

PENNSYLVANIA  
SPECIAL EDUCATION HEARING OFFICER

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This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

6013/05-06 KE

File Number

M.T.

Child's Name

xx/xx/xx

Date of Birth

1/09/06, 1/26/06

Dates of Hearing

Closed

Type of Hearing

**For the Student:**

Parents

David T. Painter, Esq.  
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30 Cassatt Avenue  
Berwyn, PA 19312

**For the School District of  
Philadelphia:**

Mimi Rose, Esq.  
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School District of Philadelphia  
440 North Broad Street – Third Floor  
Philadelphia, PA 19130-4015

Dates of Hearing:

January 9 and 26, 2006

Date Record was closed:

February 17, 2006

Date of Decision:

February 28, 2006

Hearing Officer:

Daniel J. Myers

## **BACKGROUND**

Student is a [late teedaged] resident of the School District of Philadelphia (School District) whose emotional disturbance and attention deficit hyperactivity disorder (ADHD) qualify her for specially designed instruction and related services. In December 2004, her approved private school could no longer meet Student's emotional and safety needs. For nearly a year, the School District offered no alternative educational program/placement. Student's parents then unilaterally placed Student into several hospitalization programs and residential treatment centers. The School District acknowledges its responsibility to reimburse Student's parents for one of the unilateral placements, but it opposes reimbursement of Student's most recent unilateral placement. Student's parents now seek such reimbursement, as well as travel and related expenses, and independent evaluation costs. For the reasons described below, I will award reimbursement of the most recent unilateral placement, but not of other the costs for which reimbursement is sought.

## **ISSUES**

1. Whether or not Student's parents are entitled to tuition reimbursement at various periods from December 29, 2004 to present; and
2. Whether or not various parental claims for tuition reimbursement include nonreimbursable expenses.

## **FINDINGS OF FACT**

1. Student is a [late teenaged] resident of the School District who has been diagnosed at various times with bipolar affective disorder with psychotic features, ADHD, impulsivity, explosive personality disorder, learning disorders, inhalant dependence, possible post traumatic stress disorder, symptoms of anorexia nervosa, and symptoms of obsessive compulsive disorder. Currently, Student needs a highly structured, well-supervised, therapeutic setting twenty-four hours per day. (P 3; P 4; P 11; P 12; P 15; P 28; N.T. 8, 112-113, 138, 146, 174-175, 258-259, 313-319) <sup>1</sup>

### **2001-2002 School Year (8<sup>th</sup> grade)**

2. In September 2001, during her eighth grade school year, Student was hospitalized due to escalating misbehaviors and self-injurious ideation. Upon her discharge, she attended a partial hospitalization program. (P 3, p.1; P 4, p.4)
3. In March 2002, Student's parents unilaterally placed Student at a private residential treatment center. (P4, p.4; P12, p.2; P14, p.2; P 25; N.T. 95)

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<sup>1</sup> References to P and HO are to Parent and Hearing Officer exhibits, respectively. References to N.T. are to the transcripts of the January 9 and 26, 2006 hearing sessions.

- a. The school is licensed and accredited, and all teachers are certified. (N.T. 102, 116)
- b. Students at PRIVATE FACILITY range from ages 12 to 18, all students have severe emotional behavior disorders, and all students have IEPs. (N.T. 106, 117)
- c. Classes are small, usually with nine students. Teachers work closely with each student's therapeutic program. The program at PRIVATE FACILITY is safe and structured. (N.T. 106, 114)

#### **2002-2003 and 2003-2004 School Years (8<sup>th</sup> and 9<sup>th</sup> grades)**

4. For the 2002-2003 school year, Student remained at PRIVATE FACILITY. By the end of the school year, she was healthy enough to return home. (P 19, p. 4; N.T. 95)
5. For the 2003-2004 school year, Student's IEP team placed her at a local, approved private special education school. Student lived at home and attended day school at the School. By the end of the school year, Student was valedictorian of her class. Student's IEP indicated that she did qualify for extended school year services. (P 1, p.14; P 12, p.2; N.T. 205, 209, 472)

