

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

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 28428-23-24

Child's Name

T.G.

Date of Birth

[redacted]

Parents

[redacted]

Local Educational Agency

String Theory Schools
Philadelphia Performing Arts Charter School
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Hearing Officer

Michael J. McElligott, Esquire

Date of Decision

12/05/2023

Introduction

This special education due process hearing concerns the educational rights of [redacted] (“student”), a student who attended the Philadelphia Performing Arts Charter School, a school operated by String Theory Schools (“charter school”).¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)² as a student with a specific learning disability.

Through the 2022-2023 school year, as in prior school years, the student attended a nearby private school, a placement agreed upon between the parties and supported by the charter school. In the spring of 2023, the parties disputed whether the student qualified to take a diploma and be exited from special education. As a result of that dispute, on June 30, 2023, parents filed a complaint as to that issue, among others.

Parents claim that the student did not qualify to take a diploma. Therefore, parents claim that the charter school is responsible for ongoing special education programming for the student. More specifically, parents claim that the student program and placement should continue at a program for special needs learners housed at a local community college with

¹ The generic use of “student”, and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§711.1-711.62 (“Chapter 711”).

academic and student support, a program that was part of potential considerations for the student in the 2023-2024 school year. That program is run by the private placement which the student had been attending. Therefore, parents seek a finding that the student (1) should be provided with special education programming (2) in the program at the community college run by the private placement. Additionally, parents claim that the charter school failed to program appropriately for the student with extended school year ("ESY") programming in the summer of 2023.

The charter school counters that the student met credit requirements to take a diploma and issued that diploma to the student in June 2023. Therefore, the charter school contends that the student no longer qualifies for special education programming and an order should confirm its decision to grant a diploma to the student and, consequently, that it had no obligation to the student for ESY-2023 programming.

Additionally, two procedural elements informed the procedural background and evidence at the hearing. One, the parents asserted pendency in the private placement for the current 2023-2024 school year, which the charter school resisted given its position regarding diploma-issuance. Therefore, a pendency hearing was held and a pendency ruling was issued in August 2023, finding that the student's programming should continue at the private placement pending the issuance of this decision.

Two, in prehearing consultation with counsel for the parties, the undersigned hearing officer indicated that he was aware through the complaint what parents sought for the student's placement/programming, should the decision favor parents on the diploma-taking issue. He was unaware, however, of the charter school's position in such a circumstance. Therefore, a hearing order directive was issued for the student's individualized education program ("IEP") team to meet to develop an IEP for the student, supported by the issuance of a formal recommendation by the charter school, should the diploma-taking issue result in an order for ongoing programming. If that was the case, the evidence could be considered in light of what each party sees as an appropriate placement/program for the student. If that was not the case (i.e., if the record supports a finding is that the student should be awarded a diploma), then such evidence would be moot but would at least provide a complete evidentiary mosaic. Thus the evidence in this record includes a September 2023 IEP and placement recommendation by the charter school.

For reasons set forth below, I find in favor of the student on the issue of diploma-taking—the student did not meet charter school graduation requirements and should continue to receive special education programming. This will include a finding that, to the extent that the parents were required to undertake out-of-pocket funding for ESY programming in the summer of 2023, parents be reimbursed or that any balance owed by parents be paid

directly. I find in favor of the charter school on the issue of the student's placement/program for the current 2023-2024 school year—its proposed September 2023 IEP is reasonably calculated to provide meaningful education benefit.

Issues

1. Did the student meet credit requirements for the issuance of a diploma from the charter school in June 2023?
2. If not, what should the student's placement/program be for the 2023-2024 school year?
3. Is parent entitled to any remedy for ESY-2023 programming?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

4. The student has a medical diagnosis of cerebral palsy. (Parents Exhibit ["P"]-3; Charter School Exhibit ["S"]-4; Notes of Testimony ["NT"] at 53-175).
5. In January 2018, the student was identified by a private evaluator as a student with specific learning disabilities in reading, written

expression, and mathematics, as well as a health impairment (attention deficit hyperactivity disorder). (P-3).

