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. 00715-0910KE

Child's Name: B.S.

Date of Birth: [redacted]

Dates of Hearing: 6/16/10, 8/10/10, 8/12/10, 8/13/10, 9/17/10, 9/23/10, 10/1/10, 10/26/10, 11/5/10, 11/17/10

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents Parent[s]	Parent Attorney Amy Carolla, Esquire Reisman Carolla,Gran, LLP 19 Chestnut Street Haddonfield, New Jersey 08033
School District Radnor Township 135 S. Wayne Avenue Wayne, PA 19087-4117	School District Attorney Sara Davis, Esq. Levin Legal Group 1402 Mason Mills Business Park 1800 Byberry Road Huntingdon Valley, PA 19006
Date Record Closed:	December 13, 2010
Date of Decision:	December 28, 2010
Hearing Officer:	Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student in this case is a recent graduate of a private residential school located in [another state]. A resident of the Radnor Township School District, Student attended its schools through 8th grade, and then spent 9th and 10th grades in private boarding schools before re-enrolling in the District for 11th grade at the beginning of the 2008/2009 school year.

At the time Student left the District at the end of middle school, Student had been receiving special education services under the categories of specific learning disability (SLD) and emotional disturbance (ED). The District acknowledged Student's IDEA eligibility at the time of reenrollment by immediately assigning a special education learning support teacher as Student's case manager. After approximately three months in the District high school, Parents placed Student in private therapeutic residential facilities through the end of the 2009/2010 school year.

Parents seek reimbursement from the District for the costs associated with the costs of those residential placements, as well as compensatory education for the brief period Student attended the public high school.

As explained in detail below, based upon the evidence compiled over a 10 session hearing held between June and November 2010, and in accordance with the applicable legal standards, Parents will be awarded some of the relief they requested. Specifically, Parents will receive reimbursement for the private placement they selected for Student in the 2008/2009 school year and partial reimbursement for the 2009/2010 school year.

ISSUES

1. Is Student entitled to an award of compensatory education for any part of the time Student was enrolled in [the] School District between September and November 2008, and if so, in what amount, for what period and in what form?

2. Is [the] School District obligated to reimburse the Parents for the costs of tuition and transportation for Student's enrollment in an out of state residential treatment facility from December 1, 2008 until the end of September 2009?

3. Is [the] School District obligated to reimburse the Parents for the costs of tuition and transportation for Student's enrollment in a different out of state residential facility for the 2009/2010 school year?

4. Is [the] School District obligated to reimburse the Parents for the costs associated with Student's placement at a Pennsylvania diagnostic unit from the end of January to the beginning of March 2010?

FINDINGS OF FACT

1. Student born [redacted], is now a late teen-aged individual. At all times relevant to the issues in this case, Student was a resident of [the] School District and eligible for special education services. (Stipulation, N.T. pp. 13—15)

2. Until high school graduation, Student was IDEA eligible under the disability categories of Specific Learning Disability (SLD) and Emotional Disturbance (ED) in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(4), (10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 14, 15)

3. Beginning in 4th grade, Student received itinerant learning support services for math reasoning and reading comprehension. After the District issued a reevaluation report (RR) in the middle of 8th grade (January 2006), ED was added as a disability category and 3 periods /week of itinerant emotional support services were added to Student's special education services due to increasing levels of anxiety and depression that were impacting school performance. (N.T. pp. 345, 2142, 2144, 2146, 2160; P-35, pp. 1, 4, 6)

4. The 2006 RR noted Student's Father's concerns with Student's hyperactivity, aggression and conduct problems at home, including explosive behavior. (N.T. pp. 347, 348; P-35, pp. 4, 6)

5. Although Parents reported that Student "was determined not to have anyone know" about increasing difficulties with anxiety and obsessive compulsive disorder (OCD), Student's 8th grade teacher recalled that Student openly sought out and willingly used available supportive services. She recommended that emotional support services continue in 9th grade because she worried that Student would become stressed over trying to succeed

academically at the high level for which Student always strove. (N.T. pp. 2149, 2178, 2179; P-35, pp. 4, 6)

6. At the end of 8th grade, also the end of middle school, Parents withdrew Student from the District to attend a private boarding school that specializes in educating students with nonverbal learning disabilities. Father's employment as [redacted] was a factor in that decision. (N.T. pp. 352, 1756, 2188; S-29)

7. Because Student was unhappy at that school, particularly with the lack of [redacted specific extracurricular] program and the peer group, Parents selected a private college preparatory boarding school with a highly structured program and strong discipline code for 10th grade. Student experienced significant problems at that school and Parents were concerned about the lack of supports for Student's emotional difficulties. (N.T. pp. 353, 1757—1759, 2413)

8. During Student's 8th grade school year, Parents began working with consultants to find an educational placement that would assure academic progress as well as address Student's emotional/behavior issues. (N.T. pp. 354; P-56, p. 1)

9. In July 2008, after a difficult 10th grade school year, and at the suggestion of Parents' educational consultant, Student was admitted to the [redacted out-of-state] Clinic for a diagnostic work-up to identify conditions that might be causing increasing social and behavioral problems. In July 2008, Parents obtained a private psychiatric examination which corroborated the need for a diagnostic hospitalization. Parents expected the Clinic admission to include a review and possible adjustment of Student's medications, as well as recommendations for the type of placement a school that could successfully address Student's behavioral and academic needs. (N.T. pp. 356, 357, 1760, 1764, 1765; P-58)

10. Due to Student's increasingly problematic behaviors at home, including aggression toward Parents and a younger sibling, Parents' educational consultant recommended a residential treatment facility for the 2008/2009 school year, but Parents rejected that suggestion. A Clinic staff member who evaluated Student also recommended a residential therapeutic placement, but the Clinic discharge summary noted that the family would explore the viability of Student remaining at home. (N.T. pp. 357, 358, 737, 744, 1763; S-35, pp. 9, 35)

