

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

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: A.M.

Date of Birth: [redacted]

ODR No. 00758-0910 KE

CLOSED HEARING

Parties to the Hearing:

Representative:

Parent[s]

Craig David Becker, Esquire
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Abington School District
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Dates of Hearing

October 12, 2010; October 14,
2010; October 22, 2010; October 28,
2010; November 3, 2010

Record Closed:

November 9, 2010

Date of Decision:

November 24, 2010

Hearing Officer:

William F. Culleton, Jr., Esquire

INTRODUCTION AND PROCEDURAL HISTORY

Student is an elementary school-aged eligible resident of the Abington School District (District); Student is identified with Specific Learning Disability under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA). (NT 8- 6 to 10, 9-23 to 10-22, NT¹ 11-22 to 13-14.) During kindergarten, first and second grades, the Student was enrolled in the District. (NT1 18-2 to 4.) For third grade, the Parents removed Student to a Private School in [redacted], Pennsylvania. (NT1 17-23; NT 54-11 to 18.) The Parents seek tuition reimbursement for the 2009-2010 school year and prospectively, and in the alternative, compensatory education and an order directing District programming for the 2010-1011 school year. The District asserts that it offered an appropriate program and placement to the Student and that the private placement is not appropriate.

In ODR No. 00625-0910 LS, the District sought to defend its initial evaluation provided in March 2008, (NT1 18-4 to 8), after the Parents requested an independent educational evaluation at public expense. (NT1 401-14 to 17; P-36 p. 2, S-46.) By Decision dated May 16, 2010, I found that the District evaluation was appropriate. (HO-1.)² Due to illness of the hearing officer and summer scheduling difficulties, this matter commenced on October 12, 2010 and was concluded in the fifth hearing session on November 3, 2010. The record closed upon receipt of the last transcript.

¹ This matter was heard together with a prior matter on behalf of the same Student and District, No. 00625-0910 LS, heard on March 18, 2010, April 13, 2010 and April 26, 2010. (NT 6-5 to 23.) The parties stipulated that the transcript and admitted documents from No. 00625-0910 LS are part of the record in this matter. (NT 7-18 to 8-14.) The transcript in No. 00625-0910 LS is referred to in this decision as “NT1.” The transcript in the present matter, No. 00758-0910 KE is referred to in this decision as “NT.” The parties utilized the same document books in each matter; therefore, no special reference form is necessary for the documents in evidence.

² On my own motion, I have marked as HO-1, and entered into the record of the present matter, the decision in the previous matter, in order to provide a complete record in the event of an appeal.

ISSUES

1. Did the District provide a free appropriate public education (FAPE) through an appropriate program and placement, with regard to the Student's educational needs related to mathematics, writing and any emotional needs that interfered with learning, from March 7, 2008 until the end of the 2008-2009 school year?³
2. Did the District offer to provide a free appropriate public education (FAPE) through an appropriate program and placement, with regard to the Student's educational needs related to mathematics, writing and any emotional needs that interfered with learning, for the 2009-2010 and 2010-2011 school years?
3. Was the Private School an appropriate placement for the Student for the 2009-2010 school year and is it an appropriate placement for the 2010-2011 school year?
4. Should the hearing officer order the District to pay the cost of tuition at the Private School for all or any part of the 2009-2010 and/or 2010-2011 school years?
5. Should the hearing officer order the District to provide compensatory education for all or any part of the period of March 7, 2008 to October 12, 2010?
6. Should the hearing officer order the District to provide educational planning and/or other services for the 2010-2011 school year?

FINDINGS OF FACT

1. The Student has a history of abuse and neglect by the biological mother in [an Eastern European country], where Student was born. Student's older sibling took care of Student, and both were subjected to living in very deprived circumstances. (S-4, 9.)
2. In February 2008, a psychiatrist retained by the District evaluated the Student and found no symptoms of post traumatic stress disorder (PTSD) and no physical evidence of fetal alcohol syndrome. The evaluator detected anxiety, attention and impulsivity issues. The Student appeared to find it difficult to passively attend. The Student was described as very social. (S-4.)

