DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

OSSE STUDENT HEARING OFFICE 2011 APR -1 AM 11:26

Guardian Ad Litem, on behalf of the Student,[1]

Petitioner,

v.

The District of Columbia Public Schools ("DCPS"),

Respondent.

Date Issued: March 29, 2011

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2006

HEARING OFFICER DETERMINATION

I. INTRODUCTION

On January 21, 2011, the student's Guardian Ad Litem, through her Attorney, filed with the District of Columbia, Office of the State Superintendent of Education ("OSSE"), Student Hearing Office, an "Administrative Due Process Complaint Notice", on behalf of the student.

The Respondent was required to convene a resolution meeting within fifteen (15) calendar days from the date of the complaint, which expired on February 15, 2011. The thirty (30) day resolution period ended on February 20, 2011. The resolution meeting was held on February 15, 2011, therefore, the forty-five (45) day timeline for convening a due process hearing and rendering a decision, began on February 16, 2011, the day after the resolution meeting; expiring on April 1, 2011.

On January 24, 2011, the Student Hearing Office assigned the due process complaint to this Hearing Officer. On February 6, 2011, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for February 21, 2011 at 3:00 p.m.; and Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting.

[1] *Personal identification information is provided in Appendix A.*

On January 26, 2011, the Respondent filed a response to the due process complaint; and on February 4, 2011, the Respondent filed "District of Columbia Public Schools', Motion to Dismiss", on the grounds that the allegations in the complaint are "moot"; because the Respondent granted the Petitioner's request for an independent Vocational Assessment.

On February 9, 2011, the Petitioner filed "Petitioner's Opposition to DCPS' Motion to Dismiss", representing that the Respondent authorized the independent Vocational Assessment, after the complaint was filed. On February 10, 2011, the Hearing Officer denied the Respondent's motion to dismiss, because it failed to satisfy the standard for a Rule 12(b) motion to dismiss, by demonstrating that Petitioner failed to state a claim upon which relief can be granted; or that it appeared beyond doubt that no set of facts support Petitioner's claim, entitling it to the relief requested in the complaint.

A prehearing conference was held on March 7, 2011; and during discussion of the date for the due process hearing, the Petitioner advised the Hearing Officer that the Petitioner's witnesses were not available on February 6, 2011, the date identified in the notice of prehearing conference, as the date for the due process hearing. The Petitioner requested a continuance of the hearing representing that the Petitioner's witnesses were not available. The Respondent objected to the motion for continuance, representing that the Petitioner had prior notice of the hearing date and of witness unavailability, however, failed to notify the Hearing Officer in a timely manner. After hearing from both parties, the Hearing Officer denied the Petitioner's request for a continuance, finding that the Petitioner failed to establish "good cause", for granting the continuance. On March 9, 2011, the Hearing Officer issued a prehearing order confirming the due process hearing for March 14, 2011, at 9:00 a.m..

The due process hearing convened on March 14, 2011, at approximately 9:00 a.m., at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the Petitioner's request. Each party was represented by counsel; the Petitioner's Attorney provided an opening statement; and the Respondent's Attorney waived opening statements.

The Petitioner's Attorney offered into evidence Petitioner's Exhibits 1-14; and the Respondent's Attorney offered into evidence Respondent's Exhibits 1-15. Petitioner's Attorney objected to Respondent's Exhibits 3,4, 9, 10, 11, and 15 on grounds that the exhibits were not relevant to the issued in the complaint. After hearing arguments from both parties, the hearing officer overruled objections entered by Petitioner's Attorney. Receiving no additional objections, the Hearing Officer admitted into the record as evidence, Petitioner's Exhibits 1-14, and Respondent's Exhibits 1-15. A witness list accompanied each party's disclosures.

Petitioner's witnesses included: the student, student's Guardian Ad Litem, and a Vocational Consultant, from Interdynamics, Inc.. The Petitioner offered the Vocational Consultant as an expert in conducting Vocational Assessments and developing Transition Plans. The witness was voir dired by both parties and the Hearing Officer. Receiving no objections from Respondent, the witness was admitted as an expert in conducting Vocational Assessments and developing Transition Plans.

The due process hearing concluded with the Petitioner providing closing arguments and requesting that the Hearing Officer find in its favor on all issues in the complaint, and the Respondent resting on the record with no closing argument.

II. JURISDICTION

The due process hearing was held; and the Hearing Officers' decision is written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

III. BACKGROUND

The student is years of age; a ward of the District of Columbia; and an grade student at an independent non-profit school for special education students, located in Largo, Maryland.

