

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the 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. 28208-22-23

CLOSED HEARING

Child's Name:

A.S.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Leona Z. Goldshaw, Esquire
705 Easton Road
Willow Grove, PA 19090

Local Education Agency:

Council Rock School District
30 North Chancellor Street
Newtown, PA 18940

Counsel for the LEA:

Erin K. Aronson, Esquire
60 East Court Street
Doylestown, PA 18901

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

01/22/2024

INTRODUCTION AND PROCEDURAL HISTORY

The student, A.S. (Student),¹ is a late elementary school-aged student residing within the boundaries of the Council Rock School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² under the Specific Learning Disability classification, and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ Student attended school in the District until enrollment in a private school by the Parents in the late spring of 2022.

In June 2023, the Parents filed a Due Process Complaint against the District under the IDEA, Section 504, and the Americans with Disabilities Act.⁴ In that Complaint, they challenged the programming provided and offered by the District over the 2021-22, 2022-23, and 2023-24 school years. As remedies, the Parents sought compensatory education as well as reimbursement for private school tuition, tutoring services they arranged, and private evaluations they obtained. Subsequently, the Parents were granted leave to file an Amended Due Process Complaint wherein they expanded the scope of their claims to also encompass the 2019-20 and 2020-21 school years. The District denied all of the claims and sought to limit their scope based on the IDEA statute of limitations.

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

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

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

⁴ 42 U.S.C. §§ 12101-12213.

Following an evidentiary hearing, the Parents' claims were restricted to the two-year period immediately preceding the filing of the original Due Process Complaint. The matter then proceeded to a hearing on the merits.⁵ The Parents sought to establish that the District's programming as implemented and offered was not appropriate for Student's known needs, demanding compensatory education in addition to various forms of reimbursement. The District countered that it had complied with all of the legal requirements owed to Student, and denied that any remedy was due.

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

ISSUES

1. Whether the District provided Student with a free, appropriate public education over the summer of 2021 and the 2021-22 school year through Private School enrollment in May 2022;
2. Whether the District offered a free, appropriate public education at the end of the 2021-22 school year, and the entire 2022-23 and 2023-

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. References to exhibits may not be to all versions of the same content; and references to Parents in the plural is used where it appears that one was acting on behalf of both. The ruling in favor of the District on the scope of the claims is HO-2, this hearing officer having concluded that the Parents knew, or had reason to know, of their older claims no later than April 2021, more than two years prior to the date of the original Complaint. The District submitted a different set of exhibits for that portion of the hearing; its exhibits cited herein are to those admitted during the sessions on the merits (HO-3). The District sought to admit S-10 twice (HO-3 at 7-8) but it is likely that the second reference to S-10 is a typographical error. S-19 is hereby admitted as that which this hearing officer concludes was intended by the second reference to S-10 because of the content of that exhibit.

24 school years including the summers of 2022, 2023, and 2024;

3. If the District failed to provide Student with a free, appropriate public education over the summer of 2021 and the 2021-22 school year through Private School enrollment in May 2022, should Student be awarded compensatory education;
4. If the District failed to offer a free, appropriate public education at the end of the 2021-22 school year, or for any portion of the 2022-23 and/or 2023-24 school years including the summers of 2022, 2023, and 2024, should the Parents be reimbursed for private school tuition and related expenses; and
5. Whether the Parents should be reimbursed for private evaluations and/or other services they obtained?

FINDINGS OF FACT

1. Student is a late elementary school-aged student residing with the Parents within the boundaries of the District. Student is currently enrolled in a private school (Private School) at the option of the Parents. (N.T. 43-44.)
2. Student is eligible for special education under the IDEA. (N.T. 44.)

Early Educational History

3. The Parents obtained a speech/language evaluation of Student in the summer of 2019, prior to the start of Student's entry into school-

aged programming, due to concerns with delayed and dysfluent speech. Student resumed private speech/language therapy after that evaluation, having previously been provided those services in 2015 and again over 2017-18. (N.T. 50, 54-55, 657; P-2 at 2.)

4. The private speech/language pathologist identified Student with a developmental language disorder in 2019, a term defined by the science of speech and language disorders. The report reflected average-range phonological awareness and phonological processing scores with areas of speech/language strength and weakness; following verbal directions was challenging for Student. (N.T. 660, 664-65; P-4.)
5. The private speech/language pathologist determined that Student performs better with multisensory presentation rather than relying on language. (N.T. 665, 667-68.)
6. The Parents hired a private tutor for Student prior to entry into [redacted] grade, and generally maintained those services while Student was enrolled in the District. (N.T. 504-08.)

2020-21 School Year

7. The District conducted an evaluation of Student and issued an Evaluation Report (ER) in November 2020. Student had been enrolled in the District since the fall of 2019. (S-1.)
8. Parental input into the November 2020 ER referenced the private speech/language evaluation and other documents previously submitted. The ER reflects that they viewed Student's motivation, enthusiasm, respect, creativity, and outgoing social personality to be strengths. In the area of weaknesses, the Parents saw mathematics to be a preferred but challenging subject, with a short attention span

and frustration with an inability to read as concerns. (P-15; P-16 at 1-2; S-1 at 1-2.)