11. When Student was discharged from Clinic in mid-August, Parents had not located a suitable school, and, therefore, several days before the school year began decided to re-enroll Student in the District for 11th grade. Student was eager to return to the public high school. (N.T. pp. 1763, 1764; S-27, p. 1)

12. A few days before the school year began, Father met with the high school principal and the guidance counselor to whom Student would be assigned to enroll Student in the high school and to develop a class schedule. The guidance counselor had Student's 8th grade IEP, and, therefore, was aware that Student had been an IDEA eligible student when last enrolled in the District. The guidance counselor requested records from the schools

Student attended in 9th and 10th grades, which the District received by late September. The prior school records disclosed that Student met academic expectations in 9th grade and received average to above average grades in 10th grade. No significant disciplinary concerns were noted. (N.T. pp. 362, 2192, 2195, 2196, 2225, 2230; S-26, S-28)

13. Father requested that Student be assigned to a supportive special education case manager, but wanted Student placed in all regular education classes, including advanced biology, an honors level English class and Algebra II, the college prep math class generally taken by 11th grade students. The schedule was developed based upon Father's recollection of the classes Student had taken in 9th and 10th grades, since the records from those schools were not yet available to the District. The guidance counselor understood from Father that he was to make the final decisions concerning the classes and teachers to which Student should be assigned although she could certainly make recommendations. (N.T. pp. 2195, 2196, 2225—2227; S-27, p. 2)

14. During the conversation with the guidance counselor, Father mentioned that Student had issues with anxiety and focus, had been diagnosed with a seizure disorder, and had difficulty with math. (N.T. p. 2196)

15. Although Father recalled an emotional conversation with the guidance counselor in which he disclosed the increasing behavior difficulties Parents were experiencing with Student at home, Father did not discuss the very recent Clinic admission or provide the District with the limited draft report Parents had received upon Student's discharge. (N.T. pp. 362—365, 2198, 2203, 2204)

16. In conversations with Student's case manager, and in an email to Student's teachers early in the school year, Father described academic difficulties in math and science that might arise from what he described as Student's neurological impairment. (N.T. pp. 366, 367, 1503, 1562; P-34a, p. 7)

17. Because Student had been out of the District for two full school years, Student's previous IEP was outdated, so there was no IEP in place for Student at the beginning of the 2008/2009 school year. (N.T. pp. 1511, 1512)

18. The first IEP meeting was held on September 19, 2008. The proposed IEP presented at the meeting included information from the District's January 2006 (8th grade) evaluation, as well as some discussion concerning the effects of Student's issues with anxiety and depression on school performance in 8th grade. Also noted were Student's difficulties with transitioning into the District high school and an increase in negative behaviors since the beginning of the school year. (N.T. pp. 381, 383, 392, 1502, 1503, 1515, 1564, 1565, 1769; S-25, pp. 5—7)

19. The IEP proposed at the September 19 IEP meeting had two annual goals, both for math, and described modifications/specially designed instruction directed primarily toward academic issues, including, weekly academic progress reports, encouragement for self advocacy, extended time for tests and the opportunity for an alternative setting for tests.

Concerns about focus and task completion were addressed by weekly monitoring. The proposed IEP continued the same supports that had been made available to Student from the beginning of the school year with no changes or additions. There were no goals or SDI explicitly for emotional support. (N.T. pp. 383, 384 1558—1560, 1588; S-25, pp. 11, 12)

20. Difficulties with Student's school performance began before the September 19 IEP meeting, with early indications of unwillingness to complete class work and assignments and falling asleep in class as well as refusal to use the supports in place, such as the Help Center for assistance in math and as a place to take tests. Weekly check-ins with teachers beginning on September 8, 2008 revealed that although few aggressive or anti-social behaviors were observed, Student's poor academic performance and work refusal that began in early September, increased through October and November, and included refusals to attend classes or go to school at all. (N.T. pp. 373—380, 385, 387, 388, 394, 395, 737, 1521, 1530, 1596, 1600—1602, 1606, 1609, 1615—1618, 1763, 1769; P-34a, pp. 13, 14, 22—29, 32, 37, 41, 42, 47—53, 55, 56, 62—64, 76—80, 88—91, 96—98, 100, 103, 113—115, 121, 126, 127, 129—134, 139, 162, 168, 170—172, 175, 176, 179, 181, 184, 187, 190, 193, 198, 202, 235—238)

21. By the September 19 IEP meeting, the District was aware that Student had begun associating with undesirable peers. On one occasion, a group refused to leave the family home and had to be removed with police intervention. (N.T. pp. 390, 391, 1573—1575, 1774; S-25, p. 7)

22. To address Student's early academic difficulties, the District attempted to reduce Student's workload by assignment, first, to a less demanding math class upon learning that Student had never completed the pre-requisite Algebra I class, and ultimately to an on-line math course. Student did no better in math after the math course changes. (N.T. pp. 738, 1597—1599, 1608, 2208—2214, P-34a, pp. 8, 30, 33, 92, 93, 99, 106, 119)

23. Through frequent meetings with Student, the case manager came to understand that Student resisted special education services to such an extent that low or even failing grades in regular education classes were, in Student's view, preferable to transferring to classes that would provide greater support. (N.T. pp. 1598, 1602, 1603, 1620)

24. By mid-October, Student had stated to the case manager that Student was refusing to complete class work and had no intention of succeeding in the District high school because of a deteriorating relationship with Father. (N.T. pp. 1618—1620, 1623, 1728)

25. In accordance with prior discussions at the end of September with other members of Student's IEP team, including Parents, Student's case manager suggested late in October that another IEP meeting be convened in mid-November, after first quarter grade reports were issued. (N.T. pp. 1572, 1611—1615; P-34a, p. 119)

26. After Student was involved in a fight in school in late October, Mother disclosed the Clinic admission to Student's case manager and guidance counselor, and on November 4,

