

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

Pennsylvania

## Special Education Hearing Officer

### DECISION

ODR No. 15850-1415AS

Child's Name: S.L.

Date of Birth: [redacted]

Dates of Hearing: 3/23/15, 4/13/15, 4/14/15

### CLOSED HEARING

Parties to the Hearing:

Parents

Parent[s]

School District

Exeter Township

200 Elm Street

Reading, PA 19606

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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May 22, 2015

June 2, 2015

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## **INTRODUCTION AND PROCEDURAL HISTORY**

Student in this case is a high school age eligible resident of the District who has attended private schools chosen by Parents, but at District expense, since 3<sup>rd</sup> grade.

For the current school year, the District sought to return Student to the public school when the most recent settlement agreement between the parties expired. Parents objected, contending that a public school placement would be detrimental due to Student's fragile emotional state. In their due process complaint, Parents sought private school tuition and transportation costs for the current and next school year, and reimbursement for the costs of private evaluations.

Based on the record produced at a three session hearing in March and April 2015, Parents have established their entitlement to private school tuition for the current year but not for 2015/2016.

## **ISSUES**

1. Did the School District timely propose an IEP for the 2014/2015 school year that appropriately addresses all of Student's disability-related and other educational needs, including an appropriate plan for Student's successful transition from private to public school?
2. If the District's proposed IEP is appropriate but was not timely proposed, was the School District's delay in developing the proposed IEP justified in light of all the circumstances?
3. If the District's proposed IEP is not appropriate, should the District be required to pay Student's private school tuition and transportation costs for the current school year, in that the private school is appropriate for Student and there are no equitable reasons to deny or reduce tuition reimbursement?
4. If tuition reimbursement is denied for the entire school year, is Student entitled to an award of partial tuition reimbursement, or of compensatory education, from the first day the 2014/2015 school year opened in the District through the date the District provided Parents with a NOREP for an appropriate District placement?

5. If tuition reimbursement for the current school year is awarded, is there a factual/legal basis for ordering the District to pay Student's private school tuition for the 2015/2016 school year?
6. Should the School District be required to reimburse Parents for the cost of one or more independent educational evaluations (IEEs) of Student that Parents obtained?

## **FINDINGS OF FACT**

### **Background Through August 2014**

1. Student, a late teen-aged child, born [redacted] is a resident of the School District who is eligible for special education services, and is currently attending a Parent-selected private school. (Stipulation, N.T. pp. 20, 21)
2. Student has been identified as IDEA eligible in the disability categories of Other Health Impairment (OHI) and Specific Learning Disability (SLD-Math), in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(9), (10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 21)
3. Through a series of settlement agreements between the parties, Student attended small private schools from the 2006/2007 school year (3<sup>rd</sup> grade) through the end of the 2013/2014 school year (10<sup>th</sup> grade), when the most recent agreement expired. (N.T. pp. 233—236, 417, 418; S-1, S-2, S-3)<sup>1</sup>
4. A few months after joining the District at the beginning of the 2013/2014 school year, the Director of Pupil Services and Special Education began reviewing all settlement agreements for out of District placements. Through that process, she became aware of Student, the settlement agreements and that the latest agreement would expire in August 2014. (N.T. pp. 326, 327, 380, 381)
5. The most recent agreement between the parties, an Addendum to the 2008 Settlement Agreement and Release, was signed by Parents in September 2010 and by the District in November 2010. It provided that the District would fund Student's placement at "both [a private] Christian School and Connections Academy." (N.T. pp. 244, 245, 393, 420; S-3 pp. 1, 3)
6. "Connections Academy" refers to a Pennsylvania public cyber charter school, [redacted]. When the Addendum to the main settlement agreement was executed in 2010, and for part of the period during which it remained in effect, Student received some academic instruction from the charter school, facilitated by private school staff. During that same

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<sup>1</sup> Commendably, the parties agreed not to duplicate exhibits in this matter, which avoided an unnecessarily long documentary record. Although most exhibits were joint, they were still designated "S" for School District and "P" for Parents, followed by sequential exhibit numbers, from S-1 through S-39 and P-40 through P-62. Exhibits submitted separately by either party are included in the sequential "S" and "P" numbering.

period, Student also took classes at the private school that were not offered by the charter school and participated in extracurricular activities. Student last attended the charter school during the 2011/2012 school year. Tuition costs for the charter school, as well as for the private schools, were paid from the settlement trust fund. (N.T. pp. 176, 177, 241, 243, 246; S-4, S-5, S-41)

7. Parents contacted the District, via counsel, in June 2014 proposing to enter into a new agreement for the following two school years (2014/2015 and 2015/2016). Parents' counsel at the time informed District counsel that a private reevaluation of Student was underway and promised to provide the report when completed. (N.T. pp. 327, 419, 420)
8. Upon reviewing the settlement agreements after counsel contacted her, the Director concluded that because the most recent agreement provided that Student would receive some instruction from a charter school while also enrolled in the private school, the agreement had the effect of transferring LEA status for Student from the District to the charter school, thereby divesting the District of responsibility for providing educational services to Student until and unless Student formally reenrolled in the District. (N.T. pp. 328, 241, 244; S-4)
9. Although the District reiterated its non-enrollment position in a letter dated August 4, 2014, and further stated that Parents had not requested a FAPE for Student from the District, it also included a permission to reevaluate Student (PTRE) with the August 4 letter. The District requested Parents' consent to assess Student's ability, achievement and other aspects of Student's functioning and potential related service needs. (N.T. pp. 238, 243, 331—333; S-6)
10. Since Student had recently been tested, Parents did not sign and return the District's PTRE, but took steps to determine when the private evaluation report would be available. Parents provided their private neuropsychological report and addendum to the District on August 18, 2014. (N.T. pp. 243, 253, 254, 425, 426; S-7, S-10, P-54)
11. After reviewing the private neuropsychological reports, the District informed Parents via a letter dated August 27, 2014 that it had sufficient information to create an IEP, and enclosed an invitation to an IEP meeting on September 12, 2014. (N.T. pp. 251, 252, 343, 490; S-10)
12. In addition to the conclusion expressed by the District in July and August 2014 that the District was not Student's LEA because Student was not currently enrolled in the District, the District was also unwilling to enter into a new settlement agreement for a private school placement because it believed that it could provide an appropriate public school placement to meet Student's emotional, educational and post-secondary transition needs. (N.T. pp. 352—356, 364; S-4, S-6)<sup>2</sup>

