

XXXX XXXX, XXX,	*	BEFORE MARY R. CRAIG,
STUDENT	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
PRINCE GEORGE'S COUNTY	*	OF ADMINISTRATIVE HEARINGS
PUBLIC SCHOOLS	*	OAH No: MSDE-PGEO-OT-13-14854
* * * * *	*	* * * * *

DECISION

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ORDER

STATEMENT OF THE CASE

On April 18, 2013, XXXX XXXX, Sr., the Parent, on behalf of his son, [Student], Student, filed a Due Process Complaint with the Office of Administrative Hearings (OAH), requesting a hearing to review the identification, evaluation, or placement of the Student by the Prince George's County Public Schools (PGPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

On May 1, 2013, the parties participated in a resolution session, which did not successfully resolve the case. On May 14, 2013, the PGPS notified the OAH that the resolution session did not resolve the case.

I held a telephone prehearing conference on June 3, 2013. The Parent participated, representing himself. Gail B. Viens, Esquire, Deputy General Counsel, represented PGPS. By agreement of the parties, the hearing was scheduled for July 15 and 16, 2013.¹

I held the hearing on those dates at the offices of the PGPS. The Parent represented himself. XXXX XXXX, the Student's mother, attended the hearing and participated in Mr. XXXX's presentation.² Gail Viens, Esquire, represented PGPS. The hearing dates requested by the parties fell more than 45 days after the triggering events described in the federal regulations, which is the date my decision is due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2012). The parties requested an extension of time until August 15, 2013 for me to issue a decision. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2008).

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2012); Md. Code Ann., Educ. § 8-413(e)(1) (2008); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); COMAR 13A .05.01.15C; COMAR 28.02.01.

ISSUES

1. Did the Student earn and/or receive a Maryland Public School diploma in June 2012 or June 2013?

¹ These were the first available dates due to the parents' vacation the week of June 8, 2013, my previously scheduled leave the week of June 17, 2013, and unavailability of PGPS witnesses due to furloughs in PGPS (closing the school system for Fridays in June and July) and other end-of-school commitments.

² I shall refer to Mr. XXXX as the "Parent" since he filed the Due Process Complaint, Mrs. XXXX by her surname, and Mr. and Mrs. XXXX as the "Parents."

2. Should the Student's February 4, 2013 Individualized Education Program (IEP) be amended to remove him from the diploma plan and place him in the certificate of program completion plan?

3. Did PGPS provide the Student during the 2011/2012 and 2012/2013 school years with all secondary school transition services to which he is entitled?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached an Exhibit List to this Decision.

Testimony

The Parents testified and presented the following witnesses:

- XXXX XXXX, Vocation Rehabilitation Counselor, Maryland Department of Rehabilitation Services (DORS)
- XXXX XXXX, Vocational Rehabilitation Supervisor, DORS
- XXXX XXXX, Transition Specialist, PGPS

PGPS presented the following witness:

- XXXX XXXX, Transition Specialist, admitted as an expert in special education and transition services

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student, whose date of birth is XXXX, 1994, was enrolled in the PGPS in the 2011/2012 and 2012/2013 school years, attending [School].

2. The Student attended a fourth year of high school in the 2011/2012 school year; he completed a fifth year of high school in the 2012/2013 school year.
3. The Student had an IEP at all relevant times.
4. The Student received special education services at [School] at all relevant times.
5. PGPS identified the Student as a student with multiple disabilities, which include orthopedic impairment and a specific learning disability.
6. The Student has a medical diagnosis of XXXX with XXXX, a XXXX, and controlled seizure disorder.
7. PGPS completed the Student's latest IEP on February 4, 2013 (2013 IEP). (Jt. Ex. 1).³

The IEP identified the areas affected by the Student's disability as:

- a. Academic – reading comprehension, written language expression;
 - b. Health – occupational performance skills; and
 - c. Physical – functional mobility.
8. The 2013 IEP contained goals and objectives to meet the areas identified, and called for the Student to receive thirty hours of special education services outside the general classroom every school week.
 9. The 2013 IEP provided that the Student was pursuing a Maryland high school diploma, and that he was expected to exit school or graduate with a diploma on June 1, 2013.
 10. The Parents did not object to the 2013 IEP prior to the April 2013 IEP team meeting.
 11. The Student earned a Maryland high school diploma in June 2013 by satisfying the enrollment requirements, acquiring all required credits, completing the service hours

³ This is the only IEP in evidence.

required and satisfactorily completing XXXX Plans for XXXX.⁴ The Student did not pass the Maryland High School Assessments.

