

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jim and Laurie Gibson, as next friends of	:	
Chloe Gibson,	:	
	:	Case No. 1:11-cv-329
Plaintiffs,	:	
	:	Chief Judge Susan J. Dlott
v.	:	
	:	Order Granting Motion for Transition
Forest Hills School District Board of	:	Remedy
Education,	:	
	:	
Defendant.	:	

This matter is before the Court on Plaintiffs’ Motion for Transition Remedy (Doc. 42). Chloe Gibson (DOB 12/16/1990) qualified as a student with disabilities as defined by the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1401, *et seq.* Plaintiffs Jim and Laurie Gibson are her parents and legal guardians. The Gibsons reside within the boundaries of the Defendant Forest Hills School District (“Forest Hills”). Forest Hills was required to provide special education and related services to Chloe pursuant to the IDEA and Ohio Revised Code Chapter 3323.

On December 14, 2009, the Gibsons filed an administrative due process complaint with the Ohio Department of Education against Forest Hills alleging that the school district had failed to provide Chloe with a free appropriate public education. An independent hearing officer (“IHO”), and then a state level review officer (“SLRO”) upon administrative appeal, found in favor of the Gibsons on some grounds, but against the Gibsons on other grounds. On June 6, 2011, the Gibsons filed for a judicial review of the SLRO Final Decision in this Court. The Gibsons requested additional substantive relief and attorney fees.

On June 11, 2013, the Court issued an Order Affirming in Part and Reversing in Part the Final Decision of the State Level Review Officer (“Judicial Review Order”) (Doc. 35). The Court reversed the SLRO Final Decision to the extent that the Court concluded that Forest Hills violated the IDEA by not providing Chloe with adequate transition services. (*Id.* at PageID 719, 735.) Thereafter, the Court held a settlement conference with the parties on August 20, 2013 to determine whether they could reach an agreement as to the appropriate transition services remedy. The parties were unable to come to an agreement. Accordingly, Plaintiffs filed the pending Motion for Transition Remedy with leave of the Court. The matter is fully briefed and ripe for adjudication.

I. ADJUDICATION OF THE TRANSITION SERVICES ISSUE IN THE JUDICIAL REVIEW ORDER

The Gibsons’ disputes with Forest Hills about the educational services required by Chloe are well known to the parties and the Court. However, it will be useful to the analysis of the pending motion to re-state the Court’s discussion about transition services from the Judicial Review Order. The Court stated as follows:

The IDEA requires school districts to annually provide, beginning when the student turns sixteen, “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills” and “transition services (including courses of study) needed to assist the child in reaching those goals.” 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa) & (bb). Federal and state regulations require the school district to invite the student to [individualized education program (“IEP”)] team meetings when the team will be discussing postsecondary goals and the transition services needed to reach those goals. 34 C.F.R. § 300.321(b)(1); Ohio Admin. Code 3301-51-07(I)(2)(a). The school district must take other steps to ensure that the student’s preferences and interests are considered “[i]f the child does not attend the IEP Team meeting.” 34 C.F.R. § 300.321(b)(2); Ohio Admin. Code 3301-51-07(I)(2)(b).¹

¹ Relatedly, school districts must provide students with notice that their IDEA rights transfer to them on their eighteenth birthdays at least one year before they turn eighteen. 34 C.F.R. § 300.320(c). Forest Hills did not specifically discuss the transfer of rights with Chloe when she turned seventeen. (Tr. 494–95, 2313–14.) The evidence suggests that Forest Hills did not think it was necessary given that her parents indicated that they would

Chloe turned sixteen years old in December 2007 and was in the ninth grade at Anderson H.S. The facts are undisputed that Forest Hills did not invite Chloe to participate in IEP team meetings where transition services were discussed. (Tr. 493–94, 2312–13.) Forest Hills did not consider asking Chloe to the meetings because her parents never invited her, the meetings were long and adversarial, and Susie Giesting [Chloe’s teacher] thought they would be frightening for Chloe and above her level of comprehension. (Tr. 493–94, 2312–15, 4249–51, 4254.) However, Giesting admitted that she could have helped Chloe prepare to attend a meeting and that the IEP team could have modified or structured the meeting to make her attendance easier. (Tr. 4250–51.) IDEA and Ohio regulations explicitly state that the school district “must invite” the student to IEP team meetings when postsecondary goals will be discussed. 34 C.F.R. § 300.321(b)(1); Ohio Admin. Code 3301-51-07(I)(2)(a). Forest Hills violated this mandatory requirement. The tougher question is whether this procedural violation resulted in a substantive harm and a denial of [a free appropriate public education (“FAPE”)]. *See Zelazny*, 325 F.3d at 732.

