

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:

25209-21-22

Child's Name:

F.C.

Date of Birth:

[redacted]

Parents/Guardian:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

May 13, 2022

BACKGROUND

The parents filed a due process complaint seeking reimbursement for a unilateral placement of the student in a private school, contending that the school district failed to offer a free and appropriate public education to the student. The school district contends that it offered a free and appropriate public education to the student. I find in favor of the parents and conclude that they have proven that they are entitled to a reimbursement for fifty per cent of the cost of tuition for the unilateral private school placement.

PROCEDURAL HISTORY

The hearing for this matter required two in-person sessions. The failure of counsel to agree to more than two stipulations of fact unnecessarily protracted the hearing and delayed the decisional process. A total of eight witnesses testified at the hearing. The following exhibits were admitted into evidence at the hearing: Parent Exhibits P-1 through P-4 and School District Exhibits S-1 through S-23.

After the hearing, counsel for each party filed written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUE PRESENTED

The due process complaint, as explained and clarified at the prehearing conference convened in this matter, presents the following issue:

Whether the parents have proven that they should be reimbursed for a unilateral private placement of the student?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. The school district is the student's local education agency and is a recipient of funds from the federal government.
2. The student is eligible for special education under the categories of intellectual disability, autism, speech language, and other health impairment.

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parent exhibits; "S-1," etc. for school district exhibits, and references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

3. [redacted]. (NT 558 – 559)

4. The student is [redacted] years old and was born on [redacted].
(S-23)

5. The student attended school district schools until third grade, at which point the student was enrolled in a different private school than the one at issue here and remained there through ninth grade. (NT 521)

6. The parents retained a private neuropsychologist to evaluate the student and to testify as an expert witness at the hearing in this matter. The neuropsychologist prepared an evaluation of the student dated July 23, 2020. The evaluator found that the student had significant areas of need in adaptive and functional skills. The evaluator recommended a small, structured school setting for the student with a low student – teacher ratio and that the student be instructed by teachers with the training required to be able to teach students with a high degree of need in academic functioning, social communication skills and adaptive functioning. The evaluator stressed the importance of a transition program and functional transition planning, especially generalization of skills stressing academic, functional and adaptive needs of the student. (S-2; NT 233–246, 286 - 288)

7. In the fall of 2020, the student was enrolled at the private school that the student is currently attending. (NT 304)

8. A Permission to Reevaluate was issued by the school district on January 29, 2021. It recommended a cognitive assessment, an achievement assessment, behavior rating scales, adaptive rating scales, autism rating scales, reevaluation by the speech language pathologist, parent input, teacher input and student observations, as well as a review of records. The parents signed the consent form agreeing to the reevaluation on February 1, 2021. (S-8; NT 68 – 69)

9. The school district completed the reevaluation of the student and issued a report on April 2, 2021. The report was prepared by the school district's certified school psychologist. (S-9, S-16; NT 69 – 70)

10. The parent input section of the reevaluation report states that the parents feel that the student needs to remain at the private school the student now attends in order to be successful, and the parents believe that the school district should keep the student at the private school placement. The parents' biggest concerns were safety of the school district building and that the student needed a small class. (S-9; NT 71)

11. The overall conclusions of the reevaluation report were generally consistent with the findings of the evaluation by the parents' independent neuropsychologist. The student was found to continue to be eligible for special education. The district identified needs related to cognitive, executive functioning, social communication, and academic skills. The reevaluation report recommended a structured environment for the student. (S-9; NT 93)

12. On April 22, 2021, the IEP team for the student met virtually to review the district's proposed programming. (S-23; NT 158, 196)

13. On the morning of April 22, 2021, the parents requested that the school district provide them with a draft IEP. The district provided a draft IEP by e-mail approximately one hour before the start of the IEP team meeting. (P-1)

14. The draft IEP included a two-paragraph description of the Learning Support II program. The description stated that approximately 30 students attend the two LS-II programs. The draft IEP stated that the student would be in the regular education classroom for approximately 39% of the school day. (P-1)

15. The IEP team meeting on April 22, 2021 was very short, lasting no more than 30 minutes. At the meeting, the parents were not interested in the contents of the IEP. The parents did not ask any questions about the proposed educational program, except that the parents mentioned a concern regarding the student's safety in the high school. The parents made statements to the effect that they were not going to permit the student to attend the district's high school. (NT 163 – 164, 228 – 229, 420 – 421)

