

*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

DUE PROCESS HEARING

Name of Child: P.D.

ODR #17487 / 14-15-AS

Date of Birth:  
[redacted]

Date of Hearing:  
May 2, 2016

CLOSED HEARING

Parties to the Hearing:  
Parent[s]

Representative:  
Pro Se

Mastery Charter High School Thomas  
927 Johnston Street  
Philadelphia, PA 19148

Lucas Repka, Esquire  
O'Donnell Associates  
108 East Center Street  
Nazareth, Pa 18064

Date Record Closed:

May 7, 2016

Date of Decision:

May 10, 2016

Hearing Officer:

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

## Background

Student<sup>1</sup> is an 11<sup>th</sup> grade student attending a charter school (School). Student is eligible for special education pursuant to the Individuals with Disabilities Education Act [IDEA] and 22 Pa Code § 711.3(b)(26) under the primary classification of Intellectual Disability, and secondary classifications of Autism and Speech/Language Impairment. As such, Student is also an individual with a disability as defined under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The School requested this hearing because it believes that in order to receive a free appropriate public education [FAPE] Student requires a change in educational placement to an Approved Private School (APS). The Parents<sup>2</sup> oppose this change in placement.

The hearing was scheduled in accord with the 45-day timeline for an LEA-requested hearing. The parties jointly requested and were granted an extension of the decision due date to allow time for them to meet to try to resolve the dispute. As the parties ultimately could not come to an agreement, the hearing was held and completed in one session.

Based upon the preponderance of the evidence before me I find for the School.

## Issues<sup>3</sup>

1. In order to receive FAPE does Student require a change of placement from the School to an Approved Private School that offers full time autistic support services?
2. May the School proceed with the Approved Private School application process over the objection of the Parents?

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<sup>1</sup> Other than on the cover page, this decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

<sup>2</sup> Although Student's mother participated in the hearing including prehearing matters, it is understood that she also spoke for Student's father who was present throughout the hearing session.

<sup>3</sup> At the outset of his opening statement counsel for the School moved that since the Parents had not filed an Answer to the School's complaint, the averments and allegations contained in that complaint should be deemed admitted based on that reason. The Motion was denied. [NT 15]

In her opening statement the Parent sought to introduce two new issues, first her belief that Student has not made meaningful academic progress at the School and is entitled to compensatory education, and second that Student has been subjected to a hostile environment in the School. Given that these were not issues in the LEA's complaint the hearing officer advised the Parent that if she wanted these issues heard she had to file a separate complaint that would then form the basis of another due process hearing. [NT 25-27]

## Findings of Fact<sup>4</sup>

### The Student

1. Student is eligible for special education under the primary classification of intellectual disability, with secondary classifications of autism and speech/language impairment. [NT 33; M-6]<sup>5</sup>
2. Student spoke ‘very few words’ at age two years, was not toilet trained until age 3 ½ years and as a preschooler received speech therapy and occupational therapy through Child Link. Student attended a half day Early Intervention program prior to Kindergarten. [M-9]
3. Student’s Full Scale IQ is 51 at the 0.1 percentile, in the Extremely Low Range as assessed on November 8, 2015 through the Wechsler Intelligence Scales for Children Fifth Edition (WISC-V). <sup>6</sup> [M-6]
4. Student’s academic achievement was assessed on November 8, 2015 through the Woodcock-Johnson III Test of Achievement (WJ-III ACH). Student’s Broad Reading standard score was 47 in the Extremely Low Range. Broad Math skills standard score was 29 in the Extremely Low Range. Broad Written Language skills standard score was 47 in the Extremely Low Range. <sup>7</sup> [M-6]
5. Results of the Fountas and Pinnell Reading Assessment expressed in Independent Reading Level grade equivalents were as follows: November 2014 – 1.83, January 2015 – 1.83, March 2015 – 1.83, June 2015 – 1.83 and November 2015 – 1.67. [M-6]
6. Results of the STAR Math Skills Assessment expressed in grade equivalents were as follows: November 2014 – 2.8, January 2015 – 3.0, April 2015 – 2.8, June 2015 – 2.7, and November 2015 – 2.5. [M-6]
7. Student frequently moved to different schools as reported by the Parent during a March 1, 2016 Comprehensive Biopsychosocial Evaluation (CBE): Kindergarten through First - PES; Second - CES to SG; Third - back to CES, then to MES (Student ‘upsetting self’ because of teacher); Fourth - PES; Fifth and Sixth - KCS (problems because ‘only one teacher could work with Student one-to-one’).<sup>8</sup> [M-9]

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<sup>4</sup> The testimony of every witness, and the content of each exhibit, was considered in issuing this decision, regardless of whether there is a citation to particular testimony of a witness or to an exhibit.

<sup>5</sup> NT is Notes of Testimony, M denotes School exhibits and P denotes Parent exhibits.

<sup>6</sup> The WISC-V IQ is reported on the bell-shaped curve, with 100 being exactly average. The standard deviation is 15 points. [M-6]

<sup>7</sup>WJ-III ACH Standard scores are also reported on the bell shaped curve with the same standard deviation. [M-6]

<sup>8</sup> Only the initials of the schools are provided to protect Student’s identity.

8. Student has been at the School since 7<sup>th</sup> grade and has been a hard-working student. Up until this year, the 2015-2016 school year, the School has successfully programmed for Student in a supplemental learning support environment. Student attended Extended School Year [ESY] in summer 2015 and did well, having daily attendance, no behavioral concerns, and making progress on academic goals. [NT 32-34, 221, 298]
9. Student loves the School because of the culture trips, winning awards and honors, student council and hanging out with friends. [NT 299-300, 313]
10. The November 12, 2014 Individualized Education Program [IEP] is the IEP which governed most of the 2014-2015 school year and under which Student began the 2015-2016 school year. The IEP provides for supplemental learning support services, speech/language support, occupational therapy support, and counseling in a social skills group. This IEP does not have a Positive Behavior Support Plan (PBSP) attached because when the IEP was created in fall 2014, and throughout the course of the 2014-2015 school year, Student did not display significant behavioral concerns that could not easily be addressed within the classroom with redirection. [NT 35-36; M-1]
11. Although the School does not have an emotional support program, the School offers Student counseling through a community agency, Resources for Human Development [RHD]. [NT 34]
12. A Functional Behavior Assessment (FBA) was conducted and a report issued on November 18, 2015. Targeted behaviors of concern were disruption in the classroom; noncompliance, especially with staff redirection; yelling at adults and peers; and throwing objects. These were new behaviors that had started in the current school year. [NT 42-43; M-4, M-5]
13. The FBA results indicated that there were significant behavioral concerns across the majority of Student's classes and that a PBSP needed to be added to the IEP. [NT 44, 118; M-5]
14. Following the completion of the re-evaluation in November 2015, a new annual IEP was created on November 19, 2015. As did the previous IEP, this IEP provides for supplemental learning support services, speech/language support, occupational therapy support, and counseling in a social skills group. One-to-one counseling was added as was a PBSP to be implemented across settings given that Student was exhibiting behaviors that interfered with Student's learning and that of others. [NT 45-49; M-6]
15. Upon the implementation of the PBSP Student's behaviors improved for a short period of time. [NT 52-53]

