

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: D.R.
ODR #2225/11-12-KE

Date of Birth:
[redacted]

Dates of Hearing:
October 21, 2011
November 15 2011
January 17, 2012
January 31, 2012

CLOSED HEARING

Parties to the Hearing:
Parents

Representative:
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School District of Philadelphia
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Date Record Closed:

February 27, 2012

Date of Decision:

March 21, 2012

Hearing Officer:

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

Background

Student¹ is a late teen aged eligible child with a classification of specific learning disability in reading and math who resides in the School District of Philadelphia [“District”] and currently attends a private school [“private school”] for children with learning differences. Student has never attended public school although Student’s father and mother [“Parents”] requested and received an evaluation from the District in July 2006.

The Parents believe that the District failed to offer Student a free appropriate public education [“FAPE”] and that they should be reimbursed for the cost of a private evaluation they obtained for Student in 2010 and for a portion of Student’s private school tuition for the 2010-2011 school year and the entire 2011-2012 school year.

This hearing was conducted in conjunction with a hearing for Student’s sibling, such that each case had about half of each hearing day. Since there were two separate cases, the date for closing arguments and the Decision Due Dates were scheduled accordingly.

Issues

1. Should the District be required to reimburse the Parents for the independent educational evaluation they obtained for Student in July/August 2010?
2. Should the District be required to reimburse the Parents for Student’s private school tuition from January 2011 through June 2011 and for the 2011-2012 school year?

Findings of Fact

1. Student is a 12th grade resident of the District who has attended private schools throughout Student’s educational career. [NT 40]
2. Student attended a regular education private preschool and was held back a year. Student then enrolled in kindergarten in a regular education private school, repeated kindergarten, and remained in that school through the first two months of second grade. [NT 42-44]
3. In November of second grade the Parents placed Student in a private school for children with learning differences where Student remained through sixth grade [2005-2006 school year]. [NT 45-48]

¹ 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.

4. When the Parents were considering a change from the first special education school to another school, they focused their search on a private special education school outside the State, and on two charter schools located in Philadelphia, but not on District-operated public schools. [NT 137-139, 143]
5. On April 19, 2006 the mother wrote a letter “To Whom It May Concern’ with no inside address. Asked to whom she wrote the letter, the mother testified, “I believe it was sent to the School District back then” but further questioning failed to elicit any further clarity. [NT 55-58]
6. The April 19, 2006 letter noted that the mother was “writing regarding schooling for my [child, Student]”. The letter went on to say that Student had been attending [a private special education school] since 2002, that Student had received various diagnoses, and that upon the private school’s recommendation that Student receive certain reading methodologies daily the Parents were considering an out of state special education private school. [P-4]
7. The April 19, 2006 letter ended with the statement “The [future school] is a private school in [town, state] that incorporates this type of program in their daily teaching. Since [the private school Student was attending at the time] does not utilize the Wilson Program it is imperative that [Student] be in a schooling environment that will address [Student’s] learning disabilities so that [Student] may have a greater chance to succeed. Thank you for your prompt attention to this matter.” [P-4]
8. The April 19, 2006 letter noted an attached private evaluation.² The letter did not make a request for an evaluation from the District, for a placement in the District, for tuition reimbursement or for transportation assistance. [P-4]
9. On June 20, 2006 Student received a private evaluation from the same psychologist who had evaluated Student in March 2004. The mother testified that the Parents had Student re-evaluated since she thought children with special needs were supposed to be evaluated every two years. [NT 52; S-7]
10. The private evaluator administered a test of cognitive ability [WISC-IV], academic achievement [W-J III TA], the SCAN Auditory Processing Test, the Barkley ADHD Rating Scales, and a test of self-regulation and attention [the Gordon Diagnostic System]. [S-7]
11. The private evaluator assigned the DSM-IV³ diagnoses of ADHD combined type, Reading Disorder, and Cognitive Disorder NOS (Auditory Processing Disorder) and made educational recommendations. [S-7]

² Almost certainly the private evaluation from March 11, 2004 done by the same psychologist who performed the next evaluation in June 2006. [S-6, S-7]

³ Diagnostic and Statistical Manual – Fourth Edition of the American Psychiatric Association.

