

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

Child's Name: J.G.
Date of Birth: [redacted]
CLOSED HEARING

ODR File No. 17958-15-16 KE

Parties to the Hearing:

Parent[s]

Local Education Agency
Hampton Township School District
4591 School Drive
Allison Park, PA 15101

Dates of Hearing:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney
Jeni Hergenreder, Esquire
Andrew Favini, Esquire
Disability Rights Pennsylvania
429 Fourth Avenue, Suite 701
Pittsburgh, PA 15219

LEA Attorney
Patricia R. Andrews, Esquire
Matthew J. Allen, Esquire
Andrews & Price
1500 Ardmore Boulevard
Pittsburgh, PA 15221

November 16 and 17, 2016

December 20, 2016

Cathy A. Skidmore, M. Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a post-teenaged student who resides in the Hampton Township School District (hereafter District). Student attended the District high school for four years and participated in graduation with Student's peers at the end of the 2015-16 school year, but remains eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² on the basis of an Intellectual Disability. At the Parents' request, Student's educational program in high school focused on academic instruction with limited transitional services until the program proposed for the 2016-17 school year.

Following development of a new IEP in May 2016, Student's Parents filed a Due Process Complaint against the District asserting that its proposed program for the 2016-17 school year did not offer Student a free, appropriate public education (FAPE) under the IDEA. With the agreement of the District, the Parents amended their Complaint in late August 2016, seeking reimbursement for tuition expenses they have been and are obligated to pay for a privately-secured placement for Student in a post-secondary vocational-educational program (hereafter Program) at a local university for the 2016-17 school year.

The case ultimately proceeded to a due process hearing convening over two sessions.³ The Parents sought to establish that the District failed to offer an appropriate program to Student

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision.

² 20 U.S.C. §§ 1400-1482.

³ The hearing dates were determined based upon availability of the various participants, including witnesses, requiring rescheduling beyond the ordinary timelines that applied after the Amended Complaint was filed. Because Student was in a parentally-selected placement, the Parents did not assert any concerns with the delay caused by rescheduled hearing sessions, and the Parents and District jointly requested an extension of the decision due date. References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number School District Exhibits (S-) followed by the exhibit number, Joint Exhibits (J-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. References to Parents in the plural will be made where it appears that Student's mother, who appeared to be the more active participant in Student's educational programming, was acting on behalf of both Parents.

for the 2016-17 school year, particularly with respect to post-secondary transition services, in the least restrictive environment. The District maintained that its special education program, as offered in May 2016, was appropriate for Student under the law and responsive to Student's needs, and that no remedy was warranted.

For the reasons set forth below, the Parents' claims will be denied.

ISSUES

1. Whether the District's program proposed for Student for the 2016-17 school year is appropriate under applicable law, particularly with respect to post-secondary transition services;
2. If the District's proposed program is not appropriate, whether the program chosen by the Parents is appropriate for Student's needs; and
3. If the first two issues are resolved in favor of the Parents, whether equitable considerations should be applied to reduce any award of tuition reimbursement and related expenses?

FINDINGS OF FACT

Background

1. Student is post-teenaged and is a resident of the District but no longer attends its schools. Student is an eligible Student under the IDEA on the basis of an Intellectual Disability. Student also has expressive language needs. (N.T. 36-38, 40-41, 143, 289)
2. The District receives federal financial assistance. (N.T. 38)
3. Student has participated in a variety of sports in the community and through Special Olympics as well as at school. Student is interested in sporting activities, including physical fitness, and has also mentioned health-related facilities and restaurants as possible employment environments. (N.T.46-49, 86; P-25 p. 15)
4. Student has difficulty generalizing skills from one environment to another. (N.T. 80, 98-99)
5. In order to promote generalization, Student, like many students, needs to learn to perform a skill across varied opportunities and in multiple settings. Teaching skills in the actual setting where that skill would be used in real life is generally a successful approach to fostering generalization for Student. (N.T. 250-52, 333-34, 416)

6. Student's Parents were not in agreement with the District's programming proposals for each of Student's high school years (2012-13 through 2015-16 school years). The Parents wanted Student to focus on academic goals (in addition to speech/language and social skills needs) rather than on functional living and vocational skills, until Student left the District. Student's Individualized Education Programs (IEPs) through the end of the 2015-16 school year reflected the team's acquiescence to these requests of the Parents, including during Extended School Year (ESY) programming, although Student was to explore the District's College and Career Lab once or twice each school year and complete vocational interest inventories. (N.T. 54-55, 57-58, 64, 147-48, 481-82; J-6, J-7, J-8, J-9, J-12, J-13, J-14, J-17, J-18, J-19, J-20, J-22)