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<sup>2</sup> In testimony elicited at the hearing, the District suggested, and stated more explicitly in its closing argument, that it was justified in refusing to enter into a new settlement agreement with Parents in 2014 because Parents misused funds provided pursuant to the now expired agreements. The relevance and significance of that argument is obscure at best. In the first instance, this case is not about prior settlement other than to explain the background of the

13. Parents never completed a new student enrollment form and received no response to their inquiry concerning steps they needed to take to clarify and assure Student’s enrollment status in the District. (N.T. pp. 421—423; P-62 pp. 5, 6)
14. The 2014/2015 school year began on August 25, 2014 for the District. Student began attending the private school on September 2, the first day of its 2014/2015 school year. (N.T. pp. 435, 484)

Private Neuropsychological Evaluation, Transition Evaluation, Therapies

15. A neuropsychologist who had also evaluated Student in 2009 and 2010, and a school psychologist from the same office, assessed Student in May and June 2014. (N. T. pp. 39, 41, 80, 81; S-7 pp. 1—24)
16. The neuropsychologist identified several persistent areas of difficulty for Student that create challenges in the school setting: a) Social deficits related to a childhood diagnosis of an autistic spectrum disorder (now largely resolved);<sup>3</sup> b) social psychiatric disorders, including depression, anxiety, post traumatic stress disorder (PTSD) and self-injurious behaviors related to a prior personal trauma; c) cognitive and learning issues that affect Student’s processing speed and executive functioning, along with a specific learning disability in math. (N.T. pp. 41—44, 53, 95, 96, 97, 104, 105 ; S-7, P-45, P-46)
17. Consistent with prior assessments, Student’s cognitive ability fell within the average range of functioning as measured on the WISC-IV (Wechsler Intelligence Scale for

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dispute. The District is, of course, under no obligation to enter into a settlement agreement with these or any other parents of an IDEA eligible child. The District’s only obligation is to provide a FAPE to resident students who are eligible for special education services. Second, Parent’s use of the phrase “If it’s not broke, why fix it?” appeared to refer to the success Student has had at the private school, not to the expired settlement agreement, specifically, or to the process of providing for Student’s education via agreements for private school placements. Third, the full settlement agreement provided that the District waived the right to challenge Parents’ requests for services under the agreement. (S-2, pp. 8, 9, ¶22) Consequently, the purpose of raising the issue of Parents’ use of funds provided under the now-expired settlement agreements is questionable.

To suggest that the District’s IEP and placement offers, or its actions with respect to the timing or any other circumstances relating to developing an IEP for Student should be viewed, and perhaps justified, in light of Parents’ past actions relating to the expired settlement agreement, if that is the intent of the argument, is disquieting. The District’s obligations to the Student are not diminished, or in any way altered, by the judgments or opinions of District staff with respect to Parents’ actions relating to the settlement funds, or Parents’ advocacy on behalf of their children, or any other matter not directly related to the events that began in 2014 concerning Student’s education for the current and next school years. Nothing more needs to be said with respect to any past use of settlement funds, since that is entirely irrelevant to any issue considered and decided in this matter, including whether there is any equitable reason for refusing or reducing tuition reimbursement.

<sup>3</sup> Student’s behaviors were highly consistent with autism spectrum disorder in childhood, but with significant support over the years, symptoms have diminished to the point that autistic behavior features are low, although “vestigial aspects of unresolved autistic features” continue to affect Student (N.T. pp. 55, 66, 89, 90, 92—94; S-7 pp. 19, 20)

- Children-Fourth Edition) with generally consistent component index scores, except for the Processing Speed Index (PSI) in the low average range. (S-7 pp. 11, 12, 18, 20)
18. Although Student still has a specific learning disability in math, and a particular weakness in math reasoning, comparing standardized test scores from earlier evaluations with the results obtained in the 2014 evaluation shows considerable improvement in numerical operations and math calculation skills. (N.T. pp. 43—47; S-7 pp. 14, 15, 20)
  19. Student's standardized achievement test scores were strong in the areas of spelling, reading and written expression, and showed improvement compared to prior test results. The evaluator noted in the report, however, that the written expression test score was based upon constructing short written responses to a prompt, not writing longer essays, and that Student spent a significant amount of time thinking about and constructing the responses. The special education teacher who provides 1:1 learning support to Student noted in an interview for the evaluation that Student struggles with written expression and time management skills in school (N.T. pp. 48—51; S-7 pp. 9, 15, 20)
  20. Student's social-emotional functioning was assessed by means of rating scales completed by Parents (Connors' Parent Rating Scale 3, Child Behavior Checklist-CBCL-2), teachers (CBCL-2) and Student (CBCL-2). The results of the CBCL-2 showed an unusually high degree of consistency among raters, and identified clinically significant levels of anxiety, depression and internalizing problems, as well as moderate affective elevation, obsessive-compulsive features and high risk for PTSD. The rating scale results confirmed information found in therapy records. (N.T. pp. 52—54; S-7 pp. 18, 19)
  21. The Connors-3 results suggested mild to moderate executive functioning problems, consistent with other executive functioning measures (NEPSY-II Developmental Neuropsychological Assessment, 2<sup>nd</sup> Edition, Inhibition Subtest; BRIEF-Behavior Inventory of Executive Functions rating scale, completed by Parents). (N.T. pp. 106—108; S-7 pp. 12, 13, 18, 19, 20)
  22. Near the end of the 2013/2014 school year, a BCBA (Board Certified Behavior Analyst) who works with the neuropsychologist conducted observations of Student at the private school and interviewed the 1:1 special education teacher. Based upon Student's peer interactions, class participation in various school settings and the interview, she concluded that Student interacted appropriately with teachers and peers, appeared more comfortable in small group settings and required more time than peers for task completion. (N.T. p. 83; S-7 pp. 10, 11)
  23. The BCBA reported that teacher comments suggested that Student's social anxiety may increase with frequent changes in classmates, although that could not be verified by direct observation because Student remained with the same class grouping for three consecutive class periods. (N.T. pp. ; S-7 p. 11)
  24. The neuropsychologist concluded that Student's school performance continued to be affected by the learning disability in math, compounded by executive functioning

weaknesses, including slow processing speed and by social/emotional difficulties, primarily anxiety. The social emotional issues, which contribute to historically weak self-advocacy skills, also interfere with other aspects of academic functioning and with Student's social functioning. (N.T. pp. 63, 64; S-7 pp. 20, 21)

