

special education instruction, life skills training, and related services to prepare the Student for independent living and future employment.

On November 3, 2011, DCPS held a resolution meeting that did not resolve the Complaint, and the parties did not agree to end the 30-day resolution period early. The resolution period therefore ended November 24, 2011, with the 45-day timeline expiring January 8, 2012.

On November 17, 2011, DCPS filed a late Response and Motion to Dismiss. DCPS argued that the Hearing Officer was without jurisdiction to hear the Complaint because the Student graduated with a regular high school diploma and DCPS no longer owed a FAPE to the Student. On November 21, 2011, Petitioner filed an opposition to the motion, and the motion was thereafter denied. The Hearing Officer ruled that he had jurisdiction over a due process complaint filed on behalf of a graduated student who contests the validity of his graduation and/or seeks compensatory education relief for a denial of FAPE occurring prior to graduation. *See Prehearing Order*, ¶ 3. However, the ruling was expressly without prejudice to consideration of all applicable legal and factual issues relating to Petitioner's entitlement to the specific relief requested based on the full hearing record. *Id.*

On December 2, 2011, a Prehearing Conference ("PHC") was held to discuss and clarify the issues, and a Prehearing Order was then issued on December 7, 2011. The parties filed their five-day disclosures as required on December 12, 2011; and the Due Process Hearing was held on December 19, 2011. Petitioner elected for the hearing to be closed.

At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-14.

Respondent's Exhibits: No documentary exhibits.

In addition, the following Witnesses testified on behalf of each party:

Petitioner's Witnesses: (1) Student; (2) Parent; and (3) Carrie Peckover, Educational Consultant.

Respondent's Witnesses: (1) Private School Case Manager; and (2) DCPS Compliance Specialist.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). The statutory HOD deadline is January 8, 2012.

III. ISSUES AND REQUESTED RELIEF

The following issues were presented for determination at hearing:

(1) Failure to Provide Appropriate Transition Services — Did DCPS deny the Student a FAPE by failing to provide the Student with appropriate transition services so as to adequately prepare him for employment, adult education, and independent living during the 2009-10 school year?²

(2) Improper Exiting — Did DCPS deny the Student a FAPE by improperly exiting him from special education services with a regular high school diploma (a) without providing the Student with a "summary of academic achievement and functional performance" as required by the IDEA, and (b) despite the Student's significant academic deficiencies? *Complaint*, pp. 5-6.³

As relief, Petitioner requests an order: (a) funding compensatory education in the form of vocational training, special education instruction, life skills training, and related services to prepare him for independent living and future employment; (b) that he receive continued special education and related services until age 22; and/or (c) that DCPS reconvene the MDT to develop an IEP for him including a comprehensive transition plan.⁴

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. DCMR 5-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Petitioner also had the burden of proposing a well-articulated plan for compensatory education, per *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

² Petitioner confirmed at the PHC that the Complaint does not seek to assert any claim for denial of FAPE before 10/25/2009, a date two years prior to the filing date of the Complaint.

³ The Prehearing Order had also noted a third allegation regarding exiting — *i.e.*, that the Student should not have been exited with a regular high school diploma where he had not achieved relevant IEP goals and objectives. *Prehearing Order* (Dec. 7, 2011), ¶ 6 (2). However, Petitioner's counsel clarified by email dated 12/08/2011 that Petitioner was *not* asserting such claim. This was also confirmed at the outset of the hearing.

⁴ It was discussed at the PHC that categories (b) and (c) above normally would constitute prospective relief not available to Petitioner if he was properly exited with a regular high school diploma.

