

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:

File No. 25178-21-22

Child's Name:

E.H.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent(s):

Kathleen Metcalfe, Esquire
1230 County Line Road
Bryn Mawr, PA 19010

Local Education Agency:

Haverford Township School District
50 E. Eagle Road
Havertown, PA 19083

Counsel for LEA:

Claudia L. Huot, Esquire
Blue Bell Executive Campus
460 Norristown Road, Suite 110
Blue Bell, PA 19422

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

09/30/2021

INTRODUCTION AND PROCEDURAL HISTORY

The student, E.H. (Student),¹ is a late teenaged student who has a Parent residing in the Haverford Township School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ Student is currently in a residential treatment facility in another state.

The parties met in May 2021 to develop a program for Student for the 2021-22 school year. In July 2021, after not agreeing to the proposal of the District, the Parents filed a Due Process Complaint challenging its proposed program and demanding reimbursement for tuition and related expenses. The District denied the allegations and the requested reimbursement, and the case proceeded to a due process hearing.⁴ The Parent sought to establish that the District's proposed program would not provide Student with a free, appropriate public education (FAPE) and that the relief sought was warranted. The District maintained that its special

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

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ By agreement of the parties, the efficient hearing proceeded remotely during the COVID-19 pandemic. References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. References to Parents in the plural will be made where it appears that one was acting on behalf of both. Duplicative exhibits were admitted for valid reasons, but citation thereto may not be to all.

education program, as offered, was appropriate for Student under the IDEA, and that no remedy was due.

Following review of the record and for all of the reasons set forth below, the claim of the Parents must be granted.

ISSUES

1. Whether the District's proposed program for the 2021-22 school year was appropriate based on Student's needs; and
2. If the District's proposed program for the 2021-22 school year was not appropriate, whether the private placement is appropriate; and
3. If the private placement is appropriate, should the Parents be awarded reimbursement for tuition and related expenses?

FINDINGS OF FACT

1. Student is a late teenaged student whose family resides within the District. Student has been identified as eligible for special education based on an Emotional Disturbance and an Other Health Impairment. Student is currently in a residential facility in another state (Private Placement). (S-2; S-11.)
2. As of the summer of 2017, Student had a variety of mental health diagnoses including disorders of processing and executive functioning, Attention-Deficit/Hyperactivity Disorder (ADHD), Social Anxiety

Disorder, Persistent Depressive Disorder with Major Depressive Episodes, and Oppositional Defiant Disorder. Mental Health treatment for those diagnoses has included family therapy. (P-2.)

3. Student has a history of refusing to attend school largely as a result of Student's mental health diagnoses, and has been in a variety of educational placements including therapeutic boarding school. (N.T. 199-200, 202-05; P-1 at 1-2; P-2; P-6 at 7-8; S-2 at 5; S-11 at 2.)
4. In a February 2017 evaluation by another school district where Student resided, Student was identified as eligible for special education on the basis of an Emotional Disturbance. A follow up evaluation in June 2018 maintained that classification. (P-1; S-2.)

Entry Into District - 2018-19 School Year

5. Student became a resident of the District in the summer of 2018. At that time, Student was enrolled at the option of the Parents in a private school serving children needing emotional support. The District maintained the private school placement for the 2018-19 school year. (N.T. 142, 144, 205-07; S-3.)
6. A private psychiatric evaluation in February 2019 reflected diagnoses for Student of Conduct Disorder, ADHD, Cannabis Use Disorder, and Bipolar Disorder vs. Major Depressive Disorder. (S-5.)
7. In the spring of 2019, Student exhibited significant behavioral concerns some of which led to police involvement. Student also had difficulty getting ready for and eventually stopped attending school. The Parents placed Student in an inpatient hospitalization program for stabilization and safety, and a residential program was recommended on discharge. (N.T. 197-98, 209-14, 227; P-6.)
8. In the spring of 2019, the District conducted an evaluation of Student and issued a Reevaluation Report (RR) in March. That RR included

significant content from the recent psychiatric evaluation and previous school evaluations, including a Truancy Action Plan. The RR also noted that Student was in an out of state mental health program and unavailable. Student was identified as eligible for special education on the bases of an Emotional Disturbance and an Other Health Impairment. (N.T. 261-62; S-6.)