³ This period is referred to in this Decision as the "relevant period."

3. In 2008, a therapist privately seeing the Student reported signs of post traumatic stress disorder. (S-9 p. 17.)
4. In first grade, during the 2007-2008 school year, the Student's marks in listening, writing and mathematics were below basic or basic. Student was functioning about one year below grade level in mathematics. (S-6, 9.)
5. The Student needed improvement in being prepared for school, organization of materials and following directions. The teacher reported substantial difficulties with sustaining attention, organization, following directions and self control. (S-6, 9.)
6. The Student was diagnosed with Attention Deficit Hyperactivity Disorder and medicated. (S-9.)
7. The Student received remedial mathematics classes. (S-9.)
8. In March 2008, the District issued an initial evaluation report, noting severe deficits in auditory memory, visual memory, and written language, as well as weakness in mathematics, concentration, attention and impulse control. The evaluation found academic achievement that was significantly below expectations given the Student's superior cognitive functioning. The evaluation identified the Student with Specific Learning Disability in reading, writing and mathematics. (S-9.)
9. The Parents objected to the evaluation report on grounds that it did not address a previous psychiatric evaluation that detected post-traumatic play in therapy sessions, and loss of self esteem in first grade; Parents demanded summer programming in a special education setting or reimbursement for a private summer placement. (S-9.)
10. By letter dated March 26, 2008, the District Director of Pupil Services indicated an intention to invite Parents to an IEP meeting to address the parents' concerns about the initial evaluation report. By letter dated two days later, the Student's Mother (Parent) demanded placement in an appropriate classroom within one week and indicated an intention to make a unilateral placement at public expense. (S-10, 11.)
11. At an IEP meeting on April 2, 2008, the District offered placement in itinerant learning support with alternate curriculum and supplemental instruction by a special education instructor in a learning support resource room. Measurable goals were offered regarding mathematics, writing, attention and concentration. Specially designed instruction (SDI) included rephrasing of directions, mathematics games, reading of assignments to the Student in mathematics and extended time for tests and writing assignments. The District offered five weeks of Wilson reading instruction during the summer, although it deferred decision on ESY eligibility pending data gathering. Related services were not offered. (S-12.)

12. The District provided instruction in the Everyday Mathematics curriculum, which is aligned with Pennsylvania standards and is research based. The curriculum was delivered with fidelity. The curriculum was differentiated to provide specially designed instruction and accommodations prescribed by the Student's IEP. (NT 670-5 to 675-5, 678-19 to 679-3, 712-21 to 713-11, 868-2 to 870-25, 1004-1 to 1005-7, 1014-22 to 1020-12.)
13. The IEP provided instruction in writing in the general education setting through a program that was integrated with the reading curriculum; in addition, the IEP provided supplemental learning support for written expression, and the regular education teacher provided one to one and small group differentiated teaching for composition skills. The teacher was assisted by an aide from the learning support classroom. The learning support teacher provided direct instruction in proofreading. (NT 597-4 to 11, 608-15 to 17, 634-3 to 635-7, 705-23 to 706-21, 716-22 to 719-9, 892-2 to 897-18, 946-3 to 947-5.)
14. The Parent accepted the IEP with modifications made pursuant to the IEP meeting. (S-13, 16.)
15. During a meeting on May 29, 2008, the IEP was amended to increase the weekly hours of special education and change the placement to resource learning support. (S-19.)
16. On September 30, 2008, the District changed the Student's placement to supplemental learning support. The Parent approved this change. (S-25, 29.)
17. In March 2009, Parent requested heightened percentages for goals in counting money, adding and subtracting, and more time per day in learning support. (S-60.)
18. On April 30, 2009, the District offered an IEP with placement in supplemental learning support for mathematics and written expression, and with amended goals and SDI addressing, among other needs, writing and mathematics. Related services were not offered. The offered IEP reduced the minutes of learning support by thirty minutes per week. (S-35, 37, 40.)
19. The Parent declined to accept the April 30, 2009 offered IEP, because it did not offer compensatory education for alleged "late identification." (S-37, 38.)
20. On May 28, 2009, the Parent demanded summer programming for the Student. (S-39.)
21. In February 2010, in response to a parent information form, the Parent asserted that the Student felt excluded at the District's elementary school when pulled from regular education for learning support services. (S-62 p. 3, 23.)

