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Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: JE

Date of Birth: XX/XX/XX

Dates of Hearing: 11/17/08, 12/9/08, 12/10/08,
2/3/09, 2/5/09, 2/6/09

CLOSED HEARING

ODR No. 9301/08-09 KE

Parties to the Hearing:

Representative:

Parents

Parent Attorney

Mr. & Mrs.

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Date Record Closed: March 4, 2009

Date of Decision: March 19, 2008

Hearing Officer: Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student, who is IDEA eligible due to Asperger's Syndrome and learning disabilities, was educated at [REDACTED] School, an approved private school (APS), via a Boyertown Area School District placement from the time he and his Parents moved into the District through the end of the 2007/2008 school year. Contending that School had become inappropriate for Student by the end of Student's 9th grade year, Parents sought an alternative placement from the District during the summer of 2008. When the parties could not agree upon a District-provided placement by the beginning of the 2008/2009 school year, Parents unilaterally enrolled Student at [REDACTED] Current School, a private college for students with learning differences. Parents then filed a due process complaint seeking reimbursement for tuition and transportation costs.

The hearing was held over six sessions from mid-November 2008 through the first week of February 2009. For the reasons which follow, I find that Boyertown Area School District did not offer Student an appropriate special education program and placement for the 2008/2009 school year, and will award Parents reimbursement for tuition and for the cost of transporting Student to Current School.

ISSUES

Is the Boyertown Area School District required to reimburse Student's Parents for the costs of tuition at Current School for the 2008/2009 school year, and for their transportation costs?

1. Was the program offered for the 2008/2009 school year by Boyertown Area School District's designee, School, appropriate for Student?

2. Is Student's program/placement at Current School appropriate for him?
3. Are there any equitable reasons to deny or reduce reimbursement?

FINDINGS OF FACT

1. Student is a teen aged child, born xx/xx/xx. Student is a resident of the Boyertown Area School District and is eligible for special education services. Student is enrolled in 9th grade at Current School, a private school selected unilaterally by Parents at the beginning of the 2008/2009 school year. (Stipulation, N.T. p. 12)
2. Student has a current diagnosis of autism spectrum disorder/Asperger's and specific learning disability in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1), (10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p.12)
3. Student had a difficult history during the early school years, and at Parents' request was placed at School beginning in September 2000 by the school district in which Student previously resided. Boyertown Area School District continued Student's education at School when Student's family moved into the District at the beginning of the 2001/2002 school year. (N.T. pp. 23, 24, 34, 172; P-, S-11, S-18)
4. Student is consistently described as a courteous [individual] and a hard-working student whose efforts to always do the "right" thing sometimes engendered mockery from other School students. Consistent with Student's autism disability, Student sees things in terms of black and white and has difficulty understanding social interactions, which creates problems with peer relationships. When Student does not feel comfortable in Student's surroundings or perceives more demands than Student can meet, Student becomes anxious, sometimes resulting in tics such as picking at Student's skin and other repetitive, compulsive behaviors. (N.T. pp. 22, 95, 99, 102—105, 118, 131, 132, 135, 153, 154, 168, 169, 220; P-2, P-3, S-10, S-11, S-18, S-29)
5. Until the 2004/2005 school year, Parents were very happy with School. During that year, Student began experiencing problems with a group of students new to the school, which caused Student's anxiety level to rise, and Student began treatment with a psychologist in the Philadelphia area to help Student deal with the increased anxiety. Difficulties with that group, and particularly one student, continued through the 2007/2008 school year, marked by at least one serious incident resulting in injury to a student by-stander in the fall of 2007. (N.T. pp. 24—26, 35, 43, 52, 62—64, 92—97, 100, 101, 103, 106—108, 136, 171, 172, 200—209, 226—230, 239, 791, 792, 814—816; P-3, P-5, S-11)

