

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Nashoba Regional School District
& LABBB Collaborative**

BSEA No. 1810420

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766” (MGL c. 71B), the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

The Student in this case is a young woman with disabilities with a talent and passion for culinary arts (particularly baking) and a strong desire for a career in that field. Student has been enrolled in a post-high school program operated by the Nashoba Regional School District (NRSD or Nashoba) for transition-aged students. At issue in this case is whether Nashoba’s program, which comprises a combination of classroom instruction and school- and community-based work experiences, has provided Student with a free, appropriate public education (FAPE) by affording her adequate preparation for her desired career, or whether she requires placement in a more specialized vocational program operated by the LABBB Collaborative on the site of Minuteman Regional Technical School (“Minuteman”) Also at issue is whether Nashoba committed procedural violations when it failed to authorize the LABBB Collaborative to allow Parents and Student to view its program in approximately fall of 2016 and multiple occasions thereafter.

On June 21, 2018 Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA) in which they alleged that from May 2017 forward, Nashoba’s program failed to provide her with the type and degree of training, instruction, facilities and support necessary for her to progress towards her career goals or achieve self-sufficiency.¹ Parents also alleged that Nashoba committed procedural violations when it refused to refer Student to the LABBB Collaborative program, or otherwise authorize Parents to investigate the program, in order to determine whether it would be an appropriate placement for Student. Parents sought an order from the BSEA directing Nashoba to allow Student to tour the LABBB Collaborative programming located at Minuteman and to formally refer Student to LABBB Collaborative. Parents also sought an award of compensatory services to Student for alleged procedural violations.²

¹The initial hearing request named both LABBB Collaborative and Minuteman, but Minuteman was dismissed as a party early in the proceeding.

²As will be discussed below, the precise relief requested changed thereafter to a referral to a different LABBB program, which is housed at both Lexington High School and Minuteman.

Upon receipt of Parents' hearing request, the BSEA scheduled an initial hearing date of, July 27, 2018. The hearing was postponed at the request of the parties several times for good cause and was held on September 13, 14, November 28 and December 12, 2018 and on January 23, March 25 and March 27, 2019.³ The hearing was held at the offices of Catuogno Court Reporting in Worcester, MA. Father proceeded *pro se* on behalf of Parents and Student, and both Nashoba and LABBB Collaborative were represented by counsel. Both parties had an opportunity to examine and cross-examine witnesses as well as to submit documentary evidence for consideration by the Hearing Officer. After the testimony was concluded, the parties requested and were granted a postponement until April 9, 2019 to file written closing arguments. The BSEA received the arguments and closed the record on that day.

The record in this case consists of Parents' Exhibits P-A through P-F, P-H, and P-J, School's Exhibits S-1 through S-30, as well as electronically and stenographically-recorded witness testimony. Those present for all or part of the proceeding were:

Parents	
Student	
Patric Barbieri	Executive Director, LABBB Collaborative
Allyson Bell	Board Certified Behavior Analyst (BCBA), NRSD
Constance Benjamin	Teaching Assistant, formerly employed by NRSD
Paulette Clarke	BCBA, formerly employed by NRSD
Joan DeAngelis	Director of Pupil Personnel, NRSD
Kristen Diggis	Speech-Language Pathologist, NRSD
Katherine Gianetti	NRSD
James Kelly	High School Program Director, LABBB Collaborative
Matthew Lance	Teacher, MRSD
Elsbeth MacDonald	NRSD High School Social Worker
Lauren Mahoney	School psychologist and Team chair, NRSD
Anne Neylon	Team Chair, NRSD
Stephanie Redmond	Special Educator, NRSD
Michelle Roche	Minuteman Regional Technical School
Bettina Toner	Attorney for Minuteman Regional Technical School
Alisia St. Florian	Attorney for NRSD and LABBB Collaborative
Kristen M. Edwards	Court Reporter
Sara Berman	BSEA Hearing Officer

ISSUES PRESENTED

The issues for hearing are the following:

³Among the reasons for postponement were settlement attempts, unavailability of witnesses, and a family medical emergency.

1. Whether the IEPs for May 2017 to May 2018 and May 2018 to May 2019, as well as the corresponding placement in Nashoba's Transitions Program were reasonably calculated to provide Student with a free, appropriate public education.
2. If not, whether the LABBB Collaborative program sited at Lexington High School and Minuteman Regional Technical school are appropriate for Student such that Student should be placed there prospectively.
3. Whether NRSD committed procedural violations that deprived Student of FAPE or impeded Parents' ability to participate in the Team process such that Student is entitled to compensatory services, potentially extending past termination of her eligibility in July 2019.

POSITION OF PARENTS

Student is a creative, motivated and focused young woman with a strong, longstanding interest in a career in culinary arts, especially in baking. She has demonstrated ability to achieve her goals if she receives appropriate instruction in those fields. The services provided to by NRSD in its post-high school transition program have not been adequate or appropriate to meet Student's needs. Specifically, the program does not have the equipment, staff expertise, or comprehensive, sequential instruction and practice in large-scale food preparation and baking that would enable Student to practice or advance her cooking and baking skills. Student has attended the same job sites for the past three years, doing monotonous tasks that do not advance her knowledge or skills in her chosen field. Nashoba has grouped Student with inappropriate peers who are lower-functioning than she is. Some of these peers have had violent outbursts and other inappropriate behaviors which have upset Student and disrupted her educational progress. Student has not meaningfully progressed in improving her so-called "soft skills" such as performing non-preferred tasks without rudeness or complaint; however, shortcomings in these areas stem from her frustration with performing the same monotonous tasks year after year. Student's soft skills are likely to improve if she is engaged in work that is meaningful to her, and which supports advancement towards her goals.

In contrast to Nashoba's inappropriate program, the LABBB Collaborative program housed at Lexington High School and Minuteman, would provide Student with a FAPE because it would afford her the opportunity to work on her culinary and baking skills with properly trained staff and commercial baking equipment in furtherance of her career aspirations. Nashoba committed procedural violations when it refused to take the necessary steps to allow Student and Parents to even consider LABBB as a placement for Student. This violation deprived Student of FAPE and deprived Parents of meaningful participation in the Team process; as such, Student is entitled to compensatory services that extend beyond her 22nd birthday.

POSITION OF SCHOOL

At all relevant times, NRSD has offered and provided Student with appropriate services through the Transitions Program at Nashoba Regional High School. The IDEA

neither requires nor contemplates that the Transitions Program provide Student with vocational training in cooking or baking. Rather, its programming for Student was and is appropriately designed to teach her the “soft” skills in interpersonal relations, workplace behavior, self-regulation, and independence that she needs to not only to find and keep employment of any kind, but also to function as independently as possible in other areas of her life. Further, Nashoba has provided Student with a range of opportunities, both in school and at job sites, to practice and develop these skills, often in the context of food preparation and baking, (including in-school opportunities to produce and sell baked goods) but also in relation to other types of employment. Student has made progress in all of her IEP goals, improving both her “soft skills” and a variety of occupational skills related to culinary arts, including baking, as well as skills that are applicable to any employment situation. Even if Nashoba’s program is found to be inappropriate, there are serious questions about the structure as well as the age range and peer grouping at Parents’ preferred program at the LABBB Collaborative. Parents have provided no evaluations or other evidentiary basis to support their contention that Nashoba’s program was in any way deficient. Moreover, any procedural violations, if they occurred, are *de minimis*, and did not deprive Student of educational benefit or Parent and Student of the opportunity for participation in the Team process.