22. In March 2010, the District issued a reevaluation report that recommended continued special education with placement in learning support to address needs in writing and mathematics. (S-62.)
23. In April 2010, the District offered an IEP that addressed the Student's needs with regard to mathematics and written expression through placement in supplemental learning support, measureable goals and specially designed instruction. The IEP offered to address the Student's needs with regard to attention and organization through specially designed instruction and accommodations. Related services were not offered. Assistive technology was offered for mathematics and written expression. Fewer hours of learning support were offered, so that the Student could be included in the general curriculum for more hours. (NT 878-1 to 889-11; S-63.)
24. The Student made progress on the goal for solving mathematics problems from April 2008 to April 2009, although Student did not meet the goal. Student advanced from a baseline of 93% accuracy at a kindergarten level to scores of 91% and 100% at a mid-first grade level, and then to 79% at a beginning-second grade level. The Student also advanced in the second grade curriculum. (NT 656-15 to 657-15, 824-22 to 825-14, 854-18 to 857-22, 919-10 to 922-11; S-72.)
25. The Student made progress on the goal for writing simple sentences from April 2008 to April 2009, although Student did not meet the goal. Student advanced from a baseline of 93% accuracy at a kindergarten level to scores of 91% and 73% at a first grade level. Student was able to write a simple sentence with proper punctuation and capitalization. (NT 716-22 to 718-14, 892-2 to 897-18; S-72.)
26. The Student made progress on the goal for solving mathematics problems from April 30, 2009 to June 17, 2009, although Student did not meet the goal. Student advanced from a baseline of 79% accuracy at a beginning-second grade level to 75% at a third period second grade level. (NT 657-16 to 658-8, 658-12 to 21, 666-1 to 667-1, 918-9 to 919-9; S-73.)
27. The Student made progress on the goal for written composition from April 30, 2009 to June 17, 2009, although Student did not meet the goal. Student advanced from a baseline of 2 of 4 on a writing rubric to 2.5 of 4. (NT 658-12 to 18; S-73.)
28. Between January 2008 and December 2009, the Student did not make significant progress on the Wechsler Individual Achievement Test (WIATT) – Second Edition. (NT 424-22 to 426-5; P-37 p. 15.)
29. Between December 2009 and January 2010, as measured by the WIATT – III, a new edition superseding the WIATT Second Edition, the Student continued to significantly underachieve academically in mathematics reasoning, mathematics calculation and mathematics fluency for subtraction and multiplication. The Student continued to demonstrate statistically significant academic

underachievement in the mechanical aspects of writing including sentence composition, essay composition and spelling. (NT 340-2 to 343-20; P-63 p. 12 to 13.)

30. The Student did not exhibit symptoms of post traumatic stress disorder or reactive attachment disorder while in school, other than problems with attention and some impulsivity. District staff did not observe serious misbehavior, lack of motivation or evidence of lack of emotional control. The Student interacted with staff and peers in a way that was typical of other students of the same age and sex. (NT1 68-5 to 69-6, 37-7 to 38-24, 169-7 to 22, 197-11 to 198-6, 254-16 to 255-5; NT 555-21 to 561-14, 572-5 to 574-19, 583-11 to 588-20, 679-16 to 691-11, 727-1 to 744-22, 748-2 to 752-16, ; S-9 p. 5 to 6, 11, P-37 p. 8 to 9, 19.)
31. The Parents' independent educational evaluation did not reveal any evidence of serious emotional disturbance or serious behavioral disturbance. (P-37.)
32. The Parents' independent educational evaluation recommended use of the Saxon Math Program rather than the Everyday Math program, individualized writing instruction, writing remediation, and assistive technologies including instruction in use of a keyboard. The evaluation also recommended part to whole verbal plus visual teaching, repetition, step by step sequential teaching, clearly defined and simplified directions, broken down into small portions, learning support, reinforcement of attention and concentration, firm classroom guidelines, explicit teaching of study skills, preferential seating, extended time, prompting and small classes with low stimulation environment. (NT 286-17 to 287-8; P-37 p. 24 to 30.)
33. The District's school psychologist viewed the Student's attention difficulties to be manifestations of the Student's ADHD, and not manifestations of anxiety disorder, disagreeing with the Parent's expert psychiatrist. (NT 75-18 to 777-10, 780-21 to 781-8.)

