DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

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STUDENT,[1] through the Parent,	)	
Petitioner,	)	Date Issued: June 11, 2011
v.	)	Hearing Officer: Virginia A. Dietrich
District of Columbia Public Schools	)	Case No:
Respondent.	)	Hearing Date: May 20, 2011 Room 2003

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of year old Student, filed a due process complaint notice on 04/08/11 alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA").

Petitioner took issue with the contents of Student's Individualized Education Program ("IEP"); specifically the transition plan, stating that no age appropriate transition assessments had been conducted and since the transition plan was not based on age appropriate assessments and did not contain realistic post-secondary education and employment goals or any independent living goals, the transition plan was inappropriate and not calculated to provide Student with a FAPE.

For relief, Petitioner requested that the Hearing Officer determine that Student had been denied a FAPE, that the Multidisciplinary Team ("MDT") meet to review the results of an independent Vocational II Assessment and that the Hearing Officer determine an appropriate award of compensatory education for the denial of a FAPE.[2]

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[1] Personal identification information is provided in Appendix A.
[2] Petitioner's original request that DCPS fund an independent vocational evaluation was withdrawn because DPCS provided a letter authorizing an independent Vocational II Assessment on 04/26/11.

Hearing Officer Determination

DCPS asserted that Student attended a school with a career counselor who had been working with Student on his transition goals and transition plan, that the school had conducted age appropriate assessments for Student, and that the transition plan was appropriate for Student who was in the 10th grade and projected to graduate in 2013 with a high school diploma. And, although DCPS had not specifically conducted a Vocational II Assessment, DCPS had begun the process of identifying Student's vocational interests in response to programming concerns only recently expressed by Petitioner. Moreover, on 04/26/11, DCPS authorized funding for an independent Vocational II Assessment. DCPS argued that DCPS was not required to specifically conduct a Vocational II Assessment and that Petitioner had not shown any harm by DCPS' failure to conduct a Vocational II Assessment by the time of the filing of the complaint.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

This Hearing Officer was assigned to the case on 04/11/11. A resolution meeting took place on 04/22/11 and although Petitioner wanted to end the 30-day resolution period on that day, DCPS did not. Therefore, the 30-day resolution period expired on 05/08/11, the 45-day timeline to issue a final decision began on 05/09/11, and the final decision is due on 06/22/11.

The due process hearing was a closed hearing that took place on 05/20/11. Petitioner was represented by Darnell Henderson, Esq. and DCPS was represented by Laura George, Esq. Neither party objected to the testimony of witnesses via telephone. Petitioner participated in the hearing in person.

Petitioner presented three witnesses: Petitioner; a vocational specialist; and Petitioner's educational advocate. DCPS presented two witnesses: IEP Coordinator at
and the Career and Technology teacher at

Petitioner's disclosures dated 05/13/11, containing a witness list and Exhibits -1 through -17 (hereinafter referred to as P-1 through P-17), were timely filed and admitted into evidence without objection with the provision that the name of a different student on P-16 (sample IEP) was redacted. DCPS' disclosures dated 05/13/11, containing a witness list and Exhibits R-1 through R-8, were timely filed and admitted into evidence without objection.

The two issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied Student a FAPE by failing to conduct age appropriate transition assessments and/or a vocational assessment.

Hearing Officer Determination

Whether DCPS denied Student a FAPE by failing to include appropriate transition goals on Student's 06/04/10 IEP.

Parties agreed to the following stipulation of fact:

(1) On 04/26/11, DCPS provided to Petitioner an authorization for funding of an independent Vocational II Assessment.

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. Student is a year old special education student who was placed at by DCPS.[3] At the time of the filing of the complaint, Student was in the grade although arguably he was in the 9th grade based on Carnegie Units he had earned.[4]

#2. The purpose of a post-secondary transition plan is to help prepare a student for further education or training after high school[5] and post-secondary transition planning is an on-going process.[6] Student identified his post-secondary education career plans as attending a 4-year college or university[7] and Petitioner had previously Student enrolled in the Upward Bound Program to assist with obtaining information and funding for college.[8]