16. Shortly after a January serious behavioral incident leading to the first of two crisis evaluations the School-based therapist recommended and the Parent agreed to a psychiatric evaluation/CBE through RHD. The evaluation was completed on March 1, 2016. [M-9]
17. The March 1, 2016 CBE report notes among others a DSM-5<sup>9</sup> provisional diagnosis of Anxiety Disorder, Unspecified.<sup>10</sup> [M-9]
18. The March 1, 2016 CBE report noted that Student was receiving outpatient therapy at a local mental health agency, but that there was a plan to switch to another agency for this service. [M-9]
19. The March 1, 2016 CBE report noted that Student was to be started on Lexapro starting at 5 mg *qam* to address anxiety. The intensity of the behaviors decreased, but spiked back up again about a month later. [NT 79-80, 145, 188-189; M-9]

#### Problem Behaviors at the School

20. In 10<sup>th</sup> grade Student had problems with two teachers, and was not listening and not following directions. According to Student, sometimes Student listens and follows directions and sometimes Student does not listen and does not follow directions. Sometimes Student understands the directions and sometimes not, ‘it all depends’. [NT 300-303; M-9]
21. Mother reported at the time of the March 2016 CBE that during homework time in 10<sup>th</sup> grade Student wanted her to give Student the answers and when she would not Student confronted her ‘as if [Student] wanted to fight’ her, then got to the point where Student ‘pushed [mother] out of frustration’. Mother reported to the CBE evaluator that this behavior occurred every day, and attributed Student’s behavior around homework to a teacher ‘who has been a problem since 7<sup>th</sup> grade’. [M-9]
22. Student has difficulty with change. At the beginning of this year the [local] School District (SD), which funds and oversees cab transportation for students, changed Student’s cab company such that Student had a different driver and a different-looking cab from those to which Student had become accustomed for the past four years. [NT 37-38]
23. There were also problems with pick up times at home and after school. Student was coming late to school and had to leave before afternoon activities were completed. With regard to morning, the School contacted the cab company and

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<sup>9</sup> Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association.

<sup>10</sup> The CBE evaluator indicated ‘No’ to Intellectual Disability on the Review of Psychiatric Systems. It is suspected that she did not review Student’s evaluations or IEPs from the school. Also it seems that the Parent may not have reported the ID classification to the CBE evaluator but did report Autism Spectrum Disorder. [M-9]

- received a report that Student was not ready in the morning when the cab arrived. The Parent had also reported to the School through emails that on occasion Student was having difficulty getting into the cab. Student testified that at times the cab was late. With regard to the afternoon, because the School began its academic year on August 26<sup>th</sup>, several weeks earlier than the local SD, it had to wait until September 9<sup>th</sup> when the local SD opened to make changes to the after school pick up time. [NT 38, 110-111, 304-307; M-15]
24. Student has been taking three segments of public transportation to get to school in the morning rather than the cab but a cab comes for Student after school. Student is late in the morning either because the bus is late or Student is late getting to the bus. [NT 306-307]
25. Student was having significant difficulty with a particular teacher. At the Parent's request on October 19, 2015 the RHD counselor led a mediation session with this teacher and Student. [NT 39-40; M-15]
26. In 11<sup>th</sup> grade (current 2015-2016 school year) Student has presented with significant behavioral concerns. [NT 32]
27. In addition to numerous occasions of cutting class or of entering classrooms at times when Student was not assigned, other behaviors of concern during the current school year are as follows:
- 10/6/15 Threw [an object] and hit another student.
  - 10/19/15 Threw [an object] at another student.
  - 11/4/15 Threw [an object], slammed door in another student's face, refuses restorative conversation with teacher.
  - 11/10/15 Threw test in teacher's face and walked out of class.
  - 11/12/15 Very upset because peers did not pick student's choice of food to cook the next day; yelled in hallway; when back in room refused to do any work.
  - 11/19/15 Refused merit card, grabbed book out of teacher's hands, threw papers and pencil at teacher's desk, slams door while exiting.
  - 12/3/15 Grabbed materials, shoved book at teacher, slammed door.
  - 12/4/15 In peer's space and did not step back when asked, instead shoved the peer [redacted]. Upset rest of the class, became extremely angry when there were no second helpings; shoved another student [redacted].
  - 12/8/15 Ignored teachers and walked away when given the choice of taking a quiz during class or separately during office hours.
  - 12/15/15 Insisted on knowing quiz grade [teacher knew student will become upset and tried to defer telling Student] so went to the desk, saw the grade anyway and became upset. In cooking class called teacher [a name]. Got out of seat and erased another teacher's class board and everything that teacher had written on the board for the lesson. Threw [an object] at teacher's desk; fellow students became very frustrated and upset because student's behavior was cutting into their learning time. [Redacted] and teacher had to stop the lesson. Came over to fellow student, [and threw an

