

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 Due Process Hearing Officer

Final Decision and Order

ODR No. 27661-22-23

CLOSED HEARING

Child's Name:

R.C.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

06/29/2023

INTRODUCTION AND PROCEDURAL HISTORY

The student, R.C. (Student),¹ is a mid-teen-aged student who resides in the Pennsbury School District (District) but has been attending a private school at the option of the Parents. In the spring of 2022, the District proposed an educational program for Student for the 2022-23 school year based on its determination that Student has a disability entitling Student to the protections under Section 504 of the Rehabilitation Act of 1973.² The Parents did not approve that proposal, and filed a Due Process Complaint against the District pursuant to the Individuals with Disabilities Education Act (IDEA)³ and Section 504. As remedies, the Parents sought reimbursement for the private school tuition and related expenses for the 2022-23 school year.

The matter proceeded to a very efficient due process hearing,⁴ at which the Parents sought to establish that the District's proposal was not appropriate for Student under the applicable laws and that they were entitled to the remedy demanded. The District denied the Parents' assertions and countered that its proposal met its obligations to Student such that no relief should be awarded.

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 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).

³ 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).

⁴ References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, Parent Exhibits (P-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. The term Parents is used in the plural where it appears that one was acting on behalf of both.

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

ISSUES

1. Whether the District's educational program proposed for the 2022-23 school year was appropriate for Student;
2. If the District's proposed program for the 2022-23 school year was not appropriate, whether Private School was appropriate; and
3. If the District's proposed program for the 2022-23 school year was not appropriate, and Private School was appropriate, are there equitable considerations that would operate to reduce or deny an award of tuition reimbursement?

FINDINGS OF FACT

1. Student is a mid-teenaged student residing within the District, which recently identified as eligible for the protections of Section 504. Student attended District schools in the past from kindergarten through fourth grade, then attended private schools. (N.T. 49-50, 336-37.)
2. Student was determined to be eligible for early intervention services because of an identified speech/language impairment, and then for special education for the same disability into elementary school. (S-2 at 2-3.)

3. Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and convergence insufficiency. Student experiences difficulty with focusing and maintaining attention to task, and has taken medication at times for the ADHD. (N.T. 47-48, 76-77; S-2 at 2.)
4. Student exhibits weak social interaction skills and has an introverted personality. (N.T. 48, 166-69, 184-85.)
5. Student attended Private School for the 2020-21 and 2021-22 school years, earning grades generally in the A to B range. (P-13 at 12.)

Spring 2022

6. The District conducted an evaluation of Student and issued a reevaluation report (RR) in May 2022 with the consent of the Parents.⁵ (N.T. 107-08; P-1; S-1.)
7. The District school psychologist spoke with one of the Parents in addition to having them complete a developmental history form for the May 2022. On that form, the Parents noted that vision, ADHD, and speech/language needs impacted educational performance; they also indicated lack of eye contact for an extended period of time. (N.T. 110-11; P-2 at 3-8.)
8. The District obtained input from Student's Private School teachers for the May 2022 RR through a District form. Each teacher reported that Student was attentive and focused, participated in class, and cooperated with peers in group activities. However, one teacher stated that Student "struggle[d] with peer relations" (S-2 at 6). (N.T. 112-13; S-2 at 6-7.)

⁵ The parties had agreed to a reevaluation of Student in the spring of 2022 as part of a prior settlement. (N.T. 50; S-1.)

9. The District school psychologist conducted a thirty-minute observation of Student at Private School for the May 2022 RR. (N.T. 114-15, 128; S-2 at 5-6.)
10. Cognitive assessment for the May 2022 RR (Wechsler Intelligence Scale for Children – Fifth Edition) reflected composite scores in the average to high average range, with a Full Scale IQ in the average range. Relative strengths were identified with fluid reasoning and working memory skills. (S-2 at 8-9.)
11. Assessment of academic achievement (Woodcock-Johnson Tests of Achievement – Fourth Edition) for the May 2022 RR yielded scores ranging from the low average to superior ranges. Cluster scores were all in the average range with the exception of Basic Reading Skills (low average range). (S-2 at 9-13.)
12. A formal reading assessment for the May 2022 RR by a reading specialist included several different instruments. Results indicated no weaknesses in basic reading skills, decoding, fluency, reading comprehension, or listening comprehension. (S-2 at 22-26.)
13. Speech/language evaluation for the May 2022 RR also included several instruments. Those results revealed no deficits in receptive and expressive language, pragmatic language, articulation, voice, or fluency. (S-2 at 26-29.)
14. In the area of social/emotional/behavioral functioning, the District obtained Behavior Assessment System for Children – Third Edition (BASC-3) rating scales from the Parents, two Private School teachers, and Student’s self-report for the May 2022 RR. One teacher identified at-risk concerns for withdrawal and social skills; Student reported at-risk concerns with relations with parents. No other concerns were noted by any of the raters on this measure. There were no indications