The procedural violation did not result in substantive harm if Forest Hills took other steps to ensure that Chloe’s preferences and interests were considered. *See* 34 C.F.R. § 300.321(b)(2); Ohio Admin. Code 3301-51-07(I)(2)(b). Giesting testified that Chloe’s interests were considered “based on the knowledge that [Giesting] had of [Chloe] and what she likes to do and her interests at school.” (Tr. 4252; *see also* Tr. 2315.) Giesting also stated that she talked to Chloe about jobs in the classroom and gave her choices about what she wanted to do. (*Id.*) This informal approach to determining Chloe’s postsecondary preferences and interests was not sufficient.

To begin, transition services are generally not provided by the regular special education teacher. The Ohio Administrative Code requires that transition services for the student are to be provided by “individuals who have the competencies, experiences, and training required to meet the individual student’s transition services needs, and may include job training coordinators, vocational special education coordinators, career assessment specialists, work-study coordinators or other qualified individuals.” Ohio Admin. Code 3301-51-01(B)(63)(a)(iii). Giesting and Betsy Ryan testified that Chloe could not answer direct questions about her postsecondary interests the way a person without cognitive disabilities could. (Tr. 494–96, 2312, 2314, 4252.) However, Ryan agreed that they could have talked to Chloe on her level about the jobs people do and could have taken her to shadow or assist a person like a librarian at their job. (Tr. 494–97.) However, Ryan qualified her statement by adding that she did not think that Chloe would fully understand the role and duties of the position of librarian. (*Id.* at 497.) Giesting and Jack Darland, the Forest Hills transition

seek guardianship, and in fact did seek guardianship, of Chloe when she turned eighteen. (*Id.*) This procedural violation did not result in substantive harm.

coordinator, agreed that Chloe could perform at some job settings with support. (Tr. 2333, Tr. 4811–12.) Giesting testified that providing Chloe job training through Anderson H.S. would have taken away from other activities at school. (Tr. 2333.) Giesting’s focus away from job-training is consistent with Forest Hill’s belief that Chloe would participate in a recreational/leisure environment after leaving Anderson H.S., not a supported work environment. (D.Ex. 13 at 285.) At school, Chloe engaged in the same type of work-related activities in the classroom year after year while at Anderson H.S.—for example, stapling, shredding documents, folding napkins, emptying the dishwasher, wiping tables, stuffing envelopes, pushing a cart—reducing the value of the conclusions about Chloe’s skills and interests that could be based on the small sample. (D.Ex. 10 at 210; D.Ex. 11 at 222; D.Ex. 13 at 291.)

Moreover, Forest Hills did not have age-appropriate assessments related to postsecondary goals completed for Chloe. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa) & (bb) (stating IEP requirement to include postsecondary goals based on age-based assessments). Chloe had not had a formal transition/vocational assessment at the time the due process hearing began. (Tr. 884, 891.) Betsy Ryan testified that a work-study specialist last had worked directly with Chloe when she was fifteen years old and in the eighth grade. (Tr. 479–80.) Jack Darland, the transition coordinator, did an informal observation and assessment of Chloe, but not until the 2009–2010 school year. (Tr. 4814–15.) The IHO ordered that “thorough” vocational assessment be completed during the due process hearing on May 19, 2010. (Tr. 898.) Chloe participated in a vocational assessment with Goodwill Industries in the late summer and fall of 2010. (P.Ex. SSSS; P.Ex. TTTT.) Goodwill concluded that although Chloe was “not able to meet competitive standards for quality and pace,” she did show “a willingness to learn and to try new things.” (P.Ex. SSSS at 5.) Goodwill recommended that if Chloe was interested in supported employment in a community setting, then Chloe would need to “participate in site specific, extended Community Based Assessments that would allow for Chloe to fully identify interests, assess stamina over time, [and] allow the team to see if repetition would improve pace and quality.” (Id.) Forest Hills’s failure to obtain more complete transition assessments about Chloe yearly beginning in December 2007 when she turned sixteen eliminated the opportunity for Forest Hills to provide transition services to her consistent with those assessments.