12. At an indeterminate time between April 2006 and July 2006 the Parents contacted the District's regional office by telephone and had a conversation with a District psychologist. [NT 62-63]
13. At some indeterminate time between June 20, 2006 and July 11, 2006 the Parents provided the District psychologist with a copy of the June 20, 2006 private evaluation. At some indeterminate time in this same period the District psychologist met with Student and the mother. ⁴ [NT 72; S-7]
14. The District psychologist considered this June 20, 2006 private evaluation and incorporated it into an Initial Evaluation Report [ER] dated July 11, 2006. In addition to reporting the results of testing just done by the private evaluator the District's ER contained educational, medical and diagnostic information provided by the Parents, and extensive academic and social information from the private special education school Student had been attending. [NT 385-387, 416; S-6]
15. The District psychologist concluded that Student was eligible for special education as a child with a specific learning disability in reading and math fluency, and recommended a resource level program at the 7th grade level. Further, given that Student would be new to the public school in particular and new to public school education in general, the District psychologist recommended that Student's progress should be reviewed by 12/31/2006 to determine if this was the appropriate level of service to meet Student's needs. [S-6]
16. On July 11, 2006 the mother had a conversation with the District psychologist. Her contemporaneous notes indicate that she told the psychologist that she was "looking for anything that I can get but especially transportation to [the out of state special education school]." ⁵ [P-8]
17. Mother's contemporaneous notes also say that the District psychologist told her that Student "can be provided with "appropriate"⁶ learning environment for 7th and 8th grade". [P-8]
18. The District psychologist heard nothing further from the Parents after giving the mother a copy of the ER until the District psychologist and the mother spoke ⁷ in early December 2006. The mother said Student had begun attending the out of state private school at the beginning of the 2006-2007 school year [7th grade]. [NT 147-148; P-4]

⁴ Although there was a July 11th meeting it is unclear whether this meeting was the only meeting held.

⁵ Unfortunately the Application Materials and Enrollment Contract for the out of state school are not in evidence. This hearing officer's experience through the years is that it is the usual practice of private regular education and special education schools to require enrollment fees and tuition contracts between February and April of the school year prior to the year covered by the contract.

⁶ Internal quotation marks are in the original handwritten notes. [P-8]

⁷ The mother's testimony contradicts her typewritten notes about who initially called whom and it is unclear if student or Student's younger sibling was the initial reason for the call. [P-4]

19. Student remained at the out of state private school through the 2007-2008 school year [8th grade]. At the time reports were issued for the end of the last marking period in 8th grade, a teacher's comment⁸ made evident the fact that Student would be moving to another school for the following school year. Student began at the current private school at the beginning of the 9th grade [2008-2009 school year] and has remained there through the present [12th grade]. [S-10]
20. On February 24, 2010 the Parents signed an Enrollment Agreement with the current private school for the 2010-2011 school year [11th grade]. The Enrollment Agreement provided that the enrollment fee of \$3200 had to be sent to the school by March 1, 2010 and that ten payments of \$3200 each shall be sent to HES⁹ by the 1st of each month, April 1, 2010 through January 1, 2011. [S-11]
21. The enrollment contract stipulates that parents were unconditionally obligated to pay the fees for the full coming academic year [2010-2011] after May 1, 2010 even if the child is absent, withdrawn or dismissed. There is a tuition refund plan [brochure not in the record] that covers very specific circumstances arising in the event of unanticipated separation from the private school after the first 14 consecutive calendar days beginning with a child's first day in the school year. [S-11]
22. In July/August 2010 Student was evaluated by a private evaluator [other than the previous private evaluator]. [S-5]
23. The evaluator administered cognitive testing [WAIS], academic achievement testing [WIAT-II; Peabody Individual Achievement Test Writing Sample], and reading testing [Nelson-Denny; Critical Reading Inventory selections]. [S-5]
24. The next contact the family had with the District was on one of the same days as the private evaluation, August 23, 2010, when the mother and Student came to their area high school to enroll Student for the 2010-2011 school year. As additional information was required [immunization records] the Parent was expected to return in a few days to complete the registration process. The mother never returned to complete the registration paperwork. [NT 350-351, 500; S-4, S-5]
25. Nevertheless, on August 28, 2010 based on the August 23rd enrollment the District's Transportation Services notified the Parents that Student was eligible for a free student pass via SEPTA from home to the High School and back. Student's Pupil ID number was included on the notification letter. [P-2]