IV. FINDINGS OF FACT

1. The Student is a -year old adult who previously was determined to be eligible for special education and related services as a child with a disability under the IDEA. The Student is a resident of the District of Columbia.
2. During the 2009-10 school year, the Student attended Private School pursuant to DCPS' placement. *Student Test.; Parent Test.*
3. In June 2010, at the conclusion of the 2009-10 school year, the Student graduated from Private School with a regular high school diploma from DCPS.
4. As a result of receiving his DCPS high school diploma, the Student was exited from special education services.
5. The Student's last individualized education program ("IEP") was developed on May 21, 2009, and governed the special education and related services he received during the 2009-10 school year. *See P-13.* The 05/21/2009 IEP includes a Post-Secondary Transition Plan for the Student, which specifies "H.S. Diploma" as his Projected Exit Category. *P-3, pp. 15-16.*
6. The Student's Post-Secondary Transition Plan identifies no formal or informal transition assessments as having been utilized to determine the Student's long-range goals and interests, *P-3, p. 15*, and there is no evidence that any such assessments were utilized.
7. The Post-Secondary Transition Plan does not include appropriate measureable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and independent living skills. It contains only one annual goal for post-secondary education and training, two annual goals for employment, and one annual goal for independent living. *P-3, p. 15. See also Peckover Test.*
8. In March 2011, the Student was administered psycho-educational testing by the Rehabilitative Services Administration ("RSA") for the purpose of assessing his employment and training prospects. The testing indicated that the Student's full-scale IQ was 63, which places him at the 1st percentile and falls within the intellectually deficient range of functioning. In addition, the Woodcock-Johnson III Tests of Achievement administered as part of that testing indicated that the Student's academic achievement was at a low elementary school level (between 1st and 2d grade levels in Reading and Writing and approximately the 3d grade level in Math). *See P-4.*

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Failure to Provide Appropriate Transition Services

Under **Issue 1**, Petitioner alleges that DCPS failed to provide the Student with appropriate Transition Services so as to adequately prepare him for employment, adult education, and independent living, during the 2009-10 school year prior to his graduation. The Hearing Officer concludes that Petitioner has met his burden of proof on this issue.

Under the IDEA, “[b]eginning not later than the first IEP to be in effect when the child turns 16... the IEP *“must include – (1) appropriate measureable 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.”* 34 CFR § 300.320(b) (emphasis added). See 20 U.S.C. § 1414 (d)(1)(A)(i)(VII). “Transition services,” in turn, are defined under IDEA as a *“coordinated set of activities* for a child with a disability that –

(A) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities...;

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of living skills and functional vocational evaluation.”

20 U.S.C. §1401(34) (emphasis added); see also 34 C.F.R. §300.43.

IDEA thus requires that a written plan be included in the IEP, containing “appropriate measureable postsecondary goals” that are geared *specifically* to the “individual child’s needs.” That plan (commonly called a “Post-Secondary Transition Plan”) then serves as the guide for a “coordinated set” of transition activities. The primary intent underlying these IDEA provisions is to afford individual students the opportunity to reach measureable post-secondary goals of self-sufficiency as adults.

In this case, the Student's Post-Secondary Transition Plan had several fundamental defects. First, it does not appear to be based on any age appropriate transition assessments of the Student. Indeed, the Plan itself identifies no assessment tools whatsoever – no interest inventory, no transition skills inventory, etc. *See P-13, p. 15; Peckover Test.* And there is no evidence that any such assessments were in fact utilized. DCPS offered the testimony of the Private School Case Manager, whose responsibilities were to oversee the Student's progress and make sure that required services were delivered, but she did not testify about any specific vocational assessment efforts. *See Case Mgr. Test. See also Student Test.*

Second, there are no baselines specified for any of the annual goals in the Plan. *See P-13, p. 15; Peckover Test.* Nor does the Plan otherwise appear to contain appropriate, measureable post-secondary goals that are specific to the Student's individual needs. Instead, the goals are written in very general terms (*e.g.*, “[Student] will investigate possible post-secondary educational opportunities”; “[Student] will, with the assistance of his counselor, explore 3 areas of vocational interest”) rather than being drafted down to specific steps. *Id.*

Third, the Plan identifies no specific courses of study to support any post-secondary transition goals. It merely cites “General Academic Coursework” and unspecified training to be included “as part of psycho-educational group counseling.” *P-13, p. 16.* And the Plan appears not to have included any other coordinated set of transition activities, including activities that might link him with other agencies such as RSA or the D.C. Department of Disability Services (“DDS”). *See P-13, p. 16; Peckover Test.; Student Test.* As the record revealed, Petitioner graduated with functional reading skills that are significantly below the level necessary to support his transition into his vocational area of interest (painting/light construction). *See P-1; Peckover Test.* Although Private School exposed Petitioner to job-site employment experiences in this field, DCPS failed to design and ensure that he received a coordinated set of activities “focused on improving [his] academic and functional achievement ... to facilitate [his] movement from school to post-school activities” related to his interests and preferences. 20 U.S.C. §1401(34) (A).