The Court concludes that Forest Hills failed to invite Chloe to meetings to discuss postsecondary goals and failed to otherwise fully consider her interests and preferences. This resulted in substantive harm and a denial of FAPE.² The

² In analyzing whether Chloe was provided sufficient transition services, the Court did not focus on the parties’ differing visions for Chloe’s future. The parents envision Chloe living and working in a supported environment. They hoped to get her enrolled at the Starfire U. program. Forest Hills also envisioned Chloe living in a supported environment, but participating in a small group/recreational activities. (D.Ex. 13 at 285.) The Court’s analysis is not outcome-oriented. The Court finds that Forest Hills denied Chloe a FAPE by not performing the necessary age-appropriate assessments to determine Chloe’s postsecondary goals and interests and to target transition services to achieve those goals.

Gibsons request that the Court order Forest Hills to collaborate with them, an expert, and a provider to determine the appropriate remedy, which would include “a minimum of 3 days per week, 3 hours per day for community and vocational training, for . . . three years.” (Doc. 28 at 272.) The Court does not have sufficient information at this time to determine an appropriate remedy. The Court must meet with the parties to discuss how to proceed as to the remedy.

(Doc. 35 at PageID 715–19.)

II. ANALYSIS

The Court, having based its decision upon a preponderance of the evidence, now has the duty to “grant such relief as the [C]ourt determines is appropriate.” 20 U.S.C.

§ 1415(i)(2)(C)(iii). This statutory language grants “broad discretion” to the Court. *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369 (1985). “An award of compensatory education is an equitable remedy that a court can grant as it finds appropriate.” *Bd. of Educ. of Fayette Cty., Ky. v. L.M.*, 478 F.3d 307, 316 (6th Cir. 2007). “Compensatory education is meant to place children in the position they would have been in but for the violation of the Act.” *B.H. v. W. Clermont Bd. of Educ.*, 788 F. Supp. 2d 682, 700 (S.D. Ohio 2011) (internal quotation and citation omitted). In formulating the equitable remedy, the Court is mindful that one of the purposes of the IDEA is to “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.” 20 U.S.C. § 1400(d)(1)(A).

Courts in the Sixth Circuit have expressed reservations about the issuance of “rote hour-by-hour” compensatory education awards. *See L.M.*, 478 F.3d at 316; *B.H.*, 788 F. Supp. 2d at 701. Hour-by-hour awards may be either inadequate to ensure that the child is properly educated, or alternatively, may be greater than necessary to provide the child with an equitable remedy. *See L.M.*, 478 F.3d at 316–17. However, hour-by-hour awards are not *per se*

inappropriate. *See B.H.*, F. Supp. 2d at 701. The Sixth Circuit in *L.M.* warned against awards that appear designed to punish the school district rather than to remedy the denial of a free appropriate public education to the child. *Id.* at 317.

The parties agree that the Court has authority to order that Forest Hills provide Chloe with compensatory educational services even though she is beyond the age of twenty-two. (Doc. 42 at PageID 758; Doc. 43 at PageID 821.) However, they propose very different transition services remedies.

A. Transition Services Remedy Proposed by the Gibsons

The Gibsons assert that Chloe needs to be provided with opportunities to explore possible jobs and training to develop skills she will need to function in the community and at her employment. The Gibsons adopt a plan proposed by Margaretha Vreeburg Izzo, Ph.D., a professor of psychiatry at the Ohio State University and transition services consultant. (Doc. 42-1 at PageID 782.) Dr. Izzo based her recommendation upon a records review, including review of Chloe's psychological reports, IEPs, in-school assessments, Goodwill Industries work evaluations conducted in 2010 and 2012; an observation of Chloe; an interview with Laurie Gibson; a review of six videos of Chloe; a literature review; and a small-sample survey of other school districts near Forest Hills. (*Id.* at PageID 771–76.)

