

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:

22831-19-20

Child's Name:

M.W.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent

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Hearing Officer

Charles W. Jelley Esq.

Date of Decision:

05.08.2020

BACKGROUND

The Parent ("Parents") commenced this action via the filing of a due process complaint. (Complaint). The Complaint alleged that Mastery Charter School (Mastery) failed to provide the Student with a Free Appropriate Public Education ("FAPE"), as provided for under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) during the 2019-2020 school year.¹ Parent now seeks tuition reimbursement for out of pocket expenses for providing FAPE/related services and other appropriate equitable relief. The Charter School asserts that at all relevant times, they complied with the IDEA and Section 504 and applicable state regulations.² Having reviewed the pertinent case law, the parties' well-briefed arguments, and upon giving due weight to the testimonial and non-testimonial extrinsic evidence, I now find Mastery failed to offer the Student with a FAPE; therefore, for all of the following reasons I will now enter an Order granting appropriate relief in the form of

¹ The Parents IDEA claims arise under 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, implementing the IDEA are set forth in 22 Pa. Code §§ 14.101-14.163 (Chapter 14). At the same time the applicable federal and state regulations implement Section 504 are found at 22 Pa. Code Chapter 15, and 34 C.F.R. Section 104.101 *et seq.* Over the course of this action, due to schedule conflicts, availability of witnesses, including the necessity to schedule an additional sessions the Decision Due Date was extended for a good cause, upon written motion of the Parties on multiple occasions; therefore, the final Decision, with the expressed consent of the Parties, is well beyond traditional IDEA timelines.

² References to the record throughout this decision will be to the Joint Exhibits (J-) followed by the exhibit number, Hearing Officer Exhibits (HO-) followed by the exhibit number and page when necessary. When a fact occurs throughout the presentation of testimony, I will cite fact as N.T. *passim* followed by the witness's affiliation, *i.e.* Parents or Charter. At times to denote a specific fact of consequence I will use N.T. followed by the page number.

reimbursement for out of pocket FAPE/related services expenses and/or tuition reimbursement.

STATEMENT OF THE ISSUE

Did the Charter fail to provide the student with a free, appropriate, public education during the 2019-2020 school year? If so, is the Student entitled to tuition reimbursement?³

FINDINGS OF FACT

THE KINDERGARTEN THROUGH THIRD GRADE YEARS

1. The Student began attending Mastery in kindergarten during the 2013-14 academic school year. (J-23 p.6).
2. In October 2015, during Student's second-grade year, Mastery conducted a psychoeducational evaluation of Student, and it completed an Evaluation Report ("E.R."). (J-1).
3. At that time, Student was deemed eligible for special education services as a child with Specific Learning Disabilities in Reading and Writing. (J-1 p.7).

³ Although the Parents make denial of FAPE claims under the IDEA and Section 504, the essential elements of each denial of FAPE claim for liability and equitable relief, under both statutes and regulations in this instance directly overlaps. Therefore, the Parents' theory of liability under the IDEA and Section 504 and for appropriate relief are *sub silentio* combined as one claim for each school year in the Statement of Issues set forth above. The Parents did not raise a claim for Section 504 discrimination, before this hearing officer; therefore, this hearing officer will not undertake a traditional discrimination deliberate indifference legal analysis. See, *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014) (quoting) *Ridley Sch.. Dist. v. M .R.* 680 F.3d 260, 283 (3d Cir. 2012). See also, *Fry v. Napoleon Community Schools*, 137 S. Ct. 988 (2017) (February 22, 2017)

4. As a result, in November 2015, with Parent's participation, Mastery developed an Individualized Education Plan ("IEP") for Student, which provided the Student with an itinerant level of learning support. (J- 2).
5. Parent agreed to the IEP, which was in place for the entirety of Student's second grade academic school year (2015-16). (J-3 p.3).
6. In October of 2016, which was the beginning of Student's third-grade year (2016-2017), Mastery held an IEP meeting to develop a new annual IEP. (Jt. Ex. 5). The IEP continued Student's itinerant learning support services, and the Parent again agreed with the supports and services contained in the IEP (Jt. Ex. 6 p.5). For the first time, the 2016 IEP team determined the Student was also eligible for Extended School Year ("E.S.Y.") services. (J-5, J-7).
7. Following the completion of Student's third-grade year, Mastery and Parent entered into a settlement and release agreement that placed Student at an agreed-upon private school at Mastery's expense. The Agreement provided in pertinent part that for the 2017-2018 and 2018-2019 school year, Student's fourth and fifth-grade years Mastery would pay and the Student would attend an agreed-upon private school at Mastery's expense. Mastery issued and the Parent agreed to the IEP and the placement was set out in Mastery's Prior Written Notice and a Notice of Recommended Educational Placement (PWN/NOREP). (J-12).
8. The Settlement Agreement and Release limited the private placement to a term of two years. At the same time, the Agreement provided that Student's pendent placement upon completion of the 2018-2019 school year would be the Student's previous Mastery school building. In exchange for the two years of private school education, the Parent

waived all past claims and any IDEA denial of FAPE claims while the Student attended the private school. (J-12).

THE OCTOBER 2017 MASTERY IEP

9. Although Student was placed at the private school, Mastery held an IEP meeting in October 2017, to again develop the annual IEP for Student, which was during Student's fourth-grade year (2017-2018). (J-10). The 4th-grade IEP included a single reading goal. Although no math goal was included in the present levels note on the Metropolitan Basic Skill Progress assessment, the Student earned a grade equivalency of 3.3 by scoring 24 digits correct on the 3rd-grade assessment. (J-10 p.6). Although the assessment is timed assessment, the Student was given unlimited time. (J-10 p.6). The Notice of Recommended Educational Placement (NOREP) proposed and the Parent agreed to a full time learning support placement at the private school.
10. In accordance with the terms of the above-referenced Settlement Agreement and Release, Student attended the private school for the entirety of the fourth-grade school year (2017-2018). (J-12).

THE OCTOBER REEVALUATION REPORT

11. The Mastery reevaluation report (R.R.) dated October 1, 2018, which was completed when Student was in fifth-grade, stated that the reevaluation referral was made to help the IEP team develop a better understanding the Student's intellectual development and academic achievement, along with determining specific learning needs. (J-17, NT 49).

12. The entire IEP team, including all Mastery representatives, and the Mastery psychologist who conducted the reevaluation, agreed with the contents of the Mastery reevaluation report. (J-17; N.T. 54).
13. The Mastery R.R. dated October 1, 2018, which was agreed to by all IEP team members, stated regarding Student's reading and writing skills, at the start of the year were 1's and 2's and at the end of the school year were mostly 2's and several 3's. (J-17 pp.4, N.T. 55).
14. The Mastery R.R. specifically stated that the private school employs highly qualified professional and support staff and that teachers at the private school are regularly observed by members of the administrative team to monitor the quality of instruction and fidelity to the standards-based curriculum. (J-17 pg.6, par. 7).
15. The Mastery R.R. specifically acknowledged that the math instruction and the reading instruction provided by the private school to Student was appropriate. (J-17 pg.6, par.7, N.T. p.58).
16. The Mastery R.R. included the administration of the two nationally known norm-referenced standardized assessments, the Wechsler Intelligence Scale for Children – V (WISC-V) and the Wechsler Individual Achievement Third Edition (WIAT-III). The WICS-V is an individually administered comprehensive instrument designed to provide a global assessment of an individual's intellectual skills, incorporating five general areas. On the WICS-V, the Student obtained a Full-Scale I.Q. of 98 at the 45th percentile. This score falls in the average range. Three of the five measures fell in the Average range, while the Student's Process Speed fell in the High Average range and Working Memory fell in the "Low Average" range. Working Memory tasks assess the Student's ability to register, temporary maintain, and manipulate visual or auditory memory perform some operation or

manipulation on it and produce a new result. Working Memory involves attention, concentration, mental control and reasoning, as well as mental flexibility and mental alertness. On the other hand, Processing Speed is a measure of the Student's ability to quickly and correctly scan, sequence or discriminate unique visual information, suggests Student ability to process basic information is well developed. (J-17 pp.10-11).

17. The WIAT-III is a timed individualized and standardized achievement test that is designed to assess acquired information through schooling and explicit instruction. The WIAT-III includes a variety of subtests designed to measure the Student's reading comprehension, math problem solving, word reasoning, pseudoword decoding (i.e., nonsense words), numerical operations, oral reading fluency, and math fluency (addition-subtraction-multiplication. (N.T. pp.65-66, J-17 pp.8-10).
18. Reading is based on a development progression that begins with basic phonemic awareness, development of basic skills, fluency with basic skills, and then to comprehension. On the Word Reading and Pseudoword Decoding subtest, the Student fell in the "Below Average" range at the 13th percentile. In terms of actual words, the Student has a modest library of sight words. Likewise, the Student's Pseudoword Decoding skills fell in the "Below Average" range. (J-17 p.12).
19. The Student's Reading Comprehension score fell in the "Below Average" range at the 12th percentile. The examiner noted that on three occasions, the Student provided the correct answer to the previous questions. (J-17 p.12).
20. The Student's Oral Reading Fluency score, when the Student was presented with two grade-level passage and was asked to read the passages along and the orally respond a comprehension question after

each passage was "Below Average." The Student was unable to complete the initial passage in the allotted time. The Student's Oral Reading Fluency Accuracy fell at the 8th percentile, while the Oral reading Rate fell at the 8th, 14th and 8th percentile. These scores indicate the Student continues to need "intense reading instruction." (J-17 p.12).

