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: J.M.

Date of Birth: [redacted]

Dates of Hearing:
April 21, 2010, June 15, 2010, June 16, 2010, July 8, 2010

CLOSED HEARING

ODR No. **00825-0910AS**

Parties to the Hearing:	Representative:
Parent[s]	Liliana Yazno-Bartle, Esquire Law Offices of Caryl Andrea Oberman Grove Summit Office Park 607A North Easton Road Willow Grove, PA 19090
Mr. Howard Levy Supervisor of Special Education Montgomery County Intermediate Unit 1605 West Main Street Norristown, PA 19403	Timothy E. Gilsbach, Esquire Fox Rothschild LLP 10 Sentry Parkway, Suite 200 P. O. Box 3001 Blue Bell, PA 19422

Date Record Closed:	July 27, 2010
Date of Decision:	August 11, 2010
Hearing Officer:	Cathy A. Skidmore, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student[1] is an early preschool-age eligible young child who resides within the geographic area served by the Montgomery County Intermediate Unit (hereafter "IU"). Student's parents filed a due process complaint challenging the educational program offered to Student by the IU at the time of Student's transition from the Infant/Toddler program to the Preschool program. Specifically, the parents sought reimbursement for tuition for Student to attend a private school program and related costs, as well as provision of consultative therapy services.

Four due process hearing sessions were conducted at which the parties presented evidence in support of their respective positions. For the reasons which follow, I find in favor of the parents and award reimbursement for tuition and transportation, and direct that the requested related services be provided to Student.

ISSUES

1. Whether the program offered by the IU was appropriate for Student;

2. If not, whether the parents are entitled to reimbursement for tuition and transportation expenses, and whether Student is entitled to physical and occupational therapy services.

FINDINGS OF FACT

Developmental History

1. Student is [early preschool-age] and resides with Student's parents and an older sibling within the geographic area served by the IU. Student is eligible for special education and related services, having been diagnosed with autism, infantile spasms, hypotonia, global developmental delay, language delay, and gross motor delay. (Notes of Testimony (N.T.) 37-40, 94; Parent Exhibit (P) 10)

2. There were medical complications at Student's birth (asphyxia) and resulting developmental concerns. Student was initially referred for early intervention services in January 2007. Student began receiving services of a special educator and a physical therapist in September 2007. Occupational therapy and speech/language therapy services started in July and October 2008 respectively. (N.T. 93; P 1, P 3, P 33)

[1] The name and gender of the child are not used in this decision in order to preserve Student's privacy.

3. Student was evaluated in November 2008 through the neonatal follow-up program and presented with significant developmental delay in addition to decreased eye contact, lack of social reciprocity, significant language delay, and some idiosyncratic behaviors. On the Bayley Scales of Infant and Toddler Development – Third Edition (Bayley III), Student achieved scores in the 0.4 percentile on the Cognitive developmental domain, and in the 0.3 percentile on the Language and Motor domains. Student also exhibited general low muscle tone (hypotonia) and, as a result, Student required (and still requires) more sleep than might be expected: 12-13 hours each night plus at least one 1-2 hour nap. Student was referred for further evaluation for suspected autism, and an intensive developmental program was recommended. (N.T. 93-95, 213-14; P 1, P 2)

4. Student was evaluated by a neurodevelopmental pediatrician in January 2009 when Student was 25 months of age. In developmental testing, Student achieved scores for expressive language in the 4-5 month range and for receptive language in the 3-4 month range, with occasional higher level skills. Student demonstrated adaptive skills at the 40-44 week level, gross motor skills at the 52-56 week level, fine motor skills at the 40-44 week level, and personal-social skills scattered between the 28-36 week level. The neurodevelopmental pediatrician agreed with diagnosis of autism spectrum disorder and recommended that Student begin receiving 20-30 hours per week of applied behavioral analysis (ABA). (N.T. 712-13; P 3)

5. Starting in or about February 2009, Student's parents began exploring educational options for Student which included contact with a private school (hereafter "private school") for children with autism. The private school, which provides individualized educational programs based upon ABA principles, is located near the family's home and involves a drive of approximately ten or fifteen minutes. (N.T. 211-14, 300-03, 522-23, 539; P 42; Intermediate Unit Exhibit (I) 1)

6. In February 2009, Student was diagnosed with a seizure disorder and placed on medication. Specifically, Student was demonstrating infantile spasms on a daily basis which were described as brief episodes of mild reflexive movements of the head and arms, as though startled, generally occurring within 1-2 hours of waking. Student does not lose consciousness and does not require medical attention when the seizures occur, although it is very important that each episode be recorded and reported to Student's physicians. Many people who observe Student having these episodes do not recognize them as seizures. (N.T. 103-05, 125-27, 128-29, 216-17, 242-43, 260-61, 286-87, 295, 372-73, 385-86, 407, 412-13, 434-35, 471-72, 682, 718-20, 722-23; P 6, P 15, P 16)

7. The parents arranged for private ABA therapy in their home approximately 4-6 hours per week beginning in February 2009, which decreased to approximately 2 hours per week by December 2009 because of the private therapist's demanding schedule. This therapist focused on developing Student's ability to visually attend, which she believed was essential to teaching Student, and also worked on other skills such as motor imitation and one-step directions, in addition to goals in the Individualized Family Support Plan (IFSP). (N.T. 128-29, 181-82, 292, 310-13, 477-80, 484, 650; P 28)

8. Student was evaluated in March 2009 at a university medical college where Student was diagnosed with autism. The evaluators recommended that Student receive a minimum of 25 hours per week of intensive behavioral intervention such as ABA. (N.T. 98; P 4)

9. Through a Lovaas-model provider identified by the county early intervention (Infant/Toddler) program, Student began receiving additional home-based ABA services in March 2009 on a consultative basis with approval for clinic-based services 6 hours per week beginning in April 2009; approval to increase those services to 9 hours per week was subsequently obtained. The average number of weekly treatment hours during this quarter by this provider was 5 hours in April, 8 hours in May, and 10 hours in June 2009. During this time frame, Student worked on 1 of 3 IFSP goals with these ABA therapists (saying consonant sounds and playing with toys functionally). The Lovaas-model ABA provider detailed 9 specific programs used with Student to work toward that IFSP goal. The quarterly report for this time period (April-June 2009[2]) was not provided to the family until April 2010. (N.T. 98-101, 130-31, 310-11, 649-50, 674-78; P 24, P 50)

