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Pennsylvania

## Special Education Hearing Officer

### DECISION

Child's Name: A.S.

Date of Birth: [redacted]

Dates of Hearing:

July 23, 2014

September 5, 2014

September 17, 2014

### **CLOSED HEARING**

ODR Case #15112-1314KE

Parties to the Hearing:

Parent[s]

Central Dauphin School District  
600 Rutherford Road  
Harrisburg, PA 17109

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Vivian Narehood, Esquire  
41 East Orange Street  
Lancaster, PA 17602

Christopher Conrad, Esquire  
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Suite 201  
Camp Hill, PA 17011

October 15, 2014

November 4, 2014

Jake McElligott, Esquire

## **INTRODUCTION**

Student is a teenaged student residing in the Central Dauphin School District (“District”). The student resides with, and has educational decision-making in the hands of, [relatives], who act as the student’s guardians. The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)<sup>1</sup> for specially designed instruction/related services as a student with autism and specific learning disabilities.

The student attended District schools through the end of the 2011-2012 school year. As the result of an agreement between the parties, the student attended a private placement, the Private School, for the 2012-2013 and 2013-2014 school years.

As part of the agreement, the parties undertook mutual obligations. Part of the guardians’ obligations included participation in a re-evaluation process in the spring of 2014 in anticipation of the 2014-2015 school year. In April 2014, the District proposed an individualized education plan (“IEP”) for implementation at the District. Ultimately, the student’s guardians rejected the District’s recommended education program/placement and continued to enroll the student in the private educational placement for the 2014-2015 school year.

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<sup>1</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 (“Chapter 14”).

Guardians claim that the April 2014 IEP proposed by the District was inappropriate, and filed the special education due process complaint that led to these proceedings. Parents seek tuition reimbursement for the private resources utilized by the guardians to fund the private placement for the 2014-2015 school year.

The District counters that the April 2014 IEP is reasonably calculated to yield meaningful education benefit and, therefore, provides a free appropriate public education (“FAPE”) to the student for the 2014-2015 school year. As such, the District argues that the guardians are not entitled to remedy.

For the reasons set forth below, I find that the April 2014 IEP is not appropriate and, therefore, the District failed to propose an appropriate IEP for the 2014-2015 school year. Therefore, the guardians are entitled to tuition reimbursement for the private placement.

### **ISSUES**

Was the proposed April 2014 IEP appropriate?

If not, are parents entitled to reimbursement of the private resources utilized to fund a private placement for the 2014-2015 school year?

## **FINDINGS OF FACT**

1. In February 2012, the spring of the student's 6<sup>th</sup> grade year, the student's IEP contained seven goals (two in reading, two in written expression, two in mathematics, and one in speech/language). (Guardians' Exhibit ["G"]-6).
2. The student's placement was supplemental learning support at the school which the student would attend if non-disabled, spending 56% of time in a regular education environment. (G-6).
3. The student's guardians submitted a two-page addendum for proposed changes to the February 2012 IEP. (G-6).
4. In August 2012, the student underwent a private psychological evaluation. (G-5).
5. In November 2012, the District undertook a re-evaluation ("RR") of the student. (G-3).
6. The November 2012 RR reiterated cognitive testing from preschool, where the student's full-scale IQ was found to be 72. Cognitive testing from the November 2012 RR did not calculate full-scale IQ finding that the student's "overall intellectual functioning difficult to summarize by a single score." The student's composite scores were as follows: verbal comprehension – 79, perceptual reasoning – 63, working memory – 59, processing speed – 91. (G-3).
7. The November 2012 RR showed similar 'scatter' in the student's assessment results. The standard scores of some achievement sub-tests were in the upper 40s or 50s (reading comprehension, math fluency-subtraction, math fluency-multiplication, spelling); some sub-tests were in the 90s, or 100 (sentence combining, essay composition, word count, receptive vocabulary). (G-3).
8. The November 2012 RR contained social/emotional testing from the guardians and three teachers. All raters scored the student as clinically significant in the internalizing problems composite, and the functional communication sub-scale. The three school-based raters scored the student as clinically significant in adaptive skills composite and in the following sub-scales: anxiety, depression, somatization, atypicality, social skills, and leadership. (G-3).
9. The student began the 2012-2013 school year, the student's 7<sup>th</sup> grade year, at the District. Part way through the school year, the

student was enrolled in the Private School for the remainder of the 2012-2013 school year. (Notes of Testimony [“NT”] at 293-297, 576-577, 585).

10. In February and April 2013, the student underwent a private psychological evaluation and psychiatric evaluation. Cognitive testing from the April 2013 evaluation found the student’s full-scale IQ to be 78, with composite scores as follows: verbal comprehension – 83, perceptual reasoning – 90, working memory – 65, processing speed – 88. (G-5).
11. In the spring of 2013, the parties settled a prior round of special education due process with an agreement that called for the District to continue supporting the private placement for the remainder of the 2012-2013 school year and the 2013-2014 school year.
12. In March 2014, the student was re-evaluated by the District. (G-4; School District [“S”]-11).
13. The March 2014 RR contained cognitive testing, with a general intellectual ability standardized score of 58. The broad verbal ability, thinking ability, and cognitive efficiency cluster scores were, respectively, 64, 66, and 59. (G-4; S-11).
14. The March 2014 RR showed the consistent scatter whenever the student has been assessed with standardized instruments, with sub-test scores ranging from 46 to 100. (G-4; S-11).
15. The March 2014 RR contained a standardized adaptive behavior assessment for developmental and intellectual disabilities. Eight raters completed the assessment—each guardian and six educators. One rater’s adaptive composite score could not be calculated. Of the remaining seven raters, three were in the average range, one was below average, two were in the borderline range, and one (the female guardian) was in the extremely low range. (G-4; S-11).
16. In April 2014, the District drafted an IEP for the student’s return to the District for the 2014-2015 school year. (G-7; S-12).
17. The April 2014 IEP contained seven goals (two in speech and language, two in reading, one in mathematics, one in community-based instruction [working through a shopping list/grocery store experience], and one in self-advocacy). (G-7; S-12).