6. Student also began to be perceived as a “tattler” by classmates, which weakened and ultimately destroyed Student’s relationships with students who had formerly been friends. Student’s teacher became frustrated with Student’s continual reports to her of other students’ rule-breaking, which also increased Student’s anxiety. Student’s social difficulties and isolation continued in 8th and 9th grades. In or around March 2008, Student began having lunch with another student, which appeared to lessen Student’s feelings of social isolation. (N.T. pp. 27—33, 44, 46, 47, 50, 95, 96, 99, 100, 101, 105, 108—110, 134, 179, 239—242, 245, 290, 293, 303—309, 315, 316, 323, 324, 792—796, 803—807; P-3, P-5, S-10, S-11, S-29)
7. Student’s school counselor in middle school and new counselor in 9th grade (2007/2008) were aware that Student was anxious, and Parents were concerned, about the teasing/bullying and social isolation Student was experiencing at School over a five year period. Student’s counselors believed that the intensity and extent of Student’s perception of the teasing/bullying by other students, and one student in particular, was increased by Student’s inability to move on after incidents occurred, which is characteristic of autism spectrum disorders. Although the teasing that Student experienced is not atypical among middle school students, Student’s disability made those interactions especially difficult for him to handle. Consequently, Student overreacted to and perseverated on such situations. (N.T. pp. 97, 98, 134, 135, 138, 139, 203, 204, 207, 208, 219, 291—293, 304, 315, 316, 333)
8. During the 2007/2008 school year, Student’s counselor discussed Student’s peer/social problems with the treating psychologist on at least one occasion. The counselor worked with Student on social issues and provided social skills training in general through a “walking club” to provide opportunities to talk and peer mediation. She also met with Student when an incident occurred for discussion and role play. (N.T. pp. 219, 291—294, 301, 302, 319—321, 330)
9. Student developed a strong interest in writing in middle school, and began to express an interest in attending college to prepare for a writing career. Parents privately obtained an educational evaluation from an independent psychologist in order to determine whether Student had the intellectual capacity and academic skills and background to successfully attend college. Parents recognize that Student’s social skills issues present an obstacle to that goal. (N.T. pp. 45, 46, 51, 53, 71, 75, 78, 117, 118, 169, 178, 868, 956; P-3 at pp. 3—11, 16—19, S-11)
10. Student’s growing interest in college also caused Parents to question whether Student was sufficiently challenged at School, academically, and whether School could adequately prepare Student for college. Parents believed that in order to minimize Student’s contact with the group students perceived to be bullying Student, School did not place Student in classes that were the most academically appropriate for Student. Student’s treating psychologist agreed that Student was

- bored with insufficiently challenging classes, and recommended that School individualize Student's academic program to assure that Student was provided with more stimulating material. (N.T. pp. 51, 53, 67—72, 75, 76, 78, 112, 113, 128, 129, 140, 141, 181—183, 251, 252, 804; P-3, pp. 7, 8, P-5)
11. During the 2005/2006 and 2006/ 2007 school years, Student was placed in smaller classes, which included students at varying academic levels, all of whom were below grade level in terms of maturity and social/emotional needs. To comply with Parents' request that Student not be placed with the same teacher with whom Student had experienced problems during the 2004/2005 school year, School transferred Student to a class which was deemed to have a better social environment for Student. As in the two previous school years, classroom selection for the 2007/2008 school year was initially based upon social rather than academic appropriateness. (N.T. pp. 180—186, 254, 255, 280—284, 317, 802; S-4, S-10, S-11)
 12. As part of a re-evaluation of Student in October 2007, at the beginning of the 9th grade year, the School reading specialist assessed Student's progress and abilities in reading with the Standardized Reading Inventory, which placed Student's instructional level in reading at grade level. The Gates-MacGinite Reading Test administered in May 2007 placed Student's reading level at a 7.8 grade equivalent, which showed considerable growth over the same test administered at the end of the 2005/2006 school year. Although the reading specialist stated that classroom performance demonstrated that Student was appropriately placed in the 5th to 7th grade level reading class in which Student began the 2007/2008 school year, he acknowledged that since Student was already reading at the upper level of that class, it was impossible to determine whether Student could have benefited from reading instruction at a higher level. (N.T. pp. 651, 653—660, 675, 688, 701--703; S-9, S-11)
 13. Near the beginning of Student's 9th grade year at School (2007/2008), at the school counselor's suggestion, Student was moved from the class to which Student had been assigned for social reasons, which was functioning at a 5th to 7th grade reading level, to a group with older students who were functioning at higher academic and social levels. (N.T. pp. 283—286, 288, 296, 297, 326, 790, 791; S-4, S-22)
 14. Student was frustrated at the beginning of 9th grade because the other students in Student's class were functioning at a lower level, and Student had already learned the academic material presented in that class. Despite some social complications, Student found the class to which Student was moved early in the school year a better fit because the lessons were more advanced. (N.T. pp 789—791)
 15. Student's 9th grade school counselor began working on a transition plan early in the 2007/2008 school year. After meeting with Student, she concluded that "it was very clear from the beginning that college was in Student's future."

