

*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

EXPEDITED DUE PROCESS HEARING

Name of Child: T.J.

ODR #16207/14-15 AS

Date of Birth:  
[redacted]

Date of Hearing:  
May 13, 2015

CLOSED HEARING

Parties to the Hearing:  
Parent[s]

Representative:  
Catherine Reisman, Esquire  
Reisman Carolla Gran  
19 Chestnut Street  
Haddonfield, NJ 08033

Education Plus Academy Cyber Charter School  
487 Devon Park Drive Suite 206  
Wayne, PA 19087

Jeffrey Stacey, Esquire  
O'Donnell and Associates  
1601 Market Street Suite 2310  
Philadelphia, PA 19103

Date Transcript Received:

May 15, 2015

Decision Due Date:

May 29, 2015

Date of Decision:

May 20, 2015

Hearing Officer:

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is an elementary school aged child who is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] under the classification of Specific Learning Disability and Speech/Language Impairment. Student's LEA is the Education Plus Academy Cyber Charter School [hereinafter School]. Student currently attends an Approved Private School [APS], a placement selected by the Parent and which the School is funding pursuant to a negotiated settlement agreement.

The current matter concerns an expedited due process request from the Parent who disagrees with the School's proposed Extended School Year program [hereinafter ESY program] delivered at the APS, and instead requests that the School reimburse her the tuition she paid for the summer program offered by the private school in which she proposes placing Student [hereinafter Proposed Private School] for the 2015-2016 school year.<sup>2</sup>

I find for the School on the issues presented.

## Issues

1. Is the ESY program the School offered to Student for summer 2015 appropriate?
2. If the ESY program offered by the School is not appropriate, is the summer program selected by the Parent appropriate, and if so should the School be required to reimburse Parent for the tuition for the summer program offered by the Proposed Private School for summer 2015?

## STIPULATIONS OF FACT<sup>3</sup>

1. Student<sup>4</sup>, date of birth [redacted], is enrolled in Education Plus Academy Cyber Charter School ("Charter School") and placed by the Charter School at [Private School]. Student is a "child with a disability" within the meaning of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1402(3)(A),

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<sup>1</sup> This decision is written without further reference to the Child's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

<sup>2</sup> The ESY issue addressed in this decision was one part of the Parent's complaint which was bifurcated to accommodate the need to hold an expedited hearing and complete a decision within 30 days of the filing of the complaint. The remaining issue[s] in the complaint will be addressed at a hearing scheduled for a later date under a different case number.

<sup>3</sup> Counsel are commended for their work in producing these Stipulations and for their creation of a set of Joint Exhibits.

<sup>4</sup> The Stipulations are verbatim as offered by counsel, however consistent with Footnote 1, the Student's and the Parent's personally identifiable information has been redacted from the Stipulations. Also to protect their privacy, only the initials of other persons referenced in the Stipulations are used. Before this decision is posted on ODR's website further redactions will be made with reference to the name of the APS and the name of the Proposed Private School.