In sum, the Hearing Officer concludes that the Post-Secondary Transition Plan included in the Student's IEP was not reasonably calculated to provide meaningful educational benefit to him, consistent with statutory requirements, and that Petitioner did not receive required post-

secondary transition services from 10/25/2009 to the end of the 2009-10 school year. The Transition Plan appears to be little more than a “generic and somewhat vague formula of post-high school goals and services, equally applicable to almost any high school student.” *Virginia S. v. Department of Education*, 47 IDELR 42 (D. Haw. 2007). Accordingly, Petitioner has met his burden of demonstrating a denial of FAPE in this respect.

B. Improper Exiting

Under **Issue 2**, Petitioner alleges that DCPS also denied him a FAPE “when they improperly exited this student from [special education] services [1] without providing the student with a summary of academic achievement and functional performance and/or [2] despite the student’s significant academic deficiencies.” *Complaint*, p. 5. The Hearing Officer concludes that Petitioner has failed to prove either claim by a preponderance of the evidence.

Pursuant to the IDEA, the obligation to make FAPE available to all children with disabilities between the ages of 3 and 21, inclusive, “does not apply with respect to ...Children with disabilities who have graduated from high school with a regular high school diploma.” 34 C.F.R. § 300.102 (a) (3) (i). IDEA regulations provide that, as used therein, “the term *regular high school diploma* does not include an alternative degree that is not *fully aligned with the State’s academic standards*, such as a certificate or a general educational development credential (GED).” *Id.*, § 300.102 (a) (3) (iv) (emphasis added). For a child whose entitlement to FAPE terminates due to graduation with a high school diploma, IDEA regulations further provide that the LEA “must provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.” 34 C.F.R. § 300.305 (e) (3).

First, Petitioner did not prove that DCPS failed to provide a sufficient “summary of academic achievement and functional performance,” as required by § 300.305 (e) (3). The IDEA regulations do not specify the information that must be included in the summary, and the U.S. Department of Education has indicated that “State and local officials should have the flexibility to determine the appropriate content in a child’s summary, based on the child’s individual needs and post-secondary goals.” 71 *Fed. Reg.* 46, 645 (Aug. 14, 2006). When Petitioner graduated, he had not yet turned 18 years old, so his Parent would have been expected to receive the required

summary on his behalf. The Parent testified that she could not recall whether or not she received such a summary. *Parent Test*. Beyond that, Petitioner's witnesses appear to have been speculating as to what may or may not have occurred in June 2010.

Second, Petitioner did not prove that DCPS awarded him a high school diploma that was not fully aligned with the District of Columbia's academic standards. D.C. Municipal Regulations provide that "[e]ach student, including students receiving special education" who earns sufficient Carnegie units and meets certain other specified requirements "shall be eligible to receive a high school diploma." 5 DCMR §§ 2202.1, 2203. Petitioner failed to show that he fell short of these eligibility criteria. *Cf. T.S. v. Indep. School Dist. No. 54*, 265 F.3d 1090 (10th Cir. 2001) (noting that student may contest validity of graduation and exit if student's academic program failed to meet state requirements for graduation).⁵

Finally, to the extent Petitioner seeks to argue more broadly that no special education student may graduate with a regular high school diploma with significantly below grade-level academic functioning,⁶ Petitioner has not demonstrated legal support for such position. Moreover, the evidence is undisputed that the Parent specifically requested and agreed with the High School Diploma track for her child in this case. *See Parent Test*.

C. Appropriate Relief

The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005). Compensatory education is an equitable remedy available to a hearing officer, exercising his authority to grant "appropriate" relief under IDEA. *Id.* The fact that Petitioner has graduated with a high school diploma does

⁵ At hearing, Petitioner's counsel appeared to argue for the first time that Petitioner's low academic achievement scores in the March 2011 RSA testing necessarily means that he could not have met the "basic" level or higher on the DCPS proficiency tests (*see, e.g.*, 5 DCMR §2202.1 (b)) a year earlier. However, Petitioner presented no testimonial or documentary evidence to establish such connection.

⁶ *See, e.g. Complaint, p. 6* ("In the case at hand, this student was provided a High School Diploma and exited from special education services despite the fact that educational testing revealed he was significantly below grade level....[Student] should not have been considered for a high school diploma where his documented functional levels are such that giving him a diploma reduces the validity of the document for the thousands of students who have historically accomplished this benchmark").

not moot either Petitioner's claim or this form of relief. *See, e.g., San Dieguito Union High School Dist. v. Guray-Jacobs*, 44 IDELR 189 (S.D. Ca. 2005).

