

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

Pennsylvania Special Education Hearing Officer
Final Decision and Order

CLOSED HEARING
ODR File Number: 21434-18-19

Child's Name: M.G. **Date of Birth:** [redacted]

Parent:
[redacted]

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Hearing Officer: Linda M. Valentini, Psy.D.
Certified Hearing Official

Date of Decision: March 14, 2019

Background

Student¹ is a high school aged student who resides in the District but attends a private school chosen by the Parent. Although previously found eligible, Student is not currently identified as eligible for special education under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and its Pennsylvania implementing regulations, 22 Pa. Code § 14 *et seq.* (Chapter 14). However Student is regarded as an “individual with a disability” (emotional disturbance) as defined by Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.*, and as a “protected handicapped student” under the Pennsylvania regulations implementing Section 504 in schools, 22 Pa. Code § 15 *et seq.* (Chapter 15).

The Parent requested this hearing under both the IDEA and Section 504, alleging that the District failed to identify Student as currently eligible for special education under the classifications of emotional disturbance and/or specific learning disability. The Parent is requesting reimbursement for private school tuition. The District maintains that its latest evaluation finding Student ineligible for special education is procedurally and substantively appropriate and that the Parent is not entitled to the relief sought.

In reaching my decision I carefully considered the witnesses’ sworn testimony and documents admitted into the record as well as the parties’ oral closing arguments. Based on the record before me I find in favor of the Parent.²

Issues

1. Was the District’s evaluation of Student appropriate?
2. Is Student eligible for special education under the IDEA?
3. Is the Parent entitled to reimbursement for tuition to the private placement Student is now attending?

Stipulation

Although the record was closed in this matter on February 28, 2019, on March 7, 2019 counsel agreed to add the following stipulation to the record:

“The parties stipulate that if the District [evaluator] were called to testify, [the evaluator] would testify that [the evaluator] did in fact administer the BASC self-report. [The evaluator] would

¹ In the interest of confidentiality and privacy Student’s name and gender, and other potentially identifiable information, are not used in the body of this decision. The identifying information appearing on the cover page or elsewhere in this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² Counsel are here commended for their efficient management of their cases during the hearing.

testify that [the evaluator] misspoke when counsel for the Parent asked [the evaluator] why [the evaluator] did not administer the self-report.”

Findings of Fact

Relevant Background History

1. Student began demonstrating emotional regulation deficits as early as age two or three. The Parent accessed mental health services, and at age five, by the time Student was in preschool, wraparound services were in place. [NT 184-185]
2. Upon entry into kindergarten and through about 3rd grade, Student’s behavioral health/mental health issues became less prominent, while learning issues emerged early on. [NT 185-186]
3. Beginning around 4th grade, manifestations of depression emerged. Student received private psychotherapy and was prescribed medication; learning issues continued. [S-5]

Previous Evaluations

4. In 1st grade Student received reading and writing support in another district. [NT 185]
5. The other school district found Student eligible for special education in 3rd grade under the classification of a specific learning disability (2011 evaluation). Student transferred to a second school district in 4th grade with an IEP. Student entered the District in 5th grade with an IEP that addressed deficits in reading and math. [NT 186-187; S-1, S-5]
6. Pursuant to the IEP being implemented in 6th grade, Student was receiving specially designed instruction in reading and writing as well as in math: reading check-ins with an adult to ensure understanding of text; small classroom environment for assessments if needed so that assessments could be read aloud; study guides given for science and social studies quizzes and tests at least five days prior due to difficulty with comprehension of content area facts; highlighting important words and key phrases; use of a graphic organizer for longer writing assignments; writing check-ins for published writing assignments; pre-teaching and/or re-teaching of math concepts; preview of math assessments one day prior to assessment; additional time on assessments. [S-1]
7. The District reevaluated Student at the end of 6th grade (2014 reevaluation) and found Student no longer eligible. Student was exited from special education. [NT 189; S-5]
8. The 2014 reevaluation yielded WISC-IV cognitive scores generally congruent with those obtained in 2011, with the exception of an approximately one standard deviation drop in Perceptual Reasoning (assessing nonverbal reasoning, fluid reasoning, and visual-spatial processing). Student’s standard score in this area went from 96 to 82. Other than noting the drop and identifying this area as a “significant cognitive weakness” neither the 2014 District evaluator nor the 2018 District evaluator addressed the implications of this

change or recommended additional testing to determine any suspected origins of this significant change. [S-1]

9. For the 2014 reevaluation achievement testing was done with the WIAT-III on which standard scores from 85 through 115 are considered within the average range. What may be considered to be “average”, especially when the average range covers a large span, can be misleading. For example, a difference in cognitive functioning can be observed when having a conversation with a child whose verbal abilities are around 85 and a conversation with another child whose verbal abilities are around 115 even though both children are technically in the “average” range. [NT 111-112, 147]
10. On the 2014 reevaluation Student’s WIAT-III Total Reading Composite standard score was 88, with basic reading skills at 88, word reading at 90, pseudoword decoding at 87, reading comprehension at 103, oral reading fluency at 87, oral reading accuracy at 94, and oral reading rate at 88. [S-1]
11. Parental input included in the 2014 reevaluation noted that, “[Student] has shown good improvement, but [Student] is still struggling in the areas of academics. [Student] currently needs medication for depression, and [Student] sees a therapist a few times per month. [Student] has low self-esteem.” [S-1]
12. Assessment of behavioral and emotional functioning with the BASC-2 in the 2014 reevaluation showed congruence of At-Risk ratings between parent and teacher responses on Withdrawal; the Parent’s rating on Depression was Clinically Significant while the teacher’s rating was At-Risk.³ [S-1]
13. The 2014 reevaluation concluded that, “...as [Student] has demonstrated significant improvement in the area of math problem solving, [Student] no longer meets the eligibility criteria for a specific learning disability. Therefore it is recommended by the team that [Student] be exited from receiving special education services, as [Student] no longer requires these services to access the regular education curriculum.” The Parent indicated her agreement with this conclusion. [S-1]

Student’s Final Two Years in the District

14. In 7th grade, in order to maintain Student’s grades, the Parents did considerable work helping with studying and homework nightly. [NT 188]
15. In the morning Student would seek out tutoring help from teachers. [NT 188]
16. In 7th grade Student’s roster included Language Arts/Literacy Skills, a course which was for students needing additional help in this area and which was not offered to all 7th grade students. Student’s end-of-year grade for this course was C. Student took this course in 8th grade as well and the end-of-year grade was a B. [NT 89-90; S-2, S-3]