Dr. Izzo started with an assumption that students receive approximately five hours of instruction per school day and have an average of 186 days of school per year. (*Id.* at PageID 777.)³ Accordingly, she concluded that students receive approximately 930 hours of instruction each year and 1,860 hours of instructions over two years. (*Id.*) From her survey of neighboring school districts, Dr. Izzo learned that at least two neighboring school districts provide 50–100%

³ The Ohio Revised Code requires that each school be open for not less than 182 days per school year. Ohio Rev. Code § 3313.48. Further, it requires that each school day consist of at least five clock hours. *Id.*

of their school day on employment instruction and community experiences. (*Id.*)⁴ Dr. Izzo's remedial plan would provide Chloe with 1,860 hours of transition services over two years, or the equivalent of two full-time school years, plus other related services. (Doc. 42-1 at 777–80.) The Gibsons specifically request the following transition services award based on Dr. Izzo's recommendations:

1. 1,860 hours of customized employment services over two years, consisting of 465 hours of community-based discovery experiences, 744 hours with a job coach in the community, and 651 hours of instruction on job- or work-related skills;
2. 456 hours of services by a customized employment consultant to “coordinate the transition services and providers for Chloe to . . . help her make progress in transition and employability skills in the community;”
3. 20 hours for an assistive technology assessment to address Chloe's needs in an employment setting;
4. 18 hours of services by a “person centered planning facilitator” who would “ensure that Chloe's interests and preferences are identified and considered[;]”
5. Transportation services for up to five round trips into the community each week; and
6. Administration of a special trust for compensatory educational funds.

(Doc. 42 at 755–57; Doc. 42-1 at 777–80.) Dr. Izzo describes customized employment as a flexible process whereby the unique characteristics and interests of the job seeker are paired to meet the particular needs of the employer. (Doc. 42-1 at PageID 776.)

B. Forest Hills's Response and Counter Proposal

Forest Hills contends that the Gibsons' proposal is inappropriate for a variety of reasons. It questions whether Chloe, given the extent of her cognitive disabilities, would receive a meaningful benefit from the employment-related skills instruction, job coaching, and

⁴ The summary of the survey Dr. Izzo provides in her report is of limited value to the Court. Dr. Izzo does not provide details as to the types or severity of the disabilities of the students who received the services provided by the other districts. A comparison with transition services provided to students with significantly less severe or materially different cognitive disabilities than Chloe has little relevance.

community-based assessments and activities proposed.⁵ It contends that the remedy proposed by the Gibsons would be more appropriate for children who qualified for the Turpin High School life skills classroom.⁶ Forest Hills disputes that Chloe will be able to work in a competitive employment situation. Instead, it focuses on the conclusion found in a 2012 Goodwill assessment that Chloe will work best in a familiar environment, with familiar individuals, and with appropriate supports. (Doc. 42-1 at PageID 772.) Forest Hills contends that it should not take years of training, consultation, and community outings to prepare Chloe to work in that type of supported environment. (Doc. 43 at PageID 818.)

Forest Hills relies on the recommendations of Thomas Sullivan, Ph.D., clinical neuropsychologist certified by the American Board of Professional Psychology. He based his report on a review of Chloe's medical records, her therapy notes, the testimony of two due process hearing witnesses, a Goodwill evaluation report, and Dr. Izzo's report. (Doc. 43 at PageID 829.) He did not personally observe Chloe. Dr. Sullivan focused on the evidence indicating that Chloe suffers from "functional degradation" due to seizures "that have never been fully controlled by her earlier surgery and/or medication." (*Id.* at PageID 836.) Dr. Sullivan found that Chloe had "moderate to severe intellectual impairment" and that her "ability to acquire and use new information and skills appears to be grossly degraded." (*Id.* at PageID 838.)

He concluded that Dr. Izzo's proposed remedy would not achieve the results of allowing Chloe to obtain competitive customized employment nor allow her to be more independent. (*Id.*) Dr. Sullivan's alternative recommendation was for Chloe to obtain vocational services from the Hamilton County Developmental Disabilities Services ("Hamilton County DDS"). (*Id.* at

⁵ The Court notes that the parties continue to greatly differ on their perceptions of Chloe's cognitive abilities and deficits.

⁶ The Court agreed with the findings of the IHO and the SLRO that Chloe was not qualified for the life skills classroom. (Doc. 35 at PageID 726.)