25. Based upon the evaluation, the neuropsychologist recommended that Student remain in the private school placement because a) it was working well, academically, based on Student's progress on standardized achievement tests; b) its small class sizes meet academic and social/emotional needs and are optimal for Student's success; c) Student appeared to have a good rapport with teachers and peers; d) Student was comfortable in the private school placement and wanted to remain there. (N.T. p. 88; S-7 p. 21)
26. The report also included recommendations for accommodations to facilitate Student's academic success and post-secondary transition and reduce anxiety: a) extra time for tests and assignments to allow for slow processing speed; b) testing in a distraction-free environment; c) individualized instruction in areas of weakness, specifically, math; d) note checking by teachers to assure that Student has obtained all necessary information; e) study breaks incorporating sensory or gross motor activities; f) breaking tasks/activities into smaller components; g) use of mnemonics; h) executive functioning support such as assistance with planning, scheduling for larger projects, coaching on organizational strategies, deductive reason skill practice; i) training, coaching in stress management techniques; j) repetition of critical information; k) frequent reminders, including visual reminders, of important information; l) OT consultation for strengthening visual/spatial skills, drawing, construction skills and sensory techniques for stress management; m) a vocational training component to Student's educational program. (S-7 pp. 21, 22)
27. The neuropsychological report emphasized Student's need for assistance and training to develop and practice self-advocacy skills, which will become more critical as Student transitions to post-secondary education. (S-7 p. 22)
28. Parents also obtained a comprehensive Educational and Functional Transition Assessment dated July 30, 2014 which included an observation of Student at the private school and interviews of Parent, Student, all of Student's teachers, the neuropsychologist and school psychologist who conducted the psycho-educational/neuropsychological evaluation. Recommendations included clarifying Student's and the Family's post-secondary outcomes; developing self-awareness and self-determination of need for accommodations and how to obtain them; exploring career interests and conducting job exploration; assessing, identifying and addressing areas of need in independent living, community and social skills to function as an adult. The evaluator further identified specific weaknesses, needs and compensatory strategies in the areas of math, social skills instruction and executive functioning abilities, and recommended at least a 13<sup>th</sup> school year for transition in light of the need for a detailed and extensive transition plan. (S-7 pp. 25—45)

29. A July 31, 2014 Addendum to the neuropsychological report was issued with further recommendations based upon the transition assessment. (N.T. pp. 100—104; P-45)
30. Based upon interviews with teachers and Student’s interactions with several peers during an approximately three hour observation at the private school in the spring of 2015, the neuropsychologist concluded that staying with the same peers in class groupings appears to be important, since Student has struggled in the past with social relationships and social understanding because of anxiety and remnants of autistic behaviors. Teachers reported “slow but steady” progress in peer relationships, and noted that Student appears to have identified a few peers as close friends. (N.T. pp. 55, 56, 116 )
31. The neuropsychologist observed Student during a math class in which only one other student was present. The teacher provided a high degree of individualized teaching and support to Student. The observer noted that despite familiarity with the teacher over several school years, Student appeared reluctant to reveal a lack of understanding of the material by asking and responding to questions. (N.T. pp. 57, 58)
32. Although he believes that Student can successfully attend college, the neuropsychologist also believes that Student will need a very supportive process to make that transition, and that taking college courses while still in high school, with a home-based environment in place, would be helpful. He also sees as critical a counselor or mentor with whom Student has developed a relationship and whom Student can turn to for help in managing the anxiety and pressure of a major change in light of Student’s psychiatric status. (N.T. pp. 102, 122—124)
33. Student also needs a close connection with at least one peer and could benefit from peer mentoring. (N.T. pp. 124, 125)
34. Student began weekly psychological therapy for anxiety, depression, low self-esteem and self-injurious behaviors in the winter of 2013, and has continued with treatment for ongoing symptoms of anxiety and depression. (N.T. pp. 195—197; P-43, P-51)
35. Due to difficulty confronting stressful situations, Student uses strategies such as avoidance and denial. When anxiety becomes too overwhelming to manage, Student becomes withdrawn and isolated. (N.T. pp. 197—200)
36. The therapists who have treated Student within the past two years concluded that Student’s psychological condition has improved because of Student’s comfort in the small school environment, as well as the 1:1 support of the special education teacher who works with Student every day. (N.T. pp. 201—204; P-51)

Proposed IEPs/September 2014, January 2015

37. The IEP developed by the District and offered to Parents on September 12, 2014 incorporated information from the independent psychological evaluation concerning the relationship between Student’s executive functioning weaknesses and academic

functioning, noting that Student requires a high output of mental energy to remain focused and is slower than average to complete tasks that require rapid decision-making or changing mental set, which impact Student's performance in math, cause fatigue that accumulates through the day and requires support to plan, organize and prioritize project components. (S-7p. 20, S-13 p. 8)

38. The IEP also noted Student's well-developed skills in spelling, writing and reading, along with the comments of Student's learning support teacher that Student struggles with time management in meeting academic demands, causing Student to become overwhelmed and anxious, leading to difficulties with written expression and an unwillingness to request help. (S-7 pp. 9, 10, 14, S-13 p. 9)
39. Based upon information gathered from the neuropsychological evaluation report and Parent concerns, the District identified needs in the areas of math reasoning and fluency, executive functioning (mental shifting, time management, initiating), self advocacy and emotional concerns (anxiety, fearfulness, withdrawal). (S-13 pp. 8—11)
40. Based on Student's expressed interests, the proposed IEP included a post-secondary education and training goal that suggested focusing on humanities for vocational studies, improving self-determination, self-advocacy and time management skills and gaining knowledge of the process of gaining acceptance into a program and obtaining accommodations. The IEP also included a post-secondary employment goal for gaining an understanding of employment and employability. The transition plan services/activities provided for researching college programs (minimum one time per year), improving math skills and exploring volunteering at a community service organization. (S-13 p. 13)
41. The IEP proposed goals for math computation and math concepts and application, self advocacy (completing a weekly grade check and contacting general or special education teachers if an academic grade falls below 80% to determine how to improve the grade). (S-13 pp. 21—24)
42. Specially designed instruction included executive functioning accommodations and strategies (extended time, preferential seating, opportunity to take tests in a separate room, copy of class notes, outlines, chunking of material, agenda book, end of day meeting with special education teacher to review homework and organize materials), scheduling core classes early in the day, 2 periods daily of 1:1 instructional support, direct, explicit, sequential math instruction, frequent breaks upon request, "anytime" pass for the emotional support classroom to access support for anxiety, support for accessing bookshare, use of electronic and handwritten planners, development of a transition plan from private to public school. Meeting with the school psychologist for counseling twice weekly is listed as a related service.<sup>4</sup> (N.T. p. 345; S-13 pp. 25—28)