of characteristics of emotional disturbance on a different scale completed by the Parents and two teachers. (S-2 at 13-16.)

15. A separate assessment of executive functioning was also conducted via rating scales by the Parents, two teachers, and a self-report (Behavior Rating Inventory of Executive Function – Second Edition (BRIEF-2)). The Parents did not note any concerns; Student noted a mildly elevated concern with shifting, task completion, and working memory. The teachers noted mildly elevated concern with self-monitoring and task-monitoring, with one indicating a potentially clinically significant concern with shifting between tasks. (S-2 at 19-21.)
16. On the Conners-3 Rating Scale completed by Student, the Parents, and two teachers for the May 2022 RR, Student scored in the high average range for inattention on the Parents' scale and on the self-report; one teacher endorsed learning problems. No other concerns were identified by any rater, including for ADHD; however, the score for peer relations on the Conners-3 by the teacher who noted Student's struggles with peer relationships could not be calculated due to omitted items. (S-2 at 17-19.)
17. The District school psychologist interviewed Student following the test administration for the May 2022 RR. Student reported previous but not current difficulty focusing in class, an ability to self-advocate, and less class participation than peers. (N.T. 128; S-2 at 21.)
18. The May 2022 RR identified Student's strengths to include fluid reasoning and working memory abilities, written expression, listening comprehension, and speech/language skills. Needs were noted for specific accommodations: extended time on assessments, testing in an alternate location, check-ins for attention/focus and on-task behavior, and preferential seating. (S-2 at 32.)

19. The May 2022 RR determined that Student had a disability (ADHD and convergence insufficiency) but did not need specially designed instruction after specifically considering a Specific Learning Disability, a Speech/Language Impairment, and Other Health Impairment. With respect to Other Health Impairment, the RR concluded that, “[Student’s] ADHD does not significantly impact [Student’s] educational performance” (S-2 at 31), and that executive functioning weaknesses were mild. This RR did recommend a Section 504 service agreement. (N.T. 132-34; S-2.)
20. A meeting convened to review the May 2022 RR and develop a Section 504 Plan. The Parents did not agree with the disability determination. (N.T. 55, 123; S-2 at 34, 36-38.)
21. The May 2022 Section 504 Plan proposed by the District stated that Student’s ADHD and convergence insufficiency “may substantially limit” Student’s learning (S-3 at 2). The Plan included all of the provisions identified in the May 2022 RR as needs and added frequent breaks and checks for understanding of directions. The Parents did not consent to the Section 504 Plan. (S-3.)
22. The District high school has approximately 3,000 students. (N.T. 139-40.)
23. In August 2022, the Parents notified the District of their intention to maintain Student’s enrollment in Private School and seek public funding for that placement. (P-8.)

Fall 2022 Private Evaluation

24. The Parents obtained a private evaluation of Student in the fall of 2022. (N.T. 60, 154; P-11; S-4.)
25. The private psychologist obtained input from the Parents that included a description of Student’s social skills, which they believed were weak,

as well as a lack of eye contact. At that time, Student had resumed taking medication for ADHD. Student was also interviewed for this evaluation. (P-11 at 3-5, 16-17; S-4 at 1-3, 14-15.)