- object]. Refused to leave one class to go to another class, and when ready to leave jumped up, called teacher [a name] and slammed door. Student's actions in class are causing issues with other pupils and teacher fears students may become physical with one another because of the built-up frustration.
- 12/16/15 Threw [objects] and walked out of room. Was in a room where Student didn't belong. Came up to teacher's desk and started touching things, then started knocking some items off the desk. Picked up [an object], tossed it back and forth in hands coming closer and closer to teacher; when Dean was called threw [objects] on way out.
- 12/16/15 Threw [an object] at another person.
- 12/17/15 Erased geography boards and looked through papers on teacher's desk then left
- 12/17/15 Approached teacher's desk, threw [objects] across teacher's desk.
- 1/12/16 Threw [an object] at teacher and made rude comments to teacher.
- 1/14/16 [Disrupted other] students [who] were attempting to take notes and [was disruptive to the class]. Refused to leave the classroom when requested by Dean and pushed another student and threw [an object].
- 1/19/16 Refused to come into office during sixth period and instead barged into a staff meeting and refused to leave. Staff had to move the meeting to another office. Slammed Assistant Principal of Specialized Services's arm in the door. Not responsive to asking why Student is in the room. [Upset other students and was disruptive.
- 2/1/16 Throws away [an object] at lunch.
- 2/4/16 Disrespectful to substitute teacher, grabbed materials without permission, objected to how substitute teacher was running the class, spoke aggressively.
- 2/11/16 Threw [an object] at another student. Escalated and staff had to stay with Student; [disrupted the] class [and] teacher unable to continue teaching.
- 2/11/16 Comes to unassigned room, yelled at staff, refused to leave room when asked to step out to de-escalate.
- 2/16/16 Refuses to be introduced to TSS worker. Rips up schedule and walks out of the door slamming it.
- 2/17/16 Forces way into a room where a group of [students were gathered], refused to leave when asked and eventually exited on own.
- 2/17/16. No books, refused to take any seat, stood close to others, left and slammed door [redacted].
- 2/18/16 Frustrated when late, grabbed classmates' materials, threw [an object]. Comes to unassigned room, would not respond when asked to leave and was yelling. Enters meeting in another room, refused to leave when asked, [disrupted the class and] lesson.
- 2//22/16 Arrived late, refused to sit in any seat, left room then returned. Upon return [played with and threw equipment and objects despite teacher redirection]. Student exited and bypassed Student's mother as she attempted to have a conversation with Student. Picked up [an object] and threw it [requiring restraint] to prevent further aggression. While in the hold made verbal

threats, attempted to grab [an object]. Mother assisted with attempting to de-escalate the situation with verbal prompts and eventually Student walked with mother to the conference room. Mobile crisis team arrived, completed initial assessment provided mother with documentation needed for a voluntary hospital admission.

- 2/29/16 Shook head when asked for late pass and began to open [an object]. A peer asked permission to step into the hall because he was nervous that Student was becoming frustrated. After discussion about level of demerit got very upset, [redacted].
- 3/1/16 Destroying a teacher's property and escorted to another room. In the other room behaviors briefly escalated, began using profanity and attempted to push past adult requiring multiple prompts.
- 3/4/16 Refused to leave classroom at the end of class, stayed touching things on teacher's desk, ripping up demerit card and throwing it in trash.
- 4/15/16 Pretended to fall asleep [redacted].
- 4/18/16 Asleep in class [redacted].
- 4/19/16 Came late, slammed the door [and was disruptive].
- 4/20/16 Reported demerit card was lost but expressed temptation to rip it up, later ripped it up anyway.

There are no entries past 4/20/16. There was a major incident on April 26, 2016 that is described below. [NT 48-55, 61-62, 89-90, 113, 116, 124-129, 137-138, 146, 157-158, 160-161; M-11, M-14, M-15]

#### IEP Revisions and PBSP Revisions

- 28. Following the completion of the evaluation components, a new annual IEP was created on November 19, 2015. As did the previous IEP, this IEP provides for supplemental learning support services, speech/language support, occupational therapy support, and counseling in a social skills group. One-to-one counseling was added as was a PBSP to be implemented across settings given that Student was exhibiting behaviors that interfered with Student's learning and that of others. [NT 45-49; M-6]
- 29. The IEP developed for student on November 19, 2015 provides for the following: modified or shortened tasks and/or assignments; prioritize seating; clear visual and verbal directions for academic tasks; clearly posted classroom rules and expectations; time limits and time warnings; one on one check ins with the instructor during independent work time; chunking academic tasks into smaller more manageable tasks; ensuring student has all necessary materials for completion of academic tasks; public praise for academic participation; providing clear notes and samples for academic tasks; instruction in a small group setting for math, reading, writing, and transition skills; instruction at Student's instructional level. [M-6 p, 62]
- 30. Positive reinforcement offered under the November 19, 2015 IEP were as follows: private praise with an explanation from general education teacher; private praise



- with an explanation from case manager; positive phone call home; positive note or letter home; leadership opportunity within the classroom; merits for on task behavior; merits for classwork completion; one-on-one time with teacher of Student's choice; public 'shout outs' to celebrate progress; participation in school culture activities. [M6 p. 62]
31. The IEP developed on November 19, 2015 included the following modifications and specially designed instruction: individual counseling weekly; visual structure and support using a daily schedule; planning for Student's shutting down episodes by selecting a private space where Student can recover privately; to reduce anxiety Student should be provided a special personal space in the classroom where Student may go; a review of Student's ability to adequately process sensory input; provision of frequent specific positive feedback and praise; explicitly teaching and coaching Student through self-monitoring, impulse control, and social skills; using close proximity. redirection and constant verbal praise; immediate positive reinforcement of desired level of attention; when Student exhibits an undesired behavior tell Student what to do to correct the inappropriate behavior; implementation of the positive behavior support plan; allowing Student access to the support teacher; clarification and simplification of directions in writing, visually, and verbally; checking for understanding with new instructions, expectations, and information /material. [M6 p. 64-66]
  32. The School and the Parent met at the end of December 2015 to discuss adding more positive rewards, and adding more support from the RHD counselor. [NT 55]
  33. On January 8, 2016 Student's IEP was modified with respect to the positive behavior support plan. In addition to the elements of the previous positive behavior support plan the following provisions were added: making Student aware of the natural consequences before becoming easily angered, annoyed, or upset; not forcing Student to interact or remain in the group if Student is likely to become angry, annoyed, or upset; maintaining a consistent daily schedule and consistent expectations; allowing flexibility in meeting academic demands when Student becomes angry, annoyed, or upset; teaching Student decision-making steps (think about how others may be influenced, think about consequences, carefully consider the unique situation, think of different courses of action which are possible, and think about what is ultimately best for self); teach Student to verbalize feelings before losing self-control; intervene early when Student becomes angry, annoyed, or upset; teach Student to think before acting; talk to Student about ways of handling situations successfully without conflict; speaking to Student to explain what Student is doing wrong; teaching Student strategies to deal with controlling temper in various environments. [NT 58-59; M-6 p, 129]
  34. Student's individual access to the RHD counselor was increased from 30 minutes a week to being able to seek her out throughout the course of the school day if she was available. [NT 59]

