

*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:**

23339-19-20

#### **Child's Name:**

M.F.

#### **Date of Birth:**

[redacted]

#### **Parents:**

[redacted]

#### **Counsel for Parents:**

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#### **Hearing Officer:**

Cathy A. Skidmore, Esquire

#### **Date of Decision:**

August 7, 2020

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student (hereafter Student)<sup>1</sup> is a late teenaged student residing in the Upper Merion Area School District (District) and is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> under the classifications of Autism, Emotional Disturbance, and Other Health Impairment. Student attended a private school at the Parents' election beginning with the 2017-18 school year through the end of the 2019-20 school year.

In the spring of 2019, the District proposed returning Student to its own high school. The Parents did not agree to that recommendation and ultimately filed a due process complaint against the District asserting that its offer would deny Student a free, appropriate public education (FAPE) under the IDEA, Section 504 of the Rehabilitation Act of 1973,<sup>3</sup> and the Americans with Disabilities Act (ADA),<sup>4</sup> as well as the federal and state regulations implementing those statutes. The case then proceeded to a due process hearing which convened virtually due to the COVID-19 pandemic.<sup>5</sup> The

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 42 U.S.C. §§ 12101-12213.

<sup>5</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) 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.

Parents sought to establish that the District's spring 2019 proposed program amounted to a denial of FAPE, and they sought reimbursement for private school tuition and related expenses. In response, the District maintained that its special education program, as offered, was appropriate for Student and that no remedy was warranted.

For the reasons set forth below, the claims of the Parents will be granted.

## **ISSUES**

1. Whether the District's program proposed for Student for the 2019-20 school year was appropriate;
2. If the District's program proposed for Student for the 2019-20 school year was not appropriate, should the Parents be entitled to reimbursement for private school tuition and related expenses?

## **FINDINGS OF FACT**

1. Student is a late teenaged resident of the District who is eligible for special education under the classifications of Autism, Emotional Disturbance, and Other Health Impairment. (S-15 at 1, 18.)
2. Student has historically exhibited difficulties with all areas of language, receptively and expressively, and particularly with pragmatic language. Student also presents with weak executive functioning skills including maintaining attention to tasks, and has significant difficulty with transitions. (N.T. 41-42, 390, 422, 425-27; P-8; S-1.)

3. Student has had behavioral health services in the home since the age of three due to developmental delays. Student has treated with a psychiatrist or a psychologist. (N.T. 258-62, 265, 284, 332-35, 389-90, 392, 398, 406, 478; P-1.)
4. Over time, Student has experienced anxiety but, by the time of the due process hearing, was better able to manage those feelings. The anxiety was exhibited in various situations including changes in routine and social interactions. (N.T. 43-44, 297-98, 333.)

### **Early Educational History**

5. Student received early intervention services before attending school in the District with special education support. (P-8; P-21; P-23.)
6. Student was evaluated by a private neuropsychologist in early 2016 after the District agreed to an Independent Educational Evaluation (IEE). (P-19; S-1.)
7. The results of the 2016 IEE reflected strengths and weaknesses for Student. Specifically, the report noted that Student had deficits in executive functioning including attention and adaptive functioning; and, Student presented with a number of characteristics of Autism Spectrum Disorder (interpersonal behavior, communication, and repetitive behavior) including rigidity and inflexibility, especially when experiencing anxiety. Among other recommendations, the IEE described Student's need for structure and predictability and preparation for new situations. (S-1.)

### **Spring 2017**

8. An incident [redacted] in early May 2017 when [redacted]. Student's initial reports at home about the May incident were not accurate, but Student was reluctant to discuss it. (N.T. 348, 415-17, 572-76; P-12 at 5-6.)

9. The District conducted an investigation of the May 2017 incident and met with the Parents to develop a plan for Student to return to school. (N.T. 448, 576, 581-82; P-12 at 14-15, 27-30; P-13; P-14 at 1-4.)
10. After the incident in May, Student reported being fearful to leave the home, and did not return to school. Soon thereafter, however, Student expressed an interest in attending a larger school or attending both a private school and school in the District. (N.T. 283-84, 285, 314, 337-38, 340, 355, 358-360, 422, 426, 587.)
11. After the incident Student's psychiatrist recommended that Student be excused from school for the remainder of the year. (P-14 at 7-8; P-15; P-25.)
12. Student began attending the Private School in the summer of 2017, and remained there for the 2017-18 and 2018-19 school years. (N.T. 135; S-15 at 2.)
13. Student would be able to transition to a large public high school setting with a thoughtful plan for such a change, including learning to navigate the new environment. Student would also benefit from class sizes that are not large at first, and a trusted adult to turn to when needed. (N.T. 56-57, 371, 376-77.)

