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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: JE
ODR #9228/08-09 LS

Date of Birth:
Xx/xx/xx

Date of Hearing:
October 24, 2008

OPEN HEARING

Parties to the Hearing:
Mrs.

School District of Philadelphia
440 North Broad Street, 3rd Floor
Philadelphia, Pennsylvania 19130

Representative:
Pro Se

Kenneth Cooper, Esquire
Office of General Counsel
School District of Philadelphia
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Date Transcript Received:

November 3, 2008

Date of Decision:

November 8, 2008

Hearing Officer:

Linda M. Valentini, Psy.D.

Background

At the end of June 2008 Student, a then 8th grade teenaged student, aged out of Student's full-time autistic support placement at the Elementary School (hereinafter The Elementary School) in the School District of Philadelphia (hereinafter District). Previously, in December 2007, the District had offered, and Mrs. (hereinafter Parent) had approved, a Notice of Recommended Educational Placement (NOREP) for an Approved Private School (hereinafter APS).

Although the Parent has visited several, she has not yet found any APS to be appropriate for her child, and wants Student returned to The Elementary School to help Student transition to an APS. The District maintains that The Elementary School is neither an available nor an appropriate setting, and that Student's pendent placement is an APS as set forth in the approved NOREP. Originally the District had offered several public high schools as an interim placement in lieu of a stay-put placement until an appropriate APS that met the Parent's approval could be located. However, the District has now withdrawn these offers based upon an unsuccessful visit to one of the locations, an autistic support classroom at The Middle School (The Middle School). The District now maintains that APS, (hereinafter APS) is appropriate for Student and that this should be ordered as the pendent placement for Student.

At the time of the hearing the Parent was keeping Student out of school and educating Student herself at home. Although there may therefore be justifiable concern that this matter has been delayed, it must be noted that the family was originally represented by counsel, and the parties with the aid of both attorneys were working towards a settlement such that they requested and received a continuance. Ultimately, however, the parties could not agree and this hearing was scheduled. A few days prior to the hearing, counsel for the family gave notice that Student no longer represented the family and that the Parent had stated her intention to proceed pro se.

Issue

The parties agreed on the record that the issue in this hearing is as follows: What is Student's pendent placement?

Findings of Fact

1. Student is a teenaged eligible student residing in the School District of Philadelphia. Student's classification is autism.
2. Student was enrolled in the District in 2002, and during the 2007-2008 school year received special education in a full time autistic support classroom located at the The Elementary School School, a Kindergarten to 8th grade (K to 8) school. (NT 33, 118)

3. In October or November 2007 the parents of the 8th graders, all of whom would be aging out¹ of The Elementary School and into high schools, including Student's parents, began to be informed about various planned promotion activities such as renting of gowns and senior class trip. Individual pictures of the seniors were eventually taken for the yearbook and Student's picture was included in the yearbook. (NT 108, 110, 116-119, 120, 127)
4. Starting in 2003 Student has had a particular one-to-one aide in school, Miss T. In addition to the one-to-one aide, for the past four or five years Student also has had a long-term TSS worker with Student in school, although when that worker left in April 2008 the position was not re-staffed until June 2008. Student thus had two-to-one support in the autistic support classroom prior to and for most of Student's 8th grade year. A Behavior Specialist Consultant was also assigned through the mental health agency to devise a treatment plan and monitor its implementation, as well as to supervise the TSS.² (NT 43-44-47, 76-77, 80)
5. In addition to Student's having two-to-one support, Student's classroom at The Elementary School was staffed by a teacher and a teaching assistant. (NT 86)
6. Student's BSC, who observed Student on average one to two hours a week, testified that at various times, whether or not the TSS was present, depending on the day, and to varying degrees, Student engaged in behaviors such as annoying other students by getting too close to their faces to get a reaction, touching other students, spitting, getting up from Student's seat and walking, biting self to the point of causing a scar, hitting, and grabbing other students. (NT 84-88, 95)
7. The BSC has concerns that if Student is not supervised closely Student could hurt someone, albeit not intentionally, and Student could be hurt by another person who is reacting to Student. (NT 90, 96)
8. On December 20, 2007 the District and the Parent agreed that Student's needs could not be met in a public school setting, and decided that an APS was the appropriate placement for Student. The parties modified an earlier NOREP (October 18, 2007) by handwritten changes initialed by the Parent and a District representative. (NT 121-124; S-1, S-2)
9. The District sent out packets to APS, [and three other schools]. At the time of the hearing Student had been accepted by [another school and APS. (NT 37)

