

This is a redacted version of the original hearing officer decision. Select details may 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 AND ORDER

File Number: 6916/06-07 AS
Child's Name: EM
Date of Birth: August 19, 1990
School District: Wissahickon
Type of Hearing: Closed

For the Student:
Ms.

David T. Painter, Esq.
McAndrews Law Office
30 Cassatt Avenue
Berwyn, PA 19312

Hearing Request Date:
Unsuccessful Resolution Meeting Date:
Hearing Dates:
Date Record Closed:
Decision Date:
Hearing Officer:

For Wissahickon School District:

James Malley, Supervisor of Special
Education
Wissahickon School District
601 Knight Road
Ambler, PA 19002

Scott H. Wolpert, Esq.
Timoney, Knox, Hasson & Weand
400 Maryland Drive
P.O. Box 7544
Fort Washington, PA 19034

August 15, 2006
Waived
November 20, 21 and 22, 2006
December 15, 2006
December 28, 2006
Daniel J. Myers

BACKGROUND

Student is a xx year old resident of the Wissahickon School District (School District), currently attending the [redacted] (hereinafter “Private School,”) a therapeutic residential school in [state redacted]. Contending that the School District has not offered a free and appropriate public education since April 2005, Student’s parent seeks reimbursement of Private School tuition and compensatory education for the 2005-2006 school year. For the reasons explained below, I find for the School District.

ISSUES

- Whether the School District has denied a free and appropriate public education to Student for the 2004-2005 and 2005-2006 school years; and
- Whether Student’s parent is entitled to tuition reimbursement for the 2006-2007 school year.

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a xx year old resident of the School District, currently attending a residential school in [state redacted]. (S1; N.T. 260-261)¹ Student is a nonconformist, with a big, engaging personality, a love of Japanese culture, and an interest in the arts and singing. She presents herself as gregarious and outgoing. (N.T. 150, 305, 385, 494, 583, 692)
2. Student has been diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), and Tourette’s Disorder. (N.T. 261; S2, p.10)
3. Student grew up in a two-parent home where her verbally abusive father, who has been described as a loving but very angry and “pretty scary” man, was the primary care-giver. (N.T. 140, 278-279; P18, p.3) Student has always compartmentalized her home and school behaviors, exhibiting much more control over her emotions at school than at home. (N.T. 41, 43, 582-583) She represses negative feelings and lacks skills to identify and express her emotions. Over the years, Student has exhibited increasingly problematic behavior within the home environment, expressing suicidal thoughts, breaking things, and aggressively threatening family members. (N.T. 43, 274; P5, p.4; P18, p.3) Student has no history of substance abuse, nor has there been substance abuse in her home, although she is at risk for substance abuse, sexual acting out, eating disorders, and self-mutilating behaviors. (N.T. 40, 61)

¹ References to “HO,” “P,” and “S” are to the Hearing Officer, Parent and Student exhibits. References to “N.T.” are to the transcripts of the November 20-22, 2006 hearing sessions in this matter.