³ Clinically Significant scores suggest a high level of maladjustment; At-Risk scores indicate areas that are a significant problem but may not be severe enough to require formal treatment, or are indicative of a potentially developing problem that needs careful monitoring. [S-1]

17. In 7th grade Student's end-of-year grade in Science was D+. [S-2]
18. Student's 7th grade year was one of the worst in terms of emotional functioning. Student struggled with suicidal ideation a number of times, the Parent sought new therapists and medication changes were considered. [NT 189]
19. Student was subject to a great deal of bullying of which the principal was made aware. Student would resist going to school, call or text Parent to come and get Student, and visit the school nurse and/or school counselor multiple times per week. The nurse and the counselor kept in close touch with the Parent. [NT 189-190]
20. The Parent and the school counselor talked weekly, sometimes daily, and emailed constantly. [NT 190]
21. In 7th grade Student saw the counselor on average once a week, but this average consisted of weeks when there were visits two or three days a week. The Parent received constant text messages from Student to be picked up, with follow up calls from the counselor to pick Student up. It came to the point where the Parent did not want to reinforce this behavior and would make Student stay at school despite Student's crying and asking to come home. [NT 193]
22. One night in May of 7th grade Student planned to commit suicide and wrote the grandmother a good-bye message. The grandmother alerted the Parent who was able to intervene with Student in time. Student was admitted to an inpatient psychiatric hospital setting and was held for six or seven days. The Parent again sought a new therapist and new medications were tried. The Parent remained in contact with the school counselor as transition back to school was planned. [NT 190-191]
23. Student wanted to be home-schooled for 8th grade but the Parent could not afford to stay home from work, so Student remained in the District middle school. Student developed rapport with a new school counselor and the counselor and the Parent became friends and they spoke frequently. [NT 192]
24. In 8th grade, Student continued to struggle emotionally and it was another hard year. Although Student did not have to be re-hospitalized, there was talking about suicide and Student wrote the Parent a letter about suicidal ideation. The Parent continued with therapy and medication and did the best she could. [NT 192-193]
25. Wanting to leave school and come home continued in 8th grade, and Student visited the nurse frequently. The Parent made the nurse aware of what Student was going through and the nurse was sympathetic to Student's difficulties, giving Student a few minutes to lie down, or offering some aspirin. [NT 194]
26. Student's 8th grade final grades in major subjects were As and Bs. [S-3]

27. Going into 9th grade Student was still extremely unstable, had medication changes that were not working and had gained [weight] because of a medication side effect. Student did not want to go to school on the first day, and texted from the bus and from school to please be allowed to come home. The Parent contacted the new school counselor that day and asked him to go and talk to Student. Student visited the nurse four or five times in the first weeks of school. Student had to be driven to school or picked up from school. Student had no friends and a group of peers were texting Student messages such as “you should die”. [NT 195-197]
28. The Parent called the school to see what options there were and described Student’s situation to the guidance counselor. [NT 196-197]
29. Finally, toward mid-October after about six weeks in 9th grade in the District, the Parent placed Student at a cyber charter school. Initially having Student educated at home fixed the immediate need and started well, but then things did not go well. Student’s depression was constant, and Student had no motivation to do anything. [NT 198-199]
30. The Parent believed that special education evaluations and IEPs were tied to academic deficits only and therefore did not ask the District to reevaluate Student. Neither the school nurses, nor the school counselors, nor any other staff member in the middle school or the high school having knowledge of Student’s school refusal and requests to leave school initiated the process for a reevaluation.⁴ [NT 200-201]

Cyber Charter School and Reevaluation/IEP

31. Even without having to deal with poor peer relationships, Student did not do well in the cyber charter school and received the following final grades in major subjects in 9th grade: Spanish 1 69; English Composition 77; Algebra 1 80; Physical Science 66; American History II 73. [S-5]
32. The cyber charter school reevaluated Student at the end of 9th grade (2017 reevaluation). The cyber charter school found Student to be eligible for special education under the classification of emotional disturbance. [P-9]
33. The 2017 reevaluation report was not available to the District at the time the evaluator completed the 2018 reevaluation, but the IEP for 10th grade generated from that 2017 reevaluation was available and a summary of the 2017 reevaluation was in the IEP. [NT 21-22, 41; S-6/P-4]
34. Student remained enrolled in the cyber charter school for over half of 10th grade. Student’s grades continued to decline and in major subjects were as follows: Introduction to Scientific Principles D; World Geography F; Spanish 2 F; English Literature F; Algebra 2 F. [S-5]

⁴ The District is a well-regarded suburban district that is involved in some but not very many due process complaints annually. I am impelled to register my amazement that no one in the District suggested that this child be reevaluated in 7th or 8th grades, and even at the beginning of 9th grade, given the vigorously waving red flags suggesting the presence of emotional/social deficits that needed to be addressed.

35. Student was then parentally placed in the private school from the end of the third quarter of 10th grade to the present. Tuition and transportation to the private school was funded by the District through the end of the 2017-2018 school year. [S-4, S-5]

District's 2018 Reevaluation – Specific Learning Disability and Deficits in Executive Functioning

36. The District evaluator is a certified school psychologist who holds a master's degree in education along with certification in school counseling and is also a licensed behavior specialist. The evaluator has done private evaluations. [NT 72-73]
37. The District reevaluated Student toward the end of the 2017-2018 school year when Student was attending the private School and issued a reevaluation report on July 24, 2018 (2018 reevaluation). [NT 84; S-5]
38. Parental input for the 2018 reevaluation was obtained at a meeting and the information the Parent shared was written down by a District staff member. The District evaluator did not attend that meeting or speak personally with the Parent. The Parent also completed a Parent Input form. The information from the Parent that was put into the 2018 reevaluation report includes, “[Student] also suffers from learning disabilities such as comprehension issues which affects everything [Student] does with school.” [NT 38-40; S-5]
39. On the 2018 reevaluation the District reported scores from the 2011 evaluation and also from the 2014 reevaluation. One of the indexes comprising cognitive functioning, Perceptual Reasoning, had dropped 14 points between 2011 and 2014; the District evaluator acknowledged in testimony that this drop was significant in that cognitive functioning generally stays stable over time. In discussing the drop in Perceptual Reasoning, the District evaluator noted that the drop could potentially have affected academic areas such as reading or math. The District reevaluation report did not address this significant drop.⁵ [NT 16-17, 20]
40. The original 2018 reevaluation report lists Student's age as 17; however Student was 5 or 6 months short of Student's 17th birthday at the end of the school year when the testing was administered. The report indicates that the norms used for the WJ IV COG were based on age 16-6. Because neither the test protocol nor the test manual's scoring tables are in evidence, it is not possible to determine if the scoring is correct. [S-5, p. 1 and p. 10]
41. In 2018 Student's cognitive ability was assessed by the WJ IV COG; the average range on that instrument is 90 through 109. [S-5]

⁵ The District evaluator noted being asked to comment and hypothesize about the findings and conclusions of two other evaluators whose test results were included in the District's report; however evaluators regularly review, analyze and reference data collected by other evaluators.

