January 25, 2013 Amended IEP Team developed independent long-range goals related to acting out the steps to securing an apartment and practicing cooking a balanced meal; with the short-term goals of researching types of housing, creating and using shopping lists to determine the amount of money needed and self-advocating by discussing his needs related to his education and future goals. (Petitioner's Exhibit 6)
31. The student's January 25, 2013 Amended IEP includes speech-language goals and behavioral/emotional goals related to reducing omission of sounds during conversational speech; utilizing self-advocacy strategies such as requesting repetition, clarification and asking for help; improving social emotional functioning regarding self-management and redirection; identifying appropriate responses to anger cues and triggers; and recognizing and utilizing effective coping strategies to handle frustrations and emotions. (Petitioner's Exhibits 1 and 6)
32. The student's January 25, 2013 Amended IEP included a math goal related to solving problems using data presented in graphs, tables and charts; a reading goal related to determining the meaning of unfamiliar words using context clues; and a written expression goal related to matching vocabulary words with their definitions. (Petitioner's Exhibits 1 and 6)
33. On January 24, 2013, the IEP Team discussed the student participating in Project Search during the 2013-2014 school year however the IEP Team did not agree on whether to specifically include job shadowing or an internship on the student's transition plan. (Petitioner's Exhibit 5; Advocate's Testimony; Parent's Testimony; Evaluator's Testimony; Special Education Coordinator's Testimony; Teacher 2's Testimony)
34. On January 24, 2013, the parent requested additional information before making the decision of whether to pursue Project Search for the student. (Petitioner's Exhibit 5; Parent's Testimony)
35. The transition plan in the student's January 25, 2013 Amended IEP was drafted during the January 24, 2013 IEP Team meeting. (Teacher 2's Testimony)
36. On January 24, 2013, the student's IEP Team updated the student's academic interests and included a summary for independent living within the section for assessment results on the student's transition plan. (Petitioner's Exhibits 1 and 6)
37. On January 24, 2013, the student's IEP Team did not include the results of the student's December 27, 2012 assessment on the student's transition plan. (Petitioner's Exhibits 2 and 6; Evaluator's Testimony; Teacher 2's Testimony)
38. During the 2013-2014 school year, transition services and specialized instruction related to the student's transition goals have been incorporated throughout the school day as a part of the student's program. (Teacher 1's Testimony)

39. For the 2013-2014 school year, the student's program includes a "self-advocacy" class which focuses on identifying strengths and weaknesses, expanding on strengths and "building up" weaknesses. (Teacher 1's Testimony)
40. In the student's "self-advocacy" course for the 2013-2014 school year, the student is working on his presentation, practicing initiating conversation, establishing eye contact, being deliberate about speech in order to avoid feeling impeded by his speech, asking questions in math and responding appropriately to feedback including criticism. (Teacher 1's Testimony)
41. During the 2013-2014 school year, Teacher 1 has assisted the student in looking at careers online, researching the education and training requirements for careers, filling out sample job applications and actual retail job applications, and beginning resume development. (Teacher 1's Testimony)
42. For the 2013-2014 school year, Teacher 1 has planned to have speakers related to various careers address the class, provide opportunities for the students to meet with representative from the field of their interests, provide additional "hands-on" engagement, assist the student identifying companies with security guards and learning more about the hiring process. (Teacher 1's Testimony)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). 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 prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The Court in *Rowley* stated that the Act does not require that the special education services 'be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Instead, the Act requires no more than a "basic floor of opportunity" which is met with the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id*. at 200-203. Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, *citing Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seg., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Board of Education v. Rowley*, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991). Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, *citing Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

In the present matter, the Petitioner alleges that DCPS failed to develop an appropriate postsecondary transition plan for the student on January 24, 2013, specifically by failing to include agreed upon goals in the areas of postsecondary education, self-advocacy, employment search, career exploration and independent living; participation in job shadowing or an internship; and one to two hours per week of transition services on the student's postsecondary transition plan.

Beginning not later than the first IEP to be in effect when the child turns sixteen (16), or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR §300.320(b); *see also* 5 DCMR §E-3009.3.

Presently, the student is 17 years of age and although, in the District of Columbia, the student is able to continue his education until the age of 22, the parent and the student desire for the student to exit the educational system at the end of the 2013-2014 school year with a Certificate of Attendance. It is unclear as to whether the student will choose to continue to accept educational services after June 2014. The student is a soft-spoken, hard-working student who has a "remarkable" memory and is driven and eager to learn. The student is an ID student, and as such, struggles with reading and math. Additionally, the student has vocabulary and articulation speech and language deficits. The student is able to appropriately interact with both disabled and nondisabled peers. During the summer of 2012, the student held a summer job at Providence Hospital and was successful in this position. The student is interested in helping others and desires to become a police officer.