2012-13 through 2014-15 School Years

7. Student was reevaluated in April 2012, and the District issued a Reevaluation Report (RR). At the time, the Parents sought to have Student challenged more, particularly socially and with respect to academic tasks. (J-1 pp. 1-2)
8. Grades reported for the 2011-12 school year were all above 80% and most above 90%. Student also scored in the proficient range on the Pennsylvania Alternative System of Assessment (PASA). Academic achievement testing (Woodcock Johnson Tests of Achievement – Third Edition (WJ-III-ACH)) from 2010 and 2011 reflected scores in the very low range on all subtests and clusters. (J-1 pp. 2-4)
9. The April 2012 RR provided information on Student's progress on academic goals with input from teachers and the speech/language therapist. With respect to transition, the RR summarized several surveys and inventories completed by Student and the Parents. Student was uncertain about a goal for independent living and did not provide any post-secondary goals, but the Parents indicated a desire that Student would continue education beyond high school. (J-1)
10. The April 2012 RR identified Student as eligible for special education on the basis of an Intellectual Disability.⁴ This RR included recommendations for direct instruction in reading, English, and mathematics, and a program of life skills, as well as social skills instruction and speech/language services. The Parents disagreed with the recommendation for life skills programming. (J-1)
11. The Parents filed a Due Process Complaint against the District in May 2012, challenging the District's NOREP proposing life skills support at a supplemental level. The parties resolved the dispute via a Settlement Agreement that included a release of all claims raised by the Due Process Complaint. The parties agreed to revisions to Student's IEP that provided for learning support, with only social skills instruction in the life skills environment two days per week, in addition to speech/language services. (N.T. 56; J-11, J-21, J-22)

⁴ References to Mental Retardation in the record will use the term Intellectual Disability consistent with Rosa's Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010); *see* 20 U.S.C. § 1401(3)(A)(i).

12. The District issued a new RR in April 2014. Parent input into this RR reflected their desire for a continued academically challenging program. (J-2 pp. 1-2)
13. Grades reported for the 2013-14 school year were all above 85% with the exception of mathematics (79%). A 2013 administration of the WJ-III-ACH yielded results similar to those in the 2012 RR, with very low scores on all subtests and clusters. However, Student's scores reflected growth in the areas of reading fluency and mathematics calculation. (J-2 pp. 2-4)
14. The April 2014 RR provided information on Student's progress on academic goals with input from teachers, including the social skills teacher, and the speech/language therapist. With respect to transition, the RR reflected Student's post-secondary goal of competitive employment with support. (J-2)
15. The April 2014 RR identified Student as eligible for special education on the basis of an Intellectual Disability. This RR included recommendations for direct instruction in reading, English, and mathematics, and participation in a life skills curriculum, in addition to social skills instruction and speech/language services. (J-2)
16. The IEP developed in August 2015 continued the focus on academic rather than functional living and vocational skills. However, this IEP added participation in mock interviews and a job shadowing experience during the school year to the transition services portion of the IEP. (J-9)

2015-16 School Year

17. The District issued a new RR in April 2016. Parent input into this RR noted Student's independence at home with skills such as using a debit card, picking up prescriptions, and completing household chores. They again indicated their expectation that Student would attend a post-secondary education program on a college campus with a focus on job training, travel training, and independent living skills. (J-3 pp. 1-2)
18. Grades reported in that RR for the 2015-16 school year were all in the A and C range, following all A and B grades at the end of the 2014-15 school year. PASA scores were in the proficient range in both reading and mathematics. An administration of the WJ-III-ACH in 2015, and of the Fourth Edition of that same instrument in 2016, yielded very low scores across all subtests and clusters. (J-3 pp. 2-6)
19. Adaptive behavior skills were assessed in April 2015 and again in April 2016 (Adaptive Behavior Assessment System, Second Edition (ABAS-II)) for the 2016 RR. Parent ratings were higher overall than the teacher ratings in both administrations: the Parents reflected below average functioning across all clusters at home (with an average range score on the social cluster in 2015), and teacher ratings yielded extremely low range scores across all clusters. The discrepancy suggested that Student demonstrated higher functional skills for daily living at home when compared to the school setting. (J-3 pp. 3-5)