42. With the caveat noted in FF #40 above, with a General Intellectual Ability score of 91, areas of cognitive weakness, significant at plus or minus one standard deviation, were in the areas of Phonological Processing (74), Story Recall (81), and Short Term Working Memory (81). [S-5]
43. Working Memory had been a relative strength for Student in both the 2011 evaluation and the 2014 reevaluation; both times Student's score in this area was 102. When the District reevaluated Student in 2018, the Working Memory score was 81, a full 21 points lower than in 2011 and in 2014. [S-5, P-9]
44. While reporting the Working Memory data, the District did not contrast the score of 81 with the score of 102 obtained in 2011 and 2014, and did not provide an analysis of the 21-point decline or make any recommendations for further testing by a District or private neuropsychologist or a neurologist to assess the reasons for, or the educational (or social) implications of, this decline. [S-5]
45. The District evaluator testified that the significant weakness in Phonological Processing could cause a student to struggle academically in spelling and basic reading, and Working Memory weaknesses could affect processing reading, or mental math calculations. [NT 23]
46. In 2018 Student's academic achievement was assessed by the WJ IV ACH. The report indicates that the norms were based on age 11-2. Again, because neither the test protocol nor the test manual's scoring tables are in evidence, it is not possible to determine for certain if the scoring is correct. [S-5, p. 12]
47. With the caveat noted in FF #46 above, areas of academic weakness, significant at plus or minus one standard deviation, were in the areas of Basic Reading Skills (85), and Letter-Word Identification (84). Word Attack (88) and Mathematics Applied Problems (86) just missed being identified as weaknesses. [S-5]
48. The 2017 IEP from the cyber charter school which the District reviewed carried a goal for reading comprehension. [P-8]
49. The 2017 IEP from the cyber charter school which the District reviewed carried a goal for math concepts and application. [P-8]
50. The District compared Student's cognitive ability and academic achievement, both assessed by the respective WJ IV tests, using the Ability-Achievement Discrepancy Analysis, and concluded that Student's performance was "consistent with the scores predicted for the measured abilities". [NT 25-26; S-5]
51. The counselor and the principal at the private school were asked to complete the BRIEF (Behavior Rating Inventory of Executive Functioning). While the counselor's endorsements yielded all Average scores, the principal's responses yielded the following; Emotional Control – Elevated, Initiate – Elevated, Working Memory – Mildly Elevated,

Plan/Organize – Elevated. Based on the principal’s responses, the Behavioral Regulation Index was At-Risk, and the Metacognition Index and the Global Executive Composite Index were both Elevated. [S-5]

52. Neither the Parent nor the Student was asked to complete the BRIEF. Despite the Elevated results from the private school principal, the District evaluator believed that information reviewed from previous evaluations, was sufficient because the issues explored on the BRIEF “didn’t stand out as problematic for [Student].” [NT 40-44; S-5]
53. The District evaluator referenced the IEP that was generated after the 2017 reevaluation done by the cyber charter school in discussing the belief that Student did not have difficulties in executive functioning. However, parental input, which the evaluator acknowledged could indicate executive functioning issues, includes Student, “frequently fails to give close attention to details or makes careless mistakes, seems to have difficulty organizing tasks and activities ...often forgets chores [Student] is supposed to do”. [NT 42, 44; P-8]
54. The 2017 IEP notes that one of Student’s disability-related needs is working memory which the District evaluator acknowledges is an aspect of executive functioning. [NT 44; P-8]
55. The 2017 IEP carries several SDIs related to executive functioning: access to modified assignments; graphic organizers to help generate and organize ideas for writing assignments; daily check-ins to review progress; access to further chunking/explanation of class material by teachers; and, extended time for testing including national standardized testing. [P-8]

District’s 2018 Reevaluation – Emotional Disturbance - Depression

56. As presented in the reevaluation report, on the Parent Input form for the 2018 reevaluation the Parent noted, “[Student] suffers from depression and anxiety since [Student] as (sic) 9 – 10 years old. Over the years, [Student’s] depression has worsened which has resulted in many obstacles for [self, [Student’s] family and friends. [Student] still deals with suicidal thoughts as well as panic attacks.” The Parent went on, “[Student] struggles with depression daily, from getting out of bed, brushing teeth, showering/personal care as well as interacting with family.” [S-5]
57. In contrast, the District evaluator testified that “there were not concerns about anything socially, emotionally during seventh and eighth grade.” The evaluator gleaned this impression from a “child study team [where] we review previous report cards, information that’s presented sort of, like, a review of the records and it was -- I can't tell you specific -- specifically the exact documents, but, certainly, report cards and notes that would have come up from, you know, the middle school...(Q) I guess, perhaps, the counselor, maybe, the principal you know. (Q) Attendance records, you know, those are the sorts of things, you know, that are looked at.”⁶ [NT 46]

⁶ The record is unclear whether the witness attended this child study team meeting. If this is the same meeting in which the Parent gave input, the witness was not present.