9. Teacher input into the November 2020 ER reflected Student's strengths to include Student's cooperation, respect, motivation, and friendly nature. Weaknesses included difficulties with reading decoding and comprehension as well as fluency; mathematics skills; and a need for reminders to remain on task and focus on instruction. (P-16 at 3; S-1 at 3.)
10. Cognitive assessment for the November 2020 ER (Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V)) yielded an average-range Full Scale IQ score of 91, with all Composite scores in the average range except Processing Speed (low average). (P-16 at 5-7; S-1 at 5-7.)
11. On the Wechsler Individual Achievement Test – Third Edition (WIAT-3), Student's Total Achievement composite score was in the below average range, as were scores on the Total Reading, Basic Reading, Written Expression, and Math Fluency composites; Reading Comprehension and Fluency was in the low range, with Oral Language and Mathematics composite scores in the average range. Listening comprehension was a relative strength with a standard score of 100 (solidly in the average range). (P-16 at 7-11; S-1 at 7-11.)
12. An ability-achievement discrepancy analysis for the November 2020 ER using the two Wechsler measures reflected a significant difference in areas of reading (reading comprehension, word reading, pseudoword decoding, and oral reading fluency subtests); the same is true for the Total Reading, Basic Reading, and Reading Comprehension and Fluency Composites. The Written Expression

and Math Fluency Composites also yielded a significant difference on the discrepancy analysis. (P-16 at 9; S-1 at 9.)

13. The District also obtained rating scales from the Parents and teacher using the Behavior Assessment System for Children – Third Edition (BASC-3) for the November 2020 ER. The only notable result is a clinically significant concern with learning problems by the teacher; neither rater identified any other concerns including with hyperactivity and attention problems. (P-16 at 10-12; S-1 at 10-12.)
14. Speech/language evaluation for the November 2020 ER also conducted. Parental concerns in that area at the time related to reading (letter recognition, sounds, sight words, word recall, and overall). Teacher input, by contrast, reflected no concerns. Results of the measures for this evaluation suggested some areas of weakness (word meaning, word knowledge, oral expressive language) but not identification of a speech/language impairment. (P-16 at 13-16; S-1 at 13-16.)
15. The November 2020 ER identified Student as eligible for special education on the basis of Specific Learning Disability in reading fluency, reading comprehension, and written expression because of severe discrepancies between aptitude and achievement in those areas. Identified needs in this ER were for basic reading skills including decoding; reading fluency; reading comprehension; and written expression (mechanics and conventions). (P-16 at 19-20; S-1 at 19-20.)
16. The Parents reviewed and discussed the November 2020 ER with the District school psychologist. (N.T. 80-81, 83.)
17. A meeting of Student's Individualized Education Program (IEP) team convened in November 2020. The Parents expressed concerns at

that meeting including the proposed reading interventions and support. (N.T. 384-86, 391; P-19.)

18. The November 2020 IEP contained annual goals addressing reading fluency (increasing rate from 20 to 65 words correct per minute at instructional level); reading comprehension (applying learned strategies with 90% accuracy to Level 18 texts from a baseline of Level 4, a difference of 7 levels); and nonsense word fluency (one syllable nonsense words at 80% accuracy from a baseline of 57%). Program modifications and items of specially designed instruction (SDI) were included to support reading and written expression (mechanics and conventions) needs, including direct instruction in those areas, in addition to providing test and assignment accommodations. At the Parents' request, an additional item of SDI provided for math fluency practice. The Parents approved the Notice of Recommended Educational Placement (NOREP) for this IEP. (P-19; P-20.)
19. In March 2021, the District proposed and the Parents approved Extended School Year (ESY) services for Student for the summer of 2021. (P-24; S-3; S-4.)
20. Student began in-person instruction in the District in approximately April 2021 after the Parents elected to have Student remain remote following the COVID-19 pandemic. In-person instruction had been provided to students by the District in a hybrid format beginning in October 2020 and full-time in February 2021. (N.T. 576-77, 852; P-32 at 4.)
21. Progress reporting on Student's IEP goals in April 2021 reflected that Student was reading fewer words correct per minute but at the next higher level than in January 2021; exhibited some growth with

reading comprehension at the next higher level than in January 2021; and made slight growth in decoding one-syllable nonsense words. (S-48A.)

22. Progress reporting in June 2021 reflected that Student was reading the same number of words correct per minute but at the next higher level than in April 2021; exhibited slight growth with reading comprehension at the next higher level than in April 2021; and made some growth in decoding one-syllable nonsense words compared to April 2021. Student's overall progress since November 2020 indicated that Student was not on a trajectory toward mastery of the initial IEP goals by November 2021. (S-48A.)
23. Student's report card at the end of the 2020-21 school year indicated that Student was meeting most expectations at the end of the year across subject areas and with learner characteristics, except that English/Language Arts skills was an area with more approaching expectations because Student was not at grade level. (S-48.)
24. Student participated in ESY in the summer of 2021. A summary report reflected that Student worked on reading fluency and comprehension. (S-7.)