20. The April 2016 RR provided information on Student's progress on academic goals with input from teachers, including the social skills teacher and guidance counselor, and the speech/language therapist. With respect to transition, the RR reflected variability during the 2015-16 school year for Student's post-secondary goals of competitive employment or attending college, and living independently or with roommates. On independent living skill measures, Student demonstrated difficulty with completing forms requiring personal data, navigating unfamiliar areas in the school building, carrying important information at all times for emergency situations, and practicing multi-task skills (vocational jigs) independently; whereas Student exhibited a strength in understanding lunch menus. The results of several transition surveys completed by Student were summarized for this RR, as were Student's difficulties with a mock interview in April 2015. (J-3 pp. 6-13)
21. The April 2016 RR identified Student as eligible for special education on the basis of an Intellectual Disability. This RR recommended a life skills program to address socialization, functional academics, and transitional skills and experiences including travel and vocational skills, as well as continued speech/language services. (J-3)
22. The Parents disagreed with the April 2016 RR, stating that Student's needs for post-secondary education could be met "effectively, age-appropriately, and in a 'real life' setting" (J-4 p. 1), as well as regarding peer socialization, at the university where Program is provided. Student also indicated disagreement with the RR. (J-4 pp. 1, 19)
23. Student completed twelfth grade in the District and participated in graduation ceremonies at the end of the 2015-16 school year. The IEP team agreed that Student would still continue to be provided special education services. (N.T. 43, 147)

The District's Proposed Program: May 2016 IEP

24. The District developed a draft IEP that was discussed at a meeting attended by the Parents and Student. The May 2016 IEP was revised based on that meeting and sent to the Parents.⁵ (P-2, P-3)
25. Parent input into the May 2016 IEP reflected their continued disagreement with a functional life skills program for the 2016-17 school year. (J-10 p. 39)
26. The May 2016 IEP stated at its outset that the District members of the IEP team recommended a program focused on functional life skills. This IEP also provided a comprehensive summary of Student's present levels of academic achievement and present levels of functional performance, including historical information under those sections. (J-10 pp. 8-31)

⁵ Although the Parents believed there was inconsistency in the teacher's input into the May 2016 draft IEP with respect to Student's self-care skills (N.T. 73-75), the results of the ABAS-II set forth in that draft (P-2 pp. 5-7) were clearly copied verbatim from the April 2016 RR (J-3 pp. 3-4) and, as such, were an explanation by the District school psychologist on those scoring results. In any event, the District removed the sentence about which the Parents had concerns from the revised May 2016 IEP (J-10 pp. 8-10). References to the May 2016 IEP are to the finalized version at J-10 unless otherwise noted.

27. The present levels related to transition similarly provided a comprehensive summary of Student's transition services and assessments for the then-current and prior school years. (J-10)
- a. Student's goal for post-secondary education was noted to be education and/or vocational training after high school; the goal for employment was for competitive employment with support; and the goal for independent living was to gain access to community and family resources and support to be able to live semi-independently following high school graduation. (J-10 pp. 31-32)
 - b. Surveys and inventories completed by Student and the Parents in April 2016 reflected Student's uncertainty about goals for post-secondary education and employment, but desired independent living in a home or apartment. By contrast, the Parents indicated goals for Student to live at home or with other relatives; to attend a college campus program, in a "real world and age appropriate setting" (J-10 p. 32), focused on vocational and travel training and independent living skills, and to secure competitive employment in the future. They specifically named Program as the setting for Student. (J-10 p. 31-32)
 - c. Additional transition information from the April 2016 RR and previous school years was also set forth in the IEP. (J-10 pp. 33-39)
28. The May 2016 IEP identified a number of Student's strengths, including perseverance, work ethic, decoding and oral reading skills, and assignment and task completion. Academic, developmental, and functional needs were noted to improve functional reading, English, and mathematics skills, as well as to improve socialization, vocational, travel, and language skills, in addition to transition services. (J-10 p. 41)
29. The transition section of the May 2016 IEP provided for a number of services, including exploration of programs offered by the local community college; maintenance of a calendar; and job shadowing and other vocational experiences. Functional speech/language, reading, writing, and social skills were also targeted, as were job-readiness skills (mock interviews, application completion, development of a portfolio). Services to address independent living included community based vocational experiences (approximately weekly); community based instruction/field trips (at least twice per quarter); school-based vocational experiences (twice each week) and travel-related instruction and practice. (J-10 pp. 42-44)
30. Annual goals in the May 2016 IEP addressed speech/language, functional academic skills (banking transactions, completion of applications, counting money, identifying safety signs), and social skills. A number of program modifications and items of specially designed instruction were also included, as were ESY services and speech/language therapy services twice per week. The IEP specified a program of supplemental life skills support, with participation in regular education in non-academic (including elective) classes and extracurricular activities. (J-10; P-27)