DISCUSSION AND CONCLUSIONS OF LAW

BURDEN OF PROOF

The burden of proof is composed of two considerations, the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the

risk of failing to convince the finder of fact.⁴ The United States Supreme Court has addressed this issue in the case of an administrative hearing challenging a special education IEP. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). There, the Court held that the IDEA does not alter the traditional rule that allocates the burden of persuasion to the party that requests relief from the tribunal. Thus, the moving party must produce a preponderance of evidence⁵ that the District failed to fulfill its legal obligations as alleged in the due process Complaint Notice. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)

In Weast, the Court noted that the burden of persuasion determines the outcome only where the evidence is closely balanced, which the Court termed “equipose” – that is, where neither party has introduced a preponderance of evidence to support its contentions. In such unusual circumstances, the burden of persuasion provides the rule for decision, and the party with the burden of persuasion will lose. On the other hand, whenever the evidence is preponderant (i.e., there is greater evidence) in favor of one party, that party will prevail. Schaffer, above.

Based upon the above rules, the burden of proof, and more specifically the burden of persuasion in this case, rests upon the Parent, who initiated the due process proceeding. If the Parent fails to produce a preponderance of the evidence in support of Parent’s claims, or if the evidence is in “equipose”, the Parent will not prevail.

⁴ The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

⁵ A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810.

LEGAL STANDARD FOR TUITION REIMBURSEMENT

Although the parent is always free to decide upon the program and placement that he or she believes will best meet the student's needs, public funding for that choice is available only under limited circumstances. The United States Supreme Court has established a three part test to determine whether or not a school district is obligated to fund such a private placement. Burlington School Committee v. Department of Education of Massachusetts, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985). First, has the District offered to provide a free appropriate public education? Second, is the parents' proposed placement appropriate? Third, would it be equitable and fair to require the district to pay? The second and third tests need be determined only if the first is resolved against the school district. See also, Florence County School District v. Carter, 510 U.S. 7, 15, 114 S. Ct. 361, 366, 126 L. Ed. 2d 284 (1993); Lauren W. v. DeFlaminis, 480 F.3d 259 (3rd Cir. 2007).

FAILURE TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION

The 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), 20 U.S.C. §1401(9). 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), see Souderton Area School Dist. v. J.H., Slip. Op. No. 09-1759, 2009 WL 3683786 (3d Cir. 2009).

“Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” Ridgewood Board of Education v. N.E., 172 F.3d 238, 247 (3d 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. Board of Education v. Rowley, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); Oberti v. Board of Education, 995 F.2d 1204, 1213 (3d 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 Supreme Court’s interpretation of the IDEA in Rowley and other relevant cases, however, a school district is not necessarily required to provide the best possible program to a student, or to maximize the student’s potential. Rather, an IEP must provide a “basic floor of opportunity” – it is not required to provide the “optimal level of services.” Mary Courtney T. v. School District of Philadelphia, 575 F.3d at 251; Carlisle Area School District v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

The law requires only that the plan and its execution were reasonably calculated to provide meaningful benefit. Carlisle Area School v. Scott P., 62 F.3d 520, (3d Cir. 1995), cert. den. 517 U.S. 1135, 116 S.Ct. 1419, 134 L.Ed.2d 544(1996)(appropriateness

is to be judged prospectively, so that lack of progress does not in and of itself render an IEP inappropriate.) Its appropriateness must be determined as of the time it was made, and the reasonableness of the school district's offered program should be judged only on the basis of the evidence known to the school district at the time at which the offer was made. D.S. v. Bayonne Board of Education, 602 F.3d 553, 564-65 (3d Cir. 2010).