6. In December 2018, as a result of a settlement agreement between the parties, the student was placed in a private placement. The student attended the private placement from that time through the date of this decision. (S-1, S-3).
7. In January 2021, the student was re-evaluated by the charter school. The student continued to be identified as a student with specific learning disabilities and ADHD, with academic and behavioral needs. (S-4).
8. In February 2022, the student's IEP underwent its annual revision. (S-5).
9. Present levels of academic and functional performance in the February 2022 IEP indicated that the student was reading and was instructional at the high school level; was able to compose a 3-paragraph composition with a score of 78% on a placement-based scoring rubric; was achieving in mathematics at the K-2 level in number and operations, measurement and data, and geometry; and was achieving at the 3-5 level in algebra and algebraic thinking. (S-5).
10. Present levels of academic and functional performance in the February 2022 IEP indicated the student engaged in behaviors such as disruption, verbal aggression, elopement, respecting physical

boundaries, property destruction, and non-compliance. The IEP indicated that a functional behavior assessment was not necessary and were managed through the placement's schoolwide behavior management strategies. (S-5).

11. The February 2022 IEP identified academic needs in written expression and mathematics and developmental/functional needs in social competency, multimedia presentations, community-based instruction, oral presentations, and peer-based learning. (S-5).
12. The student's transition goals in the February 2022 IEP included attending a post-secondary institution: "Upon completion of the secondary program...enrolling into a 2/4 year college program which provides support services for educationally disabled students". (S-5).
13. The February 2022 IEP goals included goals in the areas of identified need, one goal each in mathematics, written expression, emotional regulation/interpersonal communication, community-based instruction, perspective-taking/interpersonal relations, peer-based learning, oral presentations, and multimedia presentations. (S-5).
14. The February 2022 IEP indicated that the student qualified for ESY in the IEP goal areas. (S-5).
15. The student's placement in the February 2022 IEP was continued attendance at the private placement, a recommendation which the parents approved. (S-5, S-6).

16. The student was below basic on statewide testing in literature, algebra, and biology, administered in the spring of 2022 and reported in the fall of 2023. (P-55).
17. The February 2022 IEP was in place at the outset of the 2022-2023 school year.
18. In August 2022, the charter school requested updated reading and mathematics assessment data from the private placement. (P-20).
19. The private placement variously referred to the 2022-2023 school year as the student's 12th grade year or senior year. (NT at 662-758, 762-814, 821-958).
20. In December 2022, the private placement held a "senior progress meeting to discuss post-graduation options, establish a transition plan, and determine a timeline to achieve student's transition goals". (P-7; S-7; NT at 53-175, 414-470).³
21. The December 2022 meeting, which was not an IEP meeting, included discussion of a post-secondary program run by the private placement and hosted on the campus of a local community college (a program known as Standard 9 ["S9" in the remainder of this decision]). (P-7; S-55, S-60, S-61; NT at 53-157, 414-470, 662-758, 821-958).

³ P-7 and S-7 are the same document. For ease in citation, only P-7 is cited.

22. The S9 program “is a continuing high school program for students 18-21 who are gaining skills for transition to adult environments, roles, and responsibilities during their years of educational entitlement under IDEA”. (P-12 at page 8; NT at 821-958).
23. A referral to the S9 program for admission includes submission of educational history, evaluations, and “the existing (IEP)”. Additionally, “(to) be eligible for admission...a student must have already met high school graduation requirements....”; and “students who currently attend (the private placement) as high school seniors as well as students outside of (the private placement) referred by a sending school district may apply.” (P-12 at page 8-9; NT at 821-958).
24. Students in the S9 program pursue one of three tiers: a ‘scholars’ tier for those students who have passed at least one placement assessment; an ‘exploration’ tier for those who have not passed any of the placement assessments; and a ‘vocational’ tier for those who are focused on vocational, as opposed to academic, instruction. (NT at 662-758, 821-958).
25. The S9 program consists of one remedial academic class taught by a community college professor in addition to an instructional program taught by special education teachers, with instructional support, provided by the private placement. (NT at 821-958).