PageID 837–38.) His goal was for Chloe to continue living at home and to work in a supported environment. (*Id.* at PageID 837.) Dr. Sullivan did not define the term, “supported environment.” He described it as similar to the environment at Goodwill Industries and he contrasted it with a situation where Chloe would go into the community without one-on-one assistance. (*Id.*)⁷

Forest Hills bases its proposed remedy upon the recommendation made by Ohio Valley Goodwill Industries after Chloe’s 2010 assessment. Goodwill recommended that Chloe “participate in site specific, extended Community Based Assessments that would allow for Chloe to fully identify interests, assess stamina over time, allow the team to see if repetition would improve pace and quality and allow the team to see how independent Chloe could work without prompts over a period of time.” (*Id.* at PageID 823.)

Forest Hills’s proposed remedy is more modest in scale and detail than the Gibsons’ proposed remedy. Forest Hills’s recommendation to the Court is as follows:

[T]he court can fashion an appropriate compensatory transition remedy for Chloe by directing Forest Hills to conduct the additional assessments of Chloe recommended by Goodwill Industries following its 2010 assessment of Chloe. The court can direct Forest Hills to contract with one of the agencies, such as Hamilton County Developmental Disabilities Services or Ohio Valley Goodwill Industries, to conduct these additional assessments. Any costs associated with these additional assessments not provided free to adults with disabilities would be the responsibility of Forest Hills.

(*Id.* at PageID 824.)

⁷ The Court disagrees with Dr. Sullivan’s characterization of Dr. Izzo’s report. Dr. Izzo did not state as an explicit goal that Chloe be trained for competitive customized employment. Dr. Izzo also did not conclude that Chloe could work in customized employment without support.

C. Inadequacies of the Proposed Remedies

The Court finds that neither proposed remedy is appropriate. Neither appears designed to place Chloe in the same position in which she would have been had Forest Hills given her appropriate transition services for the period from December 2007 through December 2009.

Chloe was entitled to transition services from Forest Hills pursuant to the IDEA regardless of whether she was or is likely to achieve a high level of independence or to attain competitive employment. IDEA transition services are designed to “improv[e] the academic and functional achievement” of all children with disabilities whether the children are transitioning to “post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.” 20 U.S.C. § 1401(34). The primary problem with Forest Hills’s remedy is that it is limited to assessments. Forest Hills’s remedy does not provide for the training and other services needed to help Chloe achieve the goals recognized as appropriate in the assessments. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa) & (bb) (requiring school districts to include transition goals and services needed to help reach those goals).

On the other hand, the comprehensive recommendations made by Dr. Izzo and the Gibsons appear likely to provide Chloe with transition services that are greater in quality and quantity than those which Forest Hills could have provided. The remedy requested by the Gibsons provides Chloe with 1,860 hours of transition services, or the equivalent of two full school years, plus an assistive technology assessment and the services of two consultants. The transition services included in the 1,860 hours would include “discovery,” community-based assessments and job-coaching, and instruction on work tasks and social skills. Referencing the Sixth Circuit’s oft-quoted analogy, the Gibsons’ proposed remedy is akin to a Cadillac while the

IDEA requires Forest Hills only to provide a serviceable Chevrolet. *See Doe By and Through Doe v. Bd. of Educ. of Tullahoma City Schs.*, 9 F.3d 455, 459–60 (6th Cir. 1993) (stating analogy); *see also, e.g., Metro. Nashville and Davidson Cty. Sch. Sys. v. Guest*, 900 F. Supp. 905, 909 (M.D. Tenn. 1995) (repeating analogy).

Several factors lead the Court to this conclusion. To begin, Forest Hills would have lacked adequate time to have provided a substantially similar transition services program for Chloe during the relevant timeframe. Forest Hills had competing teaching priorities for Chloe. For example, the IHO determined that Chloe should have had IEP goals which included at least 40 minutes each school day for a structured reading program and 40 minutes each school day for a math program to increase Chloe’s frequency in number and money counting skills. (Case No. 1:11-cv-628, Doc. 2-2 at PageID 50–51.) Chloe participated in a dance class two times per week at least during the 2008–2009 school year. (Doc. 35 at 702.) The Gibsons had requested that Chloe be given instruction in other general education curriculum subjects such as writing, science, government and health. (Doc. 28 at PageID 221.)