12. The 2013 IEP noted that the Student failed to pass the Maryland High School Assessments, but was a XXXX Plan Participant.⁵
13. At the Parents' request in June 2012, PGPS permitted the Student to remain enrolled in PGPS and to attend [School] for his fifth year in the 2012/2013 school year in order to permit the Student additional time to obtain post-secondary services from other agencies, including DORS and the Maryland Developmental Disabilities Administration (DDA).
14. On or before February 4, 2013, PGPS provided the Parent with a referral to DORS and DDA. PGPS invited representatives from DORS and DDA to the February 2013 IEP meeting, which the Parents attended. PGPS provided the Parents with information about [Organization], a non-profit that operates a series called Transition 101, as well as the location of [Organization]'s website containing other information regarding transition services.
15. PGPS provided the Parents with the Maryland State Department of Education (MSDE) Transition Planning Guide, a document stating Parental Procedural Safeguards, a copy of the 2013 IEP, and prior written notice of the IEP meeting.
16. The 2013 IEP contains a description of the Student's preferences and interests, an appropriate transition assessment by PGPS, and a statement of the Student's postsecondary goals to obtain employment in the literary field as a XXXX. The IEP

⁴ The XXXX Plan for XXXX is an alternative to the Maryland State High School Assessments. It is explained in more detail in the Discussion.

⁵ MSDE regulations define the "Maryland High School Assessments" as "the tests in algebra/data analysis, biology, English, and government developed by the Department that are aligned with and measure a student's skills and knowledge as set forth in the content standards for those subjects." COMAR 13A.03.02.02B(5).

identified Arts, Media and Communication as courses of study to support his postsecondary goals.

17. On April 17, 2013, PGPS provided the Parents with prior written notice of the school system's plan to exit the Student from the school system in May 2013 when he received a high school diploma. The Parents attended an IEP team meeting to discuss the Student's exit from PGPS. They did not agree with the amendment of the Student's IEP to terminate him from special education services by graduation.
18. The Parent filed a Due Process Complaint on April 18, 2013.

DISCUSSION

The Arguments of the Parties

The Parents filed a Due Process complaint to contest the issuance of a Maryland High School diploma to the Student by PGPS. The Parents question how the Student could attain a high school diploma given his disabilities. They point out that, to the best of their knowledge, he was lacking mandatory service learning hours and had not passed the Maryland High School Assessments. The Parents further contend that PGPS did not provide the Student with adequate transition services. They acknowledge receiving information about programs which might be available to the Student upon graduation, but they complain that none of the services are in place as of June 2013, so they contend that the transition services provided by PGPS fell short of what is required by the law.

In essence, the Parents contend that the Student should be permitted to attend PGPS until he is twenty-one, primarily because he has to date not received assistance from DORS or DDA

toward achieving his post-secondary goal of employment.⁶ The Parents maintain that the Student will be unable to obtain assistance from DORS when he graduates from PGPS due to the nature of his disabilities. According to the Parents, DORS has informed them that the Student may qualify for dependent work aided assistance from the DDA, but not until his twenty-first birthday in XXXX 2015. The Parents seek an order requiring PGPS to retain the Student as a student at [School] until that time. It is unclear whether the Parents seek a high school diploma for the Student or if they are asking that he be awarded a certificate of program completion when he exits public school.