58. In order to assess social/emotional/behavioral functioning Student was given the Beck Youth Inventories – 2nd Edition. Student’s self-ratings on the five inventories were as follows: Depression – extremely elevated; Anxiety – moderately elevated; Anger – moderately elevated; Disruptive Behavior – average; Self-Concept – lower than average. [S-5]
59. Notably, on the Depression Inventory Student reported experiencing symptoms of feeling lonely, thinking that Student’s life was bad, feeling unloved, feeling stupid, feeling bad about things Student does, and feeling empty inside. Student also reported having trouble sleeping, feeling like crying and feeling sad. [NT 33]
60. To further assess Student’s social/emotional/behavioral functioning the Student was also asked to complete the BASC-3 Self-Report. Student’s endorsements of various items resulted in scores that were Clinically Significant for Depression, Locus of Control, Sense of Inadequacy, Social Stress and Self-Esteem. At-Risk scores were found for Anxiety, Interpersonal Relations, Relations with Parents, and Self-Reliance. [S-5]
61. Two of Student’s teachers at the private school completed the BASC-3. With the exception of one teacher’s rating Student At-Risk in the areas of Atypicality and Hyperactivity, all other areas were Average. [S-5]
62. The Parent was not given the opportunity to complete the BASC-3. The District evaluator believed that the Parent’s responses provided for the cyber school’s 2017 reevaluation a year ago were sufficient, coupled with Parent’s ratings going back to 3rd through 6th grades, and with the current information on the Parent Input form. However, the BASC-3 form instructs the respondent to rate a child’s behaviors “recently – in the last several months”.⁷ [NT 36-37]
63. In considering whether Student qualified for the classification of emotional disturbance under the IDEA the District based its conclusions on how Student was functioning in the small private school environment with individual or very small group instruction and teachers specially trained to address students’ emotional difficulties. [S-5]
64. In making this consideration, the District evaluator described how Student presented outwardly at the private school. However in the reevaluation report the District also included that Student reported feeling stress with social interactions, out of place with others and ignored, others seem happier than self, some degree of worry and nervousness, lacking a sense of strong self-confidence or confidence in problem-solving abilities, depressed almost always, not optimistic, and not understood by anyone. [S-5]
65. The District concluded that there was “no evidence to suggest that [Student] currently experiences any of these characteristics over a long period of time and to a marked

⁷ https://www.cgcatogo.com/uploads/1/0/6/7/10675379/introduction_to_basc-3_and_flex_monitor_gnets_sept_2016_1.pdf. Last visited on March 9, 2019.

degree” and “are not overwhelmingly pronounced or evident to a significant degree to teacher and school personnel”. [S-5]

66. In contrast however, the District evaluator acknowledged in testimony that the Parent’s reports of daily depression “was consistent with all of her past ratings that were provided”, that the Parent had reported Student’s depression “through the years” and that concerns with signs of depression, anxiety, and panic attacks were present while Student was enrolled in the cyber charter school and “those things were present at home prior to that” and agreed that “there had been a long history of depression and anxiety” . [NT 39-40, 46-47, 63]

67. Based on its 2018 evaluation the District found Student ineligible for special education under the IDEA, and also found that Student was not a protected handicapped student under Section 504. [S-5]

Reconsideration of Section 504 Eligibility

68. The District’s supervisor of pupil services reviewed the District evaluator’s report and raised questions about the mitigating effect of medication; the District evaluator realized that medication was a mitigating factor and changed the report. A revised, but not re-dated, reevaluation report was issued. [NT 50-52, 86; S-6/P-4⁸]

69. In addition to Student’s age being corrected on the first page, the revised report repeats the finding of ineligibility for special education under the IDEA but now concludes that Student is considered a protected handicapped student under the ADA and Section 504, that use of medication to treat depression mitigates or lessens the effects of this diagnosis but that Student is not in need of services in order to access the educational program. [S-6/P-4]

70. On August 7, 2018 the District issued a Notice of Recommended Educational Placement (NOREP) noting under Options Considered: “One option considered was eligibility for special education services.” Reason for Rejection noted: “Sufficient data exists to indicate that the child does not have a disability that would preclude educational benefit without special education services.” No other options were considered. [P-3]

Private Educational Evaluation - Specific Learning Disability and Deficits in Executive Functioning

71. The private evaluator holds a doctorate in educational psychology, is a certified school psychologist, has performed independent evaluations, and has supervised school psychologists as part of duties in various positions. The private evaluator has also recently been a District superintendent. The private evaluator currently teaches and trains school psychologists at a large Philadelphia university and supervises the university’s psychoeducational clinic. The private evaluator is vice president of the Learning

⁸ Exhibit S-5 is the original 2008 Reevaluation Report. Exhibits S-6 and P-4 are identical documents, the amended 2018 Reevaluation. The only difference between S-5 and S-6/P-4 is that S-6/P-4 show a changed age and a changed determination of status as a protected handicapped student under the ADA and Section 504.

Disability Association of America, and has been on the board of the International Dyslexia Association as well as president of the local branch. [NT 97; P-2]

72. The private evaluator evaluated Student in September 2018 right before school started and issued a report in October 2018. [NT 99; P-1]
73. For purposes of the evaluation the private evaluator reviewed Student's records, interviewed the Parent on several occasions, and administered the Kaufman Test of Educational Achievement (K-TEA) and the Test of Integrated Language and Literacy Skills (TILLS). [NT 100; P-1]
74. The private evaluator did not conduct cognitive testing because there were consistencies in the results of previous cognitive testing. However, the private evaluator utilized the two most recent cognitive testing results in addition to the TILLS results to configure the Cattell-Horn-Carroll model of IQ testing interpretation in order to analyze whether Student has cognitive processing deficits that would be predictive or related to the areas where Student may be struggling academically. [NT 100-101, 104-105, 107]
75. The Cattell-Horn-Carroll model is the theoretical model for the structure of the intellect. Mostly all the major cognitive assessment batteries (IQ tests) have now been reconfigured and reframed according to this model, starting with the Woodcock-Johnson through to the most recent, the WISC-V. [NT 101]
76. The Cattell-Horn-Carroll model is well-researched and now widely accepted in the field of learning disabilities as a model for determining whether or not a student has a learning disability. The Cattell-Horn-Carroll model looks at broad cognitive factors and narrow abilities within those factors, because there is considerable research that certain narrow and broad factors have more of an impact on academic performance than others. For example, phonological processing, which is a narrow ability under auditory processing, is a cognitive factor that is strongly influential in the acquisition of basic reading skills. [NT 102, 113-114]
77. Student's very low score in phonological processing on the Woodcock-Johnson, the hallmark with children with word reading difficulties or dyslexia, stood out for the private evaluator who then wanted to obtain more information to verify that score. Two subtests from the TILLS and some subtests in the K-TEA confirmed that Student does have below average functioning in phonemic awareness. [NT 108]
78. The private evaluator also had concerns about Student's memory storage and retrieval weaknesses because that is a skill that very much impacts on children's ability to read with comprehension, to find words when they are trying to express themselves, and to pull out formulas and problem solving techniques when they are solving math problems, among other things. These weakness could be related to some of the academic difficulties that Student experienced. [NT 108-109]