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<sup>4</sup> An Intermediate Unit school psychologist contracted exclusively to the District provides consulting and direct services to students assigned to the two high school emotional support classrooms. Private clinical psychology services are available at the high school through a community counseling agency that maintains a satellite office in the District high school. (N.T. pp. 371, 555—558, 561, 569)

43. The District's September 16, 2014 NOREP proposed an itinerant emotional support placement in the District high school, where Student would follow a regular education schedule for all grade-level academic classes, except possibly math. Assignment to a regular or special education math class was to be determined after completion of a District evaluation. (N.T. p. 61; S-13 p. 31)
44. Parents rejected the NOREP on September 26, and Student remained at the private school. (N.T. pp. 258; S-14)
45. The District proposed a second IEP on January 14, 2015 that provided for a supplemental emotional support placement at the District high school. Academic classes, all in the regular education setting, were to include an arts elective, Spanish I, a two period British Literature class, Civics and Algebra II. Student was to be assigned to a special education academic support classroom and to the emotional support classroom as study halls during the final two periods of the day. (S-22, S-23 pp. 6, 40, 41)
46. The proposed IEP included a plan for transitioning Student to the public high school setting, including: a tour of the building; the opportunity to register for counseling with the satellite office of the community counseling service located at the high school, and to schedule a meeting with the student assistance program (SAP) coordinator to help Student with the social/emotional aspects of the transition; "shadowing" a peer, already known to Student, and in the same grade, for one day prior to beginning attendance; meetings with staff to discuss various aspects of the transition and Student's educational program, including the school psychologist assigned to the emotional support program, to discuss social and emotional needs with Student; daily meetings for two weeks after beginning attendance for check-ins to support the transition. (N.T. pp. 367, 564; S-23 pp. 8, 9)
47. The January IEP proposed goals for math computation and math problem-solving using an adapted and modified standards-based math curriculum focused on key concepts and presented at a slower pace. The regular education Algebra II class proposed for Student is taught at a bit slower pace for students with math difficulties, but the content is the same as other regular education Algebra II classes. (N.T. pp. 592, 593; S-23 pp. 26, 27)
48. The January IEP proposal also included goals for increasing self-advocacy skills by completing a weekly grade check with non-verbal prompts from teachers faded to elimination, and by contacting the teacher when a class grade drops below 80% to determine how to improve the grade. (S-23 pp. 28, 29)
49. Specially designed instruction was very similar to the SDI proposed in the September IEP offer with several additions/ changes: review of program modifications and SDI by Student and the case manager to determine a specific location for services; opportunity for paper-based instead of computer-based assessments; a daily pull-out session in the emotional support classroom for 1:1 social and emotional support; specifically scheduled twice weekly sessions with the school psychologist to discuss social and emotional

support needs; daily access to laptop and i-phone to access educational applications in any class. The SDI from the September IEP for 1:1 instructional support and for scheduling Student's core classes before lunch were not included in the January IEP proposal. The emotional support study hall provides an opportunity to obtain individual assistance for academic work. (N.T. pp. 565, 567; S-13 pp. 26—28; S-23 pp. 31—34)

50. The SAP coordinator evaluates students recommended for SAP, and recommends services, which may include participating in groups run by the SAP coordinator. SAP participation is completely voluntary. (N.T. pp. 574, 575)
51. Teachers and the guidance counselor often try to help a student new to the high school feel comfortable by asking a peer with the same schedule to walk the new student to the next class. Although not ordinarily done, the District could select a peer role model with the same class schedule as Student, and who would be comfortable fulfilling that role, to accompany Student in the halls between classes and sit with Student in class and at lunch on a more consistent basis. (N.T. pp. 578, 605, 606)
52. The school psychologist who works with the emotional support program has not facilitated students approaching teachers in the past, but could assist Student in going to teachers with questions and problems if Student was reluctant to do that independently. (N.T. p. 582)
53. The post-secondary transition plan incorporated the math and self-advocacy goals and some of the SDI in the January IEP proposal and added a one time/semester job shadowing activity and one time/quarter attendance at college fairs and visiting days. (S-23 pp. 18, 19)
54. Neither the SDI nor the transition plan in the proposed IEP includes a transition class or any other kind of direct instruction in either self-advocacy skills or understanding the nature of Student's disability, although classes of that nature are available in the District. (N.T. pp. 622, 623, 625, 629; S-23)
55. The District offers the Gateway to College program in cooperation with [a local] Community College, designed for students in their senior year of high school, or beyond, who need supports to succeed in college. Students take college level courses at the community college and receive specific academic support and assistance to become strong college students. The Pupil Services/Special Education Director is recommending that program for Student for the 2015/2016 school year. (N.T. pp. 357, 358, 624—626)
56. In light of Student's emotional/mental health needs, as well as Student's attendance at small private schools since the early elementary school years, Parents had, and continue to have, significant overall concerns about removing Student from very small classes in the private setting to a much larger public high school with which Student has had no experience. Parents do not believe that Student will be academically successful or able to function well socially and emotionally in a large public high school setting. Student's private therapists and the neuropsychologist who evaluated Student agree that a

placement in a large public high school will not meet Student's needs and may be detrimental. (N.T. pp. 430, 431, 437—439)

