

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

Child's Name: [REDACTED]

Date of Birth: [REDACTED]

Dates of Hearing: 10/02/08; 11/03/08; 11/18/08;
11/19/08; 12/01/08; 12/05/08

CLOSED HEARING

ODR No. 9084/08-09 AS

Parties to the Hearing:

Representative:

Parents

Parent Attorney

[REDACTED]

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Date Record Closed:

January 23, 2009

Date of Decision:

February 7, 2009

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student has been enrolled in the 5th grade at [], a private school, since the beginning of the 2008/2009 school year. From kindergarten through 4th grade, Student attended school in Lower Merion School District, where s/he received special education services as a child with language-based learning disabilities and ADHD. Contending that Student did not made meaningful progress in the District, particularly in learning to read, and that the IEP offered by the District for the current school year was not reasonably calculated to assure that Student would make meaningful progress in 5th grade, Parents withdrew Student from the District, enrolled him in [private school] and sought reimbursement from the District.

The due process hearing was held over six sessions between October 2 and December 5, 2008. For the reasons which follow, I find in favor of Lower Merion School District and will not order tuition reimbursement.

ISSUE

Is the Lower Merion School District required to reimburse Student's Parents for tuition paid to [private school] for Student for the 2008/2009 school year?

FINDINGS OF FACT

1. Student is an 11 year old child, born October 30, 1997. He is a resident of the Lower Merion School District and is eligible for special education services. (Stipulation, N.T. p. 13)
2. Student has a current diagnosis of specific learning disabilities (SLD) and other health impairment (OHI) 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. 13)

3. Student entered Lower Merion School District during the 2003/2004 school year (kindergarten) and received learning support, speech/language and occupational therapy services during that school year. Student began receiving instruction in the Wilson Reading Program in first grade and continued receiving learning support for reading, writing and math through 4th grade. Student is classified as a non-reader, still in the learning to read phase of instruction. Unable read grade level texts for curriculum content, or read such things as menus and sports rosters, Student is not a functional reader. (N.T. pp. 26, 258, 265, 266, 274, 606, 607; S-2, S-3, S-4, S-5, S-6, S-12, S-13, S-27, S-40, S-48)
4. Parents were dissatisfied with the IEP offered by the District for the 2008/2009 school year, and did not approve it, because the recommended services, *i.e.*, part-time learning support, with one hour of resource room instruction in language arts and math each day, 45 minutes of supplemental reading support and occupational therapy, were nearly identical to services Student has been receiving through previous IEPs. Parents also believe that the goals on the IEP offered by the District are not measurable or objective, and, therefore, Parents believe that they would be unable to determine whether Student was meeting the IEP goals and objectives. (N.T. pp. 25—29; P-16, P-70,)
5. In the spring of 2005, toward the end of his 1st grade school year, Student's Parents procured an independent psychological report to better understand Student's needs and determine an appropriate educational placement for him. The evaluator particularly noted Student's difficulties with maintaining focus and attention, memory difficulties and the need for constant repetition and re-direction during the testing process (N.T. pp. 237, 239, 241, 243; S-16)
6. The independent psychologist's program recommendations were directed primarily toward addressing Student's attention and organization difficulties, since she believed that those issues, especially attention and focus, were seriously inhibiting Students' performance on the standardized tests she administered and in the classroom. The psychologist agreed with the District's recommendation that Student be placed in a self-contained classroom for the next school year, but did not consider the specific classroom appropriate, since it was reportedly an autistic support class. The evaluator also recommended: that Student be taught to use a keyboard and laptop and that writing be de-emphasized due to Student's significant fine motor delays; that strategies be developed to help Student organize information; that tasks be divided into smaller segments that would be more manageable for Student; that Student be encouraged to become an independent learner through his teacher's structuring of tasks and assuring that he left school each day with everything needed to successfully complete his homework without significant parental involvement; that Student be exempt from studying a foreign language; that Student have a clear understanding of expectations and consequences in the classroom, and that whenever possible,

