

By Order dated February 28, 2024, by the Honorable Mark A. Kearney, ODR File Number 27061-22-23 was remanded. This is the remanded hearing officer decision.

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**

CLOSED HEARING

ODR No. 29347-23-24

Child's Name:

Q.M.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Judith Gran, Esquire
19 Chestnut Street
Haddonfield, NJ 08033

Local Education Agency:

Central Bucks School District
16 Welden Drive
Doylestown, PA 18901

Counsel for LEA:

Mark W. Cheramie Walz, Esquire
331 East Butler Avenue
New Britain, PA 18901

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

June 17, 2024

INTRODUCTION AND PROCEDURAL HISTORY

The student, Q.M. (Student),¹ is a [redacted] student whose Parents reside within the boundaries of the Central Bucks School District (District). This matter is before this hearing officer on a remand by the Federal District Court of the Eastern District of Pennsylvania, following its review of her May 2023 decision in favor of the District on a claim for reimbursement for tuition and related expenses at a residential private school (Private Placement).² An administrative decision was previously issued by this hearing officer addressing claims related to the programs over the 2019-20 through 2021-22 school years, and tuition reimbursement for Private Placement was awarded for the 2021-22 school year.³ The same Court had remanded the Parents' newly raised claim on appeal for the 2022-23 school year to the undersigned, resulting in the May 2023 administrative decision.

Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA) and has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973⁴ and the Americans with Disabilities Act (ADA).⁵ Student reportedly remains in Private Placement at the election of the Parents.

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 Formal citation is not made to the Court's decision because, unlike in this administrative forum, it appears to include potentially personally identifiable information about Student. See n. 1, *supra*. The decision has been admitted as Hearing Officer Exhibit (HO-) 1.

³ *Q.M. v. Central Bucks School District*, No. 24978-2021AS (Skidmore, January 15, 2022).

⁴ 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).

⁵ 42 U.S.C. §§ 12101-12213.

The issue presented for disposition in May 2023 was the same as that in the prior decision relating to the 2021-22 school year, with the Parents claiming that Student required Private Placement as of the spring of 2022 for the 2022-23 school year in order to receive an appropriate education. The administrative record in the prior matter relating was incorporated into that proceeding on remand by agreement of the parties (N.T. 8, 30).

Review of the full record for that May 2023 decision⁶ was remarkably hindered by the parties' jointly held but erroneous belief that incorporation of the two previous administrative records included filings made in the District Court.⁷ In its Memorandum accompanying the order of remand, the Court suggested that additional proceedings may be necessary and the parties were provided with that opportunity.⁸ The Parents, without objection, submitted three relevant documents from those court filings (a Joint Appendix, a Joint Case Management Plan, and the District's response to a set of interrogatories and request for production of documents), which together exceed 700 pages, and each of those was admitted into the record. Those exhibits, particularly those surprisingly relative few which were never previously introduced in this forum, have been carefully reviewed in drafting this decision on remand.

⁶ *Q.M. v. Central Bucks School District*, No. 27061-2223AS (Skidmore, May 20, 2023).

⁷ This assumption was pointed out to the parties in the May 2023 decision, with the Parents in their closing statement quoting from and citing to federal court records relating to, as a notable example, a specific definition of "total [redacted] security". The current evidentiary filings submitted by the Parents are comprised of documents through June 2022; their newly admitted Joint Case Management Plan includes a stipulation of fact filed in the District Court that the parties and hearing officer had agreed to incorporate "the record made in the [first] action in federal court." P-2 at 4 ¶ 17. Following this remand, it was clarified by the undersigned that, when a party appeals a special education decision to a court, ODR is at some point directed to transmit the administrative record. When a court thereafter decides that case, it does not transmit its record to ODR or provide access to its electronic filings, which is especially important in these cases where documents are often filed under seal. In the current remand, even the District Court pointed to the "extensive discovery" by the District prior to March 2022 (HO-1 at 23-24), of which this hearing officer had only limited knowledge in the spring of 2023.

⁸ HO-1 at 28.