### District Reevaluation

57. At the IEP meeting on September 12, Parents gave consent for the District to proceed with a reevaluation to include classroom observations, review of school and evaluation records, Parent, teacher and Student interviews, a speech/language evaluation and transition assessments. (N.T. pp. 256, 257, 347, 427, 492; S-12)
58. The District particularly wanted to complete a speech/language evaluation because of a history of autism/autistic tendencies noted in the neuropsychological evaluation report, making it especially important to the District to determine whether Student's receptive, expressive and pragmatic language skills are intact and age appropriate. (N.T. p. 348)
59. The District's December 15, 2014 reevaluation report (RR) was compiled by a school psychologist contracted to the District by the Intermediate Unit. The school psychologist gathered new information from several sources, including Parent input, classroom observations, speech/language and transition assessments. (N.T. pp. 497—499, 505, 615; S-18, P-55)
60. Since the testing provided in Parents' private neuropsychological evaluation report was thorough, the report was exhaustive and Student had been assessed several times in the past, the school psychologist concluded that no additional psychoeducational assessments were needed. Standardized test results, rating scale results and additional narrative information from the neuropsychological evaluation report were incorporated into the District RR. Results from standardized achievement tests were omitted due to an error by the school psychologist. (N.T. pp. 492, 493, 499, 507, 508; S-18 pp. 4—7, P-62 p. 10)
61. The District RR noted Student's struggles with social anxiety despite good peer and adult relationships, as well as internalizing problems and depressive symptoms. Difficulties were also noted with sustaining attention and organization of classroom materials. The RR noted Student's need for a high degree of emotional support, and additional needs were identified in the areas of self-advocacy, math fluency and reasoning. (N.T. pp. 500—503; S-18 pp. 14, 18)
62. All speech/language assessments conducted for the District RR were in the average to above average range. (S-18 pp. 10—12, 19)
63. The District's transition coordinator administered several inventories and rating scales to assess Student's career interests, educational and independent living skills. (N.T. pp. 614—620)

Private School Information, Services/Instruction, Progress

64. The school Student currently attends is a Middle States accredited, Pennsylvania licensed college prep private school with an approximate total enrollment of 320 students in grades K-12. The school takes a classical approach to education and has a Christian religious orientation. Class sizes (grade levels) are generally under 20, with smaller instructional groupings. For the current school year, the high school population is approximately 65 students, with 12 at Student's grade level. The majority of students enrolled in the school are typical learners, and almost all graduates (98%) go on to four year colleges. (N.T. pp. 130—132, 142)
65. The private school has a February reenrollment deadline and deposit requirement annually to reserve a place in the school for the following school year. (N.T. pp.158, 159, 188; S-31)
66. College planning is directed by the guidance counselor who works with students on researching colleges and the admissions process, as well as career interest inventories and exploration of earnings potentials. The school also works with families to locate financial aid resources. (N.T. pp. 142, 143)
67. The school provides SAT prep courses for math and reading, as well as one to one SAT tutoring upon request. (N.T. pp. 143, 542)
68. Student is enrolled in the core college prep program at the private school. Student's courses for the current school include an art class, logic/rhetoric, physics, Algebra II and a second math class, SAT prep. Student is also taking an integrated humanities (Omnibus) class that encompasses literature, history and theology presented in three non-consecutive class periods. Student's Omnibus class this school year includes twelve students. (N.T. pp.133—135; S-37)
69. Student does not have an IEP, but does have a written plan of modifications and accommodations available for all teachers to review. Teachers regularly discuss Student's progress and needs at staff meetings. (N.T. p. 541)
70. Student's 2014/2015 educational program was based upon review of the 2014 neuropsychological evaluation and its recommendations. Student's math instruction, specifically, was altered for the current school year based upon the assessments conducted for the evaluation, as well as Student's performance in the prior school year. (N.T. pp. 137—141, 145, 172, 295, 300, 434, 435; S-7)
71. For the 2013/2014 school year, Student was in a geometry class of 15 or 16 students taught by a teacher who did not know Student well. The special education teacher who began providing Student's one to one academic support midway through the school year was not strong in math, and did not feel that she could provide the level of support in math that Student needed. Although Student's math grade looked good "on paper," it did not take into account the significant accommodations and assistance needed to achieve it.

Standardized test results, therefore, would more accurately reflect Student's level of knowledge. (N.T. pp. 292—295, 528; S-35)

72. Student is one of three students in the Algebra II class, which has a reduced content, since it includes both Algebra I and Algebra II concepts and delves more deeply into Algebra II concepts than usual. The class is also taught at a much slower pace than a typical regular education math class. Although Student has strong cognitive ability in math, Student has gaps in skills and knowledge, and struggles with both retention and generalization of math concepts. Instruction in the Algebra II class is individualized to identify and address Student's specific deficits. (N.T. pp. 140, 285, 286, 288—291, 301, 302; P-48 pp. 1, 2; P-49 p. 3)
73. Student also takes the SAT math course, which is focused on practice tests, since it is geared specifically toward preparing students for the SAT. Student finds the SAT prep class significantly more difficult than the Algebra II class because it includes numerous topics applied in different ways, presumes knowledge of Algebra I concepts that Student has not fully mastered and moves very quickly. There are nine students in the SAT math class. (N.T. pp. 285—287)
74. The same teacher provides instruction to Student in both math classes, as well as physics, where Student also struggles with the math aspects of the course and the pace of instruction. The teacher, who also instructed Student in a small math class in ninth grade, provides additional assistance to Student, especially with respect to the SAT prep class. (N.T. pp. 287, 288, 291, 303; S-37)
75. Because Student's additional math instruction during the current school year provides significant close support, it is an improvement over the 2013/2014 school year, but math remains an area of significant difficulty and source of anxiety for Student, which interferes with progress in math. Student's level of confidence significantly impacts recall and broader application of math concepts. (N.T. pp. 290, 294, 529, 530)
76. In light of Student's disability-related difficulties with math, both in terms of learning issues and emotional factors, Student needs significant individualized support from someone who realizes when Student is not understanding the material and will slow down the instruction/reteach. Student also needs a personal relationship with a math instructor that can help reduce anxiety over the inability to grasp, retain and apply math concepts in order to build Student's confidence. (N.T. pp. 297, 298)
77. Specialized instruction in other areas is provided for Student in a 1:1 "guided study hall" during one class period each day with a special education teacher to work on time management skills or provide tutoring or coaching. That period also provides some additional time away from peers and an opportunity to address Student's executive functioning needs, which present as requiring assistance in handling multi-step and long-term assignments. Classroom teachers also address executive functioning on an ongoing basis. (N.T. pp. 133, 134, 160, 171, 179, 180, 523, 524, 542)