#3. On 03/17/10, Student was administered an Individualized Transition Plan Interview to gather information in the area of post-secondary education and training. On 11/25/09, Student was administered a COIN Career Cluster Assessment for high school students in order to gather information in the area of post-secondary education and training. On 11/25/09, Student was administered a COIN Self Assessment to gather information in the area of post-secondary employment. On 11/25/09, Student was administered a COIN Skills Assessment to gather information in the area of post-secondary employment. On 11/25/09, Student was administered a COIN Career Cluster Assessment Survey for high school students to gather information in the area of post-secondary employment.[9] All of these transition assessments were identified in Student's 06/04/10 IEP.[10] COIN assessments are assessment tools that can be administered to students on a yearly basis and the responses provided by students on the COIN assessments are used in the formulation of a post-secondary transition plan. The COIN assessments by themselves are not sufficient to determine any type of programming; they just provide a basis for identifying a student's interests and developing an initial transition plan based on those interests.

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[3] R-1.
[4] R-7.
[5] Testimony of IEP Coordinator.
[6] Testimony of Career and Technology teacher.
[7] R-2.
[8] Petitioner.
[9] R-2: Testimony of Career and Technology teacher.
[10] P-11.

The COIN assessments are adequate and age appropriate assessment tools to identify the interests of a 10th grader with plans of attending college. [11]

#4. Student's last annual IEP, dated 06/04/10, contains a Post-Secondary Transition Plan ("Transition Plan") that includes the following: (A) A section on Student's long-range goals and interests in the area of post-secondary education and training and the area of employment; (B) A section that identifies the assessment tools used to determine Student's long range goals and interests, the date the assessment tool was administered and the results of the assessment; however, the paper copy of the IEP has incomplete sentences/descriptions under the "results" section; (C) A section on annual measureable goals for post-secondary transition in the areas of post-secondary education and training, and employment; and (D) a section on post-secondary transition activities and services.[12]

#5. The Transition Plan in Student's 06/04/10 IEP is based on career aspirations identified by Student verbally and the transition goals appropriately reflect the information provided by Student.[13] The long-range and annual goals in Student's Transition Plan are appropriate for Student who is a 10th grader, who is projected to exit from high school in 2013 with a high school diploma, and who plans to attend a four-year college or university and study television production and obtain employment as a movie producer.[14] At the 06/04/10 IEP meeting, Petitioner agreed with Student's long-range post-secondary career and employment goals as well as the Transition Plan annual goals because she thought they were appropriate at that time based on Student's desires and she did not want to discourage Student by telling him that the goals were unrealistic.[15] Petitioner has never expressed dissatisfaction with the Transition Plan in the 06/04/10 IEP.[16]

#6. Independent living goals are generally more appropriate for 11th and 12th graders, but can be appropriate for a 10th grader if the student's identified long-range goals warrant it. Currently, independent living goals as part of Student's Transition Plan are not necessary for Student because Student indicated that he wanted to attend college and live in a college dormitory.[17]

#7. Petitioner initiated the convening of the 03/07/11 MDT meeting as a "pre-IEP" meeting in advance of Student's annual IEP meeting in May 2011. At the MDT meeting on 03/07/11, there was no discussion about the transition goals in Student's IEP. However, Petitioner did express a desire for Student's future participation in a vocational program and in response to Petitioner's concerns, staff indicated that Student would participate in a standardized Individualized Graduation Portfolio ("IGP") beginning in a few weeks; a program that is a substitute for the Vocational I and Vocational II Assessments and that

[11] Testimony of Career and Technology teacher.
[12] P-11.
[13] Testimony of Petitioner, Career and Technology teacher, IEP Coordinator.
[14] R-1; Testimony of Career and Technology teacher.
[15] Testimony of Petitioner.
[16] *Id.*
[17] Testimony of Career and Technology teacher.

would provide information about Student's vocational interests.[18] At the time of the due process hearing, the IGP process had begun for Student.[19]

#8. The paper copy of the IEP has limited information in the "results" section with respect to assessments used to determine Student's long-range goals and interests due to the way the computer prints out the IEP. The computer database that generates the paper IEP contains complete sentences and the information can be accessed easily. Additionally, the career and technology teacher at Foundations School, who administered all of the COIN assessments to Student, has a paper portfolio of Student's transition assessments that can be accessed at any time.[20]

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:

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

34 C.F.R. 300.320(b) provides that beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include 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.

