

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

PENNSYLVANIA SPECIAL EDUCATION HEARING OFFICER

DECISION

Child's Name: A.D.

Date of Birth: [redacted]

ODR File No. 15203-1415 KE

Dates of Hearing:

September 3, 2014

October 22, 2014

November 3, 2014

November 5, 2014

November 10, 2014

CLOSED HEARING

Parties to the Hearing:

Parent[s]

Young Scholars – Kenderton Charter
School
1500 W. Ontario Street
Philadelphia, PA 19140

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Vanita R. Kalra, Esquire
David J. Berney, Esquire
Law Offices of David J. Berney
1628 JFK Boulevard, Suite 1000
Philadelphia, PA 19103

Patricia A. Felice-Moreland, Esquire
Marks, O'Neill, O'Brien, Doherty &
Kelly, PC
1800 JFK Boulevard, Suite 1900
Philadelphia, PA 19103

December 9, 2014

December 24, 2014

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is a late-elementary school-aged student in the Young Scholars – Kenderton Charter School (hereafter School) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student’s Parent filed a due process complaint against the School asserting that it denied Student a free, appropriate public education (FAPE) under the IDEA; and that it violated Section 504 of the Rehabilitation Act of 1973³ and the Americans with Disabilities Act (ADA),⁴ as well as the federal and state regulations implementing those statutes.

The case proceeded to a due process hearing which convened over five sessions, at which the parties presented evidence in support of their respective positions. The Parent sought to establish that the School failed to provide Student with FAPE in the least restrictive environment throughout the time period in question; and, sought remedies including an order for a prospective placement at a private school at the expense of the School. The School maintained that its special education program, as offered and implemented, was appropriate for Student. The record closed upon receipt of the parties’ written closing arguments.

For the reasons set forth below, I find in favor of the Parent and Student.

ISSUES

1. Whether the School denied Student FAPE during the 2013-14 and 2014-15 school years, as well as over summer 2014, both procedurally and substantively;
2. If the School did deny Student FAPE, is Student entitled to an award of compensatory education; and

¹ In the interest of confidentiality and privacy, Student’s name and gender, and other potentially identifiable information, are not used in the body of this decision.

² 20 U.S.C. §§ 1400-1482.

³ 29 U.S.C. § 794.

⁴ 42 U.S.C. §§ 12101-12213.

3. Should the School be required, at its expense, to place Student prospectively into a private school in order to provide FAPE?

FINDINGS OF FACT

General Background

1. Student is a middle school, late preteen-aged student who is eligible for special education as a child with a specific learning disability. At the time of the due process hearing and throughout the time period relevant to the issues, Student attended the School. (Notes of Testimony (N.T.) 46-48 (Stipulation))⁵
2. Student has been diagnosed with Attention-Deficit/Hyperactivity Disorder and Disruptive Behavior Disorder, and also exhibits difficulties with behavior, reading, and mathematics. (N.T. 798-99; J-17 p. 1)
3. Prior to the start of the 2013-14 school year, Student attended the same school building that was then part of the local school district. Student was identified as eligible for special education by that school district in October 2010 on the basis of a specific learning disability. Behavioral difficulties, including poor peer interactions and impulse control, were also noted. (N.T. 797-98; P-2)
4. Student was evaluated by the school district in the spring of 2013 and a Re-evaluation Report (RR) was issued. The RR included Parent input, teacher recommendations, and various assessments. Cognitive testing (Kaufman Assessment Battery for Children – Second Edition) was inconclusive because Student refused to participate in some tasks, yielding very low scores. Achievement testing (Kaufman Test of Educational Achievement – Second Edition) revealed extremely low scores in reading and low scores in mathematics. Student also demonstrated weak visual motor integration skills. (J-17; P-3)
5. Behavioral assessment for the RR (Behavior Assessment Scale for Children – Second Edition (BASC-2)) provided information from the Parent and two teachers. The form completed by Student’s Parent reflected at-risk scores in the areas of hyperactivity, aggression, conduct problems, attention, adaptive skills, leadership, and functional communication. One of the teachers endorsed clinically significant concerns in the areas of hyperactivity, aggression, conduct problems, attention problems, and learning problems; both teachers endorsed at-risk concerns in numerous other areas. Overall, the BASC-2 reflected a need to address Student’s aggression and conduct problems. (J-17)

⁵ The “N.T.” designation will be used for the transcript filed at this case number. Counsel also stipulated that the transcript of Student’s sibling at ODR File No. 15202-1415KE could be considered as applicable. (N.T. II 290-91) References to the transcript of the sibling are designated as “N.T. II.” References to other evidence in the record will be made as follows: Joint Exhibits as “J-”; Parent Exhibits as “P-”; School Exhibits as “S-”; Written Stipulation of Counsel as “12/4/14 Stipulation”; Hearing Officer Exhibits as “HO-”. This hearing officer appreciates and commends counsel for streamlining the record through Joint Exhibits and Stipulations.