The District Court specifically remanded the case for a more detailed analysis of certain elements of the claims presented under the legal authority applicable to the issues. This hearing officer welcomes the relatively rare opportunity in IDEA cases to revisit a decision, as is required in the current remand in a very complicated case with a Student having complex needs. All of the factual findings contained in the May 2023 administrative decision are incorporated herein as though set forth at length.⁹ Although this decision is written primarily for the parties and potentially the District Court, all of whom are very well versed in the multifaceted procedural history, factual background, and prior administrative decisions cited herein, it is prudent to set forth a number of them from the May 2023 decision with the original citations to provide proper context.

Student is [redacted] and has been identified as a child with a disability based on Other Health Impairment. The Parents reside in the District but Student is in a residential placement out of state. (P-25 at 1; S-24 at 1, 55-58.)

Student has been diagnosed with [redacted], a genetic condition that impacts Student's entire life (medical condition). The medical condition is a rare disorder with a major characteristic that the individual is constantly [redacted]; there are additional manifestations, as with Student, within the individual's cognitive, physical, and emotional/behavioral domains. Individuals with the syndrome generally fall somewhere along a continuum, with Student at the more severe end. (N.T. 129-32, 233-240 242-44, 247, 249, 260, 307-08, 310, 423-24, 429, 452-53, 459, 470-71, 484, 486-89.)

⁹ Both of the previous decisions are available to interested readers on the ODR website.

District's March 2022 Proposed IEP

A meeting of Student's IEP team convened in the spring of 2022 attended by the Parents. (N.T. 36, 219; S-4.)

The District requested [in early February 2022] that the Parents execute a release of medical records. The Parents did not sign a release but agreed to having District representatives convene a separate, remote meeting with Private Placement staff. When the Parents asked the District to identify the specific records it sought, it did so. (N.T. 42-43, 65, 73-74, 220-22; S-5.)

The IEP team discussed [redacted] security to include full-time supervision and management of/restriction on Student's access to [redacted]. A classroom near a [redacted] was determined to not be appropriate. For community-based activities and instruction, the team discussed the need for home-school communications prior to each event, so that the specific circumstances of the location could be addressed and, as necessary, Student would not participate when [redacted] security could not be maintained. (N.T. 227-35, 242-43.)

The District's proposed IEP developed in March 2022 incorporated information from Private Placement in the present levels sections, including a summary of its FBA and the behavior support plan. Post-secondary transition information from the 2020-21 school year in the District was also included. (S-6 at 7-21.)

Parent input into the March 2022 IEP reflected their anticipation that Student would ultimately obtain full-time supported employment. They reported that Student was not independent with many activities of daily living including personal hygiene,

safety awareness, transportation, using a budget and a bank account, and time and household management. However, they also conveyed that Student no longer engaged in difficult behavior. Their main concern was [redacted] security in the school environment, and they expressed a preference for Student to remain at Private Placement. (S-6 at 22-23.)

Needs identified in the March 2022 were reading comprehension, language comprehension, functional mathematics, and written expression skills; speech intelligibility; self-regulation and coping skills; visual motor and gross motor skills including coordination; and life and employability skills. (S-6 at 24.)

Annual goals in the March 2022 IEP addressed reading comprehension (passage comprehension, identifying main ideas/supporting details); mathematics (solving two-step word problems using addition and subtraction as well as answering questions on calendar, time, and money concepts); written expression (paragraph writing with supports); gross motor skills (strengthening and flexibility exercises, ascending and descending stairs, negotiation curbs); fine motor skills (bilateral coordination, coping skills); speech/language (self-monitoring volume, tone, clarity, listener comprehension); vocational skills (completing a task analysis); independent use of coping skills; and self-regulation/problem solving. All of the goals contained baselines. (S-6 at 36-49.)

Transition services in the March 2022 IEP identified a post-secondary goal to attend a training program for public safety or a related field, an employment goal of supported employment, and an independent living goal of supported living. (S-6 at 29-31.)

Program modifications and items of specially designed instruction in the March 2022 IEP were for direct functional reading and writing instruction; pre-reading activities; direct instruction in functional mathematics along with additional supports; direct instruction in and practice with social skills; direct instruction in executive functioning skills; opportunities for implicit and higher-level questions; community-based instruction; clear questioning; supports for auditory input; opportunities for narrative language; consistent classroom routines; preparation for changes to routine or schedule; eye contact before giving instructions or new materials; reminders for articulation; opportunities for movement and high-interest materials for learning engagement; access to sensory input; a visual schedule; visual cues for calming strategies; assistive technology for writing tasks in addition to typing instruction; a [redacted]-secure environment across all classroom settings; scheduled [redacted] and [redacted] monitoring with all [redacted] sent from home; parent-school discussion of strategies for managing [redacted] security in community-based activities; and instruction in hygiene and personal care. (S-6 at 55-60.)