21. The Student's Written Language score includes measures of Sentence Composition, Sentence Combining and Sentence Building. The Student's Sentence composition score fell in the "Average" range, while performance on the other two measures revealed dramatic differences indicating uneven skill development. On the Sentence Composition subtest, which required the Student to combine two or three-sentence into a single sentence (Sentence Combining), the Student scored at the 68th percentile. While on the Sentence Building subtest, the Student scored at the 5th percentile. The examiner noted that at one point, the Student took two minutes to write a sentence with the word "until." At another point, the Student was not able to compose sentences with words like "of," "an," "than," and "as." (J-17 p.6, J-17 pp. 12-13). The examiner noted the Student needs instruction in a number of areas, including spelling, vocabulary development, grammar, sentence composition and writing organization. (J-17 p.13).
22. The Student's WIAT-III Mathematics score fell in the "Below Average" range at the 14th percentile. In particular, the Student's Math Fluency Composite score fell at the 4th percentile. Math Fluency Composite score includes scores from the addition, subtraction and multiplication subtests. On the addition subtest, the Student earned a score at the 6th percentile, while in subtraction and multiplication, the Student scored at the 4th percentile. These scores indicate the Student's grasp of basic mathematics is "tenuous." The Student skipped several

division problems stating, "Sometimes I get confused." The examiner went on to state that "[i]t is reasonable to hypothesize that [redacted] would experience more difficulty not trying to understand new information, but also to thoroughly master and integrate such information with supports." Finally, the examiner stated that the "Student's reading struggles are likely to interfere with the Student's ability to generate independent analytical thought." (J-17 pp.13-14).

23. When the Student's WIAT-III scores are looked at as "Grade Equivalent" (G.E.), the scores ranged for a low of 1.9 in Pseudoword Decoding to a high of 4.0 in Sentence Completion and Numerical Operations. Overall the Student's Total Reading at the 7th percentile, Basic Reading at the 12th percentile, Reading Comprehension and Fluency at the 5th percentile, Mathematics at the 14th percentile and Math Fluency at the 4th percentile all will in the "Well Below" "Below Average" range. (J-17 p.14, J-17 p.20). The discrepancies in the Student's scores are quite uncommon, occurring at least 5% and 10% of the time in the standardization sample for the WICS-V and the WIAT-III. (J-17 p.16).
24. The Mastery evaluator reported that the Student scored in the 5th percentile regarding sentence building and was below grade level in written expression, with reading struggles that were negatively impacting writing skills. (J-17, pg. 13; N.T. pp.64-65).
25. The R.R. examiner recommended 32 different instructional strategies, accommodations and forms of SDIs for reading, writing, and math. (J-17 pp.17-22). The mother, a special education teacher who never met the Student, a counselor from the private school, the local education agency representative and a psychology supervisor, agreed with the content of the report. (J-17 p.19).

26. Mastery then issued an IEP dated October 9, 2018, shortly after the October 1, 2018, R.R. was issued. (N.T.p.69, J-8, J-18 pg.12, N.T. p.70).

THE OCTOBER 2018 IEP

27. The October 2018 IEP developed by Mastery Charter for the 2017-2018 – fourth grade school year - noted that the Student participated entirely in a small group special education classes with a 1:6 teacher-student ratio and participated in the following core classes:

Wilson	45 minutes	5 days/week	225 minutes/week
Reading	40 minutes twice a day	5 days/week	400 minutes/week
Math	40 minutes/day	5 days/week	200 minutes/week
Math	40 minutes extra	2 days/week	80 minutes/week
Writing	40 minutes/day	5 days/week	200 minutes/week
Total			1105 minutes/week

(J-18)

28. The October 2018 IEP developed by Mastery Charter for the 2018-2019 – fifth grade school year - noted the Student participated entirely in small group classes with a 1:6 teacher-student ratio and participated in the following core classes:

Wilson	45 minutes/day	5 days/week	225 minutes/week
Reading	40 minutes twice a day	5 days/week	400 minutes/week
Math	40 minutes/day	5 days/week	200 minutes/week
Math	40 minutes extra	2 days/week	80 minutes/week
Writing	40minutes/day	5 days/week	200 minutes/week
Total			1105 minutes/week

(J-18, pp. 7-8).

29. The mother, the Student's aunt, the local education agency representative, a Mastery special education teacher and the Student's counselor at the private school, attended the meeting. While the meeting included a Mastery special education teacher, the teacher never observed, worked with or met the Student. The IEP team lacked the Student's then-current special education teacher at the private school and a regular education teacher from Mastery. (J-18 p.3).
30. The present levels of education performance note the Student is a person with a specific learning disability, in basic reading skills, reading comprehension, mathematics, and written expression. The present levels include objective data and anecdotal information from the private school placement. For example, the private school reading teacher notes the Student needs to improve decoding, reading output, comprehension, fluency, self-advocacy, confidence and reading strategies. (J-18, pp.8-10).
31. The writing and spelling and science teacher noted the Student uses a number of strategies like graphic organizers to outline ideas, quick words and Wilson tapping to spell. The teacher also stated that the Student struggles with multi-step directions does not respond well to inferential questions and needs to develop grammatically correct complete sentences with the organization. (J-18, pp.8-10).
32. The math teacher noted while the Student has shown great improvement and is self-motivated, the Student still uses a skip counting to learn multiplication facts (J-18 pp.8-10).
33. The private school staff recommended the following supports: (1) improve reading skills, improve organization, participation in a research-based reading "Foundations" Wilson reading program five days a week 45 minutes per day, along with guided and independent

reading five days per week, nightly reading with a reading log focused on current comprehension strategy.⁴ The staff also suggested "Learning Ally" to build confidence. To keep the Student-focused, the staff stated the Student implemented a planned positive verbal reinforcement. In addition to regularly using positive reinforcement, the private school staff used a goal card and a binder or folder system to improve organization. The staff also checked the Student binder during desk check 2 to 3 times per week. (J-18, pp.8-10).

34. The IEP notes that for statewide and local assessments, in math and writing, the Student needs extended time, small-group sessions, while math questions should be read, and the Student needed refocusing prompts to stay on task. (J-18 pp.15-16). The IEP included a reading goal, and a writing goal calling for the Student to "achieve an overall fifth grade level of equivalency. Both goal statements called for a one time a year "annual progress report." The writing goal references the Student's WIAT-III grade-level score of 4.0 as a baseline, while the reading goal references the Student score on level 2 score on the Informal Reading Inventory. (J-18 pp.19-20). Although math is listed as a need, the IEP team determined based on the Student's score of a 4.9 grade level on the Monitoring Basic Skills Progress Computation Assessment tool that an SDI for math drills for fluency was appropriate. The Mastery staff also concluded the Student no longer required a computation math goal. (J#18 p.9 vs. J#18 pp.19-20).

⁴ I must explain "Foundations" this is not a typographical error. Foundations® is a Wilson reading multisensory and systematic phonics, spelling, and handwriting program that benefits all K-3 students. Later in the Findings of Fact, the reader will learn that should the Student return to Mastery, for sixth grade, the Student would participate in "Foundations Math." These interventions/curriculums are not the same.

<https://www.wilsonlanguage.com/programs/foundations/overview/>

35. The IEP included 12 SDIs like extended time to complete test, homework, and use of highlighting or underlining to identify keyword, and daily activities to improve math computation fluency in addition, subtraction, multiplication and division along with timed drills and flashcards. (J#18 pp.21-22). The IEP also called for the Student to attend summer school for reading and writing. (J#18 pp.24-25).
36. The October 9, 2018, IEP, stated that Student required a full-time learning support placement for the period from October 11, 2018, through July 31, 2019. Mastery then, on another page, notes that effective as of August 22, 2019, the Student's placement would change to supplemental learning support placement, instead of a full-time learning support placement. (N.T. pp.71-73, 9-6 J#18 pp.27-28).
37. Oddly, the October 1, 2018, IEP included multiple inconsistent statements describing different "types of support," and "amounts of special education support. "On page 27, the IEP stated that the Student needed "Full-Time special education support and services provide by special education personnel for 80% or more of the School day." Underneath that statement, the IEP listed "Learning Support" as the type of special education support. Then on page 28, the IEP states as follows "Next Recommended (08/22/2019-10/09/2019) Type of Support: Supplemental Special Education supports as services provided by special education personnel for more than 20% of the school day but less than 80% of the school day. (N.T. p.74, J-18 pp.27-28).
38. When it came time to calculate the time, the Student was educated in the regular education classroom for 5th grade (2018-2019 school year) rather that calculate the percentage of time in the full time learning support placement as 100% of the time the Mastery IEP is blank. While at the same time, the IEP on a subsequent page states that from

08/22/2019 through 10/19/2019, the Student would be in the regular education classroom at Mastery for upwards of 79% of the school day in regular education and receive special education for approximately 1.5 hours a day. (Compare J-18 p.26-27 vs. J-18 pp.27-28). The IEP does not describe the basis for the substantial change in special education time or how the team reached its decision. *Id.*

39. The NOREP issued at the same time as the IEP called for the Student to receive Full-Time Learning Support at the private school from 10/11/2018 to 06/13/2019, followed by Full-time Extended School Year Learning Support services at the private school from 07/01/2019-07/31/2019. The NOREP then proposed to transfer the Student back to Mastery with Supplemental Learning Support at from 08/22/2019-10/09/2019 (J-19 p.5).
40. Mastery proposed change of placement from Full-Time learning support to Supplemental Learning Support" was made without knowing at that point (in October 2018) how Student would perform academically for the balance of fifth grade school year in 2018-2019 at the private school and without reference to the previously accepted October 2018 R.R. (N.T. pp.78-79).
41. The Mastery NOREP goes on to state the following under the reason for the "action" proposed: "Mastery Charter School – [redacted] Elementary recommends Student attend the [redacted private school] in a learning support setting. [redacted] is a student with a specific learning disability in basic reading, comprehension, fluency, math and written expression. The Student requires remediation of skills in these areas outside of the regular education curriculum. Mastery Charter-[redacted] Elementary is recommending that the Student receive full time learning support services at [redacted private school]. At this

time, the IEP team finds that Student needs continued support in order to maintain steady and ongoing progress." (J-19, pg. 2).