PGPS argued that the Student completed all of the Maryland State Department of Education (MSDE) diploma requirements as of June 2012. He did not pass the Maryland High School Assessments, but earned the diploma through the XXXX Plan for XXXX. Although it was not required by law to do so, PGPS argued, it permitted the Student to attend high school for a fifth year in the 2012/2013 school year. PGPS pointed out that the Student's IEP states that he will graduate in June 2013 with a diploma. He is not eligible for a certificate of program completion.

PGPS argued that the Parents attended IEP team meetings in February and April 2013, and all procedural requirements of the IDEA have been met. PGPS contended that it provided the Student with all mandated transition services, and it argued that the Parent's request for additional public school services be denied.

The Governing Law

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has

⁶ DORS is a State agency within MSDE. The DDA is a State agency within the Maryland Department of Health and Mental Hygiene. Md. Code Ann., Health Gen. § 7-201 (2009). PGPS has no control over DORS and DDA.

the burden of proving the allegations made against PGPS. The burden is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2009). To prove his case by a preponderance of the evidence, the Parent must show that it is more likely than not that PGPS failed to provide the Student a FAPE. Merely asking questions and raising doubt does not constitute proof by a preponderance of the evidence.

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487 (2010), 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2008), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412. Courts have defined the word “appropriate” to mean personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. Clearly, no bright line test can be created to establish whether a student is progressing or could progress educationally. Rather, the decision-maker must assess the evidence to determine whether the Student’s IEP and placement were reasonably calculated to enable him to receive appropriate educational benefit. *See In Re Conklin*, 946 F.2d 306, 316 (4th Cir. 1991).

The requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined a FAPE as follows:

Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child... We therefore conclude that the basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

458 U.S. at 200-201. In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide a FAPE to a student with disabilities. First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefits. 458 U.S. at 206-207. See also, *A.B. ex rel. D.B. v. Lawson*, 354 F. 3d 315, 319 (4th Cir. 2004).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176. Instead, a FAPE entitles a student to an IEP that is reasonably calculated to enable that student to receive educational benefit.

The Alleged Procedural Violation

During the prehearing conference, the Parent did not identify any procedural violation of IDEA as an issue for the hearing. However, in the interest of completeness, I will address one issue regarding notice raised by the Parents during their testimony. As I conclude that the Parent is not entitled to any relief for a procedural violation, I conclude that PGPS is not prejudiced by my inclusion of this issue in the decision.

When a school district intends to graduate a special education student before the student reaches the age of twenty-one, it must give prior written notice to the student’s parents regarding this change in educational placement. 20 U.S.C. § 1415(b)(3), 34 C.F.R. § 300.102(a)(3)(iii). The student’s parents may then file a complaint with the school, contesting the graduation. See *id.* § 1415(b)(6)(A). The Parent did not allege that PGPS failed to comply with the graduation

notice requirement; he acknowledged receipt of the notice of intended discharge of the Student in April 2013 and attendance at the April 2013 IEP team meeting at which this was discussed. *See* Jt. Ex. 3.

However, the Parent testified that the 2013 IEP stated, and the Parents were told at IEP meetings, that the Student could remain enrolled until age twenty-one. *See* Jt. Ex. 1, p. 20.⁷ It is undisputed that the 2013 IEP contained the statement that the Student could remain enrolled in PGPS until age twenty-one, but it is also undisputed that this statement inaccurately described the Student's plan. Upon consideration of the facts of this case, I conclude that this clerical error was not a violation of the notice requirements of the IDEA.

The procedural requirements of the IDEA require prior written notice to the parent of a child with a disability a reasonable time before a public agency proposes to initiate or change the educational placement of the student. 34 C.F.R § 300.503(a)(1). I conclude that the inclusion of the erroneous statement regarding the Student's ability to attend school until his twenty-first birthday did not violate the procedural safeguards of the IDEA. The Parents participated fully in every IEP meeting held to discuss the Student. The 2013 IEP contains accurate statements regarding the Student's progress toward a diploma. It indicates that, although he did not pass the Maryland High School Assessments, he was participating in the XXXX Plan for XXXX and pursuing a high school diploma. Jt. Ex. 1, p. 5. The IEP identified the Student as participating in a five year high school plan. *Id.* The Transition portion of the 2013 IEP stated that "[a]fter 13th year, [Student] will be employed in the literary field as a XXXX." Jt. Ex. 1, p. 20. That same section states: "The student is projected to exit with: Maryland High School Diploma: (with 2