2008 provided the District with the Clinic final written report and other records. (N.T. pp. 732, 733 1632, 1639; P-34a, p. 165, S-35)

27. When the Director of Pupil Services reviewed the Clinic report, the District concluded that Student's needs could best be met at [redacted] Center, a private therapeutic day placement. (P-34a, pp. 207, 211; S-35)

28. Student's case manager notified the school psychologist of the Clinic report in order to begin a new District evaluation, and noted that Student urgently needed emotional support. (N.T. pp. 1636, 1637, 1653; P-34a, pp. 163, 164)

29. By mid-October, Father began to discuss with the case manager the extent of Parents' problems with Student's violent and aggressive behaviors at home, which prompted the case manager to try to expedite a therapeutic placement for Student after learning of the Clinic report. (N.T. pp. 1640, 1641, 1647, 1651, 1730)

30. Parents were also interested in an out of District therapeutic placement, but in accordance with the advice of their educational consultant and Student's private therapist, Parents wanted a residential facility, not a day program. (N.T. pp. 741—743, 745, 752, 753, 1643; P-34a, p. 225)

31. Until a private therapeutic placement could be arranged, the District suggested a diagnostic placement in the [redacted] Program, a part-time emotional support program for District high school students with academic problems arising from emotional/behavioral issues. Students spend most of the day in a self-contained classroom with two teachers who provide academic instruction in accordance with a modified curriculum, and have access to a school psychologist for counseling. Students in the Program can also receive academic instruction in regular education classes to the extent they are able to participate in the regular curriculum. (N.T. pp. 739, 1576, 1620, 1652, 2218, 2219, 2267, 2268, 2276, 2294, 2295, 2380, 2381; P-34a, p. 207)

32. Although Student's case manager doubted that the Program would be a viable alternative given Student's resistance to special education services, Parents agreed that Student should be transferred immediately while the District worked toward moving Student to the private placement. There was some disagreement among District officials as to whether a trial of the in-house emotional support program was necessary before the School Board would approve payment for the private school. (N.T. pp. 740, 741, 1620—1622, 1641, 2305, 2306; P-34a, pp. 211, 215, 217, 219, 220)

33. In mid-November the District proposed an inter-agency meeting, but it was never arranged during the 2008/2009 school year. (N.T. pp. 1910, 2310; P-34a p. 223)

34. On November 21, 2008 the District issued a Permission to Reevaluate (PTRE) for a review of records and issued a reevaluation report in early February 2009. (P-37, P-41a)

35. Based upon a general description of Student's behaviors and academic concerns, the District inquired into whether Center could accommodate Student's needs, and was told that the student described by the District could be admitted. The District never formally submitted an application on behalf of Student or provided Center with a packet of information concerning Student. Center, therefore, never specifically considered whether it would accept Student. (N.T. pp. 1745, 2298, 2299)

36. On December 1, 2008 Parents notified Student's IEP team that they had withdrawn Student from the District to attend a private boarding school. (P-34a, p. 240)

37. Parents unilaterally placed Student in an out of state residential treatment facility school that they selected based upon the recommendation of their educational consultant and Student's private therapist. (N.T. p. 753)

38. That facility provides an intensive, highly structured program that includes therapy, recreation and academic instruction. (N.T. pp. 807)

39. Upon learning of Parents' decision to place Student in the residential treatment facility, both the school psychologist and Students' case manager expressed the hope that the District could do something to help the family fund the private placement. (N.T. p. 1662; P-34a, pp. 227, 230)

40. On November 26, 2008, the District issued a NOREP for the Program, which Student's case manager believed was necessary in order to assist the family in obtaining partial reimbursement from the District for the private placement selected by Parents. (N.T. p.1665; P-38)

41. On December 4, 2008, the District's school psychologist notified Student's case manager that the District needed to have an IEP meeting "to build an IEP with emotional supports that sound like [Student] should be placed at Center" in order to further Parents' "goal of having the District pay the equivalent" of the District's proposed private day placement toward the residential placement. (N.T. pp. 1667, 1668; P-34a, p. 241)

42. Student's case manager and the special education teacher coordinator at the high school subsequently drafted an IEP for that purpose and presented it to Student's IEP team at a meeting on December 17, 2008. The new proposed IEP added several emotional support goals to the prior IEP, based upon recommendations included in the Clinic report, along with additional SDI directed toward emotional support and counseling as a related service. (N.T. pp. 1667—1673, 2293, 2298; P-40, pp. 9—11)

43. On the same date, the District issued a NOREP for an emotional support placement at an alternative school, specifically the Center. (P-40, p. 13; P-41)

44. In March 2009, the District again offered a NOREP for Center for the 2009/2010 school year, accompanied by the same IEP offered in November 2008. Parents rejected the

Center day placement as inadequate to meet Student's needs. (N.T. pp. 1920—1924; P-40, P-44, P-46)

45. At the residential treatment facility, where Student remained from December 2008 through the end of September 2009, Student's behavioral plan was based on a functional behavioral assessment and a level system through which Student could earn and lose privileges for desirable and undesirable behaviors. (N.T. pp. 805, 810—812)

46. The educational program is rigorous and organized like a regular high school program. Student passed all classes in 11th grade with an average in the C+ to B- range. Student's academic progress was better than progress in controlling negative behaviors in interpersonal relationships. (N.T. pp 822, 823, 854; P-70, pp. 1, 57—59)

47. Student's progress toward controlling anger and maintaining appropriate behavior toward peers was neither as rapid nor as complete as most of the students who enroll in the facility. Student, however, began with greater anger and more serious behavior deficits than most students in the program. Despite Student's slow and uneven behavioral progress, the facility staff believed that Student was unlikely to make further progress in that setting at the time Student left the facility in September 2009. (N.T. pp. 838—840, 843—847, 851, 852 863—865; S-6, p. 6, P-70, pp. 57—59)