79. Specific areas of deficit found when integrating the private evaluator's results from the K-TEA and the TILLS were weaknesses in long-term memory storage and retrieval; slow decoding/processing at the word-reading level because of a lack of automaticity in connecting letter symbols with sounds; and, poor spelling skills connected with phonological processing deficits. Student's writing skills are affected also, because although Student has figured out how to write using mainly the words which Student knows, Student's writing lacks the variation of word use and sentence structure that would be typical for a high school student. Student also demonstrated difficulty with vocabulary awareness. [NT 114-123]
80. To verify conclusions based on the data, the private evaluator consulted with one of the authors of the Woodcock-Johnson who concurred with the findings and was particularly struck by Student's score of 74 on phonological processing and the need for additional testing to explore that area. [NT 118]
81. Even if one were to put aside the Cattell-Horn-Carroll model and look at learning disability diagnosis from the ability/achievement discrepancy model Student would still qualify as having a specific learning disability in reading. In Pennsylvania there is no formula required to establish exactly what a severe discrepancy is, so psychologists can use clinical judgment to look at functional level and how a child's skills impact the child's functional abilities in the classroom. Based on Student's data that shows average cognitive abilities in some areas, in contrast to basic reading skills at the 16th percentile with certain scores well below that, Student demonstrates a severe discrepancy. [NT 140-141, 145]
82. Word reading does not become irrelevant in high school, and the higher a person goes academically, the more solid word reading skills become important. Federal funding through OSEP for adolescent reading research has stressed how important reading skills are in high school and how deficits can and must be remediated for students to find success. Student's post high school goal includes a position for which Student will have to take licensure exams where there will be multi-syllable words not in everyday vocabulary, and because of phonological processing deficits Student is going to struggle to decode those words. [NT 137-138]
83. Based on the private evaluator's summation of the data previously collected and what the private evaluator personally collected, the private evaluator concluded that Student does have a learning disability in the area of basic reading, that is, that Student does have dyslexia. [NT 126]
84. Student requires direct systematic instruction in decoding and word reading skills. [NT 150]

Private Educational Evaluation - Emotional Disturbance - Depression

85. The private evaluator conducted a clinical interview with Student, who related feeling more comfortable at the private school because there is a great deal of support and attention from teachers who are right there to help when Student is struggling to read

something, or doesn't understand something. The teachers are constantly there to scaffold the instruction and help Student through things that are difficult. [NT 129-130]

86. Referring to middle school and the short time in high school in the District Student reported feeling being "one of the dumbest people" in the class and that teachers didn't recognize Student was struggling or didn't have time to help. [NT 130]
87. On an assessment of social communication through pragmatic language Student demonstrated a flat affect and had difficulty understanding the intent of speakers in social scenarios, which the private evaluator hypothesized contributed, along with Student's anxiety and depression, to Student's social difficulties with peers. [NT 123-124]
88. In considering whether Student qualifies as having an emotional disturbance, the private evaluator considered Student's inability to build or maintain typical, normal and satisfactory interpersonal relationships with peers; inappropriate types of behaviors or feelings under normal circumstances as evidenced by Student's repeatedly needing to leave during the school day when under peer or academic pressure; Student's general pervasive mood of unhappiness or depression, that has been consistent since 3rd grade by self-report and parent report; and the tendency to develop physical symptoms or fears associated with personal or school problems as evidenced by Student's avoidance and escape as well as around fears associated with academic and social struggles and fear of failing. [NT 161-162]
89. The private evaluator concluded that Student is eligible for special education under the IDEA classification of emotional disturbance. Student's depression has been consistently present for an extended time as it was diagnosed when Student was nine years old in 3rd grade. Student has been medicated since that time, has had an inpatient psychiatric hospitalization and continues to be in psychotherapy. Student does not have typical peer relationships such as going out with friends, talking or texting on the phone, or engaging with others on social media. [NT 130-131]

Private School Placement

90. There are 30 to 40 students ages 12 to 18 enrolled at the private school campus Student attends. The private school's classes have from 2 to 5 students, but Student's largest class has only a total of 4 students and at times Student is the only student in the class. [NT 92, 211-212]
91. Staff at the private school have been specifically trained to work with students presenting with emotional and social issues, students have access to a counselor, and direct teaching of social skills and opportunities to practice these skills is incorporated in the daily program. [NT 152-153]
92. When Student is struggling emotionally staff provide individual attention in various creative ways so that Student is able to return to class. In the year Student has been at the private school Student has only called the Parent and asked to be picked up once; after

the Parent emailed a staff member who talked with Student, Student told the Parent that it was not necessary for Student to be picked up. [NT 212-214]

93. Student wants to go to school every day and on a day when neither bus nor parental transportation was available Student called around to school peers and found a ride to school. On days when there might be a school delay Student still goes in to school at the usual start time. Student is the happiest the Parent has seen Student in years, and is taking pride in going to school. [NT 202-203]
94. Student has done well academically at the private school. In the latter half of 10th grade Student took Current World Issues, Spanish II, English, Algebra 2 and Forensic Science as well as six special subjects. Student received all As and Bs in these subjects. [NT 203; P-6]
95. In the first semester of the current 11th grade school year Student took Pre-Calculus, English, Spanish III, Biology and Geography as well as eight special subjects. Student received two Bs and all the rest As in these courses.
96. From the Parent's perspective, overall Student is in the right setting to deal with Student's issues, and Student does not feel like an outsider. Student is struggling a little more academically this year than last year, but still things are better, "not perfect, not fantastic, but better". [NT 204, 206-207]
97. Student loves it at the private school. [NT 214]
98. Student has socialized with peers from the private school outside the school day. [NT 35]
99. In the private evaluator's recent position as a district superintendent the private evaluator was involved in placing a student at the private school and visited it to view and understand the program there. Although school was not in session when doing Student's evaluation the private evaluator did place a telephone call to the school principal to confirm that previously obtained information about the school was still correct. [NT 132-133, 149]
100. The private evaluator describes the private school as a very small and supportive environment, with very tiny classes and usually more than one adult in these classes. Most of the children there are struggling with emotional and social issues, and executive functioning issues. The students there tend to be more the withdrawn type than the acting out type. The teachers there have been trained to work with children with social and emotional difficulties. [NT 133]
101. When initially deciding if a child is eligible, the child is typically in a regular education environment not receiving specialized services and support. It is "a little trickier" when evaluating a student who is already in a very supportive program that would look, if you picked it up and put it into a regular typical comprehensive public high school, like an emotional support classroom. Student is receiving at the private

school what would be considered specially designed instruction in a public high school and is responding well to it. [NT 167-169]