9. The District developed an Individualized Education Program (IEP) following its March 2019 RR. The District proposed full time emotional support outside of the neighborhood school, to be determined through a referral process. The Parent did not approve the Notice of Recommended Educational Placement (NOREP). (S-7; S-9.)
10. Student was placed at the Private Placement by the Parents in April 2019 when Student was accepted and enrolled. Student reportedly needed the residential treatment facility primarily because of Student's depression and substance abuse. (N.T. 98, 214; S-8.)
11. The parties resolved their dispute over Student's programming for the 2019-20 and 2020-21 school years. As part of their agreement, the District would conduct a reevaluation in the spring of 2021 in order to develop a program for the 2021-22 school year. (N.T. 147-48, 158-59.)

Preparation for 2021-22 School Year

12. The District conducted another evaluation in the spring of 2021 and issued another RR in April. (N.T. 269; S-11.)
13. Parent input into the April 2021 RR reflected Student's difficulty with executive functioning skills, poor self-esteem, and deficient mathematics skills, as well as past substance abuse. (S-11 at 3, 15.)
14. The April 2021 RR noted accommodations provided at Private Placement: small group and individualized instruction; organizational

assistance; support during unstructured time; chunking of materials; a modified curriculum; explicit step-by-step instructions; and extra time for tests and assignments. Student's progress at Private Placement was noted to be slow in that structured environment. (S-11 at 6, 19.)

15. Cognitive assessment for the April 2021 RR (Wechsler Abbreviated Scale of Intelligence – Second Edition) revealed a solidly average range Full Scale IQ score, which was consistent with previous evaluations. Student's significant processing speed weaknesses were also noted from prior administrations of cognitive assessments. (S-11 at 9-10.)
16. On assessment of academic achievement (Wechsler Individual Achievement Test – Third Edition) for the April 2021 RR, Student exhibited average range reading skills, inconsistent (below average to above average range) written expression skills, and below to well below average range mathematics skills particularly on timed tasks. (S-11 at 10-12.)
17. Assessment of social/emotional functioning for the April 2021 RR (Behavior Assessment System for Children – Third Edition (BASC-3)) was conducted through rating scales. The Parents' ratings were in the clinically significant range for attention problems and adaptability, and in the at-risk range for hyperactivity, conduct problems, anxiety, depression, withdrawal, and leadership. Rating scales from Private Placement were either not sought or not returned. (N.T. 280, 302-03; S-11 at 13-15.)
18. Student's completion of a rating scale for social/emotional functioning revealed that Student experienced low self-esteem, a mildly elevated level of anxiety, an elevated level of depression, and mildly elevated

levels of anger and disruptive behavior. Student's anxiety and depression affected Student's overall functioning particularly outside of a structured setting. (S-11 at 15-16.)

19. Student's mental health diagnoses from Private Placement were reported in the April 2021 RR: Unspecified Anxiety Disorder; ADHD; Reactive Attachment Disorder; Major Depressive Disorder; Disruptive Mood Dysregulation; and Cannabis Use Disorder. Student reportedly had made "significant improvement in managing depression" (S-11 at 17) and discharge was anticipated in June 2021. However, the discharge information reflected the potential for relapse with less structure. (S-11 at 17-18.)
20. Student's executive functioning was also assessed for the April 2021 RR. Results reflected areas of deficit including on timed tasks and in processing visual information, and behavioral inhibition and impulsivity were weaknesses. (N.T. 278-80, 300; S-11 at 12-13.)
21. The April 2021 RR reflected Student's eligibility for special education on the bases of an Emotional Disturbance and an Other Health Impairment. Identified needs were for emotional regulation and executive functioning skills. Recommendations included accommodations for mathematics calculation, written expression, and processing speed; and the residential program with its significant supports was noted to appropriately address Student's needs despite slow progress and pacing. (S-11 at 18-19.)
22. An IEP meeting convened in May 2021. At that time, Student remained in Private Placement but was making progress on goals in the treatment plan, and was doing well enough that the family expected Student to be discharged in June of that year. However, Student continued to exhibit difficulty and inconsistency with time

management and attending classes in addition to emotional regulation. (N.T. 149, 160-61, 222, 311-15; S-12.)