16. The IEP includes a two-sentence description of the school district's Learning Support II program that it was proposing for the student, stating that it is a highly intensive learning support program that provides students with a structured learning environment and a lower teacher to student ratio. The IEP does not specify the number of students in the class, but the class would consist of approximately 11 or 12 students with needs similar to those of the student. The students follow a block schedule of 86 minute classes. The IEP provides a schedule that the student would follow in the LS-II program that varies from the block schedule used by the LS-II program. In addition to a teacher, there are paraprofessionals and professional care assistants to provide support in the classroom. (S-23; NT 508, 405-408, 431, 206 - 207)

17. The IEP includes a number of specially designed instruction and other supports addressing the student's moving from the private school to the public high school, including an opportunity to visit or tour the high school prior to the start of the school year to meet the counselor and see the location of the classrooms, and a personal care assistant for a minimum of 30 days upon return to the school district to assist the student in navigating the school building and the learning environment. (S-23; NT 537-538)

18. The IEP states that the student will be in the regular education classroom approximately 28% of the school day. (P-1, S-23; NT 391 – 392)

19. The IEP includes the following related services: group speech therapy, 30 minutes twice weekly; individual speech therapy, 30 minutes once weekly; counseling 30 minutes per week; a personal care assistant for 6.5 hours per day for a minimum of the first thirty days and personal care services for up to 2 hours per day. (S-23)

20. The IEP provides that an occupational therapy evaluation of the student would be conducted within 60 days. (S-23; NT 49-50, 441-442)

21. The transition services in the IEP include the following: direct instruction in reading, math and written expression; the opportunity to attend a college fair; a weekly opportunity to explore community based vocational training; information on the selective service; and twice monthly opportunities to work on activities of daily living in the apartment at the high school. (S-23; NT 204, 224-225)

22. The school district issued a prior written notice/Notice of Recommended Educational Placement (hereafter sometimes referred to as "NOREP") on May 5, 2021. The NOREP provides that the student would receive group speech language therapy one time weekly for thirty minutes. The NOREP does not provide for the related services of individual speech language therapy or counseling. (S-13)

23. The parents disapproved the NOREP on approximately May 12, 2021, writing that "(the student) is in appropriate placement now at (private school). We do not think (school district's) High School is appropriate." (S-13, NT 555-557)

24. On approximately September 16, 2021, parents requested that their expert neuropsychologist be permitted to observe the Learning Support-II classroom that the school district had proposed. The district

refused because of the pending due process hearing. (P-4; NT 244 – 246, 183-184, 490-491)

25. The private school that the student now attends is an Approved Private School and is a specialized setting for students who are eligible to receive special education; its student body is comprised entirely of special education students. It does not utilize a general education curriculum and there are no extracurricular activities. There are no opportunities for exposure to typically developing peers during the school day. (S-12; NT 340-343)

26. The private school that the student now attends has an open campus and students transition between multiple buildings. For transitions during the school day, the student requires the supervision of an adult. The student does not have a personal care assistant at the school. (NT 354-359)

27. The student has two primary academic teachers at the private school that the student now attends; both teachers possess emergency certification in special education. (NT 332)

28. Transition services at the private school that the student now attends include community based instruction in which the student and other students and school staff travel to stores and fast food chains one afternoon every six school days to practice skills in different settings. (NT 316-318)

29. The student also participates in community based vocational training at the private school that the student now attends one afternoon every six school days during which the student and three other students, accompanied by a job coach, perform various employment tasks at a retirement community. (NT 305-306)

30. The student has made progress at the private school that the student now attends. (P-3, P-2; NT 238-241)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violation of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In order to receive reimbursement of tuition resulting from a unilateral private school placement, the United States Supreme Court has ruled that a parent must prove three elements: 1) that the school district has denied FAPE to the student or otherwise committed a substantive violation of IDEA; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not preclude the relief. School Committee Town of Burlington v. Dept of Educ, 471 U.S. 358, 556 IDELR 389 (1985); Florence County Sch Dist 4 v. Carter, 510 U.S. 7, 20 IDELR 532 (1993); Forest Grove Sch Dist v. TA, 557 U.S. 230, 52 IDELR 151 (2009).

3. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the student's individualized educational

program is reasonably calculated to enable the child to make progress in light of the child's unique circumstances. Andrew F by Joseph F v. Douglass County Sch Dist RE-1, 580 U.S. ____, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 176, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

4. For a procedural violation to be actionable as a denial of FAPE under IDEA, a parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. Ridley Sch Dist v. MR and JR ex rel. ER, *supra*; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a). Where there are multiple procedural violations that might otherwise be harmless in isolation, the cumulative effect of the multiple procedural violations may, nonetheless, constitute an actionable denial of FAPE. See, LO ex rel KT v NYC Dept of Educ, 822 F.3d 95, 67 IDELR 225 (2d Cir 2016)

5. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area Sch Dist, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

6. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley Sch Dist v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Bd of Educ, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. Sch Dist of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

7. IDEA requires that a parent of a student with a disability be afforded meaningful participation in the IEP process and in the education of the student. 34 C.F.R. § 300.501; DS & AS ex rel DS v. Bayonne Bd of Educ, 602 F.3d 553, 54 IDELR 141 (3d Cir 2010); Fuhrmann ex rel Fuhrmann v. East Hanover Bd. of Educ., 993 F.2d 1031, 1036, 19 IDELR 1065 (3d Cir. 1993); MP by VC v Parkland Sch Dist, 79 IDELR 126 (ED Penna 2021). See, Deal v. Hamilton County Bd of Educ, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd of Educ, 48 IDELR 159 (S.D. WV. 2007).

8. Local education agencies and parents are required to participate in IEP team meetings with an open mind; it is a violation of IDEA if they predetermine the components of an IEP or a student's placement prior to the IEP team meeting. See Deal v. Hamilton County Bd of Educ, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd of Educ, 48 IDELR 159 (S.D. W. Va. 2007).

9. IDEA requires that, beginning with the IEP in effect when the student turns 16 years old, the IEP must include appropriate transition services. IDEA, § 614 (d)(1)(A)(i)(VIII); Perkiomen Valley Sch Dist v RB, 78 IDELR 222 (E.D. Penna. 2021). "Transition services" means "a coordinated set of activities for a child with a disability that-is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living

objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.” IDEA, § 602 (34)

10. In the instant case, the parents have proven that the school district denied a free and appropriate public education to the student by failing to offer a clear, understandable and concise description of its offer of FAPE for the student, which thereby deprived the parents of meaningful participation in the process and was an actionable procedural violation.

11. In the instant case, the parents have proven that the school district denied a free and appropriate public education to the student by failing to propose an IEP for the student that adequately addressed the student’s transition needs by failing to provide a transition plan that adequately addressed functional transition planning, especially generalization of skills stressing functional and adaptive needs of the student. Accordingly, the school district’s proposed IEP was not reasonably calculated to confer meaningful educational benefit in view of the student’s unique circumstances.

12. The private school that the student currently attends is appropriate for the student.

13. The equities involved in this case require a reduction of the award of reimbursement for private school tuition by fifty percent.

DISCUSSION

1. Whether the parents have proven that the school district should reimburse the parents for their unilateral private placement for the student?

The parents seek reimbursement for unilateral placement of the student in a private school. The school district contends that the parents have not proven that reimbursement is appropriate. An analysis of the three prongs of the Burlington – Carter – TA factors follows:

a. Whether the parents have proven that the school district denied a free and appropriate public education to the student?

The parents contend that the school district failed to offer a free and appropriate public education to the student. The parents allege both a procedural violation and a substantive denial of FAPE. The school district argues that it did offer a FAPE to the student.

The parents contend that the school district committed a procedural violation by failing to make a coherent and clear description of its educational program for the student in its offer of FAPE. The parents' argument in this regard is supported by the evidence in the record. The school district did not clearly articulate its offer of FAPE to the parents and thereby denied them meaningful participation in the process.

The most extreme example of the school district's failure to coherently describe its proposed program for the student is the fact that even after the beginning of the due process hearing in this matter, the school district still not could identify the correct "final" IEP for this student. Contrast Exhibit S-11 with Exhibit S-23. (See, NT 167 – 173) The school district's inability to

bring the correct final IEP to the hearing underscores the fact that the school district could not clearly articulate the nature of the program it was offering to the student.

The record evidence reveals that there are numerous discrepancies between the various IEPs that were the offer of FAPE for this student, including the draft IEP given to the parents before the IEP team meeting. The various documents have completely different descriptions of the Learning Support II program that was being offered to the student, including differences in the number of students per classroom, a major concern of the parents. One IEP states that the student would be in the regular education classroom approximately 38% of the time. Another IEP states that the student would be in the regular education classroom approximately 29% of the time. Also, there are signatures on the first IEP produced at the hearing but not on the final IEP. Contrast Exhibit S-11 with Exhibit S-23. In addition, the final IEP provides a schedule for the student that was incorrect; hearing testimony revealed that the student would instead have a block schedule.