- 34 C.F.R. § 300.8, and 22 Pa. Code § 711.3(b)(1), and a “qualified individual with a disability” within the meaning of § 504 of the Rehabilitation Act (“Section 504” or “Rehabilitation Act”), 29 U.S.C. § 705(20) and the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq. (“ADA”).
2. The Charter School is a local educational agency (“LEA”) within the meaning of 20 U.S.C. § 1401(15), 34 CFR § 300.28 and a federal funds recipient within the meaning of IDEA, 20 U.S.C. § 1401 and Section 504, 29 U.S.C. § 794(b)(2)(B). The Charter School is a “public entity” as defined in the ADA, 42 U.S.C. § 12131(1).
  3. Student enrolled in the Charter School and began receiving services from the Charter School on October 13, 2012.
  4. Student is currently eligible for special education as a student currently identified as having a primary disability of Specific Learning Disability (in reading, mathematics, and written expression) (“SLD”) and a secondary disability of speech or language impairment (due to Language Disorder) (“SLI”). Exhibit J-14 at 23.
  5. In 2013, Parent filed a request for due process asserting that Charter School had violated its Child Find duty, offered an inappropriate Individualized Education Program (“IEP”) offered in March 2013, and inappropriate ESY programming for 2013 Extended School Year (“ESY”) services. The matter was heard by Hearing Officer Brian Ford and is referenced at *T.J. v. Education Plus Academy Cyber Charter School*, ODR No. 13941-1213KE (Ford 2013).
  6. Hearing Officer Ford found the March 2013 IEP offered by Charter School was an offer of FAPE. Hearing Officer Ford also found that Charter School violated its Child Find obligation and Parent was entitled to reimbursement for expenditures made related to placing Student at an ESY program at [Second Private] School.
  7. Parent appealed the Hearing Officer’s final order finding that the IEP was an offer of FAPE.
  8. In order to avoid further litigation, the Parties settled the matter via Settlement Agreement. Exhibit J-1.
  9. The Settlement Agreement provided for educational placement at [Private School] for both the 2013-14 and 2014-15 school years as well as ESY services in Summer 2014. Exhibit J-1 at 4.
  10. The Settlement Agreement also provides the following regarding 2015 ESY services:

The Parties agree and acknowledge that the Student's pendent placement for ESY for the Summer of 2015 will be the program that [Student] attends in the Summer of 2014. The Charter School Entities acknowledge that it must issue a NOREP for ESY 2015 in accordance with the deadlines outlined in the *Armstrong v. Kline* consent decree. If the Charter School does not issue a NOREP prior to March 31, 2015 for ESY 2015, the Charter School waives its right to recommend a change in placement and Student will be entitled to funding of, and transportation to, the pendent ESY placement. Exhibit J-1 at 5.

11. By NOREP dated March 28, 2014 (Exhibit J-5), the Charter School placed Student at [Private School] for Extended School Year ("ESY") 2014, as well as the 2014-2015 school year.
12. Parent signed the NOREP for the 2014-2015 program on March 30, 2014. Exhibit J-5.
13. Student currently participates in a fourth grade special education classroom at [Private School].
14. Student's report cards are in the record and marked as follows:

J-7	ESY 2014 Progress Report
J- 9	November 2014 Report Card
J-10	January 2015 Report Card
J-19	April 2015 Report Card

15. On March 2, 2015, the Charter School issued a Reevaluation Report ("2015 RR"), marked as Exhibit J-14.
16. J. B., Ed.S., NCSP, [Private School]'s school psychologist, completed the 2015 RR, which is identified as a "Review of Educational Records". J-14 at 1.
17. The 2015 RR included the following information from a neuropsychological evaluation completed by Dr. E. P. in January, 2015:
  - a. Student "reportedly loves attending school and no longer exhibits the same level of anxiety that was evident in [Student's] previous school program. [Student's] behavior at [Private School] has been excellent, and Student is often recognized for [Student's] academic and behavioral achievements." J-14 at 5.
  - b. Student "presented as notably less anxious than [Student] did during [Student's] previous assessment and had no difficulty completing all tasks required of [Student] without protest. Many of the atypical behaviors that were evident during the previous assessment were no longer observed,

including echolalia, self-talk, excessive restlessness, and atypical mouth movements.” *Id.*

- c. Student’s improved performance on the DAS-II was “likely due to [Student’s] more stable emotional state and the positive impact on [Student’s] ability to focus, regulate [Student’s] behavior, and engage in the testing process.” *Id.*
- d. The following diagnoses best capture Student’s current cognitive and behavioral presentation: Language Disorder (DSM-5: 315.39); Severe Specific Learning Disorder with Impairment in Reading, Mathematics, and Written Expression (DSM-5: 315.00; 315.1; 315.2); Anxiety Disorder (DSM-5: 300.00). *Id.* at 6
- e. “One major concern of Student’s current school is that since it is a full time emotional support program, the behavioral presentation of many of the students in the program is more disruptive than what Student exhibits. Moreover, the students in [Student’s] current classroom, while a nice social fit for [Student], are working at a higher academic and cognitive level. Therefore, much of [Student’s] instruction must be delivered in an individualized manner. It will be important that Student participate in an academic program that will be able to appropriately address all areas of need.” *Id.*
- f. “It is recommended that [Student] complete this year at [Private School] to prevent an escalation of anxiety that may occur due to transitioning mid-year. However, for the next academic year, a full-time emotional support classroom will no longer be the most appropriate setting.” *Id.*