SUMMARY OF THE EVIDENCE

1. Student is a 21 year old young woman with disabilities who is a resident of a town served by the NRSD. Student has been enrolled in Nashoba for her entire school career. In 2016, upon completion of twelfth grade at Nashoba Regional High School, Student received a Certificate of Completion but not a diploma. The parties agree that Student needs and is entitled to post-high school transitional services from Nashoba until July 2019, when she will reach the age of twenty-two. This action is being pursued by Mother, who is Student’s court-appointed guardian, on behalf of Student and both Parents. (Mother, DeAngelis)
2. The parties agree that Student is an outgoing, charismatic, creative young woman with a great sense of humor. She shows initiative and is hard-working and persistent. Student has many interests and activities, including singing, dancing, theatre (she has performed in both school and community theatre productions), and the Best Buddies program, where she has done fundraising and taken leadership roles. (Mother, S-7)
3. Since mid-high school, Student has had a passion for culinary arts, especially baking. She has been involved successfully in cooking and baking ventures in school, where she has produced and sold baked goods to staff at holiday times. Additionally, Parents have secured multiple out-of-school culinary experiences for Student. For example, Student currently has a part-time job assisting in the

bakery of a local supermarket, where she performs a variety of tasks including packaging, filling muffin cups before baking, and frosting and decorating cupcakes. She was briefly employed by a local bakery, until that job ended because the bakery owner retired. She successfully completed a summer course at a private cooking school in Cambridge, and also has completed adult community education cooking classes held at local malls. Parents and Student report that she has worked and/or learned independently in these settings, without job coaches or other supports, and with non-disabled co-workers. Parents further report that Student's supervisors and instructors in these settings have been pleased with her work and there have been no complaints about her behavior. In her home, Student prepares family dinners, independently, one or two days per week, and also bakes cakes, pies, and other desserts for her family. She recently demonstrated a baking recipe on a community access cable television program. Student has acquired many of her skills from watching YouTube videos and television cooking programs such as Food Network. (Student, Mother)

4. Student has long-standing diagnoses of Autism Spectrum Disorder (ASD)⁴ and ADHD, which affect her skills in multiple areas, including learning, communication, generalization, transitions, receptive and expressive language and social interactions. (S-7) In the employment context, Student's challenges affect her ability to work as part of a team, to accept criticism or feedback as well as to perform non-preferred tasks or work with people whom she does not like, without making rude comments. (Redmond, Benjamin) Student also has struggled to understand and accept that she has disabilities, especially autism, and this struggle has interfered with her ability to self-advocate for assistance. (Mother, Benjamin, S-9)

5. Student's most recent school-based evaluation was conducted in 2015, and consisted of psychological, educational, speech-language, and transition/life skills assessments. According to the psychological assessment, Student's intellectual functioning was variable, with scores on the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) ranging from solidly average (perceptual reasoning) to "low average" (processing speed) to "borderline" (verbal comprehension and working memory). (S-11) The educational assessment, consisting of the Wechsler Individual Achievement Test, Third Edition (WIAT-III) gave rise to scores falling generally within the average range, except for lower scores in reading and listening comprehension and math fluency. (S-12) Student's scores in the speech-language evaluation ranged from average to below average. Student had relative strengths in expressive language, and the evaluator noted that she was pleasant and conversed easily. Student had relative weaknesses in receptive lan-

⁴Student's original diagnosis, given when she was a young child, was Pervasive Developmental Disorder Not Otherwise Specified (PDD NOS). (Mother, S-7)

guage as well as in problem-solving in unfamiliar or anxiety-provoking situations. (S-13) Student's independent living and vocational skills were evaluated using relevant portions of the Assessment of Functional Living Skills (AFLS), which provides criterion-referenced information about multiple skill areas relevant to independent living. (S-14). According to the AFLS, Student demonstrated strengths in many areas, including personal management, safety, social interactions, and use of kitchen tools and appliances. Her vocational strengths were in computer and kitchen skills. (S-14)

6. Student has spent her entire educational career in District schools. For grades 9 through 12, she was enrolled in the Life Skills program at Nashoba Regional High School, where she spent the majority of each day in substantially-separate classrooms, attended some general education classes, and was involved in several general education extra-curricular activities such as drama and two choral groups. According to Mother, Student "thrived" in high school. (Mother, S-7)

7. In May 2016, near the end of Student's 12th grade year, the Team developed an IEP covering May 2016 to May 2017 (including summer 2016). That IEP called for Student to complete 12th grade in the Life Skills program and then to move on to Nashoba's Transitions Program ("Transitions") at the start of the 2016-2017 school year. Transitions is located in the high school and is designed for 18 -22 year olds who have received certificates of high school completion.

8. This IEP contained goals in Communication (social communication and conversation skills), Vocational (including benchmarks in workplace communication and food service), Counseling (coping strategies and emotional self-management skills), Adaptive Behavior (interpersonal skills and problem-solving), Independent Living (safety skills, following recipes, budgeting), and Functional Academics (functional vocabulary, creating resumes, reading comprehension). The service delivery grid included, in Grid A, monthly consultation between Parents, BCBA and counselor and weekly consultation among staff, and, in Grid B, supported academics. The majority of Student's goals were addressed in Grid C, which listed individual speech/language therapy and counseling in addition to sub-separate classroom and community activities. The Vision Statement in the Transition Planning Form (TPF) attached to the IEP stated, in part, that Parents wanted Student to increase her social skills with different types of people, increase her independent living skills, and work in an area that provided an outlet for her creativity. Student wished to work in the culinary field and was also interested in music, dance and drama. The TPF identified that Student had disability related needs in the areas of communication, generalizing, attention, transi-

tioning, social interaction, and language. Parents accepted the IEP in full and consented to the placement on July 13, 2016 (S-7)

9. Pursuant to the accepted IEP, Student began Transitions at the start of the 2016-2017 school year. She continued to attend during 2017-2018 and 2018-2019. Her program over these years has included classroom instruction in functional academics and independent living skills, participation in inclusion activities (*e.g.*, Unified⁵ health and chorus) within Nashoba Regional High School, placement at job sites, speech/language therapy and counseling. (Mother, Redmond, DeAngelis)

10. Throughout her time in Transitions, Student's job sites have included a corporate cafeteria, the dining rooms at two senior assisted living facilities, Meals on Wheels, a local movie theatre, a nursery and a District elementary school. Additionally, Student has worked within Nashoba Regional High School, at the snack stand in cafeteria and in an office. Student has worked at the corporate cafeteria, the assisted living facilities and the elementary school for most or all of the past three years. (Redmond, Benjamin, Student Lance, Mother)

11. Student's job duties at the corporate cafeteria have included placing items on trays such as cookies, croissants and muffins, placing pizza slices on pans to prepare for baking, filling taco shells, dishwashing, and other, similar tasks. At the assisted living centers, Student has set and cleared tables in the resident dining rooms and cleaned up after meals. The Meals on Wheels job entailed assembling meal items, and then traveling with a driver and carrying the prepared meals from the vehicle to the homes of recipients on the route. The movie theatre job consisted of sweeping floors in the lobby. At the elementary school, Student was assigned to first and second-grade classrooms where she read books to the children and assisted the teacher with routine classroom tasks. The snack vendor job consisted of stocking the shelves and cooler, as well as checking for and removing expired items. During the 2018-2019 school year, Student was offered a placement sorting mail and filing at a local hospital, which Parents declined. While the corporate cafeteria job, in particular, has included food handling, none of the job placements has involved any major food preparation such as chopping vegetables or preparing dough for baking. (Neylon, Redmond, Benjamin, Bell, Student)

⁵Unified programs at Nashoba Regional High school are open to Transitions, Life Skills, and general education students, and include courses and activities such as chorus, athletics, and P.E./health.