Moreover, Dr. Izzo’s own report casts doubt on the appropriateness of 465 hours of community-based employment discovery experiences. Dr. Izzo described discovery as an informal process of learning about the individual through structured activities, observations of the individual doing activities they enjoy, and interviews. (Doc. 42-1 at PageID 776.) Importantly, she stated that “[e]xperts estimate that it may take 6–12 months or 30–60 hours for the discovery process[,]” but that it could take more time in particular circumstances. (*Id.*) Dr. Izzo did not explain why Chloe would require more than seven times the amount of discovery services than the experts’ high-end estimate.

Also, the IHO already has ordered that Chloe receive an assistive technology assessment. (Case No. 1:11-cv-628, Doc. 2-2 at PageID 51.) More recently, the Ohio Department of Education, Office for Exceptional Children, issued a Findings Letter on November 6, 2013 providing a schedule for assistive technology assessment and training to be conducted. (Doc. 44-6 at PageID 935, 942–942.) The Gibsons, through Dr. Izzo, have not demonstrated why a separate, additional assistive technology assessment geared towards employment and transition only is necessary. Similarly, the services provided by a “customized employment consultant” and a “person centered planning facilitator” appear to overlap. Dr. Izzo also did not adequately explain why the services could not be performed by one person.

D. Determination of an Appropriate Remedy

Having made the determinations that neither the remedy proposed by the Gibsons nor that proposed by Forest Hills is wholly appropriate, the Court must undertake to fashion a proper remedy. To begin, the Court notes that the conclusion in the Judicial Review Order that transition services were inadequate does not mean that Forest Hills failed to provide any transition-related services. For example, Chloe received two hours per month of direct services in speech and language instruction and one and one-half hours per month of occupational therapy. (D.Ex. 11 at 223, 225.) She also performed job-related tasks in the classroom such as folding napkins and wiping tables. (D.Ex. 10 at 210; D.Ex. 11 at 222; D.Ex. 13 at 291.) These activities were designed to provide Chloe with skills which would be useful to her postsecondary education life. The Court found, rather, that Forest Hills had not sufficiently sought to ascertain Chloe’s interests and desires as to her post-schooling future and that Forest Hills had failed to undertake the necessary assessments. Forest Hills could have further tailored Chloe’s educational plan based on the results of those assessments. Remember, the 2010 Goodwill

assessment was undertaken only upon order of the IHO during the course of the due process hearing. (Tr. 898.)

Customized employment is the goal for Chloe recommended by both Goodwill Industries and Dr. Izzo. Though Dr. Sullivan criticized having a goal of *competitive* customized employment for Chloe, he agreed that Chloe might work in a supported environment. (Doc. 43 at PageID 837–38.) Likewise, the Court notes Ohio law has been changed to reflect a preference that community employment be the IEP goal for all students with disabilities. Governor Kasich issued Executive Order 2012-05K on March 19, 2012 wherein he ordered that “[c]ommunity employment should be the priority and the preferred outcome for working-age Ohioans with disabilities.” (Doc. 44-4 at PageID 931–33.) The Ohio Revised Code also was amended in 2012 to require that IEPs for students with disabilities contain statements describing “[a]ppropriate measurable post-secondary goals based on age-appropriate transition assessments related to employment in a competitive environment in which workers are integrated regardless of disability.” Ohio Rev. Code 3323.011(H)(2). Though this revised law was not applicable when Chloe was in school, it does support the Court’s conclusion that the services recommended by Dr. Izzo and Goodwill Industries for Chloe are appropriate.

The Court orders that Chloe receive 120 hours of community-based employment discovery services at a rate of no more than \$70 per hour.⁸ Providing Chloe this service is consistent with the Goodwill Industries’ conclusion in 2010 that Chloe should engage in extended community-based assessments to gauge her interests and determine whether her work skills could improve. One hundred twenty hours is more than double the hours which Dr. Izzo

⁸ The Court also adopts Dr. Izzo’s report insofar as she provided estimates as to the expected costs for the services to be provided to Chloe. Forest Hills did not challenge Dr. Izzo’s qualifications nor her knowledge regarding the expected costs. If Chloe uses providers who charge more than the maximum hourly rate specified in this Order, the Gibsons are responsible for the overage.

reported that experts recommend in most cases, but is about one-fourth of the hours which the Gibsons requested as a remedy. This amount of community-based discovery is appropriate in this case considering the severity of Chloe's impairments and the length of time that passed since Chloe should have received analogous services from Forest Hills.