102. It is not clear whether or not Student is being specifically instructed in reading at the private school. Nonetheless, with Student's underlying learning disability and long-standing depression and anxiety, in the supportive private school environment the impact of both of those things is being mitigated so Student is finding academic success and is possibly on the road to social success. [NT 138, 151]
103. On the Parent Input form the Parent noted, "With the short time period [Student] has attended [private school] [Student] has been able to bring up the D's and F's [Student] had for grades to A's and B's. [Student] is feeling more confident with [Student's] school work and [Student's] surroundings. Before, going to school meant panic attacks up to 2-3 times a day but now that has changed. With [private school] [Student] has friends who are just like [Student] and teachers who ensure their well-being both mentally and physically as well as educationally". [S-5]
104. The District reviewed data about Student's performance at the District high school, the cyber charter school and the private placement and noted an improvement at the private school. [NT 22]
105. The District noted in the 2018 reevaluation report, "Upon admission to [private school] there was a significant improvement in [Student's] outlook and [Student's] school performance to a noteworthy degree. [S-5]
106. The District evaluator acknowledged that Student was doing well in the private school academically, socially and emotionally, but in reaching the ineligibility conclusion did not factor in that Student was doing well in a specialized, supportive small environment rather than in a large public school. [NT 45-46, 81, 135]

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]. 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 (3rd Cir. 2012). In this case the Parent asked for the hearing and thus assumed the burden of proof.

Child Find: The IDEA and its implementing state and federal regulations obligate school districts to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-

14.125. This obligation is commonly referred to as “child find.” Under the IDEA’s “child find” requirement, a local education agency has a “continuing obligation ... to identify and evaluate all students who are reasonably suspected of having a disability.” *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 271 (3d Cir. 2012)(citing *P.P. v. West Chester Area School District*, 585 F.3d 727, 738 (3d Cir. 2009)); *Perrin v. Warrior Run Sch. Dist.*, 2015 U.S. Dist. LEXIS 149623 (M.D. Pa. 2015);. Section 504 imposes a similar obligation. *See P.P. v. West Chester Area School District*).

Evaluations: The general standards for an appropriate evaluation/reevaluation are found at 34 C.F.R. §§300.304—300.306. The public agency is required to 1) “use a variety of assessment tools”; 2) “gather relevant functional, developmental and academic information about the child, including information from the parent”; 3) “Use technically sound instruments” to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; 4) refrain from using “any single measure or assessment as the sole criterion” for a determination of disability or an appropriate program. C.F.R. §300.304(b)(1—3). In addition, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be “sufficiently comprehensive to identify all of the child’s special education and related service needs” and provide “relevant information that directly assists” in determining the child’s educational needs. 34 C.F.R. §§300.304(c)(1)(ii—iv), (2), (4), (6), (7).

The IDEA regulations impose additional criteria that school officials must use when evaluating a child to determine if the child has a disability. A child's initial evaluation or reevaluation consists of two steps. First, the child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments and classroom based observations, and observations by teachers and other service providers. 34 C.F.R. § 300.305(a)(1). Second, based on their review of that existing data, including input from the child's parents, the evaluation team must "identify what additional data, if any, are needed" to assess whether the child has a qualifying disability and, if so, "administer such assessments and other evaluation measures as may be needed." *Id.* § 300.305(a)(2), (c).

Under the first step of the analysis, the district is required to "[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." *See id.* § 300.304(b). All the assessment methods, protocols and materials used must be "valid and reliable" and "administered by trained and knowledgeable personnel." *Id.* § 300.304(c)(1). In combination, these well-established criteria have the effect of ensuring the evaluation or the reevaluation both confirms the child's potential disabilities, identifies the child’s individual circumstances and examines whether the child still needs specially-designed instruction.

The IDEA defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 34 C.F.R. § 300.8(a); *see also* 20 U.S.C. § 1401. Those classifications or categories are “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious

emotional disturbance (referred to in this chapter as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.” 20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a).

Emotional Disturbance: Pursuant to the IDEA Part B regulations, 34 CFR §300.8(c)(4)(i) "emotional disturbance" means a condition exhibiting one or more of the following characteristics "over a long period of time and to a marked degree that adversely affects a child's educational performance":

An inability to learn that cannot be explained by intellectual, sensory, or health factors.

An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

Inappropriate types of behavior or feelings under normal circumstances.

A general pervasive mood of unhappiness or depression.

A tendency to develop physical symptoms or fears associated with personal or school problems.

A student needs to exhibit only one of the five criteria under the definition of an emotional disturbance to potentially qualify for special education and related services under the ED classification. The District concedes that Student has an emotional disturbance, thus meeting the first criterion for eligibility under the IDEA.

Having a disability, however, does not automatically mean that a child is eligible, since it is a two-part test. With respect to the second prong of IDEA eligibility, “special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). More specifically,

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child’s disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. § 300.39(b)(3).

FAPE: Eligible students are entitled by federal law, the Individuals with Disabilities Education Act 20 U.S.C. Section 600 *et seq.* and Pennsylvania Special Education Regulations at 22 PA Code § 14 *et seq.* to receive a free appropriate public education (FAPE). FAPE “consists of educational instruction specifically designed to meet the unique needs of the handicapped child supported by such services as are necessary to permit the child to benefit from the instruction.” *Ridley School District v. M.R.*, 680 F.3d at 268-269, citing *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982). The Third Circuit has ruled that special education and related services are appropriate when they are reasonably calculated to provide a child with “meaningful educational benefits” in light of the student's “intellectual potential.” *Shore Reg'l High Sch. Bd. v.*

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 (3d Cir. 2009) (citations omitted).

Merely passing from grade to grade and achieving passing grades is not dispositive that a student has received a FAPE. 34 C.F.R. §300.101(c)(1) provides: “Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.” Additionally, it is long-established case law in the Third Circuit that the need for emotional and behavioral instruction and support are equally valid reasons for special education eligibility as are academic concerns. *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3d Cir. 1996), cert. den. 117 S. Ct. 176 (1996)(education includes progress in emotional and social domains); *Breanne C. v. Southern York County District*, 2010 WL 3191851 (M.D. Pa. 2010)(education includes progress in all relevant domains under the IDEA, including behavioral, social and emotional).