On January 21, 2011, the Petitioner, through her Attorney, filed this complaint challenging the Respondent's completion of a Vocational Assessment, the appropriateness of the student's IEP Post-Secondary Transition Plans, and appropriateness of the student's December 20, 2010 IEP.

IV. ISSUES

The following issues are before the Hearing Officer:

(1) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because it failed to conduct a Vocational Assessment during the 2009/10 and 2010/11 school years, in violation of 20 U.S.C. §1401(34)?

(2) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because the transition plans developed for the student on December 17, 2009, and December 20, 2010, are not based on age appropriate transition assessments, in violation of the IDEA, at 34 C.F.R. §300.320(b), and 20 U.S.C. §1401(34)?

(3) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because it failed to develop an appropriate IEP for the student on December 20, 2010, because the transition goals in the IEP, are not based on an age appropriate transition assessment, in violation of the IDEA, at 34 C.F.R. §300.320(b)?

V. RELIEF REQUESTED

The Petitioner requests that the Hearing Officer issue an order requiring the Respondent to convene a MDT/IEP team meeting to review the independent Vocational Assessment; review and revise the student's December 20, 2010 IEP, based on the findings and recommendations in the independent Vocational Assessment; and compensatory education services from January 21, 2009 through January 21, 2011.

VI. CREDIBILITY DETERMINATIONS

The testimony of Petitioner's witnesses was credible. The Respondent presented no witnesses, refuting the testimony presented by Petitioner's witnesses.

VII. 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 disabled and eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA).[2] The student's disability classification of Emotionally Disturbed.[3]

2. The student is years of age, and is a ward of the District of Columbia.[4] The student has a long history of multiple foster home placements; and currently resides in a group home, in the District of Columbia.[5]

   The student is in the grade, and attends a private non-profit school for special education students, located in Largo, Maryland.[6] The student began attending the private school during the 2010/11 school year.[7] The student is on a diploma track, with an interest in attending college after high school.[8] On November 9, 2010, the student had a grade point average of 2.5; and as of March 8, 2011, the student's academic scores were at the elementary and junior high school levels.[9]

   Prior to attending the private school, the student attended the located in Baltimore, Maryland, and the of Prince Georges County, located in Largo, Maryland.[10]

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[2] Petitioner's Exhibit 2.
[3] Petitioner's Exhibit 2 and 8.
[4] Testimony of GAL.
[5] Petitioner's Exhibit 1; Petitioner's Exhibit 8, and testimony of GAL.
[6] Testimony of student, and Petitioner's Exhibit 2.
[7] Testimony of student.
[8] Petitioner's Exhibit 5, page 2.
[9] Testimony of Vocational Consultant.
[10] Respondent's Exhibit 10, page 1.

3. On ***July 31, 2009***, the Inc. conducted a Psychiatric Evaluation of the student.[11] The student has a history of substance abuse and incarceration. The student is diagnosed with mood disorder, is prescribed medication as a mood stabilizer, and has reports of suicidal thoughts.[12]

4. On ***December 17, 2009***, the Respondent convened an IEP team meeting to complete an annual review of the student's IEP.[13] Team members included: the Respondent's Placement Specialist, student's Social Worker, student's Attorney, Special Education Coordinator (SEC); and student's teacher. The team failed to include Department on Disability Services (DDS), Rehabilitation Service Agency (RSA), although this agency is identified in the plan the agency responsible for post-secondary transition activities and services. [14]

   The team discussed the student's transition goals, and that the student continues on a diploma track with a post high school interest in college or an information technology degree; that the student would continue with an in school information technology program, participation in a career exploration class, independent living skills program and courses; and develop basic skills required for completing high school.[15]

   The team also developed an IEP and IEP Post-Secondary Transition Plan for the student, including one post-secondary education and training goal, one goal for employment, and one goal for independent living.[16] Prior to conclusion of the meeting, the student's Attorney requested, and the team agreed to complete a Vocational Assessment, and reconvene to review the assessment, once the assessment is completed.[17]

5. On ***September 30, 2010***, the student's Career Exploration Teacher conducted a guided ten (10) minute Individualized Transition Plan (ITP) Interview of the student, soliciting yes/no responses from the student.[18] During the interview the student reportedly expressed an interest in Forensic Science; and attending a four-year college after graduation from high school.[19]