⁸ "I will miss [Student's] smiling face next year and hope [Student] will never be a stranger to the [School]." [S-10 page 6]

⁹ HES is similar to AMS, described in *P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727 (3d Cir. 2009) as "a program that fronts the entire year's tuition to a private school and requires that parents repay the bank on a monthly basis, with limited opportunity for parents to opt out of full payment if their child does not attend the private school."

26. It is noteworthy that in the early months of 2010 the Parents decided to move Student's younger sibling to the current private school for the 2010-2011 school year, and signed an Enrollment Contract for the sibling in April 2010. The mother testified that it was difficult having two children in two different schools some distance apart, and the older sibling [Student] would be obtaining a driver's license and [the younger sibling] could go to school with the older sibling [Student]. [See NT 126-127 in Volume I of transcript for #2226/11-12-KE]
27. On August 23, 2010 the Parents already had to have paid the \$3200 enrollment fee and five of the \$3200 monthly tuition installments for the 2010-2011 private school tuition. The mother testified that she never inquired into whether the private school would release the family from the contract, and in fact she believed that the private school would require that the family pay the full tuition and fees for 2010-2011. [NT 112-114; S-11]
28. On August 26, 2010, only three days after the mother had enrolled Student in the District High School, the Parents composed a letter "To Whom It May Concern" using only the inside address "Philadelphia School District, Philadelphia PA 19154".¹⁰ [P-1]
29. The letter noted that the Parents had enrolled Student in the District, that the Student had special needs, and that they were requesting a special education evaluation and an IEP from the District as soon as possible. The letter also noted that Student was enrolled in the private school, and that the Parents were asking the District to "provide transportation and support for this program at least until an appropriate IEP is completed and a proper program is offered". [P-1]
30. The mother testified that she sent this letter to the Northeast Regional Office, to the High School Region and to the Central Office, but there is no documentation that this was the case or that the mother had the correct addresses for any/all these offices. [NT 81-83; P-1]
31. The mother testified that she could not recall if she sent the letters by mail or delivered them in person. Toward the end of her testimony she did remember that a letter or letters was/were returned to her by either the District or the US Postal Service for "incorrect address". [NT 514]
32. The mother also testified that she sent the letter to the High School where she had registered Student, but later recanted this testimony. When questioned as to why she had not sent the letter directly to the High School in which she had enrolled Student the mother testified that she was going on vacation and did not have time to send the letter to the High School and/or drop it off in person. [NT 81-82, 90, 158-159]
33. The District had no record of receiving this letter. [NT 256, 348, 461-465]

¹⁰ Student's private August 23, 2010 evaluation notes that mother is a college graduate and father attended two years of college. Mother's testimony that she wasn't good at writing letters is puzzling. [NT 162, S-5]

34. The Parents withdrew Student's enrollment in the District on or before September 10, 2010. [S-4]
35. The mother testified that not having heard anything from the District the Parents sent a follow-up letter dated October 6, 2010, addressed "To Whom It May Concern" and using the inside address "Philadelphia School District, Philadelphia, PA". However the Parents had received the Transportation Letter from the District on or About August 28, 2010. [P-2, P-3]
36. The District had no record of having received this letter. [NT 350-351, 461-465]
37. On March 14, 2011 the Parents signed an Enrollment Agreement with the private school for Student's 12th grade [2011-2012 school year]. The Enrollment Agreement provided that the enrollment fee of \$3300 had to be sent to the school by March 1, 2011 and that ten payments of \$3300 each shall be sent to HES by the 1st of each month, April 1, 2011 through January 1, 2012. [S-12]
38. The enrollment contract stipulates that parents were unconditionally obligated to pay the fees for the full coming academic year [2011-2012] after May 1, 2011 even if the child is absent, withdrawn or dismissed. There is a tuition refund plan [brochure not in the record] that covers very specific circumstances arising in the event of unanticipated separation from the private school after the first 14 consecutive calendar days beginning with a child's first day in the school year. [S-12]
39. On August 16, 2011 the Parents through counsel filed for this due process hearing requesting tuition reimbursement and reimbursement for the private evaluation conducted in July/August 2010. [S-3]
40. On August 18, 2011 the mother wrote a letter to the principal of the High School, using the principal's name, the name of the school and the correct address. She did not include an address or a phone number or email address the school could use to contact the family. The mother said she was in a hurry and therefore omitted the contact information. [NT 169; S-1]
41. The August 18, 2011 letter informs the principal that the District has not offered an appropriate program to meet Student's special needs, that Student is enrolled in the private school and that the Parents are asking the District to fund the tuition at the private school. [S-1]