18. In addition to a primary diagnosis of SLD and a secondary diagnosis of SLI, the 2015 R.R. noted:

“Additionally, [Student] has a longstanding history of Anxiety to a marked degree that had adversely affected [Student’s] educational performance. [Student’s] anxiety has affected [Student’s] ability to learn, ability to build or maintain interpersonal relationships, and [Student] has exhibited physical symptoms or fears associated with personal or school problems.” J-14 at 23.

19. On March 3, 2015, the Charter School offered continued placement at [Private School] and detailed the program in an IEP. Exhibit J-15 (IEP); Exhibit J-34 (NOREP).
20. An e-mail from Parent’s counsel dated March 30, 2015 erroneously indicates that Parent signed the 2015 NOREP. Exhibit J-17. In fact, the last NOREP Parent signed was in March, 2014.

21. On April 13, 2015, Parent notified Charter School of her intent to place Student unilaterally at [Third Private School] and seek reimbursement. Exhibit J-20.
22. The Charter School issued a Permission to Re-evaluate (“PTRE”) on April 16, 2015. Also on April 16, counsel for the Parent responded that she would sign the PTRE and inquired as to whether Charter School would offer an amended program and placement prior to expiration of the ten day notice period. Exhibit J-21.
23. Parent signed and returned Permission to Re-evaluate and returned it on April 17, 2015. Exhibit J-35.
24. The IEP offered by the Charter School provides for extended school year services at [Private School] from June 29, 2015 through August 7, 2015. The ESY program operates five days a week from 8:30 a.m. to 2:00 p.m.
25. [Third Private School] provides extended school year services from June 29, 2015 through July 31, 2015. The ESY program operates five days a week from 8:00 a.m. to 3:00 p.m.
26. The parties stipulate that Dr. E. P. is an expert in neuropsychology and school psychology. Her curriculum vitae is Exhibit J-27.
27. The parties stipulate that A. A. is an expert in school psychology. Her curriculum vitae is Exhibit J-32.
28. The parties stipulate that J. B. is an expert in school psychology. Her curriculum vitae is Exhibit J-33.

#### Findings of Fact<sup>5</sup>

1. [Private School] provides services to students who are in need of a full-time, out-of-district emotional support program because they have not been successful within their public school system emotional support settings. [NT 14]
2. The Parent agrees that Student has made academic, social and emotional progress while at [Private School], the school she selected. [NT 140]

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<sup>5</sup> The reader should note that each exhibit, and the testimony of each witness whether cited or not, as well as the parties’ written closing briefs, were carefully considered in preparing this Decision. Although counsel and the hearing officer made considerable efforts to avoid evidence that more properly belongs in the next hearing session relative to placement in [Third Private School - Parent’s desired private school] for the 2015-2016 school year, a review of the transcript reveals that sections of testimony were not directly relevant to the narrow ESY issue. It is the preference of this hearing officer that the entire transcript from the May 13<sup>th</sup> hearing be incorporated into the record in the upcoming hearing.