   Based on results of the ITP, on December 20, 2010, an IEP Post-Secondary Transition Plan was developed for the student. The Respondent also developed charts purportedly based on Skills Assessment and Self Assessment Surveys; however, there is no evidence that these surveys were completed for the student.[20]

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[11] Petitioner's Exhibit 7.
[12] Petitioner's Exhibit 7, page 8.
[13] Petitioner's Exhibit 5, page 1.
[14] Petitioner's Exhibit 4, page 10.
[15] Petitioner's Exhibit 5, page 3.
[16] Petitioner's Exhibit 4, pages 9 and 10.
[17] Petitioner's Exhibit 5, pages 3 and 5.
[18] Respondent's Exhibit 1, and testimony of student.
[19] Respondent's Exhibit 1, page 3.
[20] Respondent's Exhibit 1.

The reports reflect information gathered regarding the student's career interests; and no information regarding the student's level of psychological, social, academic, physical, and vocational abilities.[21]

6. On ***November 10, 2010***, the conducted an Educational Evaluation, to assess the student's academic performance.[22] At the time of the evaluation, the student was years of age.[23] According to the Woodcock Johnson III Tests of Achievement scores included in the Educational Evaluation, the student lacks the basic academic skills necessary for a student on a diploma track, and transitioning from high school to college.

   When compared to others his age, the student's overall academic achievement is very low; his academic skills, ability to apply those skills, and fluency with academic tasks are within the very low range; and the student's grade equivalent is between the 2nd and 5th grade in all areas, except math calculation skills, calculations, and writing samples.[24] The student's performance is low average in math calculation skills (7.0) and written expression (5.6); low in mathematics (4.9) and written language (4.8); and very low in broad reading (3.2).[25]

7. On ***December 20, 2010***, the Respondent convened an IEP team meeting to discuss the student's educational program.[26] Meeting participants included: the student, student's Guardian Ad Litem (GAL), student's attorney, student's Social Worker, Career Exploration Teacher, IEP Coordinator, Vocational Education Teacher, and the Wrap Care Coordinator.[27] The IEP team failed to include a representative from the Department of Disability Services (DDS), Rehabilitation Service Agency (RSA), although this agency is identified in the plan the agency responsible for post-secondary transition activities and services.[28]

   The team developed an IEP and IEP Post-Secondary Transition Plan for the student, including one post-secondary education and training goal, one goal for employment, and no goals for independent living.[29]

8. **Failure to Conduct a Vocational Assessment**

   The Hearing Officer finds that the Respondent failed to conduct a Vocational Assessment for the student, during the 2009/10 and 2010/11 school years.[30]

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[22] Petitioner's Exhibit 7.
[23] Petitioner's Exhibit 7, page 1.
[24] Petitioner's Exhibit 7, page 2
[25] Petitioner's Exhibit 7, page 2.
[26] Petitioner's Exhibit 2 and 3.
[27] Petitioner's Exhibit 2.
[28] Petitioner's Exhibit 2, pages 9 and 10.
[29] Id.
[30] Petitioner's Exhibits 2, 3, 4, and 5.

A Vocational Assessment is specifically designed to evaluate the student's level of functioning in various domains, including measurement of the student's psychological, social, educational, physical, and vocational abilities, as well as, vocational interests and aptitudes.[31]

At the December 17, 2009 IEP team meeting, the student's Attorney requested, and the team recommended a Vocational Assessment, and agreed to reconvene to review the assessment, once completed.[32] However, a Vocational Assessment was not conducted.[33]

On September 30, 2010, the student's Career Exploration Teacher conducted a ten (10) minute Individualized Transition Plan (ITP) Interview of the student, to determine the student's career interests. The ITP instrument utilized by the Respondent, is a type of assessment instrument, however, it is not a Vocational Assessment, designed to assess the student's level of functioning in the various domains.

Additionally, administration of the ITP instrument was very limited in duration and scope; and is not sufficiently comprehensive.[34] The Respondent failed to conduct a Vocational Assessment, as requested by the Petitioner, and recommended by the IEP team at the December 17, 2009 IEP team meeting.

9. Failure to Develop Transition Plans Based on Age Appropriate Transition Assessments

The Hearing Officer finds that the IEP Post-Secondary Transition Plans developed for the student on December 17, 2009 and December 20, 2010, are not based on age appropriate transition assessments.[35]

The Hearing Officer also finds that age appropriate transition assessments[36] were not completed for the student, as a result, the December 17, 2009 and December 20, 2010 IEP Post-Secondary Transition Plans were developed by the IEP teams, without the benefit of information from age appropriate transition assessments, related to training, education, employment, and independent living skills.