Discussion and Conclusions of Law

Burden of Proof

In November 2005, the U.S. Supreme Court held the sister burden of proof element to the burden of production, the burden of persuasion, to be on the party seeking relief. However, this outcome-determining rule applies only when the evidence is evenly balanced in "equipose," as otherwise one party's evidence would be preponderant.

Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). The Third Circuit addressed this matter as well more recently. *L.E. v. Ramsey Board of Education*, 435 F.3d. 384; 2006 U.S. App. LEXIS 1582, at 14-18 (3d Cir. 2006). Thus, the party bearing the burden of persuasion must prove its case by a preponderance of the evidence, a burden remaining with it throughout the case. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006). Here, the Parents requested this hearing and were therefore, assigned the burden of persuasion pursuant to *Schaffer*.

Upon very careful consideration of the testimony and documents, and evaluating the credibility of the witnesses, this hearing officer has determined that the Parents failed to provide a preponderance of the evidence, the District's evidence was more persuasive, and, the parties' evidence not being equally balanced, determining the outcome under *Schaffer* was not necessary.

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).

The mother testified on behalf of both Parents. She appeared to be sincere and was pleasant and courteous, and clearly conveyed that she and her husband wanted the best education they could possibly provide for their children. However, her testimony could be credited with little weight when issues of fact and intent were examined. On numerous occasions, the mother answered that she couldn't remember, could not recall, didn't think so, or was confused between the two siblings. On a few occasions she retracted previous statements. Her frequent lapses in recollection led to her testimony being given less weight when a finding of fact rested on an issue of credibility. Additionally, the mother's claim that the Parents were interested in a public school program and placement for Student was incompatible with many of their actions, for example carelessly addressing important letters to the District despite making detailed notes of conversations with the District psychologist, entering into Enrollment Contracts for the private school and paying down these contracts at the same time they professed to be pursuing placement in the District, failing to contact the District one way or another after receiving the District's evaluation, and enrolling Student in the High School after the family had paid a considerable portion of the tuition bill only to withdraw Student eighteen days later. Notably, the first time that the Parents identified and wrote to a specific District staff member, the High School principal, with a correct address and with more clarity than ever before about their intent, was two days after the family's counsel had filed for due process.

The District psychologist, who is no longer with the District, presented as an exceptionally difficult witness. Although to the individual's credit the witness appeared

without requiring a subpoena, the witness displayed barely concealed contempt for the hearing process. Given the witness' attitude during the hearing, and concluding that the individual's manner may be in some part how the person interfaces with others at times, it is entirely understandable that the mother was offended by her interactions with the individual. Nevertheless, the factual content of the witness' testimony was persuasive.

Much of the Parents' closing argument details the District psychologist's attitude and conduct toward the family. Although this individual might in fact have said and done all that the Parents allege given the individual's demeanor in the hearing, the person's interpersonal conduct is not a matter within a hearing officer's authority to remedy.

The testimony of the District witnesses regarding not having received correspondence from the Parents, and about the registration process at the High School, was credible.

The witness from the private school was not helpful in establishing that the Parents' unilateral placement was proper under the Act for this Student specifically since he knew very little about Student or Student's individual educational program.

Legal Basis and Discussion - Evaluation

The IDEA requires States to provide a "free appropriate public education" (FAPE) to all children who qualify for special education services. 20 U.S.C. §1412.