78. Student began working with the current special education teacher during the 2013/2014 school year. It took several months for the teacher to build a good rapport with Student. (N.T. pp. 528, 535, 536)
79. Student sometimes uses the period of 1:1 special education instruction as a more traditional type of mid-day study hall to re-group, de-compress and check-in with respect to homework assignments and gather all necessary materials to complete assignments. Student can also use the time to discuss areas of difficulty with the special education teacher before approaching classroom teachers. (N.T. p. 527)
80. The private school addresses Student's emotional support needs through a supportive milieu, including a small team of teachers who have built trusting relationships with Student over several years. True therapeutic supports for Student's mental health diagnoses, however, are provided primarily through out of school psychotherapy and medication monitored by a doctor. (N.T. pp. 54, 104, 105, 135, 136, 533, 534)
81. Upon enrollment in the private school, Student initially presented as quiet and withdrawn, with somewhat forced social interactions, but little outward sign of anxiety. Student's weak self-advocacy skills have been very slow to develop, even in the small, supportive setting, and have only begun to improve noticeably during the current school year. (N.T. pp. 63, 64, 146, 147, 149, 299, 308, 309)
82. Student's anxiety rises when Student has difficulty understanding academic concepts, but limited self-advocacy skills in the past prevented Student from asking for help from teachers, which increased the anxiety, since Student was unable to obtain help with the area of difficulty, and often missed the point of the lesson by perseverating on the missed concept. By the time Student brought the problem to the attention of the special education teacher, Student would have become very stressed. (N.T. pp. 530, 531)
83. The special education teacher addressed the problem, initially, by accompanying Student to speak with teachers after class. Student is now able to approach most teachers independently, but only privately, after the class period ends. Student will not ask questions during class. Student still sometimes spends an inordinate amount of time on homework assignments rather than email the teacher for clarification and help, although Student will now sometimes contact the special education teacher. (N.T. pp. 63, 64, 531, 543)
84. Student is permitted to keep and use a personal mobile phone as "safety valve" to contact Parents in the event of feeling overwhelmed, which occurred at least once, during exams in the 2013/2014 school year. (N.T. pp. 167, 168)
85. Socially, Student remains quieter and more withdrawn than typical peers, tends to spend time with one or two friends, and although generally accepted, has tic-like physical behaviors that make Student appear different from peers. (N.T. p. 533)

86. Although all accommodations recommended in the 2014 neuropsychological evaluation report are available to Student, not all are currently needed and used by Student to the same extent as in prior school years. (N.T. p. 175)
87. Student's academic performance is strong overall. Student's grades during the first two years of high school through the second quarter of the current school year range from the low '80s to the mid'90s, with higher grades generally in the humanities and lower grades in science and math. (N.T. pp. 145, 146; S-36, P-48, P-49, HO-1)
88. On the PSAT test, taken without accommodations during the current school year, Student scored at the 58<sup>th</sup> percentile in critical reading, the 60<sup>th</sup> percentile in writing and the 18<sup>th</sup> percentile in math. Student will receive accommodations for the SAT. (N.T. pp. 168, 169; S-35, HO-2)

#### Additional Student Information

89. During the 2013/2014 school year, Student participated in a one week missionary trip to Mexico sponsored by the private school. There were approximately 15—20 in the group, which did not include any of Student's family members. (N.T. pp. 144, 166, 473, 474)
90. In the summer of 2014, Student participated in a supportive six week college readiness program designed to provide exposure to college-level instructional material and course structure to academically capable high school students with high functioning autism and other special needs ([the local] Community College "Bridge to College"). Despite significant misgivings just before the program began, Student "loved" the program once it started. Student acclimated well, socially, interacting freely with peers, showed care, concern and patience in helping to resolve conflicts, participated enthusiastically in various activities and timely submitted all assignments. At the end of the class, Student earned an "A" grade and two college credits, along with a certificate of completion. (N.T. pp. 187, 359—361, 484—487, 552; S-27)
91. Building on the growth in self-advocacy skills Student demonstrated during the summer program, Parents have made a specific effort during the current school year to support Student's independence requiring Student to email teachers directly with questions and concerns, although Parents still provide support and assistance. (N.T. p. 487, 488)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Standards/Burden of Proof**

The IDEA statute provides that a school-age child with a disability is entitled to receive a free appropriate public education (FAPE) from his/her school district of residence. 20 U.S.C. §1400, *et seq.*; 34 C.F.R. §300.300; 22 Pa. Code §14. The required services must be provided 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); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 249 (3<sup>rd</sup> Cir. 2009). “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 (3<sup>RD</sup> 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 (3<sup>rd</sup> Cir. 1993). An eligible student is denied FAPE if his program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3<sup>rd</sup> Cir. 1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3<sup>rd</sup> Cir. 1988).

The IDEA statute and regulations also provide procedural safeguards to parents and school districts, including the opportunity to present a complaint and request a due process hearing in the event special education disputes between parents and school districts cannot be resolved by other means. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511; *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 240.

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parents have challenged the District’s proposed placements and services offered to Student, Parents were required to establish that the District’s proposals would not have provided a FAPE to Student.

Although the burden of persuasion remains with the party that files a due process complaint throughout the proceedings, the Supreme Court it did not specify in the *Schaffer* case which party must produce evidence at various points in the proceeding. Consequently, although a school district will prevail if a parent fails to present sufficient evidence to justify a conclusion that the district violated the IDEA by whatever action or failure to act that the parent contends was inappropriate, that does not mean that a school district has no obligation to present evidence at a due process hearing. Allocating the burden of persuasion affects the outcome of a due process hearing only in that rare situation where the evidence is in “equipoise,” *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012).

### **Tuition Reimbursement Legal Principles**

In *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985), the United States Supreme Court established the principle that parents do not forfeit an eligible student’s right to FAPE, to due process protections or to any other remedies provided by the federal statute and regulations by unilaterally changing the child’s placement, although they certainly place themselves at financial risk if the due process procedures result in a determination that the school district offered a FAPE or otherwise acted appropriately. The right of parents to seek reimbursement for private school tuition was later codified in the IDEA regulations at 34 C.F.R. §300.148.

To determine whether parents are entitled to reimbursement from a school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon *Burlington* and *Florence County School District v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed. 2d 284 (1993). The first step is to determine whether the program and

placement offered by the school district is appropriate for the child, and only if that issue is resolved against the school district are the second and third steps considered, *i.e.*, is the program proposed by the parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof. A decision against the parents at any step of that process results in a denial of reimbursement.