⁷ I have hand numbered the pages of the IEP in red ink for ease of reference.

credits) of Advanced Technology)’’ *Id.* The Student’s projected date to exit PGPS was June 1, 2013. *Id.*

Considering all of the relevant provisions of the 2013 IEP, I conclude that the statement regarding the Student remaining in high school until he turned twenty-one was one erroneous statement inconsistent with every other statement in the IEP. It is likely that the statement regarding the Student’s right to remain in high school was part of a boilerplate that is found in the template for the IEP which should have been deleted given all of the other Student-specific information in the 2013 IEP. Reading the 2013 IEP in its entirety, the clerical error did not amount to a procedural violation of IDEA. The Parents were on notice from the content of the 2013 IEP that PGPS planned to issue the Student a diploma in 2013 and that he was expected to exit the school system through graduation.

I accept the Parents’ testimony that there was discussion of the Student remaining in high school past the 2013 graduation date, but I conclude that the nature of the discussion was not as the Parents portrayed it. The Parents testified that they were told that the Student could remain in high school until he reached the age of twenty-one. They explained that it was presented to them as their option. However, I conclude that the possibility of retention, which was discussed at the IEP meetings in February and April of 2013, was not accepted by the IEP team. The summary of the April 2013 IEP meeting states that the Parents wished the Student to remain at [School] for another year, but the IEP team disagreed since the Student had completed the requirements for a diploma. Jt. Ex. 3.

Effect of Graduation on PGPS' Responsibility to Provide a FAPE

Under regulations promulgated by the United States Department of Education relating to special education and rehabilitation services for students with disabilities, the obligation of a state to make a FAPE available to all students with disabilities does not apply to students who have graduated from high school with a high school diploma. 34 C.F.R. § 300.102(a)(3)(i).⁸ A school system is obligated to afford a student who has graduated without a high school diploma a FAPE until the student is twenty-one years old. 34 C.F.R. § 300.102(a)(3)(ii).

The issue of whether a student with a disability will receive a high school diploma or a certificate of program completion when he graduates from school is not addressed in the IDEA. State law exclusively determines diploma and graduation requirements. If a student with a disability meets all state and local school district requirements for award of a high school diploma, he cannot be denied a diploma simply because he has a disability. The IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding him a high school diploma.

IEP team decisions about graduation are not specifically included in the topics that must be discussed by IEP teams and documented in the written IEP. 34 C.F.R. §§ 300.320 through 300.326. Graduation from high school with a diploma is a change in placement, however, and the school system is required to convene an IEP team meeting prior to terminating special education services through graduation. 34 C.F.R. § 300.102(a)(3)(iii). The IDEA does not include a requirement that an IEP contain specifically identified graduation criteria or the date of the Student's planned graduation.

⁸ PGPS did not object to the Parent's right to proceed with a hearing under IDEA under the doctrine of mootness. See *Gorski v. Lynchburg School Board*, 1988 U.S. Dist. LEXIS 18210 (W.D. Va. 1988), *aff'd*, *Gorski v. Lynchburg Sch. Bd.*, 875 F.2d 315 (4th Cir. 1989); *Moseley v. Board of Education of Albuquerque Public Schools*, 483 F.3d 689 (10th Cir. 2007).

The Validity of the Student's 2013 High School Diploma

The Student was awarded a high school diploma in June 2013. (PGPS Ex. 10).⁹ The Parent questions how the Student could have earned the diploma, but he did not argue that PGPS granted the Student an unearned diploma in order to discharge him from special education services or with the goal of depriving the Student of his right to receive continued services under he reached the age of twenty-one. I conclude that the Parent expressed *questions* about how the Student satisfied the graduation requirements, but did not produce convincing *evidence* that the Student failed to earn his diploma.