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[18] R-7; Testimony of educational advocate.
[19] Testimony of IEP Coordinator.
[20] R-8; Testimony of Career and Technology teacher.

Hearing Officer Determination

The first issue to be determined is whether DCPS denied Student a FAPE by failing to conduct age appropriate transition assessments and/or a vocational assessment.

Petitioner did not meet her burden of proof on this issue. Student is seventeen years old and in the 10th grade although based on the number of Carnegie credits he has earned to date, he may actually be in the 9th grade.[21] Student has identified his post-secondary education goal as attending a four-year college or university to study television production and his post-secondary employment goal as obtaining employment as a movie producer. These goals are stated in Student's Transition Plan contained in the 06/04/10 IEP, Petitioner agreed with these goals on 06/04/10, and since that time Petitioner has never expressed any dissatisfaction with any part of Transition Plan.[22]

In 2009 and 2010, COIN assessments were administered to Student while he was in the 8th and 9th grades in order to begin the initial process of developing a transition plan. The COIN assessments are age-appropriate assessments that were timely administered to Student. In June 2010, when Student's current IEP was developed, Student's projected exit from high school was with a diploma in 2013; there was no talk from Petitioner or Student about pursuing a vocational program. Not only was Student desirous of attending college; Petitioner had the same desire because she had previously enrolled Student in the Upward Bound program that provides assistance and funding for college. It wasn't until March 2011 that Petitioner expressed an interest in future programming for Student that would include vocational training. DCPS swiftly responded to Petitioner's concerns by beginning the IGP process for Student; a process that will identify Student's vocational desires and aptitudes through formal assessments.[23] Moreover, on 04/26/11, DCPS authorized funding for an independent Vocational II Assessment.[24]

At this juncture in Student's educational career, the absence of a vocational assessment has not denied Student a FAPE because not only does Student's IEP reflect a post-secondary education goal of college, Petitioner assented to Student's education and employment goals in television production and movie production. Since Student had chosen college over a course of vocational study, there was no reason for DCPS to conduct a vocational assessment when Student was scheduled to graduate from high school with a diploma and had plans for attending college.[25] Moreover, Student has at least two more years of high school to complete prior to graduation despite the fact that he will be 18 years old in December 2011. There is still time to get Student on a vocational program track for his last two years of high school if that is the desire of Petitioner and Student.

The COIN assessments existed on paper and the fact that the IEP did not fully state the results of the COIN assessments was of no significance because the appropriate and complete data existed in the computer data base and was accessible; it was the format of the computer generated IEP that made it impossible to display all of the data on the paper IEP.[26]

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[21] Finding #1.
[22] Finding #5.
[23] Findings #2, #7.
[24] Stipulation #1.
[25] Findings, #2, #5.
[26] Findings #4, #8.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to include appropriate transition goals on Student's 06/04/10 IEP.

Petitioner failed to meet her burden of proof on this issue. The goals indicated in Student's current IEP reflect Student's career and employment aspirations and are appropriate based on the expressed desires of Student. Petitioner credibly testified that she has never expressed dissatisfaction with any of the transition goals in Student's 06/04/10 IEP. In fact, Petitioner concurred with the transition goals as a show of support to her child even though the goals were not realistic.[27]

At this point in time, the absence of independent living goals in Student's Transition Plan does not render the Transition Plan and IEP inappropriate. Student's long-range goals did not warrant the development of independent living goals because Student planned to live in a dormitory while attending college.[28]

"When a school district deprives a disabled child of free appropriate public education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place." *Reid v. District of Columbia,* 43 IDELR 32 (2005). Student is not entitled to compensatory education because Petitioner failed to prove by a preponderance of the evidence that Student had been denied a FAPE.

ORDER

Petitioner failed to meet her burden of proof on any of the issues identified in the complaint and as a result, she is not entitled to any of the relief requested.

The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

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).

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[27] Finding #5.
[28] Finding #6.

Hearing Officer Determination

Date: June 11, 2011

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner's Attorney: Darnell Henderson, Esq. (electronically)
DCPS' Attorney: Laura George, Esq. (electronically)
DCPS (electronically)
SHO (electronically)