

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: SB

Date of Birth: [redacted]

Dates of Hearing:
September 15, 2011
November 10, 2011

CLOSED HEARING

ODR File No. 2150-1112AS

Parties to the Hearing:

[Mother]

[Father]

Parkland School District
1210 Springhouse Road
Allentown, PA 18104

Date Record Closed:

Representative:

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Disability Rights Network of PA
429 Fourth Avenue, Suite 701
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Pro Se

Catherine Nguyen, Esquire
Eastburn and Gray
60 East Court Street
Doylestown, PA 18901

December 9, 2011

Date of Decision:

December 23, 2011

Hearing Officer:

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

INTRODUCTION AND PROCEDURAL HISTORY

Student¹ is a high school-aged student in the Parkland School District (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² One of Student's Parents filed a due process complaint against the District in July 2011,³ asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA and Section 504 of the Rehabilitation Act of 1973,⁴ when it proposed to terminate Student's eligibility for special education and graduate Student in June of 2011. The Parent also asserted that the District failed to provide Student with an appropriate educational program during the 2010-11 school year, and that it similarly failed to propose an appropriate program for the 2011-12 school year.

The case proceeded to a due process hearing convening over two sessions, at which the parties presented evidence in support of their respective positions. The Parent sought to establish that Student should be provided with an appropriate special education program through the end of the 2011-12 school year. The District maintained that it properly determined that Student should graduate at the end of the 2011-12 school year. The parties did, however, reach an agreement on Student's pendent placement while this case went forward.

For the reasons set forth below, I find in favor of the Parent but will not award all of the remedies requested in the Parent's written closing argument.

ISSUES

1. Whether the special education program provided during the 2010-11 school year was appropriate for Student;⁵
2. Whether Student was properly exited from special education at the end of the 2010-11 school year; and

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

² 20 U.S.C. §§ 1400 *et seq.*

³ Student's other Parent participated at the hearing but did not join in the complaint or take a position against the District.

⁴ 29 U.S.C. § 794.

⁵ Although the Parent initially sought compensatory education for this claim (Due Process Complaint at p. 5), counsel made clear that the Parent was no longer seeking this remedy at the start of the hearing. (Notes of Testimony (N.T.) 31-32) (Other references in this decision are to Joint Exhibits (J), Parent Exhibits (P), School District Exhibits (S), and Hearing Officer Exhibits (HO).)

3. Whether Student remains eligible for and entitled to a special education program for the 2011-12 school year.⁶

FINDINGS OF FACT

1. Student is a high school-aged resident of the District, and is eligible for special education by reason of specific learning disabilities and emotional disturbance. Student's pendent placement, by agreement of the parties, is a half day of work-based experience and a half day in an academic transition class. Student also takes an elective and is provided with direct instruction in English and mathematics. (Notes of Testimony (N.T.) 33-34, 324-25; P 4)
2. Student has a desire to go to culinary school after graduation, and ultimately wishes to be employed in a restaurant or bakery. (N.T. 37-38, 55, 138)
3. Student was initially evaluated for special education in 1995 by another school district. Cognitive assessment revealed a full scale IQ in the borderline range; and Student was determined to be eligible for special education based on an Other Health Impairment (OHI) due to Student's Attention Deficit Hyperactivity Disorder (ADHD). (P 4)
4. Student moved into the District during kindergarten and was determined at that time to be eligible for special education by reason of specific learning disabilities. In an evaluation during Student's second grade year, assessment of Student's cognitive abilities contradicted the previous evaluation as Student's full scale IQ score was in the average range. Student was provided with learning support through the end of second grade when Student moved into another school district. (P 4)
5. Student moved back into the District in 2007, and the District conducted another evaluation. Cognitive assessment using the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) resulted in variable scores, and the school psychologist opined that Student's overall intellectual functioning was "difficult to summarize by a single score." (P 4 p. 5) Student's full scale IQ was reported to be in the borderline range. (N.T. 149-51; P 4)
6. In achievement testing at the time of the 2007 reevaluation, Student achieved variable scores on reading subtests using the Wechsler Individual Achievement Test – Second Edition (WIAT-II), ranging from the borderline to extremely low range. In mathematics skills, Student's scores were in the extremely low range, and in written language, Student scored in the borderline range. (P 4)
7. The District's September 2007 Reevaluation Report (RR) included an ability-achievement discrepancy analysis, noting weaknesses in the areas of reading,