4. Outside the home, Student acts in ways that draw attention to herself so as to receive positive self-feelings and validation. Her friendships are based on external presentations, and tend not to be genuine or authentic relationships. (N.T. 43, 52-54, 117-118, 158, 181, 255, 692) She can be extremely helpful around the classroom and she does not demonstrate at school the violent, angry outbursts that she displays at home, but she needs substantial assistance keeping organized and she tends to have difficulty with male teachers. (P2, p.1; P5; P11; N.T. 530)
5. Student has average cognitive abilities. (P5; S3) Her reading achievement is in the average range while her math calculation and math fluency skills are in the low average range. (N.T. 50-51)
6. In second grade (1998-1999), Student began receiving speech therapy services. In third grade (1999-2000), she began receiving learning support services in reading and math. (N.T. 263; S2, pp.6-7)
7. In 2002-2003, when Student entered middle school in 6th grade, she received push-in learning support for math, literature, language arts, social studies and science, modified tests, study guides, class notes, and she had an opportunity to go to the resource room 3 times per 6 day cycle. (S2, p.7) Her parents also privately hired an after school tutor for Student to help with homework. (N.T. 282) Her end-of-year grades were As in math and Japanese language, Bs in English, science and German, Cs in social studies and Spanish, and a D in French. (S11)
8. In 2003-2004, when Student was in 7th grade, she developed a close bond with her special education teacher, who reported that student was usually caught up with her assignments, her homework was done, and her folders organized. (S2, p.9; N.T. 352-353)
 - a. Student also exhibited some behaviors that adversely affected her education. In classes that she did not like, she turned around in her chair during the class, knocked books on the floor, and/or refused to answer teacher questions. (S1, p.7) On March 23, 2004, Student stabbed her pen through her pants, saying that she didn't care about this stuff. (S1, p.27; S2, p.9)
 - b. Student's parents secured a private evaluation in May 2004 by Dr. L, a developmental neuropsychologist. (N.T. 280; S3,p.1; P5) Dr. L noted that, since entering middle school, Student's academic difficulties had increased and that her PSSA writing score was in the below basic range. (S3, p.3) Dr. L concluded that Student's emotional issues directly impeded both her classroom performance as well as her relationships at home. (P5)
 - c. Dr. L concluded that Student's difficulties in school were contributing to problems at home. (N.T. 281-282) Student started taking Zoloft and received weekly counseling outside of school. (N.T. 271, 276, 480)
 - d. Student's end-of-year grades were straight Cs. (S11; N.T. 272)

9. In September 2004, when Student began her 8th grade school year, her father died suddenly and unexpectedly at age 41 of a massive coronary. (N.T. 276-277, 283)
 - a. At home, her behavior was extremely disruptive. When Student started failing to come home after school, she spent a week in a partial hospitalization program at the recommendation of her therapist. (N.T. 289-290, 481)
 - b. In school, Student began wearing attention-getting outfits, including [redacted, to preserve student's anonymity]. (N.T. 287, 489) She regularly saw a counselor at school. (N.T. 504)
 - c. Student had a good bond with her 8th grade special education teacher, but she did not care for her math teacher. (N.T. 284, 352-353, 477, 482) In January 2005, Student was placed in a special education math class, not because she needed the additional math support, but to place her with a teacher with whom she could develop a better bond. (N.T. 284, 286, 373-374, 379, 471, 482; S8; P8) In the smaller learning support environment, Student's academic performance improved and her peer relationships were positive. (S12; P11)
 - d. Student's April 2005 IEP had provided for resource room learning support services in math and language arts, with push-in support for social studies and science, and a study skills class in lieu of a foreign language. (P9, p.2; S9; p.2)
 - e. At the end of the school year, Student was excited about leaving the middle school and starting a new chapter in her life in high school. (N.T. 549) Student received As, Bs and Cs in 8th grade, and there is no issue in this case that Student made meaningful educational progress through April 2005. (N.T. 300, 492-493; S11)

10. On June 10, 2005, Student's IEP was revised to eliminate specially designed instruction in English, social studies, science and math. The June 2005 IEP simply called for Student to visit the learning support classroom three times per six day cycle. (P10; S 10)

11. In 2005-2006, when Student was 14 years old, she started high school in the 9th grade.
 - a. She started failing immediately, with Fs in her classes by September 23, 2005. (P27, pp.129-131; N.T. 304) Her mother requested an IEP team meeting in November in response to Student's poor academic performance. (N.T. 311)
 - b. Student did not bond with the male special education teacher to whom she was assigned, ignoring him and refusing to work with him. (N.T. 312, 446-448, 453) Her IEP team decided to reassign Student to a female special education teacher. (P12; N.T. 313, 389, 594, 598)
 - c. Student also began wearing bizarre make-up to school that made her look like [redacted to preserve student anonymity]. (N.T. 322)