In *Andrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court considered a lower court’s application of the *Rowley* standard, concluding that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

Tuition Reimbursement: Parents who believe that a district’s proposed program or placement is inappropriate may unilaterally choose to place their child in what they believe is an appropriate placement, but they place themselves at financial risk if the due process procedures result in a determination that the school district offered FAPE, otherwise acted appropriately, or that the parents’ selected placement is inappropriate.

The right to consideration of tuition reimbursement for students placed unilaterally by their parents was first clearly established by the United States Supreme Court in *Burlington School Committee v. Department of Education*, 471 U.S. 359, 374 (1985). “Whether to order reimbursement and at what amount is a question determined by balancing the equities.” *Florence County Sch. Dist. Four V. Carter*, 114 S. Ct. 361 (1993) later outlined the Supreme Court’s test for determining whether parents may receive reimbursement when they place their child in a private special education school. The criteria are: 1) whether the district’s proposed program was appropriate; 2) if not, whether the parents’ unilateral placement was appropriate, and; 3) if so, whether the equities reduce or remove the requested reimbursement. This three-part test is referenced as the “Burlington-Carter” test for tuition reimbursement claims under the IDEA. The second and third tests need be determined only if the first is resolved against the school district.

A unilateral private placement is only appropriate if it provides “education instruction specifically designed to meet the unique needs of a handicapped child.” *Frank G.*, 459 F.3d at 365 (quoting *Rowley*, 458 U.S. at 188-89, 102 S.Ct. 3034). A parent’s decision to unilaterally place a child in a private placement is proper if the placement “is appropriate, i.e., it provides significant learning and confers meaningful benefit...” *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007). The “parents of a disabled student need not seek out the perfect private placement in order to satisfy IDEA.” *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 249 n. 8 (3d Cir.1999). See also *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d.

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). The District Court "must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion." *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014); *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); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I could not assign a great deal of weight to the District evaluator’s contribution to the record for a number of reasons, many of which are related to the reevaluation report as presented above in the Findings of Fact and below in the Discussion. Additionally, with regard to actual testimony at the hearing, I found the witness’s answers were often ambiguous and confusing. I gave the testimony of the private evaluator and the Parent considerable weight. The private evaluator is an expert who has been actively involved in the field of reading/dyslexia, is fluent in current research in the area of cognitive and achievement assessment and their interplay, and was able to explain her findings clearly. The Parent testified with grace and bravery about very difficult topics, speaking without rancor, appearing neither to embellish nor diminish her child’s struggles.

Discussion

Appropriateness of the District’s evaluation: I find that the District’s 2018 evaluation was not appropriate under the IDEA because in addressing the question of whether Student continues to have a previously-identified learning disability the District did not use a variety of assessment tools to conduct an analysis of Student’s weaknesses and their effects on functioning; used a single measure or assessment of academic skills as the sole criterion for a determination of disability; and, did not assess the child in all areas of suspected disability so as to be sufficiently comprehensive to identify all of the child’s special education and related service needs. I also find that the District’s 2018 evaluation was not appropriate under the IDEA because in addressing the question of whether Student continues to have a previously-identified emotional disturbance the District did not use the BASC in accordance with the instructions provided for the assessment, and thus did not obtain current information from the Parent through administering the BASC inventory but instead relied on the Parent’s responses from the previous year; discounted the information from the Parent that was currently available and discounted the Student’s own self-report in favor of reports from private school personnel; and failed to properly consider the criteria for emotional disturbance under the IDEA.

Some illustrative but not comprehensive problem areas in the District’s 2018 reevaluation with regard to assessment of a possible learning disability are as follows: While acknowledging that cognitive functioning is expected to remain stable over time, and reporting a significant drop in

Student's score on the cognitive Perceptual Reasoning Index between the 2011 and 2014 assessments, the District failed to explore, or recommend referrals to other professionals to explore, other areas of suspected disability that caused this cognitive decline. This is particularly important because the District evaluator acknowledged in testimony that the drop could potentially have affected academic areas such as reading or math.

Although Student's overall general cognitive ability was assessed to be 91 plus or minus the standard error of measurement, Student evidenced a 17 point discrepancy in the score of 74 plus or minus the standard error of measurement on Phonological Processing. Although the District evaluator acknowledged that a significant weakness in Phonological Processing could cause a student to struggle academically in spelling and basic reading, the evaluator did not administer additional tests, or refer to a reading specialist, to determine whether Student had a reading disability.

Assuming that the reevaluation report simply contains a cut-and-paste error and that the norms applied to Student's academic achievement were not based on the 11-2 age table, there are notable weaknesses in the areas of Basic Reading Skills and Letter-Word Identification as well as on Word Attack and Mathematics Applied Problems. Again the District did not use additional instruments to determine Student's needs in reading and math.

Although reporting, based on a record review, that Student's Working Memory had been a relative strength in both the 2011 evaluation and the 2014 reevaluation – on both assessments Student's score in this area was 102 - the District recorded a Working Memory score of 81, yet in its report did not discuss possible origins or consequences of this 21-point decline or recommend a referral to a District or private neuropsychologist or to a neurologist to explore this decline.

In terms of the District's assessment of Student's eligibility for IDEA services under the classification of emotional disturbance, it is striking that while the District administered several very appropriate instruments, going through the elements of the criteria for emotional disturbance there was little evidence of reliance on the data gleaned. Although the District report contains some of Student's significant long-standing mental health history, the District either did not solicit or ignored information from Student's 7th and 8th grade years which indicated that despite good grades, Student was not able to function socially or emotionally in the general education setting without ongoing, nearly constant, crisis intervention by the school counselor and the school nurse in concert with the Parent. Further, the District reported but then undervalued what current data indicative of emotional disturbance was solicited from the Parent, and virtually disregarded Student's self-report, "not to diminish feelings [Student] may have...however Student does not demonstrate difficulties day-to-day in any of these areas while in school and is managing these feelings based on [Student's] positive performance in school and teacher observations of [Student's] mood."

In sum, I found the District's reevaluation report to contain a considerable amount of numerical data and written explanations of singular data points, most of which appears to be computer-generated, without presenting a thoughtful analytic interpretation of the interplay of the

comprehensive field of data points and their significance for Student's academic, social and emotional needs.