⁶ The remedy which the Parent sought for this claim was development of an appropriate special education program for the 2011-12 school year; there was no claim for compensatory education for this claim until the submission of the Parent's closing argument. (Due Process Complaint at p. 5; N.T. 22-26) Because this claim was not presented in the complaint or raised at the hearing, it will not be considered. (N.T. 22; *see also* 34 C.F.R. §§ 300.511(d), 300.512(c))

mathematics, and written expression. Curriculum based assessments were also included, as was input from the Parents and teacher. Student was determined to be eligible for special education on the basis of specific learning disabilities in reading, mathematics, and written language, as well as an emotional disturbance. (P 4)

8. At the end of the 2009-10 school year, Student's IEP team determined that Student should remain in the District to complete the three-year commercial baking program, which Student did not start until the beginning of the 2008-09 school year. (N.T. 387-89; J 3; S 5)
9. Student was reevaluated again in September 2010. The resulting RR noted that Student had been participating in a functional curriculum which emphasized socialization and independent daily living skills, including employability skills. Student's recent report card grades were included, and Student's below basic scores on the Pennsylvania System of Statewide Assessment (PSSA) were noted in both Reading and Mathematics. There was no assessment of Student's academic achievement. (J 7)
10. The Adaptive Behavior Assessment Scale – Second Edition (ABAS-II) was used to gather information from Student' learning support teacher and one of the Parents for the 2010 RR. Weakness in functional academics was noted by both. (N.T. 321-22; J 7)
11. Vocational information in the 2010 RR noted that Student was interested in post-secondary educational training after graduation such as at a culinary school, and had an interest in becoming a baker or chef, or a veterinarian. (J 7 p. 12)
12. The 2010 RR also summarized Student's skills in the work-based learning program in various sites, reflecting scores of 4 or 5 out of 5 on all aspects of job duties and job related skills. Strengths at those job sites included demonstration of initiative, acceptance of constructive criticism in a positive manner, understanding of job expectations, and completion of assigned tasks. A need was noted to improve communication with peers and staff. (J 7)
13. The 2010 RR concluded that Student remained eligible for special education by reason of a specific learning disability and an emotional disturbance. Academic strengths noted included hands-on activities such as baking, motivation, and cooperation; needs were identified to increase vocational skills and functional daily living skills. (J 7)
14. Student completed an Interest Inventory in September 2010 which, among other things, stated that Student wanted to pursue culinary school after graduation. Student's learning support teacher was aware of that desire. (N.T. 322-24, 351; J 7 at p. 12; S 11)
15. An Individualized Education Program (IEP) was developed for Student in September 2010 for the 2010-11 school year. By that time, Student had already earned more than the required number of credits to graduate. This IEP noted Student's anticipated date of graduation as 2011. (N.T. 299-300; J 3; S 5)