- Improving preparation for college was the primary reason the counselor suggested changing Student's classroom. The transition services section of Student's IEPs for the 2007/2008 school year stated that desired post-school outcomes included two or four year college/university or technical/trade school with support. (N.T. pp. 278, 279, 286, 296, 321; P-2, S-4, S-10)
16. Based upon Student's and Parents' reports of continued anxiety, bullying and social problems at School, as well as Student's frustration at the lack of academic challenge, Student's treating psychologist believed that Student had outgrown the School placement and advised Parents to consider alternatives such as Current School and [REDACTED]. (N.T. pp. 110—113, 148, 218)
 17. Parents met with School and District officials in the summer of 2008 to discuss, primarily, Student's academic needs as well as possible alternatives to School. Parents also requested an independent re-evaluation, which the District refused, but offered to conduct its own re-evaluation of Student. To avoid delay in obtaining an evaluation prior to the 2008/2009 school year, Parents obtained an evaluation from Dr. G at their own expense. Parents also consented to the District's re-evaluation, which was completed in October 2008. (N.T. pp. 53, 61, 181—191; P-3, pp. 7, 8, 12, 17; S-14, S-15, S-22)
 18. Parents looked at several private schools during the summer of 2008. They believed that Current School would meet Student's social needs and provide a more challenging academic environment. Parents were informed by the District, however, that it would not pay for a private school that was not an APS. The District was not opposed to Student enrolling in an APS other than School, having explicitly requested that Parents inform the District whether [REDACTED] would meet his needs. The District and Parents also considered a public school placement as an alternative to School. (N.T. pp. 53—55, 58, 82, 83, 188, 189, 192, P-3, pp. 9, 12, 16—19; S-14, S-15)
 19. Parents continued to visit alternative private schools during the summer of 2008 and intended to enroll Student at [REDACTED] for the current school year. Student was ultimately not admitted there due to concerns that Student would experience a difficult social adjustment. The administrator at [REDACTED] recommended Current School for Student, as did the treating psychologist. (N.T. pp. 54—58, 61, 110, 192, 193, 214—217; P-3, pp. 12, 14, S-)
 20. Parents then returned to Current School, where Student was accepted, provided that Student repeat 9th grade due to skill/knowledge gaps and to have the benefit of another year to prepare Student for college. By letter dated September 8, 2008, Parents informed the District that they were enrolling Student at Current School for the current school year, beginning September 15, 2008. (N.T. pp. 58, 59, 62, 87, 221, 426, 474; P-3, pp. 16—19)

