

*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. 00057-0910LS

Child's Name: O. M.

Date of Birth: xx-xx-xxxx

Dates of Hearing: 11/6/09; 11/9/09, 12/7/09, 12/16/09

### CLOSED HEARING

#### Parties to the Hearing:

##### Parents

##### School District

Pottsville Area  
1501 West Laurel Boulevard  
Pottsville, PA 17901

Date Record Closed:

Date of Decision:

Hearing Officer:

#### Representative:

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January 8, 2010

January 23, 2010

Anne L. Carroll, Esq.



## **INTRODUCTION AND PROCEDURAL HISTORY**

[Student], currently enrolled in a private residential secondary school, was a regular education student for most of the time he attended school in the Pottsville Area School District [hereinafter District], where he continues to reside with his Parents when school is not in session.

The District initially evaluated Student for IDEA eligibility in 2005 after he was hospitalized for a [redacted medical reason] and found him ineligible for IDEA services. After receiving notice of a medical diagnosis of depression and ADHD in the fall of 2008, the District provided Student with a §504 service plan.

In January 2008, after several short term hospitalizations in April, July, September and November 2008, [redacted medical reason] resulted in a longer in-patient hospital admission. When Student was discharged, Parents transported him directly to an out of state residential treatment facility. After an evaluation in the spring of 2009, Student was determined by the District to be IDEA eligible due to emotional disturbance.

Parents rejected the IEP offered by the District for the 2009/2010 school year and the District refused Parents' request for reimbursement of costs for the treatment facility where Student spent the second half of the 2008/2009 school year, and for the current private school placement Parents unilaterally selected at the beginning of the 2009/2010 school year.

Parents filed a due process complaint in August 2009, asserting that the District failed to timely evaluate Student and provide special education services, for which Parents request compensatory education from the beginning of the 2007/2008 school year through December 2008. Parents also seek reimbursement for the costs of Students' private placements from January 2009 through the current school year. Based upon the applicable law and an evidentiary record compiled over four due process hearing sessions between November 6 and December 16, 2009, Parents' claims will be denied.

## **ISSUES**

1. Did the Pottsville Area School District fail to timely identify [Student] as a student eligible for special education services at any time between the 2004/2005 school year and the time an evaluation was completed during the 2008/2009 school year?
2. Is [Student] entitled to an award of compensatory education for any period of time from the beginning of the 2007/2008 school year through December 2008, and if so, for what period and in what amount?
3. Are [Student]’s Parents entitled to reimbursement for the costs of associated with [Student] placement at [Redacted facility] services from January 2009 through discharge in July 2009?
4. Are [Student]’s Parents entitled to reimbursement for [Student] tuition at [Redacted School] for the 2009/2010 school year?

## **FINDINGS OF FACT**

1. [Student] is a 17 year old child, born [redacted]. He is a resident of the District and is eligible for special education services. (Stipulation, N.T. pp. 19, 20)
2. Student has a current diagnosis of emotional disturbance in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(4); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 21)
3. Early in 2005, at the age of 13, Student required in-patient hospital treatment due to [redacted]. (N.T. pp. 41; P-A<sup>1</sup>, P-B, S-4),
4. The District submitted behavior rating evaluations to the hospital as requested, and on the hospital’s recommendation, conducted a psycho-educational evaluation to determine whether Student was eligible for IDEA services by reason of a learning disability. Based upon his cognitive and achievement test scores, the District concluded that Student did not have a learning disability. The District also used the behavior ratings completed by District teachers and its psychiatric report to rule out IDEA eligibility based upon emotional disturbance. (N.T. pp. 51, 52, 259, 260, 376, 377, 636—641, 690—692; P-B, P-C, P-D, P-E, S-6, S-9)
5. Between Student’s return to school in the fall of 2005, after discharge from the hospital, and the spring of 2008, Student had no problem attending school, expressed no concerns about school and generally maintained grades in the B-C range. The District’s school psychologist saw Student periodically during the first part of the 2005/2006 school year,

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<sup>1</sup> Parents Exhibits were designated by letters rather than numbers.