2021-22 School Year

25. Student was in a co-taught classroom for the 2021-22 school year, with both a regular education and special education teacher in addition to a teacher's assistant. There were approximately 25 students in the class. (N.T. 966-67.)
26. Student's November 2021 progress report indicated no progress on the reading fluency goal; some progress on the reading comprehension goal at one level higher than in June 2021; and maintenance of decoding skills compared to June 2021. Student was

far from mastery of the reading fluency and comprehension goals, and the apparent progress on decoding was later determined to be not maintained. (P-55; S-48A.)

27. A November 2021 meeting of Student's IEP team convened to develop a new program. At that time, Student was determined to be at an instructional reading level at mid-first grade, and was below grade expectations. Although Student was in the regular education environment for all instruction, the District determined a need for additional support in reading in light of Student's lack of foundational skills in that area. (N.T. 497, 983-84, 1214-15; P-26; P-29; S-11 at 7-9.)
28. Needs identified by the November 2021 IEP were in the areas of basic reading skills and decoding; reading fluency, reading comprehension; written expression (mechanics and conventions); and attention/focus during large group instruction. (S-11 at 10.)
29. Annual goals in the November 2021 IEP addressed reading fluency (from 31.25 correct words per minute at Student's instructional level to 65 correct words per minute); reading comprehension (from level 12 to level 28 (end of second grade)); and reading decoding (from one-syllable to multi-syllable nonsense words). However, Student's decoding skills would be addressed by a different program that would begin with the goal Student had been working on since November 2020. (S-11 at 7-8; 14-16.)
30. Program modifications and items of specially designed instruction in the November 2021 IEP included small group instruction and individualized support for reading and mathematics; direct, explicit instruction in decoding and encoding three times per week; graphic organizers and similar supports for written expression; repeated

directions presented with visual supports with checks for understanding; practice and repetition; breaks for focus/attention; test and assignment accommodations; and preferential seating. (P-26; S-11 at 17.)

31. The November 2021 IEP proposed learning support at an itinerant level, with Student participating in regular education for all instruction. (P-26; S-11 at 19.)
32. Immediately after the November 2021 progress report and IEP meeting, the Parents began an investigation into private schools and private evaluations. (N.T. 96-97, 156-58, 164-65.)
33. On December 2, 2021, the Parents responded to the District with a letter advising of their intention to place Student in a private school and to seek reimbursement from the District for those costs, citing to the applicable sections of the Code of Federal Regulations. (P-27; S-15.)
34. The Parents also arranged for a private neuropsychological evaluation of Student in December 2021. The Parents' major concerns were with Student's reading, spelling, and writing skills. The private neuropsychologist observed Student at school at that time. (P-32.)
35. Another IEP meeting convened in December 2021 at the District's request after receipt of the Parents' letter. The District suggested a different reading curriculum for Student to be provided in a special education resource room environment in a small group for the ninety-minute English/Language Arts block. The District also proposed thirty minutes of Wilson Reading instruction to be provided beginning just prior to the start of the school day. (N.T. 501-02, 511-15, 521, 989-990, 992-93, 1217-18; P-28; P-29; S-16; S-17; S-18 at 9-10.)

36. The IEP was revised along with that December 2021 meeting to add parental input as well as several items of specially designed instruction: study guides for science and social studies; instruction on making inferences and predictions when reading; instruction on drawing conclusions and make generalizations between decoding and encoding skills in content area classes; and instruction of mnemonic strategies across subjects for new materials as part of a multisensory approach. Further revisions were for resource room instruction for Language Arts, and Wilson reading instruction three times per week; Student was also determined to be eligible for ESY services. Student's program was one of learning support at a supplemental level, with Student outside of regular education for Language Arts instruction and the direct explicit decoding and encoding instruction (Wilson). (S-18 at 9-10, 12-13, 19-21.)
37. Student began resource room instruction for Language Arts in January 2022. The teacher used a variety of programs with Student to address reading fluency, decoding, encoding, and comprehension. (N.T. 1203, 1212-16, 1244-47, 1294-95; P-92.)
38. In early January 2022, the Parents asked for an increase in the Wilson instruction and a writing goal; they also requested evaluations in the area of speech/language and occupational therapy. (S-23.)
39. Another IEP meeting in mid-January 2022 convened to discuss the Parents' new requests. Student's IEP was revised to provide for the Wilson Reading instruction for 45 minutes four times per week; the reading decoding goal was revised to align with the Wilson program anticipating Student progressing from step 1.3 to step 3.3; and a new written expression goal was added for writing five-sentence paragraphs with transitional spelling although Student was writing eight-sentence paragraphs at that time. Student's program

remained learning support at a supplemental level. (P-37; S-26 at 6-7, 10-11, 16-18, 20; S-49 at 7.)

40. After the District began implementing the December 2021 IEP, Student exhibited some signs of anxiety especially at home. (N.T. 524-26, 1009-10; P-44; S-31.)
41. Student experienced difficulty and frustration with a required project that involved a presentation in the spring of 2022. The Parents worked to assist Student with completing that project at home, as was expected of all students. Student began to exhibit a reluctance to go to school around that time. (N.T. 529-31, 534-35, 1221-22.)
42. An occupational therapy evaluation was completed by the District in February 2022. The District occupational therapist observed Student on two occasions, one for large group instruction and one for a small group activity. She also spoke with Student's teachers and viewed some of Student's work samples. (N.T. 1144-46, 1178-79; P-38; S-33 at 8-9; S-46.)
43. No need for occupational therapy was indicated by the District evaluation of fine motor, visual motor, and visual perceptual skills, although Student did at times exhibit difficulty with orienting lines across midline, but not at other times for the evaluation. (P-38; S-33 at 8-9; S-46 at 5-6.)
44. A speech/language evaluation was also completed by the District in the spring of 2022 that included observations and teacher input. That evaluation did not reveal a need for direct services, including with word retrieval, but monthly consultation was suggested in addition to several items of specially designed instruction: encouragement and modeling of sequential language and sentence

starters; phonemic cues as needed; and providing wait time. (N.T. 1323; P-39; S-33 at 9-11; S-46.)

45. Student's IEP was revised again in March 2022. By that time, the speech/language and occupational therapy evaluations had been completed, and the IEP incorporated the results. New items of specially designed instruction consistent with the speech/language evaluation recommendations were added; another such item addressed notice of changes to schedules in advance. (P-41; S-33.)
46. The Parents made the decision in the spring of 2022 to enroll Student in a private school and gave a second notice to the District in mid-April 2022 of their intention to do so and seek reimbursement. Student began attending the private school (Private School) on or about May 9, 2022. (N.T. 540-41, 546, 1000-01; P-48; S-37; S-45.)
47. The District replied to the Parents after the April 2022 notice and asked them contact the District to schedule another IEP meeting. (P-49; S-38.)
48. Progress reporting on IEP goals in mid-April 2022 reflected some progress in reading fluency at a beginning- to mid-second instructional level; minor progress in reading comprehension at an early second grade instructional level; significant progress toward mastery in decoding at a Wilson 3.1 level; and essential maintenance of skills on the written expression goal for paragraph writing. (P-47; S-49.)
49. In late April 2022, Student's IEP team convened again. Several new items of specially designed instruction were added relating to generalizing decoding skills across subject areas, participation in a reader's theater activity, and access to a calming room; school counselor consultation was also made available. (P-50; S-41.)

50. The Parents returned the NOREP accompanying the April 2022 revised IEP, and did not approve the recommendation because they believed it to be inappropriate for Student. (S-42.)
51. The Parents did not formally disenroll Student from the District when Student began attending Private School. (N.T. 608-09.)
52. Student's report card for the end of the 2021-22 school year revealed that Student was meeting expectations in a majority of the areas, except that English/Language Arts reflected Student's instructional levels. (P-51.)

Private Neuropsychological Evaluation Report

53. In late April 2022, the Parents received and provided the report of the private neuropsychologist to the District. (S-43.)
54. On a measure of cognitive assessment for the private neuropsychological evaluation (WISC-V), Student attained a General Ability Index score of 98, which was determined to be most the accurate representation of ability due to variability among Index scores. (P-32 at 4, 16.)
55. Assessment of achievement for the private neuropsychological evaluation (Fourth Edition of the WIAT (WIAT-4)) reflected deficits in the areas of reading, spelling, written expression; mathematics scores were in the average range. (P-32 at 5, 18.)
56. The private neuropsychologist also administered assessments of Student's executive functioning skills including rating scales completed by teachers and the Parents. A number of areas of weakness were identified including focus, attention, effort, memory, and organizational skills. Separate assessment of memory, however, revealed average to superior range skills. (P-32 at 7-8, 17.)

57. Other rating scales for the private neuropsychological evaluation explored Student's behavioral functioning, yielding only a few minor concerns other than attention and learning problems (teachers) and hyperactivity, functional communication, and atypicality (Parents). (P-32 at 8-9.)
58. The private neuropsychologist concluded that Student met diagnostic criteria for a language disorder, specific learning disorder in reading and written expression, and ADHD. The evaluation did not analyze eligibility under the IDEA, but did provide a number of educational recommendations including intensive specialized instruction in reading decoding; supports for attention; organizational and memory retrieval skill support; visual support for instructions; pre-teaching and re-teaching of content; support for changes to expectations and transitions; and specific suggestions for executive functioning weaknesses such as breaking down directions, visual cues and supports, and providing a routine. (P-32.)
59. Student's unique presentation of strengths and weaknesses required very explicit, structured instruction that included significant repetition as well as comprehension and attention checks. (N.T. 815-86;
60. Student exhibited less anxiety shortly after beginning to attend the private school. (N.T. 591-92.)

Spring 2023

61. In March 2023, the Parents notified the District of their intention to seek reimbursement for Private School for the 2023-24 school year because the District's "program and placement currently being provided" to Student did not meet Student's needs. They advised that they intended to "place [Student] at [Private School]...no sooner

than ten business days from the date of" the letter. (N.T. 535; P-57; S-53.)