The March 2022 IEP contained a Positive Behavior Support Plan (PBSP) addressing non-compliance and aggression based on the Private Placement FBA. Antecedent strategies provided for choices throughout the day; modifications to the environment or task for non-preferred tasks; a visual schedule; preparation for changes to routine and transitions; first-then statements; alternating preferred and non-preferred tasks; blueprints for coping with difficult situations; positive affirmations; earned

breaks at defined intervals of compliance. Replacement behaviors were also identified (coping skills, functional communication, developing flexibility, social skills including self-advocacy) as well as consequences for problematic and replacement behaviors. Positive reinforcement, reinforcers, and breaks were specified for engaging in replacement behaviors. (S-6 at 25-27, 51-54.)

Related services in the March 2022 IEP were for individual and consultative occupational, physical, and speech/language services in addition to full time paraprofessional support. Training by an organization for people with Student's medical condition would be provided to the members of the IEP team was one element of the supports for school staff. (S-6 at 61-63.)

The March 2022 IEP provided for a program of full-time learning and life skills support, with Student's participation in general education for physical education, lunch, and community-based instruction. The remainder of Student's instruction would be provided in a special education setting. (S-6 at 67-68.)

The Parents did not agree to the one-on-one paraprofessional, stating that Student did not need that supervision at school. (N.T. 230-31.)

The District provided a Notice of Recommended Educational Placement (NOREP) on March 25, 2022 with the proposed IEP. (S-7 at 1.)

The Parents provided additional Private Placement records, specifically Student's February 2022 Comprehensive Treatment

Plan, when they returned the NOREP as disapproved. (N.T. 256, 265-68, 275.)

Student's endocrinologist conducted an evaluation of Student in March 2023, the first appointment since sometime in 2019 or early 2020. The physician rarely lets more than two years elapse between examinations. (N.T. 170-72, 190.)

Student's medical condition has become more serious as Student has gone through[redacted], as is typical for that condition. Student has had more significant medical consequences; and the family including Student report an increase in behavioral manifestations (anxiety, obsessive tendencies, and rigidity) in addition to increasingly uncontrollable [redacted]. (N.T. 168-70, 172-73, 191-94.)

Student has exhibited social and emotional growth at Private Placement. (N.T. 110.)

FINDINGS OF FACT

The following findings are new and are largely based on the newly admitted exhibits from the District Court.¹⁰ surprisingly few of which were never part of the administrative records prior to the instant remand.

1. A student with the medical condition that Student has can be successful in a local school if access to [redacted] is managed and restricted, and the student is not a danger to self or others when dysregulated. Supervision is also necessary. However, only students

¹⁰ Citations to N.T. in these findings are to the notes of testimony presented in the case resulting in the May 2023 decision, *supra* n. 6.

on a less severe position on the continuum of the medical condition than Student is have been successful in such an environment. (N.T. 133-34, 173-74, 198-99, 201.)¹¹

2. In late March 2022, the Parents asked for documentation from Private Placement to provide to the District with some information deemed to be “not relevant” (pertaining to a “sensitive situation” and being a victim) removed. (P-1 at 307, 310.)
3. Also in late March 2022, “five weeks after” the District asked for specific Private Placement records, the Parents provided a “draft IEP” but not the “actual IEP.” (P-2 at 5, ¶¶ 27, 28.)
4. In May or June 2022, the District obtained Student’s records from Private Placement pursuant to a federal court subpoena. Those records included “hundred[s] of pages of incident reports that were not available to the District at the time of the March 25, 2022 IEP meeting.”¹² (P-2 at 5 ¶ 31; P-3 at 13 ¶ 6.)
5. The District did not convene another IEP meeting or revise the March 2022 IEP after receipt and review of the Private Placement records. (P-3 at 24 ¶ 11.)
6. As of December 2023, while the second appeal was pending in the District Court, the Parents provided a definition of “total [redacted] security” in a formal discovery request as follows: “a system in which [redacted] is present only during meal times and [redacted] is locked up and out of sight at all other times and where, in a school setting, there is no [redacted] during instruction, special events or anywhere in

¹¹ This is a revision through a necessary additional sentence to that in the May 2023 decision at 13, ¶ 42.