12. In January 2006, at the recommendation of Student's private therapist, her parent privately applied to enroll Student at the [redacted] School, a local private school. (P30, p.5; N.T. 316, 404, 564) Local Private School is a private academic school that offers to secondary students a nurturing environment and both learning support and emotional support services as well as peer social skills groups. (N.T. 569, 671, 718) Its total population is 103 students, with 43 9th and 10th graders. (N.T. 569, 671-672) Its annual tuition is \$21,250 plus \$2,000 in fees. (N.T. 671) It has two social workers and a psychology intern on staff. (N.T. 674) A faculty advisor is assigned to each student. (N.T. 677) Every three weeks, each student is formally discussed at the weekly faculty meeting. (N.T. 679-680)
13. In February 2006, Student visited Local Private School as part of the private school application process. During that visit, Student talked out of turn, socialized excessively, and was difficult to redirect. (N.T. 697, 748) As a result, Local Private School officials rejected Student's application for enrollment. (P30, p.8-9)
14. In April 2006, Local Private School reconsidered Student's enrollment at the request of both the School District and Student's parent. (P30, pp.10-15) Student's second application visit was much more successful, resulting in acceptance by the School. (N.T. 317, 416, 571, 698, 703, 748; S19; P30)
 - a. Her acceptance by Local Private School's admissions committee was not unanimous, however, with one faculty member expressing skepticism about Student's future success at Local Private School. (P30, p.12; N.T. 701-702, 728, 743)
 - b. Local Private School's acceptance letter stated, "We also expect [Student] to continue to engage in a productive relationship with [her therapist] or other reputable mental health professional, and to follow the advice of that person." (P30, p.14)
15. Student's acting-out behavior in the public high school deteriorated during the last semester of 2005-2006, resulting in two suspensions for obscene language and cutting a Saturday detention. (N.T. 318-319; P27, p6; P15) Student's parent then hired an educational consultant to assist in finding an appropriate educational placement for Student. (N.T. 325) The consultant did not believe that Local Private School was appropriate for Student, believing that Student's emotional issues were more serious than Local Private School could manage. (N.T. 326) Rather, the consultant recommended a summer wilderness program in [state redacted], followed by a therapeutic boarding school, i.e., the Private School. (N.T. 326-327)
16. At parental expense, Student spent summer 2006 at the [redacted] wilderness therapy program for at risk adolescents, located in [state redacted] ("Wilderness Program.") (N.T. 30-31, 417) Student's progress in the Wilderness Program was minimal in comparison to other students in the program. (N.T. 31, 58, 69; P18; P31)

17. On August 11, 2006 the School District issued a Notice of Recommended Educational Placement (NOREP) recommending that Student attend the Local Private School at School District expense. (S16; P19; P20) The August 11, 2006 IEP added a social skills goal and structured group interaction to assist with social skills, a small class setting, comprehension skills/strategies, problem solving strategies, an emotional identification goal, and a frustration coping goal. (P19; S16)
- a. If Student had begun attending Local Private School for the 2006-2007 school year, she would have started school as a 9th grade student, with the option of moving up to the 11th grade if she had a strong academic year. (N.T. 712)
 - b. I find that Local Private School is capable of implementing the School District's August 11, 2006 proposed IEP. (N.T. 584, 706; P19; S16)
18. On August 15, 2006, Student's mother disapproved the NOREP and requested a due process hearing. (P22)
19. Around the same time, Student began attending Private School, a visual and performing arts, college preparatory, personal-and-emotional-growth residential high school on 300 acres in [state redacted]. (N.T. 149) Private School is designated by the state of [redacted] as an independent school, and it is licensed by the [state redacted] Department of Children and Families. (N.T. 183)
- a. Private School curriculum includes horseback riding, a five-phase Ericksonian model of child development intended to help children move through developmental stages, individual therapy, group therapy, and family therapy. (N.T. 155-156, 159-160, 165, 178-179; P24)
 - b. Private School has 40 students, ages 14-18, in grades 9th-12th. (N.T. 144, 203) Its largest class is six students, with most classes comprised of 4-6 students. (N.T. 167) All Private School students are residential, most have previously attended either a wilderness program or a residential treatment center, 85% have learning disabilities, and 40% have substance abuse histories. (N.T. 204, 206, 256)
 - c. No teachers at Private School are certified in special education except its Head of School, Dr. F, who is licensed in special education in California, has a Ph.D. in educational psychology, and has practiced in the clinical and educational fields since 1981. (N.T. 144-145, 208) Private School has four therapists on staff, and faculty meet daily to discuss their students. (N.T. 160-161)
 - d. Private School creates written learning plans, rather than IEPs, for their students. Student's learning plan had not yet been developed at the time of the due process hearing. (N.T. 193-194) Private School provides one-on-one assistance, preferential seating, and homework and organizational assistance to Student. (N.T. 168-169)
 - e. Private School costs \$5,700 per month, plus a \$3,700 enrollment and orientation fee. In addition to the enrollment fee and monthly tuition since