The student's October 12, 2012 transition plan was developed using the results of an October 10, 2012 Brigance Secondary Transition Skills Inventory. For education and training, the results of the October 10, 2012 assessment indicated that the student desired to attend some form of postsecondary education. For employment, the results of the October 10, 2012 assessment indicated that the student desired to become a police officer or obtain employment in the field of civil service.

In the student's October 10, 2012 transition plan, the student had a long-range goal in postsecondary education and training of using the internet to research career options in law enforcement and/or public service, with the short-term goal of completing a career assessment to identify areas of interest and one hour per month of transition services to assist the student in reaching the goal. For employment, the student had a long-range goal of seeking part-time employment upon completion of a vocational training program; short-term goals of learning how to complete various applications on paper and on the internet, exploring careers during job shadowing and mentoring opportunities offered at school and participating in mock interviews; and two hours per month of transition services to assist the student in reaching the goals.

In December 2012, the student participated in independent transition assessments. Overall, the independent assessments indicated that the student was in need of goals and objectives for academic, employment readiness, functional academic, daily living, career decision, career planning, independent living and career exploration areas. The Evaluator made eight recommendations related to the student's transition planning, provided "present levels of performance," and suggested twelve long-term goals with an average of seven short-term objectives for each goal.

On January 24, 2013, the student's IEP Team met to review the December 27, 2012 Transition Assessment Report and revise the student's transition plan. Present at the January 24, 2013 IEP Team meeting were the Parent, the student, Teacher 2, the Special Education Coordinator, the Evaluator, a social worker and the Advocate. It is uncontested that the student's IEP Team reviewed the December 27, 2012 Transition Assessment Report at the meeting and that all Team members participated in the discussion regarding the student's transition plan. The Petitioner argued that the student's January 25, 2013 Amended IEP should have included the postsecondary education, self-advocacy, employment search, career exploration and independent living goals as suggested in the December 27, 2012 report and participation in job shadowing or an internship.

Within the student's December 27, 2012 Transition Assessment Report, the Evaluator recommended a long-term postsecondary education/training goal of identifying "two possible postsecondary educations [sic] or training based on his the [sic] results of his employment goal in career awareness and planning activities and be accepted to at least one of the programs before completion of high school." The short-term objectives include "locate sources of occupational and training information; investigate local occupational and training occupational [sic]; student will participate in school visit to potential postsecondary training; student will identify process for enrollment of postsecondary training program; student will complete application process for postsecondary training program." The student's January 24, 2013 IEP Team developed postsecondary education and training long-range goals related to explaining steps to begin shadowing a security guard or police officer, making a visit to a postsecondary institution and using the internet to research career options in law enforcement or public service; with the short-term goals of completing a career assessment to identify areas of interest and researching and finding three postsecondary education options that are available and accessible to the student.

The Parent testified that the student requires self-advocacy goals because he often does not "speak up for himself" due to his speech deficits. Within the student's December 27, 2012

Transition Assessment Report, the Evaluator recommended a long-term self-advocacy goal of demonstrating "self-advocacy skills in school and community setting order [sic] to communicate learning style, academic and behavioral needs." The suggested short-term objectives include, "student will appropriately confront topics/issues, which are uncomfortable, with teacher; student will plan and implement alternative solutions for school and community problems as they occur with adult guidance; student will face academic and social situations positively and appropriately and discuss feelings regarding these situations; student will accept praise and/or criticism from peers or adults and utilize this to change social and behavioral outcomes; identify a program and its possible causes; student will self-evaluate work behavior in community-based vocational settings; student will describe their [sic] disability in terms of learning strengths and weaknesses." Within the student's independent living goals on the student's January 25, 2013 Amended IEP, the student's January 24, 2013 IEP Team developed the short-term goal of "self-advocating by discussing his needs related to his education and future goals." Additionally, the student's January 25, 2013 Amended IEP includes speech-language goals and behavioral/emotional goals related to reducing omission of sounds during conversational speech; utilizing self-advocacy strategies such as requesting repetition, clarification and asking for help; improving social emotional functioning regarding self-management and redirection; identifying appropriate responses to anger cues and triggers; and recognizing and utilizing effective coping strategies to handle frustrations and emotions.