¹² It is unclear from the existing record what, if any, other records were provided.

the school building except during meal times in the cafeteria.” (P-3 at 4-5 (citation omitted).)

7. In a previous similar formal discovery request by the Parents in June 2022, the District did not object to this same definition of total [redacted] security but, in answer to a differently worded question, responded that it offered a “[redacted] secure environment” in the high school. (P-1 at 652-54.)
8. In the Parents’ December 2023 formal discovery request, the District confirmed that it would not provide “total [redacted] security” at the high school pursuant to the March 2022 IEP but rather would provide a “[redacted] secure environment” with citation to provisions of that proposed IEP. (P-1 at 653.)
9. In the Parents’ December 2023 formal discovery request, the District objected and declined to respond to the question of whether the conference with Private Placement representatives prevented it from offering appropriate services in the March 2022 IEP. (P-3 at 16-17.)
10. As of the spring of 2023, Student continued to require an environment where [redacted] was not accessible throughout, including in trash cans and locked desk drawers. An individual such as Student with the medical condition experiences extreme anxiety when [redacted] is available in educational settings such as adjoining classrooms, and the individual will focus only on trying to obtain access to that [redacted]. (N.T. 178-85, 189-90.)
11. If Student is in an environment where [redacted] is available (*i.e.*, one without total [redacted] security), Student’s significant anxiety and related behaviors that would be manifested would preclude Student from being available for educational instruction because Student’s

mind would be wholly occupied with obtaining that [redacted]. (N.T. 174-76, 180-83.)

12. If Student were removed from a setting that did not provide the support that Student has had at Private Placement, Student's relative success in that environment would not continue. (N.T. 102-04.)
13. The District's March 2022 proposed IEP for Student did not, as a whole, offer total [redacted] security as defined by the Parents and Student's endocrinologist. (P-1 at 490-564.)

RELEVANT LEGAL AUTHORITY

General IDEA Principles: Substantive FAPE

The IDEA mandates that states provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. "Special education" consists of specially designed instruction. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(a). "Specially designed instruction" is adapting the content, methodology, or delivery of instruction as appropriate to a child with a disability to meet educational needs and to provide for access to the general education curriculum. 34 C.F.R. § 300.39(b)(3).

Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed the IDEA's statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act. Through local educational agencies (LEAs), states meet this 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). An IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Andrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 399 (2017).

Individualization is, of course, the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the law demands services that are reasonable and appropriate in light of a child's unique circumstances, and not necessarily those that his or her "loving parents" might desire. *Andrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). "The IEP *must aim* to enable the child to make progress," but progress is not measured by what may be ideal. *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

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). Nevertheless, evidence subsequent to the development of the IEP may be considered but "only in assessing the reasonableness of the district's initial decisions regarding a particular IEP or the provision of special education services at all" rather than to engage in "Monday Morning Quarterbacking." *Susan N. v. Wilson School District*, 70 F.3d 751, 762 (3d Cir. 1995) (citing *Fuhrmann*, 993 F.2d at 1040).

General IDEA Principles: Least Restrictive Environment

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

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

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

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

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

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

General IDEA Principles: Parental Placements

Parents who believe that an LEA is not providing or offering FAPE to their child may unilaterally place him or her in a private school and thereafter seek reimbursement. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Such is an available remedy for parents to obtain 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 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.* Nonetheless, “[t]he IDEA was not intended to fund private school tuition for the children of parents who have not first given the public school a good faith opportunity to meet its

obligations". *C.H., supra*, 606 F.3d at 72 (finding in the alternative that denial of reimbursement was warranted where the parents did not cooperate and assist in IEP development) (citation omitted); *see also* 20 U.S.C. § 1412(a)(10)(C)(iii)(III) (permitting a reduction or denial of reimbursement for unreasonable actions taken by the parent).

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.