An evaluation forms the basis upon which a child's special education program is developed. A school district, upon request, must provide an evaluation for a resident child who is not enrolled in the district. Federal regulations provide that an evaluation must be conducted within 60 days of receiving parental consent. 34 C.F.R. § 300.301(c)(1)(i).

Pennsylvania specifies that the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the agency receives written parental consent for evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted. Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10 calendar days of the oral request. 22 Pa Code § 14.123(b)(c)

A parent also has a right to an independent evaluation at public expense if the parent disagrees with the District's evaluation. In that event, the District must either file for due process to defend its evaluation or pay for the independent educational evaluation if parent requests it. 34 C.F.R. § 300.502(b)

Discussion: The District has no record of having received a request for an evaluation and IEP for Student from August 2010 onwards. [FF 33, 36] The documentary and testimonial evidence put forth by the Parents regarding their having requested an

evaluation for Student in 2010 is not persuasive. The Parents were simply unable to convince this hearing officer that the District should have received the letters they sent, and the disorganized and inadequate manner in which the Parents wrote and addressed the letters renders the District's position of lack of notice more plausible than not. [FF 28, 30, 31, 32, 35] The District provided Student with an evaluation in 2006. [FF 13, 14, 15] The District provided Student's sibling with an evaluation in 2010. Had the District received the Parents' letters requesting an evaluation of Student in 2010 this hearing officer has no reason to believe that the District would not have provided one. There is no evidence that the District received an evaluation request from the Parents by mail or by any other means prior to or after the dates the private evaluation was obtained. There is no basis upon which to grant the Parents' request for reimbursement for the private evaluation they obtained for Student in July/August 2010.

Legal Basis and Discussion – Tuition

Although the IDEA provides that a hearing officer can order tuition reimbursement when a parent places a child in a private facility, the IDEA's implementing regulations at 34 C.F.R. §300.148 (c), make it clear that tuition reimbursement can be considered only under specific conditions:

“If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency enroll the child in a private...school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment...”

In *Forest Grove School District v. T.A.*, _ U.S., 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009), the Supreme Court held that tuition reimbursement can be awarded to a parent whose child has never attended a public school.

Even before becoming a matter of statute, the right to consideration of tuition reimbursement for students placed unilaterally by their parents was clearly established by the United States Supreme Court in *Burlington School Committee v. Department of Education*, 471 U.S. 359, 374 (1985). *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 amount. Consideration of these three elements is referenced as the “Burlington-Carter analysis”.

The IDEA authorizes hearing officers and courts to award “such relief as the Court determines is appropriate” 20 U.S.C. § 1415(h)(2)(B). The IDEA does not require a local education agency to pay for the cost of education, including special education and related

services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such a private school or facility. 20 U.S.C. § 1412(a)(10)(C)(ii).

The first prong of the Burlington-Carter analysis requires an examination of whether or not the District provided Student with FAPE. The threshold question in this particular case, however, is whether the District knew that the Parents were asking for a public school program and placement for Student. The Parents registered Student in the District's High School just prior to the opening of school in the 2010-2011 school year and indicated on the enrollment materials that the Student had received special education. [FF 24] However, the Parents withdrew Student from the District's rolls just eighteen calendar days later. [FF 34] It is unclear why the mother did not provide the District with a letter upon enrolling Student in person in August 2010. Although the Parents represented that they subsequently sent letters to the District requesting an evaluation the letters were not received by the District. [FF 28, 33, 35, 36] There is no basis upon which to conclude that the District should have provided a proposed program and placement for Student during that narrow timeframe, notwithstanding the notation on the registration form that Student had received special education. Having not received an evaluation request, and Student's registration having been withdrawn, there is no basis upon which to conclude that the District was on notice that it should offer FAPE to Student for any portion of the 2010-2011 school year or for the 2011-2012 school year.

Additionally, although it is not necessary to reach the second prong of the Burlington-Carter analysis, it is noteworthy that the witness from the private school presented by the Parents had no direct knowledge of how Student was doing in school, did not know which interventions were being provided to Student, described an assistive device that some children used at the private school but then acknowledged that Student was not using this technology, and could not explain why Student's Learning Profile had not been updated [NT 199, 222, 224, 226-227, 232-235].