35. On February 25, 2016 Student's IEP was again modified with respect to the positive behavior support plan. In addition to the elements of the previous positive behavior support plans the following were added: recognizing that Student is triggered by frustration and embarrassment or sudden changes/ transitions without proper warning; recognize Student is embarrassed if arriving late to school / perseverating on being behind and not able to catch up; employing the strategies of acknowledging and greeting Student cordially and in a welcoming way; pausing briefly and providing information regarding how to join the lesson including providing any materials relevant to the lesson; providing opportunity for Student to utilize skills and strategies to cope such as taking a hall break; privately assuring Student that Student is able to see teacher for office hours or other mutually convenient times to catch up on missed lesson; needed direction should be done privately; provide consistent praise through compliments the merits for jobs well done on a project or assignment or other commendable behavior; assign Student a daily job or duty that is Student's responsibility such as helping out in some way [M-6 p. 198]
36. On February 25, 2016 the following elements were added to specially designed instruction and modifications: providing access to paraprofessional support throughout the school day to ensure Student's safety when Student leaves the classroom and also to support with the initiation of skills and strategies that have been taught by the therapist / counselor; teachers to provide frequent specific positive feedback and praise so Student can continue to develop confidence in academic skills and abilities and reinforce positive progress; immediate positive reinforcement of desired level of attention during the lesson and use of proper proximity in conversations; allowing Student access to the support teacher. [M-6 p. 201-203]
37. Following the implementation of the initial PBSP and subsequent versions Student's behaviors improved for a short period of time. There were days when the PBSP and other strategies worked and days when they did not work and it was difficult to discern all Student's triggers for inappropriate behavior. New interventions would sometimes work for a few weeks and then behaviors would return and escalate. [NT 52-53, 141-142]
38. In addition to changes to the IEP and PBSP, the School has made persistent and various efforts throughout the current school year to address Student's behavior and provide appropriate accommodations. These include: working to change cab afterschool pickup time and offering travel training so Student could take public transportation instead of cabs; providing Transpass; mediations with Student and teachers; provision of feelings worksheet; first period group circle meeting provided by counselor to try to address feelings other students were having about Student's behavior; changes in roster; lessening of academic demands; unlimited time to complete tasks; allowing Student choice of seat in classrooms; incorporating elements of the Mindfulness (How I Decide) curriculum into the

Life Skills class; modifying the school-wide merit/demerit system so Student received only merits and no demerits; attempted provision of one-to-one worker or as a classroom aide; modification of late pass procedure; and providing a 'green pass' for breaks. [NT 48-51, 93, 111-112, 131-133, 135, 140, 197, 207-208, 251, 267; M-15]

Escalation and Additional School Efforts to Address Escalating Behaviors

39. Because the Parent believed that Student's inappropriate behaviors were occurring mainly with two teachers, the late December 2015 meeting also addressed the Parent's request to change teachers in the first, eighth and nine period classes. [NT 55, 164-165]
40. During a three-week period when the School was determining how to change Student's class schedule and working to acquire a one-to-one worker for Student, Student spent two periods of the day in the office of the Assistant Principal of Specialized Services, and was assigned for one period to a history class with a teacher with whom Student seemed to get along. However Student often cut that history class, triggering building-wide searches until Student was located or appeared. [NT 99-103, 115]
41. The School adjusted Student's first period class by moving Student to another teacher who was teaching the exact same curriculum during first period; there were four students in that class. For ninth period, because the Parent had expressed a concern that the School was not supporting Student's reading comprehension, Student was changed to working exclusively with the case manager, on one-to-one corrective reading. A change was not possible for eighth period, because the teacher was the only teacher in the building who taught the Daily Living Skills class. [NT 55-57, 96, 111]
42. Student began to have problem behaviors in the new first period class and the problems continued in the other new and old settings as well. [NT 104-106]
43. The RHD counselor did some classroom observations of Student in order to provide some more suggestions and supports for the teachers. She then suggested putting in some additional positive rewards for Student. [NT 57]
44. Student had a good initial response to the revised PBSP, and was seeking out the RHD counselor as needed. However physical aggression, destroying peers' work, defiance, and teaching or building disruption returned, and in fact escalated, in mid-January such that they were more frequent and of longer duration. [NT 60]
45. It was taking multiple staff members to intervene when Student was upset, and at times it took two or three of the School's four Deans to remove Student from the situation. Additionally it was taking a significant amount of time for Student to calm down. [NT 60-61]

46. The day after an incident on January 19, 2016 during which Student slammed the Assistant Principal of Specialized Services' arm into a door, and the Parent had to come to the School to calm Student down, administrative staff held a phone conference with the Parent and proposed the idea of an APS placement. [NT 62]
47. The Parent did agree to a crisis evaluation which took place at a psychiatric facility with the Parent and the RHD counselor present. The evaluation resulted in a recommendation for a placement in a partial psychiatric hospitalization facility and psychotropic medication. The Parent refused the recommendations. [NT 63-64, 186-187]
48. On February 16, 2016 the School attempted to implement one-to-one support for Student and the therapist discussed this with the Parent. The Parent put some parameters on the one-to-one worker's interaction with Student. However, Student refused to be introduced to the worker, did not want to have a conversation with the worker and did not want to be in the same room with the worker. The worker's presence in the classrooms escalated Student's behaviors. The School tried to modify the role of the worker from being present throughout the whole day to just being present in seventh and eighth periods, and designated the worker as the 'classroom assistant' such that he could be perceived as supporting the whole class and not just Student and Student would not feel singled out. The support of the worker was not successful since Student would not interact with him at all and ultimately the worker was removed. [NT 77-80, 143, 168-169, 204-206, 242; M-15]
49. A second crisis evaluation took place on February 23, 2016<sup>11</sup> following an incident the day before when Student came into school very agitated and in first period class was throwing [objects at others]. Although the Deans needed to be called to step in to support, the same thing happened in the second period class. The Parent was called to offer support and while the Parent was in the building, Student left the conference room and proceeded to the front desk where Student took [an object] off the desk and threw it at the front desk assistant. Student needed to be restrained during which Student reached for [an object]. Although Student was able to be brought into the conference room Student could not be deescalated to return to a classroom. [NT 64-66]
50. The school social worker who also had been called to assist spoke with the Parent and recommended a voluntary inpatient psychiatric commitment. The crisis center was called and the Parent escorted Student to the crisis center located within a hospital where an evaluation was completed. An incomplete report, missing several pages was provided to the School and although the complete report was requested it was not sent. The report contained a diagnosis of Oppositional

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<sup>11</sup> Although there is no documentation in the record the Parent indicated that at one of the crisis evaluations Student was found to have depression and 'panic'. The CBE carried a provisional diagnosis of Anxiety Disorder Unspecified. [NT 108-109]

Defiant Disorder, as well as a recommendation for a partial psychiatric hospitalization placement. The Parent refused that placement. [NT 66-67; M-7]