31. The District proposed that Student spend three periods per day in a life skills classroom for direct instruction in English, mathematics, and other areas requiring specially designed instruction. The team discussed this proposal at the May IEP meeting. (N.T. 474)
32. The District's life skills classroom at the high school has five students ages 16-18. Students work on transition skills based upon their then-current needs in that area. (N.T. 163, 183, 184, 480)
33. Students in the life skills class have several periods of individual direct instruction working on academic and functional IEP goals, and one or two periods of vocational experiences in the building or out in the community. During the periods of direct instruction, students may be pulled out for related services specified in the IEP. Students also take elective classes in the regular education environment. (NT. 164-67, 170-71, 173-74, 175-76, 197-98, 471-73)
34. Students in the life skills class learn and practice travel and mobility skills, including recognizing and understanding safety signs and navigating crosswalks, in the school building and out in the community. The community-based travel instruction occurs weekly, with the building-level instruction more frequent. (N.T. 176-83, 205, 213-14, 220-21)
35. Students in the life skills class are provided weekly instruction on job readiness skills necessary for any job, and continuing through the process of applying for employment. This instruction includes completing job applications, creating resumes, and participating in mock interviews. Students are also assessed for areas of interest for potential employment. (N.T. 183-84, 188-89, 384-90, 392-93, 417-18)
36. Students' vocational experiences are matched to their interests, and opportunities are individualized for each student based on interests and needs. The IEP team discussed options for Student's vocational experiences consistent with Student's interests at the May 2016 meeting. During vocational periods, the students go out into the community to work with an assigned paraprofessional and sometimes other adults who are working alongside or monitoring the student. Students also participate in vocational experiences at the school building. The students frequently interact with peers during vocational experiences. Data is collected weekly on each student's performance and demonstrated skills at the worksites, and feedback on performance is provided to the student. (N.T. 167-69, 186-87, 390-97, 402-03, 410, 414, 417, 475-77)
37. The IEP team discussed increasing the amount of time from the initial recommendation for the frequency of Student's community-based vocational experiences based on Student's performance and needs. (N.T. 484-85)
38. Students in the life skills class participate in community-based field trips, such as to restaurants, based on IEP goals. (N.T. 189-90, 217-18)
39. The District offers a number of electives in the high school that Student had not yet taken by the end of the 2015-16 school year. There are a number of electives that students take

more than once. Many of the elective courses are focused on independent living skills. (N.T. 421-23, 425-29, 431-34, 436-38, 477-78)

40. The District offers a number of clubs for all students in the high school. (N.T. 487-88)
41. The IEP team discussed the possibility of Student spending one period per day in a class of interest to Student as an in-school vocational experience. Student would perform tasks such as organizing equipment, taking attendance, and monitoring the students in the class. The team also considered other possibilities for vocational experiences at school based on that particular interest of Student. (N.T. 103, 476-77)
42. The Parents expressed their interest in Program to the District in the spring of 2016. At the May 2016 IEP meeting, they reiterated their wish for Student to attend Program and stated that Student would not return to school in the District. The Parents filed their original Due Process Complaint on June 29, 2016 challenging the District's proposed program. (N.T. 104, 155, 456-58, 460, 461, 468; HO-1)
43. Student participated in one mock interview arranged by the District in May 2016, and demonstrated a need for more practice in interview and social skills. At that time, Student was not able to provide Student's home address upon request. (N.T. 447-48, 452-54)
44. Student completed questionnaires and applications at the District in the spring of 2016, and required one-on-one assistance and prompting in order to complete those. (N.T. 448-49)
45. The Parents agree with the stated transition goal to engage in education or vocational training after leaving high school. They disagreed with the NOREP accompanying the May 2016 IEP and explained that Program would be more effective for Student's needs and age. (N.T. 82-83; J-16)

2016-17 School Year: Program

46. The Parents first considered several local post-secondary education programs for Student, including Program, in the fall of 2015. Student applied to Program in early 2016 and was accepted in early spring. (N.T. 95-97, 148-49, 445-46)
47. Program is located on a local university campus. All students in Program are ages 18-21 and commute to campus daily. (N.T. 108, 135, 138; P-8 pp. 1-2)
48. Program provides a curriculum that is focused on functional academic skill, vocational training, mobility training and public transportation, and social skills. (P-7 p. 2)
49. Program students attend classes attended only by Program students, although there are two groups of newer and older students who attend separate classes. (S-2 p. 13)
50. There are approximately thirty two students within Program. Students are placed into small groups for the majority of activities, which include work-experiences and

community outings on and near campus. There is also a dedicated apartment for students in Program to visit in order to learn and practice independent living skills such as cooking and laundry. (N.T. 108-09; P-7 p. 2, P-8 pp. 1-2; S-2 p. 13)

51. Approximately twenty university students participate in the Program as a form of their own work-study experience, acting as a job coach and peer mentor. The university mentors support the students who are enrolled in Program, and assist them in navigating the campus and performing tasks on and off campus. (N.T. 109-10, 115; P-7 p. 2, P-8 pp. 1, 4-5)
52. Data on certain annual goals at Program is collected twice each year, in December and May. Progress is measured based on a Likert scale. (N.T. 503; P-11 pp. 3-9, P-25 p. 13; S-2 p. 13)
53. An organization supported by Program assigns a “buddy” to interested participants, where a university student is paired with the Program student. Various activities on- and off-campus are available for the university and Program students to attend together. (N.T. 130-32; P-17)
54. After Student was accepted into Program, the Parents were not required to make a tuition payment to hold Student’s place. On August 5, 2016, the Parents notified the District of their intention to enroll Student in Program and seek tuition reimbursement from the District together with transportation expenses. They filed an Amended Due Process Complaint on August 22, 2016, seeking tuition reimbursement. Parents paid the tuition for Program for the 2016-17 school year in full in late September 2016. (N.T. 97, 104; J-24, J-25; P-20)
55. Student began attending Program at the end of August 2016. Student’s schedule at Program provided for in-class instruction several periods each week; mobility training; social skills activities; visits to the apartment; on- and off-campus vocational experiences; and a lunch period. (N.T. 107; P-9)
56. At Program, Student has an Individual Education Program that provides for behavioral health and life skills (the apartment site) once per week, in addition to vocational experiences and in-class instruction. Student has annual goals addressing use of public transportation, development of vocational skills, development of independent living and functional life skills, functional mathematics and reading skills, and age-appropriate social skills; additional goals related to behavioral health, current events, budgeting, fine arts (music and art), health and physical fitness, and independent travel/mobility. (P-11)
57. Sites available for on- and off-campus vocational experiences at Program offered opportunities for cleaning/janitorial service; shelving at libraries; clerical services; food delivery; bussing and dishwashing in restaurants; and food preparation. (P-10)
58. Student does not receive speech/language services at Program. (N.T. 143-44)

59. A District school psychologist observed Student at Program in late October 2016 with consent of the Parents, and the District thereafter compiled and issued a reevaluation report (RR). (N.T. 496; J-5; S-2)
60. The District school psychologist first observed an art therapy class attended by a group of Program students and a university mentor in addition to the teacher. (N.T. 496-502, 505, 532; S-2 p. 13)
61. The District school psychologist observed Student at a community-based worksite to perform some general cleaning and janitorial tasks with a peer. The two students alternated the specific tasks with some support from the university mentor. The school psychologist reported little to no interaction between Student and the university mentor or the peer, and no job coaching or problem solving when Student needed assistance. (N.T. 506-18; S02 pp. 13-14)
62. The District school psychologist observed Student go to lunch at the university in the Student Union. Student traveled to the Student Union with a group from the Program, and had lunch with peers from the Program and a few of the university mentors. The school psychologist reported little interaction between Student and peers during the lunch hour. (N.T. 519-24; S-2 p. 14)
63. The District school psychologist observed Student perform a campus-based vocational activity with a group of peers from the Program and two university mentors. The school psychologist reported that Student did participate in the activity but did not volunteer; he also reported no job coaching, but Student did interact with a peer from Program. (N.T. 524-28; S-2 p. 14)
64. The RR did not include new input from the Parents but summarized previous information and assessment data, supplemented by the District school psychologist's observations at Program and information from Student's current teachers. (S-2)
65. Student's Program teachers reported strengths for the RR as: positive peer interactions, task completion with prompting, and class participation and attention. Weaknesses were reflected in: social communications skills including making eye contact during conversations and voice volume during conversations (too quiet); task initiation; self-advocacy and seeking assistance; and independent living skills. The teachers also reported that Student was well below grade level in reading, writing, mathematics, written language, science, social studies, and some electives. (S-2 pp. 11-12)
66. The RR concluded that Student remained eligible for special education on the basis of an Intellectual Disability, recommended that Student attend a neighborhood school in a program of life skills support to include travel instruction, community-based instruction and vocational experiences, school-based vocational experiences, and job-readiness skills in addition to functional academics. (S-2 pp. 14, 17)
67. In October 2016, the Parents asked the District to provide transportation for Student to and from Program, based on their belief that the university is within a ten mile radius of the District. The District declined after a director of administrative services conducted a

drive of the route, determining that the university is not within a ten mile radius of the District. (N.T. 141, 304-07; P-21, P-22)