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[31] Testimony of Vocational expert.
[32] Respondent's Exhibit 6.
[33] After filing of the complaint, the Respondent authorized an independent Vocational Assessment. At the time of hearing the Vocational Assessment report was incomplete, and not admitted into the record.[33]
[34] Respondent's Exhibit 1.
[35] Petitioner's Exhibits 2 and 4.
[36] Assessments and other evaluation materials used to assess a child must be provided and administered in the form most likely to yield accurate information on what the child knows and can do academically developmentally, and functionally, unless it is not feasible to provide or administer; and the assessments and other evaluation materials used to assess the student must be used for the purposes for which the assessments or measures are intended, rendering data that is valid and reliable; the assessments are administered by trained and knowledgeable personnel; and are administered in accordance with any instructions provided by the producer of the assessments.[36] The age appropriate transition assessment must also be sufficiently comprehensive to assist the IEP team in identifying all of the student's transition service needs, which failed to occur in this instance.[36]

The IEP teams reportedly relied upon a Transition Planning Inventory, which is not in the record; and results of the September 30, 2010 ITP interest interview of the student. The Respondent failed to administer assessment instruments specifically designed to measure the student's psychological, social, academic, physical, vocational abilities, and level of functioning.[37]

Transition planning must also involve the student, student's teachers, a representative of the school, the student's guardian, and representatives from outside agencies. There is no evidence that Department of Disability Services, the agency responsible for implementing the IEP Post-Secondary transition activities and services, was involved in the student's transition planning.

The IEP Post-Secondary Transition Plans are inappropriate because they are not specifically designed to address this student's unique transition needs; and are not reasonable, realistic, or attainable. For instance, the student is expected to graduate with a high school diploma and is interested in attending college and pursuing a career as a Forensic Scientist, however, academically the student is performing between the 2nd and 5th grade levels.

The student's WJ-III academic scores are not representative of a student who would be successful in the field of forensic science, as indicated in the student's transition plan, or in attending college, without addressing the student's academic deficits.[38] It is more probable than not that the student will experience tremendous difficulty transitioning from high school to college and pursuing a college degree; without acquiring the basic academic skills.[39]

Furthermore, due to the student's limited academic ability and history of becoming easily discouraged, argumentative, and combative with staff, if the student does not experience some level of success in college, he is likely to become frustrated and discouraged, and will not have a support system at college or home, upon which he can rely, rendering careful transition planning for this student critical.[40]

Failure to conduct an age appropriate transition assessment, hindered the IEP teams ability to develop appropriate IEP Post-Secondary Transition Plans for the student, including post-secondary ambitions, planning for appropriate courses of study for the student, and identifying transition services and activities to assist the student in reaching the transition goals in his IEPs.

Interviews and questionnaires can be conducted with a variety of individuals for the purpose of gathering information to be used to determine a student's strengths, needs, preferences, and interests relative to anticipated post-school outcomes, and is considered one type of informal transition assessment method. However, the ITP interview-

[37] Testimony of Vocational expert.
[38] Testimony of Vocational expert and Petitioner's Exhibit 7.
[39] Petitioner's Exhibit 7.
[40] Testimony of Vocational expert.

conducted by the Respondent was very limited in duration and scope, and was not sufficiently comprehensive to develop appropriate measurable postsecondary goals and transition services (including courses of study) needed to assist the student in reaching transition goals.

Factors associated with positive post-secondary outcomes include participation in vocational education (occupationally-specific instruction) during last two (2) years of high school; participation in paid work experiences in the community during the last two years of high school, competence in functional academics, community living, personal, social, vocational, and self-advocacy skills, participation in transition planning, and graduation from high school. The student's transition planning is lacking in the majority of these areas. This student is not prepared to transition from high school to college, pursue a vocation, or live independently.[41]

10. Failure to Develop Appropriate Individualized Education Program (IEP) (Transition Goals)

The Hearing Officer finds that on December 20, 2010, the Respondent failed to develop an appropriate IEP for the student because the transition goals in the IEP Post-Secondary Transition Plan are not based on age appropriate transition assessments.[42]

First, on December 20, 2010, the IEP team developed an IEP and IEP Post-Secondary Transition Plan for the student, without the benefit of age appropriate transition assessments. Thus, the IEP team lacked the information necessary to develop an appropriate IEP and IEP Post-Secondary Transition Plan for the student, including measurable post secondary transition goals; and the transition services (including courses of study) needed to assist the student in reaching the transition goals in his IEP.