10. Student's home-based ABA therapy (both private and through the Infant/Toddler program) was provided in a playroom located in the basement of the family's home which was a busy environment with many distractions. The home setting in general was distracting to Student both visually and auditorially. (N.T. 109-10, 148, 157, 310, 387-88, 437, 453, 480, 491, 659-60; P 15)

11. The parents were notified verbally in April 2009 that the private school would accept Student, and Student was formally accepted in June 2009 by a letter advising the parents that a place was held for Student to begin there in January 2010. The family was not obligated, financially or otherwise, to enroll Student at the private school by virtue of the acceptance. (N.T. 303-04, 546-47, 567-71, 575-76, 746-48; I 1, I 2)

<u>Transition to IU Preschool Early Intervention</u>

12. In June 2009, the IU contacted the parents to schedule a meeting for Student's transition to preschool early intervention. Student's parents provided detailed information about Student and noted specific concerns with the number of hours of ABA therapy Student was receiving. The parents also described Student's difficulties with functional and appropriate play with toys, functional social interaction, and motor skills, as well as Student's lack of intentional speech or other means of communication. (N.T. 107, 308; P 7)

13. A transition meeting was held on June 23, 2009. Student's parents were given a Child and Family Profile form to complete in conjunction with several evaluations the IU would be conducting. The parents reported Student's strengths to include an easygoing nature and generally happy demeanor, enjoyment of a wide variety of foods such that eating was not a challenge, and a supportive network of extended family and friends. Student also reportedly enjoyed some gross motor activities and playing on playground

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[2] The report purports to cover the time period between April 8 and June 30, 2008, which is apparently a typographical error as services did not begin until April 2009.

equipment, demonstrated some fine motor skill improvement, and sometimes showed awareness of and interest in other people. Student's parents described a primary need for functional communication both expressively and receptively, with additional needs in the areas of improvement in fine and gross motor skills, self-care, and play skills. (N.T. 107, 112, 114-15, 122-25; P 9, P 12)

14. A new IFSP was developed through the Infant/Toddler program in August 2009 and contained five outcomes/goals. It also provided related services including physical and occupational therapy and services from a speech pathologist. (N.T. 114-15; P 10)

15. The parents signed and returned the IU's Permission to Evaluate form on August 14, 2009, and the IU received it on August 17, 2009. (N.T. 115, 814-17; P 9, P 16)

16. During July, August, and September 2009, the average number of ABA therapy hours provided in the home per week by the Lovaas-model provider were 6, 7, and 11, respectively. In August, Student was approved for 15 hours per week, an increase from 9. During this time period, the therapists worked on the same IFSP goal as in the prior quarter and also began to work on a goal for walking up and down stairs. (N.T. 107, 118, 137-38, 311-12, 649-50, 668-71, 677; P 14, P 50)

17. Student regularly received less than the approved number of hours of ABA therapy through the Lovaas-model provider. Sessions would be cancelled for a variety of reasons including the provider's policy against entering the home during periods of illness of Student or a member of Student's family, obligations of the family which conflicted with therapy sessions, and lack of staff. (N.T. 117-19, 156-57, 288, 667-69, 673-78; P 14, P 31, P 50, P 51)

18. Student's parents also had concerns with the number of different ABA therapists sent to the home by the Lovaas-model provider, often 3 or 4 each week, all of whom had different approaches to therapy as well as individual personalities. Additionally, the parents did not believe there was adequate supervision of the various therapists to ensure consistency. These ABA therapists also were not able to determine when Student was experiencing a seizure. The parents did relate their concerns to the Infant/Toddler program. (N.T. 119-22, 131-33, 216-17, 286, 355, 385, 682, 690)

19. In the fall of 2009, Student was introduced to the Picture Exchange Communication System (PECS). (N.T. 434, 705; P 20)

20. Student was evaluated again by the neurodevelopmental pediatrician in October 2009. Student's receptive and expressive language skills, at 7-8 months with gaps and 6-7 months with gaps, respectively, were unchanged from March but showed modest improvement from January. Student's adaptive skills were at the 40-44 week level, fine motor skills were at the 40 week level, and personal-social skills were at the 36 week level. (N.T. 720-23; P 13)

21. The IU completed and issued its evaluation report (ER) on October 22, 2009. At that time, Student was receiving one hour per week of physical therapy, one hour per week of occupational therapy, and one hour every other week of speech therapy. The ER

included family information and a summary of Student's health, vision, and hearing. The IU's school psychologist attempted to administer the Brigance Early Preschool Screen II but Student did not engage in any tasks to permit use of this measure. The psychologist also attempted the Batelle Developmental Inventory, Second Edition (BDI-2), but again Student did not engage in tasks presented. The cognitive score reported for the BDI-2, which was in the significant developmental delay range, was considered a representation of Student's functional capacity and not necessarily cognitive potential. (P 16, P 19)

22. Evaluation of other developmental domains were reported in the ER as follows. For Communication Development, Student demonstrated emerging receptive language skills at the 0-12 month level, and limited expressive and pragmatic language. For Social and Emotional Development, the BDI-2 was administered with most information obtained through parent interview, resulting in a standard score in the personal-social domain in the significant developmental delay range. For Physical Development, the psychologist utilized the Peabody Developmental Motor Scales – Second Edition through observation of Student at play and parent report of skills. Student achieved a developmental score below the first percentile in gross motor skills and in the second percentile in fine motor skills. The tested gross motor skills were noted as "easily completed by age related peers and are a large part of preschool activities," and it was stated that Student "will be limited in [] interactions with their [sic] peers in their [sic] school environment." (P 16 at 10, P 19 at 10)