12. Nashoba staff had identified “soft skill” deficits manifesting at job sites and elsewhere which needed to be addressed with Student. Specifically, Student would make negative comments to peers if she did not like what they were doing or to supervisors if asked to do a task that she felt was “beneath” her, become tearful in challenging situations, or fail to follow supervisors’ directions on completing a task. (Redmond, Bell, Benjamin, Lance)

13. Shortly after Student began attending Transitions, Parents became concerned that Student’s job placements were not preparing her for her chosen career. At some time during the fall of 2016, Parents toured Minuteman and observed part of a culinary arts shop. On October 12, 2016, in an email to Team Chair Anne Neylon, Parents stated: “As part of our family’s efforts to make sure that [Student’s] transition program at Nashoba is working to the maximum extent possible, we are looking at other programs for comparison. Recently [Mother] visited [Minuteman]. In addition, someone has referred us to the LABBB Collaborative in Lexington. I would like to see their offerings as well. Would you be so kind as to have someone call the Executive Director Patric Barbieri...and inform him that Nashoba is aware that we are meeting with him and his staff. We are not asking for a referral, just acknowledgment of your visit with the LABBB Collaborative. Thank you. (Mother, Neylon, P-B)

14. In an email dated October 17, 2016, in response to the above-quoted email, Ms. Neylon stated: “It sounds like you have questions about [Student’s] placement so I think the appropriate next step would be to reconvene the team...” Parents responded on the same day: “At present, we don’t have any questions of Nashoba. We may have questions that only LABBB may be able to answer. Could you please make the phone call as requested below?” Ms. Neylon replied that “[d]ecisions and recommendations about programming need to take place through the team meeting process so the next step...would be to reconvene.” (Neylon, P-C)

15. On November 30, 2016 the Team met to discuss Parents’ concerns. Parents stated that they wanted to visit the LABBB Collaborative, and asked District representatives to ask LABBB to allow Parents to visit, without a formal referral or endorsement, since LABBB generally does not allow parents to view its programs without a referral or some type of permission from the district of residence. (Barbieri) Parents provided Ms. Neylon with a draft letter to LABBB to this effect, which stated the following: “The parents of the above-referenced Nashoba...transitions/life skills student have expressed an interest in visiting the LABBB Collaborative. Our District members of [Student’s] IEP Team feel strongly we can meet her needs, and do not agree the LABBB Collaborative pro-

vides programs more suitable for [Student's] needs. Without waiving its position...the NRSD does not oppose a visit to your program by [Student's] parents.” (P-E)

16. In an email dated December 5, 2016, Team Chair Anne Neylon stated: “I talked with Joan DeAngelis, the Director of Pupil Personnel Services, regarding our discussion in [Student's] meeting and your request. We would not be able to move forward with reaching out to another program, given that the district continues to maintain that the program at the high school is appropriate for Student. Nashoba reiterated this decision in an N-1 form dated December 19, 2016.⁶ (Neylon, DeAngelis, P-D, S-6)

17. At hearing, when asked why Nashoba declined to grant permission for Parents to explore LABBB, Ms. Neylon testified as follows:

Q: (By Parent) But does Nashoba have the right to foreclose any parent of a student in its district from looking at other out-of-district placement opportunities that can provide their child with a FAPE?

A: (By Ms. Neylon) If the school that a parent is interested in looking at is one of the schools that says we won't go forward with that unless we have permission...from the district to do that, then that would not be a situation where we would give that permission, because we've already put forward what our recommendation is.

Q: Have you checked on that policy with the DESE?

A: I have not looked at that specifically.

Q: Have you ever looked at any regulation that says the district can prevent a student or a student's parents from exploring out-of-district placements?

⁶The N-1 form also stated that the Team updated Student's goals. The record does not contain a copy of a corresponding IEP amendment, however.

A: I've never seen that.

Q: ...Isn't it the team, the IEP team that makes the determination...as to whether or not out-of-district placements should be considered?

A: Yes, it's a team decision.

Q: But if the parents who are part of the team want to look at out of district placements, does it have to be unanimous?

A: Ultimately..., the team chairperson is the final decision-maker around what will be put forward as far as a proposal.

Q: Essentially, parents who are a member of a team wanted to explore out of-district placement and they needed to get permission from the district to do so, they couldn't get it if the team decides no.

A: If the Team decided that the appropriate placement was to continue at the high school or a public school.

Q: And the team that you're talking about is all the same employees of the [NRSD], not the parents.

A: Sometimes, yes.

Q: Who else?

A: ...There are other people who come into meetings who aren't actually employees of the district.

(Testimony of Neylon, Tr. Vol. III, pp. 244-246)

18. Nashoba issued a quarterly progress report on January 17, 2017. That report indicated that Student had made measurable progress in her Social Communication goal, increasing her ability to participate in conversations about non-preferred topics as well as to evaluate when it is appropriate to interrupt. She also made progress towards her Vocational goal, performing tasks in the corporate cafeteria and assisted living dining room almost entirely independently, and had a very low incidence of negative comments. (S-27)

19. In February 2017, at Nashoba's request, Frank R. Robbins, Ph.D., from Quabbin Valley Educational Consultants, LLC, observed Student in the Transitions program. Nashoba had sought Dr. Robbins' recommendations for Student's programming in light of Parents' expressed concerns. According to Dr. Robbins' report, he reviewed the results of Student's 2015 re-evaluation and observed her for a total of slightly more than two hours across school and community-based activities. Staff reported that Student was "on her best behavior" during the observation because she had stated a belief that Dr. Robbins' visit would help her get out of the Transitions program. (S-9)

20. Dr. Robbins observed Student in the high school cafeteria at her job stocking shelves and the cooler, in the Transitions classroom for a written exercise and a cooking activity, and at the corporate cafeteria job site. A Transitions staff member accompanied Student in each setting. In the high school cafeteria, Student performed her tasks well with occasional verbal reminders. During the written activity in the Transitions classroom, Student worked individually with a teacher on a checklist that was a reflection on a previous day's baking project. Student answered all of the questions on the checklist but had not calculated the cost of materials when asked how much she would have charged for the product. (S-9)

21. At the corporate cafeteria job site, Student completed tasks (removing frozen cookies from boxes and arranging them on baking trays, folding and putting away empty boxes, and cleaning dirty carts), "with a high level of independence and competence" and was friendly and cooperative with co-workers and supervisors. The teacher informed Dr. Robbins that this particular worksite was very supportive, but that on a typical day, when she did not know that she was being observed, Student would have been rude and argumentative with co-workers. (S-9)

22. Dr. Robbins observed Student perform an individual cooking activity in the kitchen area of the Transitions classroom and stated that Student did a “nice job” making muffins, in that she followed a recipe, and “overall was very competent” in handling the kitchen appliances. She did not completely clean her area after finishing. She worked independently, with the teacher sitting in another room checking on her periodically, and providing her with minimal help. (S-9)
23. Dr. Robbins interviewed Student’s teacher at the time, Ms. Wild, who reported that Student “hates everything,” including all of her job sites except for reading to children. Problematic behaviors included saying that tasks were “beneath her,” that she told people exactly what was on her mind with no apparent concern for their feelings, and could be rude when given feedback. (S-9)
24. In his Summary and Recommendations, Dr. Robbins stated that Student had many strengths and skills, but, at that time, had little understanding of her own social/emotional challenges. Her vocational progress was impeded by difficulty taking feedback from school staff or supervisors. He concluded, however, that based on his observation, Student clearly was *capable* of “taking feedback appropriately and being a productive *and* pleasant employee,” (emphasis in original). Dr. Robbins recommended that Student continue in Transitions, which he deemed to be of high quality, with the following adjustments: (1) introduction of a visual checklist linking work-related and social/behavioral skills to Student’s future career goals; (2) counseling work with Student to help her understand her strengths and weaknesses; (3) video recording of Student at work sites so that she could later review her facial expressions and verbalizations and practice corrections; (4) introduction of changes to her work evaluation sheets; (5) replacing work sites that Student did not like with a small number of sites that Student could visit multiple times per week so that she could practice the same skills with the same supervisor. (5) relabeling Student’s program from “Transitions” to “Work Experience,” and having her spend increasing amounts of time outside of the school building. Dr. Robbins stated “it would be great if a work site at a local bakery could be obtained.” (S-9)
25. The record does not indicate whether Nashoba incorporated any of Dr. Robbins’ recommendations. Transitions staff attempted to find a bakery work site but were unable to do so. (Neylon) District Team members were concerned about eliminating non-preferred work sites because they felt Student needed to be able to function in many types of environments. (DeAngelis)