3. Although Student has made considerable social and academic progress since beginning at [Private School] Student continues to have the need for special education supports in those areas. [NT 14-15, 40-41]
4. The School proposed an IEP dated 3-3-2015 wherein it outlined an ESY program for Student to be delivered at [Private School] where Student is attending during the current [2014-2015] school year. [NT 15-16; J-15]
5. In a privately funded re-evaluation completed in December 2014/January 2015 a private psychologist noted that the Parent “has been pleased with [Student’s] response to the program at [Private School]. [Student] reportedly loves attending school and no longer exhibits the same level of anxiety that was evident in the previous school program”. [J-11]
6. [Private School]’s psychologist noted that at [Private School] Student’s anxiety is diminished in the classroom such that Student can participate in class, and raise Student’s hand and read, which Student was not able to do before. Student is able to walk down the hallway without anxiety about the other students looking at Student. However in larger settings, in new situations and with unfamiliar staff anxiety continues to be exhibited. [NT 34-35, 74]
7. Student’s [Private School] classroom teacher’s observations about Student’s academic and social progress, and well as some continuing anxiety, comport with the [Private School] psychologist’s observations. She provided the additional information that Student becomes anxious about completing classroom work. [NT 42-43]
8. The Parent notes a reduction in anxiety in the home and community settings. [NT123-124]
9. The private psychologist noted that Student’s scores on cognitive testing were somewhat more favorable than scores on the last evaluation she had administered in May 2013 prior to Student’s attending [Private School]. She opined that the improvement was most likely due to an improved emotional state and a consequent positive impact on ability to focus and to regulate behavior when engaging in the testing process. [NT 34; J-11]
10. The private psychologist opined that Student needed to continue to be educated in a small academic setting [and] provided with intensive academic intervention in a supportive setting. [J-11]
11. The private psychologist acknowledged that the [Private School] classroom she observed in January 2015 meets her criteria for her recommendation for a small classroom offering a supportive setting. [NT 78-79; J-11]
12. [Private School]’s ESY program will provide a small academic setting with academic intervention in a supportive setting using the supports provided under the current IEP during the current academic year. [NT 21-22, 41]

13. The ESY portion of the March 3, 2015 IEP proposes to continue the academic goals addressed during the current school year: increasing reading fluency, increasing reading comprehension, writing complete sentences, increasing math computation fluency, increasing math applications fluency. [J-15]
14. The ESY portion of the March 3, 2015 IEP proposes to continue the behavioral/social goals addressed during the current school year: completing academic assignments, following along during the lesson, staying on-task, transitioning to activities, following all school rules, interacting positively with staff and peers and initiating positive social interactions with staff and peers. [J-15]
15. The ESY portion of the March 3, 2015 IEP proposes to continue the written communication goals addressed during the current school year: improving vocabulary and comprehension skills to communicate complete, specific and meaningful thoughts and improving sentence structure. [J-15]
16. The ESY portion of the March 3, 2015 IEP proposes to continue the speech/language/verbal communication goals addressed during the current school year: improving social pragmatic language and improving speech intelligibility. [J-15]
17. The ESY portion of the March 3, 2015 IEP proposes to continue the visual/motor integration goals addressed during the current school year: improving visual scanning and copying. [J-15]
18. The ESY portion of the March 3, 2015 IEP provides for related services in the form of 30 minutes weekly occupational therapy and 15 minutes bi-weekly occupational therapist correspondence with the Parent, a Positive Behavior Support Plan and Transportation. [J-15]
19. The ESY program offered by the School for implementation at [Private School] provides for services for six weeks, five days a week, 5.5 hours per day, a total of 165 hours.<sup>6</sup> [Stipulation #24]
20. In the [Private School] ESY program students are in small classes with more than one adult in the room. The classroom to which Student would be assigned has a cohort of similar chronological age peers. [NT 39, 44]
21. [Third Private School] is a school for children with learning differences with assessed cognitive abilities ranging from the higher end of Low [IQ 60 or 65] to Average [IQ 90-109]. [NT 103-105; J-11 page 3]
22. The summer program at [Third Private School] provides for services for 5 weeks, five days a week, 7 hours a day, a total of 175 hours.<sup>7</sup> [Stipulation #25]

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<sup>6</sup> Provided that the 4<sup>th</sup> of July holiday, which falls on the weekend, is not celebrated on July 3 or 6<sup>th</sup>.

<sup>7</sup> See above.