23. The IU did not observe Student in any home-based ABA therapy, but did perform a functional behavior assessment (FBA) which focused on one behavior: moving string or other lengthy items repeatedly. The IU determined that only one behavior needed to be assessed in the FBA because once a single behavior was identified as in need of behavioral services, those services could be provided and the team could then address other behaviors. The hypothesis generated by the FBA was that the function or consequence of this behavior was to obtain self-stimulation in a setting when Student was not engaged in meaningful activities. (N.T. 148, 822-23; P 16, P 19)

24. The IU provided a copy of the ER to the parents, who set forth a number of concerns with its contents by letter dated November 17, 2009. The parents requested clarification and correction of certain errors within the ER, and also noted the absence of several reports regarding Student which had been provided to the IU, specifically the November 2008 evaluation by the neonatal follow-up program, the January 2009 evaluation by the neurodevelopmental pediatrician, and the autism evaluation from the area university medical college in March 2009. The IU issued a revised ER at a meeting held on November 20, 2009, and addressed some of the parents' concerns with the initial report. While the parents essentially agreed with the conclusions in the ER, they remained concerned that it did not sufficiently address Student's autistic behaviors and the impact of the seizure disorder on Student's development. (N.T. 141-43, 147-54; P 16, P 18, P 19)

25. The parents had Student evaluated by a private certified school psychologist in October 2009 who observed Student during an ABA session in the home and also administered portions of the Bayley III. The Vineland Adaptive Behavior Scales-Second Edition

(Vineland) and the PDD [Pervasive Developmental Disorder] Behavior Inventory (PDDBI) were also utilized through parental input. On the Bayley III, Student demonstrated developmental delays with scores in the 0.1 percentile in both the Cognitive and Language domains. The Vineland reflected mild deficit in all four domains: Communication, Daily Living Skills, Socialization, and Motor Skills, with a mild deficit also revealed on the Adaptive Behavior Composite. The PDDBI assesses ten domains in two categories: Approach/Withdrawal Problems and Receptive/Expressive Social Communication Abilities. Student's scores were consistent with a diagnosis of autism and characteristic of a child with both PDD and seizures. (N.T. 138-41, 171-72, 425-36; P 15)

26. The private school psychologist recommended that Student be provided at least 25-30 hours per week of intensive ABA instruction, one-on-one, in a school setting. She also suggested that Student be evaluated for sensory issues since Student demonstrates both under- and over-reactivity to stimuli. In a preliminary report, this private psychologist also identified a number of needs for Student for safety, medical, and sensory reasons. She further recommended that Student continue learning to use PECS. This evaluator's report was shared with the IU. (N.T. 154-55, 171-72, 432-33, 436-39; P 15, P 20, P 22, P 25)

27. Student's parents arranged for an evaluation by a second private certified school psychologist who focused on Student's behavior. That evaluation was conducted in December 2009 and included an observation of Student at home before and during an ABA therapy session. This private psychologist also attempted to administer the Stanford-Binet Intelligence Scales: Fifth Edition and the Peabody Picture Vocabulary Test, Fourth Edition. Student did not complete a sufficient number of tasks to permit a valid estimate of intelligence, although the evaluator was able to conclude that Student was functioning at or below the first percentile in general cognitive development. Student did demonstrate a preference for and greater success with nonverbal tasks when compared to verbal tasks. Information was also reported in the areas of sensory-motor and perceptual functioning, attention, memory, communication, social-emotional functioning, and executive functioning. (N.T. 363-68, 369, 378-79, 383-84; P 26, P 46)

28. The second private school psychologist also reported on Student's adaptive behavior from the Vineland administered by the first private school psychologist, and also used the Behavior Assessment System for Children – Second Edition (BASC II). On the Vineland, this evaluator noted that Student scored below the first percentile on all four domains as well as on the Adaptive Behavior Composite on both the parent/caregiver and teacher rating forms. The BASC II reflected scores in the at-risk range on the Behavioral Symptoms Index Composite (parent rating) and in the clinically significant range on the Adaptive Skills Composite (parent rating); clinically significant or at risk scores were also recorded on the Atypicality, Attention Problems, Social Skills, and Functional Communication Scales (both parent and teacher ratings) as well as on the Withdrawal Scale (parent rating). (N.T. 381-83; P 46)

29. In a functional behavioral assessment, the second private school psychologist identified a number of problem behaviors as well as the antecedents, setting events/conditions and

underlying triggers, and functions of the behaviors. It was noted to be significant that Student's weakness in cognitive, language, and developmental skills had a significant impact on Student's functioning, thereby increasing the frequency of challenging behaviors. Student's self-stimulatory behavior was determined to serve several functions: access to desired tangibles or physical response; sensory gratification; a method of communication; attention from adults; and acquisition of control. (N.T. 175, 383-92; P 46)

30. This second private school psychologist recommended that Student be provided with a high degree of individualized instruction in a preschool level program using a highly-structured, evidence-based instructional approach such as ABA for 20-30 hours per week. Consistency of staff was regarded by this evaluator as extremely important, as was coordination of activities across the home and school environments to promote generalization of skills. Functional communication skills were also identified as critical for Student. This evaluator's report was provided to the IU. (N.T. 237-38; P 26, 46)

Educational Programming and Placements Proposed by IU

31. The first meeting of Student's Individualized Education Program (IEP) team,[3] which included the supervisor of the Lovaas-model ABA program, occurred on November 20, 2009. The resulting IEP provided information on, among other things, Student's physical and adaptive development, cognitive abilities, and language skills, from a variety of sources including private evaluations. The team, which included both of the parentally-retained school psychologists, developed 32 specific goals for Student and also set forth related services including occupational, physical, and speech therapy as well as behavioral consultation and therapy. (N.T. 156-57, 316, 333-34, 419-21, 438, 457, 777-79, 789-90, 845-46; P 17, P 23, P 29)

32. The IU and Student's parents explored a variety of placement options for Student in the fall of 2009. At the November 20, 2009 IEP team meeting, a home program was first considered, which would have been similar to the program then being provided by the Infant/Toddler program. The parents did not agree to this option, citing their experience with inconsistency in the instruction and difficulty with arranging for all of the recommended hours by the Lovaas-model provider, as well as the distracting environment in the home and Student's lack of progress in that program. There was no Notice of Recommended Educational Placement (NOREP) issued for this proposed placement and the team instead accepted the parents' determination that a home program was not an option, and moved on to explore other possibilities for Student. (N.T. 155-57, 305, 317-19, 351-53, 771-73)

33. The parents and IU discussed the parents' concerns over the ABA therapy provided by the Lovaas-model provider which had been identified by the county early intervention program for the family. The parents were advised by the IU that they could change the

[3] IFSPs are developed for children from birth to three years of age, while IEPs are developed for children who are three years of age through the age of twenty-one. *See* 22 Pa. Code § 14.154; 55 Pa. Code § 4226.1 *et seq.*

ABA provider, but the IU did not advise them what other providers were available for Student and the parents did not feel sufficiently informed to make such a change. (N.T. 290-91, 305-06, 353-54, 784-86, 806-09)

34. After the November 20, 2009 IEP meeting, at the IU's suggestion, the parents visited an area preschool classroom which was not operated by the IU. Described as a reverse-mainstream setting, there were 12 students in that classroom, 8 of whom were typically developing children and 4 of whom were identified on the autism spectrum. The parents and IU agreed that this placement was not appropriate for Student. (N.T. 158-60, 319, 782, 786, 819-20; P 21)

35. Student's IEP team next discussed placement in an approved private school (APS) preschool classroom which is approximately a forty-five-minute to one-hour drive from the family's home. The APS classroom uses a verbal behavior approach[4] and is the only placement option the IU has which provided ABA within the classroom. Student would also receive physical, occupational, and speech/language therapy, as well as behavioral consultation and ABA therapy in the home for a specified number of hours each week, essentially continuing the services from the Infant/Toddler program. This placement was proposed following the December 3, 2009 IEP meeting and the parents visited that setting with one of their privately-retained psychologists. On December 18, 2009, the parents returned the NOREP for the APS as not approved, and requested a meeting of the IEP team. The parents stated on the NOREP that the team needed to consider the reports and recommendations of the two private school psychologists retained by the family. (N.T. 172-75, 319-20, 351, 444-46, 775-777, 810-13, 820-21; P 23, P 25, P 27)

36. At the December 3, 2009 IEP meeting, Student's parents also asked the IU about the private school. The IU did not agree to consider the private school as a placement option. (N.T. 304, 346, 358, 742-43, 751)

37. The IU and Student's parents also discussed placing Student in an IU autistic support preschool classroom[5] located in an area elementary school. That classroom has both a morning and an afternoon session taught by the same special education teacher, with 6-8 students in each session. The class meets Monday through Thursday for three hours. There are two paraprofessionals in the classroom, both of whom have experience with ABA. At one point or another, Student could have been placed in either the morning or afternoon session. There would also be a home programming component of ABA therapy similar to what Student had been receiving in the Infant/Toddler program, although the number of hours was not definitively determined except that Student would receive the home program on the day on which the autistic support classroom was not in session. (N.T. 48-49, 74, 91, 160-64, 319, 355-56, 656-59, 667, 773-75, 793-94, 803-05, 825; P 44 p. 1, P 47)

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[4] It merits mention that verbal behavior is an ABA approach.

[5] This placement was previously noted as having been considered by the IEP team in November 2009, but was not then determined to be the recommended placement. (N.T. 172-73; P 23 at 3)

38. The routine in the autistic support classroom is essentially the same each day. The children enter the classroom and get ready for the day using self-help skills such as greeting others, taking off their coats, and putting items away. They next have a period of guided play in a play area before a time of individual instruction and task completion. Group circle time occurs next, where the children exchange greetings, sing songs, listen to a story, and work on generalizing skills. Circle time is followed by another session in the play area which may involve therapy. The children next participate in table activities which vary from day to day, then snack time. The class then listens to a story or goes back into the play space. A music circle activity ends the day before dismissal which focuses on self-help skills similar to those on arrival. (N.T. 48-52, 54-63, 79-80, 82-83)

39. There is no naptime in the autistic support classroom, although students who need a nap can be provided an area within the classroom to take a nap when needed. (N.T. 69-71)

40. In addition to the play area, the autistic support classroom has several separate areas for teaching, circle time, and therapy. It has its own small bathroom with a movable partition near the bathroom door for privacy during diaper changes. Many of the children are not yet completely potty-trained and several wear diapers. Most of the children in the afternoon class are verbal, while only two in the morning class are verbal. (N.T. 43, 49, 57, 63, 76-78, 168; P 47 at 67.4)

41. If Student were to attend the autistic support classroom, Student's ABA therapist would work with Student within the classroom environment. No other student in either session in the classroom is accompanied by an ABA therapist. However, the classroom professionals use verbal behavior strategies. Student would also receive physical, occupational, and speech/language therapies. (N.T. 50-51, 58, 64-68, 72, 81-84; P 47)

42. One of Student's parents visited the autistic support classroom on two occasions, once in the morning and once in the afternoon. Both of the private school psychologists retained by the family observed this placement. The environment was described as a busy one with many visual distractions. (N.T. 74-75, 80, 86, 162-63, 331-33, 351, 345, 395-96, 416, 440-42, 564; P 39)

43. During October, November, and December 2009, the average number of ABA therapy hours provided in the home per week by the Lovaas-model provider were 12, 12, and 7, respectively. During this time period, the therapists worked on the same two IFSP goals as in the prior quarter and had not yet addressed the third IFSP goal. (N.T. 672-74; P 31)

44. A pendent IFSP/IEP was developed on December 23, 2009. The private ABA therapy hours ceased in December 2009. (N.T. 176, 193, 479; P 24, P 33)

45. On January 4, 2010, the IU invited the parents to another IEP meeting to discuss the disapproved NOREP. By a letter on that same date, the parents wrote to the IU with a detailed explanation of the reasons for that disapproval, which included Student's lack of readiness for group instruction, the distance from the family's home, variability between the verbal behavior approach in the classroom and the ABA therapy provided at home,

and the absence of a provision or time for Student to take a nap, as well as their known concerns with the Lovaas-model ABA provider. (N.T. 180-81, 185, 831; P 27, P 29)

46. Also on January 4, 2010, the parents signed an enrollment contract with the private school to place Student there. (N.T. 747-48; I 3)

47. By letter dated January 5, 2010, the parents notified the IU that they were placing Student in the private school. They discontinued the ABA therapy provided by the Lovaas-model provider as of January 18, 2010, and a final treatment report by that provider was issued. (N.T. 185-86, 256-57, 280-88, 323-24, 788; P 30, P 40, P 51, P 53)

48. The IEP team met on January 8, 2010 as scheduled. The parents entered the meeting believing that the team would discuss the private evaluations in addition to the appropriateness of the APS and the private school. (N.T. 191-93; P 33) Instead, the team began to discuss a draft IEP brought to the meeting by the IU, as well as proposed placements in the APS and in the autistic support classroom. The team did not discuss the private evaluations or the private school. (N.T. 179, 194-95, 743-44, 790-91, 832-34; P 32, P 34)

49. On or about January 14, 2010, the parents were provided with the draft IEP from the January 8, 2010 meeting, which was essentially the same IEP as that drafted by the team in the November and December 2009 IEP meetings. (N.T. 161, 790-91; P 32)

50. The IU responded to the parents' January 5, 2010 letter on January 15, 2010, advising them that the IU would not agree to fund Student's placement at the private school. In a subsequent letter of January 25, 2010, the IU acknowledged that the parents had declined further ABA services by the Lovaas-model provider, and the IU also advised the parents that it would provide speech/physical, and occupational therapy services if Student was made available. (P 36, P 40)

51. Another IEP team meeting convened on February 4, 2010 at which the IU proposed Student's placement in the autistic support classroom for one-half day with a home component for ABA therapy provided by the same Lovaas-model provider. Physical, occupational, and speech/language therapy were also proposed as was the provision of a personal care assistant. The parents disapproved the NOREP on February 25, 2010, providing a detailed explanation of the reasons they found that placement inappropriate. Specifically, the parents stated that group instruction was not appropriate for Student, and noted concerns over the active and busy environment, a lack of programming for Student's self-stimulatory behaviors, a lack of consistency in the classroom and when compared to the ABA therapy provided at home, the large number of instructors to whom Student will be exposed each week, and an absence of provision and time for Student to take a nap, as well as restating their known concerns over the Lovaas-model ABA therapy provided in the home. (N.T. 239, 245-55, 290-91, 340-41, 791-92; P 41, P 43, P 44, P 47)

Student's Current Placement at Private School

52. Student began attending the private school on January 19, 2010 and that private school is Student's current educational placement. The private school operates year-round and serves children aged three through twenty-one who have autism spectrum disorder. Student is the only student in the classroom but has opportunities to interact with other students at lunch and recess. Student attends five days each week from 8:30 a.m. to 2:30 p.m. and takes a nap for thirty to sixty minutes at school every day. (N.T. 38, 186, 211-18, 296, 325-26, 530, 541, 550-51, 585-86, 589-90, 602-04, 620-21, 629-30)

53. Student's classroom contains a work table and a desk and few visual distractions within Student's view. (N.T. 542-43)

54. The staff at the private school are able to recognize Student's seizures and report all episodes to the parents on a daily basis. (N.T. 216, 535, 565, 610-11)

55. Student has a primary teacher and two other teachers who work with Student every day, one-on-one. Physical, occupational, and speech/language therapies are not provided by specific therapists but are integrated into each child's day by his or her teachers as needed. The private school will consult with related service providers if needed by the individual child. (N.T. 217-20, 255, 325-28, 350-51, 358, 462, 559-60, 596-601, 628-29)

56. There are two Directors of Education at the private school. One is a Board Certified Behavior Analyst with a master's degree in ABA, and the other is a certified elementary and special education teacher with a master's degree in special education. (N.T. 519-21, 579-80; P 42)

57. The private school focuses on ABA theories, and includes task analysis of skills, discrete trial teaching, and systematic collection of data based upon clearly-defined, observable behavior. The staff uses a motivational system of reinforcement. Intensive, one-on-one instruction at school is complemented by an individualized home component of the program which promotes generalization and permits the parents to work on maintaining skills Student has learned. (N.T. 524-29, 530-32, 555-57, 564, 586-87, 608, 640-43)

58. During the first two weeks that Student spent at the private school, staff obtained baseline information on Student's skills in the areas of Gross Motor (walking, and climbing stairs), Receptive Language (following one-step directions), and Preacademic (reaching for items and visual tracking) skills. An Assessment of Basic Language and Learning Skills (ABLLS) was performed. Staff also conducted a comprehensive FBA which assessed Student's stereotypical behaviors under a variety of conditions. (N.T. 201-04, 335-36, 524-25, 533-34, 563, 572-74, 621-22, 633-34; P 37)

59. When Student entered the private school, Student lacked basic learning readiness skills such as visually attending to materials and to others, making eye contact, pointing, reaching, imitating, and sitting in a chair. (N.T. 530, 537-39)

60. An IEP was developed for Student at the private school on March 10, 2010 which includes 23 specific outcomes/goals and provides 30 hours of ABA services each week at

the school in addition to home programming. Student follows the same routine each day in an integrated, one-on-one program that addresses learning readiness skills, gross and fine motor skills, following directions, receptive communication, expressive communication, following an activity schedule, imitation, waiting and taking turns, and self-help/daily living skills. Student's opportunities for "downtime" are very limited. The private school provides quarterly progress reports. (N.T. 243-44, 334-35, 341-42, 531-32, 561-62, 597-601, 612-19, 631-32; P 48)

61. Student's parents filed a due process complaint on March 16, 2010, and a due process hearing convened over four sessions. Parent Exhibit Nos. 1-55 and IU Exhibit Nos. 1-4 were admitted into the record. (N.T. 866)

DISCUSSION AND CONCLUSIONS OF LAW

General Principles

At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast,* 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden in this case rests with the parents who requested the hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in "equipoise." The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D.Pa. 2009). This hearing officer found each of the witnesses to be generally credible and the testimony as a whole to be remarkably consistent rather than inconsistent. Credibility of specific witnesses is discussed further in this decision where necessary.

The IDEA requires the states to provide a "free appropriate public education" (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. However, procedural violations can support a claim for relief only if those violations impeded a child's right to receive FAPE, or significantly impeded the parents' opportunity to participate in the decision-making process concerning provision of FAPE to the child, or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. §300.513(a)(2). The *Rowley* standard is met when a child's program provides him or her with more than a trivial or *de minimis* educational benefit. *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988). The Third Circuit has interpreted the phrase "free appropriate public education" to require "significant learning" and

"meaningful benefit" under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

Under the IDEA and its implementing regulations, an IEP for a child with a disability must include present levels of educational performance, measurable annual goals, a statement of how the child's progress toward those goals will be measured, and the specially designed instruction and supplementary aids and services which will be provided, as well as an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular classroom. 20 U.S.C. § 1414(d); 34 C.F.R. §300.320(a). First and foremost, of course, the IEP must be responsive to the child's identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324.

<u>The Proposed Placements</u>

The IU points out, quite correctly, that it worked diligently to explore and propose a variety of educational placements for Student. Nevertheless, the IU witness who testified in support of the various options candidly admitted that she had never met or observed Student (N.T. 798) and, thus, the weight of her testimony regarding Student's needs is necessarily limited. Similarly, the teacher of the autistic support classroom proposed following the January and February 2010 IEP meetings had never met Student, did not attend Student's IEP meetings, and had not even reviewed Student's IEP prior to the due process hearing. (N.T. 44-45)

The initial program proposed by the IU was for a home-based program similar to that provided by the Infant/Toddler program. (Finding of Fact (FF) 32) There was no NOREP issued for this placement; rather, the IEP team accepted the parents' decision that such was not an option and moved on to explore other placements. (FF 32) To the extent it is necessary to address the appropriateness of the home-based program, I conclude that it was not reasonably calculated to offer meaningful educational benefit to Student. The evidence is compelling that the basement in the home environment was busy and distracting to Student. (FF 10) Even if there were another location in the home which would eliminate possible distractions for Student (and there was no evidence presented that one existed), the second privately-retained school psychologist (Dr. H) credibly opined that Student required an environment specific to instructional routines rather than serving multiple purposes. (N.T. 388-89) Further, the family had experienced considerable difficulty with Student receiving all hours of the approved hours of therapy through the Lovaas-model provider which was the provider which was contemplated to continue those services (FF 9, 16, 17, 33, 43, 51); and, in addition, the ABA therapy itself was inconsistent depending on which of several therapists scheduled on a given day. (FF 18, 32)

Also of significant concern with the home-based program was that the Lovaas-model therapists provided Student with frequent periods of "downtime." The Lovaas-model supervisor explained that downtime was a period for Student to explore the environment or play with toys, while also permitting the therapists a few minutes to look at what occurred during the previous session and set up for the new session. (N.T. 688-89, 701) This testimony was in stark contrast to that of Dr. H, who conducted a comprehensive FBA (FF 29) and was thereby able to, and did, provide a compelling explanation on how downtime permitted Student to engage in self-stimulatory behavior which interfered with Student's ability to access instruction. (N.T. 389)

Dr. H's opinion was supported by the FBA conducted by the IU which likewise determined that when Student was not engaged in meaningful activities, Student sought self-stimulation. (FF 23) There was also significant evidence that Student did not engage in functional play with toys (FF 12, 13; N.T. 536-37, 701), and therefore the benefit of providing Student with the time to do so is questionable at best.

Lastly with respect to the home-based ABA program from the Lovaas-model provider, Student was making little, if any, meaningful progress, a conclusion with which the IU did not disagree. (FF 9, 16, 43; N.T. 838-39) Although Student did make progress on some skills in isolation, Student's progress with the Lovaas-model ABA program was described as fluctuating, and the supervisor of the program was not able to ascertain the cause of the inconsistency in Student's day-to-day performance. (N.T. 670, 683, 690, 704-05) By way of further example, the Lovaas-model provider reported Student's progress on making eye contact for a duration of two seconds in January 2010 (P 51, P 53), yet when the staff at the private school assessed Student soon thereafter, that skill was not demonstrated. (FF 59) Furthermore, while the parents did have the apparent ability to change ABA providers, that option was not actively pursued by either party and the parents can hardly be faulted for failing to understand how to go about making such a decision or what additional providers were available when the IU did not share that information with them. (FF 33) Even by the time of the February 4, 2010 IEP meeting, the IU continued to recommend the same Lovaas-model provider for the home-based ABA services. (FF 51) For all of these reasons, I conclude that the IU's proposed exclusively home-based ABA program was not reasonably calculated to provide meaningful educational benefit to Student.

The next placements to be addressed are the APS with the home-based ABA component, and the autistic support classroom with a similar home-based ABA component. In addition to the reasons set forth above regarding the flaws in the Lovaas-model provided home program, these placements may be and are discussed together since they share many of the same deficiencies in terms of programming for Student's intense individual needs.[6]

All of the witnesses who know Student agree that Student requires intensive, one-on-one delivery of instruction by a skilled and knowledgeable professional who understands Student's behavioral needs. (N.T. 326-28, 392-94, 438, 455, 523, 530-31; P 26, P 39, P 46) Additionally, Student requires consistency in both the delivery of instruction and reinforcement of appropriate behavior, across settings including the home environment, so that Student will learn to generalize skills and behaviors learned. (N.T. 120-21, 326-27, 380, 392-94, 405-06, 530-32; P 46) Of paramount importance is that Student develop communication skills. (FF 13, 26, 29, 30; N.T. 391-92)

The parents' first privately-retained certified school psychologist (Dr. B) offered her very credible opinion that Student lacks the socialization, communication, problem solving, and adaptive and daily living skills to be successful in either the autistic support classroom or the APS classroom, requiring instead individualized instruction. (FF 25, 26; N.T. 435-36, 455; P 15)

[6] It is noteworthy that there was significantly more evidence presented related to the autistic support classroom than the APS program and, additionally the specific location of the APS program was also apparently not definitively determined. (N.T. 786, 812-13)

Dr. B described the autistic support classroom as very busy with a high level of noise and visual distractions, and an unsafe environment for a child with Student's hypotonia and gross motor weaknesses. (N.T. 433-37, 440-44; P 39) She also credibly explained that the group activities occurring in this classroom were beyond Student's developmental level. (N.T. 442) Significantly, she logically found it difficult to understand how the proposed placement with the intense program necessary to address all of Student's needs could be provided in the autistic support classroom on any given day, particularly since Student still required a nap. (N.T. 442-44; *see also* N.T. 221-25 and P 44 p. 1)

With respect to the APS placement, Dr. B similarly concluded that the environment was visually and auditorially distracting, and that the children in that classroom were again more developmentally advanced and generally participating in activities which Student was not able to do. (N.T. 444-46) As noted, even the IU evaluation observed that Student would not be able to participate in preschool activities that age-related peers would engage in. (FF 22) Another significant flaw in this placement is that it required a one-hour bus ride (FF 35) which would take up a not insignificant portion of Student's day (N.T. 468-69) and would also provide extended periods of downtime which were discussed above. Dr. B's testimony in general was, to this hearing officer, well-reasoned and thoughtfully considered in light of Student's needs, with which this witness was clearly very familiar. I find that Dr. B's conclusion that Student simply is not yet ready for group instruction (N.T. 455; P 15 p. 9) is crucial to proper consideration of the proposed programs, both of which involve preschool class settings. Further, this conclusions is well-supported by the record as a whole and, furthermore, is not inconsistent with the IU evaluation that suggested that Student would be limited in interactions with peers. (FF 22)

Dr. H also presented highly credible testimony based upon broad experience in the fields of education and child psychology including school psychology. (N.T. 361-62; P 26) Dr. H prepared a thorough report setting forth the results of his observations, interviews, records review, assessments, and comprehensive FBA. (P 26, P 46) In the FBA, Dr. H addressed all of the behaviors that interfered with Student's functioning in an educational program. (FF 28; N.T. 367-72) Dr. H provided a number of specific recommendations for Student's education, credibly opining that Student needs an individualized program of intensive instruction (20-30 hours per week) in a highly structured, predictable setting using an evidence-based approach such as ABA with consistent reinforcement and systematic data collection to assess the program. (N.T. 392-94; P 46) He further explained that based upon his observation of the autistic support classroom, that environment would prove to be very distracting to Student and that Student would find it extremely difficult to focus on instructional activities. (N.T. 395-96). This conclusion was not only credible but further supported the record in its entirety.

A final basis for finding the autistic support program inappropriate lies with the uncertainty of how and when Student's one-on-one ABA therapy would be provided in that setting. The teacher of that classroom testified that the ABA therapist would make the call of when and how to work with Student, not the teacher, and the location of that service was also undetermined. (N.T. 64, 84) In light of the fact that Student would continue to have several different ABA therapists at school throughout the week (FF 18; N.T. 657-58), leaving these decisions to the discretion of the various therapists would plainly not provide for consistency in delivery of the program to Student. By contrast, the supervisor of the Lovaas-model provider

whose therapists were expected to be in the classroom with Student testified that the teacher would be providing instruction while the ABA therapist would merely prompt Student when necessary depending on how Student performed in the classroom. (N.T. 652-53, 692-94) The supervisor was also unable to explain how or when Student would receive the one-on-one ABA therapy during the school portion of the day. (N.T. 695-97) While a certain amount of uncertainty regarding Student's programming may be understandable and even expected given the proposed change in placement, the significant ambiguities about how Student's program would be implemented in this environment is not only concerning but leads to the inescapable conclusion that this proposed placement was not reasonably calculated to provide Student with a meaningful and appropriate education.

In sum, this hearing officer concludes that the APS and autistic support classroom placements fail to offer Student what Student clearly needs: an intensive, one-on-one instructional program, free of distractions, and applied consistently across all environments. While both of these preschool programs contain a number of positive attributes for certain children, Student is not, at this point, ready to participate in group instruction (N.T. 455; P 15 p. 9), which both of these placements propose. Accordingly, Student cannot be expected to derive meaningful educational benefit from those placements and they are, therefore, not appropriate for Student.

The parents next raise several specific challenges to various aspects of the IEP which they assert render them inappropriate. While there is certainly evidence in this record that the IEPs in question contain flaws, including typographical errors (N.T. 397-403, 780-81, 805-06, 825-26, 840-47; P 47) and a critical absence of programming for generalization (FF 30; P 23, P 47), it must nevertheless be recalled that the IEPs in this record are the product of four separate IEP meetings during which members of the team, including the parents and their privately-retained experts, provided significant input and worked collaboratively to address all concerns. (FF 31) At worst, the IEP documents themselves, as a whole, could be considered works in progress which may have required further revision before and during implementation. In any event, having already concluded that the placements proposed by the IU are inappropriate and noting further that Student has been privately placed and was not, thereby, denied FAPE by reason of any deficiencies in the IEPs themselves, there is no reason to discuss these specific contentions further.[7]

The Private School Placement

Tuition reimbursement is an available remedy for parents to receive the costs associated with a child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE, and the private placement is proper. *Florence County*

[7] Similarly, any delay in completing the ER did not operate to deny FAPE to Student who did not turn preschool age until after the first two IEP meetings in November and December 2009. "A procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits." *C.H. v. Cape Henlopen School District*, 606 F.3d 59, 66 -67 (3d Cir. 2010).

School District v. Carter, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). Consideration of equitable principles is also relevant in deciding whether reimbursement for tuition is warranted. *Id*. In considering this prong of the tuition reimbursement test, the concept of least restrictive environment (LRE) is not controlling in evaluating parents' unilateral placements. *Ridgewood supra*. A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter, supra*. The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Id.*

Having determined that the IU's proposed programs were not appropriate for Student, the next step is to ascertain whether the parental placement was appropriate. The private school focuses on ABA and serves children aged three through twenty-one who have autism spectrum disorder. (FF 52) Student attends five days per week and has a primary teacher and two other teachers who work with Student every day, one-on-one. (FF 52, 60) Physical, occupational, and speech/language therapies are not provided as related services by specific therapists but are integrated into each child's day. (FF 55) Student's program has both a school and home component to promote generalization and maintenance and to ensure consistency across environments. (FF 57) Student receives individualized instruction with opportunities for inclusion with peers. (FF 52, 60) Student's need for a nap is accommodated each day, and the staff reports all seizure activity to Student's parents daily. (FF 52, 54) Student has an IEP with 23 specific outcomes/goals and provides Student with the same routine each day in an integrated, one-on-one program that addresses Student's needs. (FF 57, 58, 60) The staff at the private school collects and analyzes data on a systematic basis and provides quarterly progress reports to the family. (FF 57, 60)

Based on the foregoing, this hearing officer concludes that the private school program undoubtedly addresses Student's identified needs for an intensive, individualized, one-on-one delivery of instruction by skilled and knowledgeable professionals who understand Student's behavioral needs (N.T. 326-28, 392-94, 438, 446-47, 530-31; P 26, P 39, P 46), with consistency in both the delivery of instruction and reinforcement of appropriate behavior across settings and in a predictable routine. (N.T. 120-21, 326-27, 384-85, 392-94, 405-06, 530-32; P 46) Generalization and development of critical learning readiness skills and functional communication, all well-documented and crucial needs for Student, are key components of Student's program at the private school. (FF 12, 13, 22, 26, 29, 30, 57, 59, 60) For all of these reasons, this hearing officer concludes that the private school is reasonably calculated to offer meaningful educational benefit to Student and is, therefore, appropriate for Student.[8]

The last consideration is the equities. The IU asserts that the parents determined well before Student transitioned into its Preschool program that they would place Student in the private school. However, the parents presented highly credible testimony that they kept an open

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[8] The IU contends that the parents' expert Dr. B. used the wrong standard in opining that the private school was the "best" placement for Student, relying on *Molly L. ex rel. B.L. v. Lower Merion School District*, 194 F.Supp.2d 422 (E.D. Pa. 2002). While I agree that local educational agencies are not required to provide the "best" education to students, *see id*., for the reasons set forth above, the evidence convincingly supports the determination that the private school is appropriate because it addresses Student's needs, while the IU-proposed programs did not.

mind about where Student would be placed throughout this process, and that they had not decided against an IU placement until January 2010. (N.T. 346-47, 748) There was also convincing evidence that the parents' exploration of educational options for Student, including the private school, did not commit them in any way to enrolling Student there before they signed the enrollment contract on January 4, 2010. (FF; N.T. 747-48) Unlike the parent in *A.H. v. New York City Department of Education*, 652 F.Supp.2d 297 (E.D.N.Y. 2009), the parents in this case worked cooperatively with the IU and had made no commitment, financial or otherwise, or final decision to place Student in the private school until after the IU and the entire IEP team had considered a variety of placements. (FF 11, 24, 31, 34, 42) The record also establishes that the parents did ask the IU about the private school at the December 3, 2009 IEP meeting but the IU did not agree to consider it. (FF 36) Even after the parents made the commitment to enroll Student in the private school, they continued to work cooperatively with the IU with respect to the autistic support placement. (FF 42, 45, 48)

On the other hand, while the IU representatives did persevere in exploring a variety of options for Student's educational programming upon transition into the Preschool program and its conduct cannot be viewed as unreasonable, a number of procedural errors did occur on its part during the process which tips the equitable balance slightly in favor of the parents. The parents signed the Permission to Evaluate form on August 14, 2009, yet the ER was not completed until November 4, 2009 and even then omitted pertinent information supplied by the parents. (FF 24; N.T. 813-19; P 16, P 19) Throughout the relevant time period, the parents consistently provided the IU with evaluations and other information regarding Student (FF 13, 15, 26, 30), demonstrating their full cooperation and commitment to developing an appropriate program for Student based upon all of Student's needs.[9] It is puzzling that despite the parents' willingness to share all relevant information with the IU, the IU did not even discuss the two reports which formed a major source of the parents' rejection of the December 3, 2009 NOREP. (FF 35, 47) Based upon these considerations of the equities in this case, I will not reduce the tuition reimbursement award under this third step. *See Forest Grove School District v. T.A.*, ___ U.S. ___, 129 S.Ct. 2484 (2009) (explaining that tuition reimbursement award may be reduced where equities warrant).

Related Services

Lastly, the parents seek reimbursement for transportation costs as well as an order directing the IU to provide consultative physical and occupational therapy services. The parents are entitled to reimbursement for the related expenses associated with the private placement. *Burlington, supra*. Here, each of the IEPs developed for Student includes provision of transportation and physical and occupational therapy as related services. (P 23, P 47) Additionally, an award for consultative physical and occupational therapy services is consistent with the IU's agreement to provide physical and occupational therapy services (FF 50) as well as

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[9] The IU points out that the parents did not share an evaluation conducted by the private school in the spring of 2009 when it was considering Student for admission. (IU's closing argument at 37, 39) However, while one of the co-directors of education did state that the private school had evaluated Student as part of its intake process which included a review of records provided by the parents, there was no formal assessment conducted, nor was an actual report written. (N.T. 543-44, 554-55) Thus, there was no evaluation report for the parents to share, or fail to share, with the IU.

the private school's agreement to utilize those services as needed. (FF 55) For these reasons, the IU will be directed to reimburse the costs of transportation and to provide consultative occupational and physical therapy services to Student as specified in the IEPs; namely, 60 minutes of consultative physical therapy each month and 60 minutes of consultative occupational therapy each month. (P 23 at 62-63; P 47 at 46-47)

CONCLUSION

The proposed educational programs and placements offered by the IU were not appropriate for Student. Student's private school placement is appropriate, and the equities weigh in favor of the parents. Accordingly, the parents are entitled to reimbursement for tuition and transportation costs for the private school, and will be ordered to provide the requested consultative physical and occupational therapy services to Student.

ORDER

1. The IU failed to offer an appropriate educational program to Student.

2. The IU is ordered to reimburse the parents for the tuition paid to the private school and for transportation costs incurred beginning with Student's first day of attendance on January 19, 2010.

3. The IU is directed to provide consultative physical therapy services to Student for 60 minutes per month and consultative occupational therapy services to Student for 60 minutes per month.

Any claims not addressed in this decision and order are denied and dismissed.

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: August 11, 2010

ODR 00825-0910AS