62. The District convened an IEP meeting in March 2023. Although the District had sought authorization from the Parents to obtain current information from Private School, consent had not yet been provided at the time of the meeting. (N.T. 555-56, 616, 619, 1021-22, 1239-40; P-58; P-59; S-55 at 7.)
63. At the March 2023 IEP meeting, the Parents expressed their belief that Private School was "the appropriate placement" for Student. They brought a binder of Student's work at Private School to show the District team members, and described Student as doing well there. (N.T. 555-56, 625, 1021, 1240, 1282-83.)
64. The Parents thought they would receive a new District IEP at the March 2023 meeting. (N.T. 621-22.)
65. A number of items of specially designed instruction were added to the IEP in March 2023: small group instruction for executive functioning skills; use of reading strategies in content-area classes; chunking of mathematics problems for assignments and assessments; practice with sight words; written expression supports (graphic organizers, an editing checklist, teacher conferences); access to materials over extended breaks; guidance counseling; and a transition plan to return to the District. (P-60; S-55 at 7, 27.)
66. The District did not issue a NOREP after the March 2023 IEP meeting. (N.T. 559.)
67. On March 20, 2023, the District sought the consent of the Parents to conduct a reevaluation. The Parents provided consent on May 8, 2023. (P-61.)

68. On March 23, 2023, the Parents provided the District with the update from the private neuropsychologist consisting of an observation at Private School and a new WIAT-4 administration. The private neuropsychologist described the WIAT-4 scores as reflecting expected growth in general but better than expected growth with sentence building and oral reading fluency. (P-63.)
69. In April 2023, the private speech/language therapist provided a reevaluation report. Results of that reevaluation maintained the developmental language disorder diagnosis and supported the diagnosis of dyslexia. (P-73.)
70. Student's IEP was again revised in May 2023 following receipt of the update to the private neuropsychological evaluation from the same evaluator with parental input; however, Private School had not provided information other than a summary of scores based on a grading scale across subject areas, and the results of an administration of the Wilson Identification and Spelling Test. Parent input was limited to disagreement with some of the information in the March 2023 IEP including progress Student reportedly made. (P-71; S-56 at 7, 19.)
71. Student was diagnosed with vision dysfunction including convergence insufficiency by an optometrist in July 2023. Vision therapy was recommended by the optometrist with an excellent prognosis noted. (P-82.)
72. A private occupational therapy evaluation in July 2023 did not recommend direct services, but did suggest incorporation of sensory input into Student's daily routine. (P-86.)
73. Private School provided some records to the District in mid-September 2023. (S-58.)

74. The District completed a reevaluation of Student with a comprehensive report issued in September 2023 with an addendum in October 2023. The Reevaluation Report (RR) included observations by the District school psychologist. This RR continued to identify Student as eligible for special education under the Specific Learning Disability category but expanded to include mathematics calculation. (N.T. 1387-88; S-57.)

Private School

75. Student was accepted to Private School in December 2021 and began attending there in May 2022. (N.T. 886; P-31.)
76. Private School uses a language-based curriculum and provides direct, individualized instruction to its students, sequentially building on foundational skills and using multisensory strategies. In addition to language instruction, students receive mathematics, science, and social studies; and weekly study, organizational, and communication skills classes are provided. Students also have special classes. All of Student's classes have a small number of students. (P-54; P-87; P-110.)
77. Private School provides structure and consistency across the school day using strategies inherent in its reading and writing programs. Review and practice are provided in all classes. All of its teachers are trained in the reading program Student has been using and some are certified. (N.T. 904-06, 911; P-87; P-105.)
78. Private School provides instruction and support for executive functioning skills and related skills such as study skills. (N.T. 907.)
79. In the spring of 2022, Student was not provided with speech/language and occupational therapy services, which are at additional cost, at Private School. Student did begin

speech/language therapy at Private School in late 2023, but not occupational therapy. (N.T. 563-64, 888, 915, 933, 938-39, 942-43; P-109.)

80. Student began the 2022-23 school year at a Wilson level 1.5 in the Private School's reading program based on an assessment published by the program, the Wilson Assessment of Decoding and Encoding. Student lacked the foundational skills of the early levels despite having reportedly approached level 3.1 in the District. (N.T. 890-92; P-55.)
81. Private School's progress report for Student for the 2022-23 school year indicated that Student demonstrated most skills across subject areas with ongoing or occasional support but with independent mastery in some areas especially in social studies and special classes. (P-70.)
82. Private School's progress report for Student for the first trimester of the 2023-24 school year indicated that Student demonstrated most skills across subject areas with ongoing or occasional support, but with independent mastery in special classes. (P-105.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof is comprised 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 rests with the Parents who filed the Complaint leading 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, in the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify before them. 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). On the one hand, some of the witness testimony that was contradictory or lacking in probative value may be attributed to lapse in memory or recall, or to differing perspectives, rather than any intention to mislead. On the other hand, there was testimony by several witnesses that was not persuasive from a credibility viewpoint.