- just after the first hospital stay, and found no basis for any additional evaluation for IDEA eligibility at any time during that period. (N.T. pp. 52, 53, 642—645)
6. In April 2008, Student took an overdose of his prescription medicine and was admitted to the hospital for a brief period. Parent notified the school of the incident, but provided no details or medical records. (N.T. pp. 53, 57; P-F)
  7. During July 2008, Student was hospitalized twice due to extreme emotional upset, manifested by [redacted]. (N.T. p. 59; P-G, P-H, )
  8. An incident with the football coach during a summer practice session immediately preceded one of the hospital admissions. The other hospital admission occurred during a family trip to the university a sibling attends. (N.T. pp. 59, 60, 579, 580, 617, 618; P-G, P-H)
  9. Parents notified the District in August 2008 that Student was withdrawing from the District to attend the private boarding school that Student's brother had attended. The District supported the family's decision, wrote a letter of recommendation for Student and supplied teacher evaluation forms. (N.T. pp. 61—63, 391—393, 575)
  10. After the first day, the private school notified Parents that Student felt depressed, had thoughts of harming himself and required Parents to take Student home. Parents re-enrolled Student in the District before the 2008/2009 school year opened. (N.T. pp. 61, 63, 394, 395, 576)
  11. After [[redact]], Student was admitted to the hospital for an overnight stay in early September 2008. Parent notified the District of Student's hospitalization for depression and sought assistance for low academic performance during the fall of 2008. (N.T. pp. 63, 64, 68, 69, 408, 618, 646—648; P-J, P-K)
  12. After the September hospitalization, Student's Parents requested that the District provide an IEP for Student. (N.T. pp. 69, 405, 408, 619, 620)
  13. Student enrolled in several honors math classes for 11<sup>th</sup> grade (2008/2009) school year. Previously, Student had taken regular college prep courses, but no honors classes. (N.T. pp. 389, 436; P-K, S-17, p. 2)
  14. Throughout high school, Student had generally maintained a consistent grade point average in the B-C range. Parents obtained private tutoring for Student in various subjects in which Student was having difficulties. (N.T. pp. 388, 733—735; S-17, p. 5)
  15. Student was also enrolled in District in-school tutoring programs during the 2007/2008 and 2008/2009 school years. When an issue arose concerning Student's attendance at tutoring sessions, Parents requested and received the assistance of the guidance counselor to assure that Student attended the tutoring sessions regularly. (N.T. p. 385, 386, 396—401)

16. In the early part of the 2008/2009 school year, Student was struggling with the demands of his academic courses. Student dropped the honors math classes and enrolled in regular college prep courses. Student's grades improved during the second quarter. Grade reports from the 2008/2009 school year reflect final grades for the 1<sup>st</sup> quarter only. 2<sup>nd</sup> quarter grades extend only to the date Student withdrew from the District and may reflect missed tests and/or assignments that could have been made up had Student returned to complete the 2<sup>nd</sup> quarter. (N.T. pp. 402, 403, 423, 427—429, 463, 649, 650, 654, 703, 739—742, 744—746, 749—757, 761—764; P-K, S-17, pp. 1, 2)
17. In mid-October 2008, the District received letters from Student's treating physicians notifying the District that Student was being treated for depression, had also been diagnosed with ADHD, and requesting accommodations. (N.T. pp. 70, 409, 621; P-L, P-M)
18. Upon receiving the letters from Student's treating physicians in October 2008, the District requested and received permission from Parents to conduct an evaluation to determine whether Student was a protected handicapped student under §504 of the Rehabilitation Act, and if so, the services he needed. (N.T. pp. 73, 276, 277; P-O, p. 1; S-13)
19. In November 2008, Student was again hospitalized for [redacted]. (N.T. pp. 71, 72; P-N, P-P)
20. In mid-November 2008, the District offered and Parents approved a §504 Service Agreement that provided for some classroom/testing accommodations and the opportunity to contact the nurse and guidance staff for needs associated with Student's mental health and ADHD diagnoses. Mental health therapy was to be home-based, provided by a mobile therapist. (N.T. pp. 74, 77, 435, 654, 716; P-O, pp. 2—4, S-13)
21. On at least two occasions during the fall of 2008, Student became upset at school and spoke to his guidance counselor. Parents were sometimes asked to take Student home early. Otherwise, Student attended and participated in all classes and was observed during lunch and free periods sitting with and socializing with peers who were considered to be among the popular students in the school. (N.T. pp. 75, 76, 178, 430—432, 437, 438, 659, 736, 737)
22. During the fall of 2008, Parents explored options for a residential treatment facility for Student. (N.T. pp. 80, 85, 88—90, 109, 118, 648)
23. Just before school re-opened in January 2009, Student again [redact] and received in-patient hospital treatment. (N.T. p. 80; P-R, pp. 14—18)
24. On January 12, 2009, Parents transported Student to [redacted facility], a therapeutic/residential treatment center in [redacted state], where he remained until July 2009. (N.T. pp. 82, 92, 93)

