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

Final Decision and Order

OPEN HEARING
ODR File Number: 21158-18-19 KE

Child's Name: J. H. **Date of Birth:** [redacted]

Parent:
[redacted]

Counsel for Parent
Pro Se

Local Education Agency:
Commonwealth Charter Academy
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Harrisburg, PA 17110

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Hearing Officer: Cathy A. Skidmore, M.Ed. J.D.

Date of Decision: 11/24/2018

INTRODUCTION AND PROCEDURAL HISTORY

The student, (Student),[1] is a late teenaged student attending the Charter School (School) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)[2] on the basis of an Other Health Impairment. Student's Guardian[3] filed a Due Process Complaint against the School asserting that its actions have denied Student a free, appropriate public education (FAPE) under the IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504),[4] and the Americans with Disabilities Act (ADA),[5] following its denial of her request for a private school placement. The private school placement request was made subsequent to a hearing officer decision issued in July 2018 that ordered a reevaluation of Student and specified the pendent placement while that reevaluation was conducted. *J.H. v. Commonwealth Charter Academy*, 20563-1718KE (Valentini, July 24, 2018). This case proceeded to a due process hearing which convened over a single efficient session on a very narrow issue.[6]

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[1] Although this was an open hearing, in the interest of confidentiality and Student's privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision to the extent possible. All personally identifiable information in this decision, including the details appearing on the cover page, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2) without revealing identifying information.

[2] 20 U.S.C. §§ 1400-1482. The federal regulations promulgated to implement the IDEA are codified at 34 C.F.R. §§ 300.1 – 300. 818. The related Pennsylvania regulations applicable to charter schools are set forth in 22 Pa. Code §§ 711.1 – 711.62.

[3] Although the Guardian meets the definition of a Parent under the IDEA, the term Guardian is used to avoid confusion with the biological Parent. 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30.

[4] 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61.

[5] 42 U.S.C. §§ 12101-12213.

[6] References to the record throughout this decision will be to the Notes of Testimony (N.T.), Guardian Exhibits (P-) followed by the exhibit number, School Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. Citation to duplicative documents may not be to all. The claims were limited to how Student's needs may have changed since July 24, 2018, such that a revision to the pendent placement ordered on that date might be necessary. (HO-2.)

For the reasons set forth below, the Guardian's claims must be denied.

ISSUES

1. Whether Student's needs have changed since July 24, 2018 such that the pendency order in the most recent hearing officer decision should be modified; and

2. If the placement should be modified, should the School be ordered to place Student in a private school and, until such a placement is secured, provide homebound instruction to Student?

FINDINGS OF FACT

1. Student is a child with a disability and has been identified as eligible for special education under the IDEA based on a classification of an Other Health Impairment. (P-13.)

2. Student has treated with a psychiatrist since late 2016 following diagnoses of Anxiety, an Adjustment Disorder with Anxiety, and Attention Deficit Hyperactivity Disorder (ADHD). (N.T. 127-28; P-11 at 21-57.)

3. The School is a cyber charter school where students access programming via a computer and the internet from home. Students are able to attend live lesson sessions or view recordings of those lessons. The curriculum is based on state standards. (N.T. 100-02.)

4. A due process hearing involving the Student and the School convened between April and August 2017 with a decision issued on September 30, 2017. In the resulting decision, the hearing officer concluded that the Individualized Education Program (IEP) of April 2017 was reasonably calculated to provide Student with meaningful educational benefit. The hearing officer further ordered that certain revisions be made to that IEP, such as collection of baseline data, in large part because of the lapse of time between that IEP and the date of the decision. *J.H. v. Commonwealth Charter Academy*, 18768-1617KE and 19108-1617KE (McElligott, September 30, 2017). (An unredacted copy of the decision is at S-1.)[7]

[7] There are also prior hearing officer decisions involving the parties. (*See, e.g.*, S-1 at 4-5.)

5. The IEP team made some revisions to the document following a meeting attended by the Guardian, and developed an October 2017 IEP in compliance with the September 30, 2017 decision. The School was not permitted to conduct baseline assessments or to conduct a comprehensive reevaluation of Student. (S-5 at 5 ¶ 19.)

6. In October 2017, Student's treating psychiatrist drafted a note indicating that he recommended homebound instruction for Student. A second similar note followed in February 2018. Both were timely forwarded to the School. (P-1 at 12-14, 19-20; S-2; S-3.)