Mr. XXXX testified that the Student did not pass any of his Maryland High School Assessments, State standardized tests administered to students enrolled in Maryland public schools. It is undisputed that the Student did not pass the assessments.¹⁰ His 2013 IEP indicates that he did not achieve a passing score on the tests as of May 17, 2011 (Jt. Ex. 1, p. 5).

Passage of the Maryland High School Assessments is not the sole method for satisfying the high school diploma requirements. The standards for a Maryland high school diploma are established by the Maryland State Board of Education. COMAR 13A.03.02. A student may satisfy the testing requirement for a diploma by passing the high school assessment tests, but that is not the sole path to a diploma. COMAR 13A.03.02.07A. The full range of options is set forth in COMAR XXXX as follows:

⁹ Initially, the Student was awarded a high school diploma in June 2012. (P. Ex. 2). He attended graduation ceremonies. Upon discussions between the Parents and PGPS, however, the Student's 2012 diploma was rescinded and he was permitted to attend high school for a fifth year during the 2012/2013 school year. At the hearing, the Parent did not argue that PGPS violated FAPE in taking these actions. I consider any objection the Parent might have had to the 2012 diploma waived. Similarly, the Parent did not present the 2012 Imp into evidence, so any objection to that IEP was waived at the hearing.

¹⁰ His scores are shown on page 5 of the 2013 IEP. Jt. Ex. 5.

[Description]

PGPS offered evidence that, although the Student did not successfully pass the Maryland High School Assessments, he satisfied the requirements for a diploma through completion of a XXXX Plan for XXXX.

The requirements for a XXXX Plan for XXXX are set forth in COMAR XXXX as follows:

[Description]

PGPS showed that the Student earned his diploma by completing XXXX projects. Ms. XXXX testified that “[h]is senior year he was assigned to do some of the AVP projects or advanced – XXXX projects.” Tr. 217. The Student participated in the projects. *Id.* Ms. XXXX testified that it was her understanding that the Student successfully completed the assigned XXXX projects. Tr. 218.

The Parent testified that he could not understand how the Student completed satisfactory projects. Based on his knowledge of the Student’s abilities, he testified, he doubted it was possible. The Parents have seen some of the samples of the Student’s work, and they believe that he must have had assistance in producing those samples because, from their knowledge of his abilities, he could not do so unaided.

The Parent testified that he had never seen the XXXX projects and, despite a request for copies of or access to the approved projects, he was unable to obtain them from PGPS. Ms. XXXX explained that the projects are completed at the high school and sent to MSDE headquarters where they are reviewed by a group from the central office. Tr. 220. The

individuals at MSDE who assess the XXXX projects for sufficiency do not know the identity of the submitting student or school. *Id.* The projects are not returned to the local school.

While I do not doubt the Parent's sincerity or his knowledge of the Student's abilities – by all accounts, both Parents are devoted to the Student and very involved in his education – there simply was no credible evidence presented that the Student did not satisfy the XXXX project requirements for a Maryland high school diploma. Doubts and questions do not rise above the level of speculation; evidence is necessary for the Parent to carry the burden of proof. MSDE has adopted the XXXX Plan for XXXX as an alternate route for some students who are unable to pass the Maryland High School Assessments to achieve a high school diploma. While the adequacy of the projects approved under the XXXX Plan are necessarily more subjective than the scores on a standardized test, there is no evidence in this record that the Student's projects did not meet the MSDE standards. I, therefore, conclude on the record before me that the Parent failed to prove that the Student was unqualified for a diploma achieved through the XXXX Plan for XXXX.

The Parent also questioned how the Student satisfied the service hour requirement for a diploma. COMAR 13A.03.02.09B requires every student to complete a service requirement as set forth in COMAR 13A.03.02.06A in order to achieve a high school diploma. The Parent testified that, at the end of the 2011/2012 school year, the Student was missing some service hours. He testified that he did not know when the Student satisfied the service hour requirement. There is no evidence that, prior to filing the Due Process Complaint, the Parents ever brought their concerns about the Student's qualifications for a diploma to the IEP team.