#### **2004-2005 School Year (10<sup>th</sup> grade)**

6. Student's emotional health deteriorated during the first half of this school year. She engaged in self-destructive behavior [redacted]. On December 10, 2004, personnel informed Student's parents that Student's needs for supervision and safety could no longer be met at. (P 3; P4, p.2; P 11; P 12; P 15, N.T. 38, 64-65, 205, 212-213, 384-385)
7. On December 14, 2004, Student's parents reported to Student's School District case manager that Student's emotional condition had deteriorated steadily all week and that Student had requested placement back at private facility. The School District case manager advised Student's parents to contact mental health agencies for supports for residential treatment facilities. The School District did not conduct any multidisciplinary reevaluation, nor did it arrange any IEP team meetings or interagency meetings. (P 5, p.2; N.T. 201, 213-215)
8. On December 29, 2004, Student's parents unilaterally placed Student back at PRIVATE FACILITY. (P5; P6, P7, P8, N.T. 96, 108-109, 201, 213-215, 479)
9. The School District concedes that it erroneously did not reconvene the IEP team after Student's PRIVATE FACILITY placement failed. The School District further concedes that the unilateral parental placement at PRIVATE FACILITY satisfies the tuition reimbursement test and therefore, the School District is required to reimburse Student's parents for the costs of PRIVATE FACILITY from December 29, 2004 through her discharge in April 2005. (Closing Statement on Behalf of the School District of Philadelphia, p. 6)

10. On April 29, 2005, PRIVATE FACILITY reported that it could no longer provide sufficient care against Student's self-abusive and aggressive behaviors towards her peers. Most of Student's negative behaviors occurred outside the normal school day. (P 10; N.T. 97, 107, 112-113, 118, 129)
11. On or about May 2, 2005, Student's parents privately secured a psychiatric evaluation of Student by Dr. G, a child and adolescent psychiatrist. (P4, P27, N.T. 17-21)
  - a. Dr. G diagnosed major depression, ADHD, learning disorders, developmental language disorder, and features of post traumatic stress disorder, obsessive compulsive disorder, and anorexia. (P4; N.T. 24-30)
  - b. Dr. G determined that Student's educational and psychiatric/medical needs were intertwined, and she concluded that long term (12-24 months) placement in a residential facility was medically necessary. (P 4; N.T. 23-30, 34-36, 39-42, 50-52, 308)
12. At about the same time, Student's parents hired an educational consultant to assist them in locating appropriate placements for Student. (N.T. 79, 219, 267,364,369)
13. From May 5 to May 22, 2005, Student's parents unilaterally placed Student in a short-term psychiatric hospitalization at the Private facility. (P 19, pp.32-37; N.T. 45-46, 203-204, 219, 267-268, 270-271) Student's parents do not seek reimbursement for the costs of the Private facility. (N.T. 372)
14. On or about May 23, 2005, Student's parents unilaterally placed Student in a long-term psychiatric residential treatment center PRIVATE FACILITY (P 10; P 12; P 15; P 29; P 31; N.T. 220, 267-273, 364)
  - a. For her first five months, Student resided in the acute care wing of the facility where she received 24/7, 1:1 assistance with constant checks by staff to ensure her safety. Almost 100% of Student's days were spent in individual and group psychotherapy activities. (N.T. 46, 174-176)
  - b. After five months, Student transferred to the step-down, or post-acute, wing of the facility where she learned more independent living skills, some community integration, and some vocational skills. Supports in the step-down unit are not as intensive as in the acute care wing. (P 18; P 29; N.T. 138, 140-144, 146, 166-169, 174-175, 186)
  - c. PRIVATE FACILITY has no educational accreditation, no school on site, no school affiliation and no certified special educators or teacher on staff. PRIVATE FACILITY has tutoring rooms. (N.T. 280)
  - d. The PRIVATE FACILITY acute care wing costs \$770 per day. The step-down unit costs \$450 per day. From May 2005 to the end of December 2005, Student's parents have paid \$144,200 to PRIVATE FACILITY. (N.T. 278, 376-377)
15. On June 15, 2005, an IEP team "fact finding" meeting was conducted. No IEP was developed at this meeting. Rather, the School District determined to review Student's

records on or before June 30, 2005 to offer input regarding Student's placement for Fall 2005. (P 10; N.T. 462)