26. The Team convened a meeting on May 24, 2017 for Student’s annual review. At this meeting, Parents reiterated their request for a separate “placement meeting” and were told that they needed to first receive a proposed IEP and could request such a meeting on the response page. (P-F)
27. On May 31, 2017, Nashoba issued an IEP covering May 24, 2017 to May 23, 2018. The N-1 Form accompanying the IEP reported Parents’ had requested that the Team reconvene to discuss an out of district placement for Student and to invite representatives from Minuteman to the meeting. According to the N-1, Nashoba agreed to investigate this request. Parents also stated their wish to have Student work in a bakery setting every school day. The N-1 stated that “...the district has vocational settings that include culinary options (e.g., [] Corporation cafeteria, Meals on Wheels), the district has not been able to secure a specific vocational site at a bakery. Cooking and baking continue to be part of the programming within the NRHS Transitions program and the program continues to focus on employment skills...[with] a significant emphasis...on interpersonal relationships...as this area has been particularly challenging for [Student].” (S-4)
28. In the IEP itself, the statement of “Parent and/or Student Concerns” stated that Parents “expressed concerns regarding her behavior which they feel is regressing. They feel this is due to her being unhappy in her current programming as they report she is bored and doesn’t feel that she is making progress in achieving her goals.” The IEP contained updated goals in the areas of “Communication,” “Vocational,” “Counseling,” and “Independent Living.” Benchmarks for the Vocational goal included increasing consistency of work and compliance “across preferred and non-preferred staff and co-workers,” listening to entire instructions before beginning tasks, writing and editing business letters, working on preparations to take the ServSafe Examination,⁷ and maintaining high quality work and employee interactions while staff proximity decreases, and developing a business plan. (S-5)
29. Counseling benchmarks included confining Student’s expression of frustration to appropriate times and places, identifying and discussing concerns affecting her job performance, and discussing her emotional state with her counselor. Independent Living benchmarks included improving Student’s neatness and organization of her cooking space, increasing her finance skills such as budgeting, accurately

⁷According to School witnesses, individuals seeking to work in food preparation occupations increase their employment opportunities if they receive certification in the ServSafe program, which is written instruction and tests regarding food-related sanitation and hygiene. Since beginning at Transitions, Student has been working on ServSafe by studying the instruction manual and taking practice tests, with the support of Transitions staff members. (Student, Lance, Redmond)

estimating the time required for cooking tasks, increasing personal safety skills, self-advocating for accommodations, and improving emotional self-regulation. The service delivery grid on the IEP consisted of 450 minutes per cycle of “academic/social skills” in Grid B, with the remainder of services in Grid C. The TPF contained general statements about the steps required of Transitions personnel, Student and Parents to support Student’s progress towards her post-transition goals.

30. In an email to Ms. Neylon dated June 1, 2017, Parents once again requested a placement meeting and also stated that they planned to request a hearing at the BSEA on June 2, 2017. In a responsive email on the same date, Ms. Neylon stated that since Parents had requested a hearing, Nashoba “would be discussing any rejected portions of the IEP or rejected placement with a hearing officer.” (P-F)
31. On June 7, 2017 Parents sent Ms. Neylon an email in which they rejected the proposed IEP and placement, requested a placement meeting within 10 days, and reported that they would be delivering the completed IEP response forms to the School on the following day. (P-F) On June 8, 2017, Parents delivered the completed response forms, which indicated that they had rejected the proposed IEP, refused the proposed placement and sought a meeting to discuss the rejected items. (S-5, P-F)
32. In a responsive email dated June 8, 2017, Team Chair Anne Neylon stated that Nashoba had received the rejection via email of June 7, 2017, but because the delivered paper documents were at Nashoba Regional High School, and had not yet been delivered to the administrative offices, the District deemed itself “not in receipt of the rejected documents at this time, and regulations require that the district reconvene within 10 school days, we would not be able to reconvene the Team prior to the end of the school year.” (P-F) No further Team meetings took place at the end of the 2016-2017 school year.
33. A quarterly progress report issued on June 20, 2017 indicated that Student had made some progress in her work site independence and behavior but was still making inappropriate comments, in a loud voice, to her job coach or her employer at the corporate cafeteria, her least favorite job site. She was performing her actual tasks mostly correctly and independently. The report reflected slow progress in most of her counseling, adaptive behavior, and independent living objectives. (S-25)

34. Student participated in Nashoba's ESY services during summer 2017, which included academic and leisure activities, visits to potential work sites through Best Buddies, and speech/language therapy focusing on conversational and pragmatic skills. (S-24)
35. Student attended the Transitions Program for the 2017-2018 school year and summer of 2018. She attended most of the same job site placements as she had attended in the prior two school years. Progress reports issued in November 2017 and in January, April and June 2018 indicated that Student continued slow, steady progress in listed benchmarks, but still struggled with "soft skills" such as interpersonal relationships. (Redmond, S-20, 21, 23).
36. In a letter dated May 2, 2018 to Nashoba's Director of Pupil Personnel Services, Joan DeAngelis, Parents rejected Student's "continued placement at the Nashoba Regional High School and District." The letter also requested a "meeting to discuss [Student's] placement at the LABBB Educational Collaborative and/or the Nashoba Learning Group⁸ within ten days of this date. During this time, we demand that Nashoba grant permission and/or authorization for [Student] and her parents to view these alternative learning collaboratives." The letter went on to suggest scheduling the placement meeting jointly with the previously-scheduled annual review meeting on May 9, 2017. (P-H)
37. On May 9, 2018, the Team convened for Student's annual review as referred to above. On May 15, 2018, Nashoba issued an IEP covering May 9, 2018 to May 8, 2019. This IEP generally continued the goals and benchmarks from the prior IEP and also continued her placement in the Transitions Program. For the most part, Student continued in the same in-school activities and job-site placements in which she had been involved for the prior two school years. (S-1, S-2) The record does not indicate if and when Parents responded to the proposed IEP and placement; however, they filed the hearing request in the instant case, which contested the appropriateness of that IEP, on June 21, 2018.
38. On September 14, 2018, which was the second day of the hearing in this matter, Nashoba offered to refer Student to the LABBB Collaborative program in an effort to settle this matter. Subsequently, Nashoba completed the referral process to LABBB, and Student and Parents met with James Kelly, Director of the LABBB High School program. (Kelly) After meeting with Student and Parents as well as reviewing referral materials and speaking with Ms. DeAngelis and Ms.

⁸There is no evidence that Parents pursued this referral.

Neylon, Mr. Kelly determined that the LABBB program housed in Minuteman would not be a good “social fit” for Student because the potential peers were younger, had social-behavioral issues, and were all male. On the other hand, Mr. Kelly informed Parents and Nashoba that a different LABBB program, consisting of academic weeks in LABBB classrooms at Lexington High School alternating with shop weeks in the LABBB program at Minuteman would be appropriate for Student. LABBB accepted Student into this program. Ultimately, however, the parties were not able to agree on settlement terms, Student did not enroll in LABBB, and the hearing resumed on November 28, 2018. (DeAngelis, BSEA administrative record).

39. In or about November 2018, the School sought consent to conduct Student’s three-year re-evaluation. There is no evidence on the record as to whether Parents consented to the re-evaluation or whether it has taken place.

PROGRAM PROVIDED BY THE SCHOOL

40. The Transitions Program, or “Transitions,” housed within Nashoba Regional High School, is designed to prepare young adults aged approximately 18-21 with post-high school instruction and community experiences, including vocational experiences on various job sites, to increase their ability to obtain and keep employment, as well as to function independently within the community. The program is not designed to prepare students to enter particular trades; rather, its purpose is to teach skills that can be applied to any occupation, as well as skills needed to increase independence in other aspects of adult life. Programming is highly individualized, and tied to the goals of each student’s IEP. (DeAngelis, Neylon)
41. Students served by Transitions usually have an autism diagnosis as well as some degree of cognitive impairment, and may have secondary disabilities such as ADHD. At the time of the hearing, Transitions was serving approximately seven students between the ages of 18 and 21, most or all of whom were on the autism spectrum. (DeAngelis)
42. Transitions program components include a classroom staffed by a special education teacher, three paraprofessionals, and related services staff including a Board Certified Behavior Analyst (BCBA), speech-language, occupational, and physical therapists, and counselors. These and other staff members meet weekly to

consult with each other regarding each student's progress. Within the Transitions classroom, students participate in functional academics (including, for example, personal finances) and independent living skills (including budgeting, cooking, and shopping), driven by their IEPs. Students leave the classroom for community experiences such as shopping, as well as for recreational activities. Students also have "unified" activities within Nashoba Regional High School, including music, sports, band, physical education, and cooking/crafts. With respect to vocational experiences, the Program has approximately 15 job sites with cooperating businesses and organizations. Students may have two or three job placements at one time, and may rotate through several different placements during the course of the school year. Transitions staff members serve as job coaches, and will provide students with a greater or lesser amount of support depending on their needs. A primary goal of the work component of the program is to instruct students in skills that can be generalized to any employment setting, such as punctuality, independence getting to and from work as well as on the job, task completion, following instructions, teamwork, accepting feedback, appropriate interactions with co-workers, supervisors, and customers, and the like. Students are supported by Transitions staff on the job to a greater or lesser degree depending on their needs and performance. For most students, the goal is to fade staff support as students become more independent. (DeAngelis, Redmond)