¹ One student who began in The Elementary School in September 2008 was transferred out in October as soon as a clerical error that did not reveal Student's age-ineligibility was discovered. (NT 125)

² Therapeutic Staff Support (TSS) workers and Behavior Specialist Consultants (BSC) are provided to children up to 21 years of age by private mental health agencies under a funding mechanism for Behavioral Health Rehabilitative Services. The services must be deemed medically necessary by a psychiatrist or a licensed psychologist and in Philadelphia County eligibility is reviewed through an evaluation at least annually for autistic children.

10. The BSC visited APS twice, most recently in August 2008. She concluded that the school was not appropriate for Student at that time because it did not have occupational therapy equipment such as a therapy ball, a trampoline and a swing, and she would have to talk to the occupational therapist who would supervise Student's use of such equipment to see if the therapist knew about sensory issues before she could say that APS was appropriate. (NT 90-93)
11. The Program Manager for Autism Services from the agency that provides Student' BSC and TSS, visited APS in the winter of 2007-2008. She concluded that the school was not appropriate for Student at that time because there were hazard and safety issues in what she called the "calm-down" room, and because sensory equipment such as a peanut ball, a big therapy ball, brushes, lotion, swings and a trampoline were not evident. (NT 65-66)
12. A close family friend visited APS. Her main concern was that the room where they would put Student if Student were to have a melt-down had strings of lights criss-crossed from corner to corner of the ceiling and the lights were hanging down, and there was a door with a one-way lock and no window in the door to check on the child. (NT 104-105)
13. Because by the beginning of the current school year an APS had not yet been selected, the District proposed interim placements in public schools to the Parent in lieu of a stay-put placement. Student visited The Middle School for a half-day on October 3, 2008. Student had not been in school since mid-June 2008. Student visited the autistic support classroom accompanied by Miss T, Student's long-term aide. (NT 129-132)
14. The Middle School classroom is self-contained, has six students, a teacher and an assistant. Student visited with Student's long-term one-to-one assistant. There was also a representative from the District's Central Office present in the classroom. The principal testified that all but one of the students in the class have life-skills needs but there is one higher functioning student who is included in regular education classes. The teacher in contrast testified that four of the six students would be considered on the high functioning end of the autistic spectrum, being "completely verbal, able to read and write, and moving up in their math skills". The teacher testified that although the other two students present as being very low functioning they are "very smart kids". (NT 138-139, 142, 155, 202)
15. The teacher at The Middle School testified that none of her students have any behaviors outside the "typical vocal tics and talking and scripting". Four of the students had been in a classroom together in their previous middle school. (NT 202-203)
16. On Student's October visit to the classroom Student "greeted by getting right up in (the other students') faces" and "put two of the students in a headlock" when they resisted Student's getting in their face. One student was "more than happy to

begin pushing back”. Miss T was reportedly slow to respond and stood up only after the teacher intervened. (NT 206, 209)

17. The teacher testified that she would fear for her students’ safety “if something were to occur with one of my students who is able to defend themselves and one who isn’t able to get away from something like that”. (NT 207)
18. Although the teacher has experienced aggression in the one-to-one or two-to-one private home setting, and in the preschool setting, where she worked previously she has not seen that intensity of aggression in a classroom (of older students). (NT 208)
19. The teacher does not believe that she can teach Student in her classroom environment, but believes that she could work with Student one-to-one. She does not feel that, the way her classroom is currently set up, Student could benefit and believes that Student presents a danger to her students and they to Student. She believes that her students are “behaviorally and academically in a different place” than Student is, “They’re in a vastly different place than” Student. (NT 213-214)
20. The teacher is concerned that even with the presence of the familiar Miss T and with the mother being in the school Student, seemingly unprovoked, became aggressive. (NT 216, 235-236)
21. The teacher could not think of anything that in her opinion would make it safe for Student to be in her classroom. (NT 228)
22. The principal of The Middle School was not present in the classroom during Student’s visit, but based on the teacher’s reports of Student’s behavior during the visit she determined that The Middle School would be an unsafe environment for Student and the other students in the school since there had never been incidents of this kind in that classroom since she had been in the school. (NT 131, 143-144, 149, 238)
23. The principal is in her third year as an administrator, but became a principal for the first time in February 2008, assigned to The Middle School, a brand new school. In her two previous high schools where she was an assistant principal and a principal intern there were no autistic support classes. The principal was exposed to students with Asperger’s Disorder at the school where she served as a principal intern. (NT 137, 151, 153, 156)
24. The teacher in the autistic support class at The Middle School is in the second month of her first year teaching in the Philadelphia School District. Previously she taught in an early intervention preschool autistic support program. She worked off and on in the home of a family with two autistic daughters from the ages of six and nine to the ages of twelve and fifteen. She testified that “the first