The December 27, 2012 Transition Assessment Report included the suggested employment search/career exploration long-term goals of identifying "primary and secondary career goals while identifying each occupation's qualifications, training and how each might match his with his own abilities and interests" and completing "a series of activities in order to have the basic skills, habits and behaviors necessary for success in an internships [sic] and entry-level employment." The report included the short-term goals of describing the attributes of three jobs and how they relate to his own personal interests; reporting on three different occupational of [sic] interests the needed educational levels, physical demands, earnings and future outlook; choosing a career of interests [sic] and develop a career plan for himself regarding the educational expectations, timeline, training needed, experience needed, and where he needs to go to get what he needs for this position; having goals related his [sic] ability to have knowledge and performance expectations for exhibiting appropriate work habits and behaviors; completing two job shadowing experiences related to expressed interests; successfully completing one school-supervised work experience; interpreting job-related signs, charts, diagrams, forms, etc.; interpret work related vocabulary; demonstrating skills necessary to effectively locate, apply, interview and maintain employment; identify appropriate action to take if late or absent from work; listing roles and responsibilities of supervision; identify potential safety hazards on the job; applying for a real or simulated job in person or by telephone; and identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school.

The student's January 25, 2013 Amended IEP Team developed postsecondary education and training long-range goals related to explaining steps to begin shadowing a security guard or police officer, making a visit to a postsecondary institution and using the internet to research career options in law enforcement or public service; with the short-term goals of completing a career assessment to identify areas of interest and researching and finding three postsecondary

education options that are available and accessible to the student. The student's January 25, 2013 Amended IEP Team developed a postsecondary employment long-range goal related to seeking part-time employment upon completing a vocational training program; with the short-term goals of learning how to complete various applications on paper and the internet, exploring careers during job shadowing and mentoring opportunities offered at school, participating in mock interviews and keeping a detailed list of jobs and positions held to act as a resume. Additionally, the student's January 25, 2013 Amended IEP included a math goal related to solving problems using data presented in graphs, tables and charts; a reading goal related to determining the meaning of unfamiliar words using context clues; and a written expression goal related to matching vocabulary words with their definitions.

The December 27, 2012 Transition Assessment Report included the suggested independent living long-term goals of having "the independent living skills needed to live in an apartment independently or with a roommate," having "the independent living skills needed to meet and care for own personal needs" and acquiring "the necessary skills to identify and access school or community resources to help student engage in leisure or social activities with peers with or without disabilities which in high school and after high school." The suggested short-term objectives included working with metro access for discounted metro cards and receive travel training related to travel needs; identifying steps necessary to ensure a safe environment, such as obtaining appropriate assistance during emergencies, dealing with strangers, having appropriate identification and knowing when and how to use it; performing necessary organizational techniques, such as calendar use, scheduling and record keeping; establishing a checking and savings account a completing transactions at a bank; identifying and demonstrating self-protection or self-defense behaviors and techniques; identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school; identifying and using methods to buy goods, services and make returns; locating and purchasing appropriate items in a store for meal preparation, clothing purchases, household and personal needs; understanding ways nutrition relates to health; designing a meal balanced for nutritional and caloric content; choosing the appropriate clothing to be worn; can [sic] washing and care for clothes; identifying dosage information from a medicine bottle label; identifying leisure activities to enjoy free time; identifying and completing enrollment process appropriate [sic] community resources that could support student in employment after high school; identifying and participating in two extracurricular activities/clubs in the school and community to interact with peers and make friends.

The student's January 25, 2013 Amended IEP Team developed independent long-range goals related to acting out the steps to securing an apartment and practicing cooking a balanced meal; with the short-term goals of researching types of housing, creating and using shopping lists to determine the amount of money needed and self-advocating by discussing his needs related to his education and future goals.

The Petitioner argued that the student's January 25, 2013 transition plan should have also included participation in job shadowing or an internship. The record is clear that the January 24, 2013 IEP Team did not agree on whether to specifically include job shadowing or an internship on the student's transition plan. The IEP Team discussed the student participating in Project

Search during the 2013-2014 school year however the parent requested additional information before making the decision of whether to pursue this opportunity for the student.

Teacher 2 testified that the transition plan in the student's January 25, 2013 Amended IEP was drafted during the January 24, 2013 IEP Team meeting. With the exception of the word "draft" stamped on the transition plan included in the record, there was no evidence presented which disputed this testimony. Although the Advocate and the Parent believed that additional goals would be added after the conclusion of the meeting, it is clear that the January 24, 2013 IEP Team made significant changes to the student's transition plan from the student's October 10, 2012 transition plan. The Evaluator testified that the IEP Team did not agree to incorporate specific goals into the student's transition plan following the IEP Team meeting. The Advocate acknowledged that the proposed changes to the January 25, 2013 transition plan that she sent to the Special Education Coordinator following the January 24, 2013 meeting were not specifically agreed to by the student's IEP Team.