21. At Current School, instruction is given in small classes of 4—8 students. All of Student’s academic classes are at the 9th grade level, except pre-algebra which is not typically a 9th grade class. Student did not have the math skills to be placed in a grade level math class. Student does not receive any related services, but Parents and the treating psychologist believe Student would benefit from occupational therapy and continuing speech/language therapy. Current School employs an occupational therapist who incorporates services into the regular educational program and could provide a specific program for Student if needed. (N.T. pp. 83—85, 151, 176, 177, 221, 222, 422, 426, 475, 483, 485—487, 488—491)
22. Significant social skills needs, such as those Student exhibits, are commonly addressed through speech/language services. Such needs can also be addressed in treatment and other settings through social skills groups. Student regularly participates in a social skills group with the treating psychologist. At Current School, Student meets with Student’s counselor and seven other students for group counseling during two periods each week. Those sessions follow a specific curriculum and provide opportunities for students to practice peer communication skills. Student’s counselor is also available to meet with Student on a one to one basis as needed and speaks with the treating psychologist on approximately a monthly basis. (N.T. pp. 150, 151, 169, 175, 429, 430, 447, 448, 468, 487, 488, 576, 577, 586, 590, 591, 605, 613—620; P-7)
23. Additional social skills training, as well as academic supports, are provided at Current School through a mentoring program, consisting of a daily 40 minute period in which Student meets with an assigned mentor, who is also Student’s physical education teacher and [sports] coach. In addition to social issues, Student’s mentor helps Student with organizing work and meeting project deadlines. Participation in sports, such as the [sports] team, also helps students build social skills. (N.T. pp. 84, 85, 429, 470, 527, 528, 543—547, 559, 560, 562, 563)
24. Student may use all or part of the daily mentoring period at Current School to obtain additional support from teachers in academic subjects. Student is encouraged to seek extra help on assignments or to re-take tests when Student is having problems in an academic subject area. Student uses at least part of the mentoring period for academic support 2—3 times/week. Re- taking tests or quizzes permits Current School students to review and improve their knowledge of material they may not have understood immediately. When that occurs, the scores of the original and re-taken tests are averaged to obtain the final test grade. As students progress toward graduation, they are “weaned” from accommodations such as re-taking tests, and seniors are not permitted to re-test. (N.T. pp. 429, 430, 479, 527, 528, 531, 533, 544—547, 549, 554, 555, 565—569, 577—581, 593—595, 634, 635; P-4, P-6)

25. Current School uses a “phasing” system to designate the level of academic supports a student receives in each academic subject area. Student is in the “Instructional” phase (IN), meaning that Student receives minimal academic supports, in Introduction to Literature, Writing & Study Skills, Art Foundations and Physical Education. Student is in the “With Accommodations” (WA) phase with respect to Pre-Algebra, Biology and World History. The accommodations Student receives are primarily modified assignments, extra time and extra one to one support from teachers. (N.T. pp. 432, 434, 435, 439, 475, 532; P-4)
26. After a period of adjustment Student has been doing well at Current School, both academically and socially. Student likes the school, is happy with the academic subjects and activities, is succeeding in all of Student’s classes and has made friends. With the encouragement of Student’s mentor, Student joined the [sports] team, and decided to continue with it despite an early intention to quit. Student’s psychologist believes Current School is a good placement for Student due to the absence of reported problems with social issues and because of Current School’s emphasis on teaching students with learning disabilities, which will help prepare Student for college. (N.T. pp. 82, 114—117, 119, 144, 145, 442, 443, 505, 528, 534, 548—554, 559—562, 631, 632, 644, 645, 796,797)
27. Although Student continues to experience anxiety in school related to both academic demands and social interactions, the treating psychologist’s log entry after the first few weeks at Current School notes that Student was “Less anxious than any period in last five years.” Student still misinterprets and misunderstands social interactions with peers and adults, but those issues are addressed immediately and are not a major concern for Student at Current School. (N.T. pp. 471, 529, 534, 535, 540, 541, 583, 584, 800; P-5, p. 11)
28. Dr. G’s evaluation of Student, completed in August 2008, included standardized tests measuring intelligence, memory and learning, academic achievement, reading and language.¹ The evaluation also included behavior rating scales for Asperger’s and executive function. Student’s full scale IQ score of 93 falls into the average range of functioning, but significant variability in subtest scores the reliability of the full scale IQ score as a true measure of Student’s intellectual capacity. Significant variability in results, depending upon the skills measured, was characteristic of all areas of intellectual/academic functioning. (N.T. pp. 868—882; S-18)
29. The Asperger’s ratings included in the report confirmed Student’s diagnosis. (N.T. pp. 882, 883; S-18)

¹ Wechsler Intelligence Scale for Children-- Fourth Edition; Test of Memory and Learning-Second Edition; Woodcock-Johnson Tests of Achievement-Third Edition; Gray Oral Reading Tests; Test of Adolescent and Adult Language-Fourth Edition; Asperger Syndrome Diagnostic Scale; Gilliam Asperger’s Diagnostic Scale; Behavior Rating Inventory for Executive Function-Parent; Behavior Rating Inventory for Executive Function-Self Report.