51. Two days after the February 23, 2016 crisis evaluation School staff and the Parent met to discuss next steps for Student because of the escalating behaviors and the School's belief that the School was unable to program for Student in the building. The following day the School and the Parent reconvened again as the Parent had requested time to discuss the PBSP. The Parent requested that some changes be made to the PBSP, and she provided them to the team in writing. The School revised the PBSP. [NT 70, 75-76; M-8 p. 198]
52. At this time the behaviors of concern were escalating in severity, frequency and duration and included continued agitation in the classroom, throwing [objects, and other behaviors] and being unable to be redirected by staff in the building. [NT 71]

#### Student's Perspective

53. Student told the March 2016 CBE evaluator that Student takes anger out on teachers because 'they don't know me, don't know where I come from, and they are just unfair'. Student commented 'people might be scared of me, but I am not a monster. I just have problems'. About the teachers Student reported 'because I don't respect them' 'because I don't like them', 'they don't know me too well' and 'they are in another world, they are not nice at all'. [M-6]
54. Student told the March 2016 CBE evaluator that the therapist helps Student with stress and anger and feels that the therapist's room is 'the most safe room to go to'. [M-9]
55. During testimony Student acknowledged that 11<sup>th</sup> grade has been a "tough" year and that Student has had problems this year with two teachers (not the same two from 10<sup>th</sup> grade). During the morning when the hearing was going on Student had incidents requiring the Parents' interventions with a third teacher. [NT 304, 307-309]
56. During testimony Student acknowledged the types of behaviors reported and feels particularly sorry about the [redacted] incident and lucky [redacted]. Student thinks that the behaviors are getting worse. [NT 309-311]

#### Proposals for Placement

57. The School first proposed placement in an Approved Private School because staff believed Student required full-time autistic support in a therapeutic environment, where Student would have clinicians available throughout the course of the school day. The Parent did not approve that recommendation. [NT 72-73; M-8]
58. Although the company managing the School has the MAPS Program, a full-time emotional support program in a stand-alone building in another part of the city, it

- was not offered because MAPS is for students with significant emotional disturbance or other health impairment and Student's intellectual disability did not allow placement at that program because MAPS would be unable to support Student academically in that setting. [NT-72-73, 88-89]
59. The School next offered a 45-day placement for a full evaluation at a specific APS School which offers a full-time autistic support setting, and could offer a full neuropsychological evaluation, as well as various other evaluations to assist in determining appropriate placement. At the end of the 45 days the results of the evaluation would be presented to the team, to consider when developing the next steps for Student. The Parent declined this offer. [NT 73; M-8]
60. The School then offered to provide instruction in the home during the temporary period that the due process hearing was in progress. Instruction in the home was offered to provide Student one-on-one support and services, as behaviors continued to escalate in the building. The Parent declined this offer. [NT 74-75; M-8]
61. On April 11, 2016 the School and the Parent again met for an IEP meeting at which the School presented a draft IEP to be implemented at an APS. The Parent did not request any changes to the IEP and it was finalized accompanied by a Notice of Recommended Educational Placement for an unspecified APS. The Parent refused this recommendation. [NT 182; M-10]
62. If Student is placed in an APS the School would work with the APS to effect a good transition. [NT 83]

#### The Assistant Principal of Specialized Services

63. The Assistant Principal of Specialized Services oversees the Special Education Department.<sup>12</sup> She has been employed as a professional in the field of education for fifteen years, and has been in her position at the School for nine years. Prior to working at the School she was employed by the School District of Philadelphia for five years as a full-time learning support teacher and as the special education liaison for three of those five years. She holds a Bachelor's Degree in Psychology and Sociology from Rosemont College, a Master's in Education and a special education teaching certification from West Chester University, as well as a Principal Certification from Drexel University. She receives weekly ongoing in-service training in the School as well as trainings throughout the year from the Pennsylvania Training and Technical Assistance Network [PaTTAN]. Relevant in-service trainings include special education instruction in the classroom, intervention programming, behavioral supports, conducting Functional Behavior Assessments [FBA], and writing Positive Behavioral Support Plans. [NT 30-32]

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<sup>12</sup> She also oversees the English Language Learning Department and is working toward her certification in English as a Second Language. [NT 30]

64. In her professional opinion, the Assistant Principal of Specialized Services believes that in order for Student to be successful behaviorally and academically Student needs a significant amount of intensive therapeutic and behavioral support throughout the course of the school day such as is provided in an Approved Private School. Approved Private Schools have small group settings throughout the course of the school day, they have therapeutic clinicians available to students throughout the course of the day, they have sensory rooms and they also have de-escalation rooms, none of which is available in the School building. [NT 84-85]

Special Education Teacher Formerly for Transmath and Currently for Daily Living Skills

65. The Special Education Teacher for Transmath (math intervention) and Daily Living Skills has been employed professionally in the education field for four year, and with the School for one year. Prior to her current position she was the Autistic Support Transition Coordinator at an APS in the Philadelphia area, and an autistic support teacher for two years in a high school in Virginia. She holds a Bachelor's in Education and a Master's in Special Education from Old Dominion University, and also has an Autism Certificate from Old Dominion. She holds the designation of Highly-Qualified teacher in Pennsylvania. She participates in weekly ongoing professional development including topics such as interventions, classroom behavior, and cultural context. She is also observed at least twelve times a year. [NT 122-123, 149-150]
66. At the beginning of the school year the teacher believed that the School was able to program appropriately for Student. She was able to redirect Student, behaviors did not pose a significant concern and Student performed well in the classes for which she taught Student, particularly math which was a preferred subject. [NT 131]
67. This teacher taught Student from the beginning of the year until April 26, 2016 when there was an extended incident with Student. After arriving significantly late [redacted]. [NT 124-128]
68. Prior to calling the Dean the teacher was instituting the Positive Behavior Support Plan by quietly going to Student to work one-on-one, asking if anything was going on, talking about calming down by using the green pass, getting a drink of water, going for a walk, or talking to another available staff person. [NT 128]
69. Although the teacher believed at the beginning of the year that the School could program for Student, as the year progressed and behaviors escalated she now holds the professional belief that Student requires an APS placement because Student is not making academic progress, behaviors continue to escalate, and even with the changes that have been made in the PBSP the School is unable to meet Student's needs. She believes Student needs the full-time therapeutic and

behavioral autistic support in a small group setting, all day, through all academic settings with additional staffing, that an APS can offer. [NT 147-148]

70. The [local] APS at which she was the Autistic Support Transition Coordinator is the APS where the School had sought to have Student given the 45-day evaluative placement. That APS has therapeutic and behavioral support in the moment. The classroom sizes range from six to eight students. Classrooms have many more staff than just one teacher. Given her experience with Student and her experience in an APS she believes that Student needs an APS to derive meaningful educational benefit. [NT 123-124, 170-171]