48. With the assistance of their educational consultant, Parents selected another residential treatment facility/school in another state as a less restrictive "step down" facility for Student's senior year. That facility also provided therapy and supports to continue working on Student's anger management and other behavioral issues, as well as assure completion of school work. Student did well academically, with no failing grades and only one D+. The remaining grades were primarily Bs. (N.T. pp. 486, 493, 494, 1847, 1926; P-72d)

49. In September 2009, when Parents requested payment form the District for the new residential facility for the 2009/2010 school year, the District again proposed scheduling an interagency meeting which was held on October 20, 2009. Student was subsequently approved for medical assistance. (N.T. pp. 1937, 1938; P-34a, pp. 255, 256, 269)

50. In mid-December 2009, Student was suspended from the residential treatment facility for a fight in the dormitory. Parents were uncertain whether the school would permit Student to return to complete the school year. (N.T. pp. 523—527, , 1943; P-10, P-72a, p. 17)

51. Immediately after Student was sent home, Parents notified the District and requested services. (N.T. p. 1941; P-10)

52. The District convened an IEP meeting on January 6, 2010 and presented a draft IEP that included the math and behavior goals in the December 2008 and March 2009 IEP proposals along with several additional behavior goals. (N.T. p. 1945, 1949, 1950; P-40, P-46, S-6, pp. 15—21)

53. The District proposed providing Student with homebound instruction until a permanent placement was determined, but Parents believed that Student was psychologically unavailable for instruction in the home setting. (N.T. pp. 1959, 1960, 2317)

54. At the IEP meeting, the District requested Parents' permission to conduct a psychiatric evaluation of Student and a full psycho-educational evaluation.. Parents objected to the psychiatrist identified by the District and told the District that Student's mental state would not permit an evaluation by the District's school psychologist. Parents obtained private, independent psychiatric and psycho-educational evaluations and provided reports to the District. (N.T. pp. 1970—1976, 2316—2319; P-61, ,P-63, S-32)

55. On January 25, 2010 an inter-agency meeting was convened to consider whether a residential placement was medically necessary for Student. After submission of all information required by the insurance provider for the Department of Public Welfare, the application for residential placement was approved on February 3, 2010. (N.T. pp. 2087—2093, 2105)

56. Subsequently, early in February, the resident service manager who served as liaison between Parents and the insurance carrier (Magellan) was informed that Student had been accepted by the Pennsylvania residential treatment facility, with a bed available on February 8, 2010. (N.T. pp. 2093—2095)

57. On January 26, 2010 Student had been admitted to the separate Pennsylvania diagnostic unit by Parents, who elected to have Student remain there until March 2, 2010, when discharge was recommended. Student was not medically approved for the diagnostic unit. (N.T. pp. 1995, 1996, 2096—2098; P-74, p. 189)

58. In early March 2010, Student was permitted to return to the facility in [another state], where Student successfully completed the curriculum and graduated with a regular high school diploma. (N.T. pp. 531, 1893, 2000, 2001; P-72a, p. 10)

DISCUSSION AND CONCLUSIONS OF LAW

A. Origin and Overview of the Dispute

Before outlining and applying the governing legal standards to the facts of this case, it is important to understand the somewhat unusual context that led to a very lengthy (10 session) hearing over a period of several months. The issues in this case developed because the parties, particularly the District, did not adhere strictly to IDEA requirements for developing an appropriate special education program and placement when Student enrolled in the District's high school at the beginning of 11th grade after a 2 year absence. That lapse occurred primarily

because Student's Father [redacted]. The testimony of the witnesses most closely involved with Student left the unmistakable impression that Parents were quite understandably reluctant to share the painful details of very personal family issues [redacted]. District personnel, for their part, were reluctant to seek information beyond what Father was willing to provide and permitted Parents to take the early lead in determining Student's educational needs and special education services with less oversight and input than would have occurred with an eligible Student.

Parents' desire to give Student the opportunity to be as much like any other high school student in the District high school, which Student very much wanted to attend, is understandable. (FF 11) But their delay in providing the District with all of the information available to them, especially information concerning Student's admission to the Clinic during the summer of 2008 due to extreme behaviors at home, prevented the District from realizing that the difficulties Student was already experiencing by the time of the first IEP meeting were far more likely to increase than diminish over time. (FF 10, 15, 20) Unfortunately, however, the District failed to recognize the seriousness of Student's needs even after Student's case manager obtained additional information directly from Father and Student that should have alerted him to the need to reconvene Student's IEP team no later than mid-October to consider adding emotional support services to Student's educational program. (FF 23, 24, 29)

Moreover, after Student left the public school at the Thanksgiving holiday in 2008, the District made no real effort to fulfill its responsibility to provide FAPE to Student, despite being fully informed by then of the nature and extent of Student's disability and needs. Instead, the District's efforts became focused on helping Parents partially fund the private placement they unilaterally selected. (FF 39, 40, 41, 42) When difficulties in that process arose and both parties' expectations for a simple and amicable arrangement whereby the District would partially

fund Parents' unilateral private placements were ultimately unfulfilled, both parties hastened to invoke IDEA requirements to support their respective positions. The difficulty for both parties is that having sidestepped IDEA procedures in the beginning, the statute and regulations as interpreted by court decisions will not provide complete relief to either party at the end. It is the District, however, that bears the ultimate responsibility for providing a FAPE to every eligible student residing within its borders and for otherwise complying with IDEA requirements. The consequences for noncompliance with IDEA requirements, therefore, fall more heavily on the District over a longer period. Consequently, under the circumstances presented by this case, although the District will not be required to provide compensatory education for the time Student was enrolled in the District high school in the fall of 2008, the District will be required to reimburse Parents for most of the expenses associated with two of the three private placements Parents selected during the period in dispute.

After setting forth the generally applicable IDEA legal standards, as well as the legal standards specific to the claims asserted in this case, the conclusions specific to the claims and defenses in this matter will be considered in terms of the several separate periods in dispute.