### **Preparation for 2019-20 School Year**

#### **Evaluation**

14. The District conducted a reevaluation in the spring of 2019 and issued a Reevaluation Report (RR) in April. (N.T. 532; S-15.)
15. The April 2019 RR summarized previous evaluation information and parental input that did not reflect concerns with Student's education at the time. (S-15 at 2-4.)

16. Teacher input into the April 2019 RR included recommendations such as support for assignments and assessments, self-advocacy skills, increased social interactions, and continuation of counseling and speech/language services. (S-15 at 4-8.)
17. Cognitive assessment for the April 2019 RR yielded low-average to average range scores across Indices and for the Full Scale IQ (Standard Score of 85, low average range). (S-15 at 10-13.)
18. Assessment of academic achievement for the April 2019 RR reflected average range scores in reading, mathematics, and writing, on all subtests and composites. (S-15 at 13.)
19. Social/emotional functioning assessed for the April 2019 RR through rating scales completed by a teacher did not support any areas of concern. (S-15 at 15-16.)
20. Assessment of executive functioning skills through rating scales completed by a teacher and Student indicated no concerns of the teacher, but clinically significant concerns of Student across indices and overall. (S-15 at 14-15.)
21. Speech/language evaluation for the April 2019 RR included formal and informal assessments including observations. No weaknesses were identified and direct speech/language therapy services were not recommended. (S-13.)
22. A Functional Behavioral Assessment (FBA) was conducted as part of the RR. For that FBA, a few teachers identified areas of concern that were not considered to be significant: self-confidence; self-advocacy and social skills; and frustration during athletic activities. However, Student did not engage in any of the reported behaviors of concern when the FBA observations were conducted, so the behaviors were not determined to impede learning. (N.T. 633, 636-37; S-14.)

23. The April 2019 RR determined that Student was eligible for special education based on Autism, Emotional Disturbance, and Other Health Impairment (related to a medical condition). The RR made recommendations to address areas including study skills (including organization and self-advocacy); inattention; anxiety; counseling; instructional strategies such as structuring tasks; providing notice of transitions and change to routine; checks for understanding; and gaining attention. (S-15 at 18-20.)

### **Proposed IEP**

24. A proposed Individualized Education Program (IEP) was developed in May following the April 2019 RR. That information was incorporated into the IEP as was input from teachers at the Private School. The Parents did not share concerns at the IEP meeting. (S-16 at 1-10, 13-26.)
25. A post-secondary transition assessment for Student was completed in early May 2019 for the May 2019 IEP. Student reportedly had an interest in post-secondary education and a goal for independent living. The IEP also included recommendations for exploration of possible post-secondary education. (S-16 at 10-13.)
26. The May 2019 IEP reflected the needs from the April 2019 RR in addition to post-secondary transition planning. (S-16 at 26-27.)
27. The May 2019 IEP contained transition planning for post-secondary education and training, in addition to independent living. (S-16 at 27-31.)
28. Annual goals in the May 2019 IEP addressed study skills (organization and maintaining attention to task from a baseline score on an attached rubric to a negligibly higher average score; and study and self-advocacy skills from a baseline score on an attached rubric to a

negligibly higher average score;) and social skills (from a baseline score on an attached rubric to a negligibly higher average score). The team explicitly recommended that Student maintain or increase skills because of the transition from the Private School to the District High School. (S-16 at 15, 36-38, 46.)

29. Program modifications and items of specially designed instruction in the May 2019 IEP addressed structure for complex or abstract tasks; notice of transitions and changes in routine; gaining attention; explicit expectations; checks for understanding; counseling and coaching for study skills with positive reinforcement; small group support; modeling of self-advocacy; assignment accommodations for mathematics and written expression; and co-taught core academic classes. (S-16 at 40.)
30. The May 2019 IEP provided for itinerant learning support with counseling one time per six day cycle. The counseling would also provide practice with social skills. (S-16 at 41-43.)
31. An IEP team meeting convened in May 2019 at which time the RR was also reviewed. (N.T. 230-31, 435, 509, 511-13, 539-40, 641, 663-64.)
32. The May 2019 IEP had baselines that were determined by developing a rubric for self-advocacy and executive functioning skills that were reviewed by the Private School staff, who also provided data on the identified skills. (N.T. 674-75, 688; P-31.)
33. The Parents had concerns at the May 2019 IEP meeting about Student making the transition back to a District school but did not raise that at the meeting. They did ask a number of questions, particularly about the co-taught classrooms and post-secondary transition planning. (N.T. 435-37, 464-76, 540, 602-03, 605.)

34. The Parents were given a copy of the proposed IEP at the May 2019 meeting. (N.T. 607, 615, 664, 679.)
35. Student would have been in co-taught classes for all content areas with a regular education teacher and a special education teacher who was qualified in the subject area. The classes would have had twenty-five students in one class and fewer in all others. (N.T. 235-37, 503-08, 596-604, 667-68, 681-82.)
36. Student would have met with a counselor as needed for the transition back to a District school building. That counselor would also work with Student on social skills and managing anxiety. (N.T. 678, 681.)
37. If Student had returned to the District, Student would have met with a counselor to finalize the schedule. All students in similar circumstances are afforded the opportunity to tour the building and meet an administrator to obtain information about offerings in the building. (N.T. 604-05.)
38. The Parents did not approve the Notice of Recommended Educational Placement (NOREP) for the 2019-20 school year, with their reasons focused on the size of the District high school. The NOREP was provided to them one week after the IEP meeting, and was returned ten days after that. (S-17; S-19.)
39. Student was evaluated by a private neuropsychologist in the spring of 2019. The neuropsychologist had also evaluated Student previously including for the IEE. The report was completed and provided to the Parents sometime in late summer of 2019. (N.T. 64, 475-76; S-1; S-18.)

### **The Private School**

40. The Private School serves children with some type of disability between the fifth and twelfth grades, and in May 2019 had 86 students

enrolled. Class sizes are generally between 5 and 8 students. (N.T. 116-17, 125, 129, 142.)

41. The Private School schedule is structured with varied activities across class periods. (N.T. 133-34.)
42. Student had a Personal Education Plan at the Private School that identified various strengths and needs. Student was to be provided a laptop for written assignments, assignment accommodations, occupational therapy, and individual support as needed for social interactions and skills. (S-7.)
43. All students at the Private School are provided group counseling twice each week that includes social skills programming. Individual counseling is also available as needed. (N.T. 123-24, 125-26, 148-49.)
44. Speech/language services are available at the Private School. (N.T. 124, 172-73.)
45. The Private School provides post-secondary transition services to its students beginning in ninth grade. Students explore post-secondary education in a variety of ways and are provided training on navigating through the community. (N.T. 118-23, 141-42, 427-29.)
46. Student was in tenth grade at the Private School during the 2019-20 school year in a class of twelve students. Student had classes in literature, mathematics, science, history, and a post-secondary transition class, as well as a sophomore class that included writing and study skills. Student also had a period each day to seek any additional help with a class or to work on other skills. (N.T. 127-30, 132-33, 140.)
47. Student had individual speech/language therapy during the 2019-20 school year. (N.T. 150, 173, 178, 187; P-2.)

48. Student exhibited growth in self-advocacy and pragmatic language skills since attending the Private School. Student has also shown improved organizational skills. (N.T. 137, 139-40, 173-75, 181-82, 340-41, 362; S-3; S-6; S-9; S-18.)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Principles**

Generally speaking, the burden of proof may be viewed as consisting of two elements: the burden of production and the burden of persuasion. At this point in the discussion, it should be recognized that the burden of persuasion 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 the Complaint that resulted in the administrative hearing and this decision. However, application of this principle 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.

Special education hearing officers, in 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 the testimony overall to be credible as to the facts. It must be noted, however, that the case was reassigned to this hearing officer after the first session and, thus, the witnesses from that session were not directly observed by her. Still, there

was no reason to doubt the veracity of the witnesses from that initial session, particular since the documentary evidence did not contradict their testimony. *Cf. D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (observing that courts “must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). The weight accorded the evidence, however, was not equal. The documentary evidence was deemed to be very reliable, particularly where witness memories contained lapses, but the documents that were created long before the 2019-20 school year had only limited probative value. The actual content of the proposed IEP was accorded the most significant weight of all of the evidence. It merits noting that the 2019 private evaluation was not available to the District or the Parents at the time that the proposed IEP was developed.

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

### **General IDEA Principles: Substantive FAPE**

The IDEA requires 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. Many 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 state, through its local educational agencies (LEAs), meet the obligation of providing FAPE to eligible students 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). Fairly recently, the U.S. Supreme Court observed that 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). “A focus on the particular child is at the core of the IDEA.” *Id.*, \_\_\_ U.S. at \_\_\_, 137 S. Ct. at 999, 197 L.Ed.2d at 349-50 (2017)(citing *Rowley* at 206-09)(other citations omitted).

Individualization is the central consideration for purposes of the IDEA. In other words, the crucial and primary focus of a child’s IEP is to respond appropriately to the identified educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. 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). A proper assessment of whether a proposed IEP meets applicable standards 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).

### **Substantive FAPE: Least Restrictive Environment**

A critical premise in the IDEA is the obligation that eligible students 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 *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).