43. Student's current lead teacher, Stephanie Redmond, testified about Student's current routine, during the 2018-2019 school year. According to Ms. Redmond, on a typical day, Student enters school at 7:40 AM. On approximately two mornings per week, she goes directly to her job with the cafeteria snack vendor, and on the other mornings she goes to one of her "unified" classes (chorus, gym, or health) or to the Transitions classroom to work on IEP objectives, including, for example, "self-disclosure," (i.e. understanding her disability and self-advocacy for accommodations), organization and planning (preparing a recipe following all directions), and preparing for the ServSafe examination. (Redmond)

44. At approximately 9:15 AM, Student and her classmates leave for their first job sites of the day, returning at about 11:15 AM. As of the hearing dates, there were three morning job sites, through which the students, including Student, cycled: the corporate cafeteria and the two assisted living facilities. (Redmond)

45. Student attends all three job sites with one to three classmates and is supervised by Ms. Redmond and classroom staff. She and her classmates work on teams. Student's tasks at the cafeteria include preparing food to be cooked later that day or week. For example, Student prepares pizza for cooking by retrieving the correct pan, preparing it with sprays, placing cornmeal and prepared crust on pans,

and wrapping the pan for later baking. She may also place other items on trays such as baked goods. At both assisted living facilities, Student prepares dining rooms by setting tables in a prescribed manner. In one facility, Student and her team also clear breakfast tables and clean the dining room. (Redmond, Student)

46. Ms. Redmond testified that at all three morning worksites Student's demonstrated strengths included self-motivation and initiation for preferred tasks (such as those involving food), completing assigned tasks on a list, and friendliness with work site staff. Challenges include interpersonal skills in large groups, such as decision-making about dividing tasks among team members and flexibility with co-workers. Student has on occasion refused to do non-preferred tasks. Usually, Student can solve these problems with gentle prompts to do so. (Redmond)
47. Student and her classmates return to the high school after morning job sites and attend either a Unified class (such as gym or chorus) or a group lesson in the Transitions classroom. One such group activity is technology instruction, which is an area of strength for Student. Student and her classmates then proceed to lunch in the high school cafeteria. Depending on the day, afternoon activities might include shopping for in-class cooking projects, Friday "community experience" (such as a trip to a bank, bowling alley, or restaurant), and, afternoon job sites. Student's current afternoon job sites are the elementary school classroom referred to above and the cleaning job at the local movie theatre. (Redmond, Student)
48. Since her first year in Transitions, Student has done weekly cooking and baking projects in the small kitchen located in the Transitions classroom, and has developed a small baking business where she sells baked goods to high school employees before several holidays during the school year. Pursuant to IEP benchmarks, with the assistance of classroom teachers and assistants, Student has worked on the various components of this activity, including finding recipes, budgeting for and buying ingredients, following recipes, taking holiday orders from staff, producing, packaging, and distributing completed orders, and collecting payment. (Student, Benjamin, Redmond, Lance). Between her first and second years in Transitions, Student, with staff help, applied for and received a grant to purchase kitchen equipment to be used in the Transitions kitchen for this baking project. (Lance)
49. According to Ms. Redmond, Student has made progress in her various IEP benchmarks during the 2018-2019 school year. For example, Student has updated her employment cover letter using online tools, has continued to progress

through the ServSafe manual, has progressed in updating her recipe book, and has advanced her skills in budgeting, computer use, and “self-disclosure” of her disability-related needs. As of December 2018, Student still made comments if asked to do something non-preferred, and still required some prompting regarding problem-solving, decision-making, and appropriate communication. Ms. Redmond stated that Transitions had a 1-4 scale for rating a student’s level of independence on job sites, with “1” being the least independent and “4” being fully independent. Ms. Redmond testified that Student’s independence level fell at “2” or “3.” (Redmond)

50. Student has attended the corporate cafeteria, assisted living, snack vendor, and elementary classroom sites for her entire tenure at Transitions. Student’s interests in food preparation were factored into the job site selections. (Lance, Redmond, Benjamin, Clark, DeAngelis, Student, Mother)

51. Student has received individual and small group speech-language services approximately twice weekly during all three school years in Transitions from Kristin Diggis, who has been Student’s speech-language therapist since ninth grade. Ms. Diggis testified that during high school, she worked with Student on social communication, primarily within the school building. She has continued to work with Student on social communication skills in Transitions, providing services both within the classroom and on job sites, where she assists Student and others in applying newly-learned skills, which include perspective-taking, understanding workplace hierarchies, accepting feedback and getting along with supervisors and co-workers. Ms. Diggis testified that Student has made steady progress in these areas during 2017-2018 and 2018-2019, but continues to need work on reacting appropriately to being corrected or asked to do a task she does not want to do in the moment. When asked whether Student reacts inappropriately (by “backtalk” or angrily leaving the area) because she is in a job setting that is not challenging or interesting, Ms. Diggis responded that she has seen Student respond inappropriately in both preferred and non-preferred settings. (Diggis)

52. Lauren Schnare-Mahoney, a Nashoba school psychologist who conducted Student’s psychological evaluation in 2015, and who also has been involved with Student during all of her time in Transitions via the weekly staff consultation meetings, testified that she believed that Student’s job placements were necessary and appropriate for her to learn and generalize “soft” social skills such as accepting feedback and handling frustration. (Schnare-Mahoney) Similar testimony was provided by Katherine Gianetti, a special education teacher who is on the Transitions consultation team and who also worked with Student during her

summer ESY programming in 2017 and 2018. Ms. Gianetti testified that Student has made progress in her ability to accept feedback, but still needs work in this area. Student also has progressed in her ability to accept her autism diagnosis with reduced pessimism. She has seen the greatest growth in Student's baking skills. (Gianetti)

53. Parents called as witnesses two former Nashoba employees who had worked with Student in Transitions, Paulette Clark and Connie Benjamin. Ms. Clark is a BCBA in private practice who was employed by Nashoba from 2004 to March 2018. Ms. Clark had worked directly with Student in Transitions from September 2017 until she left the district in March 2018, but had known Student since third grade from other positions she had held within NRSD. Ms. Clark testified that while she was working with Student, she came to believe that Student was not being placed in appropriate job sites that focused on her areas of interest, cooking and baking. Rather, Student was cycling through the same job placements for years at a time, because Nashoba was dedicating too few staff members to job site development and supervision. Ms. Clark stated that because of Nashoba's staffing decisions, Student had few opportunities to develop her strong interests and skills in cooking and baking. Ms. Clark stated that she had communicated her concerns to Nashoba's special education administrators on multiple occasions, to no avail.⁹ (Clark)

54. Connie Benjamin had worked for Nashoba as a special education paraprofessional from approximately 2010 or 2011 until approximately December 2017. She holds a bachelor's degree, but holds no educational degrees or certifications. (Benjamin)

55. In her capacity as a special education classroom paraprofessional, Ms. Benjamin worked with Student and her classmates in the Life Skills program for three years, corresponding to Student's tenth, eleventh and twelfth grade years. She worked in Transitions during portions of Student's first and second years in that program, supporting all of the students in their classroom and job site activities. Ms. Benjamin did not attend Team meetings or weekly staff consultation meetings, but was familiar with each student's IEP. During the time Ms. Benjamin worked in Transitions, the program served between nine and eleven students, and was staffed by a lead teacher and a four paraprofessionals. (Benjamin)

⁹Ms. Clark's resignation from Nashoba in March 2018 was under less than amicable circumstances. (Clark, DeAngelis)

56. Ms. Benjamin testified that Student informed her daily that she wanted to be a baker and a chef when she finished school, that she frequently complained about her various job placements, but generally complied with her responsibilities. Ms. Benjamin also testified that Student struggled to get along with some peers and supervisors, and needed to make progress in this area. Ms. Benjamin did not feel that Student got sufficient opportunities to bake, and expressed this opinion to Ms. Clark as well as to Student's classroom teacher; on the other hand, she felt that Student learned important life skills from all of her job placements, including tolerance of other people, persistence with non-preferred tasks, and the like. Overall, Ms. Benjamin had no opinion as to whether Transitions, taken as a whole, was appropriate for Student. (Benjamin)
57. For part of the time that Student was in Transitions, she had a classmate who had frequent, sometimes violent, outbursts. When these occurred, Student and other students generally were directed out of the room until the situation came under control. Student found these incidents upsetting, and worried about the safety of staff members who had been injured on occasion. There also was a male peer in the classroom who would regularly disrobe in the bathroom adjacent to the classroom cooking area. Due to the peer's special needs, the bathroom door was kept open, and was visible to Student and others from the cooking area. The peer also exposed himself on a few occasions in the classroom. Ms. Benjamin testified that Student initially found this behavior unsettling, but quickly learned to disregard it and proceed with her own work. (Benjamin, Bell)
58. Student testified that she had been attending most of her job placements, performing essentially the same tasks, for the past three years. She testified that she felt she was learning some new skills in areas such as customer relations, but did not believe that the tasks she was given at job sites were helping advance her cooking or baking skills. (Student)

PROGRAM REQUESTED BY PARENTS

59. Parents have sought a referral from Nashoba to the LABBB Collaborative, which is a consortium of five member districts, created under MGL c. 40, §40 to serve students with a wide variety of disabilities. LABBB operates multiple programs for students at the elementary, middle, high school and transition levels, all of which operate as self-contained programs located within member districts' public school buildings. All staff are hired and supervised by LABBB. LABBB may accept a student who has received a certificate of high school completion if the student has been referred by a sending district and LABBB is able to imple-

ment the student's IEP. Nashoba is not a LABBB member district, but LABBB does accept referrals from non-member districts, and in fact, serves students from a total of 77 districts. (Barbieri)

60. LABBB runs a substantially separate classroom within Minuteman Regional Vocational Technical School for students with a range of disabilities including autism and cognitive challenges. Students who attend the LABBB program at Minuteman typically follow the Minuteman schedule of alternating academic and shop weeks. Functional academics and related services are provided exclusively by LABBB staff. During shop weeks, LABBB students are fully integrated into the Minuteman shops, but LABBB may provide support personnel as needed. Additionally, depending on their IEPs, LABBB students may attend outside job placements during their academic weeks in addition to the in-house programming during their shop weeks. A comprehensive culinary arts program is one of the shops provided by Minuteman that is available to LABBB-Minuteman students. Most students who complete LABBB/Minuteman are placed in jobs after they graduate or otherwise finish school attendance. (Barbieri, Kelly)

61. LABBB does not provide interested parents with detailed information about its programs unless they have been referred by their home district, or at the very least, have received a letter from the district indicating that a parent is exploring LABBB. Patric Barbieri, LABBB's Executive Director testified that "[w]hen parents call, I typically talk to them. And if they ask questions about the program, I answer it in general terms. It can never be specific unless you have a referral...I always say to the parent what the protocol is for the Collaborative. You know, we work for the district, and we can only move forward if we receive a referral." (Testimony of Barbieri, Tr. Vol. I., pp. 77-78)

62. In September, 2018, as described in Paragraph 38, above, Nashoba sent a referral packet to LABBB on behalf of Student. James Kelly, who is LABBB's high school program director, met with Parents shortly thereafter. Based on the referral information and Parent interview, Mr. Kelly believed that LABBB could serve Student effectively. The following week, Student spent a day in the program, observed by staff on site at Minuteman. The staff who had observed Student reported that Student "would be able to access and do well within the culinary component of the program." LABBB staff came to believe, however, that Student would do better socially in a hybrid program, comprising a classroom located at Lexington High School that served students with profiles similar to Student's, combined with shops at Minuteman. Student would spend alternate weeks at each site. LABBB staff believed that the contemplated Lexington classroom would contain more female students and more socially compatible

peers than the Minuteman classroom, where the peers were predominantly male and more “street wise” than Student. The peer age range would be 14-18, and LABBB would apply for a DESE waiver of the 48-month age span restriction if Student were to attend. Under some circumstances, students can attend LABBB programming up until the age of 23. (Kelly)

63. At some time during the referral process, Joan DeAngelis and Anne Neylon met with Patric Barbieri, LABBB’s Executive Director. After meeting with Mr. Barbieri, they had concerns regarding the peer grouping, age range, and support staff qualifications relative to the proposed LABBB program. (DeAngelis)

64. At some time in late September or early October 2018, LABBB sent an acceptance packet to Nashoba. Subsequently, the attempted settlement that involved the LABBB referral failed to materialize and the process halted. (Kelly)

DISCUSSION

There is no dispute that Student is an individual with a disability who at all relevant times was eligible for special education and related services pursuant to the IDEA, 20 USC Section 1400, *et seq.*, and the Massachusetts special education statute, M.G.L. c. 71B (“Chapter 766”). Student was and is entitled, therefore, to a free appropriate public education (FAPE), that is, to a program and services that is “tailored to [her] unique needs and potential, and...designed to provide ‘effective results’ and ‘demonstrable improvement’ in the educational and personal skills identified as special needs.” 34 C.F.R. 300.300(3)(ii); *North Reading School Committee v. BSEA*, 480 F. Supp. 2d 489 (D. Mass. 2007); citing *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993).

While Student is not entitled to an educational program that maximizes her potential, she is entitled to one which is capable of providing not merely trivial benefit, but “meaningful” educational benefit. See *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (March 22, 2017); *Bd. of Education of the Hendrick Hudson Central School District v. Rowley*, 458 US 176, 201 (1982); *Town of Burlington v. Dept. of Education* 736 F.2d 773, 789 (1st Cir. 1984); *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2014). Whether educational benefit is “meaningful” must be determined in the context of a student’s potential to learn. *Rowley, supra*, at 202; *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F3d 18, 29 (1st Cir. 2008); *D.B. v. Esposito, supra*. As the U.S. Supreme Court recently held in *Andrew F.* at 69 IDELR 174, a disabled child’s goals should be “appropriately ambitious in light of [his or her] circumstances.” *Id.* Finally, eligible children must be educated in the least restrictive environment (LRE) consistent with an appropriate program; that is, students should be placed in more restrictive environments, such as private day or residential schools, only when the nature

or severity of the child's disability is such that the child cannot receive FAPE in a less restrictive setting. On the other hand, the opportunity to be educated with non-disabled students does not cure a program that otherwise is inappropriate. *School Committee of Town of Burlington v. Dept. of Education of Mass.*, 471 U.S. 359 (1985).

FAPE entails both a substantive component, as described above, and procedural protections for students with disabilities and their parents. These protections are intended to support the parent-school collaboration envisioned by federal and state special education statutes by ensuring that parents have full and meaningful opportunities to participate in the Team process. See e.g., *Rowley*, 458 U.S. 405-406 (1982); *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990); *Maine School Admin. Dist. No. 35 v. Mr. R.*, 32 F.3d 9, 12 (1st Cir. 2003). See also: *In Re Framingham Public Schools and Quin*, 22 MSER 137 at 142 (Reichbach, 2016), and cases cited therein.

Notwithstanding the above, it is well settled that although parents (and adult students) are Team members, entitled to fully participate in the IEP development process and to have their views considered, they are not entitled to dictate the terms of an IEP. On the contrary, a school is not required to negotiate with parents to reach a result with which parents agree if by doing so they propose an IEP that the school believes is not appropriate for the child. Rather, schools are obligated to propose what they believe to be FAPE in the LRE, whether or not the parents are in agreement. *In Re Natick Public Schools*, 17 MSER 55, 66 (Crane, 2011). Moreover, within the basic framework of an IEP, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities. *M. v. Falmouth School District*, 847 F.3d 19 (1st Cir. 2017).

A hearing officer may order compensatory relief to make a student whole in situations where procedural violations by the school district have deprived the student of FAPE or deprived parents of meaningful participation in development of a student's IEP, as discussed, above, but procedural violations that are technical or *de minimis* are not compensable. Compensatory relief generally is equitable in nature, and the hearing officer may exercise discretion in order to fashion such relief. See *CG ex rel. AS v. Five Towns Community School District*, 513 F.3d 279, 290 (1st Cir. 2008); *Lenn, supra*, 998 F.2d 1083 (1st Cir. 1993).

The instant case involves the adequacy and appropriateness of post-high school transitional services that were offered and provided to Student, who had received a certificate of completion upon finishing twelfth grade in Nashoba Regional High School's life skills program. The parties do not dispute that because of Student's disability, she requires additional services, until she reaches the age of 22. In this context, whether Nashoba has provided Student a FAPE during the relevant time period depends on whether it followed the process set forth in the pertinent statutory and regulatory provisions for transition services as well as whether those services were reasonably calculated to meet Student's unique needs.

The obligation to provide transition planning and services to eligible students who require them is rooted in the IDEA's requirement to prepare students with disabilities for

“further education, employment and independent living.” 20 USC 1400(d)(1)(A); *Mr. I v. Maine School Administrative District No. 55*, 480 F.3d 1, 12 (1st Cir. 2007).

The IDEA defines transition services as follows at 20 USC§1401(34):

The term “transition services” means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate...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... strengths, preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and...acquisition of daily living skills and functional vocational evaluation.

The corresponding federal regulation, 34 CFR §300.43, tracks much of the statutory language, elaborating that transition services are a “coordinated set of activities” that is “designed to be within a results-oriented process...” 34 CFR §300.43(a). The regulation further states that transition services “may be special education, if provided as specially designed instruction, or a related service...” 34 CFR §300.43(b).¹⁰

The Massachusetts Department of Elementary and Secondary Education (DESE) has issued several Technical Assistance Advisory memoranda to guide school districts, parents, and the public on implementation of the transition services mandate. The most recent such Advisory, SPED-2017-1: *Characteristics of High Quality Secondary Transition Services*, was issued in July 2016 and expands upon the definitions of transition services contained in the federal statutory and regulatory provisions referred to above. For example, the Advisory states that school districts should “provide a sufficient range and continuum of coordinated transition services to meet the full range of [14 to 22-year-old] students’ needs.” In particular, for students aged 18 to 22, districts should have the capacity to teach skills necessary for the following post-school activities: postsecondary education and/or training, seeking, obtaining and maintaining employment, independent living, accessing community services, and self-managing medical and personal needs.” *Id.*

¹⁰The Massachusetts special education statute at MGL c. 71B, §1 requires school districts to begin transition planning according to the standards set by the IDEA no later than the age of 14.

The Advisory goes on to state that “coordinated” transition services as described in the IDEA and federal regulations are those which proceed “in a well-thought-out-, stepwise, developmental progression,” and that progress be tracked from year to year. Additionally, services should be individualized, encompassing a variety of experiences that reflect an individual student’s unique needs, strengths, preferences, interests, and goals. Districts are encouraged to create and customize programming to adapt to individual needs. Finally, in ensuring that services are “results-oriented,” districts should seek to encourage student independence, support generalization of skills, and promote the principle of least restrictive environment (LRE). *Id.*

In a due process proceeding to determine whether a school district has offered or provided FAPE to an eligible student, the burden of proof is on the party seeking to challenge the status quo. *Schaffer v. Weast*, 546 U.S. 49, 44 (2005). In the instant case, as the moving party challenging the pertinent IEPs and placement provided by Nashoba, Parents bear this burden. That is, in order to prevail, Parents must prove that the IEP and placement at Nashoba’s Transitions Program from May 2017 forward was inappropriate, and cannot be modified to be made appropriate going forward. If Parents meet that burden, they then must show that the proposed LABBB Collaborative program is appropriate for Student, such that she is entitled to placement there.

Finally, since Parents seek compensatory services, they must prove that Nashoba committed procedural violations which deprived Student of FAPE and/or deprived Parents of an opportunity to participate in the IEP process. To determine whether Parents are entitled to any of the relief which they seek, I will examine each claim—for prospective relief and for compensatory services---in turn.

To analyze the appropriateness of Nashoba’s program, I must first examine the pertinent rejected IEPs. It is clear from the record that Parents are dissatisfied with the Transitions placement, but have not raised specific objections to the goals and benchmarks of the rejected IEPs; therefore, I will briefly examine the goals and benchmarks, but primarily focus on the appropriateness of the placement.

As stated above, Parents had accepted Nashoba’s IEPs and placement proposals issued prior to May 31, 2017, when Nashoba proposed an IEP and placement for May 24, 2017 to May 23, 2018, which Parents rejected on June 7 and 8, 2017. (Nothing in the record indicates a claim that Nashoba failed to deliver services under the last accepted “stay put” IEP of May 2016 to May 2017).

The goals and benchmarks in the rejected IEP addressed Student’s areas of need in social communication, relationships with co-workers, work completion, following directions, coping strategies, and job-related independence. The IEP benchmarks were tied to many explicit employment-related functions, including those related to Student’s desired career in the culinary industry. For example, the IEP contained benchmarks in skills such as following recipes and passing the ServSafe examination. The subsequent IEP, issued in May 2018, basically continued the benchmarks of its predecessor, with some updates to reflect Student’s progress. For both IEPs, the goals and benchmarks

were consistent with Nashoba's evaluations, addressed Student's documented needs, and addressed her transition goals. According to progress report and witness testimony, Student made slow but measurable progress acquiring the "soft skills" identified in the IEPs. (See, for example, testimony of Redmond.)

Further, the IEPs conformed with the statutory and regulatory requirements for transition services, as interpreted by the DESE *Advisory* referred to above. Nashoba has offered and provided services that were coordinated, and "results oriented," that is, designed to teach Student skills that she needs to move from school to adult life. Student's "strengths, preferences and interests," *i.e.*, in employment as a baker, were considered when planning for Student, and, in fact, were the vehicle for teaching other skills. The "needs" that the services have addressed have included the lagging communication, interpersonal, and organizational skills that undisputedly stand as barriers to increased employability and independence for Student. Student has participated in a broad range of "instruction, related services, and community experiences" that have taught her usable skills, and she has made demonstrable progress. For example, as discussed above, Student has improved her interpersonal skills, self-regulation, and social communication, has completed much of the preparation for the ServSave examination, has acquired computer skills, increased her cooking repertoire, and operated a small holiday baking business within the high school.

Parents presented no evaluations or other expert opinion stating that the goals and benchmarks were inappropriate. In fact, Parents did not have any objection to the substance of the IEPs (other than the implicit objection that they did not contain goals and objectives in baking). Rather, Parents objected to the Transitions placement on the grounds that it was and is not equipped to advance Student towards her career goals in professional baking.