- Student's teachers avoid presenting material solely in an auditory format. (N.T. pp. 237, 239—246, 249, 251, 285; S-16, pp. 18--21)
7. The independent evaluator suggested that Parents look into a school specializing in educating students with learning disabilities, recommending, among others, [private school], where Student is presently enrolled. (N.T. p. 246--248; P-16, p. 21)
 8. Parents consulted an independent reading specialist to assess Student's reading progress in the spring of 2008. The reading specialist identified a number of weaknesses interfering with Student's ability to make more rapid and significant progress in learning to read, *viz.*, orthographics (recognizing word patterns); decoding, in terms of remembering or rapidly accessing words already learned/known; auditory processing deficits Student's scores on the tests administered by the reading specialist placed his reading level between a 2.2 and 3.2 grade equivalent. The reading specialist concluded that "something" is preventing Student from retaining word patterns. Like the independent psychologist who tested Student, the reading specialist attributed Student's difficulties primarily to executive functioning deficits. The reading specialist also noted Student's significant attention problems, but also attributed the deficits she described to weak memory skills. The reading specialist's recommendation for overcoming Student's deficiencies is to teach one of the six word "patterns" at a time to mastery before introducing another pattern. More generally, the reading specialist recommended an intense, individualized delivery of the Wilson reading program, meaning 1 hour/day, 5 days/week. She also recommended having grade level curriculum materials be read to Student so that s/he does not fall behind in other academic areas while s/he continues to learn to read. (N.T. pp. 344—367, 370, 371, 382, 386, 395, 396; P-69)
 9. The reading specialist recommended, in the alternative, a special school setting, such as the private school Student is presently attending, to provide the structure and consistency she believes Student needs, as well as immersion in the recommended reading instruction strategies throughout the school day. (N.T. pp. 367, 368, 379, 387; P-69)
 10. Parents' reading specialist believes that individualized reading instruction and a one to one aide would be effective in helping Student to overcome the attention/working memory deficits that interfere with learning to read, since errors would be corrected immediately. Supplemental reading instruction for 45 minutes/day is the minimum necessary, along with reinforcement throughout the school day. The reading specialist did not agree that a teacher accompanying Student to regular education classes such as science and social studies to assist him with grade level materials would be as effective as an entire school day focused on learning and reinforcing reading strategies, since Student is so susceptible to distractions. The reading specialist agreed, however, that having a

- teacher support Student in regular education classes would be beneficial. (N.T. pp. 383, 384, 386, 389, 390; P-70)
11. The District most recently evaluated Student in the fall of 2007. The evaluation confirmed that Student has at least average intelligence, with significant variability in abilities, even in his/her strong verbal and reasoning skills. Student's basic sense of numbers, spatial abilities, math reasoning and overall "thinking" skills are also areas of strength. Working memory and processing speed are significant weaknesses. Student has extreme difficulty with retrieval and organization of information. Student can remember organized information much better than information s/he is required to organize. Assessments administered by the District school psychologist explored Student's deficits in executive functioning and demonstrated that Student can use learning strategies s/he has been taught in different circumstances. (N.T. pp. 533—552, 553—559, 563, 564, 573, 608, 611; S-48)
 12. From observations of Student during the evaluation, as well as his/her performance on various sub-tests, the District determined that Student is a "whole to part" rather than a "part to whole" learner. (N.T. pp. 548, 549, 557, 560)
 13. Student's delays in orthography (recognition of letter and word patterns), phonological processing (which has been partially remediated through the special education program), particularly affect Student's reading ability. The long-term effect of Student's significant delay in acquiring phonological processing skills on further development of orthographic skills is unknown, but the District's school psychologist is hopeful that continued practice will result in continued, if slow gains, but could not state for certain whether Student will ultimately overcome his orthographic deficits, *i.e.*, will ultimately "close the gap" that remains between Student's ability to read and the reading ability of his/her non-disabled peers, or will remain a disabled reader in need of accommodations. (N.T. pp. 562, 563, 567, 568, 574—576, 581, 587, 619; P-64, S-48)
 14. The District's school psychologist examined the effects of Student's ADHD on his learning and academic performance by means of standardized assessments of executive functioning and working memory. Although the testing confirmed Student's difficulties, the school psychologist noted that Student has good self-regulation, which she identified as another area of strength. (N.T. pp. 578—581, 584; S-48)
 15. The same private psychologist who evaluated Student in 2005 provided an additional report in May 2008, which consisted of a review of the District's 2007 evaluation results. In the second report, the evaluator noted that the District had made a number of accommodations in Student's IEPs between 2005 and the IEP offered in January 2008 to improve Student's attention to task. She also noted significant improvements in Student's scores on the WISC IV¹ in the areas of