In *Oberti*, the Third Circuit adopted a two-part test for determining whether a student has been placed into the LRE as required by the IDEA. The first prong of the test requires a determination of whether the child can, with supplementary aids and services, be educated successfully within the regular classroom; and the second prong is that, if placement outside of the regular classroom is necessary, there must be a determination of whether the child has been included with non-exceptional children to the maximum extent possible. *Id.*

### **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. v. School District of Philadelphia*, 575 F.3d 235, 242 (3d Cir. 2009). 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.*

### **The Proposed IEP**

The first issue is whether the District's proposed IEP for the 2019-20 school year was reasonably calculated to provide meaningful educational benefit in light of Student's circumstances. That question clearly must be answered in the negative.

The IEP did contain annual goals and items of specially designed instruction that were based on Student's needs, including post-secondary education and training, and the District proposed a placement in what may have been the least restrictive environment. Student would have had co-taught classes that allowed for a lower student to teacher ratio than would a large class with a single teacher. The IEP and NOREP did not, however, include a plan to transition Student back to the District building, a necessary support that was evident from Student's history in the District and all available information known at the time. *See Drinker by Drinker v. Colonial School District*, 78 F.3d 859, 866 (3d Cir. 1996)(rejecting contention that placement and transition to that placement are discrete concepts, and observing that, "[t]ransition periods and timing of placement are integral elements of any educational program."). Indeed, the District's proposed IEP

reflects obvious consideration that Student would not be successful at the high school when it indicates that Student could be expected to merely maintain skills over the course of the annual IEP because of the significant change to the educational setting. Thus, it is not apparent that the *Oberti* test was meaningfully applied and considered. The proposed IEP, based on this record, simply fails to be reasonably calculated to confer meaningful educational benefit in light of Student's unique profile and under all attendant circumstances. As such, the offer contravenes the legal standards above and amounts to a denial of FAPE. See *Endrew F.*, *supra* 137 S. Ct. at 1001, 197 L.Ed.2d 352 (holding that, "the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.").

### **The Private School**

The Private School serves children like Student and focuses on individualized instruction and supports in a small, structured environment. Student had relevant classes as well as counseling and speech/language and occupational therapy. Student could reasonably be expected to, and did, demonstrate progress in areas of need and overall as a tenth grade student. For these reasons, the Private School satisfies the second prong of the tuition reimbursement test in this case.

### **Equitable Considerations**

The District contends that the equities do not weigh in the Parents' favor because they did not mention concerns about the lack of a plan for transitioning Student to its high school, and also suggests that they did not meaningfully consider that option. This hearing officer cannot agree. It is the District as the LEA that bears the obligation to offer FAPE. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996)(explaining

that, “a child's entitlement to special education should not depend upon the vigilance of the parents[.]”). Moreover, the record established that the Parents participated in the IEP meeting and asked questions about the District high school. The additional fact that even Student was considering a different school further supports a determination that the Parents were open to alternatives to the Private School. For these reasons, the equities do not suggest a need for a reduction or denial of reimbursement.

The Parents having satisfied the prongs of the tuition reimbursement test, that remedy is appropriate for the 2019-20 school year. The attached order provides for same.

### **Dicta**

This hearing officer makes the following observations. Although there was no claim for a prospective remedy, the IEP team must seriously consider convening another meeting or series of meetings as soon as possible to discuss placement alternatives that are reasonably likely to help prepare Student for post-secondary education, whether that be the District high school or elsewhere. Least restrictive environment principles must also be meaningfully considered. Given Student’s goal for post-secondary education, there is evident concern that the Private School may not be sufficiently equipped to provide the tools that Student will need to attend a post-secondary institution that will almost certainly be attended by a large number of students.<sup>6</sup> Indeed, even Student has reportedly exhibited an interest in a larger school environment, and it is necessary to develop a careful plan for Student to successfully do so. The IEP team should

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<sup>6</sup> This factor does not serve to negate the positive aspects of the Private School for Student for purposes of the tuition reimbursement analysis.

approach development of such a tailored plan based on the program and placement that is recommended and its timing.

## **ORDER**

AND NOW, this 7<sup>th</sup> day of August, 2020, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The program proposed by the District for the 2019-20 school year was not substantively appropriate under the applicable law.
2. The Parents are entitled to reimbursement for actual tuition and related expenses that they incurred for the Private School for the 2019-20 school year.
3. Within fifteen calendar days of the date of this decision, the Parents shall provide documentation to the District of all current invoices and receipts for tuition and related expenses for Student at the Private School for the 2019-20 school year.
4. Within thirty calendar days receipt of the documentation, the District shall reimburse the Parents for the full amount of invoices and receipts provided by them pursuant to this order.
5. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

*Cathy A. Skidmore*

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 23339-19-20