30. The executive functioning deficits revealed by the evaluation are related to Student's working memory deficits rather than a disorder such as attention deficit. (N.T. pp. 883, 884; S-18)
31. The standardized test of language administered as part of the independent evaluation placed Student's language abilities in the average range of functioning overall. (N.T. pp. 880—882; S-18)
32. Dr. G's observations during the evaluation, as well as her conversations with Student revealed notable growth and maturity since her first evaluation of Student as a young child. She also found noteworthy Student's desire to expand knowledge, improve writing and eventually attend college. She also concluded that Student wanted a more "normalized" environment immediately. Dr. G emphasized that due to Student's disability, Student still needs a lot of one to one attention and assistance in Student's school environment. (N.T. pp. 886, 888, 933, 935, 936; S-18)
33. Dr. G made a number of recommendations for an appropriate academic program for Student and expressed the opinion that the Current School program meets Student's needs as she identified them. (N.T. pp. 944—946, P-7, S-18)
34. The District, through its psychologist, agreed with the results and conclusions found in Parents' independent report and relied heavily upon it to complete the District's own evaluation. (N.T. pp. 346, 364; S-29)
35. The District's evaluation included assessments and observations of Student by a District's speech/language pathologist, who found Student's receptive/expressive language skills to be in the average range. Student had weaknesses in formulating sentence, where Student was required to use specific words to formulate complete, grammatically correct sentences, and concluded that improving that aspect of Student's language ability would be an appropriate intervention goal. Other weaknesses were noted in pragmatic speech areas, such as appropriately terminating a conversation and asking for help. Student also demonstrated weaknesses in inferencing, reasoning and problem-solving, measured by answering questions about a story. From an observation of Student at Current School, the speech pathologist noted that Student's social skills were not at a 10th grade level. (N.T. pp. 747—757, 765—767, 770; S-29)
36. The District's speech/language pathologist concluded that Student needs speech/language services for social skills training, which should include explicit social skills instruction in a small group for 30-60 min./week and re-enforced in natural environment. She also recommended individual speech/language therapy. (N.T. pp. 758—763, 771; S-29, pp. 7, 8)
37. The last agreed IEP between the parties, dated 11/07/07, encompassed Student's 8th grade year at School, and the beginning of 9th grade. The IEP includes one reading goal, to answer inferential questions at Student's reading

level with 80% accuracy. Student's reading level is not specified in the IEP, and there is no goal to increase Student's reading level. The IEP includes one math goal, "solve multi-step word problems involving a variety of topics/skills at a 6th grade level with 80% accuracy in 4 consecutive weekly probes." The IEP also includes one writing goal for producing an organized written product of unspecified length, which includes a beginning, middle and end, reasons, explanations, details and a strong conclusion that would achieve a score of 3 out of 6 on a Pennsylvania writing rubric assessment. The level of the writing rubric to be used to measure the writing product is not stated. (N.T. pp. 72, 73, P-2, S-10)

38. The November 2007 IEP provides speech/language therapy for two 45 min./week small group or individual therapy and includes three goals, for sentence formulation; for providing accurate solutions to practical problems/social dilemmas and accurately answering "why" questions related to such situations, and verbalizing age and gender appropriate responses to specific social solutions, applying the sentence formulation strategies. There is one social skills goal, to engage in conversation, which is to be supported by an occupational therapist, not a speech/language therapist. There is no provision for direct and explicit social skills instruction by a speech/language therapist, and no provision for speech/language support by a speech therapist during regular classroom instruction to generalize the skills learned in speech/language therapy. The speech/language treatment logs reveal that Student's speech/language therapy was provided primarily in small group sessions with few individual sessions. (P-2, S-10, S-35)

DISCUSSION AND CONCLUSIONS OF LAW

This is a somewhat unusual case in that there is no dispute between the parties that Boyertown Area School District, where Student and Parents reside, cannot provide an appropriate program and placement for Student in a public school. There is no question, therefore, that the District must provide a private school placement for Student. The question in this case centers on whether the private school which the District prefers, and which Parents had embraced for many years, is currently appropriate for Student, or whether the District is required to pay Student's tuition and transportation costs for the private school which Parents have selected for Student. There is, however, no change to the applicable legal standards. Under the Individuals with Disabilities Education Act

(IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §14 and 34 C.F.R. §300.300, a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA) in accordance with an appropriate IEP, *i.e.*, one that is “reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress.” *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). “Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3RD Cir. 1999). Consequently, in order to properly provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Rowley; Oberti v. Board of Education*, 995 F.2d 1204 (3rd Cir. 1993). An eligible student is denied FAPE if his/her program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988). In this case, where the School District, in effect, delegated its responsibility for providing Student with FAPE, it is particularly important to keep in mind that the District, not School, bears the responsibility for assuring that Student receives FAPE.