¹ Wechsler Intelligence Scale for Children-- Fourth Edition

- Verbal Comprehension and Perceptual Reasoning. Nevertheless, the Parent's private evaluator noted that Student appeared to have more trouble paying attention, indicated, in part, by significant declines in the Working Memory and Processing Speed scores on the WISC-IV. Student had also made little, if any progress in reading fluency and had significant difficulty in following oral directions, especially when long and complex. (N.T. pp.252—258, 274; P-64, S-4)
16. Parents' independent evaluator concluded that Student's inability to retain reading skills apparently mastered in class and apply such skills outside the classroom to attain a functional reading level for activities of daily life is due to executive functioning deficits, *i.e.*, organization, planning, sequencing. (N.T. pp. 267; P-64)
 17. After reviewing the District's 2007 re-evaluation report, Parents' independent evaluator again recommended a school which specializes in education for children with specific learning disabilities, concluding that a smaller, more highly structured class would permit Student to learn remediation strategies which will increase the "likelihood" of better generalization and "likely increase [his/her] ability to attend to information in the classroom" due to decreased distractions and a teacher "more available to help Student maintain [his/her] focus throughout the day." (N.T. p.258, 270—274, 276; P-64, p. 3)
 18. The District school psychologist attributed Student's growth in verbal comprehension in the years between the 2005 independent evaluation and the District fall 2007 evaluation to Student's participation in the regular education curriculum with non-disabled peers. The District school psychologist considers it essential for Student's continued intellectual growth to have such opportunities to advance his/her cognitive and analytical skills and use his/her rich background knowledge in grade level classes. (N.T. pp. 588—590)
 19. Student's special education teacher supported him/her in his/her grade-level academic classes by pre-reading the science and social studies texts, adapting work sheets, providing other accommodations such as printing materials on different color paper to make them easier for Student to read and accompanying Student (pushing-in) to those classes daily. In the IEP offered for the current school year, the District proposed to continue such supplemental aides and services in regular education classes during the current school year. (N.T. pp.1154—1158, 1174; P-70)
 20. In the spring of 2007, Student began receiving 45 minutes of supplemental reading support 3 days each week to work on improving decoding and fluency. When the special education teacher noted that Student seemed to be relying too heavily on the rules of the Wilson program, which she had been using for the supplemental instruction, she met with the reading specialist and administered a phonics assessment which indicated that Student was on grade level with respect to phonics, and, therefore, that a phonics-based instructional system was not