6. The school district's RR concluded that Student was eligible for special education on the basis of a specific learning disability. (J-17)
7. Additionally, a Functional Behavior Assessment (FBA) was conducted by the school district in June 2013. Behaviors of concern were refusal to complete homework and classwork, and confrontations with peers in social settings. The FBA hypothesized that Student's behaviors were displayed in order to gain attention from peers and adults and to avoid tasks; a second function was to achieve something Student desired (go Student's way). The FBA recommended goals in the IEP. (P-4)
8. The school district developed an Individualized Education Program (IEP) for Student in June 2013. This IEP noted poor independent reading skills and needs to improve phonemic awareness and sight word identification skills, and to master basic math skills; as well as behavioral needs to address verbal aggression and peer interaction. The IEP contained annual goals addressing reading decoding, reading comprehension, written expression, mathematics problem solving, and behavior (negative peer interactions). Several program modifications and items of specially designed instruction were included, and Student was determined to be eligible for Extended School Year (ESY) services. Placement in supplemental learning support for reading and mathematics. The Parent did not approve the NOREP and had already determined that Student would attend the School in the fall of 2013. (N.T. 799-800; J-3)
9. The school district provided school therapeutic support (STS) staff to students in the building who exhibited disciplinary problems. The STS workers provided support in the classroom, or outside of the classroom by removing a student having difficulty in order to be redirected to return to class. They also worked on social skills and coping skills. (N.T. II 55, 164, 818-19)
10. Prior to the start of the 2013-14 school year, the Parent filed a due process complaint against the school district that resulted in a settlement agreement in October 2013. (N.T. 800-02, 886-87)

Summer 2014 Independent Evaluation

11. During the summer of 2013, the Parent had Student privately evaluated by an independent psychologist in order to identify Student's educational needs. That evaluator, who is licensed and certified as a school psychologist, issued an Independent Educational Evaluation (IEE) report following observations of Student, review of records, interviews, cognitive and achievement testing, and various behavioral rating scales and forms. (N.T. 57, 59-60, 800-01; J-25; P-18; P-26)
12. The private psychologist conducted a cognitive assessment (Wechsler Abbreviated Scale of Intelligence – Second Edition) which reflected overall intelligence at the low end of the average range. (N.T. 64; J-25 p.8; P-26 p. 8)
13. The private psychologist conducted achievement testing (Wechsler Individual Achievement Test – Second Edition, abbreviated version (WIAT-II-A); Woodcock-Johnson Tests of Achievement Testing – Third Edition (WJ-III-ACH)) revealing

significant discrepancies between ability and achievement in word reading and spelling. (J-25 pp. 8-9; P-26 pp. 8-9)

14. The private evaluator determined that Student had a specific learning disability as well as an Other Health Impairment (OHI) based on Student's attention and behavioral difficulties. He also concluded that Student's attention and behavioral difficulties were related to the reading disability and that making progress toward overcoming that area of need would likely result in improvement in attention and behavior. (N.T. 62-64, 65; J-25 pp. 14-15; P-26 pp. 14-15)
15. The IEE included evaluation of adaptive behavior (Vineland-II Adaptive Behavior Scale), social skills and problem behaviors (Social Skills Improvement System (SSIS) and Achenbach Child Behavior Checklist), and ADHD (Conners Revised). The results reflected slightly below average social skills, and behavioral instruments revealed the most significant difficulties in the areas of interpersonal relationships and cognitive problems/inattention, and externalizing problems. (J-25; P-26)
16. The private psychologist observed Student in the school building when it was part of the local school district. (N.T. 74, 76, 93; N.T. II 393-96; J-25 pp. 12-13; P-26 pp. 12-13)
17. The IEE contained a number of recommendations for Student's educational program, including intensive reading intervention and support, social skills training, exploration of assistive technology, behavioral support, accommodations for academics and incentives for task completion, an FBA followed by a Positive Behavior Support Plan (PBSP), and consideration of a private school placement to address both learning and behavioral needs. (J-25 pp. 16-17; P-26 pp. 16-17)

Transition to Charter School

18. During the summer of 2013, the School took over the operation of the school building from the local school district for the start of the 2013-14 school year. At the time, the population of student was considered to be underperforming. Student was enrolled in the School by the Parent. (N.T. II 44, 104, 178-79, 230, 659-60, 676-78, 685, 691-92, 713-14, 815; P-47)
19. Student's Parent has been and is a member of the School's Social Advisory Council (SAC), also serving as an officer of the organization. She volunteers at the School on a regular basis several days each week and also attends SAC meetings in the building. (N.T. 897-98; N.T. II 41, 106-07, 196)
20. The SAC, including the Parent, was involved in contacting charter schools and making the selections that resulted in the School taking over the operations of the school building. (N.T. II 104, 230-31, 678-80, 815-17)
21. For the first two weeks of the 2013-14 school year, the School focused on orientation, getting the students accustomed to the culture of the School and acclimated to routines such as class schedules as well as safety. One change for the 2013-14 school year was

the School's new procedures during times of transition such as structured use of the hallways. (N.T. 210-12; N.T. II 685, 827-28)

22. The same STS staff from the school district worked at the school building after the School took over operations. At the beginning of the 2013-14 school year, however, the School's use of the STS workers was more limited than it had been with the school district as School staff worked to get to know the students and "build a culture" (N.T. II 686) while also identifying students who needed behavioral and emotional support. (N.T. 850, 892; N.T. II 56, 108, 686, 818-19, 821)
23. At the School, students are provided with more than the minimum number of hours of instruction, 34 hours per week. Students are dismissed early on Fridays after a fun activity such as a movie for approximately one hour. For students in special education, progress monitoring occurred on those afternoons before the fun activity and dismissal. (N.T. II 208-09, 555-56, 586, 604)
24. The School performed diagnostic assessments of all of its students' oral reading fluency and mathematics computation using AIMSweb in the fall of 2013. Each student was assessed at grade level to determine baseline benchmarks. This instrument was also used for progress monitoring of students in the bottom quartile and those receiving special education, beginning at grade level. (N.T. 234-35, 376-77, 408-09; N.T. II 680-84)