23. District representatives at the May 2021 IEP meeting became concerned about information provided, including that by Private Placement staff, suggesting that Student's progress with managing time effectively and attending classes was not as positive as previously believed. They had particular concerns that Student's progress was not generalized across settings and was not consistent. (N.T. 312-15.)
24. The District developed an IEP in May for Student based on the April 2021 RR. Identified needs were for emotional regulation, executive functioning, and accommodations for mathematics calculation, written expression, and processing speed. (S-13 at 13-14.)
25. Annual goals in the May 2021 IEP addressed emotional regulation, executive functioning, and attendance (use of coping skills). Program modifications and items of specially designed instruction were for access to adults for support with monitoring; school-based counseling; a functional behavioral assessment; small group and individualized instruction; a modified curriculum; accommodations for mathematics calculation, written expression, and processing speed weaknesses; organizational assistance; support during less structured time at school; and test and assignment accommodations. Daily individual counseling and weekly social skills instruction were listed as related services. (S-13 at 24-30.)
26. The May 2021 IEP included a post-secondary transition plan for Student's goals of post-secondary education, competitive employment, and independent living. (S-13 at 15-17.)

27. The proposed program in the May 2021 IEP was for full time emotional support in a location to be determined. Student was determined to be eligible for extended school year services. (S-13.)
28. The District did not make referrals to specific schools for full-time emotional support for Student in the spring of 2021. (N.T. 153, 178-79.)⁵
29. District professionals recognized that Student would need a plan for transitioning to a less structured day program that would address, among other things, attendance. (N.T. 179-80, 189.)

The Private Placement

30. Private Placement is a residential treatment center for teenagers and young adults of Student's gender who are age twelve and older and have mental health needs. It is accredited by the state's education department and all teachers are licensed. Residents are required to also attend school. (N.T. 36-38, 52-53, 98.)
31. Private Placement classrooms are on the same campus as the students' residence so they do not need to travel any distance to classes. Student's classroom is in the same building as Student's residence. (N.T. 40, 81.)
32. At the Private Placement, students have three periods each school day for academic subjects, in addition to lunch and other non-structured activities. During the summer, academic programming continues and students have two periods each school day for academic subjects. (N.T. 37-38, 75.)

⁵ There is an error in the transcript at N.T. 179 L 1, which should read "child's FERPA rights" in reference to the Federal Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g, consistent with N.T. 191 LL 1-10.

33. Students are expected to complete five academic courses each semester: English, mathematics, social studies, science, and an elective class. All classes are self-paced without time limitations, and a semester begins for each resident when the individual enrolls. (N.T. 38-39, 72.)
34. Student had a Master Treatment Plan at Private Placement. Student's diagnoses there as of July 2021 were Unspecified Anxiety Disorder, ADHD, Reactive Attachment Disorder, Major Depressive Disorder; Disruptive Mood Dysregulation; and Cannabis Use Disorder (Severe). (P-11.)
35. The Master Treatment Plan contained goals and objectives for managing symptoms that were regularly reviewed for progress. The Plan targeted anxiety, depression, emotional regulation, coping skills, time management, initiating and completing tasks, co-dependency, substance abuse, and family relationships. (P-11.)
36. Private Placement does not have educational plans for its residents, but academic needs are included in treatment plans. Students are discharged when they have reached therapeutic goals. (N.T. 50, 54, 60-61, 70, 82.)
37. Student's current therapist at Private School is a social worker. Student has weekly individual, group, and family therapy. Student also checks in with the social worker regularly. Student's current focuses in therapy are use of coping skills to manage anxiety, respecting those in authority, family relationships, and Student's tendency toward co-dependency with peers. (N.T. 97-98, 101-02, 104, 110, 113.)
38. Student's therapist communicates with school staff regularly. (N.T. 63, 102.)

39. Student benefits from the self-pacing since Student's time management and other executive functioning skills are weaknesses across environments, even with a variety of supports inside and outside of the classroom. Student is frequently tardy for classes and has difficulty beginning and completing tasks within expected timeframes. (N.T. 39-40, 42-44, 47, 81, 107-09.)
40. Student is provided accommodations at Private Placement including pre-review of material, checklists for tasks, use of notes for assessments, and frequent breaks throughout the school day, in addition to time management monitoring and support. Student's materials are modified to Student's reading level (approximately ninth grade), and by July 2021, Student was working on completing a mathematics course at an approximate fifth grade level but was ready to move on to a pre-Algebra class. (N.T. 39, 41, 44-45, 47; P-15.)
41. When Student was first in Private Placement, Student did not willingly participate in individual or group therapy. Since Student has been in Private Placement, Student has exhibited more willingness to engage in instruction and tasks, participate in therapy, monitor the tendency toward peer co-dependency, use appropriate coping skills, and accept feedback. Student has also improved relationships with those in authority. (N.T. 48, 98-99, 104-07, 111-12, 114, 216-17; S-11 at 5-6.)
42. As of April 2021, Student had completed a number of courses at Private Placement: Geography, a Mathematics class, an English class, a foreign language, Ancient World History, Study Skills, two Anatomy and Health classes, and several elective-type classes. Student had earned sufficient credits to be considered a second semester sophomore (tenth grade) where Student remained as of August 2021. (S-11 at 4-5; P-15.)