B. Relevant IDEA Requirements

1. FAPE Standards

The legal obligation of school districts to provide for the educational needs of children with disabilities has been summarized by the Court of Appeals for the 3rd Circuit as follows:

> The Individuals with Disabilities Education Act ("IDEA") requires that a state receiving federal education funding provide a "free appropriate public education" ("FAPE") to disabled children. 20 U.S.C. § 1412(a)(1). School districts provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan ("IEP"). 20 U.S.C. § 1414(d). The IEP "must be 'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.' " *Shore Reg'l High Sch. Bd. of Ed.*

v. P.S., 381 F.3d 194, 198 (3d Cir.2004) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)).

Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 240 (3rd Cir. 2009)

The term "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. *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *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. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3rd Cir. 1996; *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3rd Cir. 1988).

Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, however, an LEA is <u>not</u> required to provide an eligible student with services designed to provide the "absolute best" education or to maximize the child's potential. *Mary Courtney T. v. School District of Philadelphia*); *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3rd Cir. 1995).

2. Due Process Hearings/Burden of Proof

The IDEA statute and regulations 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, in this case, because Parents assert that the District failed to offer an appropriate program and placement for Student during the 2008/2009 and 2009/2010 school years, Parents must establish that the District's program from September to December 2008, and the District's offer of a program and placement for the remainder of the 2008/2009 and for the entire 2009/2010 school years were not reasonably calculated to assure that Student would receive a meaningful educational benefit.

Since the Court limited its holding in Sc*haffer* 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 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.

C. Compensatory Education Claim—September to December 2008

1. Legal Standards

An eligible student who has received no more than a *de minimis* educational benefit is entitled to correction of that situation through an award of compensatory education, an equitable "remedy … designed to require school districts to belatedly pay expenses that [they] should have paid all along." *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 249 (internal quotation marks and citation omitted). Compensatory education is intended to assure that an eligible child is restored to the position s/he would have occupied had a violation not occurred.

*Ferren C. v. School District of Philadelphia***,** slip op at *4, *citing Reid v. District of Columbia*, 401 F3d 516, 518 (D.C. Cir. 2005).

Compensatory education is awarded for a period equal to the deprivation and is measured from the time that the school district knew or should have known of its failure to provide FAPE. *Mary Courtney T. v. School District of Philadelphia* at 249; *M.C. v. Central Regional School District*, 81 F.3d 389, 395 (3rd Cir. 1996); *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 536 (3d Cir.1995). The school district, however, is permitted a reasonable amount of time to rectify the problem once it is known. *M.C. v. Central Regional School District* at 396.

The Court of Appeals has recently noted that the remedies available for denial of FAPE to an eligible student are not limited to compensatory education or tuition reimbursement. Rather, the IDEA statute confers upon the courts broad equitable powers to fashion appropriate relief to remedy IDEA violations, subject to the requirement that any such remedy must further the purposes of the IDEA statute. *Ferren C. v. School District of Philadelphia***,** 612 F.3d 712, 717 (3rd Cir. 2010). The court specifically identified two IDEA purposes: 1) ensuring a FAPE which provides special education and related services designed to meet the unique needs of all children with disabilities; 2) protecting the rights of eligible children and their parents. By extension, hearing officers who initially consider whether an eligible student has been denied FAPE are similarly free to determine an appropriate remedy that meets the appellate court standard.

2. Relevant Facts and Circumstances from September to December 2008

At the end of middle school, Parents elected to remove Student from the District for a 9th grade private residential placement due to increasingly difficult behaviors at home and due to the potential for additional difficulties arising from Student attending [redacted]. (FF 4, 6) Student

attended different private schools in 9th grade and 10th grade, but both ultimately proved unsatisfactory and were unable to meet Student's educational needs. (FF 7) At the end of the summer of 2008, Parents decided to return Student to the District because they were reluctant to accept the advice of their educational consultant that Student needed a therapeutic residential placement, and had not located a suitable private day program. (FF 10, 11)

There was conflicting testimony in due process hearing with respect to how much Parents shared with the District concerning Student's behavioral difficulties at home, as well as over how much the District could and should have known from prior records at the time Student re-enrolled in the District. Regardless of the nature and extent of the information Parents actually shared with the District in late August 2008, there is no doubt that Parents did not disclose that Student had spent several weeks at the Clinic during the summer of 2008 for diagnostic purposes due to aggressive behaviors at home. (FF 9, 15) Moreover, there is no evidence that Father, who made initial contact with the District concerning Student's enrollment and selected the classes Student would take, told either the high school principal or the guidance counselor who finalized Student's schedule that Student's 10th grade private placement was unsatisfactory due to the absence of emotional supports and that the social/emotional difficulties Student experienced at that private school led directly to the need for the Clinic admission in the summer of 2008, as Mother testified at the due process hearing. (N.T. pp. 1759, 1760)

Parents' failure to disclose either of those important pieces of information to the District at enrollment or in initial contacts with Student's case manager and teachers at or around the time classes began in September 2008 made it impossible for the District to provide Student with an appropriate program and placement at the beginning of the school year. Parents, in effect, concealed crucial facts concerning the nature and extent of Student's problems relating

specifically to school during the 10th grade school year. Moreover, no matter how much detail Father might have shared early on with the high school staff concerning the difficulties Parents were experiencing at home with Student, Father's focus on Student's neurological impairment and learning disability at the beginning of the school year, as well as his request for a demanding schedule of academic classes, (FF 13), would suggest to any reasonable educator that Father believed that the problems at home were not likely to have a substantial adverse impact on Student's ability to succeed in school. The District, therefore, had no reason to know that Student was likely to need significant emotional support in order to have any chance of meaningful progress in a public school placement. Consequently, there is no basis for an award of compensatory education beginning with the first day of the 2008/2009 school year and extending to the date of the first IEP meeting on September 19, 2008.

