

*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** **Final Decision and Order**

### **Closed Hearing**

#### **ODR File Number:**

25976-21-22

#### **Child's Name:**

S.T.

#### **Date of Birth:**

[redacted]

#### **Parents:**

[redacted]

#### **Counsel for Parents:**

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#### **Local Education Agency:**

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#### **Hearing Officer:**

Cathy A. Skidmore, Esquire

#### **Date of Decision:**

06/22/2022

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, S.T. (Student),<sup>1</sup> is mid-teenaged student who is a resident of the Pennsbury School District (District) but attended a private school during the 2021-22 school year. Student has been identified by the District as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup>

Student attended a different private school during the 2019-20 and 2020-21 school years. In the spring of 2021, the District conducted a reevaluation of Student and thereafter proposed a public school special education program for Student for the 2021-22 school year. The Parents did not approve that proposal, filing a Due Process Complaint under the IDEA and Section 504 of the Rehabilitation Act of 1973,<sup>3</sup> with Student enrolling in a new private school (Private School) that school year. The case then proceeded to a very efficient due process hearing<sup>4</sup> with the Parents seeking reimbursement for tuition and related expenses. The District contested the Parents' claims and maintained that the program proposed for the 2021-22 school year was appropriate for Student and no remedy was warranted.

Following 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.

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<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.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. Counsel worked collaboratively to ensure submission of a complete yet concise record of relevant evidence.

## **ISSUES**

1. Whether the District's proposed program for Student for the 2021-22 school year was appropriate for Student;
2. If the District's proposed program for Student for the 2021-22 school year was not appropriate for Student, whether Private School was appropriate; and
3. If the District's proposed program for Student for the 2021-22 school year was not appropriate for Student and Private School was appropriate, are there equitable factors that would reduce or deny reimbursement for tuition and related expenses?

## **FINDINGS OF FACT**

1. Student is a mid-teenaged student who is a resident of the District. Student has most recently been identified as eligible for special education on the basis of Specific Learning Disability and Speech/Language Impairment. (N.T. 43; S-5.)
2. Student has a rare genetic condition that has resulted in developmental delays and for which Student treats with medical professionals. Educationally, Student has had difficulty with reading and written expression as well as some areas of executive functioning. (N.T. 54-56, 167, 201-02; P-25; P-26; S-5.)
3. The District is a recipient of federal funding. (N.T. 43.)

## **Early Educational History**

4. Student attended a private school [redacted] before transitioning to the District in the 2015-16 school year. Student remained in the District into middle school. (N.T. 57-58; S-5 at 2.)
5. During the 2018-19 school year, while in middle school, Student experienced significant anxiety particularly with respect to transitioning to an environment with class changes as well as meeting academic expectations. Student also had difficulty with peer relationships. For a period of time that school year, Student was on homebound instruction for medical reasons. (N.T. 58-60, 62.)
6. Student attended a second private school, located in another state, during the 2019-20 and 2020-21 school years. That institution serves children with learning disabilities. (N.T. 63-64, 200.)
7. The parties entered into an agreement for the 2019-20 and 2020-21 school years. Pursuant thereto, the District was to propose a program for the fall of 2021 and, if necessary, undertake a reevaluation of Student in the spring of 2021. (S-2.)
8. The Parents began exploring options for the 2021-22 school year in the fall of 2020. (N.T. 110-11, 143-44.)

## **District Reevaluation Spring 2021**

9. The District conducted a reevaluation of Student in the spring of 2021 with the consent of the Parents, and issued a report in April. (N.T. 284; S-4; S-5.)
10. Parent input into the 2021 Reevaluation Report (RR) described Student's need to be challenged across subjects, particularly science and mathematics, and noted Student's diagnosed medical conditions. They also set forth at length the advantages of the second and then-

current private school, stating that Student was not anxious and did not miss school there. (P-17; S-5 at 2.)

11. The 2021 RR summarized results of previous District and private evaluations between 2015 and 2019. Student was determined to be eligible for special education in 2015 based on Specific Learning Disability (oral expression, basic reading skills, reading fluency, and reading comprehension); Speech/Language Impairment (articulation and expressive language); and Other Health Impairment (due to inattention and lack of impulse control) during that time period, and by 2016 also exhibited needs with fine motor skills. In 2019, Student qualified for special education solely based on Specific Learning Disability (basic reading skills, reading fluency) and no longer manifested previously identified disabilities. (S-5 at 2-6.)
12. The 2021 RR incorporated results of the then-current private school classroom- and curriculum-based assessments, grades, and state summative assessment scores. As of the winter/early spring of 2021, Student was scoring below expected reading benchmarks. (P-18 at 6-7; S-5 at 6-7.)
13. Input from teachers at the then-current private school was set forth in the 2021 RR. Noted strengths included class participation, task and assignment completion, and grade-level written expression skills but with guidance and support including with spelling. Needs and successful supports essentially included assignment accommodations, checks for understanding of directions, modeling, organizational support, repetition and re-teaching, support for writing tasks, and a structured routine. (S-5 at 8-9.)
14. The District school psychologist, who is well qualified and experienced, observed Student at Private School. That observation was conducted

remotely at the request of Private School and was short in duration because Student had a medical appointment. (N.T. 263-64, 321-22; S-5 at 7-8.)

15. Assessment of cognitive functioning for the 2021 RR (Wechsler Intelligence Scale for Children – Fifth Edition) yielded a high average range Full Scale IQ score, with a relative weakness with short term auditory memory. The results were overall consistent with previous evaluations. (S-5 at 16-17.)
16. On the Woodcock-Johnson Tests of Achievement – Fourth Edition, Student attained average range scores on the Reading and Math Composites, with a high average score on the Applied Problems subtest and a low average score on the Passage Comprehension subtest. (S-5 at 17-18.)
17. The Test of Written Language – Fourth Edition (TOWL) was administered for the 2021 RR. All of Student’s scores across the seven subtests were solidly in the average range with a few high average range scores; overall, Student’s score was at the upper end of the average range for these skills. (S-5 at 18-19.)
18. Results of separate assessments of reading for the 2021 RR indicated relative weaknesses with basic reading skills and oral reading fluency, with below average phonological memory. The reading specialist who conducted those assessments recommended interventions in the areas of phonics/decoding and oral reading fluency. (S-5 at 22-27.)
19. A variety of tools for assessment of social/emotional/behavioral functioning were utilized for the 2021 RR including the Behavior Rating System for Children – Third Edition (BASC-3), Behavior Rating Inventory of Executive Functioning – Second Edition (BRIEF-2), and Conners-3. The BASC-3 teacher ratings endorsed an at-risk concern

for anxiety (suggesting monitoring was needed), but no clinically significant areas; the Parents and Student did not endorse any concerns. On the BRIEF-2, neither the teacher nor Parents identified weaknesses on any domain Index; the Parents did indicate a potentially clinically significant concern on the shift scale, however. No rater indicated concerns on the Conners-3. (S-5 at 11-14.)

20. The 2021 RR also included the Multidimensional Anxiety Scale for Children – Second Edition completed by Student and the Parents. Those scales suggested a low probability of an anxiety disorder, with only one area of concern noted (harm avoidance reported by Student). (S-5 at 14-15.)
21. On speech/language evaluation for the 2021 RR, Student demonstrated needs in articulation but not in any other areas including listening comprehension. Speech/language services were recommended for articulation. (S-5 at 27-31.)
22. Assessment of occupational therapy skills for the 2021 RR reflected no concerns with fine motor or sensory processing skills. (S-5 at 21-22.)
23. Student experienced anxiety in completing assessments and undergoing the observation for the District’s 2021 RR. The Parents reported Student’s anxiety to the District school psychologist, who did not perceive that Student was anxious based on demeanor, concentration, and calm presentation. (N.T. 69-72, 273-74, 323-24; S-5 at 2.)
24. The 2021 RR identified Student as eligible for special education based on Specific Learning Disability (basic reading skills and reading fluency) and Speech/Language Impairment. A number of strengths were noted including reading comprehension, written expression, and mathematics; needs in the areas of basic reading skills and articulation

were also identified, with a thorough summary of all relevant information related to potential disabilities and deficits. (S-5 at 31-35.)

25. An Individualized Education Program (IEP) developed in May 2021 incorporated results from the 2021 ER and summarized results of a transition survey completed by Student. At the time, Student aspired toward attending a four year university, self-employment, and living independently with roommates following college graduation. (S-6.)
26. Parent input into the May 2021 IEP beyond that for the 2021 RR included Student experiencing anxiety during the reevaluation process that led to medical treatment. The Parents noted Student's strengths in the areas of mathematics, science, the arts including music, and mechanical aptitude; and needs regarding reading, writing, spelling, and speech/language skills. Their concerns with Student's health were addressed with the school nurse at the IEP meeting. (S-6 at 15-16.)
27. Needs identified in the IEP were for basic reading and reading fluency skills, in addition to articulation. (S-6 at 16.)
28. Post-secondary transition planning in the IEP addressed Student's goals for higher education, self-employment, and independent living through further development of basic reading, reading fluency, and articulation skills, and steps for exploring post-high school options. Student's core courses of study were also identified. (S-6 at 17-18.)
29. The IEP contained goals addressing decoding of multi-syllable words, reading fluency at a seventh grade level, and articulation, all with identified baselines and objective criteria. (S-6 at 24-26.)
30. Program modifications and items of specially designed instruction in the IEP included instruction in phonemic awareness; direct instruction for sixty minutes in basic reading skills three times each week; direct



instruction in study and organizational skills every other day; practice with and strategies for basic reading and reading fluency skills; checks for understanding; modeling and cuing; test and assignment accommodations; preferential seating; and another IEP meeting within thirty days of the start of the 2021-22 school year. (S-6 at 27-29.)

31. Student's program identified in the IEP was one of itinerant learning support with speech/language therapy, with consideration of factors relating to Student's participation in regular education. Student would participate in regular education for all academic and non-academic classes, to include a co-taught language arts class, with the exceptions of study/organizational skill and reading instruction, and speech/language therapy. The IEP proposed the District high school as the program location. (S-6 at 31-32.)
32. A meeting convened to review the proposed IEP. The team discussed classes Student would be likely to take and, if Student enrolled in the District, Student would have met with the guidance counselor over the summer to develop a class schedule. (N.T. 399-400, 445-46; S-6 at 3.)
33. Class sizes in the District's high school range from 20-25 students. (N.T. 404, 406)
34. All students in the District have laptop computers with speech-to-text software, and other applications may be added as needed for a particular student. (N.T. 454-55.)
35. The Parents sent the District notice in late June 2021 of their intention to enroll Student in Private School, and sought District funding. Among the reasons they provided for this demand was Student's "severe anxiety" while attending District schools (P-19 at 1) and resulting health impacts. (P-19.)

## **Private School**

36. Student applied to Private School and was accepted. The Parents signed an enrollment contract with Private School, also located in another state, in March 2021 in order to secure a placement there, but understood that they could terminate that agreement with forfeiture of the deposit (approximately 10% of the total cost) they paid. (N.T. 112, 115, 193, 195-99, 202-03; P-16; P-23.)
37. Private School serves children with learning disabilities in a college preparatory program. There are both day and boarding programs for students. (N.T. 190, 194, 196-97, 200.)
38. Classes at Private School meet six times over seven school days for a period of approximately one hour. (N.T. 209, 226.)
39. Student had a Compensatory Skills Plan at Private School during the 2021-22 school year. That Plan provided for the following accommodations: preferential seating away from distractions; provision of class notes and study guides; wait time and multisensory presentation of directions; chunking of tasks; preview of materials with audio formats; and test and assignment accommodations. The Plan also addressed support for improving Student's written expression and reading comprehension skills. (P-30.)
40. Student also had a compensatory skills class at Private School that was delivered one-on-one by a certified teacher. In that class, Student focused on areas of need in reading and written expression, and also could complete assignments for other classes. The teacher additionally provided other supports for Student such as study skills and test-taking strategies. The Compensatory Skills Plan was not available to other teachers. (N.T. 209-13, 215-16.)

41. Student had an Accommodation Plan at Private School that was available to all teachers. The accommodations in that Plan were the same as those in the Compensatory Skills Plan. (N.T. 217-18; P-31.)
42. Student had a literacy skills class with six other students at Private School. The students completed the same language arts curriculum as all other students, but the teachers provided more direct and differentiated instruction. (N.T. 226-27, 249-50.)
43. Private School did not conduct any assessment of Student's reading comprehension skills, or specific written expression weaknesses, over the 2021-22 school year. (N.T. 245, 249.)
44. Student has not been provided with speech/language therapy at Private School. (NT. 248.)
45. Through the second quarter of the 2021-22 school year at Private School, Student had grades in the A to A-range across subjects. Teacher comments were overall positive and noted Student's self-advocacy, effort and motivation, and class participation. (P-22.)
46. Student enjoyed attending Private School and engaged in after-school activities. Student did not generally exhibit anxiety while attending there. (N.T. 65, 67, 78-79, 131, 206.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof is generally 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 filed for 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.

A special education hearing officer, who assumes the role of fact-finder, is charged with the responsibility of making credibility determinations of the witnesses who testify. See *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); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer adjudged each of the witnesses who testified to be credible as to the facts as they recalled them. The testimony was relatively consistent but there were understandable lapses in memory. The weight accorded the evidence, however, was not equally placed; for example, the written exhibits were of significant importance as relevant and reliable documentation of the events at issue; and the District school psychologist's testimony in particular was deemed to be reliable and convincing as noted below.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each

admitted exhibit were thoroughly considered, as were the parties' focused yet thorough closing statements.

### **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. A number of years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. 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 complying with the procedural obligations in the Act.

Through local educational agencies (LEAs), states 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). And, 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." *Andrew F. v. Douglas County School District RE-1*, \_\_\_ U.S. \_\_\_, \_\_\_, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, accordingly, central to the focus of the IDEA. 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. *Andrew 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 standard must be based on information known “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). Nevertheless, LEAs are required to periodically monitor the student’s response to the programming that is provided in order to make appropriate revisions as may be necessary. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320, 324.

## **Evaluation Requirements**

Special education programming must be based on a comprehensive evaluation of the child. Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

- (i) whether the child is a child with a disability; and
- (ii) the content of the child’s individualized education program, including information related to enabling the child

to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data including that provided by the parents in addition to available assessments and observations. 34 C.F.R. § 300.305(a).

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

The IDEA contains a crucial mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards.

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).

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

Parents who believe that an LEA has not offered 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 proposed by the public school did not constitute an offer FAPE, and the private placement is established to be proper for the child. *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 considering whether reimbursement for tuition is merited if the first two



prongs are met. *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 need not satisfy all of the procedural and substantive requirements of the IDEA in order to satisfy the test. *Carter, supra*. Rather, the standard is whether the parentally selected placement was reasonably calculated to afford the child with educational benefit. *Id.* However, where a private program fails to address a student's unique needs, it may be found to be inappropriate. *See, e.g., Lauren P. v. Wissahickon School District*, 310 Fed. App'x 552, 555 (3d Cir. 2009).

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

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).

### **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, in this case, the coextensive Section 504 claims that

challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

### **The Parents' Claims**

The first issue presented is whether the District's proposed program for the 2021-22 school year was appropriate for Student. The Parents' position is premised in part on the adequacy of the 2021 RR, so discussion of this issue must begin with analysis of that evaluation.

The District's 2021 RR utilized a variety of assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about Student, in all areas of suspected disability. More precisely, in addition to administration of assessments discussed below, the District summarized available data; incorporated results of previous evaluations; included parental input; and obtained and reported information from teachers at the then-current private school. The District school psychologist conducted a classroom observation of Student that, in addition to the testing observations, yielded information about Student's presentation and engagement, despite its brevity and format that were beyond her control.

The RR encompassed cognitive and achievement testing that also included writing and additional reading assessments; evaluation by related service providers (occupational and speech/language therapists); and a selection of rating scales to evaluate Student's social/emotional functioning, among which was a specific measure of anxiety. The District's RR summarized and reviewed all of the data and information that was gathered, and determined Student's eligibility for special education based on Student's existing current needs. All of this evidence overwhelmingly supports the conclusion that the District's RR was sufficiently comprehensive to identify Student's special education and related service needs in all areas related to

suspected disability for purposes of informing the IEP team in development of programming.

The Parents present two major criticisms of the 2021 RR. First, they contend that the District failed to adequately assess Student's written expression skills. However, all information known as of and through that RR reflected that Student did not demonstrate deficits in that area, specifically input from the then-private school teacher, the TOWL assessment of written expression, and a thorough analysis of written expression skills (S-5 at 33). The persuasive and credible testimony of the District school psychologist regarding her consideration of Student's written expression ability more than preponderantly defeats this contention (N.T. 312-14). In addition, Student did not historically present with written expression weaknesses that might suggest a need for further investigation beyond that in the 2021 RR. The mere fact that Student may have had support with writing tasks at private schools does not establish a disability in that area.

The second contention of the Parents regarding the 2021 RR is a perceived absence of inquiry into Student's anxiety. The testimony of the District school psychologist is, once again, persuasive on the extent of her examination in this area. The only indications of anxiety at the time were the report of the Parents that Student was experiencing such symptoms during the course of the evaluation, and a single at-risk teacher concern. The experienced District school psychologist did not discern Student to exhibit anxiety during the testing, and cogently described the reasons for that conclusion (N.T. 323-24). As a whole, the information obtained during the 2021 RR process, including the BASC-3 and separate specific anxiety rating scales, did not suggest that Student was manifesting such symptoms that required any support beyond monitoring. Furthermore, the planned meeting with the guidance counselor over the summer of 2021, had Student enrolled, would have provided an ideal opportunity to observe Student for

any anxiety or other symptoms that may have suggested a need for intervention.

This hearing officer concludes that the District did not fail to adequately evaluate Student in all areas of suspected disability. Thus, the next question is whether the May 2021 IEP was reasonably calculated to provide meaningful educational benefit for Student. The evidence is more than preponderant that it was, based on information known at the time.

The May 2021 IEP incorporated the results of the RR and added new input from the Parents and Student. Needs were appropriately identified in the areas of reading and articulation. Annual goals targeting those needs were developed, based on Student's current levels, and were reasonable in light of Student's identified weaknesses. A variety of program modifications and items of specially designed instruction were also proposed that largely included, but went beyond, the supports provided by the previous and current private schools. Student's language arts class would have been co-taught, providing support there as needed to Student; both written expression and organizational supports were aspects of the programming at the previous and current private schools in addition to being of some concern to the Parents. Medically, there is no evidence that the District school nurse would have been unable or unwilling to provide any services related to Student's conditions; and educationally, the same conclusion must be drawn regarding the District professionals' qualifications and ability to properly implement Student's special and regular education programming as set forth in the IEP. Additionally, the Parents were given ample opportunity to participate meaningfully in development of the proposed program for the fall of 2021.

The Parents suspect that, had Student enrolled in the District high school, needs relating to written expression and anxiety would have been manifested. They also point to Student's success in small class sizes at the

private schools, and disagreement with the IEP goals. However, as noted, the District had an obligation to monitor Student's response to its program and make needed revisions accordingly based on Student's presentation in the public school environment. There is no reason to surmise that District professionals would ignore any needs that were not previously identified, and the proposed IEP team even provided for a second meeting thirty days into the 2021-22 school year to do so as a group including the Parents. With respect to the small class sizes, the evidence is not preponderant that Student had a demonstrated need for that level of support and, moreover, the District was mandated to comply with its LRE obligations that begin with consideration of the regular education environment, and it did so. Although the Parents provided letters at the hearing from various medical professionals recommending that Student remain in a private school setting, those opinions were expressed in conclusory fashion based on maximizing Student's potential (P-25, P-26) or from what type of setting Student "may" benefit (P-28). It merits repeating that the District was not required to provide an ideal program or one that incorporated all that the Parents wished. And, if the issues turned on whether an IEP goal could have been phrased differently or even been improved, the answer to that question would almost always be answered in the affirmative, but that possibility alone does not demonstrate any substantive denial of FAPE in this case. While it is certainly understandable that the Parents want what is best for Student to ensure success, particularly in light of Student's complex and unique medical profile, this decision cannot be based on sympathy with their perspective.

In sum, the Parents have not met their burden of establishing that the District's program proposed for the 2021-22 school year was inappropriate for Student under the applicable standards. There is, thus, no need to continue to the remaining prongs of the tuition reimbursement analysis.

## **CONCLUSION OF LAW**

The District's proposed program for Student for the 2021-22 school year complied with all applicable standards and was appropriate.

## **ORDER**

AND NOW, this 22<sup>nd</sup> day of June, 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's proposed program for the 2021-22 school year was not inappropriate for Student, and no remedy is due.

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

/s/ Cathy A. Skidmore

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 25976-21-22