26. At the December 2022 meeting, the S9 program was discussed for the student but only as an aspect of continuing education; 'graduation' was not part of these discussions. (NT at 414-470, 662-758).
27. In January 2023, the student toured the S9 program at the community college. The private placement proceeded with an understanding that the student was interested in the S9 program. (S-8, S-9; NT at 662-758).
28. In January 2023, the private placement communicated with the parent about graduation pictures for the yearbook. (S-10).
29. In January 2023, the private placement issued the student's report card for the 2nd marking period. The student achieved grades in the 90s, with a 76 in English, an 87 in financial literacy/life/career, and a 100 in applied arts. (S-11).
30. On February 1, 2023, the student's IEP team met to discuss the student's IEP. (S-12, S-13; NT at 368-407, 662-758).
31. The charter school representative at the February 2023 IEP meeting was an administrative support professional, not a teacher or administrator. (NT at 368-407).
32. The IEP team discussed education continuing at a 'different campus' and 'vocational programs', but specific information about the S9 program was not shared. (S-13; NT at 53-175, 368-407, 662-758).

33. On the same day, February 1st, a team discussed the student's "post-graduation options". The student and family continued to be interested in the S9 program, except that they wished to move from the 'vocational' tier to the 'exploration' tier. (S-16).
34. On February 7, 2023, the private placement communicated internally, indicating that the student and parents were interested in pursuing the S9 program in the vocational tier. (S-17).
35. On February 15, 2023, the charter school director of special education inquired if the private placement had prepared an IEP and notice of recommended educational placement ("NOREP") for the student. She also inquired if the student would "graduate in June". The view of the private placement is that the student would not graduate in June and would be pursuing the S9 program, although it is unclear if this information was shared with the charter school at the time. (S-19).
36. On February 21, 2023, the private placement provided a copy of the student's IEP (dated February 1st, with an implementation date of February 3rd) to the charter school. The same day, the private placement communicated with the charter school, indicating that the student would be included in the private placement rolls in the 2023-2024 school year. The charter school director of special education

asked why the student was including on the 2023-2024 enrollment list.
(S-14, S-21, S-22).

37. The February 2023 IEP contained information in the present levels regarding a career assistance inventory. (S-14).
38. A NOREP dated February 1, 2023 was also produced, calling for implementation of the February 2023 IEP at the private placement campus which the student had been attending since enrollment, including ESY-2023 programming. (S-15).
39. The student's needs in the February 2023 IEP were the same as identified in the February 2022 IEP: academic needs in written expression and mathematics and developmental/functional needs in social competency, multimedia presentations, community-based instruction, oral presentations, and peer-based learning. (S-14).
40. The transition goal in the February 2023 IEP regarding post-secondary education was identical to the transition goal in the February 2022 IEP. Services to promote the post-secondary transition goal included counseling and skill development, with a projected starting date for services on February 3, 2023 and an anticipated duration of a chronological year, through January 31, 2024. The location was to be the private placement campus which the student had been attending for multiple school years. (S-14).

41. The February 2023 IEP appears to be written for partial implementation at the private placement, at the campus the student was currently attending, for the “spring 2023” and partial implementation at the S9 program. (S-14).
42. Goals addressing the student’s needs, as identified in the IEP, are noted as “spring 2023”. (S-5, S-14 at pages 39-50).
43. Additional goals in the February 2023 IEP include goals for financial literacy/practical math, written expression (written explicitly for S9), skill development, community-based instruction, counseling, peer-based learning, two goals involving independent living skills⁴, pedestrian/biking/pre-driving (written explicitly for S9), global and digital citizenship, career readiness, and health/nutrition. Some of these goals replicate goal areas for the “spring 2023” goals, with minor revisions. (S-14 at pages 18-38).
44. One goal appears to be grafted into the February 2023 IEP from another student’s IEP, who is referenced by name, involving mandated enrollment in a positive behavior support system. Given its content, it appears that this goal may have been included in error. (S-14 at page 28).⁵

⁴ These goals appear to address the same skill areas, one much more detailed than the other. It is unclear how the two goals mesh. (S-15 at pages 29, 35-36).