In addition, there are numerous discrepancies between the school district's final IEP and the NOREP that was issued by the school district. For example, the related services that the student was to receive are markedly different. The IEP provides that the student would receive group speech language therapy twice per week for 30 minutes and in addition individual speech language therapy once per week for 30 minutes. The NOREP provides only for group speech language therapy and once weekly for 30 minutes. The IEP states that the student will receive the related service of counseling once weekly for 30 minutes. The NOREP does not include any counseling services.

Thus the school district's offer of FAPE was not coherent or clear because it provided two descriptions of its LS-II program, with different numbers of total students per class; it provided two different statements as to the amount of time that the student would spend in the regular education setting; it described in multiple varying ways the amount and type and frequency of related services that the student would receive; it incorrectly described the type of schedule the student would have in the IEP; and it could not identify the correct IEP even after the due process hearing had begun. This is not an acceptable offer of FAPE. The parents could not reasonably have been expected to understand the educational program being offered by the district.

The school district also refused the parents' request to allow their expert neuropsychologist to observe the student's potential program. In general, there is no rule that requires a school district to allow a parent's expert to observe a school program. In the context of the facts of this case, however, where the school district was unable to coherently describe the educational program that it was offering to the student, the failure to permit the parents' expert to observe the program is unacceptable. As the school district points out, the request came well after a due process hearing had already been scheduled, but the parents did not have sufficient information with which to judge the district's program prior to that time. This was not an appropriate time to develop a hide-the-ball attitude. Accordingly, in this case, the failure to permit the observation by the parents' expert exacerbated the parents' lack of information and further inhibited their meaningful participation in the process.

In their post-hearing briefs, the parties agree that it is permissible to provide testimony at the hearing to explain the program that was being

offered to a student. In this case, however, the school district's failure to provide a clear and coherent description of the program that was being offered to the student before the parents had to make a decision concerning continuing a private placement denied the parents the opportunity to properly consider the school district's offer of FAPE. By doing so, the school district denied the parents meaningful opportunity to participate in the process. Accordingly, the school district's procedural violation of IDEA is actionable in this case.

The parents also assert a substantive violation of IDEA. The parents allege a number of deficiencies in the student's IEP. First, the parents allege that the IEP does not adequately address the student's transition and vocational planning needs. The school district alleges that its program was appropriate. The record evidence supports the parents' claim in this regard. It was the persuasive and credible testimony of the parents' expert neuropsychologist that the school district's program was inappropriate because it did not sufficiently address this student's functional needs and in particular the student's transition and vocational needs. The parents' expert testified that the student needs a lot of repetition of functional skills in order to be able to generalize the skills. The school district IEP contains a transition plan, but a vague reference to a weekly opportunity to explore community based vocational training and two opportunities per month to work on activities of daily living in the apartment at the high school are clearly not appropriate for this student given the student's strong need to learn and practice functional and daily living skills. Thus, the school district's IEP failed to provide sufficient opportunities for the student to obtain and practice such functional transition skills, and, therefore, was not reasonably calculated to confer meaningful educational benefit given the unique circumstances of this student.

The parents also argue that the school district's IEP does not appropriately address the student's safety and independence. This argument is rejected. The school district IEP provides for a one-on-one paraprofessional to be with the student at all times during the school day. Although the IEP provides that this service was to have lasted for at least the first 30 days of the school year, the credible testimony at the hearing was that the one-on-one paraprofessional would be reviewed after thirty days and could remain in place, if needed, particularly in view of the student's safety needs. The parents raised similar arguments with respect to the size of the school that the student would be attending, but the presence of the one-on-one paraprofessional would appropriately address the parents' safety concerns in this regard. In addition, the IEP provides for a periodic review of the need for the one-on-one paraprofessional beginning thirty days into the IEP term to permit any independence issues to be addressed. The parents' arguments concerning safety and independence are rejected.

It is concluded that the parents have proven that the school district denied a free and appropriate public education to the student both by proving an actionable procedural violation and by proving a substantive violation concerning the appropriateness of the proposed IEP. The testimony of the parents' expert witness was more credible and persuasive than the testimony of the school district witnesses with regard to these issues. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the testimony of the school district's supervisor of special education for grades 9 through 12 was extremely hostile and evasive when questioned by the parents' attorney. In addition, the numerous discrepancies among the various IEPs and between the IEPs and the NOREP

impair the credibility of the district's witnesses regarding the program that it was offering to the student.

It is concluded that the parents have proven that the school district failed to offer a program that would provide a free and appropriate public education for the student.

b. Whether the parents have proven that the private school is appropriate?

The parents contend that the private school is appropriate. The school district argues that the private school is not appropriate. This is an extremely close question in this case.

There are a number of troubling issues concerning the private school. First, it only includes students with disabilities. The student will have no interaction with the student's nondisabled peers at the school. More significantly, the private school teachers are not fully certified in special education. These issues are exacerbated by the fact that the credibility and persuasiveness of the testimony of the representative of the private school at the due process hearing was impaired by an extremely hostile and evasive demeanor when questioned by the lawyer for the school district.

Despite these significant concerns, however, it is unrebutted in the record evidence that the student made progress while at the private school. It should be noted, of course, that the standard is not whether the student was doing better at a private school than the student would have done at a public school. Instead, the standard is whether the private school is an appropriate placement for the student. In this case, because of the

student's progress at the private school, it is clear that the private school is appropriate under the Burlington – Carter – TA analysis.

c. Whether the parents have proven that the equities favor reimbursement?

The third prong of the Burlington – Carter – TA analysis involves a determination as to whether the conduct of the parties and any other equitable factors might weigh in favor of reimbursement or in favor of denial or reduction of reimbursement.

It is clear from the record evidence in this case that the parents did not come to the IEP team meeting on April 22, 2021 with an open mind about a potential public school placement for the student. The parents predetermined that only the current private school placement was acceptable. The mother testified that the parents were open to a public school placement, but that testimony was contradicted by her later testimony that any change in placement to the public school from the current private school would be detrimental to the student. In addition, the mother later testified when the parents had asked the school district's supervisor of special education for grades 9 through 12 to fund a placement at the private school, the parents were "shut down." The testimony of the mother is also inconsistent with the documentary evidence, especially the parent input portion of the school district reevaluation and the on May 12, 2021 NOREP response by the parents, both of which display a clear intention to refuse a public high school placement.

The credible and persuasive testimony of the school district witnesses, on the other hand, was that the parents were not open to considering a

public school placement for the student at the high school and that they made statements to that effect during the April 22, 2021 IEP team meeting.

The testimony of the school district witnesses is more credible and persuasive than the testimony of the student's mother concerning this point. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the mother's testimony is contradicted by other testimony by the mother, as well as by the documentary evidence in this case, and the mother displayed a very hostile and evasive demeanor when questioned by counsel for the school district.

It is concluded that the parents did not attend the April 22, 2021 IEP team meeting with an open mind; instead, the parents had predetermined that only the current private school placement would be acceptable. The parents' predetermined refusal of any placement at the public high school is unreasonable and unacceptable and would normally result in a complete denial of reimbursement for the parents. In balancing the equities in this case, however, it must be taken into consideration that the school district failed to make a coherent and clear offer of FAPE to the parents. The conduct of the district in failing to clearly articulate a program for the student is also unreasonable and unacceptable and weighs against complete denial of reimbursement. Instead, balancing the relative conduct of the parties in this matter results in a conclusion that a fifty percent reduction of the tuition reimbursement award is appropriate.

After weighing the evidence according to the three-prong standard established by the Supreme Court in *Burlington - Carter - TA*, it is concluded that the parents have proven that they are entitled to reimbursement of fifty per cent of the tuition for the private school for the 2021 - 2022 school year. The school district must reimburse the parents for

fifty percent of the cost of said tuition. Such payments are limited to the tuition paid by the parents or payments to be billed to the parents for this school year.

Because all relief under IDEA is equitable relief and should be flexible in nature, and because special education under IDEA requires a collaborative process, Schaffer v. Weist, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as the parties and their lawyers agree in writing.

ORDER

It is HEREBY ORDERED as follows:

1. The school district shall pay to the parents reimbursement for fifty percent of tuition for the 2021 – 2022 school year at the private school the student now attends. The school district's expense in this regard is limited as described in this decision. Within 14 calendar days from the date of this Order, parents' counsel shall present to counsel for the school district, proof of any payment that parents have made for the 2021 – 2022 school year and proof of any balance owed by the parents for the remainder of the 2021 – 2022 school year. The school district shall arrange for reimbursement and/or payment of fifty percent of said tuition;
2. The parties may adjust or amend the terms of this order by mutual agreement signed by all parties and counsel of record; and
3. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: May 13, 2022

James Gerl

James Gerl, CHO
Hearing Officer