16. The September 2010 IEP set forth Student's present levels of academic achievement, including information from the 2010 RR. This IEP also explained that Student would continue in the commercial baking and work-based learning programs, and would be provided with instruction in functional academics, independent living skills, and community based instruction in the learning support environment. Student would also attend a Transitions class. (J 3)
17. Needs in the 2010 IEP included improvement in verbal and social communication skills including requesting assistance or explanations when directions/instructions were not understood; increased employability skills; increased vocational and job-related skills; and increased functional daily living skills in the area of personal organization. (J 3)
18. Student's post-secondary education and training goal in the September 2010 IEP stated that Student was "not interested in pursuing a post-secondary education" with an interest in obtaining employment after high school in the field of commercial baking. (J 3 p. 17) Additional transition goals included participation in the work-based learning and commercial baking programs as well as activities in the Transition class. (J 3)
19. Other IEP goals in September 2010 related to independent completion of job-related skills as measured by a teacher-made checklist of competencies; seeking assistance or clarification of job tasks and skills; exploring potential employment possibilities and skills related to applying for a job; and demonstrating personal organizational skills. (J 3)
20. Program modifications and items of specially designed instruction in the September 2010 IEP included opportunities for community-based instruction; access to a functional curriculum; wait time for processing and organizing thoughts and responses; small group instruction; and several test modifications/adaptations. Student's September 2010 IEP specified itinerant learning support. Student's Parent approved the NOREP. (J 3)
21. One of Student's goals for the 2010-11 school year was to complete the commercial baking class and pass the National Occupational Competency Testing Institute (NOCTI) examination for retail commercial baking. Another goal was to gain more work experience. (N.T. 301-03, 306, 310, 348-49, 386, 417, 459, 479; S 31)
22. During the 2010-11 school year, Student took the commercial baking course at a career and technical institute for half a day, and spent a half a day in the work-based learning program. Student then attended a Transition class for approximately one half hour at the end of the school day. (N.T. 46-50, 229, 295-96, 300-02)
23. Student was in the commercial baking class for a total of three years. Student did not have an aide in that class, but the teacher or other students assisted Student as needed, including reading the directions in recipes for Student. Student did require assistance with using the stove and oven, but was able to follow measurements in a recipe, weigh ingredients, and mix the ingredients. At the completion of those three years, Student earned a certificate for completing the course and also attained a retail commercial baking certification from the state Department of Education. (N.T. 47, 85-86, 116-18, 133, 205, 231, 387-88, 390-93)

24. The commercial baking certification is based upon mastery of a number of competencies, and students work on those competencies throughout the three-year program. To master a competency, students must attend a theory lesson, read information about a specific task and complete a worksheet from a packet, and pass a test on the task. By the end of those three years, Student had mastered 63 of the 78 competencies in that program which placed Student in the highest level of achievement in the program. Student also demonstrated the ability to perform required skills independently by the end of the 2010-11 school year. (N.T. 386-92, 399, 425-27; S 21, S 24)
25. In the Transition class, typically the high school special education teacher and a paraprofessional were present in the classroom of approximately fifteen students. Students worked on activities such as completing applications, writing a resume, filling out checks, and reading bills, menus, and newspapers, described as functional academic skills. Students also discussed their work-based learning experiences and went on community trips. (N.T. 296, 300-04, 328-31, 333-35, 337-38, 341-43; J 7; S 10, S 12, S 14, S 15, S 16, S 17, S 18)
26. The District's work-based learning program focuses on "soft skills" such as the ability to communicate and seek assistance, having proper attitude, following directions, demonstrating appropriate social skills, arriving on time and properly groomed, maintaining attention to tasks, and making appropriate effort. Work sites are chosen through team decision based upon the interests of the students and input from the family and teachers, as well as availability in the community. Because soft skills are transferable across settings, student interest does not necessarily dictate all work sites chosen. (N.T. 459-61, 462-63, 472, 486, 488-89, 490, 492, 495-98)
27. The students in the work-based learning program were driven to the job sites by job coaches, who remained at the location to provide support to and supervision over the students. (N.T. 129-30, 301, 461-62, 466-67, 503)
28. Student's work-based learning experiences during the 2010-11 school year included stocking shelves and general cleaning at a local Goodwill store; preparing and serving lunch at a nearby office building; handling the cash register and serving customers in a local store; a short time in the bakery of a local supermarket; and working at two restaurants. (N.T. 38-46)
29. Student did not like working at the Goodwill store because it was not related to Student's interests. (N.T. 38, 75, 175)
30. Student did not like the lunch experience at the office building because it was overwhelming. Student felt obligated to perform additional work at that location because other students were not maintaining their responsibilities. (N.T. 38-40, 181-84)
31. Student did not like the experience at the other local store because one of the other students was not cooperative and Student experienced stress as a result. This setting was also not related to Student's interests. (N.T. 40-42, 70-71, 179)