7. Another due process hearing involving the Student and the School convened in January 2018 with a decision issued on February 16, 2018. In that decision, the hearing officer concluded that the School did not violate any of its obligations under the IDEA, Section 504, or the ADA, including providing Student with a free, appropriate public education (FAPE). He also concluded that he lacked jurisdiction over the regular education (including homebound instruction) claims that were made. *J.H. v. Commonwealth Charter Academy*, 20014-1718AS (Ford, February 16, 2018). (An unredacted copy of the decision is at S-4.)

8. The Guardian filed a Compliance Complaint with the Bureau of Special Education in January 2018. In that Complaint, she asserted that the School failed to include her input in the October 2017 revised IEP. The School was directed to provide the Guardian with a copy of the IEP with her specified input and it did so. (P-3 at 1-9.)

9. The School issued a Reevaluation Report in March 2018 that was based on a review of records. Student's eligibility was confirmed on the basis of Other Health Impairment. (P-13.)

10. Student's IEP team including the Guardian met in April 2018 and revised Student's IEP. That document was determined by a hearing officer to be "substantially similar to the [] October 2017 IEP" except that the approximately seventy eight pages of parental input were added into the document; a self-advocacy goal was updated; and the instructional assistant support increased to four days each day. (P-11; S-5 at 5 ¶¶ 16, 18.)

11. The April 2018 IEP contains annual goals addressing self-advocacy, reading, mathematics computation, and written expression. A number of program modifications/items of specially designed instruction were also specified, including direct instruction in Reading and Mathematics. Related services were for a BCBA, instructional assistant, and counseling services. (P-11.)

12. Student's educational program in the April 2018 IEP was for supplemental learning support. Student would not participate in the regular education classroom for English and Mathematics and would not participate in the general education curriculum for those subjects. (P-1 at 120-21.)

13. Student did not participate in the School's program for the majority of the 2017-18 school year. The exception was for a few week period in October 2017. (S-5 at 4 ¶ 10; S-6 at 2.)

14. Yet another due process hearing involving Student and the School convened in July 2018 involving the issue of whether the School denied Student FAPE over the 2017-18 school year. That decision issued on July 24, 2018, with the hearing officer concluding that the School's April 2018 IEP was appropriate for Student. She also ordered the School to conduct a comprehensive multidisciplinary reevaluation to include cognitive and achievement assessments, social/emotional/ behavioral assessment, speech/language and occupational therapy evaluations, and a transition assessment. The hearing officer also determined that the April 2018 IEP was the pendent program through completion of that reevaluation. *J.H. v. Commonwealth Charter Academy*, 20563-1718KE (Valentini, July 24, 2018). (An unredacted copy of the decision is at S-5.)

15. All three of the hearing officer decisions cited above are on appeal to the U.S. District Court for the Eastern District of Pennsylvania. (N.T. 126.)

16. The School made several efforts to obtain the Guardian's permission to evaluate Student as ordered in July 2018, and was flexible about where the assessments would be administered so as to be convenient for Student and the Guardian. No permission was granted. (N.T. 75, 105-09, 113, 142; S-6; P-15 at 1-6.)

17. In early August 2018, Student's diagnoses of Adjustment Disorder with Anxiety, Attention Deficit Hyperactivity Disorder, and Unspecified Anxiety Disorder were again provided to the School by the treating psychiatrist. He at that time recommended a private school placement, with homebound instruction pending those arrangements. The stated reasons for the August 2018 recommendation were not materially different from previous recommendations, including that reviewed for the February 16, 2018 hearing officer decision. (N.T. 85-86, 93; P-1 at 3-4, 7-10, 12, 14; P-15 at 8-11; S-4; S-8.)

18. In late August 2018, the District issued a Notice of Recommended Educational Placement (NOREP) denying the request for a private school placement. The Guardian rejected the NOREP. (P-10 at 8-10; P-15 at 10-21; S-9.)

19. Student experienced an increase in anxiety in the fall of 2018 due to repeating tenth grade again in the 2018-19 school year and having uncertainty about the future. (N.T. 133.)

20. The School moved to a different learning management system for the 2018-19 school year. The new system was created by the School to provide a greater level of flexibility for users as well as simplicity. Teachers are now able to provide more individualized and differentiated instruction for all students, including any necessary accommodations and modifications that were not integrated into the system. Previously, students who needed to access outside

educational programs were required to navigate to a separate website and log in again with a username and password. The new system allows students to use a link from the School learning management system to access outside programs without a need to again enter login information. (N.T. 42-44, 54-55, 80-81, 85; P-16.)

21. There are other differences between the previous learning management system and the new system. Those include the appearance of the display of menu options upon logging in that now open to a dashboard of information. Previously, students were required to access different screens to view assignments, lessons, and calendars or schedules, as well as to communicate with teachers. (N.T. 50-53.)