Finally, in this matter, given the unusual circumstances surrounding the first prong of Burlington-Carter, it is important to address the third prong and examine the equities. The IDEA allows a hearing officer to deny a tuition reimbursement award if: 1) Parents did not inform the IEP Team (at the most recent IEP Team meeting) that "they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and intent to enroll their child in a private school at public expense"; or 2) "at least 10 business days prior to the removal of the child from the public school..." the parents did not give the public agency notice that they were seeking the public funding of private school tuition; and 3) The claim for tuition reimbursement also may be denied upon a finding of unreasonableness with respect to the action taken by the parents. 34 C.F.R. 300.148 (d) (1) (i-ii) and (d) (3); 20 U.S.C. 1412 (a)(10)(C).

The Parents failed to provide the District with the required 10-day notice that they were [for the third and fourth time] placing Student in the private school. The Parents entered into an Enrollment Agreement for the 2010-2011 school year with the private school on

February 24, 2010 six months prior to when they allegedly contacted the District and requested an evaluation and IEP. [FF 20, 21] Under the IDEA, Parents are required to provide the District with a 10 day notice of their intent to seek tuition. In this case the Parents not only failed to provide the 10 day notice, but signed the Enrollment Agreement months prior to contacting the District. The failure to provide the proper 10 day notice to the District precludes tuition reimbursement for any portion of the 2010-2011 school year. The Parents likewise entered into another Enrollment Agreement with the private school on March 14, 2011, again without providing notice to the District. [FF 37, 38] Again, the failure to provide the proper 10 day notice to the District precludes tuition reimbursement for the 2011-2012 school year. Not until five months after signing the second Enrollment Agreement did the Parents provide the District with notice that they were seeking tuition reimbursement. [FF 41]

The fact that the Parents waited until the end of August in 2010 to register Student in the High School, without having previously prepared any letters asking for an evaluation and an IEP, and in light of their already having signed an Enrollment Agreement and having been required to make at least six payments on same as of the registration date, raises questions about their sincerity in wanting a public school placement for Student because of financial concerns [NT 79-80]. [FF 27] Additionally their entering into the 2011-2012 Enrollment Agreement in spring of 2011 without following up with the District or the High School to seek an evaluation and/or IEP for the coming school year again raises questions about their intentions. [FF 37, 38] The mother's testimony that she "didn't remember" if she ever considered contacting the High School prior to signing the contract with the private school contributed to undermining her credibility. [NT 175-176]

In addition to and as part of their failure to provide the District with the required notice the equities favor the District, as the Parents' actions were unreasonable and suggested they were not genuinely interested in placing Student in public school for 11th and 12th grades after Student had spent an entire educational career up to that point in private schools. They signed an Enrollment Agreement and paid down a substantial portion of their tuition obligation prior to registering Student in the High School in August 2010 [FF 20, 21]; they did not return to complete the registration paperwork as arranged [FF 24]; they did not follow through directly with the High School to ensure that Student was evaluated and offered a program and placement during or following registration for 2010-2011 [FF 28, 32, 35]; they prepared and purportedly sent several letters to the District with inadequate or incomplete addresses [FF 28, 30, 31, 32]; they withdrew Student's enrollment for 2010-2011 after eighteen days, a time span during which Student had already started the 11th grade year in the private school [FF 34]; and they signed an Enrollment Contract with the private school in April 2010 for Student's younger sibling and moved Student's younger sibling to the private school beginning in the 2010-2011 school year in part because Student would be obtaining a driver's license and could drive the younger sibling to and from school [FF 26].

In light of the findings above related to the credibility of the Parents and the fact pattern, the family's request for reimbursement for the independent evaluation and tuition must be denied.

Order

It is hereby ordered that:

1. The District is not required to reimburse the Parents for the independent educational evaluation they obtained for Student in July/August 2010.
2. The District is not required to reimburse the Parents for Student's private school tuition from January 2011 through June 2011 and for the 2011-2012 school year.
3. The District is not required to take any further action.

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

March 21, 2012

Date

Linda M. Valentini, Psy.D., CHO

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