Second, the postsecondary goals in the December 20, 2010 IEP Transition Plan are very general in nature, do not include developmental courses to address the student's academic deficits, transition, or college preparatory courses or activities to facilitate the student's successful transition from high school to college; and in making career choices.[43]

The student participates in a career exploration course, however, the primary focus of the course is to assist student in applying for positions, applying for insurance, and the like, which may be appropriate for a student on a certificate track planning to transition from high school to employment; however, may not be appropriate for this student who is on a diploma track, performing on a 2nd-5th grade level academically; and planning to transition from high school to college to pursue forensic science.[44]

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[41] Testimony of Vocational expert, student, and Respondent's Exhibit 7.
[42] Petitioner's Exhibit 2, page 9.
[43] Testimony of Vocational expert.
[44] Testimony of student.

Third, the student's December 20, 2010 IEP Post-Secondary Transition Plan includes two (2) annual goals.[45] The first goal is that the student will register and take the SAT during the next administration; and the second goal is that the student will research the requirements necessary to pursue a career as a Forensic Scientist. The IEP Post-Secondary Transition Plan places sole responsibility on the student to plan, initiate, and implement the goals in his transition plan; and no responsibility on the LEA.

Fourth, the Respondent failed to comply with the procedural requirements of the IDEA, in evaluating this student.[46] Assessments and other evaluation materials used to assess a child must be provided and administered in the form most likely to yield accurate information on what the child knows and can do academically developmentally, and functionally, unless it is not feasible to provide or administer; which is not evident in this case.

The assessments and other evaluation materials used to assess the student must also be used for the purposes for which the assessments or measures are intended, rendering data that is valid and reliable; and the assessments must be administered by trained and knowledgeable personnel, in accordance with any instructions provided by the producer of the assessments; which also failed to occur in this case. [47] The information gathered from the interview is also somewhat unreliable because of its limited duration and scope, and because the student's career interests readily change.[48]

Finally, the postsecondary goals in this student's IEP and IEP Post-Secondary Transition Plan are not specifically designed to address this student's unique transition service needs; and are not reasonable, realistic, or attainable, because of the student's limited academic, functional, psychological, social, and vocational abilities.[49] Absent age appropriate transition assessments, the Respondent is unable to develop an appropriate IEP and IEP Post-Secondary Transition Plan for the student, including appropriate measurable postsecondary goals; and appropriate transition services.

VIII. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as the Hearing Officer's review of governing legal authority and case law, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[50] Under the IDEA, the Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[51]

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[45] Respondent's Exhibit 2.
[46] IDEA, 34 C.F.R. §300.304(c)
[47] Testimony of Vocational expert and student.
[48] Testimony of student.
[49] Testimony of Vocational expert, and Petitioner's Exhibit 7.
[50] *Shaffer v.1 Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[51] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)

2. The Individuals with Disabilities Education Act ("IDEA")[52] is the federal statute governing the education of students with disabilities.[53] The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d) (I) (A)*.

3. The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State-involved and the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[54]

4. In the District of Columbia, the local education agency (LEA) must ensure that all children with disabilities, between the ages of 3 and 21, have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. This student is a child with disabilities entitled to receive special education and related services, pursuant to the IDEA.

5. **Failure to Conduct a Vocational Assessment**

It is the Hearing Officer's decision that the Petitioner satisfied its burden by presenting evidence that the Respondent failed to conduct a Vocational Assessment for the student, during the 2009/10 and 2010/11 school years; in violation of the IDEA, at 34 C.F.R. §300.320(7)(b)(1).

The purpose of a Vocational Assessment is to:

- assess the student's cognitive ability, present work skills, expected work skills, physical abilities, work behavior, and learning deficits;
- determine whether the student have adequate prerequisite skills for vocational or educational programs;
- suggests support services required of the student;
- suggest effective teaching techniques and instructional modifications;
- provide the vocational teacher with improved information regarding the student; and
- bridge the gap between special educators and post-secondary educators.

[52] The IDEA is reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) Public Law 108-446 and 20 U.S.C. §1400 et seq..
[53] The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.
[54] IDEA, 34 C.F.R. §300.17(d).