26. Input from Student's developmental pediatrician into the private evaluation reflected concerns with social skills and social functioning. (P-11 at 11-12; S-4 at 9-10.)
27. Input from several Private School teachers for the private evaluation identified concerns with social skills, relationships, and lack of interactions with peers; with one teacher describing Student as "very silent [and] robotic" as well as not demonstrating emotion (P-11 at 12; S-4 at 10). The private psychologist also observed Student at Private School. (P-11 at 12-15; S-4 at 10-13.)
28. Cognitive assessment for the private evaluation (Woodcock-Johnson Tests of Cognitive Abilities – Fourth Edition) reflected scores very consistent with the May 2022 RR with some areas of relative strength and weakness. The overall General Ability Index score was in the average range. (P-11 at 18-21, 45-47; S-4 at 16-19, 43-45.)
29. Assessment of academic achievement for the private evaluation (Kaufman Tests of Educational Achievement – Third Edition) yielded all average to above-average range scores. (P-11 at 21-22, 47-50; S-4 at 19-20, 45-48.)
30. The private evaluator readministered the BASC-3 and BRIEF-2 rating scales. At that time, the BASC-3 rating scales for both teachers were determined to be interpreted with caution or extreme caution because of overly negative responses. They together endorsed clinically significant concerns with anxiety, somatization, atypicality, withdrawal, social skills, and functional communication. The BRIEF-2 did not

reflect any concerns by any rater. (P-11 at 23-26, 51-64; S-4 at 21-24, 49-62.)

31. Assessment for Autism Spectrum Disorder was conducted as part of the private evaluation. On administration of the Autism Diagnostic Observation Schedule – Second Edition (ADOS-2), Student’s score was in a range indicative of autism with minimal-to-no symptoms. (P-11 at 28-30, 65; S-4 at 26-28, 63.)
32. The private evaluator determined that Student met IDEA criteria as a child with Autism Spectrum Disorder and Other Health Impairment. (P-11 at 30-31; S-4 at 28-29.)
33. The Parents provided a copy of the private evaluation to the District in late December 2022. (P-11 at 1-2.)
34. A second meeting convened in January 2023 and the proposed Section 504 Plan was revised to add two new accommodations: concise repetition of verbal instructions, and provision of graphic organizers. The Parents did not consent to this version of the Section 504 Plan. (N.T. 123-24; S-5.)
35. The District sought permission to reevaluate Student in January 2023 after receipt of the private evaluation. (S-6.)

April 2023 Reevaluation

36. The District conducted another reevaluation of Student in the spring of 2023 and issued a new RR in April 2023. This RR summarized information from its previous evaluations including the May 2022 RR, and the private evaluation. (N.T. 236; S-7 at 1-2, 24-27.)
37. The District school psychologist who completed the April 2023 RR conducted an observation of Student at Private School, and also

interviewed Student. This psychologist described Student as “very reserved” (S-7 at 3). (N.T. 240-41, 257-58; S-7 at 2-3.)

38. Teacher input into the April 2023 RR reflected improving but still underdeveloped social skills and peer interaction in most class settings, a need for additional processing time, and difficulty focusing and maintaining attention in one class. (S-7 at 4.)
39. A speech/language evaluation was conducted as part of the April 2023 RR. As with the May 2022 RR, Student did not exhibit deficits with speech/language skills including pragmatic language. (N.T. 313-14; S-7 at 19-22.)
40. A District school psychologist administered the ADOS-2 for the April 2023 RR. Results of that assessment were consistent with those in the private evaluation and indicative of autism, with the psychologist noting Student’s flat affect and minimal reciprocal conversation. Rating scales for Autism Spectrum completed by the Parents and two teachers revealed no concerns of the Parents; one or both teachers endorsed slightly or very elevated concerns with social/communication skills; other slightly elevated or elevated concerns were for peer socialization, adult socialization, social/emotional reciprocity, unusual behavior, behavioral rigidity, and attention. (S-7 at 4-6, 27-29.)
41. An occupational therapy evaluation was conducted as part of the April 2023 RR. Assessments examined sensory processing, visual-motor integration, and fine motor skills. The results reflected some difficulty with body awareness and planning/ideas; suggestions for addressing these at school were offered. (S-7 at 7-13.)
42. A Functional Behavior Assessment (FBA) was also conducted as part of the April 2023 RR. Being off-task was the behavior identified but not

observed by the District's Board Certified Behavior Analyst. (S-7 at 13-16.)

43. The April 2023 RR determined that Student had a disability (Autism, ADHD, and convergence insufficiency) but did not need specially designed instruction after specifically considering an Other Health Impairment and Autism. This RR similarly recommended a Section 504 service agreement. (S-7.)
44. A new Section 504 Plan was developed at a meeting following the April 2023 RR. This Plan again referenced that a substantial impact on learning was possible. Accommodations in this Plan were for extended time on assessments, an alternate location for testing, check-ins for attention and between assignments, checks for understanding of directions, concise repetition of instructions, graphic organizers, opportunities for and prompting of social engagement, preferential seating, lined paper, and a mechanical pencil. The Parents did not consent to this Plan. (N.T. 69; S-9.)