There are also clear principles for determining the appropriateness of a parentally selected private placement established by both court decisions and the IDEA regulations. A parent's selection of a private placement is proper

if the placement “is appropriate, *i.e.*, it provides significant learning and confers meaningful benefit...” *DeFlaminis*, 480 F.3d at 276 (internal quotation marks and citation omitted). That said, the “parents of a disabled student need not seek out the perfect private placement in order to satisfy IDEA.” *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 249 n. 8 (3d Cir.1999). In fact, the Supreme Court has ruled that a private school placement may be proper and confer meaningful benefit despite the private school's failure to provide an IEP or meet state educational standards. *Florence County Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 14-15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993).

*Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 242. *See also*, 34 C.F.R. §300.148(c).

### **Prospective Private School Placement**

The circumstances of this case present an additional legal issue: Whether the District can appropriately be ordered to provide a present or prospective private placement for Student when Parents either have not actually paid tuition, and/or are seeking a future placement.

Based on the legal principles that apply to IDEA equitable remedies, such an order is within the power of a special education due process hearing officer. *See Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3<sup>rd</sup> Cir. 2010). Moreover, since the IDEA statute and regulations explicitly provide that a parent or school district may file a due process

complaint concerning educational placement, and provide for a continuum of alternative placements, including special schools, there is no reason parents cannot seek, and a hearing officer cannot provide a remedy of that kind. 34 C.F.R. §§300.115(a), (b)(1); 300.507(a).

On the other hand, however, ordering the expenditure of public funds for a private placement should not be done lightly. Consequently, with respect to prospective placements, not only must the school district have failed to offer a FAPE, and the private placement must be appropriate, *i.e.*, provide services reasonably likely to lead to meaningful educational progress, it should also strongly appear that it is unlikely that the district's program and placement can be sufficiently improved to provide appropriate services, and, therefore, that the private school program is necessary for the eligible student to receive a FAPE going forward.

### **Procedural and Substantive Issues Relating to the District IEP Offers**

#### **June to September 2014**

The District's closing brief devoted considerable attention to the argument that the District should not be faulted for failing to have an IEP and public school placement ready for Student on the first day of the current school year. Although that procedural violation alone would not support an award of tuition reimbursement for even a portion of the 2014/2015 school year under the circumstances presented by this case, the events that occurred in spring and summer of 2014 must be briefly addressed, since they also bear upon the equities in this matter.

The District advanced two theories to explain why no steps were taken to evaluate Student, or otherwise provide a placement for Student before mid-September 2014. The District first took the position, and notified Parents, that it was no longer Student's LEA because Student had previously been enrolled in a charter school for some educational services while also enrolled in a private school. (FF 8) Later, the District appeared to profess that it was uncertain

about whether Parents were expecting the District to provide an education for Student after the most recent settlement agreement expired, because Parents never requested an IEP from the District. (FF 9) Those arguments are implausible and entirely unpersuasive. The District was simply attempting to conjure after the fact rationalizations for “dropping the ball” with respect to Student during the spring and summer of 2014.

The District’s Pupil Services/Special Education Director admittedly knew about the settlement agreement and that it was expiring in August 2014 well before receiving a request to renegotiate the agreement in June 2014. (FF 4) The District reasonably should have expected that Parents would continue to look to the District to provide for Student’s education, and most likely by means of continuing to fund a private school placement, as it had since Student was in the early elementary school years. If Student’s charter school attendance, which was explicitly contemplated by the settlement agreement at the time it was executed, had changed Student’s LEA from the District to the charter school, it is difficult to understand what benefit the District would have obtained for payment of settlement funds, since it would no longer have been required to provide a FAPE to Student by virtue of the charter school enrollment regardless of the settlement agreement. If Student’s enrollment wasn’t changed to the charter school in 2010, when the Addendum to the agreement was signed, it is even more difficult to understand how a change of placement could have occurred in 2014, when the agreement was expiring, and Student had not attended the charter school since the 2011/2012 school year. (FF 6)

Although it appeared that during the course of the hearing the District’s position changed from asserting that it was no longer Student’s LEA to an assertion of confusion about the situation, that argument is no more persuasive, and no more a justification for the District’s failure to make a timely inquiry, at least internally, into what would happen with Student’s

education after the settlement agreement was no longer in effect —as most school districts do under similar circumstances.

Nevertheless, it is unlikely that anything the District might have done differently would have advanced the evaluation and IEP development processes more quickly. Parents had arranged for a neuropsychological reevaluation of Student by the same team of independent evaluators who had assessed Student twice before, and it was not unreasonable for the District to wait until it could review the independent evaluation before determining the need for and scope of a District evaluation. Since Parent’s evaluation provided sufficient information to draft an initial IEP, an IEP meeting was convened soon after, and an IEP was proposed, the District is ultimately right that the failure to have an IEP in place on the first day of the school year is a procedural violation with too little substantive impact to support a claim for tuition reimbursement for the entire school year.<sup>5</sup>

#### September 2014 IEP Offer

Although the District made much of the purported injustice of holding it responsible for the delay in proposing an IEP for the current school year, review of the record suggests that the primary reason for pummeling that particular “straw man” so hard was to deflect attention from the District’s real problem—the glaring deficiencies of the IEP proposed after the September 12 IEP meeting that had nothing to do with either an absence of information or delay in receiving information.

Although the September 12 IEP proposal recognized the serious impact of Student’s emotional needs, including social anxiety, and the District’s Special Education Director appeared

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<sup>5</sup> As an equitable matter, some circumstances might support a prorated payment of tuition reimbursement for the days from the beginning of the school year until the IEP is implemented, since a student returning to a public school placement from a private placement would not otherwise have an educational placement at all.

to be critical of Parents' reluctance to agree to identify Student in the emotional disability category (ED) instead of OHI, there is very little in the IEP that addresses Student's significant needs in that area. The only services/supports in the IEP are unlimited access to the emotional support classroom and counseling sessions with a school psychologist. (FF 42)

Expecting a Student new to the District, and to a large public school placement, who has a high level of social anxiety, to be solely or primarily responsible for seeking help from staff with whom there has been no opportunity to develop a relationship is unrealistic and inappropriate. Moreover, providing emotional support services only when initiated by Student also fails to take into account Student's high level of social anxiety and limited self-advocacy skills. Although one of the three goals in the September 12 IEP does purport to address self-advocacy, neither the goal nor any of the SDI includes any explicit instruction or assistance to support skill development and then fade assistance as Student's skills increase. In order to meet the IEP goal, Student would have been, in essence, required to do what is extremely difficult in order to overcome the difficulty.