By the time of the September 19, 2008 IEP meeting, however, academic problems were developing in nearly all of Student's classes, Student was exhibiting early signs of difficulty with all aspects of the school routine and was refusing to take advantage of at least some of the limited available supports. (FF 20) In addition, according to the "Behavior" section of the September 19 IEP, the IEP team was aware of the 2006 reevaluation report, which discussed the negative impact of increased levels of anxiety and depression on Student's classroom performance during the second half of the 8th grade school year. (S-25, p. 6) An increase in negative behaviors during the current school year was also noted in that section of the IEP. (FF 18; S-25, p. 7) Even with that limited information, the District should have been much stronger in its response to early indications of developing trouble for an eligible Student who had recently returned to the District, but who was IDEA eligible under the ED as well as the SLD disability category at the time Student left the District after 8th grade. It was certainly not too soon for the

District to consider and suggest to Parents the potential need for interventions beyond moving Student to a less demanding math class. (FF 22) At the very least, the possibility of additional supports should have been raised by the District at the September 19 IEP meeting, There is no evidence that emotional support services were proposed by the District at that time.

Parents, however, bear considerable responsibility for the District's delay in responding quickly to indications that Student was "unraveling" as early as the date of the September 19, 2008 IEP meeting. (N.T. p. 1775) Mother testified extensively about her concern over the school-related problems that were already emerging by that time, including early failing grades and school refusal, involvement with an undesirable peer group and an incident of Student bullying/threatening another student. (N.T. pp. 1771—1774) Nevertheless, notwithstanding Student's history known in detail only by Parents, Mother's concern on September 19 that the 11th grade school year was already "heading towards disaster" and that the proposed IEP included inadequate supports, Parents neither shared the information concerning Student's 10th grade school year and the Clinic admission, suggested that Student needed a higher level of support, nor even inquired as to the supports that might be available should Student's downward spiral continue. (N.T. pp. 1775, 1776). Although Parents, and particularly Mother, may not have known specifically "what to ask of the District" at that time, meaningful input from Parents at the IEP meeting, including at a minimum, an explanation of why the 10th grade private placement was unsatisfactory and that it led to the Clinic admission, along with at least a brief explanation of the diagnostic purposes and results of that admission, would have permitted the District to form a more realistic picture of what the troublesome early issues might indicate for the future.

Certainly, if the concerns Mother was harboring in mid-September, as belatedly disclosed in testimony at the due process hearing, had been revealed to the District at the first IEP meeting, the District would have been stunningly remiss had it not immediately suggested increasing supports for Student. Such information would also have alerted the District to the possibility that it could not ultimately meet Student's needs with the program and placement options available in the public high school. That is a reasonable inference based upon the District's actions when Parents finally provided information concerning the Clinic admission to the District in early November 2008: Student's case manager immediately contacted the school psychologist to begin an evaluation and the District immediately began considering a private day placement for Student. (FF 27, 28)

Even in the absence of the information from Parents, however, the District had reason to know by mid October that Student's school problem were far more significant than a difficult adjustment to the public high school. By mid-October, Father began revealing more information concerning Student's significant behavior problems at home. Even more significantly, Student affirmatively told the case manager that Student had no intention of succeeding in the District high school because of a deteriorating relationship with Father. (FF 24, 29) Even without knowledge of the Clinic admission, such information, along with the steady stream of almost universally negative reports from Student's teachers (FF 20), should have triggered contact with the school psychologist concerning the need for an evaluation and an immediate IEP meeting. For reasons never satisfactorily addressed in the extensive record, however, Student's case manager decided to maintain the previously developed plan of an IEP meeting after 1st quarter grades were issued. (FF 25)

The delayed action by the District in the face of Student's continuing decline in school performance and Parents' apparent unwillingness to even try to address their early concerns about Student's school performance in the context of the September 19 IEP meeting establishes that both parties share the responsibility for failing to timely address Student's burgeoning academic problems during the period between the September 19, 2008 IEP meeting and Student's withdrawal from the District at the Thanksgiving holiday in late November 2008. By mid-October, the District should have been actively trying to develop an appropriate program and placement for Student, since it was obvious by then that the September IEP was inadequate and not reasonably calculated to lead to meaningful academic progress in light of Student's significant emotional support needs. Regardless of Parents' and Student's likely resistance to or outright non acceptance of emotional support services, which the District belatedly proffered via the Program in late November, just before Student left the District (FF 31, 40), the District still bore the ultimate responsibility to develop and propose an appropriate program/placement for Student. As the situation continued to deteriorate, the District should have convened another IEP team meeting no later than mid-October and scheduled, not simply proposed, an interagency meeting to explore options for additional support, including whether Student's continuing academic deterioration might require an out of District therapeutic placement.

The District, however, is entitled to a reasonable period of time to develop and implement an appropriate program once it has reason to know that a program and placement are inappropriate. In this case, that reasonable period extends from the middle of October until Student left the District at the end of November. Although by mid-October, the District should have realized that the September 19 IEP was inadequate, the Program, which was the only emotional support program available within the District high school, would likely have been

rejected by Student's IEP team as inappropriate at that point. Student's case manager noted that Student had an antipathy to special education services and that an identified emotional support program in the building [redacted] would have worsened Student's issues at that point. (FF 23; N.T. pp. 1622, 1627) Consequently, the only viable option by mid-October would have been an out of District placement. Since that involves an application process and waiting to determine whether Student would have been accepted, it is reasonable to conclude that the process would not have been successfully completed by the time Parents withdrew Student from the District.

In addition, in determining whether any remedy is warranted for the District's actions in the fall of 2008, the absence of specific evidence from Parents concerning an appropriate compensatory education award must be considered. Although Parents requested compensatory education from the first day of school until Student left the District as of December 1, 2008, Parents provided no evidence concerning the services Student should have received from the District between September and December 2008. Parents asserted only that the District failed to provide Student with FAPE during the fall of 2008, and requested full days of compensatory education based upon the annual compensation of Student's special education teachers, as well as transportation and unspecified related services. (Parents' Written Closing Statement at p. 2) As noted above, there is no basis for compensatory education from the beginning of the school year to the September 19 IEP meeting or from that date until mid-October, since Parents failed to provide the District with crucial information concerning Student's history during the two years Student was not enrolled in the District. In order to support an award of compensatory education, Parents needed to provide some evidence concerning additional services and supports Parents assert the District should have provided to Student from mid-October until the end of November. Parents also provided no evidence to support a compensatory education award for

transportation or related services. Parents identified no specific related services(s) that Student should have received, much less presented testimony or other evidence to establish that Student was denied any related services. Likewise, Parents never articulated any basis for transportation as part of a compensatory education claim.

D. Tuiton Reimbursement Claims

1. General Legal Standards

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 FAPE or otherwise acted appropriately.

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 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.

The Court of Appeals has provided significant guidance for assessing the appropriateness of a unilateral private placement, noting that

> A parent's decision to unilaterally place a child in 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.

2. Legal Standards Specific to Residential Placements

In addition to discussing the general standards for tuition reimbursement claims, the legal standards applicable to residential placements under the IDEA statute have been further explained the *Mary Courtney T. v. School District of Philadelphia*, decision.

In a much earlier case, *Kruelle v. New Castle Count School District,* 642 F.2d 687 (3rd Cir. 1981), the Court of Appeals established a standard for assessing whether a local educational agency is obligated to pay for a residential placement for an eligible student based upon whether the residential services designed primarily to address non-academic issues are educationally necessary, *i.e.*, required to fulfill a district's obligation to provide a free, appropriate public education. 642 F. 2d at 693. The court explained that a residential placement meets that standard if a child's medical, social or emotional needs so pervasively affect all aspects of functioning that it is not reasonably possible to sever his/her educational needs from other needs, and the additional services provided by the residential placement are, therefore, necessary to provide special education. 642 F. 2d at 694.

In *Mary Courtney T.*, the Court of Appeals further refined the standard, emphasizing that because virtually any service that addresses an area of significant need relates to a child's ability to learn, the inquiry must focus on the substantive goal to which a particular method, service or strategy is directed. 575 F.3d at 245. In order to impose the costs of residential services upon a school district, the purpose of the services must be closely linked to an eligible student's unique learning needs, in other words, "intended" and "designed" to address educational needs. *Id.* Another significant factor is whether the services provided by the residential placement are of the kind traditionally available in a public school setting. *Id.* Finally, the court returned to the basic principle enunciated in the *Kruelle* decision, looking to whether a student's educational and non-educational needs are "severable." 575 F.3d at 246. Where Parents seek a residential placement, the issue for a special education due process hearing is not to determine the best treatment setting for Student, but whether Student's ability to function in a classroom is so adversely affected by his/her disability that education is not possible unless combined with treatment outside of school hours.

3. <u>December 2008 to September 2009</u>

a. Appropriateness of the District's Proposed Program/Placement and the Private School Selected by Parents

The record of this case leaves no doubt that by November 2008, the effects of Student's disability produced educational and behavior needs that exceeded the District's ability to provide an appropriate program and placement in the public school setting, since by that time the District was considering an outside placement and recommended the high school emotional support program only as an interim, diagnostic placement until a transfer to the private day placement could be accomplished. (FF 27, 31)

The District did not truly dispute that conclusion for the period beginning in December 2008, but argues that it offered an appropriate alternative placement, the Center, in December 2008 and March 2009. (FF 43, 44) The District, however, never submitted an application to Center for Student. (FF 35) The District apparently relied on an informal inquiry and assurance that Student would have been accepted had an application been submitted. (FF 35) Nevertheless, if Parents had accepted either of the proposed NOREPs for Center, the District could not have implemented the proffered program in the absence of an application and formal acceptance of Student by that private facility. Even if that failure could be excused in December 2008 in light of Student's precipitous dis-enrollment from the District at the beginning of December, there is no reason the application process could not have been completed by March 2009. The District, therefore, made no viable offer of a program and placement when it issued IEPs and NOREPs for the Center. Indeed, the record reflects that the Center NOREPs were actually issued to permit a partial payment by the District toward Parents' costs of the private placement they selected. (FF 41, 42) In the absence of a truly available placement, regardless whether such placement would have been appropriate, the first prong of the tuition reimbursement analysis must be decided in favor of Parents.

The evidence also establishes that Student's behavior was increasingly difficult from the beginning of the 2008/2009 school year, both at home and at school. (FF 20, 24, 26, 29) The District recognized the possibility that a residential placement might be warranted by suggesting an inter-agency meeting in mid-November 2008, but for reasons not explained in the record, such meeting was apparently not held. (FF 33) Had an inter-agency meeting been convened in the fall of 2008, the outcome, would likely have been the same as the conclusion of the interagency meeting that was convened a year later in January 2010, *i.e.*, a finding of medical

necessity for a residential placement. (FF 55) There is nothing in the record to suggest that the nature or extent of Student's significant behavior problems changed between the time Parents first placed Student in a therapeutic residential placement in November 2008 and December 2010, when the determination of medical necessity was made.

More important for assessing Student's educational need for a residential placement, the conclusion that Student could not succeed academically without therapeutic support is well supported by the record. Significantly, Student's ability to maintain appropriate behavior remained a problem even in the residential placement Student attended beginning December 1, 2008 to the end of September 2009. (FF 47) Nevertheless, with the around the clock support Student received, in those facilities, Student was able to pass all classes and complete 11th grade with much better grades than Student earned in the District. (FF 45) In District classes during the 1st quarter of the 2008/2009 school year, Student earned two Fs, 2 Ds and one C in academic classes, (P-80) From an academic perspective, therefore, the 2008/2009 residential placement was successful, and, therefore appropriate. Although Student continued to struggle with behavior issues, the record supports the conclusion that the therapeutic support Student received was essential to making meaningful educational progress, thereby fulfilling the legal standard for tuition reimbursement for a residential placement. There is no legal basis for concluding that a residential placement is inappropriate unless it cures Student's disabilities. Indeed, if that were the legal standard for appropriateness, virtually no private or public school program could be found appropriate for an eligible student.