Private School

45. Student has attended private School, a college preparatory school for students of Student's gender in grades nine through twelve, since the start of the 2020-21 school year. (HO-1 at 1, ¶¶ 1, 4.⁶)
46. Private School has an enrollment of approximately 420 students with a teacher to student ratio of 9:1. (HO-1 at 1, ¶ 3.)
47. Private School is accredited by the Pennsylvania Association of Independent Schools and the Middle States Association for Secondary School Accreditation for Growth. (HO-1 at 1, ¶ 2.)

⁶ The parties reached a number of stipulations about Private School that are set forth in HO-1. The language of those stipulations has been slightly revised for stylistic and confidentiality purposes.

48. During the 2022-23 school year, Student had academic classes in American Literature, U.S. Government/Politics, Engineering, Mathematics, Physics, and a foreign language. (HO-1 at 1, ¶ 5; P-13 at 12.)
49. Student had an Academic Accommodation and Support Plan at Private School at the start of the 2022-23 school year. The plan provided for extended time on assessments and assignments, minimization of copying from the board, shorter intervals of time for written assignments, copies of notes, preferential seating, and breaks during remote learning. (P-13 at 5.)
50. The Private School plan was revised in January 2023, providing for extended time on assessments and assignments, shorter intervals of work on written assignments, copies of notes, encouragement of reading comprehension strategies, opportunities for socialization and using social skills, group tutoring, visual aids, teacher check-ins, and preferential seating. (HO-1 at 1, ¶ 7; P-13 at 10-11; S-8.)
51. Student was provided with extended time on assessments, preferential seating, notes and study guides, and clarified/repeated directions at Private School. Teachers provide additional accommodations as needed. (HO-1 at 1, ¶ 9; S-2 at 6-7.)
52. Student was provided with weekly private speech/language therapy outside of Private School during the 2022-23 school year. (N.T. 70-71.)
53. Student has access to a guidance counselor at Private School on a regular basis. (HO-1 at 1, ¶ 8.)
54. Student participates in tutoring on a weekly basis at Private School that does not interfere with regular class time. (HO-1 at 1, ¶ 10.)

55. Student has participated in a number of extracurricular activities at Private School since February 2023. (N.T. 70, 98; HO-1 at 1, ¶ 11.)
56. Private School staff believe that Student has made appropriate progress at Private School, and needs in the areas of academics and social/emotional/behavioral functioning have been met there. (HO-1 at 2, ¶ 14-15.)
57. Student's grades at the end of the first semester of the 2022-23 school year were all in the A to B+ range. (P-13 at 12.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. 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 led to this administrative hearing. Nevertheless, 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.

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 credible as to the facts. Their testimony was

essentially quite consistent where it overlapped. In the relatively few instances that there were contradictions, those are attributed to lapse in memory or recall, or to differing perspectives, rather than an intention to mislead. The weight accorded the evidence, however, was not equally placed.

The testimony of the private evaluator was accorded minimal weight because its value was quite limited beyond the written report of that evaluation that was made part of the record. The testimony of the District school psychologists was largely accorded significant weight where it expanded on the RRs, with the exception of their explanations of eligibility under the IDEA in light of the available information known to the District.

The findings of fact were made as pertinent to resolving 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.

Through local educational agencies (LEAs), states 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*, 580 U.S. 386, 399, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). IEP development, of course, must follow and be based on an evaluation and also be monitored and updated by changes indicating a need for revision. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

Substantive FAPE: Child Find

The IDEA and state and federal regulations further obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i).

The obligation to identify students suspected as having a disability is commonly referred to as “Child Find.” The IDEA further defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a). “Special education” means specially designed instruction which is designed to meet the child’s individual learning needs. 34 C.F.R. § 300.39(a). More specifically, “specially designed instruction means adapting, as appropriate to the needs of an eligible child [], the content, methodology or delivery of

instruction.” 34 C.F.R. § 300.39(b)(3). The process of identifying children with disabilities is through evaluation.