There is also no detail whatsoever concerning a proposed schedule of classes for Student, including the math class to which Student was expected to be assigned, although math goals are proposed and there is more than sufficient information in the neuropsychological evaluation to identify the type of instruction Student needs. It is difficult to understand how the District could propose direct, explicit, sequential math instruction without having some idea of classes available at the high school to meet that criteria. (FF42)

Finally, there is no detail whatsoever with respect to the plan for acclimating Student to the much larger public school environment. In light of both the social and generalized anxiety issues, the absence of an actual plan, rather than the promise of a plan to be developed, would

have made it unreasonably difficult, if not impossible, for Student to successfully transition from a small private school setting—the only type of placement Student had known since early elementary school--into a large public school environment in September 2014 even if there had been a proposed schedule of classes. Although it may be accurate that the private to public school transition plan, and other aspects of the IEP, could only be more fully developed based upon observations of Student in the classroom setting at the private school and direct knowledge of Student from other sources, such as staff contact, that does not change the conclusion that the September 12, 2014 IEP was inappropriate as offered, based upon the knowledge the District had about Student from the private neuropsychological evaluation.

Returning Student to the District in a large high school building and classroom setting by means of implementing the September 12 IEP would not have provided Student a reasonable opportunity for meaningful progress, since social, emotional/mental health needs were not adequately addressed in the proposed IEP, and unmet needs in those areas would have interfered with Student's ability to benefit from academic instruction.

#### January 2015 IEP Offer

The IEP proposed in January, after the District completed its own evaluation, is somewhat improved but still not appropriate for Student, since it still places far too much responsibility on a Student with significant emotional support needs and limited self advocacy skills to obtain the supports Student needs to be academically successful in a large public school setting . There is a plan for Student's transition from public to private school, but it also places too much responsibility on Student to become comfortable with new staff members in a short period of time and provides no help in developing peer relationships, which is essential for a Student with high social anxiety. There was no evidence that the Algebra II math class proposed

for Student met the IEP goal criteria for an adapted and modified curriculum. The testimony suggested that the math period to which Student would have been assigned was somewhat slower in pace, but did not otherwise provide an adapted curriculum. The record, therefore, establishes that the January 2015 IEP was also not an offer of FAPE for Student

### **Appropriateness of the Private School Placement**

The record of this case establishes that the private school meets the criteria for a private placement for which tuition reimbursement may be awarded. Student is certainly making adequate academic progress, and although the private school does not have formal special education services, the small size amply met Student's social and emotional needs during the current school year, when the District failed to offer an appropriate placement. Student gets significant support in precisely the areas Student needs, *i.e.*, executive functioning needs, and especially, assistance in developing self-advocacy skills. Accordingly, Parents have met their burden of proof with respect to the second prong of the tuition reimbursement analysis for the current school year.

### **Equities**

Parents' conduct in this matter does not support a denial or reduction of tuition reimbursement. Their request to the District to enter into a new settlement agreement in June 2014 is not a basis for concluding that Parents' conduct was inequitable, based on the history between the parties. The District did not attempt to plan for Student's special education placement and services until after Parents contacted the District in June 2014. It was reasonable for Parents to expect that the District intended to renew the settlement agreement again, since the District took no steps to notify Parents that they intended to bring Student back to the District, and took no steps to develop an IEP before that time.

### **Evaluation Reimbursement**

As Parents point out, the District relied exclusively on the July 2014 neuropsychological evaluation provided by Parents and adopted it as its own psychoeducational evaluation. The school psychologist who evaluated Student on behalf of the District acknowledged that it is thorough and comprehensive. Consequently, Parents will be reimbursed for the evaluation and the addendum provided to the District in August 2014.

In addition, the private transition assessment was also thorough and comprehensive, and the District should make extensive use of the evaluation in planning for Student's transition needs in the future.

### **Prospective Private Placement**

The detailed evidence in this case from the private neuropsychological evaluation and transition assessment, as well as from the private school witnesses, provided extensive information concerning Student's needs how they can be met in a school setting. If the District is willing to attend to and apply that information, it should be able to fashion an appropriate placement and services for Student in the 2015/2016 school year. At a minimum, an appropriate IEP should include a single person on whom Student can rely for assistance in approaching teachers with questions and working on Student's executive functioning needs. The District also needs to identify an appropriate math class that can continue to address Student's skill deficits, particularly in math reasoning.

The District must also assure that Student has the opportunity to get to know at least one grade level peer who can ease Student's entry into the public school setting, as District witnesses testified can be done. The District should also provide explicit training in self-advocacy skills,

which are a critical need for Student. Finally, the District should seriously consider a 13<sup>th</sup> year of eligibility for additional math instruction, particularly, and post-secondary transition services if Student has a difficult transition to the public school, as Parents anticipate, in order to assure that Student fully benefits from the public school placement.

Regardless of the level of services available, transition to public school will certainly be difficult, at least at the outset. That, however, is not the test for whether a prospective placement should be ordered. Eligible students are entitled to a free, appropriate **public** education, not a private education at public expense unless an appropriate public placement is impossible.

Here, there are indications that Student may be stronger than everyone who understandably wants to protect Student's emotional state may anticipate. There is, in any event, no doubt that a successful transition to public school, even if it takes time, would carry long term benefits in terms of Student gaining confidence in his/her ability to adapt to new settings. Student would also have greater opportunities for post-secondary transition services, such as the Gateway to College program.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to pay Student's tuition and transportation costs for the private school in which Student is enrolled for the 2014/2015 school year.

It is **FURTHER ORDERED** that the School District shall pay the costs of the private neuropsychological evaluation and transition assessment admitted into the record of this case as S-7, and the costs of the Addendum admitted into the record as P-45.

It is **FURTHER ORDERED** that School District is not required to pay the costs of tuition and transportation at the private school for the 2015/2016 school year, provided that it

offers an IEP with services and supports appropriate to meet Student's academic, social /emotional and transitions needs, specifically including instruction in developing self advocacy skills, and other characteristics described in the attached decision.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed

*Anne L. Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER

June 2, 2015