A Vocational Assessment is widely used and recognized as a comprehensive assessment instrument specifically designed to evaluate a student's level of functioning in several domains, including measurement of psychological, social, academic, physical, and vocational abilities; vocational interests; and aptitudes. [55] The assessment incorporates medical, psychological, social, vocational, and economic data in the attainment of the goals of the evaluation process, which was not considered in assessing this student.

Although argued by the Respondent, the student's September 30, 2010 ITP interest interview is not a Vocational Assessment; specifically designed to capture valid and reliable data regarding what the student is capable of; and is not sufficiently comprehensive to assess and identify the student's transition service needs. Furthermore, the data captured by the ITP may be considered unreliable, particularly since the student's career interest change.[56]

Furthermore, school based vocational assessments should be well planned, involve both school and community agencies, and integrated within both a K-12 career planning process, and a transition from school to work planning process; which failed to occur in this instance. Assessments should also be conducted by a team of professionals, utilizing a variety of assessment techniques, assess various domains of importance to independent living and vocational functioning; which failed to occur for this student.

In summary, a comprehensive Vocational Assessment is a prerequisite for effective vocational and transition planning, particularly for students with disabilities, such as this student, where transitioning to a vocation may serve as a more viable option than college. A comprehensive Vocational Assessment was not completed for this student.

6. Failure to Develop Transition Plans Based on Age Appropriate Transition Assessments

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that on the IEP Post-Secondary Transition Plans developed for the student on December 17, 2009 and December 20, 2010, are not based on age appropriate transition assessments,[57] in violation of the IDEA, at 34 C.F.R. §300.320(b).

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[55] Vocational Assessment for Transition Planning: Guidelines for Educators.

[56] Respondent's Exhibit 1 and testimony of student.

[57] The following three levels of assessment ensure that the student's transition needs are met: (1) screening, (2) exploration, and (3) comprehensive assessment. There are also five (5) types of information to be collected in the transition assessment process to ensure that it is effective, namely:[57] future planning needs and goals, self-determination and self-advocacy skills, academic strengths and deficits, including learning styles and behaviors , life skills, and vocational interests, aptitudes, and abilities. Transition assessments can be formal or informal, and generally include some combination of the following types of assessments: paper and pencil tests, structured student and family interviews, community or work-based assessments (situational) and curriculum based assessments. Formal assessments typically involve using a standardized procedure for administering, scoring, and interpreting an assessment. Informal assessments include data to be collected from a variety of individuals (e.g. parents, teachers, employers) using a variety of non-standardized methods. Interest Inventories provide information regarding an individuals' preferences for certain careers, occupational activities, or types of work; and is one type of formal transition assessment method, however, must e sufficiently comprehensive to capture the necessary information. Transition assessment information should be gathered in the following four (4) domains: (1) academic, (b) self-

Conducting age appropriate transition assessments is critical in transition planning and are designed to assist IEP teams in the following areas: (1) developing postsecondary goals, and related transition services and annual goals and objectives for the transition component of the IEP, (2) making instructional programming decisions, (3) including information in the present level of performance related to a student's interests, preferences, and needs in the IEP, and (4) learning about the student's strengths and limitations, beyond academics and career interests.

The IDEA mandates that services aiding in the transition process be established for students with disabilities to ensure a successful transition from school to work and the community, and that plans for transition be initiated by age 16. Specifically, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by an 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, independent living skills; and transition services necessary to assist the student in reaching the transition goals in the IEP.[58]

While age appropriate transition assessment is not defined by the IDEA, there is some indication as to its intent. The U.S. Department of Education, Office of Special Education Programs, adopts the following definition of transition assessment as provided by the Division on Career Development and Transition (DCDT) of the Counsel for Exceptional Children:[59]

> Transition assessment is an ongoing process of collecting data on the student's strengths, needs, preferences, and interests as they relate to the demands of current and future working, educational, living, learning, personal and social environments. Assessment data serves as the common thread in the transition process and form the basis for defining goals and services to be included in the student's IEP. Age appropriate means that, the assessment is based on the student's chronological, rather than developmental age.[60]

This process should begin in middle school and continue until the student graduates or exits high school; and the information gathered from this process should be used to drive the IEP and transition planning process, and develop an appropriate transition plan for the student, detailing the student's academic and functional performance and postsecondary goals.

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determination, (c) vocational interest and exploration; and (4) adaptive behavior and/or independent living. The results of transition assessments should be the basis for making recommendations for instructional strategies and accommodations in instruction and environments to meet the student's needs, while capitalizing on their unique talents.