Under the theory of 'compensatory education,' courts and hearing officers may award 'educational services...to be provided prospectively to compensate for a past deficient program.'" *Reid v. District of Columbia*, 401 F. 3d at 521 (quotations omitted). Generally, 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 (D.D.C. 2008); *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010). "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, 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. 401 F.3d at 524; *see also Friendship Edison Public Charter School v. Nesbitt*, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'."

Thus, compensatory education awards are equitable in nature. They should be qualitative and they should be flexible. They should be crafted so as to address the educational harm suffered by the Student as a result of the violation of IDEA/denial of FAPE. In this case, Petitioner has met his burden of establishing the harm caused by the absence of an appropriate post-secondary transition plan and transition services as part of his IEP during the 2009-10 school year. Petitioner has also met his burden of proposing a well-articulated compensatory education remedy that is, for the most part, appropriate and well-reasoned. *See P-1; P-2; Peckover Test*. The academic tutoring component is well suited to remedy the specific harm suffered by the Student and is supported by the record evidence. The independent tutoring would reasonably compensate the Student for his missed and/or inappropriate transition services, which did not adequately prepare him to have the functional academic skills for post-secondary employment in his relevant areas of interest or to have necessary independent living skills.

Based on careful consideration of all the testimony and evidence adduced in this case, the Hearing Officer concludes that **200 hours of independent tutoring** in the area of **intensive reading remediation** should be the primary component of an appropriate equitable remedy.

This element may employ the "Wilson Reading System" or comparable research-based remedial reading program, including an appropriate curriculum for teaching decoding and encoding beginning with phoneme segmentation. *See P-2, p. 5; Peckover Test.* The goal would be to elevate Petitioner's functional reading to the level needed for him to pursue appropriate employment opportunities in his field of interest. *Id.; see also P-1.*

Additional supporting elements of compensatory education shall include: (a) **50 hours of independent daily living skills training**, to include use of public transportation and other community resources; and (b) **50 hours of "job coaching" and employment counseling.**

The above award meets the *Reid* standard because it has been shown to be (1) reasonably calculated to provide the educational benefits that likely would have accrued from special education services that DCPS should have supplied in the first place during the relevant time period (*i.e.*, approximately 10/25/2009 to June 2010), and (2) reasonably tailored to the unique needs and deficits of the Student. The compensatory education award addresses the Student's specific deficiencies by enabling him to gain skills and other benefits he likely would have obtained had he not missed required transition-related services during the 2009-10 school year.

The Hearing Officer concludes that no other requested relief is necessary and appropriate. An Order reinstating Petitioner as an eligible student and directing that he receive continued special education and related services until age 22 is not appropriate since DCPS has not been found to have improperly exited him from special education in June 2010. Nor would an order directing DCPS to convene an MDT/IEP team meeting to develop an IEP that includes a comprehensive transition plan, for the same reason. The Hearing Officer also notes that in closing argument, Petitioner requested compensatory education relief in lieu of returning him to school after he has been away for over 1 ½ years. Both Petitioner and his educational consultant believed that he would benefit more from remedial academic tutoring and job coaching as described above.

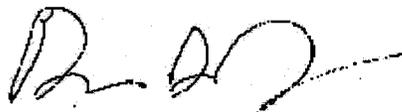
VI. ORDER

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

1. Petitioner is awarded compensatory education services as follows: Unless the parties agree otherwise in writing, DCPS shall pay for (a) **200 hours** of independent academic tutoring services for Petitioner in the area of **intensive reading remediation**; (b) **50 hours** of independent **daily living skills training**, to include use of public transportation and other community resources; and (c) **50 hours** of independent **"job coaching" and/or employment counseling**.
2. The compensatory education services specified in Paragraph 1 of this Order shall be funded at rates not to exceed the current established market rates in the District of Columbia for such services. The services shall begin within **30 calendar days** of this Order and shall be completed by **July 8, 2013**, unless the parties agree otherwise in writing.
3. Petitioner's other requests for relief in her Due Process Complaint filed October 25, 2011, are hereby **DENIED**.
4. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: January 8, 2012



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).