Ms. XXXX testified that, while she was unaware of the specifics, she believed that the Student obtained credit for performing service as an assistant to a teacher during school hours.

Again, the Parent raised questions about whether the Student completed service hours, but he did not provide evidence to support his position.

While a school system cannot deny a disabled student a high school diploma because of his disabilities, neither may a parent withhold consent to a change in placement merely to maximize or extend special education services beyond the point where a student has satisfied the requirements for a high school diploma. In this case, the Student has completed all of those requirements and has received a high school diploma.¹¹

The Parents are concerned that the Student will have a gap in services if he leaves PGPS before he becomes eligible for DDA services at age twenty-one. While the concerns of these dedicated parents are understandable, there is nothing in the IDEA that requires a public school system to enroll or retain as a student one who has met all of the graduation requirements. Gaps in State services to disabled adults due to budget and other constraints do not require otherwise.

Amendment of the Student's 2013 IEP to remove him from the diploma plan and place him in the certificate of program completion plan

At the Parent's request, I included as an issue in the Prehearing Conference Report the question of whether the Student's 2013 IEP should be amended to remove him from the diploma plan and place him in the certificate of program completion plan. At the hearing, the Parent asked that I order PGPS to permit the Student to remain enrolled at PGPS until he turns twenty-one, but I did not understand him to suggest that, at that time, the Student be awarded a certificate of program completion rather than a diploma. If I have misinterpreted his request, I conclude that I lack the authority to order PGPS to do so. The law requires a student's IEP to include "a description of how the child's progress toward meeting the annual goals ... will be

¹¹ The Parent disputed the Student's satisfaction of the Maryland High School Assessment and/or XXXX Projects requirements as well as his completion of service hours, but he did not dispute that the Student satisfied all of the other requirements for a Maryland diploma, e.g., enrollment and credits. COMAR 13A.03.02.09B(1).

measured and when periodic reports on the progress the child is making toward meeting the annual goals ... will be provided.” 20 U.S.C. § 1414(d)(1)(A). The 2013 IEP accurately stated that the Student was pursuing a high school diploma and had completed all of the requirements to obtain one in June 2013. Jt. Ex. 1, p. 5.

The Student earned a diploma and does not satisfy the criteria for a certificate of program completion. COMAR 13A.03.02.09D. PGPS cannot withhold the Student’s diploma in order to afford him additional time to enroll in high school. The 2013 IEP does not require amendment because it accurately describes the Student’s expected achievement of a diploma.

Finally, I note that the remedy that the Parent sought was unclear. He requested in his Due Process Complaint and during his argument at the hearing that the Student be permitted to remain in high school until he attains the age of twenty-one, primarily so that the Student would be at the age when he would qualify for services from the DDA. The Parent did not make it clear what educational services he was requesting that PGPS provide the Student for the next two years. In addition, there was no evidence presented of what prospective relief the Parent was requesting me to order that PGPS provide and how any prospective relief was an appropriate remedy for alleged violations of FAPE by PGPS. I conclude that no amendment to the 2013 IEP is warranted.

Transition services

The Parent argued that PGPS did not provide the Student with required transition services during the 2011/2012 and 2012/2013 school years. At the outset, I conclude that the Parent did not meet his burden of proof as to the 2011/2012 school year. The IEP for that school year is not in evidence. Although the Parent provided testimony through his witnesses about transition matters discussed at IEP meetings in the Student’s fourth year at [School], he did not provide the

IEP or any other documents to indicate what transition services were described in the IEP for that year. Therefore, he failed to meet his burden of proof as to that year, and I shall not discuss it further.

The 2013 IEP is in evidence as Joint Exhibit 1. If there is a written Transition Plan other than the IEP, it is not in evidence. PGPS Exhibit 6 contains receipts for the Transition Planning Guide signed by Mrs. XXXX on February 4, 2013 and the Parent on April 29, 2010 and February 6, 2012. It is undisputed that the Parents received this document, whatever it consists of, from PGPS three times.