16. On June 20, 2005, School District school psychologist Mr. T, with twenty-two years of experience working in the District, reviewed Student's records "for the purpose of helping determine Student's eligibility for special education services." He found continued eligibility for special education service, with primary disability as emotional disturbance and secondary disability categories as OHI and SLD. He believed that the appropriate level of services for Student was a residential treatment center for emotional disturbance that could address Student's complex and significant diagnostic and treatment needs. Mr. T did not believe the School District had a program to meet Student's needs. (P 11; N.T. 258-259, 262, 264)

### **2005-2006 School Year (10<sup>th</sup> grade)**

17. By September 2005, the School District had not yet proposed any placement for Student for the Fall 2005, residential or otherwise. On or about September 15, 2005, the local school and mental health authorities convened an interagency meeting to discuss Student's placement. No recommended educational program or placement resulted from that meeting. (P 30, p.1; N.T. 233-234, 441, 447-448, 459, 472-473)
18. On October 12, 2005, when Student transferred to the step-down, or post-acute, wing of PRIVATE FACILITY, she received academic one-to-one instruction in the traditional academic skills of language arts, reading and math by certified teachers was added to Student's program schedule. (P 18; P 29; N.T. 138, 140-144, 146, 164, 166-169, 171, 174-175, 186)
19. On October 17, 2005 School District psychologist Ms. C traveled to PRIVATE FACILITY to evaluate Student. (P 12; P 15)
- a. Ms. C believed that Student's educational program must address needs in adaptive functioning, job experience, reading comprehension and functionally relevant math skills. She also believed that Student's IEP team must address how to keep Student safe. (P 12, p. 12)
  - b. Ms. C determined that Student could not presently access a full-time educational program due to her severe psychiatric illness. Ms. C also testified that Student's educational needs were not critical in October 2005. She concluded that Student's mental health needs had become the main priority, rendering Student unavailable to learn or be accountable for her safety. Safety must be top priority in any educational environment. Needs one to one support to ensure safety. She testified that Student's medical and educational needs were not severable. (P 12, p 11; N.T. 346, 397, 402)
  - c. Ms. C testified that the District's school psychologists are not permitted to recommend residential placements for IDEA-eligible students. (N.T. 357)
  - d. Ms. C reiterated that Student had emotional disturbance, other health impairment and a specific learning disability. (P 12; P 15; N.T. 307-308)

20. On November 16, 2005 Student's multidisciplinary team developed a reevaluation report recommending one-to-one support, direct job experience, vocational skills, high structure, close supervision, psychological supports, and an emphasis on functional skills. (P 15)
21. Also, on November 16, 2005, the School District issued a Notice of Recommended Educational Placement (NOREP) recommended "homebound instruction (medical) 3 hours per week." The School District recommended re-evaluating in three months the level of instruction that Student could tolerate. They indicated that the School District had considered a return to an alternative special education setting on a full time basis, but rejected that option because Student could only tolerate a limited amount of instruction at the time. The School District's proposed IEP indicated that Student qualified for ESY. Student's parents approved the NOREP. Apparently, Student's IEP team agreed that Student would receive medical homebound instruction for 3 hours per week from outside tutors because there was no educational staff at PRIVATE FACILITY. (P 15, p. 14-15; P 16; N.T. 451, 470-473, 479-480)
22. The School District's proposed November 16, 2005 IEP also: 1) contained vague goals and objectives lacking accurate baseline levels of performance; 2) lacked a transition plan even though the reevaluation report recommended the elements of a transition plan and Student was in need of a transition plan because she was nineteen-years-old at the time; 3) lacked related services; 4) failed to provide for a one-to-one aide as recommended in the Reevaluation Report; and, 5) lacked goals, objectives or specially designed instruction for Student's obvious needs related to personal coping skills, interpersonal relationship skills and no plan for teaching replacement behaviors for her challenging, self-destructive behaviors. (P 16)
23. In Pennsylvania, a Memorandum of Understanding among the state Departments of Education, Public Welfare, Labor and Industry, and, Health states that "[i]n the event any public agency other than an educational agency fails to provide or pay for special education or related services that it is otherwise obligated to provide or pay for under State or Federal law, the LEA shall provide or pay for such services to the child and claim reimbursement from the appropriate agency in accordance with Sections II and III of this MOU." (P 24, p.4)
24. Exhibits HO 1- HO 2, and P 1-8, 10-13, 15-16, and 18-33 were admitted into evidence without objection. (N.T. 488) Student did not submit exhibits P 9, 14 or 17 into the record. In addition, Student withdrew the first two pages of P 18, so that P 18 begins with page 3. (N.T. 487)