- two months of this school year are all a big blur because I've been here 13 hours a day". (NT 200-201, 204)
25. The teacher is a self-described "26-year-old woman with bad knees and a bad back", who does not believe she can stop (a physical altercation) between two students. (NT 221-222)
 26. The teacher believes that Student is "very different from all of our students. Student has – Student's behaviors are to my students very aggressive. They're not used to that". (NT 205)
 27. The Middle School has only a 9th grade this year but will add a grade each year to 12th grade. (NT 137-138)
 28. Student lives in [certain section of] Philadelphia. APS is an APS located in [the same section of] Philadelphia on a large campus. The school building is about 75 to 100 yards from [deleted] Road and is separated from the road by a grass strip and a parking lot. All outdoor recess time is at the back of the campus bounded from the highway by a sound barrier wall. The doors are secure and students cannot enter or exit the building without being buzzed in or out. There is another security system in place in case the fire alarm goes off. (NT 166, 168-169)
 29. The school is cleaned each day by housekeeping staff and thoroughly cleaned on request. Outside there are trees and there are on occasion bird and goose droppings but there are none inside the building or in an area where the children would be playing. The birds' nest that was over the door when the Parent visited is no longer there. (NT 169, 188)
 30. The day the Parent visited there was a sign on the door of the quiet room (calm-down room) asking to please keep it locked because the room was being painted. Some low-level lighting was being tried to eliminate the need for bright fluorescent lighting at the suggestion of the occupational therapist, and because of the painting the lights were down. There are currently no Christmas lights in the room. (NT 170-171, 184)
 31. APS has 16 students currently enrolled, divided into three classrooms. The classroom into which Student would be placed currently has 5 students and Student would be the sixth. The classroom contains four adults who are APS staff– a teacher and three personal care (one-on-one) aides. One student has a TSS worker. Student would have a one-to-one personal care aide as per Student's IEP, and Student would also have a TSS worker. (NT 171-173)
 32. If Student' TSS worker did not come in on a particular day Student would still come to school and APS shifts staff if necessary to keep the children safe. (NT 189)

33. Last year APS had the equivalent of one full day of occupational therapy services. This year because of a larger number of students there will be from two to three days of occupational therapy services depending on the needs of the students. (NT 185-186)
34. APS has a small quiet room (the “calm-down” room) with a rug, a mattress, pillows and a comforter where a student who needs to be somewhere that he/she feels safe can go accompanied by an adult. (NT 183)
35. APS has swings on the grounds, large therapy balls, weighted and compression vests, and a balancing disk. (NT 167)
36. If the IEP team determined that a child needed a particular piece of equipment APS would provide that equipment. (NT 167)
37. The Director of the [autism school division] at APS testified that APS can implement Student’s IEP. (NT 172, 189-190)
38. If students exhibit significant behavioral needs APS does a Functional Behavioral Analysis and creates a Behavior Plan so that all staff are on the same page. If a student comes into APS with a behavior plan from their mental health provider agency APS works with that plan with the BHRS staff. (NT 190-191)
39. All the students at APS are on the autistic spectrum and the Director believes that Student would fit in well.³ (NT 180)
40. The Parent toured APS several times and expressed that one of the deciding factors about whether or not she would approve the school was whether Miss T could be with Student at the school in order for Student to make a smooth transition. The Parent expressed that she wanted Student to come to APS but she wanted to make sure that Miss T would continue to be Student’s personal care aide. (NT 177-178, 187)
41. The Parent returned to APS for another visit and brought Miss T. The Director met individually with Miss T who is an employee of the District. Although APS was willing to hire Miss T as Student’ personal aide, Miss T did not want to leave the District because it would mean losing her pension and benefits.⁴ (NT 178-179, 193-194)

³ The Director had a chance to observe Student for several hours during the morning half of the hearing as Student was in the hearing room seated next to Student’s mother.