DISCUSSION ON REMAND

The District Court specified several areas for additional analysis by the undersigned on remand: (1) the bases for the opposite results in the January 2022 and May 2023 decisions; (2) the value of the testimony of Student's endocrinologist in the spring of 2023; (3) the District's LRE obligation as applied to Student; and (4) the equitable considerations on the part of both parties that are part of the tuition reimbursement test. The overarching theme in the Court's Memorandum accompanying the instant remand Order is that a detailed discussion on Student's needs relating to [redacted] security was necessary. Each of these shall be discussed but with the first deferred to follow analysis of the other three if necessary.

The evidentiary value of the testimony of Student's endocrinologist was evaluated for both the January 2022 and May 2023 decisions. In May 2023, that endocrinologist had recently evaluated Student for the first time in approximately three years. As such, her evaluation was not available at the time of the March 2022 IEP and its content and conclusions could not have reasonably been known by the District. Nonetheless, her testimony has been corroborated and amply supported by the newly submitted independent evidence, establishing that the District was aware of the Parents' definition of total [redacted] security in the spring of 2022 and did not propose to provide that level of support for Student at the high school. The endocrinologist's testimony in the spring of 2023 that Student could not be successful in an educational environment where [redacted] is available confirmed what the District already knew in in the spring of 2022, and lends further support to the position of the Parents on the first prong of the tuition reimbursement test. As was explained in the January 2022 decision, her testimony was compelling in the spring of 2023 in light of her experience, qualifications, and knowledge of Student; thus, her opinions must be and are highly credited. Her testimony was also supported by that of the representative of Private Placement that Student exhibited growth there, but

if the level of support provided to Student were diminished for longer than a period of approximately ten days, Student would regress substantially (N.T. 103-04, 107-10). This conclusion is both cogent and well reinforced by all of the evidence of record.

The application of LRE principles also requires modification and elaboration in light of the record as a whole including the newly submitted evidence. In conducting an LRE analysis, the focus is on whether the child is educated with children who are not disabled to the maximum extent appropriate. In order for a child to be excluded from the regular education environment, the nature or severity of the disability must preclude successful inclusion even with supplementary aids and services. As noted above, the District was aware of the level of [redacted] security that Student continued to require in the spring of 2022. In January 2022, this hearing officer observed that, as in *Kruelle, supra*, 642 F.2d at 694, the “consistency of programming and environment is critical to [Student’s] ability to learn.” Once again, the testimony of Student’s experienced endocrinologist is entirely consistent with that conclusion, as are her opinions that Student’s needs remained unchanged from her previous evaluation of Student; that the medical and emotional components of the residential program were and are intertwined with educational instruction in order to meet those needs; and that Student continued to be in need of residential placement. This evidence is accordingly in harmony with the following conclusions reached in January 2022 on LRE:

Although the District understandably responded based upon its LRE obligations, the record preponderantly establishes that Student’s presentation as of May 2021 was at a point where Student’s intricate constellation of needs could not be met in a District high school for the fall of 2021. The testimony of Student’s endocrinologist as to Student’s medical needs, coupled

with the testimony of Private Placement professionals, leads to the inescapable conclusion that Student at that time required a structured, [redacted] secure, residential environment that includes care 24 hours a day, 365 days a year, focused on daily living skills and developing coping and emotional regulation skills in order for Student to derive benefit from, and receive, an education. As such, Student's medical needs are not segregable from, but rather are part and parcel of, the specially designed instruction Student requires based on Student's unique circumstances.¹³

The evidence establishes more than preponderantly that Student's ongoing needs for total [redacted] security could not be met in a regular education environment in March 2022, even with intensive supplementary aids and services. Again, this information was known to the District in the spring of 2022. In addition, a consistent, structured residential environment remains a fundamental imperative, and prevents Student's participation in any educational program in a less restrictive setting. Contrary to the District's argument in its brief on remand, the fact that Student has occasionally gained access to [redacted] at Private Placement does not undermine the opinion of Student's endocrinologist that the provisions for [redacted] security March 2022 IEP would subject Student to increased anxiety and other behavioral manifestations preventing access to instruction; moreover, that fact strongly suggests that access to [redacted] would be even more likely in a less [redacted]-secure environment. Accordingly, Private Placement continued to be the LRE appropriate for Student in the spring of 2022 for all of the reasons above. No contrary

¹³ *Q.M., supra* n. 3, at 29-30.

conclusion can be derived from the evidentiary record as supplemented for this remand.