42. The NOREP, then states that Mastery noted that supplemental learning support was considered as an option, but was rejected by Mastery because "[redacted] 's needs exceeded a supplemental level of support and [redacted] required specialized instruction in a small group for reading, math, and writing, provided outside of the regular education environment." (J-19, pp. 2).

THE MAY 2019 MATH ASSESSMENT AND THE JUNE 2019 RETURN TO MASTERY IEP

43. In May 2019, contrary to test maker's instructions, Mastery staff re-administered the Monitoring Basic Skills Progress curriculum-based assessment as an untimed assessment of the Student's Math Computation, and Applications and Problem-Solving skills. (J-23 pp.8-9; J-62 pp.7-8).
44. The test maker instructions call for the Monitoring Basic Skills Progress to be administered in a timed fashion, with specific times targeting a student's then-current grade placement. For example, the test makers standardized instruction when administering the Monitoring Basic Skills Progress curriculum-based assessment calls for grade-level time limits are as follows:
 - 1 minute for grades 1 and 2
 - 2 minutes for grades 3 and 4
 - 6 minutes for grade 5
 - 6 minutes for grade 6 (J-23 pp. 8-9, J-62 pp.7-8).

45. After obtaining the Student's untimed raw scores, Mastery staff using a Mastery generated scoring table converted the Student's raw scores into a grade level equivalent score. Using the Student's untimed raw scores and applying the Mastery RTII conversion table, the Mastery staff then concluded that the Student earned a Math Computation grade equivalency score of 4.9 and a 4.6 grade level equivalency score for Applications and Problem Solving. (J-23 pp.8-9, J-62 pp.8).
46. Even though the Student's IEP states that the Student is allowed "extended time" for local and state assessments, the accommodation of "extended time" was read to mean unlimited time to complete Monitoring Basic Skills Progress probes. (J-62 pp.7-8). The previous and proposed IEPs do not state that the Student is entitled to unlimited time. (N.T. pp.79-380, J-23 p. 17). This interpretation of "unlimited" time was not followed when the Student took the WIAT-III mathematics subtests. *Id.*
47. The Monitoring Basic Skills Progress math manual states that as a curriculum-based measurement, the maker relied on a standardized set of measurement and evaluation procedures. Moreover, the maker of the test standardized procedures call for the teachers to rely on specific directions for creating, administering, and using the assessment as the test maker has researched and shown over time the standardized procedures are useful, technically adequate and otherwise valid. (N.T. pp.383-384).
48. The Mastery Assistant Principal of Specialized Services testified that she is a special educator and that she or whoever is administering the Monitoring Basic Skills Progress probes is required to follow the publisher's instructions, as stated in the manual. (N.T. p.386).

49. The manual states that at a given grade level, each weekly test has the same time limit per example, the time allowed on the first test of the school year has the same time allowed for every test during the school year. (N.T. p.386).
50. The manual states that timing the test correctly is critical to ensure consistency from test to test. (N.T. p.387).
51. The manual states that an audiotape should be used to let the student who was being assessed know that it was the end of the test and that use of the tape each week to signal the beginning and end of the test is recommended. (N.T. p.387).
52. Mastery's own internally created Monitoring Basic Skills Progress document J-64 required the Mastery staff administering this assessment to score the Monitoring Basic Skills Progress prompt with two scores, one score with a time and one score without a time. Mastery staff in this instance failed to cogently describe why the team and the examiner failed to follow Mastery's internal testing Monitoring Basic Skills Progress procedures. (J-64 pp. 2, N.T. p.714).
53. The failure to follow the test maker's instruction and Mastery's internal testing requirements casts serious doubt if the results are valid and otherwise useful for instructional purposes. (N.T. pp.387-388, N.T. pp.462-463).
54. While the Mastery Assistant Principal of Specialized Services testified that Mastery relies on Monitoring Basic Skills Progress grade-level equivalency scores and benchmarks to roster students in math classes based, in part, on grade level, however, she was not sure how this Student was "rostered" for math by Mastery. (N.T. pp.436-437). She also testified that as an IEP team member, the Student Monitoring Basic Skills Progress grade equivalent scores of 4.9 and 4.6 in math

could have been a factor in rostered Student for a regular education sixth-grade general math class. (N.T. p.439, J-23).

55. Mastery did not record the actual time it took Student to complete the Monitoring Basic Skills Progress assessment on either probe administration. As such, Mastery could not compare the number of minutes it took Student to complete the assessment with the Student's timed scores on WIAT-III addition, subtraction, or multiplications well "Below Average" percentile scores. (N.T. pp.454-455, J-17).
56. The Mastery Assistant Principal of Specialized Services was not able to explain the concurrent validity between the RTII grade level conversion manual and the Monitoring Basic Skills Progress. She did state that the manual references using the same amount of time each time that the assessment is administered. (N.T. p.465. N.T. p.468).

THE MASTERY JUNE 2019 RETURN TO MASTERY IEP & MEETING

57. On June 11, 2019, at an IEP conference, Mastery proposed a change in the Student's level of learning support services, the time in special education classroom, the IEP goals, and placement for the 2019-20 school year. (J-23).
58. The June 11, 2019, IEP proposed by Mastery included a reduction in services and a change of location of the implementation of the IEP to Mastery Charter School – [redacted] Upper School. (J-23, pp.30-32). On June 11, 2019, at the end of the Student's 5th grade (2018-2019) school year, Mastery convened an IEP meeting to discuss the Student's program and placement for the 2019-2020 school year. (J-23).
59. The June 11, 2019, IEP proposed that the Student would be included in the regular education classroom for math, science, and all other electives. The June 11, 2019, IEP proposed to continue the ongoing

private school Wilson reading instruction at 45 minutes per day daily for a total of 225 minutes per week. At the same time, the proposed IEP reduced the instruction for reading comprehension, reading fluency, and written expression from 600 minutes per week to 180 minutes per week. (J-24 p.2, J-23 pp.6, 31).

60. The NOREP states that the proposed "action" of reducing the level of intervention, level of support, annual goals, SDIs, supporting the Student's return was based on "[redacted] has made progress in [redacted] reading and math goals. (J-24 p.2, J-23 p.6). At the time of the proposed action, neither the 2017-2018 nor the 2018-2019 IEPs included a "math" goal. (J-24, J-23).
61. While the new June 11, 2019, IEP included a math goal, the IEP eliminated the 1:6 small-group, and instead called for a reduction from direct small group instruction in math from 280 minutes per week, at the private school, to 0 minutes per week, thus requiring the non-certificated regular education teacher, in a class of 29, to implement the annual math goal, and SDIs. (J-23, pg. 7, J-24 pp.2; N.T. 83, N.T. pp.206-207).
62. The June 2019, present levels did not include the Student's WIAT-III "Below Average" standard scores, percentile rankings of grade level equivalent scores. (J-17 vs. J-23 and J-24).
63. While page 15 of the June 11, 2019, IEP notes the Student's reading disability interfered with the Student's math application and problem-solving skills, the IEP omits any goal-based instruction, or SDI supports to address improving the Student's math problem-solving skills and math fluency skills or reading comprehension. (J-23, pp.25-27).

64. While the June 11, 2019, IEP proposed to continue Wilson instruction 45 minutes per day daily for a total of 225 minutes per week. The IEP also proposed to reduce instruction for reading comprehension, reading fluency, and written expression from 600 minutes per week to 180 minutes per week. (J-24, pg.2).

THE PROPOSED SPECIAL EDUCATION AND REGULAR EDUCATION READING AND MATH CLASSES

65. The proposed general education sixth-grade math teacher at Mastery does not teach special education math, has never taught special education math classes at Mastery and does not hold a teaching certificate. (N.T. pp.187-188).
66. The proposed general education math teacher was unaware of the number of or what additional special education math classes and what specific math curriculum exist for special education 6th-grade students at Mastery. (N.T. p.89).
67. At the time of her testimony, the proposed general education math teacher did not have an official Pennsylvania teaching certificate and had only received a temporary certification. *Id.*
68. The proposed general education math teacher is not a special education teacher and has never held a special education certification. (N.T. p.193, N.T. p.194).
69. During the four years, the proposed general education math teacher has been at Mastery; Mastery has used four different regular education math curriculums at the sixth-grade level. (N.T. p.195, N.T. p.196).
70. The proposed regular education Foundations math class is a general education math curriculum. (N.T. pp.199 –200).