25. [Redacted facility] is a non-profit agency that provides an intensive summer residential treatment program, services to New England public schools and a year round residential treatment program that includes a full school day with curriculum aligned to New Hampshire educational standards. (N.T. pp. 104—106, 116, 117, 150)
26. Student initially needed extensive staff support to assure his safety, and continued to need clinical support throughout his stay at [Redacted facility], where therapeutic staff is available at all times. (N.T. pp. 128, 130, 147, 148, 205)
27. Student received daily individual and group therapy. Both educational and therapeutic services were provided in accordance with a treatment plan devised by a clinical psychologist. The group therapy included training in social skills, emotional regulation, stress management and conflict resolution. (N.T. pp. 93, 94, 117, 147, 173—175, 201, 202)
28. Student attended high school level academic classes for most of his stay at [Redacted facility], but did not begin school for 2—3 weeks after admission. The school day included three “debriefing” periods for assessing how well Student was maintaining control of thoughts, mood, and anxiety related to interpersonal relationships. Academic classes were small, with a high staff to student ratio. Grading is on a pass-fail basis. (N.T. pp. 150, 151, 155, 158, 167, 169—171, 173, 183, 209)
29. The [Redacted facility] program also included time for recreation/sports, opportunities for community service and additional study activities, such as SAT preparation. (N.T. pp. 171, 172)
30. [Redacted facility] evaluated Student beginning in February 2009. The evaluation consisted of  
standardized cognitive and academic achievement tests and measures designed to assess social-emotional functioning, including the Wechsler Adult Intelligence Scale-Third Edition (WAIS III), the Wechsler Individual Achievement Test-Second Edition (WIAT-II) and the Behavior Assessment System for Children-Second Edition (BASC-II), as well as several other measures. (N.T. pp. 93, 94, 158, 160, 165—167; P-S, S-14)
31. When [Redacted facility] notified the District that Student had been placed there by Parents and  
suggested that an IEP be considered, the District reviewed the testing of Student completed by [Redacted facility] and met with the family. The [Redacted facility] clinical psychologist participated in the review of the testing. (N.T. pp. 169, 177, 194, 195, 290—292; P-V, S-14)
32. The District accepted the [Redacted facility] cognitive and achievement test results indicating that Student is in the average range of intellectual functioning, with average to above average achievement scores in math, reading and writing. The District also accepted the [Redacted facility] diagnosis of emotional disturbance, but rejected the

conclusion that Student has a non-verbal learning disability based on the discrepancy between the high average verbal IQ score and an average performance IQ on the WAIS. The [Redacted facility] psychologist concluded that Student's reading and math scores on the WIAT-II should have been in the high average range, commensurate with Student's verbal IQ score, and that the discrepancy between verbal and performance IQ scores and between predicted and actual achievement scores based upon the verbal IQ score indicates a non-verbal learning disability. (N.T. pp. 161—163, 196—201, 258, 292, 655—657, 723, 724, 726, 727; P-S, S-14)