2. Equitable Considerations

The District argued that if Parents had provided the District with all relevant and important information concerning Student's emotional and behavioral issues and the District had

provided emotional support services in the high school from the beginning of the 2008/2009 school year, Student would have been able to succeed in school and would not have needed a residential placement. (*See* Closing Argument for [the] School District at p. 23; N.T. pp. 2293, 2296). As discussed above in connection with the compensatory education claim, Parents' non-disclosure of critical information at the beginning of the 2008/2009 school year prevented Student's assignment to the emotional support program at that time.

Nevertheless, the District's insistence that the Program would have interrupted Student's long-standing pattern of increasingly out of control behaviors that essentially prevented Student from benefiting from public school education services during the fall of 2008 is speculative at best and cannot be credited as an equitable reason for reducing tuition reimbursement. The evidence establishes that after nearly two years in residential treatment centers with virtually around the clock supervision, Student was not entirely successful in controlling negative behaviors. (FF 47)

It is illogical to assume that the District would have had greater success in addressing Student's seriously out of control behaviors in a six hour school day program than the highly structured therapeutic facilities where Student was enrolled for most of 11th and 12th grades. Despite the District's rather extravagant speculation concerning the dramatic difference that would have been wrought by Student spending the first weeks of the school year in the Program, there is no objective evidence to support that assertion. The objective evidence in this case, including a history of psychological therapy, a number of medications tried and changed or adjusted dating back to the pre-school years overwhelmingly supports the conclusion that the District would not have been able to program effectively for Student over the long term and would eventually have had to convene an inter-agency meeting to assist Parents in seeking

approval of a therapeutic residential placement based on medical necessity. *See* S-35 (Clinic Report) Whenever that occurred, the District would have at least been responsible for the costs associated with the educational component of such placement. The District did not, however, pursue that course in November 2008, no doubt assuming that the parties would agree on a means for the District to partially fund the residential placement selected by Parents without that process. Since an agreement did not occur, and there was no finding of medical necessity in 2008 or 2009 and no other public entity to fund the therapeutic component of the residential placement that was essential to Student's academic progress, the District is responsible for the entire cost of the placement from December 1, 2008 until Student left the facility, including the costs of transporting Student, only, to the facility in [another state] in December and returning Student to Pennsylvania in September 2009. Parents provided no evidence of any additional transportation costs that should be borne by the District.

b. October to December 2009

The District is required to fully fund the initial placement at the second residential facility for the same reasons discussed above. The District had no viable placement available for Student in September 2009, having still made no application for Student's admission to Center. In addition, the inter-agency meeting that occurred in the fall of 2009, was not directed toward determining the medical necessity for a residential placement. (FF 49). Moreover, although Student's behavior problems continued during the fall of 2009 and resulted in a suspension from the second residential placement in December 2009, Student still made academic progress, and nothing in the record suggests that Student could have succeeded without the significant structure and behavior supports Student received through the school. (FF 48)

The District will also be required to fund transportation for one round trip to the private placement. Parents provided no evidence in support of additional transportation costs.

c. December 2009 to March 2010/ March 2010 to Graduation Date

Parents argue that the District is responsible for providing Student with appropriate services immediately after Student was suspended from the residential placement in late December 2009. Parents further contend that the District should reimburse Parents for the costs associated with the placement Parents obtained in the diagnostic unit of [Pennsylvania facility], as well as for the remainder of the school year in the residential placement to which Student returned in March 2010.

The relevant facts concerning this period, however, are quite different and support a different result. Student had been out of the District for over a year and attending an out of state residential school when Parents unexpectedly notified the District just before the winter holiday in December 2009 that Student was at home and in need of immediate educational services from the District. (FF 50, 51) The District convened an IEP meeting almost immediately after school reopened, offered homebound services until another placement could be determined and arranged for an inter-agency meeting a few weeks later. (FF 52, 53, 55) After the inter-agency meeting, Student was quickly approved for a residential placement based upon medical necessity and offered a placement at the [Pennsylvania] residential treatment facility beginning on February 8, 2010. (FF 56) Parents, however, elected to continue Student's placement in the diagnostic unit, for which Student was not medically approved and to subsequently return Student to the out of state facility. Parents, therefore, rejected a placement that would have been partially defrayed by other public funds, and which their own educational consultant conceded would have been appropriate for Student. (N.T. p. 1886) Under these circumstances, the

District is not required to fund the diagnostic unit placement, since Student could have been removed to the publicly funded residential treatment facility approximately two weeks after Parents placed Student in the diagnostic unit. (FF 56)

The District is likewise not required to fund the out of state private school placement after Student returned there in March 2010. From February 8, 2010 until Student's graduation, the District's only financial obligation to Parents is to pay the cost of the educational component of the [Pennsylvania] residential treatment facility.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby **ORDERED** to take the following actions:

1. Reimburse Student's Parents for full tuition for the period of Student's enrollment at [residential treatment center], as well as for transportation of Student, only, to [that facility] at the beginning of Student's enrollment and back to Student's home in Pennsylvania at the end of the enrollment.

2. Reimburse the Parents for full tuition for Student's enrollment at [redacted] School from the first day of enrollment until Student was suspended in December 2009, as well as for transportation of Student, only, to [redacted] School at the beginning of Student's enrollment and back to Student's home in Pennsylvania in December 2009.

3. Pay to the Parents the amount the District would have been required to pay for the educational component of the [Pennsylvania] residential treatment facility for which Student was approved for admission beginning February 8, 2010 until Student would have left that program.

It is **FURTHER ORDERED** that in all other respects, Parents' claims are DENIED.

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

December 28, 2010