Having determined that the March 2022 was not appropriate and that Private Placement was, further discussion of the equitable considerations, the fourth area for the remand, is also warranted in light of the record as a whole. As this hearing officer previously observed in the May 2023 decision, there are many circumstances where a parent's lack of full cooperation in the program development process may lead to denial of reimbursement. For example, "[a] parents' single-minded refusal to consider any placement other than a residential one" may preclude reimbursement as "an unreasonable approach to the collaborative process envisioned by the IDEA." *C.G. v. Five Town Community School District*, 513 F.3d 279, 288 (1st Cir. 2008). In addition, a public school's inability to communicate directly with a student's medical providers because of a lack of parental permission may impede a collaborative IEP process. *See, e.g., Oconee County School District*, 2015 U.S. Dist. LEXIS 85226, 2015 WL 4041297 (M.D. Ga. 2015).

As was the case at the time of the January 2022 decision, the Parents continued in the spring of 2022 to decline to execute a release of Private Placement records; further, they only agreed to provide certain documents from Private Placement, at least one of which apparently was redacted to some extent at their request. They clearly curtailed the District's ability to communicate with Private Placement representatives, and although the District had been present through testimony by one of them prior to March 2022, adequate up-to-date information was necessary to determine Student's then-current needs. Finally, and extraordinarily, despite a reduction in the award for tuition and related expenses in January 2022 by this hearing officer¹⁴ and an explanation of the necessity for an LEA to

¹⁴ The District Court previously affirmed the 15% deduction in the award.

communicate with private providers in order to properly develop a program, the Parents maintained that posture. While, again, this may be understandable from a parent's perspective, the degree of their cooperation with the process in the spring of 2022 must be balanced with their continuing failure to permit open communications even after the January 2022 cautions to them. The Parents' argument in their brief on remand does not serve to support their claim of cooperation, appearing to suggest that the District's successful efforts at obtain Private Placement records pursuant to a federal court subpoena somehow overcomes their failure to agree to provide them voluntarily when requested. The Parents' actions clearly operated to hinder collaborative development of an appropriate IEP by the District in the spring of 2022.

By contrast, the District adhered to the applicable timelines, worked collaboratively with the Parents, and did not appear to vehemently object to the limitations that the Parent's placed on its efforts to obtain relevant information in the spring of 2022. Although the District also did not ask specifically about [redacted] security at Private Placement at that time, it was already aware from hearing testimony of the high level provided to Student in that setting. None of these circumstances suggest that the District's own conduct was flawed on an equitable basis.

Balancing these respective equities, and upon further reflection, this hearing officer concludes that a reduction in the award of reimbursement as was done in January 2022 and affirmed by the District Court remains appropriate. The reduction shall be 20% of the total cost of tuition and applicable related expenses, with the small increase because the Parents continued to resist the case law cited by this hearing officer in support of full cooperation in IEP development and more open communication between the District and Student's medical providers including at Private Placement.

Their reticence was previously described by the undersigned as “perplexing,”¹⁵ and it remains so.

Having reached the above conclusions on the second, third, and fourth areas identified above as specific reasons for the current remand, it is not necessary to elaborate on the first. The conclusion today is consistent with that in January 2022 with the exception of the amount of the reduction on equitable grounds for the reasons expressed in the above paragraphs.

An order consistent with the foregoing follows.

ORDER

AND NOW, this 17th day of June, 2024, in accordance with the above, it is hereby **ORDERED** as follows.

1. The District’s proposed program for the 2022-23 school year was not appropriate for Student.
2. The Parents are entitled to reimbursement for tuition and related expenses, including the residential component, of Private Placement for the 2022-23 school year.
3. Within fifteen calendar days of the date of this decision, the Parents shall provide documentation to the District of all invoices and receipts for tuition and direct related expenses for Student at

¹⁵ *Q.M., supra* n. 6 at 22.

Private Placement for the 2022-23 school year, including residential services. These expenses do not include costs associated with family visits to the geographic area of Private Placement.

4. Within thirty calendar days of receipt of the documentation, the District shall reimburse the Parents for the amount of the invoices and receipts provided by them, less 20%, pursuant to this decision and order.
5. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 29347-23-24