Student's 2013-14 School Year

Fall 2013

25. Prior to the start of school in August 2013, the Parent gave a representative of the School a copy of the recently obtained IEE report. The representative did not want to retain the copy of the IEE because of the pending case against the school district, wanting to keep the two programs separate. (N.T. 803-04; N.T. II 235-37)
26. The first day of school was August 27, 2013. (N.T. II 747-48)
27. Student began attending the School in a regular education classroom. The School did not implement the school district's IEP for Student; the School made this decision because its representatives were aware that the Parent had challenged its appropriateness through due process. (N.T. 195, 199, 209-13, 298, 574-75; N.T. II 235)
28. The School used a School-Wide Behavior Support Program (SWBSP) which provided incentive for students for positive behavior (being professional, attentive, and hard working) in the form of a "paycheck" to be used for purchasing participation in class trips, activities, or toys. (N.T. 302-03; N.T. II 190, 596, 633, 639-43, 705-06)
29. During the first two weeks of the 2013-14 school year, Student demonstrated refusal to enter the classroom as well as verbal and physical aggression. The School called the Parent on several occasions due to this behavior. Student was also suspended on at least one occasion. (N.T. 212-13, 215, 273-74, 299, 307-08, 898-99; J-18)

30. Student moved to a Diagnostic Support classroom on September 9, 2013 after a meeting of the Parent and two School representatives. The Parent signed a form waiving all special education services for the duration of the Diagnostic Support placement, which was to be for 45 days ending on November 12, 2013. (N.T. 195-96, 197-99, 202, 250-52, 469-71, 808-11, 813; J-4; 12/4/14 Stipulation ¶ 8)
31. Some School staff intended that Student would need to demonstrate fewer challenging behaviors in the diagnostic placement before any change would occur. (N.T. II 661-62; *see also* P-17 p. 6)
32. The School's policy for a diagnostic placement included a "comprehensive summary" upon a student's discharge from that placement including a Comprehensive Student Profile; an Academy summary with recommendations; a Behavior summary with recommendations; and Plans and Suggestions for improved behaviors. No such comprehensive summary was developed for Student; nor does the school provide one any student for whom an IEP is developed because some of this information is incorporated into the IEP. (N.T. 201-03; N.T. 203-04)
33. The diagnostic classroom where Student was placed included ten to twelve students from fifth, sixth, and seventh grades. The students were in that classroom for the majority of the school day, including breakfast and lunch, with the exception of some specials where the entire class would transition to another location. (N.T. 207-08, 249, 257-58, 474-75, 478-80, 629, 667-68)
34. When Student first transitioned to the diagnostic classroom, Student continued to demonstrate difficult behaviors including eloping from the class or building as well as verbal and physical aggression. (N.T. 672-73)
35. Student had reading instruction in the diagnostic/emotional support classroom for the remainder of the year. The teacher usually read directions, tests, and other materials to the class. (N.T. 474-75, 544-46)
36. Student had mathematics instruction in the diagnostic/emotional support classroom for the remainder of the year. Student was provided with first grade (instructional level) mathematics materials. (N.T. 615-16, 628-29)
37. The diagnostic classroom used a class-wide behavior system wherein students earned points for reaching specific goals each period. The points could be used to purchase rewards such as free time, computer time, movies on Fridays, snacks, and games at the end of the school day. It was similar to the SWBSP but students in that classroom were not subject to point deductions. (259-60, 537-38, 560-61, 668, 669-71, 709, 714-15, 851)
38. Student exhibited more problematic behavior in the specials than in the diagnostic classroom. With a limited trial exception, Student was never transitioned from the Diagnostic Support classroom because Student continued to exhibit problematic behaviors in that setting. (N.T. 201-04, 239-40, 685, 814)

39. In early December 2013, the Parent asked in writing for up to date testing of Student in order to update Student's IEP. (P-7)
40. Student was physically restrained/placed in manual holds on a number of occasions in the fall of 2013, although the Parent never gave consent to physical intervention. The Parent was not notified of each instance of physical restraint. She may have been called by telephone about one of these incidents. (N.T. 217-19, 820-25; J-8, J-9, J-10, J-11, J-12; P-46)

Spring 2014

41. In mid-January 2014, the Parent sent a written request for Student's IEP to be updated. (P-8)
42. The School did attempt to have Student go to one education class and one learning support class, for reading and mathematics, in January and February 2014, on a trial basis. After Student began to exhibit more problematic behavior toward peers, and following one specific act of aggression, the decision was made to eliminate the other classes for Student. This decision was made by School administrators, not during an IEP meeting. (N.T. 206-07, 231, 264-68, 293-94, 426-27, 433-34, 449-50, 451-53, 459-60, 574-75, 583, 588-90, 685-88, 704-06; S-12)
43. The School had a Reading Rewards program beginning in the middle of the 2013-14 school year, in its learning support classrooms. Student did not participate in Reading Rewards except for the trial period in January and February 2014 when Student went to other classrooms. The teacher also used materials she created. (N.T. 289-93, 428-30, 432)
44. Student continued to demonstrate problematic behavior after the transition to other classes ceased. (P-17 pp. 18, 20; S-12)
45. In late 2013 and early 2014, the Parent asked School representatives several times about an IEP meeting for Student; and, in early December 2013, the Parent asked in writing for up to date testing of Student to update Student's IEP. (N.T. 816-19; P-7)
46. In April 2014, Student along with Student's sibling and a peer entered the School building outside of school hours at a time it was closed. The three children stole keys and transportation passes. (N.T. II 85-86, 249-50, 699-700; J-16; P-17 pp. 23-24)
47. Student was suspended from school for eight days and fined \$320 for the incident. (N.T. 870-71; N.T. II 163; J-16; P-17 p. 27)
48. Student was no longer able to participate in classroom rewards or nonacademic activities after the April 2014 incident. (N.T. 232-33,870; P-17 p. 27)
49. In late May 2014, the Parent was asked to consent in writing to use of physical restraints on Student by the School but she did not provide her agreement. (N.T. 826-27; P-6)