18. In the April 2014 IEP, the student's placement was supplemental life skills support at the school which the student would attend if non-disabled, spending 0% of time in a regular education environment. (G-7; S-12).
19. In August 2013, the student's transition to the private placement for a full school year included multiple instructional recommendations. (G-11).
20. In November 2013, the student's initial report at the private placement indicated that the student would receive goal-driven instruction in receptive language, expressive language, social cognition, critical thinking, problem-solving, reading comprehension, combining/expanding written sentences in written expression in the following academic areas: reading, writing, speech-language, mathematics, science, geography, computer literacy, social skills, art, and physical education. (G-11).
21. In February 2014, across 34 indicia of the student's social/behavioral/organizational benchmarks at the private placement, the student "did not exhibit the skill" in one area (goal-setting/prioritizing), and "applies independently" in two areas (punctual/prepared and flexibility with change). The remaining 31 indicia were rated as "needs continued work" or "making progress". (G-11).
22. From April 2013, when the student enrolled in the private placement, through February 2014, the student showed improved word identification and word attack skills, improved vocabulary, and improved mathematical concepts/applications and calculation skills. Reading comprehension skills remained the same. (G-11).
23. In May 2014, the private placement noted progress in all academic areas and in each priority goal for the student. (G-11; NT at 553-664).
24. All witnesses were found to be credible. (NT at 46-152, 155-257, 267-388, 392-445, 448-485, 501-548, 553-664, 667-748).

## **DISCUSSION AND CONCLUSIONS OF LAW**

To assure that an eligible child receives a free appropriate public education (“FAPE”) (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning” (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)).

### Tuition Reimbursement

Long-standing case law and the IDEA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability.<sup>2</sup> A substantive examination of the parents’ tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEA.<sup>3</sup>

In the three-step Burlington-Carter analysis, the first step is an examination of the school district’s proposed program and whether it was

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<sup>2</sup> Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); *see also*, 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi).

<sup>3</sup> 34 C.F.R. §§300.148(a),(c),(d)(3).

reasonably calculated to yield meaningful education benefit.<sup>4</sup> In this case, the District's proposed April 2014 IEP is inappropriate. The program proposed by the District fails on two levels. First, with a focus on life skills instruction rather than academic instruction, the instruction and goals in the April 2014 IEP are inappropriate. The student's entire academic history on this record, including standardized assessments throughout the student's educational experience show two things consistently: one, the student has low average cognitive skills; and, two, the student's scatter and academic achievement make for a very complex academic profile. But nothing in the record indicates that life skills instruction is appropriate for the student. Intellectually, the appropriate curriculum for the student is an academic curriculum aligned to state academic standards. Second, the District's proposed placement would have the student entirely—100% of the instructional day—outside of a regular education setting. The student's history at the District, and the student's experience at the private placement, shows that the student's appropriate placement is an academic/regular education setting with supports. The District's proposed placement is inappropriately restrictive. And while it is not necessarily inappropriate, the District's cognitive testing in the March 2014 RR must be viewed with a heavy degree of caution. It is an outlier (markedly lower) from any other standardized cognitive testing over the student's educational history. To

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<sup>4</sup> 34 C.F.R. §300.17; Rowley; Ridgewood; M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996).



the extent that these scores played a role in the District's understanding of the student's programming needs, those results were prejudicially misleading.

For the foregoing reasons, the April 2014 IEP proposed by the District is inappropriate. When a school district program is found to be inappropriate at step one of the Burlington-Carter analysis, step two of the analysis is an examination of the appropriateness of the private placement which the guardians have selected. In this case, the private placement was appropriate. The private placement explicitly programmed for the student's needs in all areas, especially those areas which impact the student most significantly in the educational environment—social, emotional, and expressive/receptive language. The record is clear that the student made progress at the private placement over the 2012-2013 and 2013-2014 school years. The private placement continues to be appropriate in the current 2014-2015 school year.

The private placement selected by guardians is appropriate. Therefore, the parents have met the burden at step two of the Burlington-Carter analysis.

When the school district's proposed program is found to be inappropriate, as here, and the private placement is found to be appropriate, as here, the third step of the Burlington-Carter analysis is to determine if tuition reimbursement is a fair remedy and, if so, in what amount. This is the so-called "balancing of the equities" step. Here, the

equities do not weigh decidedly in favor or against either party. But having met their burden at steps one and two of the Burlington-Carter analysis, the third step provides no impediment to reimbursement.

Accordingly, the student's guardians are entitled to reimbursement.

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### **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the guardians are entitled to reimbursement for the 2014-2015 private placement. If the reimbursement was out-of-pocket, upon presentation to the District by the guardians of proof of payment for tuition and fees for the 2014-2015 school year, the District is ordered to pay the amount reflected in the guardians' proof of out-of-pocket payment. This payment shall be made within 90 calendar days of the date the guardians present the proof of payment.

Any claim not specifically addressed in this decision and order is denied.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

November 4, 2014