On the student's January 25, 2013 Amended IEP, the student's IEP Team updated the student's academic interests and included a summary for independent living within the section for assessment results. The assessment results were not specifically updated to include the December 27, 2012 assessments or the results of those assessments.

The student's current teacher, Teacher 1, testified that transition services and specialized instruction related to the student's transition goals are incorporated throughout the school day as a part of the student's program. Additionally, the student's program includes a "self-advocacy" class which focuses on identifying strengths and weaknesses, expanding on strengths and "building up" weaknesses. In this course, the student is working on his presentation, practicing initiating conversation, establishing eye contact, being deliberate about speech in order to avoid feeling impeded by his speech, asking questions in math and responding appropriately to feedback including criticism. During the 2013-2014 school year, Teacher 1 has assisted the student in looking at careers online, researching the education and training requirements for careers, filling out sample job applications and actual retail job applications, and beginning resume development. Although not yet accomplished for the 2013-2014 school year, Teacher 1 has planned to have speakers related to various careers address the class, provide opportunities for the students to meet with representative from the field of their interests, provide additional "hands-on" engagement, assist the student identifying companies with security guards and learning more about the hiring process.

Although the Plaintiffs are not satisfied with DCPS' offer of FAPE, an IEP need not conform to a parent's wishes in order to be sufficient or appropriate. *See Shaw v. District of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002) (stating that the IDEA does not provide for an "education ... designed according to the parent's desires") (citation omitted). In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. *See Gregory K v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314. A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. *Id.* What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District,*

873 F.2d 563, 567 (2d Cir. 1989). Although the parent desired for the student's January 24, 2013 IEP Team to include all of the suggestions in the student's December 27, 2012 Transition Assessment Report, the student's transition plan did not need to include all of the recommendations in order to be adequate. In fact, the Evaluator testified that it was unrealistic for the student's January 25, 2013 transition plan to include all of the suggested goals and the Advocate testified that it was understood that the student would receive transition services as a part of the 27.5 hours of specialized instruction included within the student's IEP.

While the student's January 25, 2013 transition plan did not need to include all of the transition goals suggested in the December 27, 2012 report, given this specific student's needs, the Hearing Officer concludes that the January 24, 2013 IEP Team should have included the results of the December 27, 2012 assessments on the student's transition plan and should have included a goal for the student to complete applications to postsecondary education or training programs. Although the student is only 17 years of age, the student and the parent have opted for the student to exit special education services at the end of the 2013-2014 school year. During the January 24, 2013 IEP Team meeting, the student's IEP Team was aware of the anticipated date for the student to receive a Certificate of Attendance. If the student were choosing to continue education through age 22, on January 24, 2013, a goal related to the completion of an application to a postsecondary education or training program would not have been necessary. The student's January 24, 2013 IEP Team included the short-term goal of "finding three postsecondary education options that are available and accessible to the student" however did not include the goal necessary for the student to complete the application process to these programs which is essential for a student who is on track to transition out of high school.

To the extent that the student's transition plan included any procedural violations, the procedural violations did not affect the student's substantive rights. Procedural violations raise a viable claim only if the procedural violations affect the student's substantive rights under the IDEA. *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (United States Court of Appeals, District of Columbia (2006)). The failure of DCPS to include the results of the student's December 27, 2012 transition assessments on the student's January 25, 2013 Amended IEP was a procedural violation that did not affect the student's substantive rights under the IDEA. The exclusion of the transition assessment results on the student's transition plan neither, (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, nor (3) caused a deprivation of educational benefit for the student. The student's January 24, 2013 IEP Team[3] fully discussed the results of the assessments and utilized the results to develop the student's transition plan.

With the exception of a goal for the student to complete applications to postsecondary education or training programs, the Hearing Officer concludes that the remainder of the student's

[3] The issue in this case was limited to the January 24, 2013 IEP Team meeting and the transition goals and services on the student's January 25, 2013 transition plan. The record contains evidence that the student's IEP Team in October 2013 may not have considered the December 27, 2012 assessments in the development of the student's transition goals at that time. The Hearing Officer strongly suggests that DCPS amend the student's transition plan to include the results of the student's December 27, 2012 assessments and, if necessary, revise the student's October 2013 transition plan to include any additional goals and services the IEP Team finds necessary given the assessment results.