- necessary. The teacher, after consultation with Student's IEP team and the District reading specialist, began using Glass Analysis and Explode the Code reading systems. Those instructional methods are better suited to Student's "whole to part" learning style or "neurodevelopmental profile." The New Heights Reading Program, which includes books on tape, and Repeated Reading were also added to the supplemental reading instruction. In 4th grade, the 45 minute period for supplemental reading instruction was increased to 5 days/week and provided on a one to one basis. The supplemental reading program and instructional methods were included in the IEP proposed for the 2008/2009 school year. (N.T. pp.1125, 1128, 1130—1146; 1148—1153, 1160, 1172, 1173, 1175—1177, 1189, 1190--1192; P-58, P-70; S-48, S-62)
21. The District school psychologist concluded that if Student has any chance of remediating his/her orthographic deficits and overcoming his/her reading disability, Student will need the word building and blending techniques incorporated in the Glass Analysis and Explode the Code instructional methods. (N.T. pp. 560, 576, 577, 588, 590; S-48)
 22. Despite years of special education, Student remains a non-reader because s/he has all three types of learning disorders which cause reading disabilities, *i.e.*, deficits in phonological processing, orthographic processing and rapid naming. When Student first began receiving special education services, the District focused most intensely on Student's phonological processing disorder, which has been partially remediated. More recently, the District intensified interventions to address Student's orthographic deficiencies by means of the 45 minute period of supplemental reading instruction. Student remains far behind his/her peers, however, in attention to visual detail, which adversely affects orthographic skills. Student's difficulties in retrieving and organizing information are manifested in the length of time it takes for Student to use simple, well known words to describe an object in a prescribed manner. (N.T. pp. 592, 593, 615—617, 1175, 1176, 1180; S-48)
 23. Parents' independent psychologist agreed with the assessment of Student's whole to part learning style. Parents' reading specialist endorsed Explode the Code as an adjunct to the Wilson reading program for Student. The reading specialist also concluded that all of the specially designed instruction methods in the IEP proposed by the District for the 2008/2009 school year are appropriate for Student, and noted that the proposed IEP included "a lot of really good intervention." Although she expressed concerns as to whether the program would be delivered with sufficient consistency, her concerns with respect to implementation were based entirely upon information received from Parents. She did not observe Student in a District classroom. (N.T. pp.310, 311, 374, 376—379, 388; P-70)
 24. Review of Student's progress reports in reading between 2005 and 2008 reveal that Student made three years progress as measured by periodic DIBELS

assessments, and that between the beginning of the 06/07 and the end of the 07/08 school years, Student also showed progress in reading as measured by Degrees of Reading Power (DPR) assessments. (N.T. pp. 286, 1164—1169, 1173; P-64, P-67, pp. 3—7; S-73, S-74)

25. Although Student's reading disability and executive functioning deficits adversely affected problem-solving, Student made steady progress in math in 3rd and 4th grades. Student was in the average range of achievement and nearly at grade level by the end of 3rd grade. Although Student's scores decreased slightly by the beginning of 4th grade, s/he scored in the average range and was above grade level at the end of that school year. Student required significant accommodations in testing, however, with all items read to him/her. Standardized testing administered during the District's re-evaluation in the fall of 2007 confirmed that Student's math achievement, at approximately the middle of 4th grade, was in the average range. Both the District school psychologist and Parents' private evaluator noted that math is an area of strength for Student. (N.T. pp. 291—296, 304, 563, 564, 573, 881—884, 898; P-67, pp. 9—23; S-48)
26. Student's writing skills, like his/her reading skills are below average. During 4th grade, Student was provided with a multi-sensory approach to composing sentences and a system for organizing his/her writing, which is also used generally in the District with 4th grade students, but Student still required significant time and support to produce paragraphs. Although Student needed to dictate written work, by the end of 4th grade s/he had shown considerable growth in the depth of his/her writing and improved his/her ability to sequence. (N.T. pp. 573, 904—910; S-48)
27. Due to Student's working memory deficits, and especially, processing speed deficits, Student needs and will benefit from extended time for completing work. Student has been provided with extended time for PSSA testing. (N.T. pp. 612—615; P-70, p.10)
28. The [private school], where Student is presently enrolled, admits children of average to high cognitive abilities with language-based learning disabilities. Students admitted to [private school] have experienced difficulty in acquiring basic skills in the areas of reading, writing, speaking and listening. Student spends most of his school day in a class of 12 children, the maximum class size permitted at [private school]. Math and reading instruction, however, are provided in small groups of no more than six students. [Private school] emphasizes a multi-sensory, kinesthetic approach to instruction rather auditory/visual methods, along with reinforcement of content with different activities. [Private School] offers a mentoring program to provide supplemental instruction, at additional cost, to students who do not make sufficient progress in the regular classroom. Sequential, multi-sensory systems, such as Wilson, comprise the reading instruction provided in the mentoring program. At the time of the hearing, Student was still being evaluated to determine Student's need for

the mentoring program. Student was not receiving Wilson reading instruction at [private school]. (N.T. pp. 519, 520, 629—633, 639, 640, 647, 649, 665, 679; P-78)

DISCUSSION AND CONCLUSIONS OF LAW

A. Nature of the Claim

There is no dispute between the parties with respect to the identification of Student's disabilities or need for special education. The parties' disagreement centers on whether Lower Merion School District offered Student an appropriate program for the 2008/2009 school year.