The account of the Parent who testified was in large part generally credible based on the witness’ demeanor along with consistency with documentary evidence; nevertheless, this witness was defensive and somewhat evasive on cross-examination (e.g., N.T. 576-77, 623-24). Critically, the specific testimony that the Parents were open to a District placement in the spring of 2023, discussed more fully below, was not at all persuasive but, rather, was patently carefully rehearsed based on the investigation they conducted in the fall of 2021 and repeated in similar words several times throughout that testimony (e.g., N.T. 519, 555, 613, 645); their letter in March 2023 also did not support this portion of their testimony. The Parents’ understanding of the physical locations where Student was provided with Wilson instruction in the District was not based on first-hand knowledge, and was significantly in conflict with the persuasive testimony of the District’s special education teacher (N.T. 1018-19, 1041-43) based on her forthright demeanor and descriptions of the rooms used. The testimony of the Parents’ private occupational therapist was also not

convincing with respect to Student's needs in that area, particularly because her testimony contradicted her own report on whether services were indicated; she also conceded that she tailored her evaluation report to Private School (N.T. 1110), had wrongly believe that Private School was providing occupational therapy for Student (N.T. 1111-12), and made recommendations for Student's success in all settings rather than limited to an educational environment (N.T. 1113-14). Finally, the Parents' private speech/language pathologist overall testified from a framework of best practices, going far beyond the mandates in the IDEA. By contrast, however, the testimony of the private neuropsychologist and Private School professional on Student's needs in the spring of 2022 were probative and convincing. Testimony not specifically described in this decision was deemed to be forthright and credible as to the facts.

The weight accorded the evidence was also not equally placed. The Parents' private neuropsychologist and speech/language pathologist provided reports that were made available just before Student enrolled in Private School and therefore were of limited value to the claims relating to a majority of the 2021-22 school year. The 2023 reports of the optometrist and private occupational therapist similarly did not directly relate to Student's strengths and needs prior to their evaluations.

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

General IDEA Principles

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education

services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 399 (2017).

Individualization is clearly the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). “The IEP *must aim* to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018)(emphasis in original). IEP development, of course, must

follow and be based on an evaluation as monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

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. 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).

When parents disagree with an LEA’s educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Parents are entitled to an IEE funded by the LEA if its evaluation does not meet IDEA criteria. Here, the Parents obtained private evaluations and thereafter sought reimbursement for those costs. However, the analysis is the same in this context.

General IDEA Principles: Least Restrictive Environment

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

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

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

General IDEA Principles: ESY Programming

The FAPE requirement extends to provision of ESY services as necessary for the child. 34 C.F.R. § 300.106(a)(1). Pennsylvania sets forth a number of criteria that IEP teams must consider to ascertain whether a student is eligible for ESY; in essence, a determination must be made on whether ESY services are “required as part of a Student’s program.” 22 Pa. Code § 14.132(a). Eligibility is established if the factors in Section 14.132(a)(2) “make it unlikely that the student will maintain skills and behaviors relevant to IEP goals and objectives.” Pennsylvania Department of Education, Basic Education Circular, Extended School Year Eligibility (April 15, 2013). If the student is eligible, the team must also determine the services to be provided. 22 Pa. Code § 14.132(a)(1).

In determining whether a proposed ESY program is appropriate, the general principles applicable to special education must be applied, since ESY services must be provided in accordance with the child's IEP. 34 C.F.R. § 106(b). The fundamental premise for ESY services has generally been described as preserving skills that the child has gained over the school year, rather than as a means for maximizing growth. "An ESY program continues the goals and objectives of the IEP during the summer months, after the school year has concluded, so the student does not regress from one school year to the next." *L.G. v. Wissahickon School District*, 2011 U.S. Dist. LEXIS 476 *16 n.3, 2011 WL 13572 (E.D. Pa. 2011). As noted, FAPE does not require a maximization of programs or services, and ESY services are not an exception to that general principle.

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: Compensatory Education

It is well settled that compensatory education may be an appropriate remedy where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate

educational services, as a quantitative award, after excluding the time reasonably required for a school district to correct the deficiency. *Id.* The Third Circuit has also endorsed an alternate approach, sometimes described as a “make whole” or qualitative remedy, where the award of compensatory education is crafted “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville-Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

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 IDEA Principles: LEA Obligation for Students Not Enrolled

LEAs have different obligations to students enrolled in private schools than to students attending their schools; generally, an LEA is not required to continue to develop IEPs for students outside of the District through a unilateral placement unless the parents make such a request. “A parent need not affirmatively enroll their child in public school to receive an offer of a FAPE,” but he or she “must either manifest an intent to enroll the child or request an evaluation.” *A.B. v. Abington Sch. District*, 841 F. App'x 392, 396 (3d Cir. 2021) (citations omitted); *see also Moorestown Township Board of Directors v. S.D.*, 811 F.Supp.2d 1057 (D.N.J. 2011) (concluding that a parent’s request for an evaluation by a public school prior to enrollment triggers the duty to conduct an evaluation and develop an IEP); *I.H. ex rel. D.S. v. Cumberland Valley School District*, 842 F. Supp. 2d 762, 772 (M.D. Pa. 2012) (same). “Once these IDEA requirements are triggered, private school tuition reimbursement [may be] an appropriate remedy only where ‘there has been a substantive harm—namely, that ‘the [school district] ha[s] not made a [FAPE] available to the child in a timely manner.’ ” *A.B.*, 841 F. App'x at 395 (quoting *C.H. ex rel. Hayes v. Cape Henlopen School District*, 606 F.3d 59, 67 (3d Cir. 2010)). These same principles apply equally to Section 504 claims. *A.B.*, 841 F. App'x at 396 n.8.