[58] IDEA, at 34 C.F.R. §300.320 ((7)(b)(1) and (2); and Title 5, Chapter 30, Section 3009.3 and 3009.4 of the Code of the D.C. Municipal Regulations.

[59] Division on Career Development and Transition (DCDTO if the Counsel for Exceptional Children definition of transition assessment.

[60] Wehmeyer, 2002.

This student attained age sixteen (16) on April 1, 1993; therefore, the Respondent was required to ensure that the IEP in effect when the student reached age 16, which is the December 17, 2009 IEP, included appropriate measurable postsecondary goals, based upon ***age appropriate transition assessments*** related to training, education, employment, independent living skills; and transition services necessary to assist the student in reaching the transition goals in the IEP.

Age appropriate transition assessments were not conducted for the student during the 2009/10 or 2010/11 school years, as a result, the December 17, 2009 and December 20, IEP Post-Secondary Transition Plans failed to include appropriate transition plans, including appropriate measurable postsecondary goals. The IEP reflects that the assessment instrument utilized by the Respondent in developing the IEP Post-Secondary Transition Plan and goals was a Transition Planning Inventory, and not age appropriate transition assessments.

The Respondent failed to ensure that beginning not later than the first IEP to be in effect when the student reached age 16, the IEP included 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.

7. Failure to Develop Appropriate Individualized Education Program (IEP) (Transition Goals)

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that the Respondent failed to develop an appropriate IEP for the student on December 20, 2010, because the post secondary goals in the IEP, are not based on age appropriate transition assessments, in violation of the IDEA, at 34 C.F.R. §300.320(b).

Age appropriate transition assessments were not conducted for the student during the 2010/11 school year. The IEP reflects that the assessment instrument utilized by the Respondent in developing the December 20, 2010 IEP Post-Secondary Transition Plan and goals was a Transition Planning Inventory, and not age appropriate transition assessments. As a result, the December 20, 2010 IEP and IEP Post-Secondary Transition Plan does not 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.

In summary, the December 20, 2010 IEP is not specifically designed to address this student's unique transition needs; the goals in the IEP Post-Secondary Transition Plan are not reasonable, realistic, or attainable for this student, for reasons previously delineated; and the IEP is not reasonably calculated to provide the student educational benefit. For these reasons, the December 20, 2010 IEP is inappropriate.

IX. DECISION

For the foregoing reasons, it is the decision of this Hearing Officer that the Respondent denied the student a free appropriate public education, by failing to ensure that beginning not later than the first IEP to be in effect when the student reached age 16, the student's IEPs included appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills; and transition services (including courses of study) needed to assist the student in reaching those goals, in violation of the IDEA, at 34 C.F.R. §300.320(7)(b)(1), entitling the student to compensatory education services.

Compensatory Education Services

Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that she is receiving only a de minimis benefit and fails to correct the situation, as in this case. *M.C. on behalf of J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996).

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." *See G. ex rel. RG v. Fort Bragg Dependent Schs. 343 F.3d 295, 308 (4th Cir. 2003)*. Its purpose is to help the child make the progress that he/she would have made if an appropriate program had been available.

The IDEA empowers Hearing Officers with considerable discretion when fashioning a remedy. 20 U.S.C. § 1415(i) (2) (C) (iii) (the Hearing Officer "shall grant such relief as the Hearing Officer determines is appropriate.") However, a Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides him with "insight about the precise types of education services [the student] needs to progress." *Branham, 427 F.3d at 12.*

Relevant evidence includes "the nature and severity of the student's disability, the student's specialized educational needs, and the link between those needs and the services offered by the student's school." Id. In *Nesbitt*, the Court found that an "award was not adequately individualized or supported by the record", when the Hearing Officer was not provided with any information regarding the student's current grade level of functioning.

According to *Mary McLeod Bethune Day Academy PCS v. Terri Bland, Civil Action No. 07-1223 (2008)*, a compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." According to *Reid v. District of Columbia, 401 F.3d 516.523 (D.C. Cir. 2005)*, compensatory education is not a contractual remedy, but an equitable remedy that is part of the court's resources in crafting appropriate relief; and the "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 also stresses that the Hearing Officer must take into account individualized assessments of the student so that the ultimate award is tailored to the student's unique needs; and that the award must be reasonably calculated to provide the student the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. The crafting of an award of compensatory education under IDEA simply cannot be nebulous; and an arbitrary compensatory education award will never pass muster under the *Reid* standard.