23. [Third Private School] does not implement the IEPs of students sent by LEAs, but it does follow the Specially Designed Instruction [SDI] portion of the IEPs. [NT 101]
24. If a student requires the related service of Occupational Therapy, that service is delivered at a cost to the parents of \$60 per hour by a private entity leasing space from [Third Private School].<sup>8</sup> [NT 101]
25. In addition to academic instruction the [Third Private School] ESY program provides social skills and team-building activities. [NT 17, 39]
26. In addition to morning academic instruction the [Third Private School] summer program provides afternoon workshops and swimming. Afternoon workshops include areas of interest such as robotics, kinetics, science and drama. [NT 96-97]
27. Both programs have field trips on Fridays, such that students are not receiving “academic” instruction for a total of 33 hours at [Private School] and a total of 35 hours at [Third Private School], leaving a total of 132 non-field trip hours at [Private School] and 140 non-field trip hours at [Third Private School].<sup>9</sup> [NT 17, 96]
28. As per the Settlement Agreement Student attended ESY at [Private School] in Summer 2014. [J-1]
29. As per the Settlement Agreement the pendent Summer 2015 ESY program is the program Student attended in Summer 2014. [J-1]
30. On March 30, 2015 Parent’s counsel spoke with and emailed the School’s counsel about the Parent’s desire to have Student attend Third Private School. The email does not specify whether the request included ESY for Summer 2015. [J-17]
31. On April 8, 2015 counsel for the School notified counsel for the Parent that the School would not support Student’s placement at [Third Private School]. [NT 118; J-20]
32. On April 13, 2015 Parent’s counsel notified the School’s counsel that the Parent disagreed with continued placement at [Private School] and intended to enroll Student at [Third Private School] for Summer 2015 ESY and the 2015-2016 school year. [NT 118; J-20]

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<sup>8</sup> [Third Private School] has a speech/language therapist on staff. The witness from [Third Private School] did not directly answer whether speech/language therapy is an included service or provided at an additional cost similar to occupational therapy. [NT 101-102]

<sup>9</sup> Past experience with ESY hearings leads to a finding that both programs offer lunch and likely breakfast, with these periods offering socialization time but not direct instructional time.

33. On April 29, 2015 the Parent enrolled Student in [Third Private School]'s summer program.<sup>10</sup> [J-23]
34. Tuition for [Third Private School]'s summer program is \$2100 for a half day and \$2700 for the full day. The Parent elected the full day program and paid the entire ESY tuition on or around the time she signed the summer program enrollment contract.<sup>11</sup> [NT 109]
35. Student has been accepted into the [Third Private School] summer program. [NT 108-109]
36. Attendance in the 2015 summer program is not a prerequisite for acceptance/attendance during the 2015-2016 academic year. [NT 109-110]
37. The psychologist for the School is working on a re-evaluation of Student pursuant to a Permission to Reevaluate the Parent signed on April 17, 2015. She has observed at [Private School] and has tested Student. [NT 148-149, 156]

#### Discussion and Conclusions of Law

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3<sup>rd</sup> Cir. 2012). In this case the Parent asked for the hearing and thus bore the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). Each of the witnesses appeared to be testifying truthfully to the best of

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<sup>10</sup>The Parent checked the box marked "no" to the question whether the child has an IEP. Her reasons are not part of the record. [J-23]

<sup>11</sup> Parent also signed an enrollment contract and made a deposit for the coming school year. That contract provides that 90% of the payment will be refunded if a child's application is withdrawn by June 1<sup>st</sup>. The Director for Enrollment Management from [Third Private School] did not know if this is also true of the payment for the summer program. [NT 109]

their recollections albeit from their own points of view. There were no issues of fact where their testimony differed such that the hearing officer had to determine one witness's credibility over another's.

ESY: Acknowledging that some students may require programming beyond the regular school year, the federal legislature deemed that Extended School Year services are to be provided to an eligible child if necessary to assure that the child receives a free, appropriate public education (FAPE). 34 C.F.R. §300.106(a)(2). There is no dispute that the Student who is the subject of this hearing is eligible for ESY. Because ESY services are meant to keep students' skills up during the period between the close of school in June and beginning of school in August or September the goals of an ESY program are necessarily based upon the goals of the IEP for the academic year just ending as the service is meant to *extend* the previous school year forward.