September 2006, Student's parent has also paid Private School \$1,311.78 for seven days tuition for August 2006. (N.T. 258, 330; P24; P25; P26)

20. An expert from the Wilderness Program testified at the due process hearing. Dr N has a Ph.D. in clinical psychology from Penn State University, is licensed as a psychologist in [state redacted], and has nine years experience in wilderness therapy. (N.T. 28-30; P18)
- a. Dr. N believes that Student's academic frustrations and her psychological/emotional issues are so intertwined that Student will not be successful in either home or school if she is not treated holistically, for approximately 12-18 months, in a residential setting where academic and emotional issues will be addressed concurrently. (N.T. 62-66, 75)
 - b. Dr. N recommends a structured academic environment, with classes of 10 students or less, that is well-controlled and predictable, with clearly defined tasks, rewards and consequences, both group and individual therapy, individualized attention, a safe learning environment, consistency, minimal distractions, and where all aspects of life (social, academic, and living) are controlled. (N.T. 64-66, 102)
 - c. Dr. N believes that a typical school environment would contain too many distractions. Although Dr. N participated by telephone in part of the August 2006 IEP meeting, she is not familiar with either the Local Private School or the Private School. (N.T. 47, 61-62, 76-78, 101, 104, 130)
21. I conducted a due process hearing on November 20-22, 2006. Exhibits P1 through P32, and S1 through S 19 were admitted without objection. (N.T. 799-800) The parties submitted written closing arguments, and the record in this matter was closed, on December 15, 2006. (N.T. 800)

DISCUSSION

Burden of Proof

Student's mother requested due process in this matter when she rejected the School District's August 11, 2006 NOREP and sought reimbursement for Private School tuition and compensatory education for Student. Because she seeks relief in this administrative hearing, Student's mother bears the burden of proof in this matter, i.e., she has the ultimate obligation to ensure that the evidence in the record proves each of the elements of her case. The U.S. Supreme Court has also indicated that, if the evidence produced by the parties is completely balanced, or in equipoise, the party seeking relief (i.e., Student's mother) must lose because the party seeking relief bears the burden of persuasion. Schaffer v. Weast, ___ U.S. ___, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); L.E. v. Ramsey Board of Education, 435 F.2d 384 (3d Cir. 2006) Where the evidence is not in equipoise, the trier of fact simply decides which party's evidence is more persuasive.

Tuition Reimbursement Analysis

When a parent unilaterally removes her child from the public school district and places that child in a private school, she may seek tuition reimbursement from the public school district. There are three prongs to the decision to award reimbursement for a unilateral placement of a student at a private school. First, the School District must have offered Student a free appropriate public education. Second, if the School District has not offered FAPE, Student's parent must establish that the private school is appropriate for Student. Third, if FAPE has not been offered and if the private school is appropriate, I must weigh the equities in the case. Florence County School District 4 v. Shannon Carter, 510 U.S. 7, 126 L.Ed.2d 284, 114 S. Ct. 361 (1993); School Committee of the Town of Burlington, Mass. v. Dept. of Education of Mass., 471 U.S. 359, 105 S. Ct. 1996 (1985)

The School District's Offer of FAPE

A school district program will be deemed appropriate if it provides a free appropriate public education (FAPE). FAPE means special education and related services that are provided at public expense, that meet the standards of the state educational agency, and that are provided in conformity with an individualized education program. Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998) The cornerstone of FAPE analysis is an IEP that need not provide the maximum possible benefit, but must be reasonably calculated to enable the child to achieve meaningful educational benefit. Board of Education v. Rowley, 458 U.S. 176, 207, 73 L.Ed.2d 690, 107 S.Ct. 3034 (1983); Ridgewood Board of Education v. M.E. ex. rel. M.E., 172 F.3d 238 (3d Cir. 1999) Whether an IEP is reasonably calculated to afford a child educational benefit can only be determined as of the time it is offered to the student and not at some later date. Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031 (3d Cir. 1993); Daniel G. v. Delaware Valley School District, 813 A.2d 36 (Pa. Cmwlth. 2002)

Student's Educational and Non-Educational Needs are not Inextricably Intertwined

Student, of course, contends that the School District has failed to offer FAPE because full-time therapeutic residential placement at a small private school is necessary for educational purposes. She contends that her medical and educational needs for Private School's services are so inextricably intertwined that therapeutic residential services must be considered an essential prerequisite for learning. Kruelle v. New Castle County School District, 642 F.2d 687 (3rd Cir. 1981) Student points to a recent Bloomfield Board of Education v S.C. ex rel T.M., 2005 U.S.District LEXIS 21424, 44 IDELR 128 (D.N.J. 2005) and to In Re J.K. and the Susquenita School District, Special Education Opinion No. 1150 (2001) as examples of cases similar to Student's case, in which a residential program and placement were considered educationally necessary.

In Bloomfield, *supra*, the child's residential placement provided integrated treatment to address his psychiatric, emotional, social and educational needs in order for him to be available for learning, and it was not possible to separate the need for the residential placement into a part that dealt with the learning process and a part that did not, because that student could not have a meaningful benefit from any academic program until his emotional, psychiatric and behavioral problems were addressed. In Susquenita, *supra*, the child's behavioral needs had such a significant impact on his education, as well on all aspects of his life, that he required a short term but intensive residential program at a neurobehavioral facility to address and manage his severe behavior before he could even start to focus on education.

In both of those cases, however, those children's psychiatric and emotional conditions manifested themselves at school much more acutely and severely than in the instant case. In Bloomfield, the child had been suspended from school dozens of times, threatened staff and students, and posed a physical threat to other children. In Susquenita, the child's aggressive impulses and self-abusive behaviors were so severe that even the one-on-one assistance that he was already receiving at his current residential/educational placement was insufficient. In the instant case, Student's violent, aggressive behavior manifests at home, but not at school.

Student relies substantially upon the report and testimony of Dr. N, from the Wilderness Program, who believes that Student's academic frustrations and her psychological/emotional issues are so intertwined that Student will not be successful in either home or school if she is not treated holistically, for approximately 12-18 months, in a residential setting where academic and emotional issues will be addressed concurrently. (P18; N.T. 62-66, 75) While Dr. N's report and testimony regarding Student's emotional condition is generally credible, I give no weight to her ultimate recommendation that Student attend a residential school, because that ultimate recommendation lacks logical support.