71. The proposed general education math teacher testified that Mastery has a tier-2 math class for students who are significantly behind and a tier-3 math class for students who are "very, very behind." The tier-2 students are "more than three grade levels behind," and the classroom has only 12 students. (N.T. p.202, N.T. p.204).
72. The general education math class proposed by Mastery for the Student has 29 students. The regular education math teacher is the only teacher in that classroom, but push-in support is provided at times for with reading and speech deficits. Mastery did not offer push-in support to this Student until the August 2019 revision of the June 11, 2019, IEP. (N.T. pp.206-207, J-23, J-28).
73. The proposed general education math teacher never participated in an IEP meeting related to the Student. At the time of her testimony, the general education math teacher has not reviewed any educational documents related to the Student, including IEPs, RR, NOREPs, or any other educational records. The proposed regular education math teacher had not reviewed any educational records from the private school. The general education math teacher has never administered the Monitoring Basic Skills Progress assessment in math. (N.T. p.221).
74. The general education math teacher testified that she did not have any training related to understanding percentile scores for children to take the WIAT-III test or the WISC-V. (N.T. p.236).
75. The proposed "Foundations Math," is a research-based program utilized to address the needs of students who are functioning below grade level, but the class at Mastery is "scaffolder up" to expose the students to grade-level material. (N.T. pp.526, N.T. pp. 604-06).
76. The general concept behind Foundations Math is that students are taught on their instructional level, but they are exposed to grade-level

material so as to close their academic gap with their same-aged peers. (N.T. p.526, N.T. pp.604-06).

77. The Foundations Math class is provided 10 class periods per week, two times each day. (N.T. p.27). Students in Foundations Math receive instruction from the teacher for 8 out of the ten periods, while 2 of the periods involve individualized, self-paced, computer-based practice. (N.T. p.528). At the time of the offer of a FAPE, the Foundations Math class was 29 students. (N.T. pp.290).
78. The Student's private school 4th grade and 5th grade June report card states that, although the Student was in 5th grade, the Student was being instructed on and earned passing grades doing 2nd-grade state standards math skills. (J#35 p.54, J#37, p.55, N.T. p.26).
79. Through the June 2019 IEP, and the accompanying NOREP Mastery recommended the Student receive supplemental learning support services at Mastery's [redacted] Upper School beginning in August 2019. (J- 23 p.7, N.T. pp.520-23).
80. The June 2019 IEP proposed Student's continued participation in a small group Wilson reading intervention program, five days a week, for 45 minutes per day. (J-23).
81. The continuation of the reading instruction was designed to focus on developing the Student's decoding, encoding, and fluency skills. (J-23).
82. The June 2019 IEP also proposed the Student would participate in an additional small group reading intervention program, Leveled Literacy, 4 days a week for 45 minutes per day. (J-23).
83. The June 2019 IEP also proposed the Student should participate in Level Literacy instruction to provide the Student with targeted

programming to address Student's comprehension, vocabulary, writing, and fluency skills. (J-23).

84. Both reading intervention classes would be conducted in a small group setting with a 1:6 teacher to student ratio or less. (J-23).
85. For the remainder of the school day, the June 2019 IEP proposed Student would be included in a general education classroom with SDIs, accommodations and modifications. (J-23).
86. Mastery also proposed layering on additional support in the form weekly check-ins with the school social worker to help Student with Student's transition back into a larger school environment. (J-23).
87. The June 2019 IEP set forth 20 categories of specially designed instruction (SDI) for the Student that would be utilized across the school day. (J-23 pp.25-27).
88. In addition to the supplemental learning support programming, Student was also offered full-time extended year services for the Student during the summer of 2020. (J-23 pp.31-32).
89. On July 31, 2019, the Parent submitted a written notification indicating her intent to unilaterally enroll Student at the previously agreed upon private school. (J-48).
90. While the Master NOREP dated June 11, 2019, stated that Leveled Literacy Intervention ("L.L.I.") would provide instruction in written expression. An L.L.I. Intermediate daily lesson includes reading comprehension, vocabulary, fluency practice, instruction in phonics and word study. While L.L.I. also includes a writing task about the book that was read that week, unlike the previously offered program at the private school, Mastery's proposed use of the L.L.I. does not involve direct instruction in grammar, spelling, organizational skills or written expression as called for in the R.R. (J-45, pp. 1, 14).

THE PRIVATE SCHOOL

91. The Student adjusted well to the private school. The Student enjoys going to school and likes the teachers and the schoolwork. Overall the Student has received good grades and has made progress at the private school in all areas of unique need. (J-17, pp.5, J-18, pp. 8-11, J-35; J-37, N.T. p.500. N.T. p.569).
92. During both the 4th grade (2017-2018) and 5th grade (2018-2019) school years at the private school, Student participated entirely in small group classes with a 1:6 teacher-student ratio, and also participated in a reading intervention (Wilson's Foundations and Wilson Reading) 5 days per week, 45 minutes per day. (N.T. pp.316-317, J-34; J-35; J-37).
93. During both the 4th grade (2017-2018) and 5th grade (2018-2019) school years at the private school, the Student participated in Guided and Independent Reading 5 days per week, two 40-minute sessions per day. The Student also participated in 40 minutes of math per day, in addition to extra math blocks two days per week, 40 minutes per day. (N.T. pp.318-319).
94. During both the 4th grade (2017-18) and 5th grade (2018-19) school years at the Private School, Student also participated in writing class 40 minutes per day, five days per week. (N.T. p.303, J-35 pg.5, J-37 pp 5-6).
95. During both the 4th grade (2017-2018) and 5th grade (2018-2019) school years at the private school, the Student received a total of 1,105 minutes per week of small-group instruction with a special education teacher in reading, math, and writing. (J-18 pp.7; J-34, N.T. p.274, N.T. p.276, N.T. pp.277-278, N.T. pp.300-301, N.T. pp.19-17, N.T. p.302, N.T pp.14-25; NT p.303, N.T. pp.311-312).

96. During both the 4th grade (2017-2018) and 5th grade (2018-2019) school years at the private school, Student also participated in Social Studies/Science (1/2 year for each) 5 days per week, 40 minutes per day and 40 minutes of the arts, including Art 3 days per week (40 minutes per day), music once per week, and gym once per week. (J-34, J-35 pp.12-13, J-37 pp.11-12).
97. By all accounts during the 4th and 5th grade school years, the Student adjusted well to the school, made friends, and made progress in all areas of need. (J-18, pg. 11, J-35; J-37, N.T. p.500, N.T. p.569).
98. The private school's mission is to provide children who learn differently with personalized education to realize the potential and reshape the way they view themselves and their future. (J-54 p.1).
99. The private school uses a language-based curriculum. The private school utilizes the Pennsylvania core standards as a guideline and full-curriculum instruction is offered through a structured, multi-sensory approach based on students' needs and designed to address each child's learning needs through small-group instruction. Curriculum at the private school can be adjusted to be taught at an appropriate pace for a student's individual level of learning. (J-54 p.1).
100. The reading program utilized with the Student at the private school included the Wilson reading system, which is a research-based reading and spelling program. It is a multi-sensory structured curriculum based upon phonological coding research and Orton-Gillingham practices. Wilson reading addresses skills with emphasis on phonemic awareness, phonics, high-frequency word study, reading fluency, vocabulary, comprehension strategies, handwriting and spelling. (J-54 pp. 3-4).

101. The writing curriculum utilized by the Private School with Student focused on a direct approach to teaching writing and involved a research-based, explicit, systematic approach to writing instruction addressing narrative, opinion, persuasive, informative, explanatory, and research writing, as well as grammar. (J-50 p.4).
102. The Student's private school writing program also included sentence patterns, multi-paragraph forms, and writing essays. (J-54 p.5).
103. The math curriculum at the private school uses a variety of methods to address students who have Specific Learning Disabilities in Math, as well supplemental materials taken from Houghton Mifflin Harcourt's *Big Ideas Math*. The math curriculum involves numerous teacher-created materials and interactive media that focus on computation skills, problem-solving and real-life practical applications. (J-54 pp.5-6, N.T. pp.266-268).
104. The private school is composed of an upper school and a lower school. The upper school has grades 6 through 9 and currently has 39 students. The lower school has grades 1 through 5 and currently has 25 students. There are a total of 64 students in the private school. (N.T. pp.256-257).
105. During fifth grade at the private school, the Student' math class had two teachers, specifically a full-time teacher and a part-time teacher. The part-time teacher was present Monday through Thursday and the teachers in the Student's math class provided instruction through co-teaching Monday through Thursday. (N.T. p.274).
106. The two math teachers who worked directly with the Student throughout fifth grade school year at the private school were both certified special education teachers and both had certifications in math. (N.T. p.271).