To determine whether parents are entitled to reimbursement from their school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985) The first step is to determine whether the program and placement offered by the District is

appropriate for the child. Only if that issue is resolved against the District are the second and third steps considered, *i.e.*, is the program proposed by Parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof. *See also, Florence County School District v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361, 366, 126 L. Ed. 2d 284 (1993); *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007).

Positions of the Parties

The Parents' description of the origin of the present dispute and the parties' arguments supporting their respective positions were consistent throughout the hearing. Parents initially became dissatisfied with Student's education at School around the time Student entered middle school, when social relationships with peers took a dramatically negative turn. (F.F. 5) The situation was exacerbated by an unsympathetic teacher who appeared to react just as negatively to Student's devotion to the rules as the students in the class. (F.F. 5, 6) Student began feeling socially isolated and generally out of place at School. (F.F. 5, 6) In addition, the social problems Student encountered negatively affected Student's access to an academic program that was commensurate with Student's abilities and sufficiently challenging to permit Student to strengthen academic skills and grow intellectually. (F.F. 11, 12, 13, 14) Parents, therefore, were concerned that Student would not be prepared for college if Student remained at School.

The District argued that the issues in this case arose from Parents' unfounded concerns about bullying that either had not really been as serious as perceived by the family, or had abated by the time Student left School. The District also asserted that School was, and remains, fully capable of assisting students like Student with transition

to college. In essence, the District argued that neither the Parents' academic nor their social concerns were legitimate, and that they removed Student from a program in which Student had been very successful for no good reason.

Social/Academic Issues

The relationship between Parents' academic and social concerns at School is more far more complex than portrayed by the District. Parents never questioned whether School prepares students for college, generally, or even whether it could provide college prep courses for Student. Rather, they legitimately wondered whether School could effectively prepare Student for college, given Student's history of social difficulties with a particular group of students. *See* F.F. 4; N.T. pp. 67—72. Parents did not believe that School could assure that Student would both feel safe and be academically challenged, and the record amply supports those concerns. (F.F. 10, 11, 12, 13, 14)

School became an inappropriate placement for Student by the end of the 2007/2008 school year because of the residue of the earlier, more serious social issues. Even if the bullying/teasing issues, objectively, had never been as serious as Student believed, Student's perception of the incidents which did occur arose directly from Student's disability, as acknowledged by counselors at School. (F.F. 7, 8) Moreover, the extensive record left the clear impression that School's efforts to deal with the problems were either ineffective or adversely affected Student academically. For two years prior to the 07/08 school year, School placed Student in academically lower level classes to provide Student with a less socially challenging setting. (F.F. 11) There is no evidence

that such response helped Student overcome social isolation or helped to advance Student's post-secondary transition goal of attending college.

Parents expressed their belief that School tried to provide for Student's social needs. (F.F. 6, 8). Nevertheless, School made no significant progress toward helping Student re-establish natural connections with peers. School's inability to do so deprived Student of the opportunity to practice social skills in a natural environment, which the District's speech/language pathologist believes is necessary for Student to overcome weaknesses in social language. (F.F. 36) There is nothing in the record which suggested that School had a better plan for helping Student socially for the current school year.

The record in this case left no doubt that if Student was to begin making real progress toward the development of more typical social skills as Student moves closer to adulthood, Student needed a fresh start in a new school.