## DISCUSSION

The parents of a child with disabilities are entitled to tuition reimbursement when (a) FAPE is denied, (b) the parents properly seek privately secured placement, and (c) the balancing of the equities lies in the parents' favor. Florence County School District Four v. Carter, 510 U.S. 7; 114 S Ct. 361 (1993); Burlington School Committee v. Massachusetts Department of

Education, 471 U.S. 359; 105 S.Ct. 1996 (1985); 34 CFR § 300.403) In Re the Educational Placement of N.B., Special Education Opinion No. 1685 (2005); In Re the Educational Placement of Z.G., Special Education Opinion No. 1597 (2005); In Re the Educational Placement of R. B., Special Education Opinion No. 1458 (2004)

### **The School District has denied FAPE to Student since December 2004**

A school district is required to offer an IEP reasonably calculated to enable a child with a disability to receive meaningful educational benefit. Failure to offer such an IEP will be deemed a denial of a free and appropriate public education (FAPE). Board of Education v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982) The purpose of the IEP is not to provide the “absolute best education” or “potential maximizing education” for the child; it must simply propose an appropriate education for the child. Fuhrman v. East Hanover Bd. Of Educ., 993 F.2d 1031 (3<sup>rd</sup> Cir. 1993) An IEP is appropriate if at the time it was offered it was reasonably calculated to provide some meaningful educational benefit to the Student. The benefit must be more than de minimus. Susan N. v. Wilson School District, 70 F.3d 751 (3d Cir. 1995); Carlisle Area School District v. Scott P., 62 F.3d 520 (3d Cir. 1995) A program which confers only trivial or minimal benefit is not appropriate. M.C. v. Central Regional School, 81 F.3d 389 (3d Cir. 1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988); In the Educational Assignment of Re V.B., Special Education Opinion No. 1070 (2000)

In this case, Student appeared to thrive at PRIVATE FACILITY during the 2003-2004 school year, which she finished as valedictorian of her class. (P 1; P 14; N.T. 205, 209, 472) On December 10, 2004, however, mid-way through her 2004-2005 school year, PRIVATE FACILITY personnel informed Student’s parents that Student’s needs for supervision and safety could no longer be met at PRIVATE FACILITY. (P 3; P 4, p.2; P 11; P12; P15; N.T. 38, 64-65, 205, 212-213, 384-385) Student’s parents dutifully informed the School District, whose only response was to advise Student’s parents to contact mental health agencies for supports for residential treatment facilities. (P 5, p.2; N.T. 201, 213-215)

The School District concedes that it erroneously did not reconvene the IEP team after Student’s PRIVATE FACILITY placement failed. The School District further concedes that the unilateral parental placement at PRIVATE FACILITY satisfies the tuition reimbursement test and therefore, the School District is required to reimburse Student’s parents for the costs of PRIVATE FACILITY from December 29, 2004 through her discharge in April 2005. (Closing Statement on Behalf of the School District of Philadelphia, p. 6)

In fact, the School District never offered any alternative educational program/placement until its proposed IEP on November 16, 2005. I do not believe that there is any basis in the record for finding that FAPE had been offered to Student at any time between December 10, 2004 and November 16, 2005.

When PRIVATE FACILITY reported on April 29, 2005, that it could no longer provide sufficient care against Student’s self-abusive and aggressive behaviors towards her peers, Student’s parents searched for other appropriate placements for Student. The School District, however, did nothing. (P 10; N.T. 97, 107, 112-113, 117-118, 129, 219, 267, 364, 369)

On June 15, 2005, an IEP team “fact finding” meeting was conducted but no IEP was developed at this meeting. (P 10; N.T. 462) On June 20, 2005, a School District school psychologist determined that Student needed a residential treatment center and that the School District did not have such a program to meet Student’s needs. (P 11; N.T. 258-259, 264) Nevertheless, the School District offered nothing.