107. The Student's sixth-grade math class at the private school during the 2019-2020 school year has seven students in total, and this small class size allows the math teacher to differentiate classwork and homework. (N.T. p.274).
108. Student requires small-group instruction in math. The Student requires individualized attention during math class. The Student requires math support that is approximately one teacher to six to seven students in order to make meaningful progress. (N.T. p.276, N.T. pp.277-278).
109. The Student's progress reports from the 2018-2019 school year demonstrate that the Student made meaningful educational progress during that school year. (J-37, N.T. 288).
110. On October 15, 2019, when Student was in the sixth grade, the private school administered the Let's Go Learn testing protocol. Let's Go Learn is a criterion-based assessment. Based on the results of this criterion-based assessment, Student was more than two years below grade level in at least two math skill categories and was below grade level in every math skill that was assessed. (N.T. 298-299, J-30, pg.1).
111. The Student's overall program at the private school is a full-time special education program. The private school program includes intensive academic instruction and also social and emotional components. The Student receives ongoing intensive instruction, including multimodal methods, didactic and specialized instruction across every single class and consistently. (N.T. pp.300-301).
112. In fifth grade, Student had a writing class, which met five days per week for 40 minutes per class. The Student also practiced writing during portions of the reading class that met five days a week. The writing class focused on the writing process. (N.T. pp.303).

113. The writing curriculum used with Student at the private school consists of Step Up To Writing, which is a research-based program that helps explicitly teach writing. (N.T. pp.309-310).
114. The Student's writing class has one teacher and eleven students during the fifth grade school year. The writing teacher was a certified special education teacher and a reading specialist; she also holds a Wilson certification. (N.T. p.312).
115. The Student made meaningful educational progress in writing skills during the fifth grade school year. (N.T. pp.313-314, J-37, p.51).
116. The Student currently receives Wilson reading instruction at the private school from a Wilson-certified, certified special education teacher in a class with one teacher and four students. The Wilson class meets five times per week for 45 minutes. (N.T. pp.317-318).
117. Student also receives reading instruction five days a week in another reading class that focuses on building vocabulary skills, comprehension skills, and some writing skills. (N.T. pp.318-319). Over the fifth grade school year, the Student's reading skills increased from Wilson level 1.3 to level 3.4. (N.T. p.320).
118. The private school utilizes various forms of assessments to determine progress, including informal reading inventory, informal reading inventory/qualitative reading inventory, Let's Go Learn, Woodcock-Johnson assessments, and curriculum-based assessments. (NT p.321, J-13; J-20; J-15, J-22).
119. The Mastery R.R. indicates that the Student made educational progress during fourth grade and fifth grade school years. (J-18, pp. 9, 11, J-24, pp.2, N.T. 500, N.T. pp.568-569, J-23 pp.2).

120. The Student made progress at the private school on work skills and personal development during the 4th and 5th-grade year (2018-2019). (J-53, J-54).
121. The Student standardized test scores have shown progress on reading skills as measured by the Woodcock Reading Mastery Test. (J-16, pg.2; J-22, pg. 2).
122. The Student has shown progress on reading skills as measured by the Diagnostic Online Reading Assessment (DORA) (J-15, pp. 1-2, J-29, pp.1-2, J-46, pp. 1-2).
123. The Student made progress in writing during the 5th-grade year (2018-2019) at the Private school, (J-35 pp.49-50, J-37 pp.50-51).
124. The Student made progress in math during the 4th-grade year (2018-2019) at the Private school. (J-35 pp.54-55, J-37 pp.56-57).
125. The Student made progress in reading during the 4th-grade year (2018-2019) at the Private school, including significant progress during the 2018-2019 school year, as demonstrated on the Qualitative Reading Inventory (Q.R.I). (J-13 pp.2, J-14 pg. 3, J-21 pg.3, J-26 pg.1).
126. While at the Private school, the Student made progress in writing during the 5th-grade year (2018-2019) at the private school. (J-35 pp.49-50, J-37 pp.50-51).

APPLICABLE LEGAL PRINCIPLES

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) establishes: (1) appropriate identification, evaluation, education and learning standards for disabled children in public schools, (2) guarantees Mastery and the Parent have procedural due process rights when a disagreement arises over the education and needs of the child, and (3) sets qualifications for special education teachers.⁵

IDEA accomplishes these requirements by providing federal funding to states to meet the educational needs of children with disabilities to "prepare them for further education, employment, and independent living."⁶ IDEA also states that the education of special needs students can be improved by "strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and home." 20 U.S.C. § 1400(c)(5)(B). IDEA allots federal funding to states that agree to be held accountable for providing children with disabilities a free appropriate public education (FAPE). 20 U.S.C. § 1412(a). These bedrock working principles are described below.

THE IDEA EVALUATION AND ASSESSMENT STANDARDS

The general standards for an appropriate evaluation are found at 34 C.F.R. §§ 300.304-300.306. The public agency is required to (1) "use a variety of assessment tools"; (2) "gather relevant functional, developmental

⁵ 20 U.S.C. § 1400(d). (setting forth the purposes of the chapter, which include ensuring provision of necessary resources for teachers and assistance to educational agencies for the education of children with disabilities).

⁶ 20 U.S.C. § 1411(a)(1) (authorizing the issuance of such funding). This Act explicitly establishes the requirement of a free appropriate public education (FAPE requirement) in order to "improv[e] educational results for children with disabilities." § 1400(c)(3)

and academic information about the child, including information from the parent"; (3) "Use technically sound instruments" to determine factors such as cognitive, behavioral, physical and developmental factors which contribute to the disability determination; (4) refrain from using "any single measure or assessment as the sole criterion" for a determination of disability or an appropriate program. CFR § 300.304(b) (1-3). Also, the measures used for the evaluation must be valid, reliable and administered by trained personnel in accordance with the instructions provided for the assessments; must assess the child in all areas of suspected disability; must be "sufficiently comprehensive to identify all of the child's special education and related service needs" and provide "relevant information that directly assists" in determining the child's educational needs.

34 C.F.R. §§ 300.304(c)(1) (ii-iv), (2), (4), (6), (7). An initial evaluation or a reevaluation must also include, if appropriate: (1) A review of existing evaluation data if any; (2) local and state assessments; (3) classroom-based and teacher observations and assessments; (4) a determination of additional data necessary to determine whether the child has an IDEA-defined disability, the child's educational needs, present levels of academic achievement and related developmental needs, whether the child needs specially-designed instruction and whether any modifications or additions to the special education program are needed to assure that the child can make appropriate progress and participate in the general curriculum.

34 CFR §§ 300.305(a)(1), (2).

THE IEP AND THE PROVISION OF A FAPE

Once the evaluation is completed, assuming the student is otherwise eligible, the charter school and the parents must develop an IEP. An IEP consists of eight things: (1) it must contain a statement of the child's present level of educational performance. The statement of present levels of educational performance must establish a baseline understanding of the

student's needs and circumstances. All the while, the district must keep the parent informed encourage parental participation in the IEP process.⁷ (2) The IEP must contain a statement of measurable annual educational goals and at times short-term objectives, when necessary, related to those goals; (3) The IEP must include an explanation of how the child's progress in meeting those goals will be measured and reported; (4) The IEP must contain a statement of the specific educational and related services to be provided, as well as a statement of any program modifications and related services that will be provided; (5) the IEP must contain an explanation of the extent that the child will not be serviced in regular educational programs; (6) The IEP must contain a statement of necessary accommodations and SDIs needed to gauge and encourage the student's performance; (7) The IEP must contain the date the services will begin as well as the expected duration, location, and frequency of the services; and (8) The IEP must be in effect at the beginning of the school year, must be updated yearly and included necessary transition services. *Id.* § 1414(d)(1).

In Pennsylvania, the group responsible for preparing a student's IEP is the IEP team. The IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved. At each annual review the IEP team as appropriate must (1) address any lack of expected progress toward the annual goals described in 34 C.F.R. §300.347(a), and in the general curriculum, if appropriate; (2) the results of any reevaluation conducted under 34 C.F.R. §300.536; (3) information, data and progress monitoring about the student must be provided to, or by, the parents, as described in 34 C.F.R. §300.533(a)(1);

⁷ See *also*, § 300.350 (requiring States to make a good faith effort to meet the goals stated in the child's IEP).

describing (4) the child's anticipated needs; or (5) other matters/circumstances.

THE IEP TEAM MEMBERS

One of the IDEA's procedural requirements is the creation of an IEP team to determine a child's eligibility for IDEA benefits. 20 U.S.C. §§ 1414(b)(4)(A), (c)(4). In *L.R. v. Manheim Twp. Sch. Dist.*, 540 F. Supp. 2d 603 (E.D. Pa. 2008), the court held, "The plain terms of the IDEA, however, require more than merely "a regular education teacher"; they require a "regular education teacher *of the child*," namely, L.R. 20 U.S.C. § 1414(d)(4)(B). The court went on to note there is no dispute that the regular education teacher who attended L.R.'s IEP meeting had never taught L.R. Therefore, the composition of the IEP Team violated the IDEA. *Accord R.B. ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 940 (9th Cir. 2007) (interpreting the language "of the child" to require the IEP Team to include a special education teacher who actually taught the child in question)."⁸

NOTICE OF PROCEDURAL SAFEGUARDS

The procedural safeguards notice includes a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577 of IDEA, and the State complaint procedures available

⁸ In *RB v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir. 2007) the court held that the failure to include persons knowledgeable of the student during the IEP meeting, together with the failure to consider their recommendations and the refusal to reschedule the IEP meeting at the parents' request represented significant procedural defects, warranting a finding in favor of the parents. The Ninth Circuit held that the LEA's failure to include either a teacher from the student's private educational placement or a teacher of the child, who worked with the Student, at the IEP meeting were procedural defects and violations of applicable regulations that had the result of denying the student FAPE.

under §§300.660-300.662 of IDEA including but not limited to relating to (1) Independent educational evaluation; (2) Parental consent; (3) Access to educational records; (4) opportunity to present complaints and to initiate due process hearings; (5) Requirements for unilateral placement by parents of children in private schools at public expense; (6) Due process hearings, including requirements for disclosure of evaluation results and recommendations; and (7) Civil actions.