32. Student did enjoy the experience at the supermarket bakery, where Student packaged food and decorated cakes on two occasions. However, that work location became unavailable after a short period of time. (N.T. 43-45, 74-75, 179-81, 491-92)
33. Student did not like the experience at the first restaurant where Student was assigned tasks such as preparing the dining room, making meatloaf, and weighing and measuring dough for pizza, because Student found the premises to be unclean. Student also had difficulty weighing ingredients in that setting. (N.T. 42-43, 70, 133-34, 177-78, 468)
34. Student did not like the experience at the second restaurant because Student was required to wash dishes and run the dishwasher, which was not an interest of Student's, and sometimes Student felt overwhelmed by the amount of work expected. (N.T. 45-46, 69, 176-77)
35. Student sees a private psychologist with whom Student has been treating since early 2007. Student had expressed concerns about the work-based learning program to the therapist, including feeling overwhelmed at those sites at times during the 2010-11 school year. (N.T. 99-101, 113-14, 215)
36. Student participated in several community based experiences during the 2010-11 school year. One such activity was going to a grocery store, navigating the aisles to locate and purchase items on a shopping list, paying for the items, and calculating any change due. (N.T. 318-19; S 16)
37. Progress reporting on Student's IEP goals in April 2011 reflected that Student independently completed tasks, with minimal supervision only with novel tasks; was becoming more independent in seeking assistance or clarification of a task but a need to continue to improve; could provide personal information as needed on forms and applications, but needed to work on a resume and interview skills; and needed to work on maintaining an agenda. The progress key revealed that Student was "beginning to demonstrate" the skills for each goal independently. (P 45)
38. At some point in the spring of 2011, Student and one of the Parents reiterated to the IEP team that Student wanted to go to culinary school after graduating. (N.T. 122-23, 160-61, 449, 479)
39. In April 2011, the Parent wrote to the District and asked about having Student remain in school for the 2011-12 school year. An IEP meeting convened and the team discussed this request. (N.T. 105-06, 200, 246, 374-75)
40. The NOCTI examination is an assessment of a student's baking skills. Some assessments are written, some are verbal, and some are performance-based. The specific competencies assessed by the written (multiple choice) portion of the NOCTI retail commercial baking examination are Safety and Sanitation; Weights and Measures; Identification, Classification, and Properties of Ingredients; Identification, Classification, and Function of Methods and Processes; Mise en Place; Analysis/Assessment/Troubleshooting; and Merchandising of Products. On the performance assessment,

students were required to complete five baking jobs. (N.T. 399-400, 402-04, 521-24; S 31)

41. Student took the NOCTI exam in April 2011. Student prepared by practicing and memorizing information along with the class, and decreased the number of visits to the work-based learning program job sites to concentrate on the examination. The exam was given in small groups with an instructional assistant. Student had difficulty reading many of the questions so sometimes guessed at the answers based on what Student could read. Student was given additional time to take the written part of the assessment. For the performance portion, Student and the other students sometimes helped each other by, for example, indicating that a timer was going off. Also during the performance assessments, Student returned back to the room after lunch about fifteen minutes earlier than anyone else, and used that time to get caught up with the other students before any teachers returned to the room. Student scored in the advanced range on the NOCTI. (N.T. 118-19, 205-06, 399, 403-04, 438-41, 453, 522-26; P 44; S 32)
42. Student's IEP team met on June 1, 2011. One of Student's Parents attended the meeting, and the other Parent participated by telephone. The Parent who attended asked about including academic skills in Student's IEP. The District personnel at the meeting recommended that Student should graduate at the end of that 2010-11 school year, so there was no discussion of the content of Student's IEP. (N.T. 139-48; P 51⁷)
43. The 2011 IEP noted Student's score on the NOCTI examination, and reported then-current scores of 4 or 5 out of 5 on all aspects of job duties and job related skills in the work-based learning program at all of the job sites, with the sole exception of a 3 out of 5 on using email and customer service at one location. Strengths were noted at initiating work in the absence of directions, independent completion of tasks, following directions given, and acceptance of constructive criticism in a positive manner. Needs in communication and customer service skills continued to be identified. (P 51)
44. End-of-year progress reporting on Student's job duties and job skills were consistent with those provided in April 2011 but provided additional detail about how Student performed specific job skills at each site, noting tasks Student did particularly well and making suggestions for improvement. (S 27)
45. Student was not able to attend the June 1, 2011 IEP meeting and was not asked to provide any input on whether Student should graduate that month. (N.T. 53-54, 141-42)
46. The District issued a Notice of Recommended Educational Placement (NOREP) proposing to graduate Student. The NOREP stated that Student had completed course credits needed to meet graduation requirements. One of Student's Parents did not approve the NOREP, but the other Parent did.⁸ (N.T. 147-48; P 52; HO 2 Exhibit A)