First, Dr. N had no knowledge of any aggressive or violent behavior at school. (N.T. 97, 111, 114-115) Such behavior was a significant factor in both the Bloomfield and Susquenita cases mentioned above. Further, although Dr. N referred to Student needing "some fairly intensive academic intervention to meet her learning needs," (N.T. 62) Dr. N's actual recommendations for academic intervention (small class size, controlled, safe learning environment, clearly defined tasks, minimal distractions) are not, in fact, particularly intensive. Although Dr. N refers to the "frustration that [Student] inevitably experiences in an academic environment," (N.T. 62) the evidence in the record, when weighed, does not indicate substantial academic frustration. Finally, Dr. N also does not explain why a day school cannot supply Student's academic needs. Even the need for communication and consistency in behavioral plans between residence and school are easily managed in this case through a day school. (N.T. 64-66, 102-105) I suspect, although admittedly the question was not asked at the due process hearing, that Dr. N's recommendations are based upon a professional opinion that Student needed not to live at home, rather than upon a professional opinion that Student needed to attend a residential school.

Student also relies upon Dr. L's May 2004 conclusion that Student's emotional issues directly impeded both her classroom performance as well as her relationships at home. Dr. L also determined that Student's difficulties in school were contributing to problems at home. (N.T. 281-282; P5) Dr. L's report, however, does not state that Student's social and emotional needs are inextricably intertwined with, and cannot be severed from, her learning needs. See Bloomfield, supra; see Susquenita, supra.

I conclude that Student's emotional and psychological needs for a therapeutic residential living environment outside her family home are easily severable from her academic and educational needs. Student has always compartmentalized her home and school behaviors, exhibiting much more control over her emotions and behaviors at school than at home. (N.T. 41, 43, 582-583) She has certainly exhibited some behaviors that adversely affected her education, including knocking books on the floor, refusing to answer teacher questions, and getting suspended from school twice for obscene language and cutting a Saturday detention. (N.T. 318-319; P27, p6; P15; S1, p.7) These behaviors, however, can be handled in a much less restrictive setting than a residential school, and they certainly do not equate to the types of behaviors that were at issue in the Bloomfield and Susquenita cases cited by Student.

I agree with the School District's position in this case which is that, while Student may very well need to live someplace other than in her family home, it is not because she has an educational need to live elsewhere, nor is it because her educational and non-educational needs are inextricably intertwined and nonseverable. Student's home and family-based emotional/psychological needs simply require very intensive support and respite from the stresses of the home environment. It is clear from this record that, if Student were somehow placed in a therapeutic residential environment, she could easily attend a non-residential day school such as the Local Private School placement recommended by the School District.

Local Private School is an Appropriate Offer of FAPE

Student also argues that the School District failed to offer FAPE because its offer, i.e., **Local Private School**, is inappropriate. Student notes that Local Private School's admissions committee was not unanimous in accepting Student. (P30; N.T. 701-702, 728, 743) She also argues that Local Private School's acceptance of Student was hinged upon her receipt of outside psychological therapy. (P30; N.T. 737) I reject these arguments.

The August 2006 IEP proposed by the School District is appropriate and will provide Student with FAPE. First, the IEP was detailed and tailored to meet Student's academic and emotional/social needs for structured group interaction to assist with social skills, a small class setting, comprehension skills/strategies, problem solving strategies, an emotional identification goal, and a frustration coping goal. (P19; S16) The program at Local Private School would provide Student with a nurturing environment and both learning support and emotional support services. This would be provided through Local Private School's peer social skills groups, its small overall size, its two social workers

and psychology intern on staff, and with a faculty advisor assigned to each student. (N.T. 569, 671, 674, 677) Every three weeks, Student would be formally discussed at the weekly faculty meeting. (N.T. 679-680) This publicly-funded, day school program is reasonably calculated to meet Student's needs and to provide meaningful educational benefit to Student. In Re G.K. and the Dallastown Area School District, Special Education Opinion No. 1778 (2006)

I also note that Dr. N participated in part of Student's August 2006 IEP meeting, but she was not familiar with either the Local Private School or the Private School, and therefore she could not render an opinion regarding Local Private School's appropriateness. Dr. N does, however, recommend a structured academic environment, with classes of 10 students or less, that is well-controlled and predictable, with individualized attention, a safe learning environment, consistency, and minimal distractions. (N.T. 64-66, 102) All of these conditions can be provided at Local Private School. (N.T. 569, 671-672, 674, 677, 679-680, 718)