In the present matter, I find and conclude by a preponderance of the evidence that the District did not fail to provide or offer a FAPE, as defined above by the "basic floor" standard of the IDEA, during the relevant period of time. The District appropriately detected the Student's educational needs, and addressed those needs by appropriate methods. Based upon the data available to the District during the relevant period of time, the IEPs that it implemented and offered prior to the Parents' unilateral withdrawal of the Student from the District were reasonably calculated to provide meaningful educational benefit. Given these findings and conclusions, I decline to reach the issue of the appropriateness of the Parents' unilateral private school placement; this issue is moot. Likewise, there is no reason to weigh the equities pursuant to the third test under the Burlington-Carter analysis, or to order prospective relief.

APPROPRIATE PROGRAM AND PLACEMENT

As noted above, I previously concluded that the District's March 2007 evaluation was appropriate. The record in this matter, though it is directed to provision of a FAPE, reinforces my previous conclusion as to the appropriateness of the District's evaluation. I find no basis to suggest that the District failed to detect or ignored any significant need of the Student. (FF 8.) The District continued throughout the relevant period to

acknowledge and provide services to address the three areas of educational need that are within the issues listed above: mathematics, written expression and emotional needs that allegedly interfered with the Student's educational functioning. (FF 11, 19, 23.)

Repeatedly, the District's witnesses revealed a constant attention to and an active effort to detect, all of these areas of need. (FF 10, 11, 15, 18, 22.)

Although the District did not provide specially designed instruction to address the alleged emotional interference with educational functioning, I find by a preponderance of the evidence that there was no such interference. Witness after witness testified without qualification that the Student did not exhibit any of the signs of an emotional disturbance that interfered with functioning. (FF 30.) On the contrary, all of the Student's teachers consistently testified that they perceived the Student as well adjusted and happy. Ibid. Student demonstrated high motivation and participated frequently, often with enthusiasm and an overt desire to succeed academically. Ibid. This testimony was consistent with numerous teacher responses given to both District and independent evaluators over the relevant period. Ibid. Through informal questionnaires and structured behavior inventories, the Student's teachers consistently rated the Student's behavior as within normal limits, both individually and socially. Ibid. I conclude that, to the extent that the Student suffered from emotional disorders and difficulties, those disorders and difficulties did not interfere with the Student's educational functioning so as to require specially designed instruction.

In making this finding, I give weight to the testimony of each of the District's witnesses. In demeanor, none of these witnesses evidenced anything but professional adherence to a standard of accuracy and candor in testifying. The witnesses also

demonstrated reasonably objective judgment that reinforced the reliability of their answers to questions. This is not to say that all witnesses were devoid of all adversarial feeling. Nevertheless, when I assess the nature of their answers, I find that even those who showed some hostility were willing to admit an adverse point, careful not to answer when they did not remember or know the subject matter, and not prone to embellish. I found no material contradictions between the testimony of these witnesses and the written record, or between one witness and the other.

Although the District did not see emotional needs interfering with the Student's functioning in school, the District nevertheless did address the Student's emotional needs preventively through some accommodations written into the IEP. The school psychologist made it clear that she was alert for emotional and behavioral issues. The IEPs did provide for positive reinforcement and structure that would help the Student to persevere in learning, and structure and frequent interaction in a learning support setting that would allow the detection of any adverse effects of the Student's emotional needs. (FF 11, 15, 16, 18, 23.)

The District did recognize that the Student suffered from attention deficit hyperactivity disorder (ADHD) and consequent impulsivity. (FF 11, 15, 16, 18, 23.) It characterized the Student's problems with attention and impulsivity as due to ADHD, and rejected the Parent's suggestion that it was due to emotional disturbance. (FF 33.) Nevertheless, the District addressed these issues through numerous accommodations and items of specially designed instruction during the relevant period. (FF 11, 15, 16, 18, 23.) Thus, the District appropriately addressed the only behavioral need that arguably resulted from the Student's emotional difficulties.