⁵ Another goal, the global and digital citizenship goal, contains another student’s name at one point, but this appears to be a typographical error. S-14 at page 31.

45. In the February 2023 IEP, all of the specially-designed instruction, program modifications, and related services are written for a projected starting date on February 3, 2023 and an anticipated duration of a chronological year, through January 31, 2024, at the private placement campus location which the student had been attending for multiple school years, not at the S9 community college location. (S-14 at pages 51-52).
46. The February 2023 IEP indicated that the student qualified for ESY in the IEP goal areas in the areas of identified need, those noted as "spring 2023". (S-14 at pages 52-53).
47. The student's placement in the February 2023 IEP was noted as the special education placement at the private placement campus which the student had been attending. (S-14 at pages 54-55).
48. On February 21, 2023, on the same date the private placement shared the February IEP, the private placement shared internal communication that the student, parent, and charter school had "agreed" to the S9 exploration tier. (S-18).
49. On February 28, 2023, the charter school director of special education inquired as to why the student was not graduating in June. The private placement indicated that the S9 program had been discussed and agreed-upon at the December 2022 "senior meeting". (S-22).

50. In March 2023, the charter school director of special education was still communicating with the private placement as to whether the student would graduate. The private placement responded that the student, in part, that “as we discussed at (the student’s) IEP meeting in February, (the student) will be participating in the S9 Post Secondary program, which is for students who have completed their 12 grade year. (The student) should not be issued a diploma until (the student) is ready to exit the S9 Program. There will be an Annual Review meeting held each year that (the student) participates in the program to discuss progress and determine if (the student) will continue. When the team determines that (the student) will no longer attend, or if (the student) ages out at 21, then (the student) would receive (a) diploma.” (S-26).
51. In March 2023, the private placement issued the student’s report card for the 3rd marking period. The student achieved grades in the 90s, with a 70 in English and in financial literacy/life/career, and an 88 in environmental science, Spanish, and 21st Century/financial literacy lab. (S-29).
52. In April 2023, the charter school special education director inquired with the private placement again regarding how the student’s profile aligned with the options for Pennsylvania graduation

requirements where a student might not achieve proficiency on statewide testing exams. (S-30).

53. In May 2023, the charter school reviewed the student's transcript for grades 9–12 at the private placement. The charter school determined that the student met credit requirements, and with impending completion of 12th grade, the student should be issued a diploma. (S-33; NT at 276-353, 477-646).
54. The transcript indicated that the student achieved 140 "suggested credits" for those four years. (S-33).
55. In June 2023, the private placement issued the student's report card for the 4th marking period. The student achieved grades in the 90s, with a 73 in English, an 80 in financial literacy/life/career, an 89 in algebra, environmental science, and Spanish, and a 100 in applied arts. (S-41).
56. In June 2023, the private placement issued a summary of academic achievement and functional performance. (S-37).
57. The June 2023 summary was addressed to the student and stated: "Now that you have graduated..., we are providing you with (the summary) to assist you in planning for the future." (S-37).
58. The June 2023 summary indicated that the student's year of graduation/exit was June 2023 and, as part of 'next steps' in the

student's post-secondary transition planning, the indication was that the student would "graduate from the (private placement)". (S-37).

59. The student participated in a graduation ceremony at the private placement. (S-52, S-57, S-58; NT at 762-814).

60. On June 8, 2023, the charter school issued a NOREP recommending graduation from the charter school. (S-36).

61. In June 2023, the charter school prepared a diploma for the student and communicated with families about diploma pickup. (S-46, S-59).

62. In June 2023, the private placement and the parents communicated about the student's participation in ESY programming at the S9 program (a combination of academics and orientation to the S9 program). (S-38, S-40, S-43; NT at 821-958).