Parents' Expert

68. The Parents' expert witness holds exceptional credentials in the field of special education transition programming, including inclusionary post-secondary education and independent living for students with intellectual disabilities. (N.T. 236-38, 240-45; P-24)
69. The Parents' expert conducted an evaluation of Student in order to make recommendations for a program that would offer "the best chance of success in post-school life" (N.T. 248 LL 11-12) based on Student's goals and objectives following high school. (N.T. 248; P-25 p. 1)
70. The Parents' expert observed the life skills classroom at the District high school for one period. He also observed a student go to a community-based vocational experience for a short period of time. (N.T. 202, 265-69, 320-21, 322; P-25 pp. 9-12)
71. The Parents' expert conducted an observation at Program. (N.T. 269; P-25 p. 13))
72. At Program, the Parents' expert observed Student at a community-based worksite to perform some general cleaning and janitorial tasks with a peer from Program. The two students alternated the specific tasks (N.T. 272-73, 318-19, 349-50, 406-08; P-25 p. 13)
73. At Program, the Parents' expert observed Student go to lunch at the university in the Student Union. Student traveled to the Student Union with a group from the Program, and had lunch and interacted with peers from the Program. A few of the university mentors were also present. (N.T. 274-77, 319, 351-52; P-25 p. 13)
74. The expert also observed Student perform a campus-based vocational activity with a group of peers from the Program and two university mentors. (N.T. 278, 280-81, 319-20; P-25 p. 13)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing.

Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be credible, testifying truthfully to the best of his or her recollection based on his or her perspective; and there were remarkably few contradictions in the testimony despite the parties’ contrary positions on the issues presented. The Parents presented as very devoted parents and advocates for Student seeking what is best for their child, which is perfectly understandable; and, the District representatives presented as dedicated and qualified professionals committed to their field. The parties simply did not share the same views on Student’s current programming needs. This hearing officer has carefully reviewed and considered the testimony of every witness and the content of each exhibit, as well as the parties’ closing arguments, in issuing this decision that focuses on application of the facts to the relevant law.

GENERAL IDEA PRINCIPLES

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to a student who qualifies for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE

requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 247 (3d Cir. 1995).

Local education agencies (LEAs), including school districts, meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Most critically, of course, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, the IEP need not “provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). The standard is not maximization of the child’s potential. *Rowley, supra*, at 198. Furthermore, “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

The law does permit parents who believe that a public school is not proposing FAPE to the child to unilaterally remove him or her from public school and place him or her in a private school, and seek tuition reimbursement for the cost of the alternate placement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c); *Mary Courtney T.*, *supra*, 575 F.3d at 242. Tuition reimbursement is an available remedy for parents to receive the costs associated with a child’s

placement in a private school where it is determined that the program offered by the public school did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). A private placement need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter, supra*. Nevertheless, parents who choose a unilateral private placement “do so at their own financial risk.” *Munir v. Pottsville Area School District*, 723 F.3d 423,426 (3d Cir. 2013) (quoting *Burlington, supra*, 471 U.S. at 373-74).

THE DISTRICT’S PROPOSED PROGRAM FOR THE 2016-17 SCHOOL YEAR

The first issue is whether the District’s proposed program in May 2016 was appropriate for Student, particularly with respect to addressing needs related to Student’s transition to post-secondary education, employment, and living.

In addition to the foregoing general special education principles, the IDEA requires that students who are transition-age must be provided with appropriate measurable postsecondary goals, which are based upon age appropriate transition assessments related to training, education, employment, and independent living skills where appropriate, as well as the transition services and courses of study needed to assist the child in reaching those goals. 20 U.S.C. § 1414(d)(1)(A)(VIII). A transition plan is “a coordinated set of activities” 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. § 1401(34); *see also* 34 C.F.R. § 300.43.

At the time that the May 2016 IEP was developed, while Student clearly had a number of strengths, Student continued to exhibit needs in the areas of functional academics, socialization, transitional skills, prevocational and vocational skills and experiences, social skills, travel skills and safety, and speech/language. The District's proposed IEP included special education to address functional academic and daily living skills, social skills, speech/language, travel, community experiences, and exploration of post-high school living, education, and employment, all designed to meet Student's identified needs.