There is no basis in the evidence to criticize the District for disagreeing with the Parents on the etiology or construct used to explain the Student's attention problems. Standardized behavior inventories and history detected classic symptoms of ADHD, and District personnel were well within their professional competence to determine an etiology or construct with which to understand and address the Student's attention problems in school. (FF 2, 4, 5, 6, 8, 31, 32, 33.) District personnel are not legally required to adopt a contrary diagnostic perspective, as long as all educational needs are addressed appropriately, as I find occurred in this matter.

In reaching this conclusion I accord no weight to the testimony of the Parents' expert psychiatrist. Through his demeanor during the hearing and through the sweeping nature of his conclusions, this witness' testimony proved unreliable with regard to the educational issues in this matter. The witness' educational opinions seemed to proceed solely from his own professional status and personal belief, with few objective facts to bolster his opinions. The witness made sweeping generalizations about the District's programming, (P-68), dismissing it seemingly based upon a personal predisposition – yet the witness admitted that he is not an educator, did not visit the school or discuss the programming with anyone from the District, and had little information beyond what he observed in clinical sessions away from the school, and what the Parent told him. (NT 444-5 to 450-25, 473-25 to 18, 478-2 to 6, 485-24 to 486-21, 490-16 to 493-12.) It was clear that many of his conclusions were based upon personal interpretation and extrapolation of his diagnostic conclusions backward in time to the school setting without substantial basis in observation or history. The witness's penchant for interpretation led to a distorted reading of the conclusions of a previous psychiatric report in the history

made available to the witness, upon which he relied heavily. (NT 494-5 to 495-25.) In short, I do not credit the witness' opinion that Student was exhibiting behaviors that interfered with learning, due to anxiety disorder or any other emotional disturbance, while in school in the District.

Similarly, although I found her testimony credible and expert, I gave little weight to the testimony of the Parent's independent educational evaluator with regard to the witness' opinion that the Student's emotional needs were interfering with Student's learning. This opinion was based almost entirely upon the Parent's statements that the Student was resisting going to the District's elementary school in the 2008-2009 school year. I find this to be an inadequate factual basis for such testimony, because I find that the Parent's recitation of the Student's behavioral history is unreliable.

By demeanor and statements, the Parent frankly showed an adversarial interest in the matter that detracted from the Parent's ability to relate the facts objectively. In demeanor at the hearing, the Parent demonstrated anger. The Parent made statements that contradicted the documentary record, and shifted her testimony when confronted on cross examination. (NT 169-7 to 177-19.)

The record also shows that the Parent took an adversarial tone with the District almost immediately after the Student was evaluated for the first time, threatening from the outset to place the student privately. (FF 9, 10.) Most of the Parent's criticisms of the IEPs offered during the relevant time were unrelated to the criticisms raised in the present matter. (FF 14, 16, 17, 18, 19, 20, 21, 31.)

The Parent did not pass the validity detection scale on the BASC behavior inventory administered by her own independent educational evaluator. (FF 31, 32.) Her

responses characterizing the Student's behavior as extremely disturbed across a range of diagnostic categories was characterized with the warning to use extreme caution in interpreting her responses. (P-37 p. 45.) These were almost completely out of line with any responses of teachers in the same administration of the BASC. (FF 30.)

This extreme bipolarity of responses, along with my findings as to the credibility of the District's witnesses, and the reliability of the Parent's recitations of history, leads me to infer that the Parent's reports of the Student's symptoms are unreliable from an evidentiary point of view. Because it was largely based upon the Parent's recitation of history, I find that the independent school psychologist's opinion regarding the Student's emotional needs has reduced evidentiary weight.