STANDARDS FOR JUDGING SUBSTANTIVE AND PROCEDURAL VIOLATIONS

In drafting the IDEA, "Congress placed every bit as much emphasis upon compliance with procedures ... as it did upon the measurement of the resulting IEP against a substantive standard." *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, 205-06 (1982). Procedural compliance "would, in most cases, assure much if not all of what Congress wished in the way of substantive content in an IEP" *Id.* at 206.⁹

Recently, the Supreme Court was called upon to consider once again the application of the *Rowley* standard, and it then 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 Mastery RE-1*, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The *Endrew* court emphasized that the IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Endrew F.*, 137 S. Ct.

⁹ In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies— (1) Impeded the child's right to a FAPE; (2) Significantly impeded the parent's opportunity to participate in the decision-making process. 20 U.S.C. §1415(f)(3)(E)(i), §1415(f)(3)(E)(ii).

988, 999 (citing *Rowley* at 206-09) (other citations omitted). The *Endrew* court further concluded that "the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 137 S. Ct. at 1001, 197 L.Ed.2d at 352. The *Endrew F.* standard is not inconsistent with the above longstanding interpretations of *Rowley* by the Third Circuit.

As *Endrew*, *Rowley*, and the IDEA make abundantly clear, the IEP must be responsive to the child's identified educational needs. See 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, the L.E.A. is not required to provide the "best" program, but rather one that is appropriate in light of a child's unique circumstances. *Endrew F.* An IEP must be judged "as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993). Therefore, a reviewing court first considers the district's procedural compliance before reaching a determination of the district's substantive compliance. *Id.*

TUITION REIMBURSEMENT CAN BE APPROPRIATE RELIEF

The Supreme Court has issued three decisions concerning tuition reimbursement under the IDEA. First, in *School Committee of Burlington v. Department of Education of Massachusetts* in 1986, 471 US 359, 23 Ed.Law Rep. 1189 (1985) setting out a three-part test for tuition reimbursement (1) the appropriateness of Mastery's proposed placement, (2) the appropriateness of the Parent's unilateral placement, and (3) application of the equities. Second, in *Florence County School Mastery Four v. Carter* in 1993, FN3]. 510 US 7, 86 Ed.Law Rep. 41(1993) ruling that parents are not held to the same standards as the L.E.A., thus making the second step of the test somewhat more relaxed. Third, in *Forest Grove v. TA* in 2009. [FN4]. 129 S.Ct. 2484 [245 Ed.Law Rep. 551 (2009), the court ruled that

the child's lack of previous enrollment in special education did not preclude the application of the FAPE reimbursement test.¹⁰ The 2004 Amendments refined the exceptions for the Parent's timely notice provision, thereby adding an initial equitable step, subject to exceptions, to the *Burlington-Carter* analysis. 20 U.S.C. § 1412(a)(10)(C)(iv)(I)(cc). Similarly, the 2006 regulations merely made explicit that "financial reimbursement" for placement disputes is "appropriate relief" within the jurisdiction of the impartial hearing process. 34 CFR § 300.148(b). With these guiding statutory and case law principles in mind, I will now turn to an analysis of the dispute.

ANALYSIS AND CONCLUSIONS OF LAW

CREDIBILITY DETERMINATIONS

Hearing officers, as fact-finders, are charged with the responsibility of making credibility determinations of the witnesses who testify.¹¹ This hearing officer now finds the Mastery's and the Parents' witnesses for the credible, and their testimony was essentially consistent with their fundamental understanding of the actions taken or not taken by the Mastery or the Parents in evaluating the Student's IDEA eligibility, evaluating the Student, implementing the IEPs, and their individual involvement in constructing the offer of a FAPE.

¹⁰.Congress then codified this remedy in the 1997 Amendments, resulting in an expansion of the equities step of *Burlington – Carter*.

¹¹ See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *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).

PERSUASIVNESS DETERMINATIONS

For all the reasons that follow, I found the testimony of some witnesses to be less cogent and, therefore, less persuasive than others. First, neither the regular education, the special education teachers nor the case manager ever worked with the Student; therefore, I now find their testimony to be less credible as it was not based on first-hand observations. Second, as they never worked with the Student, their involvement in the IEP team meetings does not meet the basic IDEA IEP team membership requirements.

Third, to the extent that witnesses relied on certain fundamentally flawed Mastery records, later described, as a basis of their opinion, I also give that testimony less persuasive weight. For example, although the June 2019 NOREP stated that one of the reasons for the Student's return to Mastery was "progress on the math goal" none of the IEPs prepared by Mastery for the 2017-2018 and the 2018-2019 had a math goal; therefore, I discounted certain testimony regarding progress in math in reaching my decision.

Fourth, one witness admitted that she did not follow the test maker's instructions or the Mastery test administration standards in administering a math assessment. The witness's purported justification for the "untimed" assessment was that the IEP permitted "extended time." I now find that the witness misread the plain language in the IEP that calls for "extended time" time, not "unlimited time." It is black letter law that an accommodation cannot alter what the test is assessing.¹² Therefore, in light of the IDEA and Section 504 testing violations, testimony about the Student's present levels

¹² Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35(b)(1).

in math, was also given reduced weight. *See also*, 34 C.F.R. §§ 300.304-300.306.

As for the Director of Specialized Services for Mastery Charter Schools, while polished and helpful in explaining the Mastery way, she too did not work with the Student, observe the Student, or participate as a member of the R.R. team. While her testimony was illuminating, for the most part, her testimony that the offer of a FAPE was appropriate, was grounded in the otherwise unreliable test data collected in violation of the Act, such testimony was discounted. Also, I discounted the Director's testimony to the extent she relied on the IEP goal statements and the NOREPs when those documents, as described below, were at times, procedurally and substantively flawed.

I did, however, give great weight to the Mastery R.R. The R.R. carefully described how the Student's disability adversely affects the Student's education in the regular education classroom. The R.R. provided detailed information about the Student's testing profile and identified Student specific needs and circumstances. The R.R. further provided insight into what types of SDIs could improve learning. Therefore, applying these initial credibility and persuasiveness findings, I will now move on to a review of the IEPs at issue.¹³

¹³ While I do not make any determination if the LEA's 2017-2018 or the 2018-2019 offers of a FAPE were appropriate; I do, however, as stated below, use these documents as corroborating evidence how procedural or substantive errors in each year spilled over, contributed to and caused the fundamental flaws found herein.

THE ORIGINS OF THE LEA'S 2019-2020 PROCEDURAL VIOLATIONS

THE IEP TEAM LACKED ESSENTIAL MEMBERS

Although not raised as a procedural violation, when reviewing 2017-2018, 2018-2019 and the 2019-2020 IEPs, as noted below, the Student's IEP teams lacked either a regular education teacher of the child, a special education teacher of the child or a provider of special education for the child from the private school. For example, while the 2017-2018 IEP notes the regular education teacher was excused from the IEP team meeting, the fact is that the staff person excused was the Student's then-current special education teacher from the private school. Therefore, the 2017-2018 IEP team lacked a regular educator's input.

Likewise, the August 2019 return to Mastery IEPs did not include a regular education teacher. At the same time, while each IEP included input from the private school special education teachers of the child, the IEP does not explain if the teachers of the child were excused. The record evidence infers the private school teachers of the child were not invited at all. The Mastery special education teacher, identified in the June and August IEP, never met, worked with or observed the Student. Therefore, the 2019 IEP team lacked a special education teacher. As described above, it is black letter law that the failure to include a special education teacher of the student, a regular education teacher of the student or someone who worked with the student may result in a fundamentally flawed IEP. After a careful review of the record as a whole, I now find the June and August 2019, IEP team lacked the special education teacher and a regular education teacher of the child. Without the regular education teacher and the special education teacher of the Student, the team lacked the mandated participants who are expected to deliver the personalized goals, SDIs and challenging objectives

sorely needed to ensure progress. Accordingly, in this particular instance, I now find the above violations are a substantive violation. I also find, the failure to include the proper participants during the 2019 IEP process either impeded the Parents participation in the IEP process or caused a denial of a FAPE. Even assuming *arguendo* that these errors are otherwise harmless, and they are not, when combined with the following substantive and or procedural violations, Mastery failed to offer a FAPE.