With respect to transition services, the main focus of the hearing, Student had not been exposed to or yet developed the soft skills that would be useful in the pursuit of vocational and community based experiences in any area of interest, such as completing an employment application and being interviewed. Student needed opportunities to explore options for post-secondary educational, vocational, and independent living; and then to practice skills in vocational experiences with regular monitoring and constructive feedback. Student's interests and personal goals were and would continue to be considered as Student engaged in all of those activities, particularly vocational experiences, but with flexibility as Student's own goals had not yet been firmly established. The District's May 2016 IEP included programming to meet each of these needs through transition services, annual goals, program modifications/specially designed instruction, and related services, with an aim to assist Student in moving beyond high school toward a variety of vocational and educational activities. As such, this hearing officer concludes that the May 2016 IEP proposed a program that was reasonably calculated to offer meaningful educational benefit based on Student's needs.

The Parents' expert, who is clearly well qualified in the field of transition planning for students with intellectual disabilities, testified at length about Program's "results oriented" focus, and criticized the District's program for not having the same emphasis. He apparently agreed with the Parents that Student had already decided to attend a post-secondary college program following high school, and did not consider the District's program to be supportive of that outcome. However, the record evidence reveals that Student was uncertain about Student's future educational, vocational, or living goals, even as late as April and May 2016. The District was required to develop a program based on the information that it had available when the IEP was developed in May 2016. This hearing officer concludes that it did so.

The Parents' expert also testified extensively about necessary elements of supportive transition programs, particularly for students with intellectual disabilities who wished to go on to college. Certainly one can understand the positive aspects of programs like Program for young men and women with disabilities. However, the overarching theme of that expert's testimony was that the District's program was not optimal (N.T. 248 LL 9-12, N.T. 257 LL 18-19), and suggested that Program was a better alternative. The downside to that testimony, however, is that the law requires the LEA to offer an appropriate, not an ideal, program. Regardless of how beneficial a non-public school program may be, how confident parents are in a private program, or how successful the student may be there, the issue before the hearing officer is not actually one of comparison; whether the District's program meets the legal standard must be judged on its own merit.

The Parents also asserted that the District's May 2016 IEP included acquisition of skills that Student already demonstrated at home, such as conducting online banking and completing applications with assistance. (N.T. 76-80, 84-85, 90; Parents' Closing at 3) However, the record

evidence, including testimony of the Parents' expert, establishes that Student has difficulty with generalizing skills, and needs exposure to a variety of authentic settings in order for Student to learn to use skills independently under different conditions and circumstances. Student has historically performed functional daily living skills better at home than at school. With this knowledge, the District cannot be faulted for including functional living skills in Student's IEP that Student was not exhibiting in the educational environment and had therefore not yet learned to generalize.

Another concern of the Parents was that the District's vocational experiences were not based on Student's interests. (N.T. 64-65; Parents' Closing at 3) There are several flaws in this contention. The first is that, because Student had not previously participated in vocational experiences and activities, Student needed to become familiar with general pre-employment and employment concepts and skills; indeed, the Parents' expert agreed that in the early stages of vocational training, it is not necessary for a student to be focused only on an area of interest. (N.T. 343-44) Next, the IEP team did discuss various vocational experiences that would be of interest to Student, seeking the Parents' input, and the District conveyed to them its plan to monitor and refine Student's transition services as Student began those vocational and community experiences. Additionally, as set forth above, the law requires that students be provided with a variety of transition activities based on the student's strengths, needs, and interests, but does not compel an LEA to restrict all services to those in which a student has shown a desire to participate.⁶ This hearing officer finds that the District's inclusion of programming for the job-readiness or soft skills that are general to many post-secondary activities was not inappropriate for Student.

⁶ See also n. [8, *infra*].

A related claim raised by the Parents challenges Student's proposed program and placement in the District as contrary to principles of the least restrictive environment, because Student would not have the opportunity to engage with same-age peers. Proper understanding of this claim requires review of the applicable law.

The IDEA mandates that eligible students be educated in the "least restrictive environment" (LRE) which permits them to derive meaningful educational benefit. *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000).