#### Therapist

71. The School contracts with RHD for outpatient individual and group therapy services. The therapist has been at the school since August 2015. She holds a Bachelor's Degree in Communication from Bloomsburg University, and a Master's in Social Services through Bryn Mawr College. She is licensed to practice social work in Pennsylvania. She receives ongoing individual and group supervision through RHD, and in order to maintain her Pennsylvania license is required to have thirty hours biannually in continuing education credits covering a variety of topics of her choosing. [NT 177-178]
72. At the beginning of the current school year the therapist was assigned to work with Student in a small social skills group which started on October 1, 2015. The group met once a week for an hour. She utilized the 101 Social Skills Curriculum, which presents a series of worksheets on a variety of topics, such as communication, anger management, and conflict resolution. [NT 179]
73. In November or December 2015, when Student's behaviors started to escalate around the building the therapist began to work with Student on an individual basis. At that time Student was exhibiting new behaviors that had not been previously seen or reported earlier in the school year such as having trouble regulating feelings of anger and trouble self-soothing and de-escalating. Student was resisting redirection, [destroying objects], and yelling at other students or staff members in class. [NT 179-180]
74. The therapist worked individually with Student on coping skills to manage feelings of anger and frustration in the classroom, de-escalation strategies, such as deep breathing, counting to ten, taking a short break, and being able to respond to redirection. They did some role playing and modeling to help Student become desensitized. She was also doing some classroom observations and mediations with Student and teachers and assisted teachers in using some strategies she was using with Student. Student's response was inconsistent. [NT 181-183, 196]
75. Student has access to the therapist when becoming elevated. Initially, Student was coming to her room pretty regularly on days when Student was really struggling, sometimes coming multiple times on days seeking out support. This increased



- such that given her caseload of twenty-eight students it was challenging for the therapist to always give Student crisis intervention at those times when Student needed it. At times Student came in and interrupted when the therapist was in individual sessions with another student or in group sessions. At those times it was challenging to redirect Student or ask Student to talk with the case manager or another available staff member for a few minutes while she wrapped up the other session. Student continues to come every day during difficult weeks. [NT 182-184]
76. The therapist is called to assist at times when Student is having meltdowns, across all settings and all classrooms, including in her own room, and these interventions last anywhere between a half hour to two hours, depending on how escalated the behavior is. On average, starting in 2016, the therapist was interacting with Student in one capacity or another every day, from a 15-minute check-in to a half hour to two hour de-escalation; on average, it would take at least 45 minutes to de-escalate Student. [NT 192-193]
77. The therapist has been involved in developing Student's IEPs in person at meetings or through input to the Assistant Principal of Specialized Services, and has been involved in designing and implementing the various PBSPs. In her professional opinion the IEPs and PBSPs have been appropriate, but no longer are working as the School has exhausted the strategies it can offer. [NT 194-195]
78. Given the frequency with which her interventions are needed the therapist believes that Student needs more support than the School can provide. She believes Student needs to be in a full-time placement where Student can access the therapy and interventions of a clinically trained staff as needed, across all areas throughout the day. The therapist agrees with the School that Student requires an APS with autistic support where Student's academic and emotional needs can be met. [NT 194-195]

#### Reading Intervention and Writing Teacher

79. The reading intervention and writing teacher holds a Bachelor of Arts in English, and is getting her Master's in Special Education English the week after the hearing was held. She is a second-year teacher who achieved the Highly Qualified in special education and English designation. [NT 237-238]
80. This teacher noted difficulties with writing and with reading comprehension. In the beginning of the school year Student and this teacher had a positive relationship and Student participated in her second period class. The relationship became strained when she began instructing Student in first period class as well. [NT 235]
81. Student's behavior towards the teacher and towards peers became negative at the end of January and early February as Student would enter the class late, anxious and frustrated. The teacher's efforts at redirection were unsuccessful. Student had

- at least “two huge meltdowns” in this teacher’s class. The Deans have to remove Student from the teacher’s classroom about three times per week. [NT 236-237, 243-244, 247]
82. The teacher implemented the specially designed instruction in Student’s IEP and the PBSPs when they were initiated. [NT 238-241, 244-245]
  83. The teacher believes that Student needs placement in an APS because Student requires full-time autistic support in a therapeutic setting. She holds this belief because even using the PBSP she cannot de-escalate Student and trying to work around Student or trying to have a conversation with Student, is ineffective. The behaviors are to a point where the teacher can’t have any control of Student, which hinders her from teaching the class, and impacts the futures of the other students in the class. [NT 248-249]

#### Former Reading Intervention Teacher

84. The former reading intervention teacher holds a Bachelor's of Science in Communication Disorders and a Master's of Science in special education. She has seven years’ experience teaching autistic students. [NT 258]
85. The teacher instructed Student in reading using Leveled Literacy Intervention (LLI), a program for students with reading difficulties. She implemented the program the way it was supposed to be implemented and with fidelity. [NT 269]
86. There were times when the teacher would have the class work on something independently while she worked one-to-one with Student to catch Student up and to increase reading comprehension. [NT 269-270]
87. The teacher followed the School’s policy of asking for a tardy pass whenever students are late to class for whatever reason for safety purposes, given that students could have been with another teacher, or wandering the halls. Prior to this teachers working with Student a tardy pass had not been required because it was known that Student arrived by cab and the cab may have arrived late for whatever reason. After a phone conversation with the Parent the teacher allowed Student to just place the tardy pass on her desk. Sometimes this was successful and sometimes it was not. [NT 262-263]
88. When Student was significantly late the teacher would try to catch Student up with everyone else by trying to offer the materials that the class was currently using, and offer office hours to come in during lunch or after school to make up any of the additional work missed. Student never came in during lunch office hours or after-school office hours, but sometimes reported to the case manager to complete some of the work. [NT 264]
89. Student did not have a time limit for completing work, and the teacher also modified the assignment so Student wasn't having to complete the full amount of

the assignment. The teacher would chunk the assignment for Student and if Student was not able to complete the chunking, then she would modify it even more, for example if Student was not able to formulate sentences the teacher would write a sentence for Student and leave out certain vocabulary terms that Student would have to fill in. She completely scaffolded Student's construction. [NT 265]

90. The teacher employed de-escalation strategies if needed even before the PBSP was in place, and followed the PBSP when it was in place. [NT 266]