Parents contend that the District should be required to fund the private school placement they unilaterally selected for Student because the IEP offered by the District for the current school year includes services and instructional methods/strategies similar to those provided in prior IEPs, which did not result in meaningful educational progress for Student. Parents' position in this case has been that the District's failure to properly educate Student in the past establishes that the District did not offer, and would not have provided, an appropriate program for Student this school year.

After careful review of a lengthy, detailed record compiled over six hearing sessions, and Parents' written closing argument, it is obvious that Parents' contention that Student needs a more intensive private school program is based primarily upon the premise that Student's learning disabilities have not been remediated sufficiently to bring Student to grade level in his ability to read, a deficiency that adversely affects his academic progress in all other areas of the curriculum. The crux of the dispute between Parents and District was best expressed in Parents' independent psychologist's May 2008

report: “while he may be making some progress, he is not closing the gap between his skills and those of his classroom peers.” (P-64 at p. 3)

B. Legal Standards

1. Burden of Proof

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 proof. Consequently, because Parents are seeking payment from the District for Student’s private school tuition, they must prove all of the essential elements of that claim.

2. Tuition Reimbursement

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 child’s right FAPE, to due process protections, or to any other remedies provided by the IDEA statute and regulations, by unilaterally selecting a placement other than that offered by the District. Parents do, however, place themselves at financial risk. Although parents are always perfectly free to decide upon the program/placement they believe will best meet their child’s needs, to obtain public funding for that choice, they must meet well-established and stringent legal requirements

To determine whether parents are entitled to reimbursement from their school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon the *Burlington School Committee* case. The first

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

3. Standards for an Appropriate Educational Program

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

benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* case and other relevant cases, an LEA is not required to provide an eligible student with services designed to provide the “absolute best” education or to maximize the child’s potential. *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

C. Appropriateness of the Lower Merion School District’s Special Education Services for Student

Based upon Parents’ arguments, the underlying factual question in this case is whether the undisputed fact that Student was not a functional reader at the end of 4th grade is due to the District’s failures to develop appropriate IEP goals and objectives, provide educational services/instructional strategies designed to effectively address Student’s needs, and/or to deliver Student’s program in an appropriate setting and/or at a sufficiently intense level to assure meaningful progress. More fundamentally, the essential factual issue to be determined in this case is how to define meaningful progress for Student.

Parents’ argument that Student cannot have received a meaningful educational benefit from the special education provided by the District because of the gap that remains between Student’ reading level and that of his/her typical peers raises an important legal issue, *i.e.*, whether a school district’s responsibility for providing an appropriate program, reasonably calculated to assure meaningful educational progress, extends to assuring that a child who is IDEA eligible improves to the point of reaching grade level, or at least that such child needs less intensive intervention after several years of services. Stated another way, does a school district automatically fail to fulfill its

IDEA obligations to an eligible child if the child cannot overcome his/her disabilities within a designated number of school years? Here, Parents argue, in essence, that five years should have been a sufficient amount of time to bring Student to grade level as a functional reader, and that because Student has not achieved that standard, the District's IEP that proposes to continue special education interventions of the same type and at the same level of intensity must be deemed inappropriate.

Much of Parents' testimony during the hearing focused on Student's perceived lack of educational progress as demonstrated by limited improvement in the effects of his disability on his progress in learning to read. (*See, e.g.*, testimony of Mother: "[W]e're just saying that the results aren't there and the meaningful progress isn't there. He still can't read. He's going into fifth grade and he still can't read." N.T. p. 504, l. 11—15) Admittedly, it is difficult to separate educational progress from general progress toward remediating/overcoming the underlying disability when a child is IDEA eligible due to learning disabilities and/or attention and focus issues. In many cases the strategies and specially designed instruction which permit the child to progress academically also provide a means for a generalized amelioration of the effects of such disabilities, and that is certainly the ultimate goal for any child. In this case, however, it is undisputed that although Student has made documented improvements in developing the ability to read, such progress has resulted in limited generalization of reading skills to non-educational settings. The question is whether Parents have established that the minimal progress they have observed in Student's ability to generalize developing reading skills outside the classroom also supports their contention that the District provided and proposed inappropriate IEP goals/objectives and/or specially designed instruction. Parents' motive