Turning to the 2013 IEP, the transition requirements of the IDEA and State law are clear. The IDEA defines “transition services” as follows:

Transition services. The term “transition services” means 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, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
(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 daily living skills and functional vocational evaluation.

20 U.S.C.A. § 1401(34).

Federal regulations explain the requirements for transition services as follows:

Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that --

(1) 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, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes --

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. § 300.43.

The IDEA defines the required content of a child's IEP regarding transition:

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter-

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; [and]

(bb) the transition services (including courses of study) needed to assist the child in reaching these goals....

20 U.S.C.A § 1414(d)(1)(A)(i)(VIII). *See also*, 34 C.F.R. § 300.320.

Section 21-305 of the Education Article of the Annotated Code of Maryland defines "transition services" as "a coordinated set of activities for a student with a disability who meets the definition of a transitioning student that promotes movement from school to postschool

activities, including postsecondary education, vocational training, integrated employment, supported employment, adult services, independent living, and community participation.” Md. Code Ann., § 21-305(a)(3). The statute further requires DORS to “[d]evelop, in consultation with county boards, for each transitioning student who is determined eligible for rehabilitation services, an individualized plan for employment prior to graduation.” Md. Code Ann., Educ. § 21-305(b)(3). The Maryland regulations defining transition services and the IEP requirements regarding transition mirror the federal law. COMAR 13A.05.01.03B(80), 13A.05.01.09A(3).

The facts regarding transition services and the content of the IEP on that issue are largely undisputed. The IEP contains a discussion of the Student’s preferences, interests and a transition assessment as follows:

[Student] wants to improve his communication skills using the computer and be exposed to Computer Graphics. On 1-14-13, [the Student] completed The Harrington-O’Shea Career Decision Making System Revised (CDM), a career interest inventory. He scored highest in the Arts, Business, and Office Operations Areas. Within these parameters, Arts-Business and Arts-Office Operations were the Career Clusters in which [the Student] had the highest scores. Literary and Management are the areas that he showed the most interest. [The Student] enjoys writing, and self-published a novel about XXXX. His favorite school subjects are English, Family and Consumer Sciences, Languages, and Social Science. He values creativity, independence, leadership, and physical activity. [The Student] is not interested in continuing his education after high school.

Jt. Ex. 1, p. 20.

The Parents agreed that writing, especially about XXXX topics, is the Student’s particular area of interest. They agreed with the IEP’s statement of his postsecondary goal of employment as a XXXX, at least until they filed the Due Process Complaint.

The IEP further records that the Student was enrolled in a course of study to support his postsecondary goal of becoming a XXXX. He was receiving course work in the Arts, Media and Communication. *Id.*

The transition activities listed in the 2013 IEP support the Student's postsecondary goals. He was to complete a variety of interest inventories in order to become aware of his individual interests and skills. Jt. Ex. 1, p. 21. He and his parents were also to research training programs for customer service and research XXXX careers. *Id.* In furtherance of his goal to be independent, the Student and his parents were to sign the Student up for XXXX. *Id.*

I conclude that the IEP met the transition requirements of the law. It identified the Student's postsecondary goals and listed transition services, including courses of study, to assist him in reaching his goals.

The Parents take a different view of the transition services requirements of the law. They contend that PGPS is required to assist them to obtain needed services from other public agencies so that, upon graduation, the Student will have a seamless transition from school to work and independent living. They point to the fact that the Student has an on-site assessment scheduled with DORS in October 2013. Until that assessment is completed, it is unknown what, if any, services DORS will provide to the Student. The Parents argue that the Student must remain enrolled in PGPS until DORS is ready and able to step in and provide the Student with the supports necessary to enable him to remain a productive member of society.

The Parents did not cite any legal authority for their argument, and I am unaware of any. DORS is a Division of the Maryland State Department of Education. It has the following responsibilities regarding transition services to students receiving special education services:

Duties of Division of Rehabilitation Services. -- The Division shall:

- (1) Assign a rehabilitation counselor as a liaison to each Maryland public high school;
- (2) Establish a cooperative agreement with each county board defining roles, responsibilities, and procedures in order to provide appropriate transition services

for a transitioning student; and

(3) Develop, in consultation with county boards, for each transitioning student who is determined eligible for rehabilitation services, an individualized plan for employment prior to graduation.