63. On June 30, 2023, the parents filed the complaint that led to these proceedings. Parents asserted pendency both in the complaint and in communication with the private placement. (Hearing Officer Exhibit ["HO"]-1, HO-2; S-44).

64. On July 5, 2023, the private placement shared internal emails about the status of the student. As a result of the December 2022 and February 2023, individuals at the private placement were under the impression that the charter school had agreed to having the student continue in the S9 program. A private placement witness with deep

knowledge of the S9 program shared a view that the program was appropriate for the student but that she could understand the charter school's confusion about the student's graduation status. (S-42, S-44; NT at 821-958).

65. The student attended ESY-2023 programming at the S9 program. (NT at 110, 114, 165-166).
66. On August 22, 2023, a pendency hearing was held and, on August 31, 2023, a decision was issued, finding that the student should continue to receive services under the terms of the February 2022 IEP (the last agreed-upon IEP) at the private placement campus where the student had been attending. (See decision at ODR file number 28268-22-23).⁶
67. The hearing officer directed the student's IEP team to meet to craft a proposed IEP, should the diploma-taking issue result in an order for ongoing programming and the S9 program not be available to the student.
68. On September 11, 2023, the student's IEP team met to craft an IEP. (S-49).
69. The present levels of academic and functional performance in the September 2023 IEP were drawn from the February 2023 IEP and

⁶ The order included a directive for the baselines of the student's IEP goals to be updated in the first days of the 2023-2024 school year.

included goal progress-monitoring through the end of the 2022-2023 school year. (S-14, S-49).

70. Transition planning in the September 2023 IEP called for the student to meet with a charter school counselor to engage in its online career and college readiness program to assess the student's future interests. (S-49).
71. Parents did not provide input or parental concerns for the September 2023 IEP. (S-49).
72. The September 2023 IEP adopted the student's needs from the February 2023 IEP: written expression mathematics, social competency (skill development and counseling), multimedia presentations, community-based instruction, oral presentations, and peer-based learning. (S-14, S-49).
73. The September 2023 IEP included transition goals adopted from the February 2023 IEP. (S-14, S-49).
74. The September 2023 IEP included nine goals, one each in mathematics, financial literacy, written expression, social reciprocity, self-monitoring/self-regulation, community-based instruction, career readiness, multimedia presentations, and oral presentations. (S-49).
75. The student would receive all instruction and services in the September 2023 IEP at the charter school except for instruction in written expression, which would be delivered remotely through a

contracted service. Parents shared concerns that the charter school could not guarantee that this remote instruction in written expression would be delivered by a certified special education teacher. (S-49; NT at 53-175).

76. The September 2023 IEP indicated that the student would not qualify for ESY programming. (S-49).

77. The placement outlined for the student in the September 2023 IEP indicates that the student will be in a regular education setting, participating in the general education curriculum with supports, “throughout the school day in all academic subjects”. The only time the student would be outside of a regular education classroom and the general education curriculum would be 1.5 hours per week. (S-49).

78. Based on the student’s placement, the educational environment calculation is incorrect. By spending 1.5 hours per week outside of the regular education classroom/general education curriculum, the student is outside those environments for 18 minutes per day over a 5-day school week (each day in the calculation being 7 hours). Therefore, the calculation should be 18 minutes over 420 minutes per day, or 95.71% in the regular education classroom. (The charter school erroneously calculated the result as 43% in the regular education classroom.) (S-49).

79. The September 2023 IEP is written for implementation from September 2023 through June 2024, not an entire instructional year. (S-49).
80. On September 15, 2023, the parents disapproved the NOREP. (S-51).