#### Former Case Manager and Reading Teacher and Current Math Intervention Teacher

91. The current math intervention teacher holds a Bachelor of Arts in Speech Communication, and a Master's of Education in Elementary Education and Special Education. [NT 294]
92. The math intervention teacher has known Student for three years. In 10<sup>th</sup> grade there were problems with Student needing redirection but nothing as severe as this current year. She started teaching Student math in February. [NT 274-275]
93. Student is being instructed using the Transmath Program, a program for students who are struggling in math. The teacher provides the program with fidelity. [NT 279]
94. The math intervention teacher has witnessed Student [destroying and throwing objects], walking out of the classroom without permission, not being able to be redirected or use some of the coping skills to calm down. She has not seen those specific behaviors in math, however because math is a preferred subject area for Student, it's a small group setting, the academic demands are lessened for Student in that class, so frustration doesn't come about as easily. [NT 276]
95. The math intervention teacher has utilized the PBSP to support Student. [NT 277]
96. Although the one-to-one worker was in the math classroom as an aide Student refused to work with him and would work only with the math intervention teacher. [NT 278]

#### Case Manager

97. The case manager holds a Bachelor's Degree in Sociology, and a Master's Degree in Special Education. She has worked with students with specific learning disabilities in reading, math, and writing and has worked with students on the autism spectrum. She has worked with students with behavior problems. [NT 281]
98. In her role as case manager she writes students' IEPs using the information that's provided on the evaluation report and the recommendations there, as well as incorporating teacher input. Her role is to then track the students' progress towards goals that are in the IEPs, and to support teachers who are implementing

- supports for students in the classroom. When interacting with students on her caseload, she will check in with them regarding classes and offer assistance through office hours on homework assignments. She also keeps students updated on their grades and offers them supports. [NT 282-283]
99. In her experience at the School she has never worked with a student who had behavior problems as significant as Student's. [NT 282]
100. The case manager was not present in the moment for the majority of Student's outbursts but Student would often come seek her out or speak with her after the fact. They would talk through the situation and Student would express how Student was feeling and what occurred. Many times they would talk through how Student could address the situation in the future using some techniques and strategies to potentially diffuse the situation. During those conversations Student would not articulate a specific moment or a specific statement that caused Student to become frustrated. Instead Student would talk about disliking Student's teachers or not feeling like Student respects the teachers. The case manager struggles to pull from Student if it was a specific thing that was said that caused Student to feel that way or what the specific cause was. [NT 283-284]
101. The case manager would often point out to Student that if Student didn't like the teachers, Student still had to respect them in their role and understand that they're here to teach Student. Student was not receptive to this counsel, and would repeatedly restate not liking the teacher and not respecting the teacher without articulating a specific reason. [NT 283-284]
102. Although Student had problems across class settings, Student often expressed to the case manager disliking a particular teacher. The case manager conducted formal observations in that class two or three times a report period, in addition to the times that she may have been called to support Student after an outburst had already begun. She was unable to identify specific classroom or teacher triggers for Student's behaviors. [NT 286-287]
103. The case manager's professional opinion is that Student needs a full-time therapeutic setting where Student can also receive autistic support in a small group and have access throughout the day to individuals who can offer support in the moment when Student is frustrated or triggered. [NT 286-287]
104. As a member of Student's IEP team the case manager is in agreement with the School's offer of an APS for Student because this year Student has struggled, and continues to struggle, in terms of academics, and because specifically, the behavior has escalated, and it looks as though it will continue to escalate. [NT 287-288]

## Legal Basis

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]. 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 School 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); *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). Each of the witnesses who work or worked in the School with Student was judged to be credible, and their individual and collective testimony was most persuasive as they offered their perceptions and related their direct experiences with Student. Although I cannot find in her favor, I found the mother to be a most loving and very caring Parent, evidenced not only by her frequent communications with the School, her *pro se* participation in questioning the School's witnesses at the hearing and her own sworn testimony, but also through observing her interactions with Student during Student's testimony. However, I could not rely on her testimony as it related to the teachers and to the reasons behind Student's behaviors. Additionally, it was notable that the elephant in the room seemed to be Student's intellectual disability, given that mother emphasized Student's autism and other diagnoses but did not reference intellectual disability. That having been said, I do concur with Mother's belief that Student is 'high functioning' but only insofar as it relates to Student's position on the autism spectrum as a student with a primary classification of intellectual disability. Student's Parent decided to have Student testify. I found that although Student did present in a manner that was consistent with the classification of intellectual disability, it was noteworthy that Student used some sophisticated vocabulary such as "relevant" and "complicated" and it may be that Student may be somewhat higher functioning than the Full Scale IQ would suggest, although still in the range of intellectual disability. Consideration should also be given to the fact that the results of the WJ-III ACH may indicate that Student's basic academics were adversely affected by the significant number of changes in schools which Student experienced in the early

formative years from Kindergarten to fifth grade. When testifying Student understood most of the questions and answered very honestly, and I agree with the Parent that Student is articulate. [NT 217]

Charter Schools: 22 Pa Code § 711.3(b)(26) incorporates 34 CFR 300.501—300.508, the IDEA’s implementing regulations covering evaluations, reevaluations, and independent evaluations. Further references therefore will be to the IDEA and its regulations.

IDEA Standards: The IDEA requires that a state receiving federal education funding provide a “free appropriate public education” [FAPE] to disabled children. 20 U.S.C. §1412(a)(1), 20 U.S.C. §1401(9). Public agencies including charter schools provide a FAPE by designing and administering a program of individualized instruction that is set forth in an Individualized Education Plan [IEP]. 20 U.S.C. § 1414(d). The IEP must be “reasonably calculated” to enable the child to receive “meaningful educational benefits” in light of the student’s “intellectual potential.” *Shore Reg’l High Sch. Bd. of Ed. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182-85 (3d Cir.1988)); *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3<sup>rd</sup> Cir. 2009).

“Meaningful benefit” means that an eligible child’s program affords him or her the opportunity for “significant learning.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999). In order to provide FAPE, the child’s IEP must specify educational instruction designed to meet his/her unique needs and must be accompanied by such services as are necessary to permit the child to benefit from the instruction. *Board of Education v. Rowley*, 458 U.S. 176, 181-82, 102 S.Ct. 3034, 1038, 73 L.Ed.2d 690 (1982); *Oberti v. Board of Education*, 995 F.2d 1204, 1213 (3d Cir. 1993). An eligible student is denied FAPE if his or her program is not likely to produce progress, or if the program affords the child only a “trivial” or “*de minimis*” educational benefit. *M.C. v. Central Regional School District*, 81 F.3d 389, 396 (3<sup>rd</sup> Cir. 1996), *cert. den.* 117 S. Ct. 176 (1996); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F. 2d 171 (3<sup>rd</sup> Cir. 1988).