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 USCS § 1412(a)(5)(A). In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993), the Third Circuit adopted a two-part test for determining whether a student has been placed into the LRE. The first prong of the test requires a determination of whether the child can, with supplementary aids and services, successfully be educated within the regular classroom; and the second prong is that, if placement outside of the regular classroom is necessary, there must be a determination of whether the child has been included with non-exceptional children to the maximum extent possible. *Id.*

The District's program would provide Student with the opportunity to be included with typical peers, as well as adults, during vocational experiences in the school building and beyond, in elective classes and non-academic periods, and during clubs and other extra-curricular activities. The record is clear that Student required some functional academic instruction outside of the regular education setting, and this hearing officer concludes that Student would be

included to the maximum extent appropriate in the District's proposed program, satisfying the *Oberti* test. The Parents do not truly challenge the amount of time that Student would spend outside of the regular education environment;⁷ rather, their major complaint is that all or nearly all of Student's same-age peers have graduated and, thus, Student would not engage with other young adults of Student's age in the District program. (NT. 94, 100-01; Parents' Closing at 3-4)

The IDEA does not define "peer," but as the District aptly notes (District Closing at 4), the Pennsylvania regulations provide guidance on allowable age-ranges for specialized education settings at the elementary level (3 years) and at the secondary level (4 years), subject to individual exceptions. 22 Pa. Code § 14.146. The makeup of typical public school classes at the middle and high school levels roughly align with the latter age range. In this matter, Student would be attending life skills classes alongside other students between 16 and 18 years old, which satisfies the state regulation if Student were to enroll. Student would also participate in regular education classes and activities with peers of varying high school ages, but with few of the same age as Student because most children of Student's age are no longer enrolled in public school. This "discrepancy" is described on Program's website (P-7 p.1) and is an unavoidable consequence of the IDEA's goal to provide children with disabilities access to public school education beyond that which is typical for children not receiving special education services.

The Parents argue that the District failed to adequately explore more age-appropriate environments for Student, citing *T.R., supra*, for the proposition that a school district must

⁷ However, it is important to recognize that the percentage used for PennData statistical reporting purposes is not necessarily dispositive in evaluating the appropriateness of the IEP, including adherence to LRE principles. Special education may be provided in a variety of settings that cannot be captured by the PennData page of the IEP. As the Pennsylvania Department of Education explains on its annotated IEP form, "Educational environment reporting is not an indication of the amount of special education service a student with a disability receives." Individualized Education Program (IEP) – (Annotated) – School Age – English, available at http://www.pattan.net/category/Legal/Forms/Browse/Single/?id=584b001a150ba0a76c8b4569&bor=ag=School%20Age%20Annotated**I=English (last visited December 18, 2016).

consider a less restrictive placement in the community. Even accepting the premise that the rationale in *T.R.* applies to post-secondary age young men and women, and acknowledging that peer modeling can be a very effective method for students with disabilities to learn, the Parents do not cite to any authority suggesting that older students must be permitted to engage with peers of the same exact age, rather than with an appropriate peer group of high school or college age students. Viewing the District's proposal as a whole, Student would be engaging with typical age-range peers in the school setting, and with both typical peers and adults throughout the various community outings and vocational experiences. While the Parents' concerns in this regard are genuine and quite logical, this hearing officer does not interpret the law to require the District in this case to do more in order to satisfy its LRE obligations with respect to typical peers.

In summary, this hearing officer concludes that the District's proposed program in May of 2016 was appropriate for Student under the applicable law. As such, there is no need to examine the remaining steps in a claim for tuition reimbursement,⁸ including the request for associated transportation expenses.

Finally, the Parents seek in the alternative an Order that the District provide Student with transportation pursuant to the Public School Code, 24 P.S. § 13-1361 – 13-1367. This hearing officer does not find that she has jurisdiction over these matters that are left to the authority of the School Board of the District subject to potential challenge in another forum. *See* 24 P.S. §§ 1-101 *et seq.*; Chapters 4 and 11, 22 Pa. Code. Accordingly, this claim will be denied.

⁸ While it is not necessary to reach the question of the appropriateness of Program, and one must use caution in evaluating any program based upon one or two observations, the visits to Program by the Parents' expert and the District school psychologist were remarkably similar. Both reported that Student participated in vocational experiences on- and off-campus that were not related to Student's personal interests; and both reported relatively limited social interaction between Student and non-Program peers. Thus, it does not appear that Program has effectively eliminated two of the Parents' main concerns about the District's proposed IEP, despite the evidence that Student is flourishing in the Program and university environment.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District's proposed program for the 2016-17 school year was appropriate for Student. Therefore, the Parents' claims must be denied.

ORDER

AND NOW, this 20th day of December 2016, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's proposed program in May 2016 for the 2016-17 [school year] was appropriate for Student under the IDEA.
2. The Parents' claims for reimbursement for tuition and transportation expenses are denied.
3. The District is not ordered to provide transportation or to take any action.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are **DENIED** and **DISMISSED**.

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER