

management of the Vocational Rehabilitation Program. Appellant, Gianna Tucker (Tucker), is a disabled individual,¹ who permanently resides in Narragansett, Rhode Island. (Appellee's Answer (Answer) Ex. 30 at 13.) After graduating from Narragansett High School in 2012, she was found eligible for the Vocational Rehabilitation Program. *Id.* at 3, 9. Tucker listed Occupational Therapy as her employment goal for her Individualized Plan for Employment (IPE). This goal required a master's degree. (Answer Ex. 29 at 10.)

From 2012 until 2016, Tucker attended Saint Mary's University and attained a Bachelor's Degree in psychology and biology. (Answer Ex. 30 at 4.) During Tucker's enrollment at Saint Mary's University, she received a trustee scholarship in the amount of \$72,000 and a training grant from ORS in the amount of \$46,798. *Id.* Additionally, during this time, Tucker received \$3482 for assistive technology. *Id.*

In January of 2016, Tucker met with her ORS Counselor, Teresa O'Brien (Counselor), to discuss the continuation of her IPE in order to obtain a master's degree in Occupational Therapy. *Id.* During this meeting, Tucker indicated that she applied to eight post-secondary schools and was awaiting acceptance decisions. *Id.* There was no master's program for Occupational Therapy within Rhode Island that Tucker was eligible for; thus, Tucker was required to apply to out-of-state schools. *Id.* at 14. Her Counselor advised Tucker that the ORS policy for post-secondary training grants funds up to a baseline amount, which is set at the amount of the University of Rhode Island graduate tuition. *Id.* at 4. Additionally, the Counselor informed Tucker that in order for the IPE to develop, Tucker must receive an acceptance into a school, and ORS must receive the letter of acceptance, information regarding scholarship grants, plans for working during the school year and the summer, and a copy of the student aid report from Free Application for Federal Student

¹ Her diagnoses are omitted to protect her privacy.

Aid (FAFSA). *Id.* Tucker acknowledged the required steps and stated that she would provide ORS with the information. *Id.* Nonetheless, ORS agreed to develop her IPE with the goal of a master's degree in Occupational Therapy based upon Tucker's undergraduate GPA of 3.7 and her demonstrated ability to handle challenging science classes; furthermore, this goal was also supported by the labor market's expected salary and job growth rate. *Id.*

In March of 2016, Tucker informed her Counselor that she selected Tufts University and was visiting Boston to search for apartments while she attended school. *Id.* at 4-5, Ex. 6 at 2. A meeting was held on March 28, 2016, during which Tucker informed her Counselor that she had independently enrolled at Tufts University. (Answer Ex. 30 at 4-5, Ex. 6 at 2.) As a result of Tucker's decision, her Counselor was foreclosed from discussing the comparable benefits at various institutions, such as scholarships, grants, work study or part-time work at the various institutions that would aid with the funding. (Answer Ex. 30 at 5, 7, 36.)

In accordance with DHS, ORS Policy Manual Section 115.28, *Post-Secondary Education and Vocational Training Services* (ORS Policy Sec. 115.28), Tucker and Tufts University provided ORS with the required documentation for the purpose of completing the Training Grant Worksheet (ORS-29 form). (Answer Ex. 30 at 5, Ex. 6 at 2.) Based on the foregoing financial information received² and ORS Policy Sec. 115.28, ORS provided Tucker with a grant of \$13,362 for the 2016-

² Based on the Student Need Assessment/Release (ORS-28 form), Tufts University calculated the tuition and fees costs at \$49,892 and \$844, respectively. (Answer Ex. 13.) Moreover, books along with room and board amounted to \$800 and \$18,000, respectively. *Id.* Therefore, Tufts University calculated total direct expenses at \$69,536 and the net remaining need after student loans and grants at \$33,536. *Id.* After ORS received the foregoing information, the agency completed the ORS-29 form. (Answer Ex. 30 at 5.) The ORS-29 form (Training Grant Worksheet) indicated that direct expenses included the following costs: tuition amounted to \$49,892, fees equated to \$844, and books and supplies were \$1000. (Answer Ex. 7.) Collectively, the direct expenses totaled \$51,736. *Id.* Additionally, ORS calculated that financial aid totaled \$36,000, and the unmet need was \$15,736.

2017 school year and \$1000 for books and supplies. *Id.* Additionally, ORS funded Tucker \$1193 for a refurbished MacBook in November of 2016. *Id.*

After Tucker received the ORS-29 form, she objected to the calculations and requested ORS to reevaluate and recalculate the grant. (Answer Ex. 30 at 5, Ex. 14.) ORS reevaluated the financial information from the ORS-28 form, the student aid report from FAFSA, the baseline amount, and the current ORS Policy Sec. 115.28. *Id.* After reviewing the pertinent materials, ORS contacted Tucker to notify her that the amount originally granted was correct. *Id.* The authorization for the fall 2016 semester was paid on August 22, 2016 in the amount of \$6681, which amounted to half of the annual training grant. *Id.*

On January 10, 2017, ORS received a letter from Tucker's legal counsel, Rhode Island Disability Law Center, requesting that ORS reevaluate Tucker's tuition as well as her room and board expenses. (Answer Ex. 30 at 5, Ex. 17.) ORS reviewed the amount that was granted on August 1, 2016 and found that it was consistent with ORS policy and baseline fee. However, ORS indicated in a letter dated January 19, 2017 that they would explore reimbursement options for Tucker's room rental once some documentation was received regarding the lease or rental agreement. (Answer Ex. 18.) After receiving the relevant information, ORS offered to fund Tucker for rental expenses of \$636 per month until the completion of her master's degree in Occupational Therapy. (Answer Ex. 20.) On February 24, 2017, Tucker accepted ORS's offer for rental assistance and requested that ORS fund rent retroactively as well. (Answer Ex. 21.) Additionally, Tucker requested ORS to grant a waiver based on individualized extenuating circumstances within Section IV(B) of ORS Policy Sec. 115.28. (Answer Ex. 21.) ORS approved the administrative waiver that would reimburse Tucker for room and board from January 2017 until the completion of her campus classes. (Answer Ex. 30 at 6.) However, on March 3, 2017, ORS sent a denial letter

indicating that ORS cannot grant Tucker's request for additional tuition because it exceeds the ORS baseline amount of unmet need. (Answer Ex. 22.)

On March 31, 2017, ORS received Tucker's appeal letter regarding ORS's denial of waiver for tuition and expenses. (Answer Ex. 6 at 4.) On May 8, 2017, the Appeals Officer of DHS (Appeals Officer) conducted a hearing, where the Appeals Officer heard testimony from various witnesses involved with Tucker's tuition assistance. (Answer Ex. 30.)³

On July 11, 2017, the Appeals Officer issued the decision formally denying Tucker's request to grant a waiver for additional tuition and expenses. (Answer Ex. 29.) The Appeals Officer found that ORS Policy Sec. 115.28 complied with the federal law and that ORS correctly calculated the amount of Tucker's tuition assistance because student loans qualified as other available resources that this state agency has authorized to substitute for Vocational Rehabilitation

³ Specifically, the following were present for ORS: the Administrator for the Vocational Rehabilitation Program, Kathleen Grygiel (Grygiel), the Supervisor at the Office of Rehabilitation Services, Karen Davis (Davis), and Tucker's Vocational Rehabilitation Counselor II, Teresa O'Brien (Counselor). *Id.* at 2. Present for Tucker was her legal counsel, Catherine Sansonetti from Rhode Island Disability Law Center (Tucker's Legal Counsel), as well as Tucker, herself. *Id.* at 1. Davis and Grygiel testified regarding ORS policy and services in general and about Tucker's relationship with ORS services throughout the years. *Id.* at 4-8. Tucker's Legal Counsel presented background information and stated that the general legal issue was the amount of tuition provided to Tucker. *Id.* 7-8. Tucker's Legal Counsel called Tucker as her first witness, who testified regarding her relationship with ORS since 2012. *Id.* at 8-20. Thereafter, the Counselor for ORS cross-examined Tucker regarding the number of months in Tucker's academic year. *Id.* at 20-21. Tucker's Legal Counsel also called her Counselor to testify regarding the waiver provision under ORS Policy Sec. 115.28. Specifically, the Counselor testified about the procedure and manner in which ORS decided to deny Tucker's waiver for additional tuition assistance. *Id.* at 25-27. Tucker's Legal Counsel also called upon Grygiel, who testified about the process of calculating the training grant. *Id.* 27-31. Thereafter, Tucker's Legal Counsel questioned the Counselor about the reasons why Tucker did not qualify for the waiver under individual extenuating circumstances. *Id.* The Counselor testified that ORS decided that Tucker had tuition expenses covered based on the amount of money Tucker received from other available resources, such as student loans. *Id.* 31-32. Tucker's Legal Counsel thereafter called upon Tucker to testify about her process for selecting schools and how she particularly chose Tufts University. *Id.* at 37. Lastly, Tucker's Legal Counsel questioned Grygiel about ORS's policy on waivers, which Grygiel responded that there was no formal written policy on the waiver process. *Id.* at 43.

assistance. (Answer Ex. 29 at 11-15.) On August 24, 2017, Tucker filed an appeal of the Administrative Hearing Decision with this Court.

II

Standard of Review

This Court's review of an appeal from an administrative action is governed by § 42-35-15, which provides:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error of law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”
Sec. 42-35-15(g)(1)-(6).

When reviewing an agency's decision, this Court looks only to the certified record that was before the agency at the time the decision was rendered. *Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000). Based on the record, this Court must determine “whether there is any legally competent evidence to justify the [agency's] conclusions.” *Power Test Realty Co. Ltd. P'ship v. Coit*, 134 A.3d 1213, 1218 (R.I. 2016) (quoting *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). As to questions of fact, this Court will not substitute its

judgment for that of the agency with regard to the credibility of witnesses or the weight of the evidence. *State, Dep't. of Env'tl. Mgmt. v. Admin. Adjudication Div.*, 60 A.3d 921, 924 (R.I. 2012).

Additionally, questions of law are reviewed *de novo*. *City of Pawtucket v. Laprade*, 94 A.3d 503, 513 (R.I. 2014).

III

Analysis

A

Compliance with Regulations

Tucker avers that ORS Policy Sec. 115.28 violates federal regulation 34 C.F.R. § 361.50(c) because the policy sets an absolute dollar limit of \$13,362 as the amount of tuition ORS will provide. Conversely, DHS argues that the federal regulation permits listing dollar figures and that the baseline amount is not an absolute cap because ORS Policy Sec. 115.28(IV)(B) permits exemptions to the baseline. The Appeals Officer held that ORS Policy Sec. 115.28 does not contain a cap on the post-secondary education/training service category, but does place a cap on tuition and books. (Ex. 29 at 13.) Furthermore, the Appeals Officer concluded that the cap is not absolute because the ORS policy also allows for exemptions based on a person's individualized circumstances. *Id.*

Under Payment for services, 34 C.F.R. § 361.50(c) provides in pertinent part:

“(1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

“(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

“(i) Not so low as to effectively deny an individual a necessary service; and

“(ii) Not absolute and permits exceptions so that individual needs can be addressed.

“(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.”
34 C.F.R. § 361.50(c)(1)-(3).

Pursuant to ORS Policy Sec. 115.28(IV)(A), “[i]f no comparable program exists at an in-state institution, ORS training grant amount will be based upon the amount of unmet need on the Student Aid Report (SAR) up to the URI baseline for tuition assistance.” ORS Policy Sec. 115.28(IV)(A)(3). Additionally, “ORS may pay up to \$1,000* for all required books, materials and tools” ORS Policy Sec. 115.28(IV)(A)(5). However, the foregoing may be waived as, “[t]he written waiver request should be submitted to the Administrator of Vocational Rehabilitation or designee, who may grant a waiver based on individualized extenuating circumstances.” ORS Policy Sec. 115.28(IV)(B).

Under 34 C.F.R. § 361.50(c), a State must establish a written policy to govern the rates of payment, which may also provide for a fee schedule in order to warrant a reasonable cost program. ORS Policy Sec. 115.28(IV)(A)(1)-(8). While a fee schedule and rate of payment may be established, this federal regulation prohibits any state agency from placing absolute dollar limits on specific services categories. 34 C.F.R. § 361.50(c)(2)(i)-(ii), (3). Here, ORS Policy Sec. 115.28(IV)(A)(1), (5) does place dollar limits on its tuition and books as tuition is set at the baseline rate of the University of Rhode Island’s graduate tuition and books are set at \$1000. Although ORS Policy Sec. 115.28(IV) sets a monetary limit, the policy does not place an absolute dollar limit predominantly because ORS Policy Sec. 115.28(IV)(B) allows for individuals to waive the baseline rate under “individualized extenuating circumstances.” ORS Policy Sec. 115-28(IV)(B). Here, ORS provided Tucker with the waiver for both tuition and room and board. Thereafter, ORS considered Tucker’s request to exceed ORS Policy Sec. 115.28 limits for baseline

and for living expenses. Although ORS ultimately denied the waiver to exceed tuition expenses, ORS approved and granted Tucker an additional \$7632 for living expenses. Accordingly, the Appeals Officer's final decision that ORS Policy Sec. 115.28 was not in violation of 34 C.F.R. § 361.50(c) was well-founded and was not arbitrary or capricious. *See* § 42-35-15(g)(6); *See Asadoorian v. Warwick Sch. Comm.*, 691 A.2d 573, 578 (R.I. 1997); *see also Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1092 (1st Cir. 1993).

Tucker also contends that ORS Policy Sec. 115.28 violates C.F.R. § 361.50(a) because the baseline amount and waiver provision are arbitrary limits on the scope and nature of the vocational services. Specifically, Tucker argues that providing in-state tuition rates to out-of-state programs is an arbitrary limit because the amount only offers a fraction of support for the out-of-state programs. Additionally, Tucker maintains the waiver process is arbitrary because there is no implemented sub-regulatory procedure to guide granting waivers in a uniform manner but is approved by a subjective ad hoc group of agency employees. On the other hand, DHS argues that the baseline amount is not arbitrary because it is established by the State of Rhode Island's only state university and is based upon the university's yearly in-state rate. The Appeals Officer found that ORS policy and waiver provision is not in violation of federal regulation. (Ex. 29 at 13.)

In relevant part, 34 C.F.R. § 361.50(a) provides:

“(a) Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions.”
34 C.F.R. § 361.50(a).

Based on the language of 34 C.F.R. § 361.50(a), the written policies may not establish any arbitrary limits on the vocational rehabilitation services to be provided. *Id.* While ORS Policy Sec. 115.28 does establish a baseline rate, this rate is not arbitrary as it is set at the monetary cost of the State of Rhode Island's only state university. Furthermore, 34 C.F.R. § 361.50(a) requires a written policy merely covering the nature and scope of each vocational rehabilitation service and criteria to be provided. ORS Policy Sec. 115.28(IV) sets forth a written policy of rates of payment to be provided. It also identifies the availability of a waiver request and that the Administrator of Vocational Rehabilitation may "grant a waiver based on individualized extenuating circumstances." ORS Policy Sec. 115.28(IV)(B). The waiver request does not implement arbitrary limits because the waiver can only be granted on a case-by-case basis. Here, ORS provided Tucker, as any other client, with the waiver request form. Thereafter, ORS considered her waiver for tuition and living expenses. After reviewing her living expenses accrued from attending an out-of-state institution, the ORS agency granted Tucker with living expenses of \$636 per month for an additional grant of \$7632. Thus, the Court finds that ORS Policy Sec. 115.28 does not place arbitrary limits and complies with 34 C.F.R. § 361.50(a).

Tucker also argues that ORS Policy Sec. 115.28 violates 34 C.F.R. § 361.50(b) because providing in-state tuition for programs available only outside Rhode Island effectively prohibits accessing out-of-state services. DHS counters that Tucker is, in fact, currently attending an out-of-state university and is a candidate for a master's degree in Occupational Therapy. Thus, the ORS baseline amount and grant for increased housing costs did not prohibit Tucker from attending an out-of-state school. The Appeals Officer found that the record establishes that Tucker is currently pursuing her master's degree in Occupational Therapy out-of-state and thereby must reside out-of-state during the school year, incurring additional residential expenses. (Ex. 29 at 14.) The

Appeals Officer concluded that the grant of a waiver for rental expenses effectively removed any barrier to Tucker continuing to access out-of-state training and also enables Tucker to use more of her student loan funds to pay for tuition and other expenses. *Id.* at 14-15.

34 C.F.R. Section 361.50(b) states the following:

(b) Out-of-State services.

“(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

“(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services. 34 C.F.R. § 361.50(b)(1)-(2).

It is evident from 34 C.F.R. § 361.50(b)(2) that the State agency may not establish policies that effectively prohibit obtaining services out-of-state. 34 C.F.R. § 361.50(b)(2). Here, Tucker received the baseline amount of \$13,362 for tuition, \$1000 for books and supplies, and \$636 per month for room and board. It is clear from the record that Tucker is currently attending Tufts University—an out-of-state institution—in order to obtain her master’s degree in Occupational Therapy. Thus, the amount ORS granted did not, in fact, prohibit her from attending an out-of-state service. Additionally, ORS approved the waiver of rental expenses for \$636 per month in order to help pay for her out-of-state living expenses. The funds ORS distributed for Tucker’s living expenses relieve her from other obligations that would hinder her from paying her tuition expenses. Consequently, the grant for rental expenses aids Tucker in paying for her tuition. Therefore, ORS Policy Sec. 115.28 does not “effectively prohibit the provision of out-of-State services.” 34 C.F.R. § 361.50(b)(2). Accordingly, this Court finds that the Appeals Officer did not

render a final decision that is “in violation of constitutional and/or statutory provisions,” as this Court affirms that ORS Policy Sec. 115.28 complies with the federal regulation.

B

Calculation of Benefits

Next, Tucker asserts that ORS erroneously calculated the total amount of her tuition grant because ORS improperly included her students loans as “comparable benefits” as part of her available resources. Specifically, ORS discounted her student loans when calculating her “unmet need.”

Tucker argues that under 34 C.F.R. § 361.54(a), ORS is not required to consider financial aid when determining the extent of funding to be granted. She notes that the ORS-29 form does not contain a section where the agency can subtract out parts of an available aid package that the student can elect to reject. Tucker also suggests that the situation “forced [her] to accept the [student] loan” and “A loan to be paid back with interest is not a resource.” Pl.’s Mem. Merits at 12, 13. In contrast, DHS argues that under federal law a student cannot be required to take a student loan as a condition for receiving vocational rehabilitation services, which ORS Policy Sec. 115.28(IV)(A)(8) reflects. However, the federal provision acknowledges that “[t]his does not mean . . . a client should be discouraged from exercising either or both of these options [of a student loan or work study].” United States Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration Policy Directive (RSA-PD-92-02). DHS argues that the language of the federal directive recognizes that states may take into account student loans and agencies have the right to not completely fund all post-secondary training expenses. The Appeals Officer found that RSA-PD-92-02 confirms that a client cannot be required to take a student loan as a condition of receiving vocational rehabilitation services. However, the federal provision explains that there may be instances when an individual has no

other choice but to accept the loans in order to attain their higher education goals. Thus, the Appeals Officer found that ORS policy complied with RSA-PD-92-02.

In order to assist Vocational Rehabilitation state agencies, the United States Rehabilitation Services Administration issued RSA-PD-92-02. *See* RSA-PD-92-02. RSA-PD-92-02 asserts that Vocational Rehabilitation clients “cannot be required to take a student loan as a condition for receiving VR services.” RSA-PD-92-02 at 1. As “[t]he process to coordinate student financial aid with VR assistance was never intended to force a client into accepting a loan as part of the aid package; neither was it intended to force a client to undertake a campus work study.” *Id.* at 2. Nonetheless, “[t]his does not mean . . . a client should be discouraged from exercising either or both of these options. The VR Counselor *may*, if State agency policy permits, substitute VR assistance for the loan component of the aid package.” *Id.* at 2-3 (emphasis added).

Under the ORS Policy Section 115.28(IV)(A)(3), “[i]f no comparable program exists at an in-state institution, ORS training grant amount will be based upon the amount of unmet need on the Student Aid Report (SAR) up to the URI baseline for tuition assistance.” ORS Policy Sec. 115.28(IV)(A)(3). Additionally, ORS Policy Sec. 115.28(IV)(A)(8) continues to state the following:

“Comparable Benefits are provided or paid for, in whole or in part, by Federal, State or local public agencies. Such resources as Pell Grants, SAR identified family contributions, work study or accepted loans are considered part of a student’s financial aid package. The student is not required or obligated to accept a loan to reach an unmet need for school or training.” ORS Policy Sec. 115.28(IV)(A)(8).

The language of the RSA federal provision mandates that a client cannot be forced into accepting a student loan as a prerequisite to obtaining Vocational Rehabilitation assistance. *See* RSA-PD-92-02 at 1. However, the federal provision notes that clients should not be discouraged

from taking out student loans; moreover, there may even be instances when the client has no option but to take out a student loan in order to attain higher education. *Id.* at 3. Furthermore, the agency is authorized to substitute the Vocational Rehabilitation funding with a student loan if the state agency policy permits. *Id.* at 2-3. The relevant state agency policy indicates that ORS will fund up to the amount based on unmet need up to the URI baseline amount for tuition assistance. ORS Policy Sec. 115.28(IV)(A)(3). In accordance with the federal policy directive, ORS Policy Sec. 115.28(IV)(A)(8) maintains that a student is not required or obligated to accept a loan to reach an unmet need for school or training. ORS Policy Sec. 115.28(IV)(A)(8). Moreover, the policy indicates available resources such as accepted loans will be considered part of a student's financial aid package. *Id.* This Section is consistent with RSA-PD-92-02 because the federal provisions allows for state agencies to substitute the other available resources, such as student loans, for Vocational Rehabilitation assistance. *Compare* RSA-PD-92-02, *with* ORS Policy Sec. 115.28(IV)(A)(8). Thus, ORS Policy Sec. 115.28 complied with the federal provision.

Tucker also argues that the ORS violated federal law as set forth in 34 C.F.R. §§ 361.53 and 361.5(c)(8) because ORS ignored the definition of comparable benefits. Specifically, Tucker asserts that ORS's representatives stated that Tucker was expected to take comparable benefits, such as student loans, in order to fund her education. Conversely, DHS contends that ORS's written policy provides a definition of comparable benefits that is consistent with the federal regulation. Moreover, even if ORS's representatives incorrectly used the term comparable benefits, ORS correctly calculated the amount of unmet need and lawfully considered the student loans to compute the amount of tuition assistance. The Appeals Officer found that while the ORS's representatives may have incorrectly used the term "comparable benefits," the ORS policy complied with state and federal law. Furthermore, the ORS policy allows for other funding sources

other than “comparable benefits” to be considered as available funds for unmet need; thus, the total financial aid amount that was accepted by and granted to Tucker was correctly used on the Training Grant Worksheet (ORS-29 form) when ORS calculated Tucker’s unmet need.

Pursuant to 34 C.F.R §§ 361.53 and 361.5(c)(8), Comparable benefits is defined as:

“(i) Comparable services and benefits means services and benefits, including accommodations and auxiliary aids and services, that are—

“(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

“(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s individualized plan for employment in accordance with § 361.53; and

“(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.” Sec. 361.5(c)(8)(i)(A)-(C).

Furthermore, the ORS policy defines “Comparable benefits” as benefits which are:

“(a) Provided or paid for in whole or in part by other Federal, State, or local public agencies, by health insurance or by employee benefits;

“(b) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the IPE; and

“(c) Commensurate with the services that the individual would otherwise receive from the vocational rehabilitation agency.” ORS Policy Sec. 115.5(II)(A)(1)(a)-(c).

The two provisions are nearly identical. Thus, the written ORS policy is in not in violation of the federal regulation. *Compare* 34 C.F.R. § 361.5(c)(8), *with* ORS Policy Sec.115.5(II)(A)(1)(a)-(c). Furthermore, even if the ORS’s representatives incorrectly used the term comparable benefits, ORS properly relied on the RSA-PD-92-02 and ORS Policy Sec. 115.28 in order to compute the

amount of tuition assistance. Although student loans do not constitute comparable benefits, student loans qualify as other available resources this state agency has authorized to substitute for Vocational Rehabilitation assistance. *See* RSA-PD-92-02 at 2. This Court finds that the Appeals Officer relied on competent evidence in order to support her final decision, which was not an arbitrary or capricious decision under § 42-35-15(g)(6). Therefore, this Court upholds the Appeals Officer's Administrative Hearing Decision.

C

Other Issues Not Raised at Hearing

The parties raise issues that have not been addressed below to the Administrative Hearing Board. Particularly, DHS asserts that Tucker failed to seek proper vocational counseling. When reviewing an agency's decision, this Court looks only to the certified record that was before the agency at the time the decision was rendered. *Johnston Ambulatory Surgical Assocs., Ltd.*, 755 A.2d at 804-05. For the reason that DHS failed to raise this issue before the DHS's Administrative Hearing Board, this Court fails to exercise jurisdiction to entertain these issues.

IV

Conclusion

After review of the entire record, this Court finds that the DHS's final decision was not made upon unlawful procedure or was arbitrary or capricious. Accordingly, this Court affirms the final decision as substantial rights of the Appellant have not been prejudiced. Counsel shall confer and submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Gianna Tucker v. Rhode Island Department of Human Services

CASE NO: PC-2017-4015

COURT: Providence Superior Court

DATE DECISION FILED: July 16, 2019

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Catherine Sansonetti, Esq.

For Defendant: Lisa F. Bortolotti, Esq.