Legal Framework

Diploma-Issuance/Exit from Special Education. A student is entitled to receive special education services between the ages of 3 and 21, except under certain circumstances. (34 C.F.R. §300.101; 22 PA Code §711.3(b)(9))⁷. Of the exceptions to this requirement, the exception with implications for the instant case applies to a student who has “graduated from high school with a regular high school diploma.” (34 C.F.R. §300.101(a)(3)(i); 22 PA Code §711.3(b)(9)). This does not apply, however, apply to a student who has “graduated from high school but (has) not been awarded a regular high school diploma”. (34 C.F.R. §300.101(a)(3)(ii); 22 PA Code §711.3(b)(9)). Additionally, “graduation from high school with a regular high school diploma constitutes a change in placement”. (34 C.F.R. §300.101(a)(3)(iii); 22 PA Code §711.3(b)(9)). Finally, “the term *regular high school diploma* means the standard high school diploma awarded to the

⁷ While not directly impacting by the instant case, as this decision is being issued, recent guidance from the Pennsylvania Department of Education addresses whether students should be eligible fully through their age 21 year, up to and including their age-22 birthdays. This guidance is being challenged and is currently under review in the Pennsylvania courts. This is noted since the regulations cited speak to age 21.

preponderance of students in the State that is fully aligned with State standards". (34 C.F.R. §300.101(a)(3)(iv, italics in the original); 22 PA Code §711.3(b)(9)).

FAPE. To assure that an eligible child receives FAPE (34 C.F.R. §300.17; 22 PA Code §711.3(b)(3)), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The IEP must outline programming that is appropriately ambitious in light of the student's current levels of programming, needs, and goals. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

ESY. ESY services are "special education and related services that are provided to a child with a disability beyond the normal school year of the (charter school) in accordance with the child's IEP and at no cost to the parents of the child (that) meet the standards of the (state department of education)." (34 C.F.R. §300.106(b); 22 PA Code §711.3(b)(10)). A student's IEP team must consider ESY services for every student based on

factors of recoupment or regression of learning/skills. (22 PA Code §711.44)).

Discussion & Conclusions

Diploma-Issuance. The charter school wrongfully exited the student from special education services by attempting to graduate the student with a regular diploma. Before examining this issue, there is an important and necessary observation to make about this record regarding the terms and semantics used by all of the educators involved. Namely, at various points, the private placement, the charter school, and the S9 program all used terms like “12th grade”, “senior”, “graduate”, or “graduation” to discuss the student’s educational programming. All imply a regular education connotation that a student has moved along a certain track of studies and has come to a point where the student is moving beyond schooling and into a post-secondary, post-graduation if you will, phase of life. Indeed, over the period December 2022 through April 2023, educators at the private placement and the charter school all made assumptions about those terms and their implications for continuing special education services. This muddled use of terms, and those assumptions, led to a point in May 2023 where the private placement’s position can be characterized as ‘of course the student has graduated, and now the student will be moving onto special education programming at S9’; the charter school’s position can be

characterized as 'well, if the student has graduated then we are issuing a diploma and special education programming will cease'. Both positions were grounded in the same terms, but those positions could not be any more different.

The critical component, of course, is the issuance of a regular diploma. The applicable IDEA regulation uses the term 'graduation'. In that regard, looking to the language of the regulation may simply add to the muddle. But it must be qualified by the understanding of whether or not a regular diploma is being issued. Where there is graduation *with a regular diploma*, special education services may be ended; where there is graduation *without a regular diploma*, special education services should continue.

On this record, the student does not qualify for a regular diploma. The reason for this is because the charter school simply reviewed the "suggested credits" on the private placement transcript (144 credits in total). This is an exorbitant number and, indeed, the charter school regular education administrator simply added the credit total over the student's four years of study to arrive at the number, without understanding or asking how those "suggested credits" might translate into instructional credits equivalent to charter school credits. (NT at 276-353). This determination, too, is somewhat suspect because, certainly as of February/March/April 2023, the charter school was still inquiring about the student's "graduation" status with

the private placement; this is evidence, one must concede, that the “suggested credits” did not move the charter school to definitively view the student as having met its credit requirements for issuance of a diploma.

In addition, the student’s educational profile does not support a position that the student has mastered, or nearly mastered, IEP goals. And while an individual with learning differences might require accommodations, modifications, or alternative approaches throughout life, where all parties agree that a student with an IEP requires special education programming, and the parties work to that end, the IEP team must deeply consider the continuation of programming. This is especially the case where parents explicitly request that this programming continue. Here, that consideration did not take place.