Eligibility: After receiving general education extra supports for reading and math starting in 1st grade, Student was evaluated and found eligible under the IDEA by another district in 3rd grade under the classification of specific learning disability in math. At the end of 9th grade the cyber charter school found Student eligible under the IDEA under the classification of emotional disturbance. In between these two evaluations that found Student eligible under the IDEA, the District conducted a reevaluation at the end of 6th grade, and found Student to be ineligible for special education on the basis of "significant improvement in the area of math problem solving" although Student had been receiving specially designed instruction in the areas of reading and writing as well as math, and also in the area of executive functioning. Exiting Student from special education on the basis of improvement in math removed the specially designed instruction in reading, writing and executive functioning as well. The District's 2014 reevaluation did not address substantial indications of reading deficits in the test data, nor did it pay sufficient attention to the Parent's input or both Parent and teacher indications of depression on the behavioral rating scales. Nevertheless the Parent indicated agreement with the conclusion that the District reached regarding the absence of a learning disability, not being aware that special education addresses emotional, social, and behavioral deficits as well as academics.

The District reevaluated Student towards the end of the 2017-2018 school year at which time Student was attending the small private school which was affording Student academic success and ameliorating the social and emotional issues that had previously led to chronic and intense school avoidance. The evaluation resulted in the initial finding that Student was not eligible for special education programming under the IDEA and was also not eligible for accommodations under Section 504. The latter conclusion was reversed when a supervisor found that the District evaluator had not adequately considered the provisions of the Americans with Disabilities Act (ADA). The final District evaluation reached the conclusion that Student had a disability – emotional disturbance - but did not require special education.

I hold that Student is eligible for special education services under the IDEA under both classifications of a specific learning disability and emotional disturbance, with emotional disturbance being the primary disability and specific learning disability being the secondary disability.

With regard to specific learning disability it is clear that being in Pennsylvania the District was firmly within its rights to use the ability/achievement discrepancy method to look at whether or not Student has a specific learning disability. However, a careful reading of the 2018 report, combined with the District evaluator's testimony, leads me to believe that the District looked primarily at computer-generated numbers to reach its conclusions of ineligibility rather than carefully examining previous data, including an IEP created for the very grade in which Student was placed, and more importantly that it did not go beyond the broadly painted array of numbers to analyze the data it had to discern salient word-reading weakness and significant declines in perceptual reasoning and memory that should have at least triggered further, more specific, assessment. In addition, however, I come to my conclusion giving considerable weight to the report and the testimony of the private evaluator because of her immersion in the field of

learning disabilities, her thorough command of current research and her clear and explicit analysis of the Student's data. I also note that she was additionally able to use the ability/achievement discrepancy analysis, employing more precise strokes, to arrive at her opinion that Student qualifies under the IDEA as a child with a learning disability in reading and with deficits in executive functioning.

I also find that Student is eligible under the IDEA under the primary category of emotional disturbance. In reaching this conclusion I look at Student's mental/behavioral health history beginning in toddlerhood through preschool, which condition seemed to abate in the primary grades, and which then came roaring back with full force as depression with suicidality by 4th grade. I look at Student's significant difficulty with peers in middle school, leading to chronic and desperate efforts to escape the school environment even when afforded frequent crisis intervention by school counselors and school nurses in concert with the Parent. I look at Student's finally needing to leave the District's bricks and mortar setting and enrolling in a cyber charter school, but suffering with depression to the point where there were low grades in nearly all subjects for 9th grade, and in 10th grade Fs in four of five major subjects, with the fifth subject being a D. I look at Student's having been in psychotherapy and taking antidepressant medication for approximately the past eight years. I also look at what a difference academically, socially and emotionally Student demonstrated once placed in what is in essence a special education emotional support program.

Placement: During the hearing the District spent considerable time, particularly in rebuttal, putting forth various general education options available in the high school to address reading deficits, social skills, and emotional issues. The District also noted that if the high school were too large an environment it runs a small educational setting, Sloane, in a separate location that could afford Student similar supports to those offered in the private school. Given that Student had been found to have the qualifying disability of emotional disturbance under Section 504 it is striking that none of these general education options were noted on the NOREP as having been considered.

Student was socially and emotionally unsuccessful in middle school, academically and emotionally unsuccessful in the six weeks spent in the high school, and academically and emotionally unsuccessful in the cyber school. Student has unique learning needs resulting from Student's disability and requires specially designed instruction that adapts the delivery of Student's instruction. The Parent located a placement, initially funded by the District, that has proven to yield meaningful educational benefit to Student in light of Student's circumstances. These circumstances, well-known to the District but amazingly set aside in its 2018 evaluation, include a virtually life-long manifestation of emotional disturbance including suicidality, a significant history of school avoidance, the experience of being bullied in middle school with a lack of resilience through effective coping skills, and an inability to maintain age-appropriate relationships with peers. The private placement affords Student very small educational grouping including one-to-one instruction, as well as specially trained staff who can address Student's emotional issues as they arise. Under *Ridgewood* a private placement does not need to be perfect, and although the Parent did not prove that Student's current program provides a specially designed program of reading remediation such as the expert recommends, the private school is

certainly providing the academic and emotional supports that are allowing Student to access the general education high school curriculum.

While the District acknowledged that Student was doing well in the private school, the District attributed this to the Student's no longer being educated at home but now being back in school with peers. Further, in reaching its conclusion, the District maintained that at the end of the 2017-2018 school year Student was no longer eligible for special education that was deemed necessary one year previously at the end of the 2016-2017 school year, because for about the last four-to-five months Student was doing relatively well academically, socially, and emotionally. I concur with the private evaluator in finding that the private school is affording Student the precise supports which are enabling the Student to make appropriate academic, social and emotional progress. After over two years of emotional distress in the District, and after a year and a half of academic failure and emotional distress in the cyber charter school, Student is now demonstrating that, afforded the intensive emotional supports of the private school, Student can derive meaningful educational benefit. The District's conclusion, after less than one semester, that because these supports have been successful the Student no longer needs them is, frankly, unsupportable. Just because the Cathedral of Notre Dame has not fallen down doesn't mean that its buttresses should be removed.

Order

It is hereby ordered that:

1. The District's evaluation of Student was not appropriate.
2. Student is eligible for special education under the IDEA.
3. The Parent is entitled to reimbursement of tuition for the private placement.

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

Linda M. Valentini, Psy.D., CHO

March 14, 2019

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