⁴ Additionally Miss T had some surgery and will not be back to work for a while. (NT 194)

Legal Basis

Burden of Proof –

The Parents requested this hearing and therefore they bore the burden of proof. The burden of proof is in two parts: the burden of production (simply, which party presents its case first) and the burden of persuasion (which side has to convince the decision-maker(s) by a preponderance of the evidence that its position should be upheld).

In November 2005 the U.S. Supreme Court held that, in an administrative hearing, the burden of persuasion for cases brought under the IDEA is properly placed upon the party seeking relief. Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. L.E. v. Ramsey Board of Education, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. Jaffess v. Council Rock School District, 2006 WL 3097939 (E.D. Pa. October 26, 2006). However, application of the burden of proof does not enter into play unless the evidence is in equipoise, that is, unless the evidence is equally balanced so as to create a 50/50 ratio. In this matter that is not the case.

Authority –

Special education issues are governed by the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”), which took effect on July 1, 2005, and amends the Individuals with Disabilities Education Act (“IDEA”). 20 U.S.C. § 1400 *et seq.* The IDEIA’s implementing regulations are found at 34 CFR §300 *et seq.* Eligible students are entitled under the IDEIA and Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). FAPE is defined in part as: individualized to meet the educational or early intervention needs of the student; reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress; provided in conformity with an Individualized Educational Program (IEP).

Pendency –

The IDEIA’s “stay-put” provision reads as follows:

Maintenance of Current Educational Placement

Except as provided [regarding disciplinary placements], during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child.

The federal regulations provide as follows:

300.518 Child’s Status During Proceedings

(a) Except as provided [regarding disciplinary placements] during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a hearing under 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in Student's or her current educational placement.

(d) If the hearing officer in a due process hearing conducted by the SEA or a state review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for the purposes of paragraph (a) of this section.

Discussion

Although Student last received a full-time autistic support program in a public school (The Elementary School) during the 2007-2008 school year, halfway through that year the Parent and the District agreed, in writing via an approved NOREP, that Student required an Approved Private School in order to receive a free, appropriate public education (FAPE). (FF 3)

However, the Parent has not yet accepted a proffered APS, although the District has identified one APS (APS) it believes it is appropriate for Student. The District maintains that an APS is the pendent (or stay-put) placement, agreed upon by virtue of the endorsed NOREP, and proposes to place Student at this APS, until the Parent and the District both agree on a particular APS which may or may not be APS. The Parent and her witnesses expressed concerns about some physical aspects (plant and equipment) that they observed on their visits to APS. (FF 10, 11, 12)

The Parent would like Student to be returned to The Elementary School in order to allow Student to make a smoother transition to whatever new school will eventually be chosen.

As an interim solution, in lieu of the stay-put placement, the District considered placing Student in a full-time autistic support classroom in one of three public high schools, (two others and The Middle School), but Student's behavior during the second of Student's two visits at The Middle School convinced the teacher that her classroom was not safe for Student and that her students would not be safe from Student should Student be placed there. The principal adamantly concurs with the teacher. (FF 13, 15-22) The District has withdrawn [the other two high schools] from consideration.

Moreover, and of great concern, is the fact that Student has not been in school since the end of the 2007-2008 school year.

The parties framed the issue in this case as being about stay-put, however, pendency only applies during the duration of an administrative or judicial proceeding. Thus, as there are no other active issues, this decision will end the administrative proceeding, unless the

decision is appealed to a court of competent jurisdiction. The placements discussed in the hearing will be considered in order.