33. At an IEP meeting held in May 2009, the District offered an IEP for Student that proposed emotional support annual goals, and provided emotional support services via specially designed instruction and related services in the form of weekly social work services. All services were to be delivered in the District high school. (N.T. pp. 95, 295—297; P-X, S-19)
34. During the summer of 2009, based upon additional recommendations received from [Redacted facility] and research conducted by the District school psychologist, additional emotional support services and specially designed instruction were added to the proposed IEP, including a cognitive-behavioral curriculum for students experiencing anxiety and depression. The curriculum is designed to meet the [Redacted facility] recommendations concerning appropriate supports for Student. Between the May 2009 IEP meeting and a meeting in September 2009, the District also increased social work services and added psychological services. The District's IEP proposals incorporated most of the [Redacted facility] service and support recommendations via specially designed instruction and related services. (N.T. pp. 296, 301, 302, 308, 309, 665, 668—675; P-W, S-1, S-2, S-3, S-14, S-19)
35. Both the original and revised IEPs proposed by the District provided for Student to receive all academic instruction in regular education high school classes. Parents rejected the District's proposed IEP offered at the May 2009 IEP meeting because it did not provide the level of counseling and mental health treatment Student was receiving at [Redacted facility]. (N.T. pp. 96, 97, 188; P-X, P-Y, S-1, S-19)
36. During the summer of 2009, Parents and [Redacted facility] determined that Student's level of risk had decreased to the point that Student could function without the intensive therapeutic environment offered by [Redacted facility], but should attend a residential school closer to home that offered small classes and a supportive environment. (N.T. pp. 101, 102, 182, 183, 190, 626, 627)
37. In September 2009, after the due process complaint was filed, Parents again rejected the IEP proposed by the District and subsequently asserted a claim for the District to reimburse Parents for Student's tuition at [Redacted School], a private boarding school located in Malvern, Pa. Parents unilaterally enrolled Student at [Redacted School] for the 2009/2010 school year. (N.T. pp. 298, 299, 511; P-DD)



38. [Redacted School] is a Pennsylvania Department of Education licensed private school. The school has also been licensed to offer special education summer programs in speech and language in the past. (N.T. pp. 661—663, 786, 806, 807; P-II, pp. 1, 2, S-24)
39. The annual enrollment at [Redacted School] for students in 7<sup>th</sup> through 12<sup>th</sup> grades is approximately 130. Grade level academic classes generally include 6-8 students. (N.T. pp. 513, 514, 521; P-II, p. 1)
40. Student began the 2009/2010 school year repeating 11<sup>th</sup> grade was originally placed in an academic support program for English/language arts and reading at an extra cost to Parents. Academic support was discontinued after a brief period and Student now attends only regular classes. It is possible that Student will be moved to 12<sup>th</sup> grade and graduate in June 2010. (N.T. pp. 517, 519, 526, 527, 541, 542, 549, 550, 607, 627, 628, 632; P-DD)
41. Student receives psychological therapy from a private therapist contracted by the school, and counseling from the school's social worker and/or school psychologist. (N.T. pp. 514, 517—519, 521, 534, 535, 539, 540, 551, 627, 631)

## **DISCUSSION AND CONCLUSIONS OF LAW**

Since it is undisputed that Student is currently eligible for all protections provided by the IDEA statute and its implementing regulations, the dispute in this matter is governed by the statutory/regulatory procedural safeguards, specifically, 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 235, 240 (3<sup>rd</sup> Cir. 2009)

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, in this case, because Parents challenged the timeliness of the District's identification of the Student as an eligible child and the current program/placement recommendation, Parents must establish that the District's conduct deprived Student of benefits to which he was entitled under IDEA.

Since the Court limited its holding in *Schaffer* to allocating the burden of persuasion, explicitly not specifying which party should bear the burden of production or going forward with the evidence at various points in the proceeding, the burden of proof analysis actually 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.