Specifically, Parents argued, and the record reflects, that while Nashoba has been able to secure approximately 15 job sites for its students, most of Student's job sites remained unchanged for her entire tenure at Transitions. For most of her time in Transitions, Student worked at the high school snack vendor, corporate cafeteria, two assisted living centers, and a local elementary school, supplemented by stints cleaning a theatre lobby and helping deliver Meals on Wheels. The record shows that with the exception of the corporate cafeteria, these job placements were designed to teach "soft skills" such as teamwork, following instructions, and the like, at most had a tangential relationship with the food industry, and certainly did not give Student direct practice with cooking and baking. At the cafeteria job, Student was and is involved in tasks related to food preparation, but has not done actual cooking or baking, nor will she at that site. Moreover, it appears that over the nearly three years Student has spent at the cafeteria, there has been very little increase in the difficulty level of the food preparation work to which she has been assigned

In fact, Student's only actual cooking and baking experience has taken place within the kitchen area of the Transitions classroom. While the Transitions kitchen does not replicate a commercial facility, Student has used it to work on a variety of culinary

projects of increasing complexity, with increasing independence. Among other things, Student has established a small “business” selling holiday baked goods to Nashoba staff, and in the process has acquired skills in advertising, choosing recipes, taking orders, budgeting for supplies, pricing, producing, packaging, and distributing her product baking. Other than this experience within the Transitions classroom, Student’s opportunities to cook and bake have been arranged by Parents outside of the school setting, at the culinary school, adult education courses, a short-lived bakery job, and, most recently, at her job in the supermarket bakery.

Student has been frustrated by some of her job placements at school for various reasons, including the relative lack of opportunity to work on commercial-scale cooking and baking skills. Parents object to what they see as a lack of focused, progressive opportunities for Student to progress towards her desired occupation. Nashoba has countered that Transitions is not and is not required to be a vocational school, that its obligation to Student is not to teach her a trade, but to help her acquire and generalize skills that are applicable in any job setting, and that Nashoba has used Student’s interest in cooking and baking as a vehicle to teach these skills.

At issue here is not whether the Nashoba’s IEP and the Transitions program are Student’s and Parents’ preferred program, or whether a different program might be a better fit for Student’s needs and interests. *Andrew F.*; *Lenn v. Portland*; *D.B. v. Esposito*, *supra*. Rather, what I must determine is whether Parents have met their burden of proving, by a preponderance of the evidence, that the program delivered by Nashoba is inappropriate. After careful consideration of the record, I find that Parents have not met this burden.¹¹

Parents’ and Student’s frustration is understandable. Under ideal circumstances, Student would have had more opportunities for instruction and experience in cooking and baking. The law does not require Nashoba to provide this ideal experience, however. Taken as a whole, and given the absence of contrary evidence, Nashoba’s IEP and placement meet the requirements of the IDEA, including the requirements for transition services, as quoted extensively above and as interpreted by *Andrew F.*, *supra*.

Because the IEPs and placement for the 2017-2018 and 2018-2019 school years were and are appropriate for the reasons stated above, I do not need to further evaluate the appropriateness of the LABBB Collaborative program for Student.

Claim for Compensatory Services

Patric Barbieri, the LABBB Collaborative’s executive director, testified that LABBB “works for the districts,” and that as such, LABBB will provide interested parents only with general information about its programs unless a home district either makes a formal referral or provides some type of permission to visit. Beginning in the fall of 2016, Parents repeatedly asked Nashoba to grant such permission, even without a

¹¹Parents’ concern about the behavior of certain peers in the program is reasonable, but the record shows that Nashoba addressed this behavior, which did not deprive Student of a FAPE.

formal referral, and Nashoba refused their request, stating that if the district's Team members felt that Nashoba's IEP and/or placement were appropriate, it would not facilitate Parents' exploration of alternatives. Nashoba takes the position that if Parents disagreed with its decision not to refer Student to LABBB or take other action to allow them to investigate it, that Parents' recourse was rejection of the proposed IEP and invoking due process.

Neither Nashoba nor LABBB cited any statutory or regulatory authority regarding restriction of visits to LABBB. A search of the relevant statutes and regulations governing educational collaboratives, MGL c. 41, §43 and 603 CMR 50.00, as well as the only guidance from DESE, *Responsibilities of School Committees and Charter School Boards as Member Districts of an Educational Collaborative* (August 2015), yields no information on point. Based on the testimony of Patric Barbieri, Anne Neylon, and Joan DeAngelis, there is an apparently unwritten policy or practice whereby LABBB does not allow any parent to visit its programs as potential placements for his or her child without a referral or other permission from the home district.

Parents argue that Nashoba's refusal to authorize a visit to LABBB impeded their ability to meaningfully participate in the Team process because it unilaterally foreclosed their ability to explore a range of possible placements and bring information to the Team. If Parents were correct, then Nashoba might have been liable for compensatory services even without a showing of substantive harm.¹² For reasons discussed below, however, compensatory relief is not available in the instant case.

The IDEA at 20 USC §1414(d)(1)(B)(i) and its implementing regulations at 34 CFR §300.322 set forth necessary elements of parental participation. Specifically, schools must take steps to ensure that parents are present at Team meetings or "are afforded the opportunity to participate" by notifying parents in advance of meetings, scheduling at a mutually agreeable time and place, notifying parents who will attend the meeting, and informing them that the Team will consider post-secondary goals if the student is at least 16 years old. 34 CFR §300.322(a)-(b).¹³ The regulations are geared toward ensuring that parents are able to attend meetings and are informed of who else will be there, but do not address what the Team must discuss, or what information must be made available to parents. Similarly, federal regulations at 34 CFR §300.324(a) through (d) entitled "Development, review and revision of IEP," require school districts to consider the child's strengths, parental concerns, evaluation results, needs of the child, and "special factors" such as behavioral issues. While the regulation requires IEP Teams to consider "information about the child provided to, or by, the parents," *Id.* at §300.324(b)(ii)(C), it does not seem to require the Team to enable the parents to seek information about alternative placements. State regulations at 603 CMR 28.06

¹²Procedural errors may constitute a deprivation of FAPE "only if the procedural inadequacies... (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a [FAPE]." 20 USC §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); *Roland M. v. Concord School C'tee*, 910 F.2d at 994 (1st Cir. 1990); *Honig v. Doe*, 484 US 305, 311 (1998). See also *Lexington Public Schools and Curtis*, 23 MSER 111, 125 (Reichbach, 2017)

¹³The remainder of the regulation addresses issues such as documenting efforts to contact parents, arranging for interpreters, etc. 34 CFR §300.322(c)-(f).

(placement) and 28.07 (parental involvement) are similarly silent on this issue. Thus, the applicable statutes and regulations do not appear to require Nashoba to enable Parents to visit LABBB as a possible placement for Student, or to require LABBB to allow Parents to investigate its programs.

There is no clear statutory or regulatory basis for an award of compensatory services in this case. Further, there is no guidance from DESE on the issue discussed above. Because such guidance may be useful in the future, this Decision will be forwarded to DESE for that purpose.

Evaluations

Student's most recent school-based re-evaluation took place in the fall of 2015. (Dr. Robbins conducted an observation in 2017, but did not formally evaluate Student). The record is unclear as to the status of the re-evaluation that was due in the fall of 2018. The only formal assessment of Student's vocational and independent living skills in the record is the AFLS, administered in 2015 as part of the re-evaluation. An appropriate remedy in this case is an order for a comprehensive, updated transition evaluation of Student with an emphasis on assessment of her vocational skills, including her skills and instructional needs in her chosen field of cooking and baking. In light of the longstanding dispute among the current parties, and Student's imminent transition to adult life, it is suggested that the evaluation be conducted by a mutually-agreed out-of-district entity. While I am unable to award compensatory service to Student, such an evaluation will provide her with information to be used for her next step, when her special education eligibility terminates. In light of Student's impending twenty-second birthday, this evaluation process must begin immediately.

CONCLUSION AND ORDER

Based on the foregoing, I conclude Parents did not meet their burden of demonstrating that the IEPs and placement provided by Nashoba were inappropriate. I find further that I cannot conclude that Nashoba and LABBB committed procedural violations warranting an award of compensatory services; however, the unwritten policy as discussed above should be referred to the Massachusetts Department of Elementary and Secondary Education (DESE) for future clarification and guidance.

It is ORDERED, therefore, that Nashoba, in collaboration with Parents, shall arrange for a comprehensive transitional evaluation of Student, which shall include a thorough assessment of Student's current vocational skills, needs, and interests, particularly in her preferred field of cooking and baking. Such evaluation shall commence immediately upon receipt of this Decision.

By the Hearing Officer,

Dated: May 17, 2019

Sara Berman