THE LEA PREDETERMINED THE STUDENT'S PROGRAM AND PLACEMENT

Parents contend the L.E.A. predetermined the Student's placement before writing the IEP and collecting Parent input. Predetermination constitutes a denial of FAPE because it significantly impedes parental participation in the IEP development process. Predetermination occurs when members of the IEP team decide a student's placement in advance of an IEP meeting without the parents' participation. The IDEA requires districts to ensure that the parents of each child with a disability are members of any group that makes decisions about their child's educational placement.¹⁴ IEP team members must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input.

While in *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008) (9th Cir. 2010, *unpublished*) the court found the superintendent's mere announcement at the start of an IEP meeting that the team would discuss the student's transition to public school showed that the district predetermined the student's placement. The written NOREPs, IEPs and PWN records here make it abundantly clear like *Las Virgenes* that as

¹⁴ 34 CFR §300.327; 34 CFR §300.501 (c)(1), See, e.g., *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014);

early as October of 2017, that Mastery had predetermined the Student's program/placement. While in one breath Mastery acknowledges the need for full-time support, in the next, Mastery takes the contrary position that once the two-year term is over the Student will then receive supplemental learning support at Mastery. It is no strange coincidence that the same people who drafted the 2017 IEP and NOREP, assessed the Student in 2019 and then developed the return to Mastery 2019 IEP. Each subsequent IEP and NOREP repeated the same predetermination conclusion. While certain documents may state other options were considered, the participants' actions and inactions overshadow the writings. Therefore, I now find after weighing the evidence, the Mastery staff predetermined the Student's placement and then shoehorned the Student into supplemental learning support at Mastery. Accordingly, I also find that L.E.A.'s long-held position that (1) the Student would return in two years, (2) that on return the Student would get and did get supplemental learning support interfered with the Parent's participation in the IEP process and (3) these actions and or inactions when combined with the substantive flaws described herein, resulted in a denial of a FAPE.

THE PROPOSED 2019-2020 IEPs ARE SUBSTANTIVELY FLAWED

THE MATH GOAL IS INSUFFICIENT AND PLACEMENT INAPPROPRIATE

At the center of the dispute is the Mastery's firm position that the Student made meaningful progress in math such that the Student no longer needs a small group of six students and one teacher as provided at the private school. In support of its position, Mastery points to the Student's Metropolitan Basic Skills Progress grade equivalency scores as a determinative factor in designing the Mastery 2019 IEP For all of the following reasons, the arguments advancing the Metropolitan Basic Skills

Progress grade-level score, in this instance, as an IDEA, present levels of educational performance is rejected.

First, the statements in the June 2019 IEP, the August 2019 IEP and June 2019 NOREP that the "[redacted] made progress in [redacted] reading and math goals" are factually inaccurate. Neither the fourth grade - October 2017 - nor the fifth grade - October 2018 - IEPs included a math goal; therefore, any assertion of progress as it relates to the Student's Math goals progress is rejected outright.

Second, Mastery's reliance on the Student's Metropolitan Basic Skills Progress grade equivalency as a present level of performance is equally misguided. The evidence is preponderant that the Mastery staff failed to follow the test maker's and Mastery's testing protocols in administering the assessment. Although the test maker's instruction state the assessment is timed, the Mastery examiner ignored the test maker's direction. See 34 C.F.R. §§ 300.304-300.306. This combination of actions and inactions undercuts the content validity of the grade level scores. This series of substantive and procedural violations runs contrary to the IDEA evaluations and assessment protections found at 34 C.F.R. §§ 300.304-300.306. This standalone fundamental assessment flaw contributed to the denial of a FAPE.

Third, the Mastery IEP team, without the benefit of the Student's current special education teacher, lost sight of the Student's "Low Average" Working Memory deficits. This known deficit adversely impacts the Student's participation in regular education. The Student's ability to register, temporarily maintain, and manipulate visual or auditory data and then perform some operation or manipulation on it and produce a new result is extremely limited. The IEP team's failure to consider how the Student's reading deficits coupled with the Student's Working Memory deficits directly impair attention, concentration, mental control and reasoning in the regular education was overlooked. These known Student specific deficits also

contribute to a lack of mental flexibility and mental alertness otherwise needed to perform successfully in a regular sixth-grade math class of 29 students with one teacher. Working memory, attention, alertness and reasoning skillsets are essential to success in the regular education classroom. Neither the goal nor the SDIs address the specific learning deficits. Therefore, I now find the math goal and placement in a 6th-grade class of 29 students, for this Student, with this profile, under these circumstances, is inappropriate and rejected.

THE WRITING GOAL AND PLACEMENT ARE INSUFFICIENT

Although identified as a need, the Mastery 2017 IEP did not include a writing goal. This fact went unexplained. The Mastery October 2018 IEP, on the other hand, includes a writing goal statement calling for the Student to achieve a third-grade equivalency as measured by the Lucy Calking's rubric. The goal statement further notes the Student is performing on the second grade level on the Lucy Calking's rubric. The Mastery June 2019 IEP, on page 23, calls for the Student to achieve the same third-grade equivalency once again as measured by the Lucy Calking's rubric, which again places the student at a second-grade level. These statements, when taken at face value, indicate the Student did not make any progress. This fact, if true, is a problem.

Once Mastery received the Mother's notice of intent to request tuition reimbursement, Mastery scheduled an August 2019 IEP meeting. Oddly, and the record is unclear why, at the August 2019 meeting, Mastery changed the writing goal. Beginning on page 25, the IEP repeats the writing goal statement from the June 2019 IEP; then, in a sudden turn about, the IEP

states that Mastery does not have any data about the Student's written expression progress from the private school.¹⁵

This rewrite of the goal statement is factually incorrect. For example, the recent R.R. includes teacher input from the private school writing teacher. The R.R. notes recent WIAT-II written expression data along with notations that Mastery was in possession of the Student's quarterly report card grades. Mastery staff failed to cogently explain why they ignored the fact that the R.R., relying on the private school data, states the Student writing skills, at the start of the fourth-grade year were 1's and 2's and by the end of the school year were mostly 2's and several 3's of out a 5. The Mastery staff also failed to explain why they discounted the WIAT-III writing data in the R.R.

The goal rewrite ignores the fact that on the WIAT-II, the Student's scored in the 5th percentile regarding sentence building and was performing at a "Below Average" grade level in written expression. The R.R. examiner was very careful to explain that the Student at one point during the R.R. assessment took two minutes to write a sentence with the word "until." At another point, the examiner noted the Student was not able to compose sentences with words like "of," "an," "then," and "as." The examiner then concluded, and the Mastery staff agreed that the Student needs direct instruction in spelling, vocabulary development, grammar, sentence composition and writing organization. Sadly, although the team had useful data, the 2019 writing goal does not address any of these longstanding needs and now current Student specific circumstances.

¹⁵ Granted, while the Settlement Agreement relieved Mastery of its FAPE responsibilities for services provided by the private school, the Settlement Agreement did not, relieve Mastery of its duty to make a good faith effort to collect, analyze and compose up to date present levels.

The existing data set does not support the suggestion that the Student will benefit from getting targeted written expression during reading class. Placing this Student in two different reading classes where written expression is at best an ancillary or tag along skill in light of this Student's depressed writing profile is wholly inappropriate. Let me be more specific in describing the application of the writing goal in practical terms.

A Wilson reading instruction lesson plan has ten steps and takes 90 minutes to complete all ten steps in one lesson. The ten individual steps are equally divided into three segments of 30-minutes each. Writing instruction occurs as part of step two. Step two includes instruction in eight different segments; two segments address some form of writing.¹⁶

Assuming the 30 minutes is equally divided across the eight instructional segments, and it is not, the Student would get about 8 to minutes per each individual writing segment. [30 minutes ÷ by eight segments equals approximately 4 minutes of instructional time per segment. Four minutes a segment times two segments equals 8 minutes of instruction per day on days step two is taught]. Therefore, assuming the Student gets through two lessons a week, [a total of 4 segments], the Student would get 16 minutes a week of writing instruction. At that rate of instruction, the Student would get 64 [16 x 4= 64] minutes a month of writing instructions. If the Student were excelling and received three segments a week, the Student would receive a total of 24 [3 x 8=24] minutes a week of writing instruction or 96 minutes a month. Assuming optimal use of instructional time in the second reading class, the Student would get another 96 minutes of writing instruction a month, for a grand total of minutes a 192 minutes a

¹⁶ See, Wilson lesson plan. Wilson Reading
<https://www.wilsonlanguage.com/programs/wilson-reading-system/overview/lesson-plan/>

month. When compared to the current writing program, the proposed reduction in direct teaching time is unacceptable.

At the current time, the Student has a standalone writing program five days a week for 40 minutes a day, totaling 200 minutes a week. Therefore, at the private school, the Student gets up to 800 minutes a month of small group writing instruction. Plus, assuming the Student can complete two (2) Wilson segments a week, the private school provides upwards of another approximately 64 minutes a month of writing instruction. Therefore, based on this Student's existing testing profile, known to the IEP team at the time of the FAPE offer, I now find the goal was not ambitious, challenging or appropriate.

THE PROPOSED MASTERY READING PROGRAM IS INSUFFICIENT

Mastery offered to provide the Student with nine periods a week of reading instruction. Five 45-minute Wilson sessions and four 40-minute Leveled Learning sessions per week. On its face, the commitment seems substantial, in reality, for all of the following reasons it is not.