In *Reid*, the Court rejected the "cookie-cutter" or mechanical remedies, such as awarding one hour of compensatory instruction for each hour that the student was denied FAPE. As the D.C. Circuit recognized in Reid: "Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE." *Reid*, 401 F.3d at 524. *Reid*, explicitly rejects the "cookie-cutter approach[es]," such as "a presumption that each hour without FAPE entitles the student to one hour of compensatory instruction."

In this matter, the Petitioner established that the student was without an appropriate IEP including appropriate measurable postsecondary goals and transition services for nearly two (2) school years, entitling the student to compensatory education services. Thus, equity dictates that the Hearing Officer grant the relief which it deems just and proper to compensate the student for the past violation. *Heather D. v. Northampton Area Sch. Dist., 48 IDELR 67 (E.D. Pa. 2007).* However, the Petitioner presented no compensatory education plan for the Hearing Officer to consider. Therefore, the compensatory education award crafted by the Hearing Officer is based on testimony of the Vocational Consultant, evaluations, and other evidence of record.

The following services are specifically tailored to the student's unique needs; reasonably calculated to provide the student educational benefits that likely would have accrued had the violation not occurred; and are intended to mitigate any harm the student may have suffered as a result of the violation:

Compensatory Education Services Plan

(1) Student Aptitude Test (SAT) Preparation

(a) The Respondent shall fund the student's tuition, and books for participation in a maximum of two (2) SAT preparatory courses, sponsored by the Princeton Review, to begin during the Summer, 2011, in addition to transportation costs, at a cost not to exceed

(b) The student's December 20, 2010 IEP is revised to reflect that the Respondent shall register the student for the SAT examination, during the 2010/11 school year.

(2) Independent Tutoring

The Respondent shall fund independent tutoring and transportation for the student, in areas of academic deficit, at a cost not to exceed The independent tutoring shall be made available to the student throughout the remainder of the 2010/11 and the 2011/12 school years. The student's Guardian Ad Litem shall identify the independent tutoring for the student, and notify the Respondent of the same, no later than April 30, 2011.

(3) Career Counseling/Coaching

The Respondent shall fund independent career counseling/coaching and transportation for the student, through a licensed and authorized Guidance Counselor/Coach, at a cost not to exceed

The Guidance Counselor shall research the requirements necessary for a career as a Forensic Scientist, and discuss findings with the student, in addition to engaging the student in other career exploration activities, college, and explore career options. The Guidance Counselor shall explore with the student the option of joining the "Big Brothers and Sisters of America" organization; and other community organizations to assist and support the student's career path.

The career counseling/coaching services shall be available to the student throughout the remainder of the 2010/11 and the 2011/12 school years. The student's Guardian Ad Litem shall identify the independent Guidance Counselor/Coach for the student, and notify the Respondent of the same, no later than April 30, 2011.

X. ORDER

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

ORDERED, that within ten (10) school days of receipt of the independent Vocational Assessment, the Respondent shall convene a MDT/IEP team meeting with the student, student's guardian ad litem, Respondent's representative, outside agencies responsible for the student's post-secondary transition activities and services, and any other team members deemed appropriate to:

- review the independent Vocational Assessment, complete any other evaluations or assessments recommended in the Vocational Assessment or determined appropriate by the IEP team; and determine whether the assessment;

- discuss the student's strengths and limitations, beyond academic and career interests; discuss the student's academic, psychological, developmental and functional needs and abilities; determine whether it is appropriate for the student to remain on the diploma track, or whether a certificate track is more appropriate, and revise the student's IEP and IEP Post-Secondary Transition Plan, as accordingly;

- review and revise the student's December 20, 2010 IEP and IEP Post-Secondary Transition Plan, based on the findings and recommendations in the independent Vocational Assessment; and decisions by the team; and

- revise the student's December 20, 2010 IEP and IEP Post-Secondary Transition Plan to include: appropriate measurable postsecondary goals and related transition services that are reasonable, realistic, and attainable by the student, based upon age appropriate transition assessments; annual goals and objectives for the transition component of the IEP; instructional programming decisions; information in the present level of performance section of the IEP, related to the student's interests, preferences, and needs; college preparatory courses; courses to address the student's academic deficits; opportunity for outside work related experience; information technology and independent living skill courses.

XI. 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 U.S.C. §1415(i).

Date: *March 29, 2011*

Ramona M. Justice
Attorney Ramona M. Justice, Hearing Officer