50. Student's first IEP meeting at the School was in May 2014. The Parent attended with her educational consultant. The regular education teacher identified on the cover page of the document did not attend. The team discussed a plan for Student to attend some regular education classes in the 2014-15 school year, and the consultant asked questions about testing Student to determine instructional levels. ESY and the more substantive programming components of the IEP were not discussed. (N.T. 203, 206, 211, 266-67, 697-98, 701, 815, 855-63, 923-24, 984, 988, 1050, 1138; J-7)
51. The May 2014 IEP included general information about Student's present levels of academic achievement and functional performance in reading, handwriting, and mathematics, as well as continued behavioral difficulties throughout the school year. Annual goals addressed reading decoding and comprehension, mathematics calculation and problem solving, and behavior (peer interactions and verbalizing emotions. A few curriculum supports and a positive behavior system were listed as program modifications and items of SDI. Student was not eligible for ESY. Placement was to be supplemental learning support with rotation into two regular education classes based on "behavioral progress" (J-5 p. 10). The Parent approved the NOREP with the notation that she did so because she wanted Student to have services but did not agree with the IEP. (N.T. 858-59; J-5, J-6; S-2)⁶
52. The Parent's educational consultant conducted observations of Student at the School in May 2014. (N.T. 985, 1025-26, 1027-33, 1034-38; P-22)
53. The School conducted AIMSweb grade level probes of Student's oral reading fluency and reading comprehension during the 2013-14 school year; Student's scores were highly variable but remained in the well below average and below average ranges, respectively. (J-20, J-23, J-24; P-9, P-10)
54. The School conducted AIMSweb grade level probes of Student's mathematics skills three times during the 2013-14 school year; Student's scores were highly variable but remained in the below average range on both measures across all three probes. (J-21, J-23, J-24; P-9, P-10)
55. During the 2013-14 school year, Student was provided with a total of 260 minutes of individual social skills instruction. (12/4/14 Stipulation ¶ 7)
56. The Parent or another relative worked with Student on homework at night, directing Student to re-do assignments that are not done neatly and correctly. Student had homework several times a week, and was frequently not able to read the directions for assignments without assistance. (N.T. 833-34, 837-39)

⁶ Another version of the IEP appears as P-5; however, there are differences between the two, including that P-5 lacks the SDI contained in the other versions; and J-5/S-2 omit counseling as a related service, a provision that is part of P-5. The P-5 version of the IEP is the one that the Parent reviewed in May 2014. (N.T. 857-58)

57. Student achieved final grades for the 2013-14 school year with letter grades of B in mathematics, B-s in reading and writing, D in science, and Passing or A in all specials. (P-15)
58. Student's scores on the Pennsylvania System of School Assessment (PSSA) were in the below basic range for both reading and mathematics in the spring of 2014. (P-11)

Summer 2014

59. The private evaluator who conducted the IEE in 2013 performed an updated evaluation and issued a report in August 2014 and an addendum to that report in October 2014. (N.T. 60-61, 72, 867-68; P-19, P-20)
60. Updated information using the SSIS in the summer of 2014 reflected that Student some improvement with social skills and problem behaviors when compared to the first administration. At the time, Student was having a positive summer experience at a camp and was not attending school. (N.T. 92-93; P-19)
61. The addendum to the IEE provided a comparison of Student's achievement test scores on Word Reading, Numerical Operations, and Spelling, as well as the Total Composite, using the WIAT-II-A over time. Student's standard scores declined between the 2013 and 2014 administrations, reflecting that Student regressed in those areas during that time period; and, Student's achievement remained markedly below expectations given Student's cognitive ability. (N.T. 78-82; P-19, P-24)
62. Additional achievement testing for the update and addendum to the IEE included select subtests of the WJ-III-ACH, on which Student achieved standard scores of 61 and 53 on the Reading Fluency and Passage Comprehension subtests, respectively. Those standard scores declined by 3 points on each of the two subtests. (N.T. 85-86; J-25 p. 9; P-20, P-26 p. 9)
63. Curriculum-based assessment of Student's reading and mathematics abilities were also conducted in August 2014 for the IEE addendum. Student performed poorly on both measures, reading 25 words correct per minute at the preschool level and 9 words correct per minute at grade level, and answering no comprehension questions correctly. In mathematics, Student was not able to read the questions on the grade-level materials and had no correct answers even with the questions read to Student. (N.T. 87-90; P-20)
64. Recommendations in the IEE Update were the same as in the initial IEE report. (P-19 pp. 6-7)
65. The Parent believed that the summer camp where Student attended in 2014 was appropriate and successful; and Student continued with the program into the fall, after school, where they worked on social skills and mathematics skills. (N.T. 874-78, 930-31)
66. In August 2014, the School sought permission to re-evaluate Student. The Parent requested information about the proposed testing, but did not receive a response. (N.T. 867-70; J-26; P-32, P-33)