22. The School notified families in mid-August that the new learning management system would be used for the 2018-19 school year and that student access to accounts would be available before the start of the school year. (P-16 at 1-3.)

23. Student expressed some anxiety to the Guardian and other family members over using the new learning management system. However, aside from the Guardian's concern over a general lack of sufficient notice of the new system and its components that she mentioned in a written communication on the first day of school, the School was not informed of any particular difficulties Student experienced with the new system until the hearing in late October 2018.[8] (N.T. 130-31, 148-49; P-15 at 17-18.)

24. Two programs that Student previously received (for Mathematics and Reading) as part of Student's special education were and are no longer available in the new learning management system. Instead, a special education teacher was to work with Student on areas of deficit in those subjects using curricular materials that are aligned with state standards but individualized for Student. (N.T. 79-82.)

25. Student's psychiatrist communicated with the Guardian on or about October 20, 2018. The psychiatrist made another recommendation at that time for a private school placement with homebound instruction until such placement could be secured, based on Student's "best interest". (P-1 at 1; S-10.)

26. The psychiatrist's October 2018 recommendation was provided to the School, and reviewed by its administrators. (N.T. 87-89; P-1 at 2; S-10.)

27. The School was not granted permission to speak with the psychiatrist to obtain more information on the recommendations despite repeated requests. The Guardian did offer to transmit any written questions that the School had to the psychiatrist. (N.T. 88-89, 95, 118-19, 142-43; P-15 at 9-10, 15.)

[8] The Guardian had evidently reported similar difficulties with the previous system that were not conveyed to the School at the time. (S-5 at 17 ¶ 68.)

28. The Guardian did not accept the offer for an instructional assistant in Student's home for two to four hours each day during the 2018-19 school year. (N.T. 95-96, 122, 149-50.)

29. The Guardian did not accept the offer of a Board Certified Behavior Analyst (BCBA) to work with Student in the home during the 2018-19 school year. (N.T. 122, 149-50.)

30. The 2018-19 school year began on September 4, 2018. Student did not participate in any of the School's programming from the start of the 2018-19 school year through the date of the hearing, although Student has logged in on a regular basis. The School made multiple efforts to communicate with Student during that time period. (N.T. 121, 123-24, 146-48; S-11; S-12.)

31. Student's family has obtained instructional materials such as the Mathematics and Reading programs that Student was to use in the prior school year, so that Student does receive some instruction this school year. (N.T. 136.)

32. Some of the assessments that the School anticipated including in the 2018 reevaluation cannot be used once Student is over the age of eighteen. (N.T. 75-77.)

33. The Guardian learned shortly before this hearing convened that the BCBA and instructional assistant that the School arranged to work with Student had been provided with a copy of Student's April 2018 IEP that did not include her approximately seventy eight pages of parental input. (N.T. 138-40.)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion in these proceedings 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 must rest with the Guardian who requested this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly

balanced or in "equipoise." *Schaffer*, *supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Special education hearing officers, in the role of fact-finders, are responsible for making credibility determinations of the witnesses who testify before them. *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 all of the witnesses who testified to be credible, testifying to the best of his or her recollection; and, the testimony was essentially quite consistent where it overlapped. Indeed, there is little disagreement over the facts underlying the dispute at issue in this matter. In reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered in issuing this decision, as were the parties' closing statements.

The claims presented were narrowed by a prehearing order based on principles of *res judicata* and pendency. (HO-2.) The Guardian was permitted to proceed on her claim that Student's needs had changed to such a degree that maintaining the program and placement specified in the April 2018 IEP was no longer appropriate for Student, despite the July 24, 2018 hearing officer decision explicitly determining that IEP to be pendent until the reevaluation was completed. *Id*. The School did object to the Guardian's assertions in her closing statement that the School unilaterally made changes to the April 2018 IEP and rendered it inappropriate on that basis as well. (HO-3.)[9] The School's objection is hereby overruled, since that claim was broadly asserted

[9] HO-3 was provided to the parties and is hereby admitted into the record.

in the Due Process Complaint, and evidence was presented to support that contention at the hearing. Moreover, that assertion does help fully explain the nature of the Guardian's position in the current case.

GENERAL IDEA PRINCIPLES: FREE APPROPRIATE PUBLIC EDUCATION

Although the issue presented is rather discrete, it is helpful to review general principles applicable to resolving this dispute. The IDEA and the implementing state and federal regulations obligate local education agencies (LEAs) to provide a "free appropriate public education" (FAPE) to children who are eligible for special education. 20 U.S.C. §1412. Charter schools in Pennsylvania are public schools, and required to comply with applicable laws including the IDEA. 24 P.S. § 17-1703-A; 22 Pa. Code §§ 711.1 – 711.62. The School has fully acknowledged its special education obligations to Student under the IDEA and other applicable law.