Evaluation Requirements

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child “in all areas related to the suspected disability[.]” 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1).

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have “a significant role in the IEP process.” *Schaffer, supra*, at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010).

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). 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 first issue that both parties raise and address is whether the District’s May 2022 RR was appropriate under the law, which is an

appropriate starting point since it is the May 2022 RR that led to the proposal for the 2022-23 school year. This evaluation utilized a variety of assessment tools, strategies, and instruments (rather than any single measure) to gather relevant functional, developmental, and academic information about Student. The District incorporated parental input that provided their views on Student's academic and social/behavioral functioning, in addition to Student input and an interview; and also obtained and reported on observations by and information from teachers as well as available relevant data. This RR included cognitive assessment and academic achievement testing; speech/language evaluation; executive functioning assessment; and rating scales to evaluate Student's social/emotional functioning.

As is relevant to this matter, the federal regulations implementing the IDEA provide the following definition:

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, []; and

(ii) Adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9). Courts have also recognized that special education encompasses all relevant domains, including social, emotional, and behavioral. *Breanne C. v. Southern York County School District*, 732 F.Supp.2d 474, 483 (M.D. Pa. 2010) (citing *M.C. v. Central Regional School District*, 81 F.3d 389, 394 (3d Cir. 1996)).

The reevaluation data clearly reflected concerns by both the Parents and a Private School teacher about Student's social skill deficits as well as executive functioning skills. The May 2022 RR nonetheless concluded that Student's weaknesses did not significantly impact educational performance or suggest a need for specially designed instruction. This determination is, however, based on Student's experience at Private School, which provides a much smaller environment than the District's public high school in classes with low student to teacher ratios. Moreover, and importantly, the District explicitly added the word "significantly" into the legal definition of eligibility for special education in finding Student not qualified. This was error. *Mr. I. v. Maine School Administration District No. 55*, 480 F.3d 1 (1st Cir. 2007).

This hearing officer concludes that Student has a disability under the IDEA and requires specially designed instruction in the areas of social skills and peer relationships, whether categorized as an Other Health Impairment or Autism. This is necessary for Student who has not adequately developed those skills for Student's age and even exhibits difficulty in the smaller environment of Public School. For these reasons, the District's failure to identify Student as eligible under the IDEA in May 2022 led to an inappropriate Section 504 proposal for the 2022-23 school year. Its subsequent determination following its April 2023 RR after receipt of the private evaluation was considered to put the claims in context,⁷ but this conclusion is based on information known to the District at the time of the May 2022 proposal.

The next issue is whether Private School is appropriate for Student. With the small environment, low student-to-teacher ratio, academic coursework, tutoring, available guidance counseling services, accommodations that addressed among other things social engagement, and

⁷ The subsequent evaluations including input from Private School teachers strongly suggest that Student's deficits in these areas have continued.

extracurricular activities, this hearing officer concludes that the Parents have met their burden of establishing this prong of the tuition reimbursement test. As noted, a private placement need not satisfy the mandates of the IDEA, but Student was successful over the 2020-21 and 2021-22 school years and has clearly continued to exhibit growth in that setting.

The final step is to determine whether the equities support a reduction to or denial of reimbursement. There is little in this record from which to arguably find any such basis, and this hearing officer does not agree with the District that the Parents failed to cooperate with, or withheld information from, its team. As such, there shall be no reduction to or denial of reimbursement to the Parents.

CONCLUSIONS OF LAW

1. The District's IDEA eligibility determination in May 2022 was inappropriate under the applicable law.
2. Private School is appropriate for Student.
3. The Parents are entitled to reimbursement for tuition and related expenses for Private School for the 2022-23 school year.

ORDER

AND NOW, this 29th day of June, 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's reevaluation of Student in May 2022 did not meet its substantive IDEA obligations.
2. The District's offer of programming for the 2022-23 school year was not appropriate for Student.
3. Private School is appropriate for Student.
4. The Parents are entitled to full reimbursement for tuition and related expenses at Private School for the 2022-23 school year.
5. Within fifteen calendar days of the date of this decision, the Parents shall provide documentation to the District of all existing invoices and receipts for tuition and related expenses for Student at Private School for the 2022-23 school year.
6. Within thirty calendar days of receipt of the above documentation, the District shall reimburse the Parents for the full amounts.
7. 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.

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 27661-22-23