The Elementary School: There are at least three reasons why The Elementary School, the mother's preferred school, is not Student's stay-put placement and is not an appropriate placement for Student. First, The Elementary School only goes up to 8th grade. Students who finish their 8th grade year move on to high school placements. Student was considered an 8th grader. Student's parents were informed about promotion activities in the fall of 2007, and in fact considerations for where Student would attend for 9th grade were underway in December 2007 when the NOREP for APS was accepted. Student was promoted although Student's parents did not allow Student to participate in the senior promotion activities. Student has aged out of The Elementary School. (FF 2, 3) A student's special education program is not tied to a specific building or grade level, and is best understood as a continuum, and that continuum of services does not cease to exist simply because a due process proceeding has begun and the then-current program becomes the pendent program under the IDEIA. A Pennsylvania appeals panel specifically addressed a move from one age/grade grouping to another, "*When a natural transition occurs during the pendent placement or program, that transition must occur. For example, if a student would have moved from elementary to middle school, that transition is allowed as part of the pendent placement.*"⁵ Second, although the Parent believes that going back to The Elementary School would assist Student in transitioning to a new school, this is highly unlikely. Student has not been in The Elementary School or in any school since mid-June 2008. There are new students in the 8th grade autistic support classroom at The Elementary School. Potentially Student's one-to-one aide and Student's TSS would not be the same as they were when Student was there. Student would need to be transitioned from being at home all day to being at The Elementary School, and Student would no sooner be settled back in at The Elementary School than the school year would be drawing to a close and Student would be moving again. Third, The Elementary School is not an APS and the District and the Parent agreed nearly one year ago that Student needs an APS. Notably, this agreed-upon decision was made in December 2007, well before the long-term TSS left in April 2008, such that it can be concluded that Student's need for an APS was not brought about by the loss of Student's TSS worker. (FF 8, 4) It would neither be legally correct nor in Student's best interests for this hearing officer to place Student at The Elementary School.

The Middle School: This interim placement proposed by the District in lieu of stay-put while the parties were trying to negotiate a settlement, is not an APS, and even as a placement in lieu of stay-put it cannot currently be an appropriate placement for Student. The vehemence with which the principal expressed her opposition to Student's coming to her school and the palpable concern, bordering on fear, the teacher exhibited during her testimony convinces this hearing officer that The Middle School would be a disastrous placement for Student at the present time. (FF 21, 22) If a full-time autistic support

⁵ Spec. Educ. Opinion No. 916 (June 1999). Although this opinion was rendered under the previous version of the IDEIA, and Pennsylvania now has a one-tier rather than a two-tier system, the substantive law at the base of the panel's holding has not changed.

program and not an APS were the last agreed-upon placement, The Middle School would still not offer an appropriate option given the crucial personnel currently at the school. The current principal has only been a principal since September 2008 when the school opened for the first time, she has no experience with special education, and she has only been in contact with Asperger's students on the autistic spectrum. She does not have the educational background, the training or the experience to support a new, very apprehensive teacher in incorporating a student with Student's needs into her classroom or incorporating Student into the school as a whole. (FF 23) The current teacher is charged with managing an autistic support classroom in a high school with only the skimpy credentials of being a preschool autistic support teacher and having worked with two autistic girls under twelve in a private home for several years. Although she holds a Master's Degree in special education, she does not have experience working as a teacher of high school students in an urban public school, much less working as a teacher of autistic high school students some of whom may also have cognitive deficits. (FF 24) Clearly she was fortunate that her first special education assignment was in a class of six higher functioning, non-behaviorally disordered students. The extreme level of this young woman's apprehension was reflected in her listing her own physical conditions as one reason why Student could not be in her classroom, and was even more strikingly conveyed by her declaration that there was nothing that her principal could offer to make her feel that she and her students and Student would be safe in her classroom – not even an aide and a TSS dedicated to Student, in a classroom with herself and yet another aide, with a male police officer outside the door. (FF 25, 21) If the full-time autistic support classroom at The Middle School were Student's stay-put placement, and it is not, a reallocation of school district teaching and administrative personnel, or an intensive period of retraining for current personnel, would be required. The amount of time it would take the District to retrain its staff at The Middle School, even if that amount of time were measured in weeks and not months, is too long given that Student needs to get back into school immediately. For the future, however, the District and its staff at The Middle School would benefit from considering that this type of situation was quite recently addressed in an appeals panel opinion, quoted here at length because it parallels, though does not mirror, the present matter:

“It appears that the District was attempting to fit the student into a program, placement and curriculum that already existed in the District, rather than tailoring a program and placement to the student's capabilities and limitations, as the law requires. This conclusion is further apparent in the District's assertion that it cannot be expected to create a program for a single student. This is exactly what is required by IDEA- an individualized program. This does not mean a separate class or room, but a set of coordinated services and interventions, delivered by persons capable of providing them, in the least restrictive environment. The District appears to equate “autistic support” with a class. Autistic support is a service category, not a classroom. Autistic support can be provided in any classroom by competent professionals. It does not require the aggregation of autistic students in a room. In this case, once the Student experienced lack of meaningful progress or downright failure, the District blamed the Student, maintaining that the Student presented with disabilities that were

foreign to the students in the District, that the District personnel were not trained to work with this Student, that the Student missed too much school, that the Student did not gain much from associating with typical peers, and so on and so forth. In fact, the District failed to create a program to meet the Student's needs, failed to train its staff adequately and failed to implement the parts of the program that could have been appropriate.”⁶

Two High Schools: There were other potential interim public school placements initially offered by the District in lieu of stay-put and rejected by the Parent. These were the full-time autistic support classrooms at the [redacted] High School or the [redacted] High School in [a certain section of] Philadelphia. Although this hearing officer was provided no testimony regarding these placements other than that they had full-time autistic support programs, if no APS had accepted Student (acceptance of a particular student is completely voluntary for an APS) this hearing officer would have directed the District to place Student in whichever of these two schools was closest to Student's home until such time as an appropriate APS could be found for Student.

APS: This hearing officer has determined that the last agreed-upon placement for Student, and therefore Student's stay-put or pendent placement, is an APS. Student has been accepted by at least two schools that are designated APS. The APS that the District proposes, APS, offers Student an appropriate program and placement. (FF 31, 34, 37, 39) In marked contrast to the witnesses from The Middle School, the APS Director was calm and knowledgeable, well-trained and experienced, exuded competence, and demonstrated respect to the Parent and to Student. Without rancor she answered all the points of concern raised by the Parent, by the [mental health provider agency] Autistic Program Manager, by the BSC, and by the family friend. (FF 28, 29, 30, 35, 36, 40, 41) She was welcoming towards Student and testified credibly that APS can implement Student's IEP, including providing a one-to-one aide and providing occupational therapy with the necessary equipment. (FF 31, 32, 33) She made it clear that APS is accustomed to working collaboratively with BHRS provider agencies. (FF 38) APS is relatively close to Student's home and mother's employment. (FF 28) APS offers both a legally correct and an educationally appropriate stay-put program and placement for Student. It is hoped and likely that APS and the Parent will accommodate well to each other such that Student will be successful there, particularly if it becomes not only the placement imposed by this hearing officer but also the placement freely agreed upon by the parties.

Although this case was rather brief as special education due process matters go, and the issue very narrow, the considerations nevertheless were complex. “Pendency is not a building, nor even a type of facility (private or public), it is based on the nature and intensity of the specially designed instruction delivered.”⁷ The District and the Parents

⁶ Sp. Educ. Opinion No.1858 (January 2008)

⁷ The Pennsylvania Special Education Appeals Panel in Sp. Educ. Opinion No. 1865 (February 2008). Although the instant matter was filed and heard under Pennsylvania's new one-tier system, the substantive law at the base of the Panel's holding has not changed.

had agreed that Student requires the nature and intensity of programs offered through Approved Private Schools. APS is an APS. APS is not just an APS. The facts in evidence are persuasive that APS is fully capable of offering Student an appropriate education program and placement of the nature and intensity that Student requires to receive FAPE. This hearing officer finds that APS is Student's pendent (stay-put) placement. Given that Student has missed nearly a third of this school year, it is necessary for participants on both sides to put the current dispute behind them and work together now in Student's best interests.

Order

It is hereby ordered that:

1. An Approved Private School is Student's pendent placement.
2. Student shall be placed at APS, an Approved Private School, which is capable of providing Student an appropriate program and placement.
3. Within 10 calendar days of receiving this Order the District, APS, the Parent, and [mental health provider agency] staff if the Parent so chooses, shall hold an IEP meeting to devise an appropriate educational plan for Student and arrange details of Student's entry into APS.

November 8, 2008

Date

Linda M. Valentini, Psy.D.

Linda M. Valentini, Psy.D.
Hearing Officer