January 25, 2013 Amended IEP contains appropriate measurable postsecondary goals related to training, education, employment, and independent living skills and the transition services needed to assist the student in reaching those goals. The student's transition plan addresses the student's need to self-advocate and the student's IEP addresses the student's articulation deficits which interfere with his self-confidence. It would not have been appropriate for the IEP Team to adopt, wholesale, the suggested goals in the December 27, 2012 Transition Assessment Report. Not all of the goals were measureable; some goals were not unique to the student (e.g. the goal related to making friends was not unique to the student as the student was already able to interact appropriate with disabled and nondisabled peers and the parent stated that the student was having some success in travel training and was able to procure a reduced fee card for the metro); and the goals were excessive for the time period of the IEP. Additionally, it was not necessary to include additional goals related to job shadowing or an internship for this student. During the summer of 2012, the student held a summer job at Providence Hospital and was successful in this position. Therefore, the student has already gained the knowledge and skills that a job shadowing or internship position would have offered.

Finally, it was not necessary for the student's January 24, 2013 IEP Team to include an additional one to two hours per week of transition services on the student's transition plan. The Advocate testified that it was her understanding that transition goals were addressed within the ID program. The Evaluator testified that transition services should be incorporated throughout the school day rather than a specific amount of time per week. Teacher 1 testified that transition services and self-advocacy skills were incorporated as a part of the student's daily program. Finally, the IEP Team did not discuss additional hours or need for additional hours.

Requested Relief

IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* ". . .the inquiry must be fact-specific and . . . the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F. 3d 516 at 524, 365 U.S. App. D.C. 234 (D.C. Cir 2005) citing *G.ex. RG v Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4 h Cir. 2003).

In this case, the denial of FAPE is DCPS' failure to include a goal for the student to complete applications to postsecondary education or training programs on the student's January 25, 2013 transition plan. Given that there are more than six months remaining before the student will receive his Certificate of Attendance, the most appropriate remedy is to Order that DCPS revise the student's transition plan to include goal for the student to complete applications to postsecondary education or training programs. The Petitioner has requested compensatory education for DCPS' failure to make requested changes to the student's transition plan. In particular, the Petitioner has requested 43 hours of independent vocational/transition support and 15 hours of functional math instruction.

When an LEA deprives a child with a disability of a FAPE in violation of the IDEA, a court and/or Hearing Officer fashioning appropriate relief may order compensatory education. *Reid* at 522-523. *See also Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36, 49 IDELR 38

(D.D.C. 2007). If a parent presents evidence that her child has been denied a FAPE, she has met her burden of proving that the child may be entitled to compensatory education. *Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland*, 534 F. Supp. 2d 109, 49 IDELR 183 (D.D.C. 2008); *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010). However, even if a denial of a FAPE is shown, "[i]t may be conceivable that no compensatory education is required for the denial of a [FAPE]…either because it would not help or because [the student] has flourished in his current placement. *Phillips v. District of Columbia*, 55 IDELR 101 (D.D.C. 2010) *citing Thomas v. District of Columbia*, 407 F. Supp. 2d 102, 44 IDELR 246 (D.D.C. 2005). *See also Gill v. District of Columbia*, 55 IDELR 191 (D.D.C. 2010) ("The court agrees that there may be situations where a student who was denied a FAPE may not be entitled to an award of compensatory education, especially if the services requested, for whatever reason, would not compensate the student for the denial of a FAPE.")

Here, although DCPS did not include a goal for the student to complete applications to postsecondary education or training programs on the student's January 25, 2013 transition plan, there are more than six months remaining in school year in order of the student to work on the required goal. While Teacher 1 and the parent have assisted the student in completing applications for retail jobs, the student has expressed his desire to participate in a postsecondary education program. There was no evidence presented in the record which indicated that the student has missed the deadline to apply to an appropriate community college program or to an appropriate vocational program following the student's receipt of his Certificate of Attendance. While the student did not complete the application for Project Search to be able to participate in the program for the 2013-2014 school year, the student is able to complete the application for the 2013-2014 school year should the parent and student decide to pursue this option.

Therefore, the Hearing Officer concludes that compensatory education is not warranted in this case because it is not necessary to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Given the point in the school year, DCPS is still able to provide the special education services that should have been supplied in the first place. Ordering DCPS to include a goal for the student to complete applications to postsecondary education or training programs on the student's current transition plan is an appropriate remedy.

ORDER

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

1. Within 10 school days of the date of this Order, DCPS shall convene an IEP Team meeting to revise the student's transition plan to include a goal for the student to complete three applications to postsecondary education or training programs.
2. All other relief sought by Petitioner herein is **denied**.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: November 30, 2013

Melanie Byrd Chisholm
Hearing Officer