Md. Code Ann., Educ. § 21-305(b) (2008).

It is undisputed that the Student and his Parents were referred to DORS by PGPS. It is evident that DORS's performance of its responsibilities to the Student was deficient. The evidence shows that the counselor originally assigned to the Student performed some of the tasks required to assist him with his transition, but she left DORS before the task was completed. Unfortunately, her replacement, XXXX XXXX, was not hired for many months for some unexplained reason. When she assumed her position as a Vocational Counselor in October 2012, Ms. XXXX was assigned 210 cases, including the Student's. Ms. XXXX, who had never met the Student, was scheduled to attend the April 2013 IEP team meeting and to perform a one-on-one assessment of the Student at the time, but she was in a car accident that day. Her supervisor, XXXX XXXX, attended the IEP team meeting and was able to provide the team with information about the Student's options through DORS, but she did not perform an assessment of the Student.

Ms. XXXX testified that she sent the Parents a letter at their address of record notifying them that the Student became eligible for DORS services, effective April 18, 2013. *See* Md. Code Ann., Educ. § 21-306. The Parent testified that he did not receive the letter and it was not offered into evidence. I conclude that the Parents were unaware that DORS had deemed the Student eligible for services in April 2013.

The evidence shows that in June 2013, DORS offered the Student an opportunity to participate in a summer program during the summer of 2013. He did not participate, however,

because he was in [State] with his grandmother for the summer. Hence, the October 2013 appointment will be the Student's first opportunity to be assessed by DORS.

It is clear that there was no placement for the Student in a rehabilitation, work, training or other vocational program upon graduation from high school in June 2013. DORS did not perform its responsibility to create an individualized plan for the Student's employment prior to his graduation in June 2013. This leaves the Student and his Parents in an uncomfortable situation where his next steps toward achieving his goals of independence and a writing career are uncertain. Obviously, this creates anxiety and amounts to a violation of DORS' responsibilities to the Student, but it does not present a violation of the IDEA warranting continuation of the Student's enrollment in PGPS for another year or more.

State law requires DORS to create a plan for the Student prior to graduation; that did not occur here. However, the IDEA does not require a public school system to retain a student in the educational setting until DORS completes the plan and postsecondary employment is in place for the Student. I conclude that the Parent failed to prove that PGPS violated the IDEA in connection with the Student's transition from secondary education to the postsecondary activities of his choice. The dereliction by DORS of its duty is not a violation by PGPS of IDEA.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. PGPS did not violate the procedural requirements of the IDEA, 20 U.S.C.A. § 1415(b)(3), 34 C.F.R. § 300.102(a)(3)(iii);
2. The Student satisfied all of the requirements for a high school diploma in June 2013, COMAR 13A.03.02;

3. The Student's 2013 IEP accurately indicated that he had completed all of the requirements for a high school diploma and would earn a high school diploma in June 2013. The Student's IEP should not be amended to indicate that he is in the certificate of program completion plan because he earned a diploma and is not eligible for a certificate of program completion, 20 U.S.C.A. § 1414(d)(1)(A);
4. PGPS satisfied all of the requirements of the law pertaining to transition services and documentation of the transition elements in the Student's 2013 IEP, 20 U.S.C.A. §§ 1401(34), 1414(d)(1)(A)(1)(VIII), 34 C.F.R. §§ 300.320, 300.43, COMAR 13A.05.01.03B(80), 13A.05.01.09A(3); and
5. The Parent failed to prove any violation of the law regarding the Student's 2011/2012 school year. *Schaffer v. Weast*, 546 U.S. 49 (2005).

ORDER

I **ORDER** that the relief requested in the Parent's Due Process Complaint is **DENIED**.

August 13, 2013
Date Order Mailed

Mary R. Craig
Administrative Law Judge

MRC/rbs

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. §8-413(j) (2008).

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.