General Section 504 and ADA 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). Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012). Courts have long recognized the similarity between claims made under those two statutes, particularly when considered together with claims under the IDEA. *See, e.g., Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). Thus, in this case, the coextensive Section 504 and ADA 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

Before turning to the claims, it is prudent to note that, in an ideal world, there would never be any errors or minor flaws in special education programming, including documentation. However, the law does not demand perfection of LEAs. This record became overly voluminous in part because there at times was a focus on insignificant details.⁶

The first issue is whether the District denied Student FAPE over the summer of 2021 and the 2021-22 school year prior to enrollment in Private School. This multipart issue is not, as the Parents appear to suggest, necessarily dependent on whether the District implemented every recommendation of the publisher of their preferred reading program for Student throughout the time period in question. The parties' positions on FAPE must be assessed according to the above IDEA standards.

⁶ *See, e.g.,* N.T. 557-58, referencing a word on S-56 p. 7, which could and likely does have a meaning other than "when," such as "because". Even the report of a private evaluator at P-4 p. 20 contains a name that is not Student's.

Chronologically, ESY in the summer of 2021 may rationally be addressed first. The Parents assert rather summarily that the services provided were not appropriate and that no progress on Student's IEP goals was obtained or reported. As noted above, however, a main purpose of ESY services is to limit or avoid regression in skills over the lengthy summer break, and the IEP team is to determine the specific services to be provided. In arguing that failure to provide Wilson instruction as part of that ESY program was improper without acknowledging the premise for such services, the Parents have not met their burden of establishing a denial of FAPE for the summer of 2021.

The 2021-22 school year began for Student essentially where the 2020-21 school year ended: Student was not on a trajectory to attain mastery of most of the November 2020 IEP goals by the annual review. Student's progress on the reading goals can, at best, be described as minimal to essentially stagnant in light of the expected growth according to the goals themselves; although the decoding goal suggested progress, that reported growth ultimately was not maintained. In short, the approach of providing multiple reading and related programs over the course of a week rather than one cohesive, structured, sequential methodology as described by the SDI was ineffective in enabling Student to acquire and build on foundational skills. In addition, despite an identified need in written expression, there was no such goal in the fall of 2021 and, thus, it is impossible to determine whether Student gained necessary skills; when a goal in this area was added at the Parents' urging in January 2022, Student was already reportedly exceeding the skills that the goal expected. As the Parents also point out, the written expression goal additionally seeks to measure multiple skills at the same time, and progress on any single skill is therefore impossible to determine. The most that can be gleaned about

Student's written expression needs in the fall of 2021 is that they remained areas of weakness.

The District did recognize in late fall of 2021 that Student required more intensive support in the area of reading, ultimately proposing a special education environment for Language Arts. While of course the principle of the least restrictive environment is critical for all students with disabilities, this understanding was or should have been apparent to the District much earlier, prior to the start of the 2021-22 school year. By the time that placement was instituted, Student had already experienced almost half of a school year of limited progress toward gaining the necessary foundational reading and related skills that Student still lacked. The testing completed by Private School in the fall of 2022 convincingly and clearly establishes that whatever small gains Student may have made over the 2021-22 school year in the areas of reading and written expression were not sufficiently developed and cemented but, instead, Student needed an intensive program to acquire the most basic of those skills. None of these deficiencies were corrected through mid-April 2022 when the Parents ultimately decided to enroll Student in Private School.

With respect to ESY 2022, Student had already been determined to be eligible for those services by March. The IEP team should determine what services would be provided but, by the time those decisions would have been appropriate to consider, Student was no longer attending school in the District and there was no basis for such services. The Parents have not established a denial of FAPE for the 2022 ESY program.

With respect to the 2023-24 school year and ESY 2024, the Parents have not established that the District had any obligation to Student who was enrolled in Private School. Their March 2023 letter simply informed the District that they sought tuition reimbursement for Private School for the 2023-24 school year; they referenced a program "currently being provided"

by the District despite the fact that Student had left the District nearly a year earlier. They did not ask for a District program, nor did they request an evaluation. Instead, they expected an immediate IEP proposal in response to that letter, despite the District not having permission to secure Private School input including Student's then-current present levels. In essence, the Parents in the spring of 2023 unquestionably wanted only to keep Student in Private School, a perception that many District witnesses recognized easily. Unlike the Parents' stance in December 2021 and early 2022, they demonstrated no interest whatever, spoken or unspoken, to collaborate with the District in the spring of 2023 to consider a new program for Student there. The evidence as a whole does not reflect that they were willing to consider further proposals by the District, nor did they manifest such an intention that may have triggered a District response. Accordingly, and irrespective of whether or not the Parents formally withdrew Student from the District, there is also no basis for the 2023-24 tuition claim including that for ESY services in 2024.