2014-15 School Year

67. The first day of school was August 19, 2014. Student continued to have incidents of verbal aggression at the beginning of the 2014-15 school year. (N.T. 269-70; N.T. II 747-48)
68. Student was initially in the emotional support classroom full time, before beginning to transition into a learning support class for reading (two hours per day) and a regular education foreign language class. This transition occurred after the second quarter of the school year started. Student was usually escorted to and from these other classrooms and generally did not have difficulty with the physical transitions. (N.T. 246-47, 270-71, 281-82, 294, 322-26, 348, 349, 412-15, 418-19, 437, 440-41, 451, 691)
69. For reading, Student started the 2014-15 school year in a group working on third grade level materials. Student also had another hour block of reading and writing during the first half of the 2014-15 school year. (N.T. 458, 500-05)
70. At a later point, in approximately early November 2014 (as this due process hearing was concluding), Student also began receiving mathematics instruction (one hour per day) in the learning support classroom. The teacher created the mathematics curriculum which was delivered in two small groups based on student ability levels. (N.T. 437-40, 444-47, 448, 454)
71. Student's emotional support class was comprised of fourth, sixth, and seventh grade students for a total of approximately ten students. In 2014-15, those students followed a class-wide behavior support plan wherein the children earn or are deducted points, which was essentially the same as the SWPSB. At a specific level of points earned for positive behavior, students can receive rewards such as snacks, class trips, or the right to transition into another class. (N.T. 331-32, 343, 352, 355-58, 367-68, 499-501, 555-56, 560-61, 691-92; P-29)
72. Student had science and social studies in the emotional support classroom during the 2014-15 school year. Social studies was taught in the first quarter, and science was taught in the second quarter, during the same 45-minute period. The students were taught at a sixth grade level, including written materials. Student was not provided with any accommodations or modifications to materials or assignments, although the students typically read materials aloud as a whole group or in pairs or small groups. At times the teacher worked individually with the students, including Student, during independent work as needed. (N.T. 323-24, 334-38, 339-40, 345, 348)
73. Student continued to have lunch in the emotional support classroom in the 2014-15 school year. (N.T. 330)

74. The SWBSP was used in the learning support classroom where Student began going for reading and mathematics instruction in the fall of 2014. The teacher also used a class-wide reward system where the class earned tokens for participation in social activities if the students exhibited appropriate behavior (being professional, attentive, thoughtful, or hardworking). (N.T. 281-83, 454-57, 465)
75. The School started to use Reading Mastery and Corrective Reading for the 2014-15 school year sometime after October 2014. Student began Corrective Reading at the first lesson/beginning level. (N.T. 288-91, 294, 417, 440-41, 442-43)
76. The Parent's educational consultant conducted an assessment of Student's reading abilities using the Dynamic Indicators of Basic Early Literacy (DIBELS) in September 2014, concluding that Student demonstrated very poor reading skills at a beginning first grade reading level. (N.T. 990-91, 1015-17; P-23)
77. The Parent's educational consultant conducted observations of Student at the School in October 2014. (N.T. 1040-48)
78. In late October 2014, the Parent requested an FBA from the School; there was no response. (N.T. 864-65; P-28)
79. Student was provided with 240 minutes of social skills group in the fall of 2014 prior to the close of the record. (12/4/14 Stipulation ¶ 5)

Private School

80. The private school has eleven campuses that serve children with social, emotional, learning, and behavioral needs. Behavior and social skills are integrated into the program. All teachers are certified in special education. The private school has on staff neuropsychologists, psychologists, school social workers, a psychiatric nurse practitioner, and speech, occupational, and physical therapists. (N.T. 730-31, 746-47, 750-51, 753, 762-63)
81. Every child at the private school has an IEP. Academically, the private school provides individualized schedules depending on the student's levels. Staff:student ratio is individually determined. Students receive instruction at grade level as well as instructional level, and are assessed every two weeks to determine his or her success and to make revisions to the program. (N.T. 751-55, 757, 780-81, 784-85)
82. The private school provides each student with an individualized behavior plan that is modeled on Applied Behavior Analysis (ABA). A number of Board Certified Behavior Analysts (BCBAs) are on staff to assist in identifying appropriate behaviors for the student and for the creation and monitoring of the behavior plan. Each student is also expected to adhere to school-wide behavioral expectations. (N.T. 731-34, 743-44, 780)
83. Student behaviors, including the school-wide behaviors, are tracked each period of the school day, including lunch, using a form wherein the student and teacher both assess the student's behavior based on the child's specific behavior plan. Behavior goals are

individualized for each student. Data is recorded daily on the student's behavior and reported quarterly to the parents. (N.T. 733-37, 740, 745)

84. Students earn rewards from the points accumulated through the form. Once a week, the teacher reviews the behavior plan with the student to discuss how successful the child was, and they identify the reward(s) that the child will earn. (N.T. 737-40, 744)

85. Student was accepted into the private school. (N.T. 757-58; P-25)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

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

Hearing officers, as 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 to be generally credible, and necessary determinations with respect to specific testimony are discussed further below. It should also be noted that the Parent, as well as the School personnel, all presented as dedicated individuals who care about Student and Student's education, despite their conflicting positions at the hearing.

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit.⁷ The private psychologist who conducted the IEE provided highly credible and extremely persuasive testimony about Student's abilities and achievement, including reasonable expectations of Student's growth and progress had appropriate instruction and interventions been provided. (N.T. 83-87, 143-44) His IEE reports were also given significant weight. This evidence contrasts sharply with the somewhat unfocused testimony of the second expert witness presented by the Parent, the educational consultant, who was clearly well qualified; although she testified with firmness and conviction, she did so in a manner that at times failed to answer the questions posed, and was remarkably critical of nearly every single action taken, or not taken, by the School, seemingly in response to its representatives' lack of deference to her at IEP meetings. This bias on her part significantly undermined her opinions, and this hearing officer accordingly placed only minimal reliance on her testimony and written summaries.

The private psychologist who conducted the IEE also provided a description of an appropriate diagnostic or interim placement, which was consistent both with this hearing officer's understanding and interpretive guidance provided by the U.S. Department of Education;⁸ namely, that such a placement may be an appropriate avenue when a child is not attaining success with the current level of support and services, and the team has the opportunity to conduct necessary evaluations and assessments to develop a plan to address unmet needs. (N.T. 96-97; N.T. II 348-51, 354-55, 390, 392-93) He also acknowledged the difficult position

⁷ The Parent objected to the admission S-31 (N.T. 934-39, 1188-89). This undated compilation of Student's work product was largely unidentified and lacked sufficient materiality and reliability; there, the Parent's objection is hereby sustained and S-31 is excluded from the record.