⁷ The date on this IEP incorrectly states on the first page that the meeting was held on 06/01/2010. (P 51)

⁸ The District's motion to dismiss the complaint prior to the hearing on the basis that one of the Parents had revoked consent to special education was denied. (HO 2)

47. At the very end of the 2010-11 school year, Student participated in a mock interview with a District paraprofessional. (N.T. 91-92, 335-36; SD 13)
48. Student has demonstrated an ability to complete application forms, such as for employment or renting an apartment, with assistance. (N.T. 88-90, 132, 166-67, 248-49, 336-37; P 73; S 10)
49. By the end of the 2010-11 school year, Student had earned 32.25 total credits. Only 24.25 credits were required to graduate. (P 82; S 5)
50. For the 2011-12 school year, Student attends a half day of work-based experience and a half day in an academic Transition class. Student also takes an elective, and has a study hall in the learning support class one period per day. (Notes of Testimony (N.T.) 33-34, 324-25, 352-53)
51. Student's work-based learning experiences during the 2011-12 school year include a cafeteria where Student prepares food and utensils, Meals on Wheels, two elementary school cafeterias, and two restaurants. Student is enjoying the work-based learning program experience sites this year more than in the prior school year. (N.T. 57, 187-90, 472-73, 499)
52. As of the due process hearing, Student did not have a driver's license, but Student was working on passing the driving exam in study hall and had taken steps to obtain a learner's permit. (N.T. 54, 59, 82, 170, 308, 352-54)
53. Student does not know how to take public transportation, and had exposure to that experience only one time in a District-arranged community activity. (N.T. 58-59, 170-71, 319-20, 355-56)
54. The District compiled a Summary of Academic Achievement and Functional Performance for Student on June 10, 2011, which is a document completed for students who are exiting the school program. This summary described Student's educational and vocational program over the 2010-11 school year, including accommodations that were provided, as well as how Student performed in the commercial baking and work-based learning programs. This portion of the Summary mirrored the updated information provided in the June 2011 IEP. Recommendations for Student were also included in this document. (N.T. 362-63; P 56 (*compared with* P 51))
55. The following exhibits were admitted into evidence:
 - J 3, 7
 - P 1, 4, 8, 38, 39, 40, 44, 45, 47, 51, 52, 56, 73, 80, 82
 - S 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 31, 32
 - HO 1, 2, 3, 4, 5

(N.T. 21, 529-30; HO 5) J 3 and P 39 are the same document, with J 3 including pages not part of P 39; reference is made to J 3 only in this decision. J 7 and P 38 are the same document and reference is made to J 7 only in this decision.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Broadly stated, 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);⁹ *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 Parent who requested this hearing. Courts in this jurisdiction have generally required that the filing party meet their burden of persuasion by a preponderance of the evidence. See *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Nevertheless, application of these principles 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 are also charged with the responsibility of making credibility determinations of the witnesses who testify. See generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). This hearing officer found each of the witnesses to be generally credible and the testimony as a whole was essentially consistent. Credibility of particular witnesses is discussed further in this decision as necessary.

IDEA Principles

The IDEA requires the states to provide a “free appropriate public education” (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this 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 Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Local education agencies, 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

⁹ The burden of production, “i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding,” *Schaffer*, 546 U.S. at 56, relates to the order of presentation of the evidence.