Remedies

Compensatory Education

Having found a denial of FAPE for the 2021-22 school year through enrollment in Private School, Student is entitled to compensatory education. The Parents seek a qualitative remedy, but have not even suggested, much less provided probative evidence of, an appropriate award on this basis. Therefore, a quantitative basis for compensatory education is appropriate. The late fall and early 2022 IEPs proposed ninety minutes of daily English/Language Arts special education in addition to one hundred eighty minutes weekly of Wilson reading instruction, totaling just over two hours per day. Student shall thus be awarded two hours of compensatory education for each day that school was in session over the 2021-22 school year through enrollment in Private School. There is no reasonable

rectification deduction because the District, like the Parents, were aware before June 2021 that there were serious flaws in Student's programming.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs. The compensatory education may not be used for products or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress should Student return to the District. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age sixteen (16). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents; and the cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

Tuition Reimbursement

The *Burlington-Carter* test requires a denial of FAPE, which was found for the 2021-22 school year including the spring 2022 revisions that would extend into the 2022-23 school year. The second prong requires an assessment of whether Private School is appropriate for Student. The evidence overwhelmingly establishes that it was. Private School provided a structured setting, a language-based curriculum with individualized

instruction including multisensory strategies, executive functioning support, and appropriate class sizes and subjects for Student's level. The program provided Student with necessary reading skill instruction that both the private neuropsychologist and Private School professional credibly described as necessary for Student's unique learning needs. Student has reportedly exhibited growth in known deficient basic skills in that environment. The Parents have established its appropriateness for purposes of this prong.

The final consideration is the equities. During the 2021-22 school year, the Parents demonstrated serious concern with the District's programming but, for several months after their initial letter about Private School, continued to attend IEP meetings and make suggestions for revising the IEP. This collaboration is abundant evidence of their intention to maintain a working relationship with the District through May 2022, and there is nothing in the record to reduce or deny reimbursement for that time period on equitable grounds.

By contrast, for the 2023-24 school year, even if one were to conclude that the District was obligated to develop an IEP after the March 2023 letter, the equities would not favor the Parents and would instead operate to deny any relief. They did not provide consent for Private School records until the date of the March 2023 meeting at which they expected a new IEP for their consideration. Their consent to a reevaluation was not at all prompt, resulting in an RR in the fall after Student had already begun the 2023-24 school year. As noted above, the Parents did not manifest any intention to collaborate with the District on programming decisions after Student left for Private School. While the Parents understandably did what they thought best for Student, they simply may not recover reimbursement for tuition without having provided the District with a meaningful opportunity to propose a new IEP based on Student's then-current strengths and needs.

Private Evaluations

Finally, the Parents requested reimbursement for the various private evaluations and other services they have obtained. The 2019 private speech/language evaluation was obtained prior to Student's entry into school-age programming and cannot be the responsibility of the District. The other private evaluations were procured at or after the same time that the Parents had already decided to pursue private school programming for Student, and were not secured for purposes of District program development. *L.M. ex rel. M.M. v. Downingtown Area School District*, 2015 U.S. Dist. LEXIS 49336 *75, 2015 WL 1725091 (E.D. Pa. 2015) (denying reimbursement of an IEE that was not pursued as part of the collaborative IEP process but conducted after enrollment in the private school). Moreover, none of those reports were available until after the District lost the opportunity to propose a program for Student that could include that valuable input. Reimbursement for private evaluations and any private services must be denied, and the Parents' asserted child find and related denial of FAPE claims shall be dismissed.

CONCLUSIONS OF LAW

1. Student was deprived of FAPE with respect to reading and language arts needs over the 2021-22 school year through enrollment in Private School.
2. Student is entitled to compensatory education.
3. The Parents are entitled to reimbursement for their cost of tuition and related expenses from the May 2022 enrollment in Private School through the end of the 2022-23 school year.

4. The District was not obligated to offer an appropriate program for the 2023-24 school year.
5. The Parents are not entitled to reimbursement for any private evaluations or services.

ORDER

AND NOW, this 22nd day of January, 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. Student is entitled to two hours of compensatory education for each day that school was in session in the District over the 2021-22 school year through enrollment in Private School. All of the conditions and limitations on that award set forth above are expressly made a part hereof as though set forth at length.
2. The Parents are entitled to full reimbursement for their cost for tuition and related expenses at Private School for the time Student was enrolled there in May 2022 through the end of the 2022-23 school year but not beyond.
3. 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 time of Student's May 2022 enrollment through the end of the 2022-23 school year.
4. Within thirty calendar days of receipt of the above documentation, the District shall reimburse the Parents for the full amounts pursuant to this order. The District is not obligated

for any amounts for which the Parents were not charged by Private School for the time period described in ¶ 2 herein.

5. The District is not ordered to take any further action.
6. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms in writing.

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. 28208-22-23