⁸ 34 C.F.R. APPENDIX A TO PART 300—NOTICE OF INTERPRETATION (2002).

the School found itself in. (N.T. II 456-58) Nevertheless, this hearing officer shares his view that the critical question is whether the School programmed appropriately for Student's needs and, additionally, whether the record establishes the School's ability to program appropriately for this Student's needs. (*Id.*)

Relevant IDEA Principles

The IDEA requires the states to provide a "free appropriate public education" (FAPE) to all students who qualify for special education services. 20 U.S.C. §1412. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase "free appropriate public education" to require "significant learning" and "meaningful benefit" under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). Local education agencies (LEAs) meet the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is "reasonably calculated" to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.' " *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Most critically, the IEP must be appropriately responsive to the child's identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. §300.324. Nevertheless, "the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

An LEA “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity.’” *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995) (quoting *Rowley*, *supra*, at 201); *see also Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Nevertheless, the U.S. Supreme Court over thirty years ago recognized that a child with a disability who is “advancing from grade to grade” is not necessarily a child who has been provided with an appropriate education. *Rowley*, *supra*, at 203 n.25; *see also* 34 C.F.R. § 300.101(c)(1) (“Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”) An appropriate education, thus, encompasses all domains, including behavioral, social, and emotional. *Breanne C. v. Southern York County School District*, 732 F.Supp.2d 474, 483 (M.D. Pa. 2010) (citing *M.C. v. Central Regional School District*, 81 F.3d 389, 394 (3d Cir. 1996)). Moreover, a child’s educational performance can be affected in ways other than achieving passing grades, such as by an inability to engage in appropriate social relationships with peers or to attend to tasks and instruction at school. Furthermore, where a student’s behavior impedes his or her learning, the IEP team must “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.124(a)(2)(i);

The IEP is developed by a team. Pursuant to the IDEA and its implementing regulations, unless the parents and agency otherwise agree, the team of people who develop a child’s IEP must include, at a minimum, the child’s parents, teacher(s), someone who can interpret evaluation results, and an LEA representative. 20 U.S.C. § 1414(d)(1)(B) – (C); 34 C.F.R. § 300.321. Further, a child’s educational placement must be determined by the IEP team based

upon the child's IEP, as well as other relevant factors. 34 C.F.R. § 300.116. Although there is no requirement that an IEP “incorporate every program requested by the child's parents,” *Ridley, supra*, at 269, there can be no question that a major premise of the IDEA is that parents must be permitted to participate meaningfully in making educational decisions about their children. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300501(b); *see also Letter to Veazey*, 37 IDELR 10 OSEP 2001) (confirming the position of OSEP that local education agencies cannot unilaterally make placement decisions about eligible children to the exclusion of their parents). Parents play “a significant role in the IEP process.” *Schaffer, supra*, at 53. Indeed, 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).

Also crucial to special education is the IDEA obligation for eligible students to be educated in the “least restrictive environment” (LRE) which permits them to derive meaningful educational benefit. 20 U.S.C. § 1412(a)(5); *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000). In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1205 (3d Cir. 1993), the Third Circuit adopted a two-part test for determining whether a student has been placed into the LRE as required by the IDEA. The first prong of the test requires a determination of whether the child can, with supplementary aids and services, successfully be educated within the regular classroom; and the second prong is that, if placement outside of the regular classroom is necessary, there must be a determination of whether the child has been included with non-exceptional children to the maximum extent possible. *Id.* In evaluating the first prong, the efforts the school has made to include the child, a comparison of

the benefits to the child of placement in a regular classroom versus a separate special education classroom, and the effect on the other students, must be considered. *Id.*

Applicable Section 504 Principles

The obligation to provide FAPE is substantively the same under Section 504 and under the IDEA. *Ridgewood, supra*, at 253; *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005). 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).

In order to establish a violation of § 504 of the Rehabilitation Act, a plaintiff must prove that (1) he is “disabled” as defined by the Act; (2) he is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

Ridgewood at 253.

Finally, charter schools are required to comply with the federal regulations implementing the IDEA and Section 504. 22 Pa. Code §§ 711.1 – 711.62.

Before addressing the Parent’s claims, it is prudent to mention one central aspect of the School’s presentation in this case.⁹ There is no question that the School accepted significant challenges in taking over the operations of the underperforming student body and struggling environment that was transferred to it from the local school district. The School, and particularly

⁹ *See, e.g.*, School’s Closing Argument at 1, 9.

its representatives who testified at the hearing, must be commended for their well-intentioned efforts to reverse this trend. Nothing in this decision should be read to minimize the determination of the many dedicated individuals who accepted these challenges and worked diligently to improve the educational environment for the School's students.

The Parent's Claims

The first issue is whether the School denied Student FAPE during the 2013-14 and 2014-15 school years, as well as over summer 2014, both procedurally and substantively. Following careful review of the record, the inescapable conclusion is that it assuredly did deny FAPE to Student.

Student began the 2013-14 school year in regular education without any special education support and without the benefit of implementation of the local school district's IEP,¹⁰ despite clear knowledge that Student required special education and related services. Not unexpectedly, almost immediately, Student began to display problematic behaviors; and, rather than attempt to address them through appropriate special education programming and interventions, Student was placed into a "diagnostic" placement that similarly afforded no special education services to address Student's individualized needs. There was no IEP meeting held until May 2014, well after the 45-day "diagnostic" placement was to conclude. The team itself did not include the required team members. The IEP that followed that meeting, finalized nine months into the school year, was not the result of a collaboration of team members on the components of that document. Its goals generally addressed only a few of Student's well documented and significant academic and behavioral needs, were not individualized to Student, lacked important

¹⁰ The rationale for failing to implement the school district's IEP (N.T. II 172, 238, 242-43) is puzzling at best, and provided no justification for failing to provide any special education services to Student.