In *Board of Education of Hendrick Hudson Central School District 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 that are reasonably calculated to permit the child to benefit educationally from the instruction, provided that 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 Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). LEAs meet the obligation of providing FAPE to eligible students through development and implementation of an IEP that 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).

Recently, the U.S. Supreme Court was called upon to consider once again the application of the *Rowley* standard, and it observed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The Court concluded that "the IDEA demands … an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id*., 137 S. Ct. at 1001, 197 L.Ed.2d 352. This standard for considering FAPE claims is not inconsistent with longstanding Third Circuit interpretations of *Rowley* including those cited above.

As all of the foregoing makes clear, the IEP must be responsive to the child's identified educational needs. *See also* 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. Furthermore, the IEP is developed by a team, and a child's educational placement must be determined by that team based upon the child's IEP and other relevant factors. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.116. Parents play "a significant role in the IEP process." *Schaffer, supra*, at 53. Indeed, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Nevertheless, the law does not demand that LEAs provide services beyond those that are appropriate in light of a child's unique circumstances, such as those that "loving parents" might desire. *Endrew F., supra; Ridley School District v. M.R*., 680 F.3d 260, (3d Cir. 2012); *see also Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

GENERAL SECTION 504 AND ADA PRINCIPLES

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she "has a physical or mental impairment which substantially limits one or more major life activities," or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). "Major life activities" include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, 172 F.3d at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District, supra*, 680 F.3d at 282-283. Courts have long recognized the similarity between claims made under those two statutes, particularly when considered together with claims under the IDEA. *See, e.g., Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011)*; Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). Thus, in this case, the coextensive Section 504 and ADA claims that challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

THE GUARDIAN'S CLAIMS

As noted, the narrow, focused issue is whether Student's needs have changed since the July 24, 2018 hearing officer decision and order such that the April 2018 IEP

program and placement is no longer appropriate. The record as a whole simply does not establish this claim by the Guardian.

The evidence regarding Student's present diagnoses and consequent needs is not substantively different than it was in October 2017. Student's treating psychiatrist made a recommendation in October 2017 for homebound instruction. The Guardian's Complaint seeking such an order from a hearing officer was dismissed in February 2018. The treating psychiatrist made a second recommendation in August and October 2018 for an unidentified private school placement with homebound instruction until such could be secured. That recommendation did not follow any type of evaluation or assessments, or offer any additional information about Student's needs. No new diagnoses were made or suggested. The bases for the recommendation are no different than those provided in October 2017; and, similar to what Hearing Officer Ford explained in February 2018, the more recent notes from the psychiatrist do not provide any information about educational activities in which Student is not able to participate.[10] Also as in February 2018, the School was not permitted by the Guardian to communicate directly with the psychiatrist to gain a better understanding of his August 2018 recommendation,[11] and there was no evidence presented at the hearing that supported a drastic transition to a more restrictive setting.

[10] It also merits repeating that the psychiatrist used the term "best interest" of Student (P-1 at 1; S-10), which is not the standard for this type of claim. The use of such language aligns with the Guardian's devoted advocacy to Student that is truly admirable, but as previous hearing officers have noted (*see, e.g.*, S-4 and S-5), the law does not demand an ideal special education program.

[11] The offer to permit the School to provide written questions to the Guardian to transmit to the psychiatrist for responses is, simply put, untenable. Not only would there be no assurance that all of the School's questions would be answered in a timely manner, it would be expected that some open and candid communications would be necessary for collaborative team-based educational program and placement decision-making envisioned by the IDEA.

The Guardian asserted generally at the hearing and more specifically in her closing statement that the School's conversion to the new learning management system exacerbated Student's anxiety and related diagnoses such that Student is not now able to benefit from the April 2018 IEP. This contention is not supported by the record for several interrelated reasons. First, and quite importantly, Student has done little more than log on to the School's platform for more than a brief period of time since the start of the 2017-18 school year. This circumstance may be due in part to Student's possible difficulties with the prior learning management system in 2017, which were not conveyed to the School, but it is implausible to conclude from this record that Student's symptoms have been escalated to any significant degree by that fall 2018 platform change when Student has not been required, nor even permitted, by the Guardian to access the educational programming system at all for well over a year. Similarly, even if the School had offered earlier access to the new learning management system, as the Guardian now suggests, it would strain reason to infer that Student would have taken advantage of that accommodation since Student did not attempt to do so for nearly the entire first quarter of the 2018-19 school year. Moreover, even accepting as true that Student's anxiety and related symptoms were exacerbated at the start of the 2018-19 school year,[12] there is no record evidence other than the Guardian's speculation that the escalation was caused by the School's platform change (N.T. 130-31) rather than any other factors such as Student's disappointment in repeating tenth grade for a third school year and being uncertain about the future.[13] In short, the Guardian has not met