in seeking private school placement at this time appears to be their concern that the program the District proposed for the current school year, which is similar to past IEPs, was not designed to do everything necessary to assure that Student can reach a functional reading level sufficient to permit Student to engage easily and independently in common activities of daily living, such as reading restaurant menus, as well as to allow participation in grade level academic classes with reduced supports and services. Such concern is certainly legitimate, and it is understandable that Parents want to do everything possible to assure that the educational services Student receives will allow him/her to reach the goal of reading well enough to access the regular school curriculum, to eventually get a job and to otherwise participate in common community activities without significant and obvious accommodations. (N.T. p. 520, l. 12—17) Unfortunately, however, the evidence in this case established that for Student, attaining that level of functional success is by no means assured, no matter where or by what means Student is educated. (*See* F.F. 13) Consequently, Parents could not meet their burden of establishing that the District failed to offer Student an educational program and placement reasonably calculated to assure meaningful educational progress in accordance with IDEA standards because Student has not reached grade level reading skills, or because of the extent of the gap that still exists between Student's reading level and that of typical 5th grade students, or because of Student's lack of progress in generalizing academic skills to general education and community settings.²

² Although the only issue in dispute in this case is whether Parents are due private school tuition reimbursement for the 2008/2009 school year, Parents were permitted to present considerable evidence concerning past school years based upon their contention that the alleged deficiencies of the most recently rejected IEP can only be understood in the context of its similarity to prior programs and strategies that have been unsuccessful. To assure that Parents had a full opportunity to develop that contention, evidence of prior school years was ruled relevant, and, therefore, admissible despite District objections to the amount of detail concerning prior IEPs in Parents' testimony and exhibits.

The District provided detailed testimony concerning the nature of Student's disabilities, particularly as they affect his/her ability to learn to read. (*See* F.F. 13, 22)

The District also adduced specific and detailed testimony concerning how its interventions were designed to overcome those disabilities and resulted in the progress that Student has made in reading. (F.F. 11, 13, 20, 21, 22) Parents' independent psychologist and reading specialist were far less specific in their assessments of the nature of Student's disabilities and why his/her reading level does approach grade level. There was no disagreement between Parent and District witnesses with respect to the existence and enormous adverse impact of Student's significant weaknesses in orthography, working memory, processing speed and executive functioning on his progress in reading. (F.F. 5, 8, 11, 13, 14, 15, 16) Only the District's school psychologist, however, explained the relationship between each of those deficits and the development of reading skills to provide a unifying explanation for why Student has such extreme difficulty in closing the gap with his/her typical peers. (F.F. 13, 22) Parents' witnesses only suggested that a change of scene that involves smaller classes and more repetition and immersion in learning to read strategies throughout the school day would be more effective in remediating Student's disabilities than the District's combination of part time learning support in a special education class for language arts and math and push-in learning support in grade level regular education classes. (F.F. 7, 8, 9, 17)

Parents' witnesses did not, however, describe in any detail how the instructional methods used at [private school] will explicitly address all of Student's areas of deficiency, why such methods are necessary for Student to make progress, or even that Student can definitely expect to make better progress at [private school]. (*See* F.F. 17, referring to the

“likelihood” that small classes at [private school] will permit Student to learn strategies that will result in greater generalization and improved attention) The lack of specificity concerning how [private school] will address Student’s complex needs arising from three separate disabilities that affect Student’s ability to learn to read made the testimony of Parents’ witnesses far less persuasive than the District’s testimony with respect to how the District’s program meets Student’s needs and why the progress Student has made is meaningful despite the gap that still exists between Student’s skills and those of his/her typical peers.