Academic Progress/IEP

The District relies heavily on the academic progress that Student made throughout Student's tenure at School to establish that its program was appropriate at the time Student left, and would be appropriate in the future. Parents acknowledged that Student made significant academic progress, particularly in reading, including during the 2007/2008 school year. (N.T. 224, 225, 238). Nevertheless, as the School reading specialist tacitly acknowledged, a student who is capable of more challenging work will certainly succeed at a lower academic level. (F.F. 12)

The District also noted that at School, Student had an IEP which included, goals, specially designed instruction and occupational and speech therapy. Although that is certainly true, close scrutiny of the November 2007 IEP, which was in effect at the time

Student left School, reveals that it is a very sparse document. It includes only one goal each for reading, math and writing. (F.F. 37) The IEP does not include the level of speech/language support recommended by the District's speech/language pathologist who evaluated Student in the fall of 2008. (F.F. 35, 36, 38) The transition plan in the November 2007 IEP did not go beyond initially exploring options, including trade and technical schools, although Student's counselor knew that Student is focused on attending a two or four year college. (F.F. 15) Moreover, there was no evidence that Student's IEP team was preparing Student for meeting that goal, other than by moving Student to a more academically challenging class during the 2007/2008 school year at the counselor's suggestion. (F.F. 15). There was no evidence that the District, in connection with School offered a new IEP after the District's evaluation was completed. There is, therefore, no reason to believe that the District would assure that School will produce an IEP which truly addresses all of Student's needs if Student were to return to School.

Appropriateness of Current School

The District expended considerable effort pointing out the purported deficits of the private school alternative selected by Parents. The record, however, revealed a school program with far more detailed and coordinated planning for both academic and social preparation for college than anything proffered by School. (F.F. 21, 22, 23, 24, 25) Most important, Student is succeeding at Current School, both academically and socially.

The District faults Current School for providing "accommodations" rather than true specially designed instruction. That position, however, appears to entirely miss the point of special education services. While Student, like most IDEA eligible students, may never completely overcome the effects of Student's disabilities, the goal of special

education is, or should be, to minimize the necessary services over time, and particularly as a student approaches high school graduation. Academic success in classes that are, with one exception, at Student's current grade level, should be cause for celebration. It certainly does not support a conclusion that Current School is inappropriate for Student.

With respect to social skills development, the value of the Current School approach for Student can best be summarized by noting that at Current School, Student has been able to develop social interaction skills by taking an actual role on the [sports] team rather than by the role play exercises available at School.

Availability of an IEP/Related Services at Current School

Since it is the District's obligation to provide a fully appropriate program for Student to meet all of Student's needs, there is no reason that the District cannot or should not engage in an IEP meeting for Student with Current School. If the IEP team, including District participants believe that Student needs individualized OT services, those can certainly be provided by the therapist on staff at Current School. *See* F.F. 21.

Speech/language services would be more difficult to obtain, since Current School does not have those services available on staff. Nevertheless, if District, Parent and Current School members of Student's IEP team conclude that Student needs those services, the District must provide speech/language therapy in some form.

Equitable Considerations

The District's argument that reimbursement should be denied entirely because Parents had no intention of accepting a "public" placement as early as the spring of 2008 is entirely ineffective in this context. First, the District never offered a truly "public" placement. The only offer was a private school. The record establishes that Parents were

unaware until at least the summer of 2008 that the District limited the private school options it would fund to another APS. (F.F. 18, 19) Second, the District was willing to consider an alternative APS that Parents believed would meet Student's needs, so the "public" placement was flexible to some extent. (F.F. 18). Finally, Parents considered both another APS, and a truly public school placement, within the District, and clearly would have accepted either of those alternatives had they met Student's needs.

CONCLUSION

For the reasons explained above, the program and placement offered to Student by the Boyertown Area School District for the 2008/2009 school year, enrollment at School, was not appropriate for Student. The school Parents unilaterally selected for Student, Current School, is currently providing, and from the beginning of the current school year, did provide an appropriate program and placement for Student. In the absence of any equitable reasons to deny or reduce reimbursement of Parents' out of pocket costs for tuition and transportation, they will be fully compensated by the District.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the Boyertown Area School District is hereby **ORDERED** to take the following actions:

1. Reimburse Student 's Parents for the costs of tuition at Current School for the 2008/2009 school year
2. Reimburse Student's Parents for their costs of transporting Student to Current School for each day Student attended school there during the 2008/2009 school year, provided that if the parties agree, the District may provide transportation directly for the remainder of the school year.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

March 19, 2009