And much of that redounds to the charter school. A special education administrator without knowing any context about the student attended the “senior planning” meeting in December 2022; an employee without educator training attended the February 2023 IEP meeting. Perhaps it is no surprise that the charter school had no firm grip on its understanding of the student’s programming as the “12th grade year” at the private placement would come to an end. But the private placement also made assumptions, taking generalized exchanges and understandings as firm consent from the charter school about programming “beyond 12th grade” at S9 when it was more akin

to consideration of options. Here are more assumption and miscommunication cutting through the record in the spring of 2023.

In sum, then, the student is eligible to continue receiving special education programming under an IEP because the student does not qualify for a regular diploma from the charter school. The student's placement at the private placement no longer serves student "beyond 12th grade". So it is incumbent upon the charter school to provide that special education programming or to arrange for it.

2023-2024 Placement/Program. With a finding that the student does not qualify for a regular diploma, and the fact that the private placement is no longer able to provide programming to the student under the terms of an IEP at the campus the student attended (the pendency order notwithstanding), the charter school must provide special education programming for the student in the 2023-2024 school year. In September 2023, the charter school proposed an IEP. For the most part, this IEP is reasonably calculated to yield meaningful education benefit to the student in light of the student's unique learning needs. There are elements of the IEP that need to be strengthened, but overall it is a program which, if implemented with fidelity, is calculated to provide the student with FAPE.

The charter school's understanding of the student, in the present levels information, is based on the student's performance and goal-progress

over the 2022-2023 school year. This is appropriate and, indeed, it forms the background of much of the private placement's understanding of the student as put forth in the February 2023 IEP. The student's needs continue to be addressed through goal-driven instruction and services, and the goals, as written, are appropriate. Accordingly, the charter school has met its obligations to provide FAPE to the student through the September 2023 IEP.

There are, however, areas of the IEP which need to be strengthened. First, the September 2023 IEP needs to be written for implementation over an instructional year. Because implementation will begin as set forth in the order below, the implementation date and anticipated duration of the IEP will be revised. Second, because the charter school has re-written, or modified the language, of the goals, some of the goals require updated baseline information (as recognized and ordered as part of the pendency determination). Third, the parents' concern that the student may not receive specially designed instruction in written expression delivered by a certified special education teacher is legitimate. Coupled with the need to increase the amount of time in special education environments (see below), the qualification of that teacher needs to be made explicit, especially because written expression is clearly the student's most vital area of academic need. Fourth, the student has long-qualified for ESY services in all goal areas. Nothing in the record indicates that the student should not be considered for ESY services in the summer of 2024. Fifth, the September IEP does not

provide for transportation to the charter school, as that transportation had been provided previously. Transportation must be provided. Sixth, the student requires more support in special education settings. This is especially important since the student will be coming from a private placement that does not have a regular education component; the September 2023 IEP calls for the student to be included almost entirely in regular education environments. It may be that the student finds success with more exposure to regular education peers and environments, but the IEP team will need to consider that issue in light of the student's transition to the charter school. Initially, there must be more support and instruction for the student in special education settings. This strengthening of the September 2023 IEP will be addressed in the order below.

Accordingly, the September 2023 forms a foundation as programming reasonably calculated to yield meaningful education benefit to the student in light of the student's unique needs.

ESY-2023. The student required ESY programming in the summer of 2023. As late as March 2023, when the charter school indicated definitively that it felt the student should graduate with a regular diploma, not providing ESY programming was not a consideration. And, as indicated, the student had qualified for ESY programming in all goal areas in previous summers. With the student not qualifying for an exit from special education

programming through graduation with a regular diploma, the fact that the charter school did not propose ESY-2023 programming is a denial of FAPE.

The student attended summer programming through the S9 program. This program consisted of academics and orientation to the learning environment and skills at the community college location (which broadly relate to the student's needs in skills for social competency). Therefore, the S9 summer program is appropriate, especially in light of the charter school's failure to provide this necessary programming.