The fact that Local Private School's admissions committee did not unanimously accept Student is no more indicative of an appropriate IEP than is a non-unanimous IEP team decision. The evidence clearly establishes that Student was thoroughly vetted through the Local Private School application and admissions process, and that the likelihood of a good fit is high. (N.T. 317, 416, 571, 698, 703, 748; S19; P30) Further, Local Private School's acceptance is not hinged upon Student's receipt of outside psychological therapy. (P30; N.T. 737) Local Private School did state that it expects Student to continue to relate with, and to follow the advice of, her therapist. (P30, p.14; N.T. 84, 706) This statement suggests a clear understanding of Student's unique personality and appears simply to be a respectful reminder to Student that she wields substantial control over her own academic success. It is not a requirement that Student supplement her publicly-funded education with privately-secured psychological counseling services.

I find that Local Private School is capable of implementing the School District's August 11, 2006 proposed IEP. (N.T. 5) . The first prong of the tuition reimbursement analysis requires that the School District's offered educational program and placement not be appropriate. In this case, I find that the School District's August 2006 NOREP is, in fact, appropriate to meet Student's needs. Accordingly, I conclude that the Student's parent has not met her burden of proof in this case.

No Need to Analyze the Second and Third Reimbursement Analysis Prongs

A school district need not be concerned about private tuition reimbursement when it provides a child with a free, appropriate public education. Daniel G. v. Delaware Valley School District, 813 A.2d 36 (Pa. Cmwlth. 2002) In this case, the School District fulfilled its obligation for the 2006-2007 school year with its August 2006 proposed IEP. Accordingly, I need not continue on to the second and third prongs of the tuition reimbursement analysis.

Even if I did continue the tuition reimbursement analysis, however, I would not find that the Private School is appropriate. My analysis essentially would mirror my first-prong analysis. Student's educational needs are adequately met through the School District's proposed Local Private School placement. The aspects of Private School that are similar to Local Private School would also be appropriate for Student, such as the small class size, the nurturing environment, the substantial faculty/staff attention to Student, and the social skills improvement opportunities. (N.T. 144, 155-156, 159-161, 165, 178-179, 203; P24) On the other hand, Private School is not appropriate to meet Student's needs because it has only one certified special education teacher, who would not be one of Student's assigned teachers, and it is a residential, out-of-state boarding school, which is about the most restrictive educational setting possible on the least restrictive environment continuum. (N.T. 144-145, 149, 208) Thus, I conclude that Private School is not appropriate to meet Student's needs.

With respect to the equities among the parties, both parties have been cooperative and civil toward each other, with neither party behaving in a manner that I would characterize as obstructive toward the other. When weighing such circumstances for tuition reimbursement purposes, I would conclude that they favor the parent.

Student is not entitled to compensatory education

Student seeks compensatory education for her last year in public school, i.e., her 9th grade, 2005-2006 school year, as well as the Spring of 8th grade, since April 2005. She complains that her June 10, 2005, IEP was revised to eliminate specially designed instruction in English, social studies, science and math, and was simply reduced and altered in order to fit the programs offered at the high school rather than to meet her needs. (P10; S 10)

Student received FAPE during her Spring 2005 semester. At the end of the school year, Student was excited about leaving the middle school and starting a new chapter in her life in high school. (N.T. 549) She received As, Bs and Cs in 8th grade, and there is no issue in this case that Student made meaningful educational progress through April 2005. (N.T. 300, 492-493; S11)

For the Fall 2005 9th grade semester, Student started failing immediately, with Fs in her classes by September 23, and she began wearing bizarre make-up to school that made her look like [redacted to preserve student anonymity]. (P27, pp.129-131; N.T. 304, 322) Student also did not bond with the male special education teacher to whom she was assigned, ignoring him and refusing to work with him. (N.T. 312, 446-448, 453) Fortunately for Student, the adults in her life acted quickly.