The School District now contends that its “obligation was discharged by having our school psychologist and special education case manager visit PRIVATE FACILITY to do an evaluation.” (Closing Statement on Behalf of the School District of Philadelphia, p. 8) That visit, however, did not occur until October 2005. Yet this is a child whose IEPs have consistently recognized Student’s need for extended school year (ESY) programming. (P 1; P 16, p.24) I believe that Student needed educational programming prior to the School District’s PRIVATE FACILITY visit in October 2005.

The School District, however, contends that Student “was unable to access education from May until October 200[5].” (Closing Statement on Behalf of the School District of Philadelphia, p. 8) In other words, the School District argues that Student’s condition was so impaired from the time of her May 2005 PRIVATE FACILITY discharge until the School District’s PRIVATE FACILITY visit in October 2005, that the School District did not have an obligation to provide FAPE to Student during that time.

The School District does not cite to any legal precedent for this proposition that a child can be so disabled that the School District does not have an obligation to offer FAPE. There are children incapable of participating to any degree in regular education settings. In Re the Educational Assignment of D.M., Special Education Opinion No. 1076 (2000) Nowhere, however, does the Act or its implementing regulations recognize children whose emotional disturbances are “too severe” to access any education or academic instruction.

The School District contends that, “[a]t the time of the [October 2005] evaluation and subsequent [November 16], 2005 IEP, FAPE was medical homebound instruction at her then current residence, PRIVATE FACILITY....No different from a student with a severe physical illness who requires hospitalization, [Student] had a severe mental illness requiring intensive medical care. These costs are not educational.” (Closing Statement on Behalf of the School District of Philadelphia, p. 8-9) (Emphasis in original) I reject this contention.

Admittedly, our culture (including the federal government) creates such a distinction between home and school that we have created a system by which two distinctly separate public agencies that are not required to talk to each other authorize and supervise services to meet the needs of the same autistic child, apparently applying distinctly separate eligibility and quality standards for their services – with everything apparently depending simply upon the location and environment in which those services are provided. Even the due process procedures are separate, so that I lack jurisdiction over the MH/MR agencies responsible for wrap-around services. As Student notes, however, in Pennsylvania the state Departments of Education, Public Welfare, Labor and Industry, and, Health have agreed that the local education agency (LEA) shall be the payer of last resort in disputes such as this. (P 24, p.4)

Further, the IDEA does not have a per se prohibition of hospitalization placements, although judicial rulings for hospital or hospital-like placements under special education law tend to be exceptional cases. In Re the Educational Assignment of B.A., Special Education Opinion No. 1393, 39 IDELR 227 (2003); In Re the Educational Assignment of J.K., Special Education Opinion No. 1150 (2001) In addition, school districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. Oberti v. Board of Education of the Borough of Clementon, 995 F.2d 1204 (3d Cir. 1993) Two of the options along the continuum are “instruction in the home” and “instruction in hospitals and institutions.” 34 CFR §300.26(a)(1)(i); 34 CFR §300.551(b) The School District’s reference in its November 16, 2005 proposed IEP (P 16) to “homebound instruction,” which is not a special education placement<sup>2</sup>, was apparently intended to refer to “instruction in hospitals and institutions,” which is a special education placement. 34 CFR §300.26(a)(1)(i); 34 CFR §300.551(b)

The question really is whether Student’s full-time residential placement at PRIVATE FACILITY between May 2005 and the present may be considered necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process. The unseverability or inextricability of medical and educational grounds for certain serves as the very basis for holding that the services are an essential prerequisite for learning. Kruelle v. New Castle County School District, 642 F.2d 687, 693 (3rd Cir. 1981)

In this case, the record establishes that Student has an educational need for a residential placement where she can receive academic and emotional support in a therapeutic environment. Student’s psychiatrist, Dr. G, was clear in her testimony that Student’s educational and psychiatric/medical needs were “intertwined.” (P 4; N.T. 23-30, 34-36, 39-42, 50-52, 308) School District psychologist Ms. C testified that Student’s various needs were not severable. (N.T. 346, 397, 402) School District psychologist Mr. T recommended a residential placement for Student. (P 11; N.T. 258-259, 262) Frankly, I suspect that the only reason School District psychologist Ms. C did not make a similar residential placement recommendation is because she erroneously believed that the law did not permit her to make such recommendation. (N.T. 357)

The School District also argues that this case is analogous to Clovis Unified School District v. California Office of Administrative Hearings, 903 F.2d 635, 16 IDELR 944, 16 LRP 766 (9<sup>th</sup> Cir. 1990), which rejected a parental request for reimbursement of the costs of psychotherapeutic services at an acute care facility. I find that case to be distinguishable from the instant case, however, in this significant fact: in Clovis, the responsible school district had recommended two, alternative, residential options. In this case, the only thing the School District has ever recommended since April 29, 2005 is three hours of “homebound” services. This School District’s FAPE offer is so different in quality and appropriateness from the FAPE offered in Clovis that I find the Clovis case to be inapposite.