‘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). Under the IDEA and its implementing regulations, an IEP for a child with a disability must include present levels of educational performance, measurable annual goals, a statement of how the child’s progress toward those goals will be measured, and the specially designed instruction and supplementary aids and services which will be provided, as well as an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular classroom. 20 U.S.C. § 1414(d); 34 C.F.R. §300.320(a). Most critically, the IEP must be responsive to the child’s identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, it has long been recognized that “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 Parent contends that Student (1) has not graduated, has not met the requirements for graduation, and should not be forced to graduate; and (2) was not provided with an appropriate educational program during the 2010-11 school year with respect to academic instruction and transition services. These assertions are interrelated and will be addressed together.

In Pennsylvania, students are entitled to a public education “until graduation from high school or the end of the school term in which a student reaches the age of 21 years.” 22 Pa. Code § 11.12.

Children with disabilities who satisfactorily complete a special education program developed by an Individualized Education Program team under the Individuals with Disabilities Education Act and this part shall be granted and issued a regular high school diploma by the school district of residence. This subsection applies if the special education program of a child with a disability does not otherwise meet the requirements of this chapter.

22 Pa. Code § 4.24(e). “Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice[.]” 34 C.F.R. § 300.102(a)(3)(iii).

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.

Students of transition age must be part of their IEP team when postsecondary goals and transition services are considered. 34 C.F.R. § 300.321(b)(1). “If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered.” 34 C.F.R. § 300.321(b)(2). In Pennsylvania, transition planning must begin when a student is 14 years of age. 22 Pa. Code § 14.131(a)(5).

After careful review of the record, this hearing officer concludes that the District did not properly attempt to graduate Student in June 2011. Student’s IEP team met to discuss this change in placement first in April 2011 and again in June 2011. (Finding of Fact (FF) 39, 42) At the June 1, 2011 meeting when a NOREP was issued, both of the Parents participated, yet Student was not able to attend. (FF 42, 45) There is no evidence in this record that Student was given an opportunity to provide input into this important decision in Student’s life, as required. Student testified quite clearly and convincingly that Student did not want to graduate in June 2011, and that Student continued to want to work on reading and mathematics skills which would be important to employment in the baking industry. (N.T. 54-55, 59) Student’s Parent echoed concerns with Student’s academic skills in these areas, which had been raised in prior IEP meetings. (N.T. 144-45, 148, 159, 162-63)

Student’s academic achievement was last assessed in 2007. (FF 6, 9) Even assuming *arguendo* that Student had met all District requirements for receiving a regular high school diploma by June 2011, there is no requirement in the law that a student is obligated to graduate immediately upon meeting the criteria. This conclusion is supported by the fact that, in this case, Student’s IEP team determined at the end of the 2009-10 school year that even though Student had the credits to graduate, Student should remain in school to complete the commercial baking program. (FF 8, 15) With respect to completion of Student’s special education program, the information provided to the IEP team which reflected Student’s mastery of IEP goals by June 1, 2011 is, in a word, suspect. The direction to the learning support teacher in May to update Student’s progress on IEP goals and objectives to “show [Student] has mastered [Student’s goals]” (P 47) may have been nothing more than a poor choice of words, but this language does strongly suggest that at least some members of Student’s IEP team had predetermined prior to the meeting that Student would graduate in June 2011, particularly since the most recent progress report less than three weeks earlier in April 2011 did not demonstrate such mastery. (N.T. 360; FF 37)

Similarly, the testimony that Student demonstrated successful performance in the commercial baking class was based on very limited firsthand knowledge. (N.T. 392-95, 411-12, 416, 419-22, 427-29) Further, while Student has clearly exceeded the competency requirements for completion of that three-year course (FF 22, 23, 24) and should be very proud of that and all of Student's achievements to date, Student's own forthright and convincing (and uncontradicted) testimony calls into question the accuracy of the score attained on the NOCTI examination (FF 41), while at the same time demonstrates Student's resourcefulness. There is also preponderant evidence in the record that Student continues to need specially designed instruction to improve reading and mathematics skills which are necessary for Student to pursue post-secondary schooling or employment, matters which Student candidly admitted remain weaknesses (N.T. 47-48, 54, 144-45, 148, 159, 162-63) but which the 2010-11 IEP did not address.