SDI to help Student reach those goals, and were not reasonably calculated to enable Student to make meaningful educational progress. Furthermore, both before and after development of the IEP, there was little if any consideration given to the concept of LRE.

Implementation of Student's program both before and after the IEP does little to remedy these deficiencies. At no time was an individualized behavior plan created for Student; indeed, after the April 2014 incident, Student was no longer even participating in any group behavioral plan. Further, the School's use of physical restraints were not in compliance with applicable law.¹¹

Academically, while the School's teachers undoubtedly provided instruction to their classes of students, nothing was individualized for Student and the program lacked any learning support as specified in Student's IEPs. The limited progress monitoring that was conducted was not specific to Student and Student's academic needs, and was directly contradicted by the private psychologist's initial and updated IEE reports that assessed Student's growth in areas of significant academic deficits. Student experienced only limited success in making some transition from the very restrictive diagnostic support/emotional support setting; but, was not provided with sufficient individualized instruction and intervention to address the problematic behaviors seen by the School as an impediment to "earning" a lesser restrictive placement.

Aside from some transition to other classes, Student's program for the 2014-15 school year has been merely more of the same lack of individualization based on Student's unique strengths and needs. Despite some suggestion in the record that the School was altering some of its approaches to academic instruction and behavioral intervention (N.T. II 255-56), the record simply does not establish sufficient individualization based on Student's specific needs for this

¹¹ 22 Pa. Code § 711.46.

school year, now already almost half over, such that one might anticipate meaningful educational progress.

There was some anecdotal evidence in the record that suggested that Student's behaviors improved following the diagnostic support/emotional support placement. (*See, e.g.*, N.T. 215, 255, 262-63, 453-54, 547-48, 550-51, 672-73, 690-91) However, that evidence contradicts other credible evidence in the record, such as information in the May 2014 IEP that Student's problematic behaviors continued throughout the school year, as well as only limited success in making a transition to other classes outside of the emotional support classroom. There is no consistent and systematic data collected on Student's behavior in this rather voluminous record; no FBA was conducted; and Student's programming continued to violate the critical LRE principles.

ESY

With respect to ESY, the evidence is preponderant that Student's eligibility was never seriously considered. Entitlement to ESY services derives from both federal and state special education provisions. Under the federal IDEA regulations, ESY services are to be provided to an eligible student if necessary to assure that s/he receives FAPE. 34 C.F.R. §300.106(a)(2). Pennsylvania regulations provide additional guidance for charter schools for making ESY determinations:

- (1) At each IEP meeting for a student with disabilities, the charter school or cyber charter school shall determine whether the student is eligible for ESY services and if so, make subsequent determinations about the services to be provided.
- (2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors, however, no single factor will be considered determinative:
 - (i) Whether the student reverts to a lower level of functioning as evidenced by a measurable decrease in skills or behaviors which occurs as a result of an interruption in educational programming (Regression).

(ii) Whether the student has the capacity to recover the skills or behavior patterns in which regression occurred to a level demonstrated prior to the interruption of educational programming (Recoupment).

(iii) Whether the student's difficulties with regression and recoupment make it unlikely that the student will maintain the skills and behaviors relevant to IEP goals and objectives.

(iv) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(v) The extent to which a skill or behavior is particularly crucial for the student to meet the IEP goals of self-sufficiency and independence from caretakers.

(vi) The extent to which successive interruptions in educational programming result in a student's withdrawal from the learning process.

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe mental retardation, degenerative impairments with mental involvement and severe multiple disabilities.

22 Pa. Code § 711.44.¹² This hearing officer concludes that Student demonstrated a clear need for ESY during the summer of 2014 based on each of these factors, and particularly subsections (iv), (v), and (vi) in order to be provided with FAPE.

Remedies

Before turning to the specific remedies, one point relevant to this aspect of the decision must be addressed. The law is crystal clear that “a child's entitlement to special education should not depend upon the vigilance of the parents[.]” *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). To the extent that the School has argued that the Parent’s acquiescence to Student’s programming or failure to request IEP meetings is determinative, the argument is rejected.

Compensatory Education

¹² The factors in subsection (b) are identical to those for school districts found at 22 Pa. Code § 14.132.

It is well settled that compensatory education is an appropriate remedy where a school knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the school fails to remedy the problem. *M.C.*, *supra*. Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school to correct the deficiency. *Id.* In addition to this “hour for hour” approach, some courts have endorsed a scheme that qualitatively awards the “amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district’s failure to provide a FAPE.” *B.C. v. Penn Manor School District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) (awarding compensatory education in a case involving a gifted student); see also *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005) (explaining that compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.”)) Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

The record does not establish a basis for a qualitative award. This hearing officer concludes that Student must be awarded full days¹³ of compensatory education for the 2013-14 school year and the 2014-15 school years, less the hours during which Student was provided with social skills instruction, until such time as Student begins to attend the private school discussed more fully below. Student’s academic and behavioral needs clearly pervaded Student’s entire school day and any educational benefit that Student may have received is impossible to quantify beyond the social skills instruction. See *Keystone Cent. School District v. E.E. ex rel. H.E.*, 438

¹³ Although the School provides more than the state-mandated minimum hours of instruction, compensatory education shall be calculated at 5 hours per day for 2013-14 and 5.5 hours per day for 2014-15. 22 Pa. Code § 11.3.

F.Supp.2d 519, 526 (M.D. Pa. 2006) (explaining that the IDEA does not require a parsing out of the exact number of hours a student was denied FAPE in calculating compensatory education, affirming an award of full days). For ESY, this hearing officer equitably estimates that Student should have been provided with a minimum of 48 hours of academic and behavioral services, calculated conservatively at 2 hours per day, 4 days per week, for 6 weeks during the summer of 2014.