43. Student continues to manifest significant difficulty with anxiety, co-dependency, substance abuse, and executive functioning deficits. Student retains the mental health diagnoses and their characteristics despite progress at Private Placement. (N.T. 126, 129-32, 136, 235-36; S-11 at 5-6.)
44. Student experienced a relapse with substance use in May 2021 during a home visit. Student returned to Private Placement early as a result of that relapse pursuant to its policy, but still possessed some of the controlled substance on return and used it with a peer. At that time, Student's treatment team recommended continuation of residential placement with therapeutic support, noting a risk of serious injury to Student if support was decreased. (N.T. 106, 215-19; P-11 at 9, 15.)
45. Student engaged in an incident of self-harm in July 2021 that required emergency room treatment. (P-11 at 7.)
46. Student still needs stabilization and a structured routine, and is not yet ready to make a transition from residential placement or to attend a day school program. (N.T. 116-17, 120, 224.)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as comprising two separate but related elements: the burden of production and the burden of persuasion. The burden of persuasion in this type of proceeding lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who filed for this administrative due process hearing. Application of this principle, however, determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at

58. The outcome is much more frequently determined by the preponderance of the evidence, as is the case here.

Special education hearing officers, who assume the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be generally credible. There was little actual inconsistency in testimony, although the witnesses understandably had some lapses in recall and differences in perspectives. The weight accorded the testimony, however, was not equal. In particular, the testimony of both Student's current therapist and the director at Private Placement was together persuasive and knowledgeable and, accordingly, very significant to the final decision. The testimony of a Parent further reflected an experienced understanding of Student's needs and response to changes, and was consistent with that of the Private School witnesses.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years

ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, thus, the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the law demands services that are reasonable and appropriate in light of a child’s unique circumstances, and not necessarily those that his or her “loving parents” might desire. *Endrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standard must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same).

General IDEA Principles: Least Restrictive Environment

The IDEA contains a crucial mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

LEAs are required to have available a “continuum of alternative placements” in order to meet the educational and related service needs of IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. Furthermore, the “continuum” of placements in the law enumerates settings that grow progressively more restrictive, beginning with regular education classes, before moving first toward special classes and then toward special schools and beyond. 34 C.F.R. § 300.115.

Residential placement is one option on the continuum, and is appropriate if “is necessary to provide special education and related services to a child with a disability.” 34 C.F.R. § 30.104. The question of whether a residential placement must be provided at public expense requires an assessment of whether that full-time placement is “necessary for educational

purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 243-44 (3d Cir. 2009, (quoting *Kruelle v. New Castle County School District*, 642 F.2d 687, 693 (3d Cir. 1981)). In other words, if the medical, social, and emotional components of the residential program are “part and parcel of a specially designed instruction to meet the unique needs of a handicapped child,” the local education agency is responsible for that placement. *Id.* at 244 (quoting *Kruelle* at 694).

General IDEA Principles: Parental Placements

Parents who believe that an LEA is not providing or offering FAPE to their child may unilaterally place him or her in a private school and thereafter seek reimbursement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Such is an available remedy for parents to receive the costs associated with their child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *Mary Courtney T., supra*, 575 F.3d at 242. Equitable principles are also relevant in deciding whether reimbursement for tuition is warranted. *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *C.H. v. Cape Henlopen School District*, 606 F.3d 59 (3d Cir. 2010); *Carter, supra*. A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter, supra*. The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Id.*

General Section 504 Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a

handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). Thus, in this case, the coextensive Section 504 claims that challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

The Parents’ Claims

The primary dispute in this case is whether the District’s proposal for a full time day program is appropriate, or whether Student needs a more structured residential program such as at Private Placement. That question must be answered as of what was known in May 2021, the point when the District’s proposed program was developed and offered.