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<sup>2</sup> See In Re the Educational Assignment of J.M., Special Education Opinion No. 1612 (2005); In Re the Educational Assignment of J.M., Special Education Opinion No. 1520 (2004)

In addition, the School District's November 16, 2005 IEP was also substantively flawed because: 1) it contained vague goals and objectives lacking accurate baseline levels of performance; 2) it did not contain a transition plan even though the reevaluation report recommended the elements of one and Student was [late teenaged] at the time; 3) there were no related services in the IEP; 4) there was no provision for a one-to-one aide as recommended in the Reevaluation Report; and, 5) there were no goals, objectives or specially designed instruction for Student's obvious needs related to personal coping skills, interpersonal relationship skills and no plan for teaching replacement behaviors for her challenging, self-destructive behaviors. (P 16)

For all of these reasons, I find that the School District failed to offer FAPE to Student from April 29, 2005 to the present. Thus, the first prong of the tuition reimbursement analysis has been satisfied.

**Parents' unilateral placement at PRIVATE FACILITY is appropriate for reimbursement**

The School District concedes that the unilateral parental placement at PRIVATE FACILITY satisfies the tuition reimbursement test and therefore, the School District is required to reimburse Student's parents for the costs of PRIVATE FACILITY from December 29, 2004 through her discharge in April 2005. (Closing Statement on Behalf of the School District of Philadelphia, p. 6)

At the end of the hearing, I granted the parties' request to submit written closing arguments, and I explicitly requested that they list the specific dollar amounts of the costs that they believe are, or are not, reimbursable. (N.T. 490) Unfortunately, Student's parents did not comply with my request. The School District, however, indicates that Student's parents seek \$144,200 in total reimbursement, which is the amount that Student's parents paid to PRIVATE FACILITY from May 2005 to the end of December 2005. (N.T. 376-377) From this, I deduce that Student's parents seek reimbursement of: 1) the costs of the PRIVATE FACILITY placement from December 29, 2004 through April 29, 2005 (which the School District now concedes); and 2) the costs of the PRIVATE FACILITY placement from May 23, 2005 to the present; but not 3) the costs of Student's short-term psychiatric hospitalization at the Private facility from May 5 to May 22, 2005. (P 19; N.T. 45-46, 68-69, 112-114, 118-119, 203-204, 216-219, 267-268, 270-271, 385-386) Thus, because the appropriateness of neither PRIVATE FACILITY nor PRIVATE FACILITY appears to be at issue, I will review, for purposes of analyzing the second step of the tuition reimbursement test, only the unilateral parental placement at PRIVATE FACILITY.

PRIVATE FACILITY has no educational accreditation, no school on site, no school affiliation and no certified special educators or teacher on staff. (N.T. 280) School District psychologist Ms. C, however, determined that Student's mental health needs had become the main priority, that safety must be a top priority in any educational environment, and that Student's educational program must address needs in adaptive functioning, job experience, reading comprehension and functionally relevant math skills. (P 12, p.11; N.T. 346, 397, 402) PRIVATE FACILITY fits that description of what Student needs. For her first five months,

Student resided in the acute care wing of the facility where she received 24/7, 1:1 assistance with constant checks by staff to ensure her safety. Almost 100% of Student's days were spent in individual and group psychotherapy activities. (N.T. 46, 174-176) After five months, Student transferred to the step-down, or post-acute, wing of the facility where she learned more independent living skills, some community integration, and some vocational skills. Supports in the step-down unit are not as intensive as in the acute care wing. (P 18; P 29; N.T. 138, 140-144, 146, 166-169, 174-175, 186)