[12] The Guardian also stated in testimony that the heightened level of anxiety was apparent "last year" when the School attempted to obtain baseline information for the April 2018 IEP (N.T. 131.)
[13] This latter concern serves to underscore the critical need for the comprehensive reevaluation that was to include assessment of Student's post-secondary transition interests and needs.

her burden of establishing the requisite change that would necessitate a different ruling on the pendent placement.

In related assertions, the Guardian contends that the School made other unilateral changes to Student's program and placement. While technically not relevant to the narrow issue identified by this hearing officer's prehearing ruling on the scope of the claims, they shall be addressed as germane to certain procedural aspects of Student's program since the July 24, 2018 decision.

The first of these is the concern that Student is now required to participate in the regular education Reading and Mathematics curriculums. (N.T. 82-85; Guardian Closing Statement.) The new learning management system did result in changes to the actual programs offered and implemented for all students including Student. However, enabling a student to access the general curriculum according to state standards through specially designed instruction (as the School described) is not the same as requiring the child to participate in a regular education program without modifications and adaptations as needed. The applicable Pennsylvania regulations *require* charter schools to provide children with disabilities access to the general education curriculum. 22 Pa. Code § 711.2(d). And, the specific Reading and Mathematics programs to which Student had access during the 2017-18 school year were not identified in the April 2018 IEP as the specific programs that would be provided and implemented. Furthermore, with Student not even participating in the School's educational program for the majority of the 2017-18 school year, there is nothing to indicate whether Student may or may not have been successful with the prior programs that are no longer available. Thus, this contention is unavailing.

The second related procedural concern is that the School provided a copy of the April 2018 IEP to the proposed BCBA and instructional assistant[14] that did not include her input. (N.T. 137-40; Guardian's Closing Statement.) This circumstance amounts to a minor procedural flaw, at best, that certainly had no substantive impact on Student's educational program or the Guardian's ability to participate in educational decision-making. Moreover, the Guardian was evidently unaware of what IEP those individuals had been provided before the fall of 2018, by which time their services had already been declined. There is no basis for any relief on this claim.

The third and final such concern is the Guardian's belief that there is no need for any assessments or reevaluation until Student's placement is determined and stabilized. (N.T. 131-32; Guardian's Closing Statement.) Hearing Officer Valentini provided a detailed and very cogent rationale for ordering the School to conduct a comprehensive multidisciplinary reevaluation and for maintaining the program and placement in the April 2018 IEP. *J.H. v. Commonwealth Charter Academy*, 20563-1718KE (Valentini, July 24, 2018). There is nothing in the record presented in this case from which a different conclusion should now be drawn. In addition, even a private evaluator in early 2016 noted that comparison of scores of standardized assessments to same-aged peers yields useful information for educational programming decisions (P-3 at 14), and Student is approaching an age when certain instruments will no longer be useful due to age limitations. Even that evaluation is nearly three years old and simply

[14] In this hearing officer's estimation, the use of the term PCA (Personal Care Assistant) on a few documents referencing the agency that was to staff the BCBA and instructional assistant reflects nothing more than a common practice in the field of special education of utilizing various terms interchangeably to indicate paraprofessional support.

cannot be assumed to currently reflect Student's education-related strengths and needs with sufficient accuracy to guide programming decisions at this time.

All of the above conclusions encompass the Guardian's current claims under the IDEA, Section 504, and the ADA, and all will be denied.

Finally, as has been noted previously, it is of paramount importance that Student's individual strengths and needs be determined at this age of approaching adulthood and the resulting ineligibility to access school-based special education programming. This hearing officer must join in those observations, and likewise encourages the parties to set aside their differences for the current school year and beyond and permit the reevaluation and IEP development process to occur so that Student may be educated appropriately based on current needs.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, the Guardian has not sustained her burden of establishing that Student's needs have changed since the July 24, 2018 hearing officer decision and order, and its provisions may not be set aside.

ORDER

AND NOW, this 24th day of November, 2018, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The Guardian's claims are DENIED in their entirety; and

2. All terms and provisions in the July 24, 2018 order of Hearing Officer Valentini at ODR File No. 20563-1718KE remain in effect.

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
ODR File No. 21158-1819KE