The District had conducted a comprehensive reevaluation of Student with a report issued in April 2021. Student’s needs were complex, of course, but the District had a firm foundation for developing an IEP. At that time, the District recognized that Student was making gains in Private Placement with its residential component and high level of structure, and essentially agreed that Student should continue with the existing support. As of the May 2021 IEP meeting, the team was also aware that Student’s progress on treatment goals and objectives was slow and inconsistent. This information was not novel or remarkably different than what was already known at the time of the April 2021 RR. Inexplicably, however, the District proposed moving Student to a less structured day program in Pennsylvania despite Student’s ongoing difficulties even with the highly structured residential

setting. Just as or even more critically, even with a recognized need for a careful plan of transition should that change be made, the same was absent from the proposed IEP.

Student has and has had multifaceted needs that have included significant mental health diagnoses that impact Student's entire day, including educationally. Student has historically presented with school avoidance and task initiation/completion behaviors directly related to Student's mental health. The testimony of the Private Placement professionals, as well as that of the Parent who testified, was persuasive and compelling support for the conclusion that Student still requires a highly structured, residential environment at this time; and, Student's presentation has not materially changed since May 2021. The evidence is also more than preponderant that the intensive treatment of these mental health needs are not segregable from the learning process for Student, but rather are wholly intertwined. Here, as in *Kruelle, supra*, 642 F.2d at 694, the "consistency of programming and environment is critical to [Student's] ability to learn." Because the District's proposed program did not include the necessary residential component, it cannot be considered appropriate for Student for purposes of FAPE.

The next question is whether Private Placement is appropriate for Student. This hearing officer has no doubt that that program meets Student's mental health needs as of May 2021 through the present. The District challenges its educational programming as inadequate, and allowing Student to work at an impermissibly slow pace toward graduation requirements.

This hearing officer recognizes that Student has not chartered a steady course toward discharge and graduation, and has experienced relapses which are expected. Nonetheless, and although the educational component of that program may not be ideal especially for a student with post-

secondary aspirations, the law does not demand IDEA compliance by a unilateral parental placement. Student has been taking courses that included traditional high school academic subjects, and was working at Student's own individual pace to complete the content at Student's levels. Part of Student's treatment involved monitoring time management skills, so Student was not left alone to determine the pace of course completion. This hearing officer also cannot find fatal the absence of specific, objective educational progress monitoring data by Private Placement such as is expected for IEP goals. The educational program at Private Placement overall is reasonably calculated to confer meaningful educational benefit based on Student's strengths and weaknesses, and therefore meets this prong of the test for purposes of reimbursement.

The last prong to be evaluated is equitable considerations. Here, this hearing officer finds nothing in the record suggesting any reduction or denial of reimbursement would be appropriate. Accordingly, the attached Order grants the relief requested in full.

Finally, this hearing officer makes the following observations. The District's proposed program and placement, while determined not to be appropriate as of May 2021 or even today, may be viewed as a goal for the parties to be revised as necessary and implemented after Student has had a period of stabilization. They should continue to collaborate together on a plan for transition when Student is ready to leave Private Placement and return to Pennsylvania in a less structured environment such as that in the May 2021 proposed IEP and NOREP. Part of that planning should involve the various reservations that the District professionals expressed about Student's educational experience at Private Placement and graduation and post-secondary goals, which the IEP team can and should work together to address following discharge. The attached order specifies a time by which the parties will be required to meet to begin that process.

CONCLUSIONS OF LAW

1. The District's proposed program and placement for Student in May 2021 was not appropriate for Student's needs.
2. The private program and placement is appropriate for Student.
3. There are no equitable factors that warrant reduction or denial of reimbursement for the private placement.

ORDER

AND NOW, this 30th day of September, 2021, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's proposed program for Student for the 2021-22 school year was not appropriate for Student's needs.
2. Private Placement is appropriate for Student for the 2021-22 school year.
3. Within 30 calendar days of receipt of an invoice from Private Placement for each month of the 2021-22 school year, beginning with September 2021, the District shall reimburse the Parents in full.

4. Not later than February 1, 2022, or within ten calendar days of notice of Student's anticipated discharge from Private Placement, the District shall convene a meeting of Student's IEP team to include at least one Private Placement representative to plan for Student's program and placement upon discharge with specific provision for that transition.
5. Nothing in this decision and order should be read to limit or restrict the parties' ability to mutually agree to alter its terms.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are **DENIED** and **DISMISSED**.

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 25178-21-22