This is not a case where Student's unilateral choice was a program/placement that failed to address Student's needs. PRIVATE FACILITY precisely addressed Student's needs – the School District simply argues that those needs were medical and not educational. I have already noted above, however, that hospitalization placements, while exceptional, are not prohibited per se. In fact, there is adequate evidence in the record to suggest that this is the exceptional case in which a hospitalization placement would have been an appropriate FAPE offer by the School District. I do not, and need not, make that determination for reimbursement purposes, however. All that is necessary for reimbursement purposes are my determinations today that: 1) the School District has failed to offer FAPE; and 2) PRIVATE FACILITY's services address Student's needs and meet the relaxed standard of appropriateness that applies to the second prong of the reimbursement test.

Accordingly, I conclude that the second prong of the tuition reimbursement analysis has been satisfied.

### **The equities favor the parents**

Student's parents have not withheld information or refused to cooperate with the School District. They have attended all meetings and communicated with all of the necessary bureaucracy. The School District, however, never offered any program/placement until November 16, 2005, and then it offered only three hours per week of "homebound" instruction. Under these circumstances, I conclude that the equities favor the parents.

Accordingly, I conclude that the third prong of the tuition reimbursement analysis has been satisfied. Thus, I will award reimbursement to Student's parents for the costs of PRIVATE FACILITY from the date of Student's placement on May 23, 2005 to the present.

### **Student's parents are not entitled to reimbursement of other costs**

From their written closing argument, it also appears that Student's parents seek reimbursement for the cost of Dr. G's evaluation, as well as unspecified costs incurred in transporting Student to attend PRIVATE FACILITY and PRIVATE FACILITY during the 2004-2005 and 2005-2006 school years. (Parents' and Student's Closing Arguments, pp. 33-37)

Parents are entitled to reimbursement of the costs of an independent educational evaluation (IEE) if the results of that IEE are useful and incorporated into the development of the IEP. In Re the Educational Assignment of S.Z., Special Education Opinion No. 1440 (2004) In

addition, Pennsylvania Special Education Appeals Panels have upheld Hearing Officers' awards of transportation expenses for programs provided to students out-of-state when school districts have failed to provide FAPE and the program selected by the parents is proper under the Act. In Re the Educational Assignment of C.B., Special Education Opinion No. 1122 (2001)

It is undisputed that the School District incorporated and relied upon the information contained within Dr. G's evaluation when it conducted its own evaluations of Student on June 20, 2005 and October 17 & 25, 2005. (P 12; P 15) Student's parents admit, however, that they did not provide to the School District notice, prior to the hearing, that they sought reimbursement of any IEEs. (N.T. 365-366, 485) I conclude that this failure to provide advance notice of the request for reimbursement of Dr. G's report precludes me from awarding such reimbursement her. I further confess that, where parents' own written closing argument fails to list explicitly the precise costs for which they seek reimbursement, I am not inclined to sift through the record to see whether I can discern precisely what reimbursement they are entitled to receive. Accordingly, for the reasons described above, I will not award reimbursement for any costs other than the costs of Student's placement at PRIVATE FACILITY.

### CONCLUSION

For eleven months after Student's approved private school could no longer meet her emotional and safety needs, the School District offered no alternative educational program/placement. Meanwhile, Student's parents unilaterally placed Student into several hospitalization programs and residential treatment centers. The School District acknowledges its responsibility to reimburse Student's parents for the PRIVATE FACILITY placement, but it opposes reimbursement of Student's unilateral placement at PRIVATE FACILITY. I conclude that the three-pronged test for reimbursement has been met with respect to the PRIVATE FACILITY placement. I also conclude, however, that Student's parents did not give advance notice of their request for reimbursement of IEE costs, and their written closing argument fails to articulate sufficiently the "other" expenses for which they seek reimbursement. Thus, I will award reimbursement of the most recent unilateral placement, but not of any other costs for which reimbursement is sought.

**ORDER**

For the reasons described above, I ORDER that:

- Student has been denied a free and appropriate public education since May 23, 2005;  
and
- The School District shall reimburse Student's parents \$144,200.00 for the costs of  
PRIVATE FACILITY.

*Daniel J. Myers*

Hearing Officer

February 28, 2006

Re: Due Process Hearing  
File Number 6013/05-06 KE  
Student

School District of Philadelphia