As to mathematics and written expression, I conclude that the District addressed the Student's Specific Learning Disability in these areas appropriately. The Student's educational needs in these areas were detected and acknowledged in detail. (FF 4, 7, 8, 22.) The District placed the Student in supplemental learning support for these subjects, thus providing a small group setting for explicit instruction specially designed instruction and accommodation. (FF 10, 11, 12, 13, 15, 18, 22, 23.) It offered measurable goals and progress monitoring. Ibid. The IEPs prescribed specially designed instruction that was reasonably calculated to provide meaningful educational benefit in the areas of mathematics and written expression.

Parents point out that the Student exhibited emotional difficulties and behavior problems at the Private School in the 2009-2010 school year. They argue that this raises an inference that the Student must have been experiencing disabling emotional problems and exhibiting problematic behaviors in the previous year while with the District. I see

no logical basis for making such an inference. Accepting the Parents' assertion of post-traumatic stress disorder and reactive attachment disorder for purposes of the argument⁶, there could have been any number of re-traumatizing experiences during the 2009-2010 school year, including changes in the family constellation, events triggering traumatic memories, or the transition itself to the Private School. Thus, no inference can be made on this record from the fact of emotional and behavioral difficulties at the Private School.

There was much testimony about evidence of progress during the relevant period. Parents' independent educational evaluator, a highly experienced and credentialed school psychologist, credibly provided test results that ostensibly indicated either minimal progress or regression in mathematics and written expression skills from January 2008 to December 2009, a period of nearly two years. (FF 28.) This data was based upon a well known standardized achievement test, and a comparison of data obtained at different times by the District's school psychologist and by the independent evaluator. Ibid. The data showed a decline in standard scores for mathematics reasoning and the mathematics composite score, as well as a decline in spelling with an overall gain in written language composite, due to a gain in written expression scores. (P-37 p. 15.) The witness acknowledged that the differences were not statistically significant; thus, some of the scores may have indicated insignificant achievement. (NT 425-12 to 426-5.) Parent asserts that these scores show a failure of the District to provide a FAPE from March 7, 2008 to the end of the 2008-2009 school year.

⁶ I emphasize that this decision does not reflect any conclusion in this matter with regard to the nature of the Student's emotional needs. The only finding and conclusion regarding the issue of emotional need is that the Student's emotional needs legally did not require specially designed instruction in school beyond what the District provided, because the District had no reason to believe that additional supports were necessary to provide meaningful educational benefit.

I do not find these test scores to be persuasive. The period for which progress is measured by these tests includes one and one half years of education in the District, from January 2008 until June 2009, but it also includes an intervening period of at least three months at the Private School. During that intervening period, the Student was required to transition to an entirely new school and was exposed to different curricula in mathematics and written expression. (FF 12, 13, 32.) I place less weight on these scores as indicators of lack of progress at the District's schools in the 2008-2009 school year, because the intervening period at the Private school prior to testing could have caused a loss of previously acquired academic skills; the record sheds no light upon whether or not this occurred, but it is a flaw in the logic of the argument that I take into consideration for purposes of assigning weight to the data.

These data, moreover, must be seen in the context of later achievement testing administered by the Parents' independent evaluator. In September, 2010, the evaluator administered a later edition of the same achievement test used in the analysis above. The evaluator concluded that the Student continued to show significant underachievement in mathematics and written expression while at the Private School. (FF 29.) These data indicate that, no matter the setting or the curriculum, the Student's achievement has been slow in relationship to the Student's potential. For this reason, as well as the reduced weight that I assign to the data as discussed above, these data do not show preponderantly that the District failed to provide programming reasonably calculated to provide meaningful benefit.

Both parties provided other, curriculum based data to show progress in both the District and Private School settings in mathematics and written expression. I find that the

data provided by the District demonstrates meaningful progress by the Student in light of both the Student's potential and the depth and complexity of the Student's learning disabilities. (FF 24, 25, 26, 27.) The Parents argue that the District's IEPs and progress monitoring documents were confusing and inadequately written; from this they urge the conclusion that the District's progress data were unreliable. I agree that the documents were not written with clarity sufficient for a lay person to understand the metrics by which progress was being measured. However, the issue is progress in fact, not the clarity of the documentation. After hearing extensive testimony regarding the progress data, as well as the subjective impressions of teachers whom I find credible and reliable, I find that there was credible evidence that the Student made significant progress while at the District's school under the offered IEPs. This evidence outweighs any conflict of this more subjective data with the standardized testing discussed above.

There was much testimony about the relative merits of the Saxon Math and Everyday Math programs to address the Student's needs. The Parents' expert specifically criticized the District's use of the Everyday Math program because it is not sufficiently sequential and concrete in approach. (FF 32.) The District's witnesses rebutted this assertion vigorously, showing a reasonable and professionally competent basis for their selection of the Everyday Math program. (FF 12.) The witnesses demonstrated by a preponderance of the evidence that the Everyday Math program was being implemented with the Student in a differentiated way that took into account the Student's individual needs. Ibid. The program was provided with fidelity for this purpose. Ibid. Under these circumstances, the evidence is preponderant that the District's selection of this program was appropriate and reasonably calculated to provide meaningful benefit in mathematics.

Similarly, the Parents' independent evaluator opined that the District's program was in a setting that was too large for the Student with regard to written expression. FF 32.) The program was placed in general education; however, the IEP provided supplemental learning support for written expression, and the regular education teacher provided one to one differentiated teaching for composition skills. (FF 13.) The program was aligned with Pennsylvania standards and was provided in the least restrictive setting necessary to provide meaningful educational benefit. Ibid. The expert's judgment - that the private school setting would have been better for the Student - does not create a preponderance of evidence that the District program was inappropriate. The IDEA standard is not what is best for the Student, but what is reasonably calculated to provide meaningful educational benefit. I conclude that the District's program for written expression met that legal standard.

APPROPRIATENESS OF THE PRIVATE SCHOOL PROGRAM

Given the findings above, I need not reach this issue. No tuition reimbursement is due because the Parents have failed to bear their burden to persuade me that the District failed to offer an appropriate program and placement in a timely manner. I conclude that the IEP offered in April 2009, containing all of the programmatic elements discussed above and found appropriate, was itself appropriate. (FF 18.)

DISTRICT'S OFFER FOR THE 2010-2011 SCHOOL YEAR

I find that the District's offered IEP for the 2010-2011 school year was appropriate. Like the previous IEPs, the District's offer in April 2010 addressed all of the

Student's manifest educational needs. (FF 23.) The District added services to their offer in 2010 in response to the Parent's concerns and the independent expert's recommendations to provide assistive technology. Ibid. Thus, an already appropriate offer was enhanced and met the legal standard for appropriateness. In view of the District's appropriate offer, I find no reason to order either tuition reimbursement or prospective relief in this matter.

CONCLUSION

For the reasons set forth above, I find that the District provided an appropriate program and placement to the Student from March 7, 2008 until the end of the 2008-2009 school year, and that the District offered an appropriate program and placement in a timely fashion before the Parent unilaterally placed the Student in the Private School. Consequently, the Parent is not entitled to tuition reimbursement for the Private School placement, and the Student is not entitled to compensatory education for any part of the relevant period. Prospective relief is neither necessary nor appropriate. Any claims not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. The District provided a free appropriate public education (FAPE) through an appropriate program and placement, with regard to the Student's educational needs related to mathematics, writing and any emotional needs that interfered with learning, from March 7, 2008 until the end of the 2008-2009 school year.
2. The District offered to provide a free appropriate public education (FAPE) through an appropriate program and placement, with regard to the Student's

educational needs related to mathematics, writing and any emotional needs that interfered with learning, for the 2009-2010 and 2010-2011 school year.

3. The hearing officer will not order the District to pay the cost of tuition at the Private School for all or any part of the 2009-2010 and/or 2010-2011 school years.
4. The hearing officer will not order the District to provide compensatory education for all or any part of the period of March 7, 2008 to October 12, 2010.
5. The hearing officer will not order the District to provide educational planning and/or other services for the 2010-2011 school year.

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER

November 24, 2010