What is unclear, however, is whether parent paid for this S9 summer program, or there is an outstanding balance (in whole or in part) for the program. Therefore, the order below will address a process to reimburse the parents, or to have the outstanding balance paid directly to the private placement, depending on circumstances.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Philadelphia Performing Arts Charter School ("Charter School") erred in issuing a regular diploma to the student, thereby exiting the student from special education. The student remains eligible for special education

programming in the 2023-2024 school year. The Charter School's enrollment and transcribing should be modified accordingly.

The student's pendent placement at the private placement which the student has attended as a result of the August 31, 2023 pendency ruling shall end in late December 2023 when the private placement begins its winter break. Upon the resumption of schooling at the Charter School on January 3, 2024, the student shall attend the Charter School.

The individualized education program ("IEP") proposed by the Charter School in September 2023 is appropriate and should form the basis, going forward, for the student's program at the Charter School. Forthwith, the student's IEP team shall meet to discuss how best to plan for, and account for, the student's transition to the Charter School beginning on January 3, 2024.

The Charter School is ordered to revise the following provisions of, or undertake the following tasks in terms of, the September 2023 IEP:

- The implementation date of the IEP shall be revised to January 16, 2024, with an anticipated duration of one chronological/instructional year, to January 15, 2025. This date is selected to account for the student's transition to the Charter School and to allow for collection of baseline information over the

period January 3 – January 12, 2024, as set forth below. Any portion of the IEP that requires similar implementation/anticipated-duration date information shall be revised accordingly.

- The student shall begin to attend the Charter School upon the resumption of school on January 3, 2024. Over the period January 3 – January 12, 2024, the Charter School shall update baseline information for every goal in the student’s IEP.
- The Charter School shall ensure that the teacher delivering specially-designed instruction in written expression through the contract service is an individual certified in special education through the Pennsylvania Department of Education.
- The IEP shall be revised to indicate that the student shall receive ESY programming for all IEP goals in the summer of 2024.
- The IEP shall be revised to include curb-to-curb daily transportation as a related service. The Charter School shall make arrangements in the weeks to come to have this related service in place for

transportation to the Charter School on January 3, 2024.

- The IEP shall be revised to increase the amount of time that the student receives instruction in special education settings. The placement of the student shall include 45 minutes per day of instruction in written expression and 45 minutes per day of instruction in mathematics, both in a special education setting outside of the regular education classroom. Additionally, the student shall receive 30 minutes per day of instruction in a special education setting outside of regular education classroom to address, allocated day-to-day or week-to-week as determined by the student's special education teacher, in the goal areas of financial literacy, written expression, community-based instruction, career readiness, multimedia presentations, and oral presentations.
- The placement information in the IEP shall be revised to reflect the delivery of the instruction above in special education settings. The educational

environment calculation shall be revised to reflect that the student participates in the regular education environment for 60% of the time.⁸

The Charter School is responsible for any financial commitment undertaken by parents for ESY programming at the Standard 9 program ("S9") provided by the private placement. Alternatively, to the extent that those charges are unpaid and are reflected in an outstanding balance, the Charter School shall pay that balance.

If parents have paid out-of-pocket for ESY programming at the S9 program, within seven days of the date of this order, parents shall provide, through their counsel to counsel for the Charter School, proof of such payment(s). On or before January 31, 2024, the Charter School shall issue payment to parents for this reimbursement. To the extent that there is any balance owed by parents, in whole or in part, for ESY programming at the S9 program, within seven days of the date of this order, parents shall provide, through their counsel to counsel for the Charter School, a bill for the outstanding balance. On or before January 31, 2024, the Charter School shall issue payment directly to the private placement for this balance.

⁸ Added to the 18 minutes already accounted for in the September 2023 IEP will be 150 minutes per day outlined here. This 168 minutes of the 420 minutes of schooling in a week results in the student spending 60% of the day in regular education settings.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ *Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire
Special Education Hearing Officer

12/05/2023