A placement decision is a determination of where a student’s IEP will be implemented. Pursuant to its obligation to offer and provide Student with a FAPE, an LEA must provide students with an appropriate placement. See, *P.V. v. Sch. Dist.*, 2013 U.S. Dist. LEXIS 21913 (E.D. Pa. 2013)(defining placement as an interest protected under the IDEA); *R.B. v. Mastery Charter Sch.*, 762 F. Supp. 2d 745 (E.D.Pa. 2010)(describing change of placement as fundamental change in educational program that ensures provision of a FAPE). Placement is part of the selection of services that delivers a FAPE through the IEP. *P.V.* A “placement” is not the same as a “place” or location of the services; rather, “placement” is the level and type of services to be provided to Student, wherever those services are provided. *Id.* at 19.

There is a strong and specific preference in the IDEA that, (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special

classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §300.114(a)(2). The IDEA regulations also recognize, however, that there are circumstances where “the nature and severity” of an eligible student’s disability makes education in a regular school setting unsatisfactory. For those situations, the IDEA regulations require an LEA to provide “a continuum of alternative placements,” such as “instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals.

In *Oberti*, the Third Circuit set forth a two-part test to determine whether a school district is complying with the mainstreaming requirement. First, a “court must determine whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily.” *Id.* (quotation omitted). Second, if placement outside the regular classroom is necessary, then a “court must decide whether the school has mainstreamed the child to the maximum extent appropriate.” *Id.*

Placement decisions for children with disabilities must be made consistent with 34 CFR 300.116. The IEP team, including parents, makes placement decisions. Like the formulation of an IEP, a placement decision is not a unilateral matter for the public agency’s determination. 34 CFR 300.116(a)(1) however, is also clear that parental preference cannot have been the sole nor predominant factor in a placement decision. The IDEA merely mandates parental participation in the placement decision 34 CFR 300.116(a)(1), but does not suggest that the degree of weight parental preference should be given.

Numerous court decisions have noted that although Parents are members of the IEP team and entitled to full participation in the IEP process, they do not have the right to control it. *See, e.g. Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) [noting that IDEA “does not require school districts simply to accede to parents’ demands without considering any suitable alternatives”]; *Yates v. Charles County Board of Education*, 212 F.Supp.2d 470, 472 (D.Md.2002) [“[P]arents who seek public funding for their child’s special education possess no automatic veto over a school board’s decision”]; *Rouse v. Wilson*, 675 F.Supp. 1012 (W.D.Va.1987); 34 C.F.R. Pt. 300 App. A, at 105. “The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive [a free appropriate public education]” and *A.G. v. Wissahickon School District*, 374 Fed. Appx. 330 (3d Cir. 2010)[[Did the district consider the] “whole range of supplemental aids and services,” including “efforts to modify the regular education program to accommodate” and the student “made little if any progress on her academic goals in her mainstreamed courses and received little educational benefit from her mainstreaming.]

## Discussion

Mother describes Student as high functioning, as happy-go-lucky and as having made ‘tremendous strides’ socially. [NT 220-221] While mother’s description of Student may largely apply in the home setting, the record reflects that the Parent’s description is not at all how Student presents in the school setting. The Parent believes that the reason Student is prone to outbursts in school is because Student is able to discern when people don't have Student’s best interest at heart, when Student feels as if Student not getting what Student should get from Student’s education, and when people appear disrespectful to Student. [NT 218]<sup>13</sup> The Parent alleges that the School has not provided Student with any training to handle negative perceptions Student may have or training in impulse control. [NT 217] At or close to the time the School filed its due process request the Parent filed a complaint with the Pennsylvania Department of Education, Bureau of Special Education alleging that the School 1) had failed to implement Student’s PBSP and 2) the School failed to convene an IEP meeting to consider the use of positive behavior interventions and supports to address Student’s escalating behaviors.<sup>14</sup> [P-1] The record as a whole belies the Parent’s assertions about the causes for Student’s behavior and her allegations about the School’s failures.

Student is a sturdy youth in later teenage years with an intellectual disability, autism and speech/language deficits who presumably has had some difficulties in school settings from the primary grades onwards as demonstrated by the unusually frequent school changes prior to coming to the School. To its credit the School has been able to program for Student for three, nearly four, years with some manageable problems starting at the end of 10<sup>th</sup> grade. Although Student began the current school year again exhibiting behaviors that were manageable, early in the fall behaviors have escalated in severity, frequency, and intensity such that they pose a danger to self and to other students and teachers and disrupt Student’s own learning and that of others.<sup>15</sup> The School has revised Student’s original IEP/PBSP twice this school year and has provided numerous additional accommodations other than those written into the IEP/PBSP. Student’s positive responses to interventions have overall been negligible. As of this writing, Student, among other behaviors, goes through the school building at will, enters and interrupts instruction in classrooms to which Student is not assigned, throws objects at peers and staff, and destroys peers’ work. Often the intervention of one or more of the School’s Deans is required to de-escalate Student and the Deans are not always successful in removing Student from a location where Student is having a meltdown. Efforts to prevent Student from becoming angry or frustrated, for example exempting Student from the demerit system, stopping teaching the class and giving Student one-to-one support when Student comes late to class, are seldom effective. In addition to the School’s

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<sup>13</sup> The Parent is working with Student to be respectful, but acknowledged that this is a challenge with teenagers on the autistic spectrum. [NT 218]

<sup>14</sup> The PDE/BSE complaint process is on hold pending the completion of due process. [P-1]

<sup>15</sup> Notably the hearing session was interrupted for about 20 minutes because Student was having an incident, and the Parent and one or two staff members had to leave the room to help de-escalate Student. The Parent had to leave the room a second time, for another incident. Father joined to help de-escalate Student at the time of the second incident. [NT 250-255, 304, 309-309]



programming, Student also receives the additional interventions of psychotropic medication and outpatient therapy from community agencies, and has very supportive Parents. The constellation of intensive School, home and community supports is not being effective for Student. It is very clear that for whatever combination of factors Student cannot receive FAPE at the School and requires the structure and resources of a full-time APS that can offer autistic support throughout the day and implement the IEP's academic and behavioral goals. To a person each of the School personnel, including the RHD therapist, strongly believe that Student requires an APS placement and based on the totality of the record before me I so find.

### Conclusion

The School has more than met its burden of proving that maintaining Student's placement at the School is inappropriate, compelling the finding that Student must be moved to an APS in order that Student may receive FAPE.

### Order

It is hereby ordered that:

1. In order to receive FAPE Student requires a change in educational placement from the School to an Approved Private School.
2. The School shall send out application packets to Approved Private Schools, if necessary over the objections of the Parents.
3. The Student shall be placed in an Approved Private School for the 2016-2017 school year.

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

May 10, 2016

Date

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

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