The Court, likewise, will order that Chloe receive approximately one-fourth of the hours that Dr. Izzo recommended for training with a job coach in the community and instruction in employment-related skills. **Accordingly, the Court orders that Chloe receive 190 hours with a job coach in the community at a rate of no more than \$56 per hour. The Court also orders that Chloe receive 165 hours of instruction on employment-related skills at a cost of no more than \$26 per hour.** Aimee Rittner, the Goodwill Industries community supports manager, recommended in the 2012 report that Chloe would benefit from working on her pace, transition struggles, and dependency issues before seeking community employment. (Doc. 44-2 at PageID 901.) Chloe can work to improve these skills as part of her training and instruction.

The Court also orders that Chloe receive 115 hours of services from a customized employment consultant recommended or approved by Dr. Izzo at a rate of \$70 per hour. The consultant will arrange for, coordinate, schedule, and supervise the transition services described above. The consultant will also have the duty to hire and, as necessary, train the job coach and other instructors and specialists who will provide instruction, support, and services to Chloe. Finally, the consultant will have the duty to ensure that Chloe's interests and preferences are identified and considered.

Relatedly, the Court orders that Forest Hills pay for reasonable transportation costs. Dr. Izzo's recommendations assumed that Chloe would receive the equivalent of 186 days of service per year for two years. The Court is ordering that she receive approximately one-fourth

the total hours of services. Rounding up, **the Court orders that Forest Hills reimburse the Gibsons for the transportation costs for up to 100 round trips into the community for Chloe to receive transition services at a cost not to exceed \$40.18 per round trip.**

The Court will not order that Chloe be provided with a second assistive technology assessment. Any additional assistive technology instruction or training Chloe needs can be folded into her 165 hours of instruction on employment related skills.

Likewise, the Court will not order that a trust be established and funded to pay for transition services. **The Gibsons shall provide Forest Hills with monthly itemized statements and/or invoices specifying, where reasonably possible, the service provided, the date and cost of the service, and the name and address of the service provider. Forest Hills should pay the costs directly to the provider, or reimburse the Gibsons if the Gibsons already have paid for the service, in a timely manner, a period which the Court assumes will not exceed one month.** The Court will issue sanctions if either party acts with bad faith or in a dilatory manner.

Finally, the Court will order that Forest Hills reimburse the Gibsons for the reasonable costs of Dr. Izzo's services in providing the transition services remedy assessment. Forest Hills contends that it is not liable to pay the costs of the Gibsons' expert retained for these due process proceedings even if the Gibsons are the prevailing party. *See Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 293–94 (2006) (fee-shifting provision in IDEA does not authorize prevailing parties to recover expert witness fees). *Arlington Central* is not controlling on this issue. That case concerned fee-shifting, not a determination of whether an expert evaluation can be part of the appropriate compensatory relief ordered by a court pursuant to 20 U.S.C. § 1415(i)(2)(C)(iii). *See Meridian Jt. Sch. Dist., No. 2*

v. D.A., No. 1:11-cv-320-cwd, 2013 WL 6181820, at *4 (D. Id. Nov. 25, 2013.) The Court has discretion to order these fees as part of the appropriate remedy. The Court could not determine an adequate compensatory remedy without expert testimony, especially given the passage of time since the due process evidentiary record was completed.

The Court could not find in the record an invoice detailing Dr. Izzo's fee. Within ten days of the date of this Order, the Gibsons shall provide Forest Hills with an invoice detailing the services Dr. Izzo provided, the amount of time she expended, and her hourly fee. Forest Hills shall have two weeks to dispute the reasonableness of the invoice to the Gibsons in writing or to pay the invoice. If the parties cannot come to an agreement, the Gibsons may file a motion with the Court seeking payment. The motion shall be limited to two pages, exclusive of the invoice which shall be attached as an exhibit. Forest Hills may file a brief in opposition to the motion which likewise shall be limited to two pages.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for a Transition Remedy is **GRANTED**. Chloe is to receive the transition services identified in the preceding section with the costs borne by Forest Hills. However, Forest Hills is not responsible to pay costs for transition services which exceed those provided for in this Order or for transition services obtained by or provided for Chloe more than two years after the date of this Order.

IT IS SO ORDERED.

S/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court