Most significantly, however, Parents’ expert witnesses did not testify that the District failed to identify any areas of need for Student, or that any of the instructional methods used by the District in the past and offered for the current school year are inappropriate for Student, or that Student failed to make progress in the District’s program. (F.F. 10, 15, 23, 24, 25, 26) At most, Parents’ witnesses opined that the [private school] program might be more effective for Student. (F.F. 7, 9, 17) Such opinions, however, were based entirely upon the witnesses’ general knowledge of [private school] and their knowledge of Student’s disabilities drawn only from either relatively brief assessments and/or review of evaluation reports. The suggestions by Parents’ expert witnesses that the District’s program has not provided, and is not reasonably calculated to provide Student with meaningful educational benefit were based only on the fact that Student’s disabilities have not been remediated to the point that Student is reading at grade level. Given the multiple deficiencies that impact Student’s ability to learn to read, and the question raised by the District’s school psychologist as to whether the effects of such combined disabilities, and especially Student’s significant

delay in developing phonological processing skills, will make it impossible for Student to ever acquire reading skills commensurate with his/her cognitive abilities, the contention that Student's inability to develop functional reading skills by the beginning of 5th grade establishes a lack of meaningful progress is unreasonable. Parents did not truly dispute, much less effectively refute, the testimony of the District's school psychologist to the effect that catching up to typical peers in reading skills, although a long-term goal that should not be abandoned, may never happen for Student. (F.F. 13) Parents, therefore, did not prove that the IEP offered by the District for the current school year is inappropriate due to Student's inability to read at grade level despite five years of special education provided by the District.

The most detailed and extensive testimony concerning deficiencies in the District's program came from Parents, who took issue with the repetition of goals and objectives in successive IEPs, with whether IEP goals and objectives were measurable and with whether Student's progress was reported accurately and specifically enough to determine whether s/he was meeting the IEP goals. In this case, however, the nature and severity of Student's disabilities justify maintaining goals and objectives through successive IEPs. Moreover, the District did monitor Student's progress. (*See* P- 67, P- 71) It conducted assessments that quantified Student's progress in reading and math which demonstrated that Student was advancing in those skills notwithstanding the continuing impact of severe learning disabilities. (F.F. 24, 25, 26) When Student's progress in reading stalled, the District added different instructional methods, better suited to Student's "whole to part" learning style. (F.F. 12, 20, 21) The District also assured that Student had the opportunity to participate in grade level regular education

classes, including academic subjects, by providing supports and services to assure that Student was able to benefit from the instruction received in those classes despite the deficiency in independent reading. (F.F. 19) Parents' expert witnesses, who questioned the benefits Student received from inclusion in grade level classes with typical peers, based their conclusions that participating in regular education classes was likely not productive for Student entirely upon surmising that Student would find such classes distracting given the attention and focus issues revealed by standardized assessments. (F.F. 15) Student's Parents, however, produced no evidence that directly contradicted the District school psychologist's opinion that the gains noted in Student's verbal abilities between the 2005 and 2007 evaluations resulted from his exposure to the regular education curriculum. (See F.F. 15, 18) In short, the District made substantial and sustained efforts to provide special education services Student which meet his/her varied and complex needs. The progress Student made in the basic skills of reading, math and writing in the District's program was meaningful for Student, and the District's proposal to continue the services and instructional methods it provided to Student in 4th grade through the IEP offered for the current school year was appropriate.

In light of the conclusion that the District offered an appropriate IEP for Student for 5th grade, it is unnecessary to examine the issues of the appropriateness of the private school placement selected by Parents and whether equitable considerations counsel against full or partial tuition reimbursement.

CONCLUSION

The Lower Merion School District provided appropriate special education and related services to Student in the past, through which Student has made significant

educational progress despite multiple serious disabilities affecting Student's ability to learn to read, in particular. The District's offer of similar services to Student for the 2008/2009 school year was, therefore, an appropriate proposal in that it was reasonably calculated to assure that Student would make meaningful progress. Parents, therefore, are not entitled to recover from Lower Merion School District the costs of tuition at [private school], the private placement they selected for Student.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Lower Merion School District is not required to reimburse Student's Parents for the costs of tuition at [private school] for the 2008/2009 school year.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

February 7, 2009