The District’s obligation to Student and Parents under the IDEA statute is to assure that Student receives a free, appropriate public education (FAPE). To provide FAPE, the District is required to provide an appropriate program and placement *i.e.*, an IEP 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 at 249. “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). 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/her 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).

Under the interpretation of the IDEA statute established by the *Rowley* case and other relevant cases, however, the District is not required to provide Student with services designed to

provide the “absolute best” education or to maximize the child’s potential. *Mary Courtney T.* 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995).

#### Child Find

The inquiry into whether the District failed to timely identify Student is divided into two distinct periods: 1) The time after Student’s first hospitalization for a mental health issue in 2005 until Student’s next hospital admission at the end of April 2008; 2) May 2008 through the time the District found Student eligible for IDEA services.

To put the child find issue into the proper context, it is important to note the two-pronged test for determining IDEA eligibility. A child is eligible for services under IDEA only if he or she is diagnosed with one or more of the conditions listed and defined in the IDEA statute and regulations, and “**by reason thereof**, needs special education and related services.” 20 U.S.C. §1401(3)(A), 34 C.F.R. §300.8(a) (Emphasis added).

In this case, Parents provided extensive details concerning Student’s struggles with depression, anxiety and [redacted] beginning when he was still in middle school. (F.F. 3, 6, 7, 8, 11, 19, 23) Although Student’s mental health problems may have arisen and persisted from 2005, it is not enough for Parents to establish the existence of a condition that meets the criteria for a disabling condition as defined in the statute. Parents are also required to establish that the condition adversely affected Student’s educational progress. Parents did not present convincing evidence that Student had persistent academic or social problems in the school setting at any time between returning to school in the fall of 2005, after the first hospitalization, and the fall of 2008. The only evidence of continuing problems was Parent’s brief testimony to the effect that Student’s mental condition “remained fairly bad” between 2005 and the spring of 2008. (N.T. pp. 52, 53) There was no suggestion in the record that Student’s functioning in the school setting

either casts doubt on the District's 2005 conclusion that Student was not IDEA eligible at that time (F.F. 4) or should have triggered a reevaluation by the District during that period. By Parent's own testimony, Student had no problem attending school and expressed no concerns about school between 2005 and the spring of 2008. (N.T. p. 53)

The record is unclear with respect to whether Parents explicitly notified the District of Student's second hospitalization at the end of April 2008. Even completely crediting Parents' testimony that they did make the District aware of that incident, however, a hospital admission that occurred more than three years after the first such incident was insufficient to trigger an immediate evaluation for emotional disturbance.

The term "emotional disturbance" is defined in §300.8(c)(4)(i) of the IDEA regulations as

...a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

As noted above, there was no indication that Student's school performance was adversely affected between 2005 and 2008, since Student generally maintained good grades in that period. (F.F. 5, 14) There is also no evidence, other than Parents' testimony reporting concerns Student expressed and medical records not available to the District at the time, of any difficulties with interpersonal relationships. Consequently, despite the hospital admission in April 2008, there was no basis for the District to suspect at that time that Student fit the statutory/regulatory

criteria for emotional disturbance and, therefore, to suggest that a new evaluation might be advisable.

The question becomes a bit closer after the District learned of additional hospitalizations between September and November 2008. (F.F. 11, 17; N.T. pp. 484, 496) Even assuming, however, that the District should have initiated an IDEA evaluation at the time Parents requested an IEP, and even if the District had requested permission to conduct an IDEA evaluation at the time permission was sought to evaluate Students for §504 services, the District is correct that there would not have been sufficient time to complete an evaluation, develop an IEP and begin delivering services, much less sufficient time for such services to have a positive effect, prior to the crisis that led to Student's withdrawal from the District in January 2009. *See* 22 Pa. Code §14.123(b), specifying that evaluations must be completed within 60 calendar days after receiving a signed permission to evaluate; 34 C.F.R. §300.323(c), specifying that an initial IEP meeting must be held within 30 days of the eligibility determination.