The October 2018, reading goal calls for the Student to read at level 4 as measured on the Informal Reading Inventory (IRL), the baseline is listed as Level 2. The June 2019 IEP present levels jettison the IRL metric and substitutes the Fountas and Pinnell Benchmark Reading Assessment metric, noting a performance at Level K at the 2.33 grade level as the new present level. The reading present levels further notes the Student earned a 2.67 grade level at Level L on a different fiction passage. After that, the annual goal calls for the Student to earn a 3.3 grade level on the Fountas and Pinnell Benchmark Assessment, while these statements appear to be ambitions, they are not.

Assuming the present level and the goal statements are acceptable, and they are not taken at face value, the IEP calls for the Student to make between six months to a year worth of reading progress. As a sixth-grader, reading on a second-grade level, now exiting sixth grade, I do find these learning projections to be challenging, ambitious or otherwise appropriate.

Furthermore, as documented by Mastery, contrary to the applicable regulations calling for progress monitoring, this hearing officer and the Parent are left to wonder what if any progress the Student made using the agreed-upon IRL metric. The applicable regulation at 34 C.F.R. §300.533(a)(1) calls for the IEP team to address any lack of expected progress toward the annual goal, rather than address the amount of or lack of progress mandate Mastery change the measurement metric. Although I combed the record, I could not find an updated IRL metric as none was provided. Absent the data, the team cannot begin to generate an appropriate IEP. Next, the same regulation at 34 C.F.R. §300.533(a)(3) calls for the IEP team to provide "information, data and progress monitoring about the student must be provided to the parents." By changing the metric, Mastery essentially cut the Parent out of the process, leaving her to wonder what if any progress was made. Changing the measurement metric and then reframing the goal, in this instance, is highly irregular and otherwise misleading.

If test scores are used, they should be self-explanatory. Simply stated, the scores must be able to be interpreted by all participants without the use of test manuals or other aids. Furthermore, while raw scores are seldom used, and when used, an explanation should be included. See *Pocatello Sch. Dist. #25*,¹⁸ IDELR 83(SEA ID 1991).¹⁷ That said, test scores accompanied by some individual analysis, not found here, are not uncommon.¹⁸

Finally, although the IEP includes two different reading programs and classes, the IEP includes only one goal that calls for the Student to "read at F & P [Fountas and Pinnell] Level N. 3.33 grade equivalency" as measured by the Fountas and Pinnell benchmark assessment. The Fountas and Pinnell benchmark is the sole measure of reading progress. That's not to say that Mastery cannot use two approaches; however, when it does, it must follow the maker's instructions on how to implement and measure progress; otherwise, as in this instance, the provided Wilson reading program loses one of its evidence-based core assessment strengths, the WADE® assessment. The Wilson Assessment for Decoding and Encoding (WADE®) is the metric the test maker designed to measure what is taught during the course of the 90-minute lesson. Wilson reading is based on multi-sensory phonetic skill development while Leveled Literary is based on moving the Student through a series of leveled reading materials. According to the

¹⁷ Citing then 20 U.S.C. § 1401(a)(19) as explained at 34 C.F.R. Part 300, Appendix C, Question 36. ("Thus raw scores would not usually be sufficient statement of present levels. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.").

¹⁸ See *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*,²⁸ IDELR 177(10th Cir. 1998); and *Chase v. Mesa County Valley Sch. Dist. No. 51*, 53 IDELR 72 (D. Colo. 2009).

maker, the WADE® should be administered as a posttest at the end of instruction or at the end of a school year to evaluate mastery of the curriculum and assess the student's ability to apply decoding and encoding skills independently. Wilson reading by design has built-in formative and summative measures of progress monitoring. Therefore, like the math assessment violation described above, the Mastery reading staff failed to follow the maker's instruction when formulating the reading goal and in selecting the appropriate progress monitoring metric.¹⁹ These violations are substantive. In short, the IEP again lacks a proper beginning present level of performance, and it also lacks a measurable goal. An IEP that lacks meaningful and measurable educational goals is fatally defective.²⁰

The Student's reading needs are clearly delineated in the R.R., yet the Mastery staff overlooked the obvious when they attempted to shoehorn the Student back into the elementary school. In this instance, the IEP team failed to write a complete reading goal in a way that allows for an objective measurement of the Student's progress toward achieving the annual goal. 71 Fed. Reg. 46,662 (2006). Accordingly, I now find in favor of the Parent

¹⁹ Wilson recommends the Wilson Assessment for Decoding and Encoding (WADE®) be administered as a posttest at the end of instruction or at the end of a school year to evaluate mastery of the curriculum and assess the student's ability to independently apply decoding and encoding skills. Formative and summative measures of Wilson Reading progress monitoring. <https://www.wilsonlanguage.com/programs/wilson-reading-system/implementation/setting/>

²⁰ See, e.g., *Susquenita Sch. Dist. v. Raelee S.*, 25 IDELR 120 (M.D. Pa. 1996) (the student's IEP lacked meaningful educational goals and, as a result, also lacked adequate short-term objectives, criteria for measuring progress, and adequate programming or services to address the student's identified problem areas). Likewise in *Conemaugh Twp. Sch. Dist.*, 23 IDELR 1233 (SEA PA 1996) (the appeals panel recognized that no program can appropriately address a student's needs without first defining the goals it is expected to achieve).

and against Mastery. As this is a tuition reimbursement dispute, I will now turn to the private placement and the equities.

THE PRIVATE SCHOOL IS APPROPRIATE

The Student's sixth-grade math class at the Private school during the 2019-2020 school year has seven students in total and one teacher, and this small class size allows Student's math teacher to differentiate Student's classwork and homework. The private school utilizes a language-based curriculum and follows the Pennsylvania core standards as a guideline. The school follows the regular school calendar and provides extended school year services. The private school offers a full curriculum. The private school instruction offers a structured, multi-sensory approach based on students' needs and is designed to address the Student's learning needs through small group instruction. The curriculum at the private school can be adjusted to be taught at an appropriate pace for a student's individual level of learning.

The private school is composed of an upper school and a lower school. The upper school has Grades 6 through 9 and currently has 39 students. The lower school has grades 1 through 5 and currently has 25 students. There are a total of 64 students in the private school.

The reading program utilized with students at the private school includes the Wilson reading system, which addresses skills like phonemic awareness, phonics, high-frequency word study, reading fluency, vocabulary, comprehension strategies, handwriting and spelling. Likewise, the writing curriculum utilized by the private school with the Student focuses on a direct approach to teaching writing. The standalone writing curriculum is research-based and uses an explicit, systematic approach to writing instruction addressing narrative, opinion, persuasive, informative, explanatory and research writing, as well as grammar. The Student's writing

program also includes sentence patterns, multi-paragraph forms and writing essays. All of the offerings address Student specific needs.

The math curriculum at the private school uses a variety of methods to address students who have specific learning disabilities in math, as well as supplemental materials taken from Houghton Mifflin Harcourt's *Big Ideas* math in middle school. The math curriculum involves numerous teacher created materials and interactive media that focus on computation skills, problem-solving and real-life practical applications. During fifth grade at the Private school, Student's math class had two teachers, specifically a full-time teacher and a part-time teacher. The part-time teacher was present Monday through Thursday and the teachers in Student's math class provided instruction through co-teaching Monday through Thursday. The two math teachers who worked directly with the Student throughout the fifth grade school year at the Private school were both certified special education teachers and both had certifications in math.

The Parent regularly receives multi-page quarterly progress monitoring rating sheets targeting the Student's progress on a scale from 1 to 5. For the most part, while more 5's would be better, my review of the reports confirms slow, steady incremental progress. Simply stated, the Student is making gains, and the progress is slow. That said, the Student's scores/gains on norm-referenced and criterion-referenced instruments administered by the private school staff support a finding of the school is otherwise appropriate. Accordingly, I now find the program is otherwise appropriate. I also find, based on a careful review of the intrinsic and extrinsic evidence, the placement, for the time being, is appropriate; therefore, an appropriate Order follows.

THE EQUITIES FAVOR REIMBURSEMENT

Consistent with the IDEA notice provision, the Mother notified Mastery well in advance of her intention to make the unilateral placement, thereby satisfying the IDEA notice provisions. Consistent with the Burlington-Carter standard, the Parents applying the *Rowley-Andrew* standards met their burden of proof. Mastery has already repeatedly acknowledged, in the R.R. and the IEPs, that the private school is an otherwise appropriate educational program for the Student. Therefore I now find the equities favor the Parents. An appropriate Order follows.

ORDER

And now this May 8, 2020, I find in accordance with the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Parents' claim for tuition reimbursement, is **GRANTED**.

1. The Charter is now **ORDERED** to either reimburse the Parent for her out of pocket tuition expenses or pay the private school any and all costs relating to the Student's attendance at the private school during the 2019-2020 school year including participation in the 2020 extended school year program.
2. The Charter is **ORDERED** to reimburse the Parents for all travel expenses to and from the private school traveled during the 2019-2020 school year and extended school year.
3. It is further **ORDERED** that any claims and/or affirmative defenses not specifically addressed by this Decision and Final Order are denied

Date: May 8, 2020

Charles W. Jelley, Esq. LL.M
Special Education Hearing Officer
ODR FILE #21831-19-20