The hours of compensatory education are subject to the following conditions and limitations. Student's Parent may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional goals and skills. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided through Student's IEP to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parent. The hours of compensatory education may be used at any time from the present until Student turns age eighteen (18).

There are financial limits on the Parent's discretion in selecting the compensatory education; the costs to the School of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the hourly salaries and fringe benefits that would have been paid to the School professionals who did and would have provided social/emotional services to Student during the period of the denial of FAPE.

Prospective Private Placement

Parents who believe that a public school is not providing FAPE may unilaterally remove their child from that school and place him or her in a private school, and also seek tuition reimbursement for the cost of the alternate placement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c); *Mary Courtney T.*, 575 F.3d at 242. Tuition reimbursement is an available remedy for parents to receive the costs associated with a child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985). Consideration of equitable principles is also relevant in deciding whether reimbursement for tuition is warranted. *Carter, supra*; see also. *See Forest Grove School District v. T.A.*, 557 U.S. 230 (2009) (explaining that tuition reimbursement award may be reduced where equities warrant, such as where parents failed to provide notice). In considering the three prongs of the tuition reimbursement test, the concept of least restrictive environment (LRE) is not controlling in evaluating parents' unilateral placements. *Ridgewood, supra*. A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter, supra*. The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Id.*

Here, however, the Parent is seeking not tuition reimbursement, but a prospective private placement. This hearing officer has concluded that this is a remedy which is within her jurisdiction to order. (HO-4) Hearing officers do enjoy broad discretion to fashion an appropriate remedy under the IDEA. See, e.g., *Forest Grove v. T.A.*, 557 U.S. 230, 240 n. 11 (2009); *Ferren C., supra*, at 718. In a case such as this, there is no reason to forego application of this discretion to an order for a private school placement. See, e.g., *School Committee of*

Burlington v. Department of Education, 471 U.S. 359, 370 (1985); *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285-86 (11th Cir. 2008); *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 248-49 (3d Cir. 1999).

While the tuition reimbursement test may not be directly applicable, its prongs do provide concrete guidance for evaluating this type of claim. Additionally, however, the record must, in this hearing officer's estimation, support a conclusion that the LEA is not in a position to make timely and reasonable revisions to its special education program in order to offer and provide FAPE. *See, e.g., Burlington, supra*, at 369 (explaining that private placement at public expense is warranted where an appropriate public school program is not possible). This does not mean that the Parent must establish that the LEA cannot "in theory" provide an appropriate program, *Draper, supra*, at 1285 (quoting *Ridgewood, supra*, at 248-49), but the equitable nature of the requested remedy logically demands something more than a past denial of FAPE.

This hearing officer has already concluded that the School's program has not provided Student with a placement and services reasonably calculated to allow Student to make meaningful progress. The flaws in the School's program for Student discussed above are substantial; and that this hearing officer concludes that they are so insurmountable that the School would not be able to make sufficient revisions at this point in the 2014-15 school year to adequately address all of Student's needs. Thus, the next question is whether the private school is appropriate. This question must be answered in the affirmative.

The private school offers a staff of certified special education teachers and various other professionals, including BCBAs, to address student needs. Behavior and social skills are integrated into the program. The ratio of staff to student is determined on an individual basis, and each child has an IEP. Schedules are also individualized to student levels, so that instruction

can be provided both on grade level content and instructional level. Assessments are performed every two weeks to provide guidance on success and the need for revision of programming decisions. Behavior is a central focus through individualized behavior plans and goals, with tracking and data collection throughout the school day, in addition to school-wide expectations.

The record establishes that the private school will provide a program to Student that addresses Student's specific behavioral and academic needs on an individualized basis. While Student's success there cannot be guaranteed, this hearing officer concludes that the Parent has established that the proposed program is appropriate for Student. Finally, the equities in this case do not weigh against the Parent. For all of these reasons, the Parent's requested prospective private school placement will be awarded.

Finally, having reached the above conclusions based on the IDEA, there is no need to discuss further the Parent's Section 504 and ADA claims.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the School denied Student FAPE, and that Student and the Parent are entitled to an award of compensatory education and a prospective private placement.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The School failed in its FAPE obligations to Student.
2. The School shall provide Student with five hours of compensatory education to address Student's academic and/or social/emotional needs for every day Student attended the School during the 2013-14 school year, less the hours of social skills instruction provided, subject to the conditions and limitations set forth above.

3. The School shall provide Student with 5.5 hours of compensatory education to address Student's academic and/or social/emotional needs for every day Student attended the School during the 2014-15 school year until Student begins attending the private school, less the hours of social skills instruction provided, subject to the conditions and limitations set forth above.
4. The School shall provide Student with 48 hours of compensatory education to address Student's academic and/or social/emotional needs for the lack of ESY services in 2014, subject to the conditions and limitations set forth above.
5. The School shall collaborate with the private school and Parent to transition Student to the private school as soon as possible.
6. The School shall directly pay Student's tuition at the private school for the remainder of the 2014-15 school year upon presentation of invoices.
7. It is **FURTHER ORDERED** that the private school shall be considered and shall remain Student's pendent placement after the conclusion of the 2014-15 school year until such time as:
 - a. Student's IEP team, including Parents and members from both the private school and the School, develop an appropriate IEP for Student that can be implemented in an appropriate School regular or special education placement with appropriate supports and services, and Parent approves a NOREP for such placement, or
 - b. The Parent otherwise agrees to return Student to a School recommended educational placement, or
 - c. The Parent enrolls Student in another LEA or private school, or
 - d. The Parent and/or the private school staff determine that the private school is not appropriately meeting Student's educational needs.

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

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: December 24, 2014

