

*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:**

24978-20-21

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

Q.M.

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

[redacted]

#### **Parents:**

[redacted]

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

Judith Gran, Esquire  
19 Chestnut Street  
Haddonfield, NJ 08033

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

Central Bucks School District  
16 Welden Drive  
Doylestown, PA 18901

#### **Counsel for LEA:**

Mark W. Cheramie Walz, Esquire  
331 East Butler Avenue  
New Britain, PA 18901

#### **Hearing Officer:**

Cathy A. Skidmore, Esquire

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

01/15/2022

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, Q.M. (Student),<sup>1</sup> is mid-teenaged student whose Parents reside in the Central Bucks School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.<sup>3</sup> Student currently is in a residential placement out of state at the option of the Parents.

In late May 2021, the Parents filed a Due Process Complaint against the District challenging its programming for Student under the IDEA, Section 504, and the Americans with Disabilities Act (ADA).<sup>4</sup> As remedies, the Parents demanded reimbursement for tuition and related expenses as well as compensatory education. The parties thereafter explored an amicable resolution, as required by the IDEA,<sup>5</sup> that was ultimately unsuccessful, and the case proceeded to a due process hearing.<sup>6</sup> The Parents sought to establish that the District's previously implemented and proposed programs failed to provide Student with a free, appropriate public education (FAPE),

---

<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. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

<sup>4</sup> 42 U.S.C. §§ 12101-12213.

<sup>5</sup> 20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.510.

<sup>6</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. Citations to duplicative exhibits may not be to all.

and that the relief sought was warranted. The District maintained that its special education program, as implemented and offered, was appropriate for Student under the IDEA and that no remedy was due.

Following review of the record and for all of the reasons set forth below, the claims of the Parents will be granted in part and denied in part.

## **ISSUES**

1. Whether the District's program implemented over the 2019-20 and 2020-21 school years (two years prior to the date of the Complaint) was appropriate for Student;
2. If the District's program implemented over the 2019-20 and 2020-21 school years was not appropriate for Student, is Student entitled to compensatory education;
3. Whether the District's proposed program for the 2021-22 school year was appropriate for Student;
4. If the District's proposed program for the 2021-22 school year was not appropriate for Student, is the private placement appropriate and do the equities favor reimbursement for tuition and related expenses?

## **FINDINGS OF FACT**

1. Student is mid-teenaged and has been identified as a child with a disability based on Other Health Impairment. The Parents reside in the District but Student is in a residential placement out of state. (P-25 at 1; S-24 at 1, 55-58.)
2. Student began attending school in the District in kindergarten and has been eligible for, and provided with, special education services since that time. (P-1 – P-9; P-11 – P-13; P-15 – P-17.)
3. Student has been diagnosed with [redacted] Syndrome, a genetic condition that impacts Student’s entire life (medical condition). The medical condition is a rare disorder with a major characteristic that the individual is constantly hungry and seeking food; there are additional manifestations, as with Student, within the individual’s cognitive, physical, and emotional/behavioral domains. Individuals with the syndrome generally fall somewhere along a continuum, with Student at the more severe end. (N.T. 129-32, 233-240 242-44, 247, 249, 260, 307-08, 310, 423-24, 429, 452-53, 459, 470-71, 484, 486-89.)
4. The Parents have sought out opinions and services since Student’s birth to address Student’s various needs. (N.T. 232-300, 306-368 (*passim*).)

### **Early Education History**

5. The Parents obtained a private neuropsychological evaluation in June and July 2014. Assessment results reflected variable scores across Indices on the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), with Full Scale IQ and General Ability Index scores near or within the borderline range. Student’s academic achievement

Composite scores (oral language, reading, and mathematics) were in the below average (oral language and reading) or low (mathematics) ranges. Student's adaptive skills were determined to be adequate overall. (P-10.)

6. The District reevaluated Student in March 2016 and issued a reevaluation report (RR). Student continued to be eligible for special education under the classification Other Health Impairment. (P-15.)

### **District Middle School**

7. Student was in a District middle school during the 2018-19 school year. (S-3.)
8. Student's teachers at the middle school were provided information about Student's Individualized Health Plan by the case manager as well as the school nurse. (N.T. 712-13, 730, 799-800.)
9. The District had staff at the middle school undertake training about Student's medical condition and how it might impact Student at school. (N.T. 755.)
10. The middle school staff used a variety of strategies to provide a food-secure environment for Student, including ongoing monitoring by a number of professionals. (N.T. 722-25, 751-54.)
11. A District Board Certified Behavior Analyst (BCBA) consulted regularly with Student's special education case manager in middle school. (N.T. 639-40.)
12. When Student was in the District middle school, Student was involved with assisting the team managers for a variety of sports. Student developed friendships with a number of the players and developed a

number of pre-vocational skills. (N.T. 274-76, 720-21, 745-50, 813-16.)

13. The middle school principal and a special education teacher worked with Student to identify contacts of people involved in a field in which Student had interest. Student worked on various projects in researching that field and others. (N.T. 715-18, 780-82.)
14. Student benefitted from priming and a review and rehearsal of the daily schedule at the middle school. (N.T. 767-68, 820-21, 850.)

### **Spring 2019**

15. The District conducted an evaluation of Student in January 2019 and issued a reevaluation report (RR). At that time, Student had modified curricula in co-taught social studies and science classes; Student also had reading, writing, and mathematics instruction at Student's instructional levels. Student was also receiving speech/language, physical, and occupational therapy. (S-2 at 4-11, 13-20.)
16. The January 2019 RR identified Student with a disability under the classification of Other Health Impairment. Identified needs were for reading, vocabulary, written expression, and mathematics skills. (S-2 at 22-23.)
17. An IEP was developed in February 2019 with Student and the Parents attending the meeting. Information on Student's post-secondary transition interests reflected a variety of areas. Student's needs mirrored those in the January 2019 RR. (S-3.)
18. Annual goals in the February 2019 IEP were for reading comprehension (at a fourth grade level); written expression

(responding to prompts using a rubric); functional mathematics skills (problem solving with a calculator); speech/language skills (articulation); physical therapy skills (gross motor activities); and occupational therapy skills (handwriting within boundaries, typing). Program modifications and items of specially designed instruction included prompts and reminders for speech/articulation; direct, active, and small group instruction; modified content area materials; preview of materials; full time paraprofessional support; speech/language support and practice; and test and assignment accommodations. Student's related services were occupational, physical, and speech/language support. (S-3.)

19. The February 2019 IEP provided for extended school year (ESY) services. (S-3.)
20. Student's program pursuant to the February 2019 IEP was one of learning support at a supplemental level, with participation in the regular education environment for content area classes other than reading, written expression, and mathematics. The Parents approved the accompanying Notice of Recommended Educational Placement. (S-3.)
21. The District also developed an Individualized Health Care Plan in February 2019. The Plan provided a number of interventions to limit Student's exposure to food at school and help Student understand Student's diagnosis and how it impacts Student. The Plan also addressed other health concerns including fatigue. (S-1.)
22. A functional behavioral assessment (FBA) was conducted by a District BCBA in April 2019 that included multiple observations (including time

on task data) and an interview with the special education teacher. (N.T. 622, 627-33; S-30.)

23. The April 2019 FBA identified behaviors of concern (verbal aggression, physically aggression toward objects, task refusal); antecedents to those behaviors (non-preferred or difficult tasks); and consequences of the behaviors of concern (delay/escape, attention). The hypothesis developed was that Student engaged in verbal or physical aggression or refused to comply with directives to complete a non-preferred or difficult task, in order to avoid or escape that task. (S-30.)
24. Student's IEP was revised in May 2019 following the FBA. This IEP included information on progress monitoring of the goals, and included results of the FBA and contained a Positive Behavior Support Plan (PBSP). Antecedent strategies were provided (including priming for schedule changes, transition warnings, and choices) in addition to replacement behaviors (coping skills, functional communication); positive reinforcement; and strategies for use when behaviors of concern occur. A behavior goal (identification and use of a coping skill) was added to this IEP. (S-5.)
25. Student completed the 2019-20 school year with all A and B grades. Student made progress toward a majority of the goals for reading comprehension, written expression, mathematics, physical therapy, and occupational therapy, and on the behavior goal. (S-8; S-10.)

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

26. Student's IEP was revised in August 2019 to add the behavior goal to the IEP itself; the paraprofessional support was also moved to the related services section of the document. Progress reporting from the end of the prior school year was also included. (S-10.)

27. A behavior point sheet was added for Student in October 2019. (S-11 at 25.)
28. Student's performance regarding IEP goals as of January 2020 was somewhat variable in reading comprehension, written expression, and occupational therapy, but Student exhibited growth on the mathematics, speech/language, physical therapy, and behavioral goals. (S-11.)
29. A new annual IEP was developed in February 2020 with Student and the Parents attending the meeting. Information on Student's present levels with teacher and related service provider input was included. (S-11.)
30. Post-secondary transition interests at the time of the February 2020 IEP were law/public safety, education/training, and hospitality/tourism. Student's needs were for improvement in reading, vocabulary written expression, and mathematics skills, and reduction of frustrational behaviors. (S-11.)
31. Annual goals in the February 2020 IEP were for reading comprehension (at instructional level); written expression (responding to prompts using a rubric from a decreased baseline over the prior IEP); functional mathematics skills (problem solving with a calculator, on skills similar to those in the prior IEP but with increased difficulty); speech/language skills (monitoring articulation); physical therapy skills (gross motor activities as in the prior IEP); occupational therapy skills (identifying and managing emotions, typing with an increased baseline over the prior IEP); and behavior (using coping skills as in the most recent IEP but with a slightly reduced expectation). The PBSP was slightly revised. Program modifications and items of specially designed

instruction remained the same as in the prior IEP except for the removal of small group instruction and active learning. (S-11.)

32. The February 2020 IEP provided for extended school year (ESY) services. (S-11.)
33. Student's program pursuant to the February 2020 IEP was one of learning support at a supplemental level, with participation in the regular education environment for content area classes other than reading, written expression, and mathematics. The Parents approved the accompanying NOREP. (S-11.)
34. Student's grades at the end of the 2019-20 school year were all in the A to B range. Progress reporting on goals in the February 2020 IEP was limited because of the school closures from the COVID-19 pandemic.<sup>7</sup> (S-14; S-21.)
35. The Parents declined the District's offer of ESY services for the summer of 2020. (N.T. 290-91.)

## **2020-21 School Year**

36. Student's IEP was revised in September 2020 to reflect that Student would attend a different middle school that provided in-person instruction five days per week, and a modification to transportation was made. Some progress monitoring information from the previous spring was also included. (S-16; S-17.)
37. Student began the 2020-21 school year at the other middle school. After several weeks, the Parents asked that Student return to the

---

<sup>7</sup> This hearing officer takes notice that all schools in the Commonwealth of Pennsylvania were closed by Governor Wolf in March 2020 and remained closed through the end of the 2019-20 school year.

neighborhood middle school for the remainder of the 2020-21 school year, and Student did so. (N.T. 296-97, 329-30, 359, 539-40, 756-58; S-18 at 8.)

38. Two IEP meetings convened in November 2020. The team discussed Student's behavior at home, the Parents' concern that Student's medical condition was becoming more serious, and Student's transition back to the original middle school building. At that time, Student was exhibiting increased difficulty with self-regulation and anxiety, and problematic behavior at school intensified. At home, the Parents found more evidence that Student was obtaining access to food from various sources, including at school. (N.T. 7241-44, 249-50, 317-18, 335-36, 643, 760; S-18; S-20; S-21.)
39. Student's IEP was revised in November 2020 to reflect the two meetings and strategies to address the increased behaviors; progress monitoring information for the first quarter of the 2020-21 school year was also provided. Student's behavior plan added sandwiching non-preferred activities between preferred activities, and response to aggressive behavior. Social skills instruction as well as small group instruction in reading, writing, and mathematics were also added. (S-18; S-21.)
40. Progress reporting in the November 2020 IEP reflected some variability in performance across most IEP goals, with data on some not available. However, Student made progress on the behavioral goal compared to the baseline. (S-21.)
41. The Parents had also begun to consider a residential placement for Student in the fall of 2020, and discussed that possibility with the District at the second November 2020 IEP meeting. The District team

members responded by explaining the continuum of services it was required to offer. (N.T. 281-82, 332-35, 568, 604-05; S-18 at 8.)

42. Progress monitoring reports as of January 2021 reflected progress toward the mathematics and physical therapy goals, maintenance of skills with some variability on the reading comprehension goal, maintenance of skills on the behavior and speech/language goals; and some variability on the coping skills goal but maintenance of skills on the typing goal. (S-22.)
43. A new annual IEP was developed in February 2021 with Student and the Parents attending the meeting. Information on Student's present levels with teacher and related service provider input was included; the success of a plan of providing a brief period of a reinforcing activity following longer intervals of work was also provided. At the time, the Parents again expressed an interest in an out-of-District placement. ((N.T. 544-46; S-22.)
44. Post-secondary transition interest at the time of the February 2021 IEP was public safety. Student's needs were for increased reading, written expression, and mathematics skills; independent self-regulation skills; articulation; and fine and gross motor skill development. (S-22.)
45. Annual goals in the February 2021 IEP were for reading comprehension (demonstrating more difficult skills than in the prior IEP at a fourth grade level); written expression (paragraph writing independently but with pre-writing supports); functional mathematics skills (problem solving, on skills similar to but more difficult than those in the prior IEP); speech/language skills (monitoring speech production and listener comprehension); physical therapy skills (gross motor activities similar to those in the prior IEP); and occupational therapy

skills (identifying and managing emotions, bilateral coordination); The PBSP was maintained. Program modifications and items of specially designed instruction included those in the prior IEP revision, with the addition of multisensory instruction; general education instruction accommodations; reading, writing, and mathematics supports; provisions for ensuring a food-safe environment for Student; assistive technology; a transition plan to high school; other test/assignment accommodations, social skills instruction. COVID-19 Compensatory Services were also included. (S-22.)

46. The February 2021 IEP provided for extended school year (ESY) services. (S-22.)
47. Student's program pursuant to the February 2021 IEP was one of learning support at a supplemental level, with participation in the regular education environment for content area classes other than reading, written expression, and mathematics, as well as social and self-regulation skills. (S-22.)
48. The Parents did not approve the NOREP accompanying the February 2021 IEP, but gave consent for its implementation. (S-22 at 80-84.)
49. Another FBA was conducted in April 2021, with a number of direct observations including on- and off-task data. This FBA identified verbal noncompliance, verbal aggression and/or physical aggression toward objects, and physical aggression toward others as behaviors of concern. (N.T. 647-48; S-23.)
50. The April 2021 FBA identified antecedents to the behavior of concern and consequences. The hypothesis developed in this FBA was the same as that in 2019: Student engaged in verbal or physical aggression or refused to comply with directives to complete a non-

preferred or difficult task, in order to avoid or escape that task. (S-23.)

51. The IEP team discussed the need for another meeting later in the 2020-21 school year for further planning for the fall of 2021. (N.T. 545.)
52. The District conducted another evaluation and issued an RR in April 2021 with the consent of the Parents. That RR provided extensive information based on Student's records. The school psychologist also conducted an observation in the classroom. (S-24 at 1-23, 63-65.)
53. Cognitive assessment could not be completed for the April 2021 RR because Student refused to participate. Assessment of academic achievement reflected very low scores on the Reading, Written Expression, and Mathematics Composites. (S-24 at 23-27.)
54. Assessment of social/emotional/behavioral functioning through rating scales was also conducted for the April 2021 RR. The Parents' ratings on the Behavior Assessment System for Children – Third Edition, reflected clinically significant concerns with hyperactivity, aggression, and withdrawal; and at-risk concerns with anxiety, depression, somatization, atypicality, and attention problems. The teacher ratings, by contrast, reflected clinically significant concerns only with withdrawal and social skills; and at-risk concerns with depression, adaptability, leadership, and functional communication. (S-24 at 27-30.)
55. Assessment of executive functioning for the April 2021 RR was overall significantly concerning for both the Parents and teacher, with the latter's scales indicating greater concerns on all scales. Behavioral and

Emotional Regulation were significant for both raters. (S-24 at 31-34.)

56. Student's social skills assessed for the April 2021 RR reflected below average or lower functioning in all areas except self-awareness for both raters. (S-24 at 34-37.)
57. Student's adaptive behavior functioning was also assessed for the April 2021 RR. Both raters reported areas of concern with adaptive skills, with the Parents' scales indicating lower performance overall than that of the teacher. The teacher's ratings were in the average range for social and practical skills, whereas none of the ratings by the Parents were in the average range. (S-24 at 37-40.)
58. Speech/language assessment for the April 2021 RR reflected a continued need for therapy at school for speech intelligibility and verbal language comprehension. (S-24 at 40-43.)
59. Assessment of occupational therapy skills for the April 2021 RR revealed visual motor skill deficits as well as sensory sensitivity and avoidance. One of the instruments was not completed. Continued services were recommended. (S-24 at 43-49.)
60. The April 2021 RR concluded that Student remained eligible for special education on the basis of an Other Health Impairment. Needs identified were for improved reading comprehension, written expression, and functional mathematics skills; independent self-regulation; language comprehension; speech intelligibility; and gross motor skills. (S-24 at 55-56.)

61. On May 3, 2021, the Parents through counsel notified the District of their intention to place Student in an out-of-state placement at public expense. (S-25.)
62. At the May 2021 IEP meeting, held ten days after the May 3, 2021 notice by the Parents, the District proposed that Student attend one of its high schools in the fall of 2021, which was not the neighborhood high school. The proposed high school offered a level of vocational programming that was not as available at its other high schools, including community-based instruction opportunities and independent living skills it also had available a more comprehensive learning support program for content area classes. The Parents attended that meeting. (N.T 549-57, 573-74, 589, 591-93; S-25; S-26 at 9.)
63. Student's IEP was revised in May 2021. The revision incorporated information from the recent RR and also provided current progress monitoring information. Newly obtain Parent input was also included, reflecting concerns with Student's academic, behavior, anxiety, social skills, independent functioning with a full time aide, and basic life skills. They reiterated their intention to have Student attend the out of state placement. (S-26.)
64. The May 2021 IEP added to the post-secondary transition section (work experiences, instruction in employment skills, and community-based instruction). Goals were added for independent completion of vocational tasks; self-monitoring with mathematics problem-solving; and social skills. Instruction in executive function skill strategies, typing were also included, as well as sensory strategies and interventions for food security. (S-26.)

65. The May 2021 IEP determined that Student was eligible for ESY services. The program proposed was one of learning support at a supplemental level with participation in the regular education environment for content area classes other than reading, written expression, and mathematics, as well as social/self-regulation skills. (S-26.)
66. Student completed the third quarter of the 2021-22 school year with grades ranging from A to B+. Progress reporting as of May 2021 reflected unknown progress toward the reading comprehension goal; maintenance of skills in the written expression goal; some progress toward the mathematics goal; progress on the physical therapy goal; progress on the handwriting occupational therapy goal but not on the coping skills goal; and unknown progress on the behavioral goal. s (S-26; S-28.)

### **2021 Private Evaluations**

67. The Parents obtained a private neuropsychological evaluation of Student in July 2021. (P-21.)
68. Cognitive assessment for the 2021 private neuropsychological evaluation (Fifth Edition of the WISC) yielded scores reflecting relative strengths and weaknesses, and a full scale IQ score in the mildly intellectually disabled range. Student's memory skills assessed through the WISC-V and other instruments were deficient. (P-21 at 3-6, 7-8.)
69. Assessment of Student's academic achievement for the 2021 private neuropsychological evaluation reflected scores well below expectations across domains, with mathematics a more significant weakness. (P-21 at 6-7.)

70. Student's adaptive functioning skills assessed by the 2021 private neuropsychological evaluation were an area of significant deficit, particularly with respect to socialization. An instrument measuring Student's personality and emotional functioning suggested difficulty managing emotions and using coping skills. (P-21.)
71. The private neuropsychologist who conducted the July 2021 evaluation concluded that Student's academic skills in the areas of reading and language as well as mathematics were commensurate with Student's cognitive profile; that complex and abstract tasks would likely always be beyond Student's abilities; and that Student's various other deficits presented significant challenges requiring ongoing supervision and support. (P-21.)
72. The Parents obtained a recommendation from Student's endocrinologist in August 2021 that Student be placed in a specialized residential school to address Student's complex needs. She also noted Student's cognitive weaknesses, and confirmed that Student's increased behavioral challenges have gradually grown more problematic over time as Student's medical condition has worsened. (N.T. 495-96; P-20.)
73. The Parents obtained another private evaluation of Student by a professional with years of experience with children and adults with disabilities, but who is not a psychologist. Her October 2021 evaluation consisted largely of interviews with and input from the Parents and Student, a half day remote observation of Student at school in the spring of 2021, an observation of Student in the community, an observation of Student at Private Placement, and a record review. She did not speak with anyone at the District. (N.T. 167-70, 540-43, 649, 719, 784; P-18.)

## **Private Placement**

74. Student's endocrinologist recommended that the Parents consider Private Placement. (N.T. 262-63, 282-83, 497.)
75. Private Placement serves children ages 8 – 22 with complex disabilities, including the medical condition, at a campus out of state. Services include educational, vocational, health, and clinical services, with a residential component, 365 days per year. The campus houses two dormitories, a clinical service building, and a main house with dining and nursing services as well as offices. (N.T. 381, 390-91, 409, 450-51, 458, 498.)
76. Student's educational program is provided in classrooms based on age ranges of approximately three years. (N.T. 410.)
77. The educational component of Private Placement programming is provided by certified teachers who are trained in crisis intervention. Student has content area classes and special classes including one for vocational skills. (N.T. 444-45, 454-55.)
78. Private Placement reviews the IEPs of its students when provided, and identify areas from that IEP that can be implemented in that setting in its own IEP document. (N.T. 386-87, 400-01.)
79. Student has goals at Private Placement that mirror those in the most recent District IEP. Student made progress toward each of those goals as of November 2021, when compared to the IEP baselines. (P-23.)
80. Student has a behavior support plan at Private Placement targeting aggression and noncompliance with directives. (P-22.)

81. Student has a Comprehensive Treatment Plan at Private Placement, identifying family outcomes and student outcomes. Goals in that plan address health weight and lifestyle; behaviors; and peer engagement; and are monitored for progress. Services include education (implementing the current IEP); vocational skills; life skills including social skills; behavior; and social services. (P-25.)
82. Student has made progress at Private Placement on the goals in the Comprehensive Treatment Plan. (P-25.)
83. Staff at Private Placement receive an orientation, and are also trained in the medical condition as well as behavioral support including crisis intervention. (N.T. 419-22, 437, 442-43.)
84. The clinical services team at Private Placement includes a director, a behavior technician, and other clinicians who focus on therapy and behavioral support. Those services generally are provided during non-educational portion of the school day with the exception of social skills groups. (N.T. 389-90, 456-57.)
85. Private Placement has psychiatric staff who are involved with medication management for those students who need that service. (N.T. 402, 467-68.)
86. Student was introduced to Private Placement through remote conferencing with peers, and Student responded well to these regular conferences. Student began the program at Private Placement in May 2021. (N.T. 264-65, 283-84, 292-93, 394-95.)
87. Student did experience a difficult transition to Private Placement, as is typical for students who have difficulty with transitions and entering that environment where demands are maintained. At times during

that period of transition, physical restraint was required. (N.T. 269, 272, 285-86, 430-33, 437-38.)

88. Private Placement is a food secure environment across the campus that is strictly enforced. (N.T. 158-59, 397.)
89. Student requires a residential program in order to learn, and then learn to generalize, skills of daily living within the natural environment. Student's needs are at the stage where successfully living in the family home would not be possible, and Student will always need a supervised, supported living environment. (N.T. 160-61, 439-40, 498-99, 501-02, 519-23.)
90. The residential component of Private Placement provides ongoing support with activities of daily living including personal hygiene, with support faded as the child becomes more independent. The residential portion also includes periods of exercise and involvement in the community. (N.T. 434-36, 444.)
91. Student has lost a significant amount of weight at Private Placement, and has been caring for personal hygiene needs. Student has exhibited growth in the area of social skills, developed peer relationships, (N.T. 298-99, 427-29.)
92. At this time, Student requires a structured, food secure environment that includes care 24 hours a day, 365 days a year, focusing on daily living skills and developing coping and emotional regulation skills. Student requires consistency and predictability in daily routines. (N.T. 129-32, 240-45, 253, 424-27, 430, 471, 490-91, 502.)
93. Student's needs at the present time would not permit Student to return to the home environment. Student will most likely require a

residential placement for the remainder of Student's life, somewhere other than Private Placement when Student reaches a certain age that Student cannot remain there. (N.T. 458-63, 472-73, 494.)

94. The Parents visit Student frequently at Private Placement, with the family including Student renting a house for several days, but Student is not able to return home at this time even for a short visit. They anticipate that Student may be able to do so this summer. (N.T. 265-67, 301-03.)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Principles**

In general, the burden of proof is viewed as comprising 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. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, in the role of fact-finders, are also 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); *see also 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 found each of the witnesses who

testified to be credible as to the facts. The weight accorded the evidence, however, was not equally placed.

The testimony of the Parents and District professionals was persuasive and accorded significant weight as to their respective understandings of Student in light of their specific experience and expertise. The testimony of Student's endocrinologist was cogent and compelling with respect to Student's medical condition and needs given her extensive qualifications. The Parents' educational expert's testimony with respect to manifestation of Student medical condition was convincing, but her lengthy report and opinion on the District's program was not for a variety of reasons: it was not based on any information obtained from the District; it was largely focused on a single remote observation of Student in the classroom; she was overly critical of an asserted lack of data and detail in District records including IEPs that this hearing officer finds would not have been helpful or necessary to the content of those documents; and, finally, this hearing officer's decision must be based on the record as a whole, rather than on a single witness' focus on specific information.

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' 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. Some 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 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*, \_\_\_ U.S. \_\_\_, \_\_\_, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, thus, the central consideration for purposes 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. *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 standard 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). “The IEP *must aim* to enable the child to make progress,” but progress is not measured by what may be ideal. *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018)(emphasis in original).

## **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).

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. Furthermore, 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.

Residential placement is one option on the continuum, and is appropriate if “is necessary to provide special education and related services to a child with a disability.” 34 C.F.R. § 30.104. The question of whether a residential placement must be provided at public expense requires an assessment of whether that full-time placement is “necessary for educational

purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 243-44 (3d Cir. 2009, (quoting *Kruelle v. New Castle County School District*, 642 F.2d 687, 693 (3d Cir. 1981)). In other words, if the medical, social, and emotional components of the residential program are “part and parcel of a specially designed instruction to meet the unique needs of a handicapped child,” the local education agency is responsible for that placement. *Id.* at 244 (quoting *Kruelle* at 694).

### **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). Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012). Courts have long recognized the similarity between claims made under those two statutes, particularly when considered together with claims under the IDEA. *See, e.g., Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). Thus, in this case, the coextensive Section 504 and ADA 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 in this case is whether the District’s programs implemented over the two year period between May 2019 and May 2021 were appropriate. The evidence of record compels a conclusion that they were.

Student’s IEPs during the relevant time periods addressed Student’s identified academic, behavioral/social/emotional, and post-secondary transition needs. Although Student at times made variable progress on the IEP goals, it is particularly noteworthy that the July 2021 neuropsychological evaluation determined that Student’s academic achievement was

commensurate with Student's abilities. While certainly it is understandable that the Parents would hope for more lofty progress, Student's IEPs and progress must be assessed based on Student's unique circumstances. The July 2021 neuropsychological evaluation cogently explained Student's unique presentation in this regard. Similarly, Student's post-secondary transition aspirations were identified with programming designed to permit Student to explore various aspects of those fields in a concrete manner according to Student's abilities. Student's behaviors were largely managed by the District, at least through the fall of 2020 when the Parents and District professionals observed diminished control. It must be remembered also that Student had returned to school in the fall of 2020 following an unprecedented pandemic (as had many students), and its effect was almost certainly a significant factor that could not be planned for in advance. Nonetheless, the District's response was to conduct a new FBA and implement various strategies to address the new behaviors. The evidence establishes that the District appropriately addressed Student's strengths and needs over time, as they changed, and monitored Student's progress throughout this time period.

It is instructive in this hearing officer's view to also refer to the Pennsylvania Department of Education guidance regarding a process for LEAs to determine appropriate COVID-19 Compensatory Services (CCS) for its students. Pursuant to the most recent PDE guidance, CCS means "services as determined by an [Individualized Education Program (IEP)] team needed to remedy a student's skill and/or behavior loss and/or lack of progress that resulted from [a Local Education Agency's (LEA's)] inability to provide Free Appropriate Public Education (FAPE) while using alternative instructional models due to the COVID-19 pandemic." In essence, CCS may be made available by LEAs to children who need those services because the LEA was *unable* to provide FAPE due to the pandemic. The additional

guidance by PDE regarding PCAs maintains the position on CCS to remedy any deprivation. Here, the District also offered CCS.

As a whole, this hearing officer cannot conclude that the Parents have established a denial of FAPE for the relevant time period through Student's disenrollment in May 2021. As such, no further consideration need be given to the claim for compensatory education.

The next issue is whether the District's proposed program for the start of the 2021-22 school year was appropriate, which also requires consideration of whether Student needs a more structured residential program such as at Private Placement. That question must be answered as of what was known in May 2021, the point when the District's most recent proposed program was offered and refused.

Student has multifaceted and complex needs that have significantly affected, and continue to impact, Student's entire day, including educationally. Student's medical condition is one that tends to progress over time, becoming more and more severe, and it has followed that course for Student. By the fall of 2020, the Parents and District had observed behavioral regression that the Parents attributed to a progression with Student's medical condition, a factor that Student's endocrinologist confirmed. The Parents asked the District to consider a more restrictive program and placement at that time. Although the District understandably responded based upon its LRE obligations, the record preponderantly establishes that Student's presentation as of May 2021 was at a point where Student's intricate constellation of needs could not be met in a District high school for the fall of 2021. The testimony of Student's endocrinologist as to Student's medical needs, coupled with the testimony of Private Placement professionals, leads to the inescapable conclusion that Student at that time required a structured, food secure, residential environment that includes care 24 hours a day, 365 days a year, focused on daily living skills and

developing coping and emotional regulation skills in order for Student to derive benefit from, and receive, an education. As such, Student's medical needs are not segregable from, but rather are part and parcel of, the specially designed instruction Student requires based on Student's unique circumstances.

It is true that the opinion of the endocrinologist was provided after the Parents made the decision to place Student in the residential placement. However, the record establishes that there was insufficient consideration of the reasons for Student's increasingly difficult behavioral presentation and the medical reasons therefor over the course of the 2020-21 school year. Student undoubtedly is a unique child with very severe symptoms of the medical condition at this stage of Student's life, something most school districts lack resources to fully address and with which most do not have adequate experience and expertise. But, as in *Kruelle, supra*, 642 F.2d at 694, the "consistency of programming and environment is critical to [Student's] ability to learn." That the District might not be criticized by some education professionals for declining to seek to be thoroughly informed of Student's medical and related needs in the spring of 2021 given the complexities in this case cannot, in this hearing officer's view, serve to defeat the conclusion that Student requires a residential placement at this time in order to be provided with FAPE, and that those circumstances existed in May 2021 and could easily have been fully explored at that time.

Private Placement is clearly appropriate with its intensive and structured programming that directly address Student's medical condition, as well as educational and behavioral needs. Private Placement has implemented the goals in Student's recent IEP, and Student's educational program encompasses academic, behavioral, functional living, social, and vocational skills, in addition to medical needs. Student has counseling and community-based experiences, and is learning to live with Student's medical

condition with appropriate support. Student has also demonstrated growth at Private Placement. Although not ideal particularly based on its distance from the Parents' home, Private Placement meets the second step of the analysis.

The last prong of the tuition reimbursement test is a balancing of the equities. The above description of the District's reticence in seeking medical information from Student's own physician in the spring of 2021 must be contrasted with the Parent's decision ten days prior to the planned May 2021 IEP meeting to provide notice of their intention to seek public funding for Student's residential placement. That meeting was intended to provide an opportunity for further discussion about programming and placement options for the 2021-22 school year. Giving due consideration to the complexities of this case, as well as the Parents' own private understanding of Student's medical condition guided by Student's endocrinologist that was not freely shared with the District in May 2021, and to the District's efforts to more fully discuss its proposal for the fall of 2021, this hearing officer concludes that an equitable reduction of 15% of the Parents' costs is warranted.

Finally, this decision is confined to the 2021-22 school year. Although clearly Student will need constant supervision in the future, even the Parents conceded that Student should be able to return home in the future, perhaps even this summer. The District shall therefore be ordered to convene a meeting of Student's IEP team to discuss program options for the 2022-23 school year that may or may not include consideration of residential placement.

## **CONCLUSIONS OF LAW**

1. The District did not deny Student FAPE for the two year period prior to the Due Process Complaint prior to Student's entry into Private Placement.
2. The District's proposed program for the 2021-22 school year was not appropriate for Student.
3. The Parents are entitled to reimbursement for tuition and related costs, including residential costs, for the 2021-22 school year at Private Placement.

## **ORDER**

AND NOW, this 15<sup>th</sup> day of January, 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not deny FAPE to Student for the relevant time period in its implementation of programming during the 2018-19, 2019-20, and 2020-21 school years.
2. The District's proposed program for the 2021-22 school year was not appropriate for Student.
3. The Parents are entitled to reimbursement for tuition and related expenses, including the residential component, of Private Placement for the 2021-22 school year.

4. Within fifteen calendar days of the date of this decision, the Parents shall provide documentation to the District of all current invoices and receipts for tuition and direct related expenses for Student at Private Placement for the 2021-22 school year, including residential services. These expenses do not include costs associated with family visits to the geographic area of Private Placement.
5. Within thirty calendar days of receipt of the documentation, the District shall reimburse the Parents for the amount of the invoices and receipts provided by them, less 15%, pursuant to this decision and order.
6. Within thirty school days of the date of this order, the District shall convene an IEP meeting to include the Parents to begin development of a program for the 2022-23 school year. All procedural safeguards with respect to any resulting NOREP shall apply.
7. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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. 24978-20-21