It is also evident that Student's transition planning was not based upon any comprehensive transition assessment. Other than Student's completion of an interest inventory, the team had little other guidance for developing a transition plan for Student. (N.T. 307) Although the IEP team was clearly aware that one of Student's goals was to attend culinary school after leaving the District, this desire was omitted from transition planning for Student and effectively ignored throughout the 2010-11 school year. (N.T. 322-24, 351-52, 375; FF 11, 14, 38) This fact contravenes the District's assertion that Student's transition plan satisfies the requirements of federal and state law based upon information known to the IEP team. *Fuhrman, supra*. Additionally, the fact that neither Parent challenged the transition plan developed in September 2010 is not fatal, since "a child's entitlement to special education should not depend upon the vigilance of the parents[.]" *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). Had Student and the Parent not filed a due process complaint in July 2011, Student would have had little time to complete the process of applying to any post-secondary schools upon learning of the decision to graduate Student in June.

The District points out many positive and appropriate aspects of its transition plan for Student, with which this hearing officer cannot disagree. (FF 8, 11, 14, 16 - 28, 36) The above described flaws in the transition services provided to Student are significant, however, and compel the conclusion that the District did not properly seek to exit Student from special education and graduate Student in June 2011, that Student's educational program was not appropriate, and that Student is accordingly entitled to remain in the District through the end of the 2011-12 school year. Nevertheless, these determinations do not necessarily mean that Student's program over the entire 2010-11 school year was wholly inappropriate. One substantial concern that the Parent had was that Student's work-based learning program was not tailored sufficiently to assure that Student was given opportunities to work at locations where Student could perform preferred tasks related to Student's interests. (FF 29, 30, 31, 33, 34) However, as noted above, the law does not require that students be provided with transition activities that are focused solely on a student's interests. 20 U.S.C. § 1401(34). "Unlike the IEP, a transition plan is not a strictly academic plan, but relates to *several* post-secondary skills, including independent living skills and employment." *High v. Exeter Township School District*, 2010 WL 363832 at *6 (E.D. Pa. 2010) (emphasis added).

The District's emphasis on the "soft skills" in the work-based learning program is both reasonable and logical, as well as directly related to post-secondary outcomes. These are the types of skills and abilities which are general to almost all post-secondary activities and will transfer across environments. It is also evident that even if Student is ultimately able to locate employment in Student's chosen area of interest, it is very likely that Student will also be required to perform other non-preferred tasks such as those which Student was expected to complete in the various work-based learning program sites. Furthermore, children of Student's age and older frequently are not yet certain what career path they will take, and providing a variety of experiences can help children decide what type of employment activities they enjoy as well as other types of employment activities that they do not. For all of these reasons, this hearing officer declines to find Student's program inappropriate in this respect.

Because this hearing officer has concluded that Student is entitled to remain in the District through the end of the 2011-12 school year, and Student's IEP has not been revised since September 2010, the IEP team will be directed to reconvene and to develop an appropriate program for the remainder of the school year, including appropriate transition services, based upon a transition assessment and consideration of Student's reading and mathematics skills especially as they relate to Student's post-secondary goals.

CONCLUSION

For all of the foregoing reasons, this hearing officer concludes that the District did not properly attempt to graduate and exit Student from special education at the end of the 2010-11 school year, and that Student is entitled to remain in the District through the end of the 2011-12 school year. The IEP team will be directed to reconvene to develop an appropriate program for the remainder of the school year, including appropriate transition services.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that

1. The District's attempt to graduate Student and exit Student from special education in June 2011 was not appropriate for Student;
2. Student is entitled to remain in the District through the end of the 2011-12 school year with an appropriate special education program; and
3. The District is directed to reconvene Student's IEP team within 20 days of the date of this order to develop an IEP for Student with all required elements, including appropriate transition services based upon a transition assessment and consideration of Student's reading and mathematics skills as they relate to Student's post-secondary goals.

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

Dated: December 23, 2011