Her mother requested an IEP team meeting in November 2005 in response to Student's poor academic performance. (N.T. 311) Her IEP team reassigned Student to a female special education teacher. (P12; N.T. 313, 389, 594, 598) By January 2006, Student's mother had hired an educational consultant and applied for enrollment at Local Private School. (P30, p.5; N.T. 316, 404, 564) Once the School District was aware of

this, it actively assisted in convincing Local Private School to reconsider Student's enrollment after her initial unsuccessful visit. (P30, pp.10-15) Student's second application visit was much more successful, resulting in acceptance by the School. (N.T. 317, 416, 571, 698, 703; S 19; P30) While Student's acting-out behavior in the public high school deteriorated during the last semester of 2005-2006, resulting in two suspensions for obscene language and cutting a Saturday detention, the School District's August 2006 IEP proposed an appropriate program to address Student's needs. (N.T. 318-319; P27, p6; P15)

Student, of course, would argue that the School District miscalculated way back in June 2005 when it revised Student's IEP prior to her entrance into high school, and then it failed to respond quickly enough in the Fall of 2005 when Student started failing, and in the Spring of 2006 when Student started acting out. I find, however, that while the School District's responses were not speedy, they were reasonably timely and appropriate to the situations. The School District reassigned personnel when it appeared that the gender of the special education teacher may have been a significant factor, it convinced the Local Private School to reconsider Student once it was aware of the private efforts and desires of Student's parent, and it offered an appropriate IEP prior to the beginning of the next school year.

Furthermore, both the School District's June 2005 IEP and its August 2006 proposed IEP were appropriate responses to Student's conditions as they appeared at those times. In June 2005, Student was excited about leaving the middle school and starting a new chapter in her life in high school. (N.T. 549) Student received As, Bs and Cs in 8th grade, and there is no issue in this case that Student made meaningful educational progress through April 2005. (N.T. 300, 492-493; S11) In August 2006, Student clearly needed a smaller, more nurturing environment than the public high school and, as I have already described, the School District's August 2006 NOREP offered an appropriate educational program and placement. Accordingly, I conclude that Student was not denied a FAPE for either the 2005-2006 school year, or the prior Spring 2005 semester.

On the last day of the due process hearing, Student indicated that she was also seeking compensatory education for lack of extended school year (ESY) services for summer 2006. I refused to permit evidence to be developed on this issue because it was first raised on the last day of hearing and it was not pleaded originally. (N.T. 772-774) In addition, none of the evidence or argument produced to that point had even hinted at any regression and recoupment concerns, which are the typical criteria for ESY eligibility. I further note today, upon review of the record, that even Student's privately secured summer programming, the Wilderness Program, was not an educational program designed in any way to address educational regression and recoupment. ESY was, in all respects, a non-issue until the last day of the hearing. Accordingly, it was appropriate to preclude evidence on this issue.

CONCLUSION

Student seeks reimbursement of Private School tuition for 2006-2007, and compensatory education for the 2005-2006 school year. I deny the requests because: 1) the School District did offer an appropriate program for the 2006-2007 school year; 2) the School District's June 2005 IEP was reasonably calculated to provide meaningful educational benefit, based upon circumstances at the time that IEP was written; and 3) the School District appropriately responded to Student's changing conditions throughout the 2005-2006 school year. Accordingly, I will not order either tuition reimbursement or compensatory education.

ORDER

- Student's request for reimbursement of Private School tuition is denied;
- The School District's August 2006 proposed IEP was appropriate;
- Student's request for compensatory education is denied;
- The School District did not deny FAPE to Student for either the 2005-2006 school year or the Spring 2005 semester.

Daniel J. Myers

Hearing Officer
December 28, 2006

Re: 6916/06-07 AS
Student
Wissahickon School District