Consequently, even if the District should have sought an IDEA evaluation in the fall of 2008, the delay had no substantive effect in terms of impeding development of a timely IEP or resulting in a denial of educational benefit, and, therefore, does not support an award of compensatory education based upon a child find violation. *See*, 34 C.F.R. §300.513(a)(2).<sup>2</sup>

### Reimbursement

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

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<sup>2</sup> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

applied based upon *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985) 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.

1. [Redacted facility]

The first reimbursement issue is whether the District should be required to reimburse Student's Parents for the costs of the private placement Student attended during the second half of the 2008/2009 school year. That determination is fundamentally a question of the proper interpretation of the applicable law rather than a question of determining the specific facts relating to Student's disability and his functioning at school and at home during the fall of 2008 and the early months of 2009, which are largely undisputed. The dispute over reimbursement for Student's stay at [Redacted facility] centers on the limits of the District's obligation to pay for the services Student received at the private facility when the basis for the Student's admission there was a medical/mental health crisis that required immediate treatment.

In a recent decision, the Court of Appeals explained that in deciding whether a school district is responsible for paying the costs of a unilateral residential placement that provides both treatment and education, it is essential to determine whether its primary purpose is providing special education or mental health treatment. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 244, 245. The District can be held responsible for the cost of Student's

stay at the facility only if placement there was necessary primarily to provide appropriate educational services. That was clearly not the case. The testimony of Parent and the witnesses from [Redacted facility] emphasized that Student needed to attend [Redacted facility] in order to keep him safe from the effects of his depression, which led to [redacted] when he was living at home. (F.F. 24, 26, 35) Moreover, the description of the [Redacted facility] programs and services establish that the Student's services were based upon a treatment plan designed by a clinical psychologist, and were not primarily focused on education. (F.F. 25, 27, 28)

Because the inescapable conclusion from the record is that the [Redacted facility] placement was primarily for medical not educational purposes, there is no legal basis for making the District financially responsible for the costs associated with that placement.

2. [Redacted School]

Parents are entitled to tuition reimbursement for a parentally selected private school placement only if the District has failed to offer an appropriate IEP. Consequently, the first question is whether the IEP offered by the District meets Student's needs. The evidence establishes that the District took into account Student's emotional support needs as identified in the [Redacted facility] evaluation and incorporated virtually all of the [Redacted facility] recommendations into its offer of an educational program. (F.F. 33, 34)

Parents did not fault the specifics of the District's proposal, relying again on the therapeutic benefits to Student of a smaller classes and the availability of counseling services. (F.F. 36) Student, however, is entitled to an appropriate program, not an ideal program. Nothing in the record suggests that the District's proposal is not entirely appropriate. Parents are not entitled to tuition reimbursement because they prefer the advantages of a private school, including smaller classes and a more ethnically diverse student population.

Moreover, although the record as a whole supports the conclusion that the symptoms of Student's emotional disturbance subside when his educational setting includes a residential component, there is, as noted above, no legal basis for requiring the District to pay for services that amount to mental health treatment. The record suggests that it is residing at the private school that is the key to the absence of [redacted] since January 2009 rather than the educational services Student receives. Finally, the description of Student's progress at [Redacted School] establishes that while Student's grades may be somewhat better than in the public school, he still struggles with the effects of his depression, struggles with math and needs tutoring services. *See*, N.T. pp. 520, 522, 530. There is no evidence that the educational program the District has offered, including the services and curriculum to address Student's emotional support needs will not effectively address those needs and afford Student the opportunity for significant learning. In addition to the absence of any basis for concluding that the IEP offered by the District is inappropriate or inadequate, there is no objective basis for concluding that [Redacted School] provides a better alternative for Student, other than its residential component. The record in this case provides no basis for ordering the District to reimburse Parents for tuition at the private residential school Student is currently attending.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in this matter are **DENIED**.

January 23, 2010

*Annel Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER