

*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 Due Process Hearing Officer**

### **Final Decision and Order**

**ODR No. 26958-22-23**

#### **OPEN HEARING**

**Child's Name:**

P.M.

**Date of Birth:**

[redacted]

**Parents/Guardians:**

[redacted]

**Counsel for Parents:**

David G. C. Arnold, Esquire  
2200 Renaissance Boulevard, Suite 2200  
King of Prussia, PA 19406

**Local Education Agency:**

Tredyffrin-Easttown School District  
940 West Valley Road, Suite 1700  
Wayne, PA 19807

**Counsel for the LEA:**

Lawrence D. Dodds, Esquire  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422

**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

03/10/2023

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, P.M. (Student),<sup>1</sup> is a high school-aged student who resides in the Tredyffrin-Easttown School District (District) but attends a private school at the Parents' election. Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup>

Student was enrolled in the District through the end of the 2019-20 school year. The parties did not reach an agreement on District programming for the 2020-21 and 2021-22 school years, and the Parents enrolled Student in the private school. They filed a due process complaint in late August 2022 under the IDEA and Section 504 of the Rehabilitation Act of 1973<sup>3</sup>, demanding reimbursement for tuition and related expenses for those two school years. The case proceeded to a due process hearing<sup>4</sup> after reassignment to the undersigned.

Following careful review of the record and for all of the reasons set forth below, the claims of the Parents cannot be sustained and must be denied.

---

<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> 29 U.S.C. § 794.

<sup>4</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.) and Joint Exhibits (J-) followed by the exhibit number. The use of joint exhibits was quite efficient and contributed to a concise yet thorough record. The use of Parents in the plural is used where it appears that one was acting on behalf of both.

## **ISSUES**

1. Whether the District's proposed program for Student for the 2020-21 and 2021-22 school years were appropriate for Student;
2. If the District's proposed program was not appropriate for Student for either or both school years, is the private program appropriate; and
3. If the District's proposed program was not appropriate for Student for either or both school years, and the private program appropriate, are there equitable factors to reduce or deny reimbursement for tuition?

## **FINDINGS OF FACT**

1. Student is a mid-teenaged student residing in the District who is eligible for special education under the IDEA. (N.T. 37-38.)

### **Early Educational History**

2. Student was first identified as IDEA-eligible in another state in the second grade based on written expression and fine motor skill deficits. (N.T. 59-60, 62-63; J-9 at 3.)
3. Student enrolled in the District in the fall of 2015 after the family moved to Pennsylvania. The District conducted an evaluation completed in early 2016, identifying Student as eligible for special education based on Specific Learning Disability due to written expression weaknesses. (J-9.)

4. Student experienced difficulty with receiving special education support outside of the general education classroom throughout Student's school career, and disliked drawing attention to Student's self as a result. (N.T. 66-67, 70; J-9 at 40-41.)
5. The Parents obtained a private evaluation in early 2019. As of January 2023, Student had not been evaluated by a psychologist or neuropsychologist since that time. (N.T. 131, 132-33; J-30.)

### **Evaluations in 2019<sup>5</sup>**

6. The District sought permission from the Parents to conduct a reevaluation of Student in early January 2019 to include various assessments. The Parents declined to consent to cognitive assessments until review of the private evaluation report (PER). (J-29.)
7. The District responded with a new permission for a limited reevaluation to obtain teacher and parent input, conduct a classroom observation, and review the PER. The Parents provided their consent and also agreed to occupational therapy evaluation. (J-20; J-31.)
8. The PER included administration of assessments of cognitive ability and academic achievement. Student attained a high average overall cognitive ability score (Wechsler Intelligence Scales for Children – Fifth Edition) with all Index scores in the average to high average range. In assessment of academic achievement (Kaufman Test of Educational Achievement – Third Edition (KTEA)), Student earned standard Composite scores in the average (Written Language) to high average (Reading and Mathematics) ranges using grade-based

---

<sup>5</sup> The 2019 evaluations are described in detail because they are the last evaluations of Student by a psychologist or neuropsychologist.

norms; those scores were slightly lower using age-based norms with the spelling subtest below the average range. (J-30 at 8-11, 18-20.)

9. Behavioral functioning assessed for the PER revealed more concerns by the Parents than by the teachers on the Behavior Assessment System for Children – Third Edition, with one or both Parents endorsing a clinically significant concern with aggression; and at-risk concerns with hyperactivity, conduct problems, and somatization. One teacher endorsed at-risk concerns with social skills and leadership skills. Student’s self-report reflected concerns with attitude to school, attitude to teachers, sensation-seeking, and relations with the Parents. (J-30 at 11-12, 20-21.)
10. Other measures for the PER revealed weaknesses in areas of executive functioning that were more pronounced at home (working memory, planning/organizing, task monitoring, organization of materials) than at school (task monitoring); visual-spatial functioning and fine motor skills were other identified areas of deficit. (J-30.)
11. The private evaluator provided diagnoses of Developmental Coordination Disorder/Dysgraphia and a Specific Learning Disorder with impairment in written expression. She provided a number of school-based recommendations in the PER: specific instruction in executive functioning skills and particularly with writing tasks; accommodations to support the executive functioning and writing weaknesses; assistive technology particularly for writing tasks; outlines or other note-taking support; test and assignment accommodations; and access to a counselor. (J-30.)
12. A critical reading inventory conducted in January 2019 reflected Student to be independent at grade level and instructional at the next grade level. (J-32.)

13. The District issued a Reevaluation Report (RR) in February 2019. That RR contained extensive input from the Parents and teachers as well as the results of previous evaluations including the PER. Of note, KTEA results over time using grade-based norms were relatively consistent between 2014 and 2018 with the exceptions of spelling and writing fluency that by 2018 were in the average range. Academic growth was reflected by those score comparisons, with all KTEA scores within the average to high average ranges in 2018. (J-35.)
14. The District obtained an occupational therapy evaluation as part of the 2019 RR revealing weaknesses in fine motor (handwriting) skills. (J-35 at 30-32.)
15. The District's 2019 RR identified Student as eligible for special education under the Specific Learning Disability classification due to written expression and spelling weaknesses. Needs were identified to address organizational and writing skills including handwriting legibility; monitoring of visual spatial skills and social/emotional/behavioral functioning was also recommended. The Parents indicated their agreement with this RR. (J-35 at 32-33, 36.)
16. In February 2019, the Parents asked to discontinue occupational therapy services at school. (J-54 at 23.)
17. The Parents obtained a private occupational therapy evaluation in April 2019 that recommended clinic-based services. School recommendations in that evaluation were for assistive technology, preferential seating, one-on-one explicit instruction in written expression, instruction in executive functioning skills, wide-ruled paper, and test accommodations. (J-40.)

18. The District does not provide explicit direct instruction in spelling and basic writing in the general education curriculum in the middle and high schools. (N.T. 823-25.)
19. The District does provide a laptop device to all of its students that includes tools and applications for organization of written work. (N.T. 305-06.)

### **2019-20 School Year**

20. Student's Individualized Education Program (IEP) as revised for the start of the 2019-20 school year provided for learning support at an itinerant level, with Student not participating in regular education four times per six-day cycle for advisory support. (J-54 at 40-42.)
21. The Parents denied permission for the District to conduct another occupational therapy evaluation in October 2019. (J-50.)
22. Student had the designated special education services provided outside of the general education setting at the start of the 2019-20 school year, but the Parents opted to remove Student from all of those services by early December 2019, so that Student would only meet with a special education teacher for progress monitoring. (N.T. 81-82, 158, 450, 456, 458, 481-82, 844-45; J-54 at 40-42; J-60 at 7.)
23. For the period of time that Student was provided direct writing and spelling instruction during the 2019-20 school year, it was provided in a small group. (N.T. 467, 469, 481, 484-87, 491-92.)
24. A new IEP was developed for Student in February 2020. That IEP noted that Student had not met with a special education teacher since the December 2019 revision. (J-60.)

25. Parental concerns in the February 2020 IEP included their view of Student's lack of progress in writing and spelling as well as reading. This IEP also set forth their concerns over the previous four years. (J-60.)
26. Needs identified in the February 2020 IEP were for improvement in written expression and particularly grammar and punctuation as well as sentence construction; and those skills were noted to be impacted by executive functioning and orthographic processing deficits. Reading and listening comprehension skills were among Student's strengths. (J-60 at 28-29.)
27. Annual goals in the February 2020 IEP addressed the written expression needs (revising and editing a regular education writing assignment scored on a rubric; sentence construction with proper capitalization, punctuation, and spelling). A number of program modifications and items of specially designed instruction were also provided: direct instruction in writing four times each six-day cycle for fifteen minutes; classroom accommodations including preferential seating and test/assignment accommodations such as extended time; writing and spelling accommodations including pre-writing strategies, wide-ruled paper, and acceptance of oral responses; modeling, practice, and reinforcement; assistive technology; use of visuals; and Student would also have access to a school counselor. A post-secondary transition plan was also included. (J-60 at 30-31, 35-38.)
28. The February 2020 IEP provided for learning support at an itinerant level, with Student participating in regular education except during the supplemental writing instruction. (J-60 at 40-42.)
29. Student's IEP was revised slightly in March 2020 to add provisions for skeletal notes and supports for note-taking. (J-63 at 35.)



30. The Parents returned the March 2020 Notice of Recommended Educational Placement (NOREP) with a request for an informal meeting. That meeting did not occur after the COVID-19 school closures<sup>6</sup> for a variety of reasons. The Parents subsequently disapproved a second NOREP in April 2020. (N.T. 859; J-64; J-67; J-86 at 13-15.)
31. Limited progress monitoring for the third and fourth quarters of the 2019-20 school year was conducted due to the school closures, and the District did not provide grades for the final marking period. The District planned to address the impact of the school closure on Student in the fall of 2020. (N.T. 807-08; J-75; J-78.)
32. Student experienced difficulty with remote instruction provided during the spring 2020 school closure. (N.T. 72-73, 861-62; J-69; J-71.)
33. A colleague of one of the Parents who also testified has some experience in the field of education, and made recommendations to the District to address Student's writing weaknesses through two specific approaches/strategies. (N.T. 363.)
34. Student's teachers for the 2019-20 school year all were provided training in the Parent colleague's recommended writing strategies to support Student's skills in those tasks and those were implemented as part of the curriculum. (N.T. 312-316, 820-23.)
35. The Parents made application for Student to attend a private school (Private School) in March 2020. (J-65.)

---

<sup>6</sup> Notice is taken of the orders of the Governor of the Commonwealth of Pennsylvania in March 2020.

## **2020-21 Proposed Program**

36. An IEP meeting convened in September 2020 to develop a new IEP following the approval of a District plan for students to return to school. This IEP addressed both in person and remote services. (J-84.)
37. Needs identified in the September 2020 IEP remained improvement in written expression and particularly grammar and punctuation as well as sentence construction; and those skills were again noted to be impacted by executive functioning and orthographic processing deficits. Reading and listening comprehension skills remained among Student's strengths. (J-84 at 62-63.)
38. Annual goals in the September 2020 IEP addressed the written expression needs (revising and editing a regular education grade level writing assignment scored on a rubric; sentence construction with proper capitalization, punctuation, and spelling) and included baselines. A number of program modifications and items of specially designed instruction were also provided: direct instruction in writing each six-day cycle for 255 minutes in lieu of an advisory period; classroom accommodations including preferential seating when in person and test/assignment accommodations such as extended time; writing and spelling accommodations including pre-writing strategies, wide-ruled paper, and acceptance of oral responses; modeling, practice, and reinforcement; assistive technology; use of visuals; and monitoring of progress by a special education teacher. Student would also have access to a school counselor, and the post-secondary transition plan was maintained. (J-84 at 64-65, 68-72.)
39. The proposed the direct instruction in writing in the September 2020 IEP was to be provided individually to Student for block periods on

three days of each six day cycle. This instruction would have been provided to Student individually to alleviate Student's concerns with being in a special education classroom with other students, and occur during a daily advisory period that all students have to meet with teachers and/or other students as needed. The IEP team discussed the plan to be for individual instruction, and Student's teachers for that school year were trained in the colleague-recommended writing strategies. (N.T. 280-81, 821, 864-67, 893; J-84.)

40. The September 2020 IEP proposed a program of learning support at an itinerant level, with Student participating in regular education except during the scheduled writing instruction and progress monitoring. The Parents did not approve the accompanying NOREP, stating their belief that the proposed IEP did not address Student's needs effectively. They also cited to Student's performance over time on the Pennsylvania System of State Assessment (PSSA)<sup>7</sup> and on writing samples. (J-84; J-85; J-86 at 1-3.)

### **2021-22 Proposed Program**

41. Another IEP was developed for Student in June 2021 for the 2021-22 school year. This IEP included Private School grades as well as input from teachers and a school counselor. (J-96.)
42. Needs identified in the June 2021 IEP remained improvement in written expression and particularly grammar and punctuation as well as sentence construction; and those skills were noted to continue to be impacted by executive functioning and orthographic processing

---

<sup>7</sup> In the spring of 2019, Student scored in the proficient range in Mathematics and just below the proficient range in English/Language Arts. PSSAs were not administered in the spring of 2020. (J-96 at 12.)

deficits. Reading and listening comprehension skills were among the strengths set forth. (J-96 at 13.)

43. Annual goals in the June 2021 IEP addressed the written expression needs (revising and editing a regular education grade level writing assignment scored on a rubric; sentence construction with proper capitalization, punctuation, and spelling) and included baselines. A number of program modifications and items of specially designed instruction were also provided: direct instruction in writing each six-day cycle for 255 minutes in lieu of an advisory period; an academic seminar daily to support executive functioning and provide additional writing support; classroom accommodations including preferential seating and test/assignment accommodations such as extended time; writing and spelling accommodations including pre-writing strategies, wide-ruled paper, and acceptance of oral responses; modeling, practice, and reinforcement and feedback from teachers to consider Student's self-esteem; assistive technology; use of visuals; and monitoring of progress by a special education teacher. The post-secondary transition plan was maintained. (J-96 at 14-15, 18-22.)
44. The June 2021 IEP proposed a program of learning support at an itinerant level for the 2021-22 school year, with Student participating in regular education except during writing instruction and the academic seminar. (J-96 at 24-25.)
45. The District proposed the academic skills course three times each six day cycle for direct instruction in written expression and executive function skills provided individually to Student during a period when students can take elective classes. That course would provide organizational support for writing tasks. The IEP team discussed the plan to be for individual instruction including use of the Parent's

colleague's recommendations for writing, and Student's teachers were trained to implement those. (N.T. 291-92, 822-23, 870-73, 885.)

46. The District proposed the academic seminar class provided in a small group each school day. This class would meet at a time that all students have a study hall (free period) and can go to places such as the library. (N.T. 291-92, 868-70, 884, 890.)
47. The Parents did not approve the June 2021 NOREP, again because they did not agree that the IEP would effectively address Student's needs. (J-97.)
48. The Parents did not consent to a request for permission to conduct a reevaluation of Student in June 2021. (J-98.)
49. The Parents again did not consent to another request for permission to conduct a reevaluation of Student in March 2022. (J-105.)
50. The Parents did not agree with a new IEP developed in June 2022 and rejected the accompanying NOREP for the same reasons as in June 2021.<sup>8</sup> (J-106; J-107; J-108; J-110.)

### **Private School**

51. The Parents elected to have Student attend Private School for the 2020-21 and 2021-22 school years. They provided notice to the District of their intention to seek reimbursement for expenses associated with Private School for both school years. (N.T. 64-65, 177; J-74; J-82; J-87; J-92; J-99.)

---

<sup>8</sup> The claims in the Complaint were limited to the 2020-21 and 2021-22 school years, and the parties confirmed at the end of the final hearing session that the 2022-23 school year was not at issue. (N.T. 905-07)

52. Private School is a parochial school for students of Student's gender in grades six through twelve. All students are in general education settings. (N.T. 643, 645.)
53. The teachers and counselors at Private School meet weekly as a team and are able to discuss individual students and their needs for accommodations. (N.T. 681.)
54. Student met individually with a Private School counselor after enrolling to check in weekly over the 2020-21 school year. All new students met weekly with a counselor, but the frequency diminished for many students in the second half of the year. (N.T. 644, 646-47, 662, 676, 682-83.)
55. Student had a counseling class, as did all students, approximately once every other week during the 2020-21 school year. (N.T. 679-80.)
56. Students at Private School have a daily class period when they can meet with teachers individually for additional support. (N.T. 644.)
57. Private School provided the following accommodations and strategies for Student, which are available to all students enrolled there: extended time for tests and assignments; oral responses; assistive technology; graphic organizers and templates; and verbal instructions paired with visuals. (N.T. 655; J-120.)
58. During the 2020-21 school year, Student had classes in English, Science, Social Studies, Mathematics, a foreign language, and Theology as well as electives. Student earned final grades in the A to C+ range. (J-102.)
59. During the 2021-22 school year, Student had classes in Literature and Composition, Geometry, Global Perspectives, Science, a different

foreign language, electives, and a religion class. Student's final grades were in the A to B- range. (J-103.)

60. The Parents believe that Student has been doing well at Private School. (N.T. 83, 105-07, 186-87.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. 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 of persuasion in this case must rest with the Parents who requested this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, who are in the role of fact-finders, are responsible for making credibility determinations of the witnesses who testify. See *J.M. v. Summit City Board of Education*, 39 F.4<sup>th</sup> 126 (3d Cir. 2022); see also *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014). The weight accorded the evidence was not equally placed based on persuasive value including the following credibility determinations.

This hearing officer found each of the witnesses who are District professionals (including the evaluating certified school psychologist) to be credible and persuasive, and based on the background and experience of each, was accorded significant weight (J-125; J-127; J-128; J-129). The evaluating certified school psychologist's explanation of the appropriate

norms for Student's achievement test scores in light of Student repeating a grade in the past (N.T. 206-08, 218, 239-40) was particularly compelling, as was her assessment of Student's growth over time in the area of written expression (N.T. 243-47).

The Parent who testified (N.T. 47-194) certainly knows Student better than any other witness. She was presented as a fact witness, but at times her testimony veered very close to opinions on reading and literacy instruction; to the extent that she appeared to offer such opinions, they had minimal value since she was not offered, or qualified, as an expert.<sup>9</sup> Moreover, her testimony and that of most of the Parents' witnesses was ill-informed at best. For example, several witnesses for the Parents, who are not qualified to interpret standardized test scores, summarily discounted all such results that did not align with the Parents' position (N.T. 92, 181-82, 185-86, 357-61, 385-87, 609-10) without any cogent rationale. The one literacy witness who opined briefly on standardized test scores was not presented as an expert but nonetheless compared certain results for Student with other, non-standardized assessments and declared the results overall to be in contradiction (N.T. 354-55); she did not provide any logical basis for that conclusion but relied on her own stale analysis of one or more of Student's writing samples from January 2019 (N.T. 357-61, 388-90).

The witnesses who were literacy specialists never observed Student in any school setting or spoke with anyone in the District or at Private School about Student; the one such witness who was qualified as an expert offered her critical opinion on the District's programming without having spoken to anyone other than one of the Parents (N.T. 385-86, 588, 593, 604, 607, 722-24, 759). The second expert witness presented by the Parents opined

---

<sup>9</sup> The Parent who testified is not a licensed psychologist and has very limited exposure to and understanding of assessments, but has held herself out as a psychoeducational evaluator. (N.T. 129-30.)



that the District's proposed programs for the 2020-21 and 2021-22 school years were not appropriate because they did not include her specific instructional recommendations (N.T. 739-430); yet, she conceded that Private School was similarly not providing the instruction she recommended but it somehow was nevertheless appropriate (N.T. 748-49, 753-55). Finally on credibility, the two witnesses who provided "reports" (J-114; J-115) opining as to instruction the District could provide in the general education environment are among those who never spoke with anyone in the District and had no knowledge of its curricular offerings. That testimony and their reports therefore were not well-informed and were far from convincing. As a whole, the testimony of the Parents' witnesses who were not District professionals was lacking in probative value on the issues, with the limited exception of the formal Private School employee who was able to share minimal information on its programming for Student.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. By way of example, J-11 is a report from early 2016 that does not identify its author or the source of information contained therein, and therefore was not accorded any evidentiary weight. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were considered, as were the parties' closing statements.<sup>10</sup>

### **General IDEA Principles: Substantive FAPE**

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S.

---

<sup>10</sup> This hearing officer did not review the administrative decisions cited by the District until the final draft of this decision, which already included the credibility discussion above.

Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 400, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, thus, a focal point for purposes of IDEA programming. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the law demands services that are reasonable and appropriate in light of a child’s unique circumstances, and not necessarily those that his or her “loving parents” might desire. *Endrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standards must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same).

## **General IDEA Principles: Procedural FAPE**

The special education program is developed by a team that includes the parent(s); at least one regular education teacher if the student will or may participate in regular education; at least one special education teacher, and an LEA representative, among other participants. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.320, 300.321(a). From a procedural standpoint, the family including parents have “a significant role in the IEP process.” *Schaffer, supra*, at 53. Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they resulted in such “significant impediment” to parental participation, or in a substantive denial of FAPE. 20 U.S.C. § 1415(f)(3)(E).

Full participation in the IEP process does not mean, however, that parents have the right to control it. *See, e.g., Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) (noting that IDEA “does not require school districts simply to accede to parents’ demands without considering any suitable alternatives” and that failure to agree on placement does not constitute a procedural violation of the IDEA); *see also Yates v. Charles County Board of Education*, 212 F.Supp.2d 470, 472 (D. Md. 2002) (explaining that “parents who seek public funding for their child’s special education possess no automatic veto over” an LEA’s decision).

## **General IDEA Principles: Least Restrictive Environment**

The IDEA contains a fundamental mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards. Such determinations are based on what is appropriate for the individual child.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

LEAs are required to have available a “continuum of alternative placements” in order to meet the educational and related service needs of IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. The “continuum” of placements in the law enumerates settings that grow progressively more restrictive, beginning with regular education classes, before moving first toward special classes and then toward special schools and beyond. 34 C.F.R. § 300.115. An out-of-district private school is, of course, a more restrictive setting than an in-district school.

### **General IDEA Principles: Parental Placements**

Parents who believe that an LEA is not providing or offering FAPE to their child may unilaterally place him or her in a private school and thereafter seek reimbursement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Such is an available remedy for parents to receive the costs associated with their 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 School District*

*v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *Mary Courtney T.*, *supra*, 575 F.3d at 242. Equitable principles are also relevant in deciding whether reimbursement for tuition is warranted. *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *C.H. v. Cape Henlopen School District*, 606 F.3d 59 (3d Cir. 2010); *Carter*, *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.*

### **General Section 504 Principles**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). Thus, here, the coextensive Section 504 claims that challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA shall be addressed together.

### **The Parents’ Claims**

Before turning to the merits of the Parents’ contentions, it is laudable that they were very involved in Student’s programming at the District. Nevertheless, they are seeking what they view to be an ideal program while at the same time preventing the District from evaluating Student and providing services to meet Student’s specific individual needs. While it is

understandable that they want what they feel is best for Student, this decision must be based on the applicable legal standards.

The first issue is whether the District's proposed programs for the 2020-21 and 2021-22 years were appropriate for Student under the IDEA and its case law interpretations. The two programs are similar but shall be assessed separately.

The proposed IEP for the 2020-21 school year, as revised in September 2020, identified Student's specific areas of need in written expression and executive functioning. The goals target those deficits along with a broad array of program modifications and items of specially designed instruction tailored to Student's individual profile as identified by the PER, the 2019 RR, and the 2019 occupational therapy evaluation. The District also accepted the Parent's colleague's recommendation for certain writing supports. The District proposed the necessary special education provided outside of the regular classroom to Student individually during a period when all students are able to meet with teachers and others. The September 2020 IEP was appropriate and, importantly, the time for Student to have the critical individualized instruction and support would not draw unwanted attention to Student.

The same conclusion must be reached for the IEP proposed for the 2021-22 school year. Student's needs had not changed significantly, and this IEP again focused on programming based on Student's unique profile. All of the appropriate goals, program modifications, and items of specially designed instruction from September 2020 were included in the June 2021 IEP with a few additions, including additional, and essential, special education services outside of the regular education environment that once again would be scheduled during periods of time that would not draw unwanted attention to Student. This June 2021 IEP was appropriate for Student as well.

The Parents contended throughout the hearing and again in their closing statement that Student's special education services should be provided in the general education classroom. The law does require that eligible students be educated in the least restrictive environment appropriate for him or her. That does not mean, however, that Student must never be outside of that setting, but rather requires consideration of whether the services and support can be provided in the regular education environment. Student has significant deficits that are not addressed in general education at the middle or high school levels, and the testimony of the District witnesses that Student required more intensive support in another environment was more persuasive than, and credited over, the contrary testimony of the Parents' witnesses.

The Parents' related argument that Student did not make sufficient progress on the IEP goals during the 2019-2020 school year as a basis for rejecting the District's programming all but ignores the fact that Student was not provided direct instruction in areas of need at their request as of the middle of that school year. Rather than support their position on the issues, this contention bolsters the position of the District.<sup>11</sup>

Although it is unnecessary to address the second prong of the test for tuition reimbursement, the evidence in the record about what is provided to Student at Private School is rather sparse. What is known is that Private School does not provide special education for Student and does not implement the recommendations of the Parents and their experts; moreover, only a few basic accommodations are part of Student's program there. Still, the Parents believe that Student is doing well and making progress at Private School and they are of course free to maintain Student's

---

<sup>11</sup> There is no FAPE claim raised for the 2019-20 school year.

enrollment there. The Parents in this case are not, however, entitled to do so at public expense.

### **CONCLUSIONS OF LAW**

1. The District's proposed program for the 2020-21 school year was appropriate for Student.
2. The District's proposed program for the 2021-22 school year was appropriate for Student.
3. The Parents are not entitled to reimbursement for tuition at Private School.

### **ORDER**

AND NOW, this 10<sup>th</sup> day of March, 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's proposed programs for Student for the 2020-21 and 2021-22 school years were appropriate under the law and no remedy is due the Parents.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Cathy A. Skidmore

---

Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 26958-22-23