In determining whether an LEA has offered an appropriate program, the proper standard is whether the proposed program is reasonably calculated to confer meaningful educational benefit. *Rowley*. "Meaningful benefit" means that an eligible student's program affords him or her the opportunity for "significant learning." *Ridgewood Board of Education v. N.E.*, 172 F.3d 238 (3<sup>RD</sup> Cir. 1999). The standard for judging the appropriateness of an ESY program is the same as the standard for judging whether an LEA is offering FAPE during the school year.

Standards for a Free Appropriate Public Education: Under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and in accordance with 22 Pa. Code §711.1 *et seq.* and 34 C.F.R. §300.300, *et seq.* a child with a disability is entitled to receive a free appropriate public education (FAPE) from the responsible local educational agency (LEA). A FAPE is "an educational instruction specially designed . . . to meet the unique needs of a child with a disability, coupled with any additional 'related services' that are 'required to assist a child with a disability to benefit from [that instruction].'" *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982); *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 127 S. Ct. 1994, 167 L. Ed. 2d 904 (2007) (citing 20 U.S.C. § 1401(29)); see also 20 U.S.C. §§ 1401(9), (26)(A). Under the interpretation of the IDEA statute established by *Rowley* and other relevant cases, an LEA is not required to provide an eligible student with services designed to provide the best possible education to maximize educational benefits or to maximize the child's potential. *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d at 251; *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3<sup>rd</sup> Cir. 1995). What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989); *I.H. v. Cumberland Valley Sch. Dist.*, 2012 U.S. Dist. LEXIS 101056 (M.D. Pa. 2012).

The very narrow issue before this hearing officer requires a tuition reimbursement analysis, that is an inquiry into three elements: whether or not the School offered Student

an appropriate ESY program for Summer 2015; and if not, is the ESY program selected by the Parent appropriate; and if so, are there equitable considerations that would reduce or eliminate the School's obligation to reimburse the Parent the tuition she paid. See *Florence City Sch. Dist. v. Carter*, 510 U.S. 7, 12-16 (1993). This analysis controls whether the tuition sought to be reimbursed is for the academic year or Extended School Year services. See, e.g., *T.J. v. Education Plus Academy Cyber Charter School*, ODR No. 13941-1213KE, at 13 (Ford 2013). The burden of proof regarding the first two elements is on the Parent. *Andrew M. v. Del. County Office of Mental Health and Mental Retardation*, 490 F.3d 337, 345 (3d Cir. 2007). If the Parent fails to establish by a preponderance of the evidence that the program offered by the School is not appropriate then there is no need to consider the remaining elements.

Whether the program the School offered is appropriate must be determined in light of the statutes and the case law cited above. The School offered Student a summer program that is a seamless extension of the academic year 2014-2015, a year in which all parties agree Student made academic and social progress. The goals proposed to be addressed during the summer are the goals addressed during the academic year. The supportive services of occupational therapy and a positive behavior support plan offered over the summer were supportive services provided during the academic year. Addressing the goals and providing the supportive services of the academic year over the subsequent summer will forestall regression of learned skills and enable Student to maintain hard-earned gains of the previous ten months. The Summer 2015 ESY program proposed by the School for implementation at [Private School] is appropriate under standards set forth in the IDEA and relevant case law. As the School has offered an appropriate ESY program, the elements of the appropriateness of [Third Private School] and equitable considerations will not be examined here.

### Conclusion

Since the School has offered Student an appropriate ESY program for Summer 2015 the Parent is not entitled to reimbursement of the tuition she paid to [Third Private School] for the summer program in which she enrolled Student.

## Order

It is hereby ordered that:

1. The ESY program the School offered Student for Summer 2015 is appropriate.
2. The Parent is not entitled to tuition reimbursement for the summer program at [Third Private School].

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

May 20, 2015

Date

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official