

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

ODR No. 27912-22-23

CLOSED HEARING

Child's Name:

A.B.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

07/28/2023

INTRODUCTION AND PROCEDURAL HISTORY

The student, A.B. (Student),¹ is an early elementary school-aged student who resides and attends school in the Marple Newtown School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² under the Autism Spectrum Disorder and a Speech/Language Impairment classifications.

In April 2023, the District filed a Due Process Complaint under the IDEA, seeking an order granting it permission to make referrals to private schools in light of the Parent's refusal to provide consent for it to do so. The case proceeded to an efficient due process hearing.³

Following review of the record and for all of the reasons set forth below, the District's claim cannot be sustained and will be denied.

ISSUE

Whether the District should be granted permission to provide referrals of Student to private schools that it

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 References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, Parent Exhibits (P-) followed by the exhibit number, and Hearing Officer Exhibit 1 (HO-1). The parties initially prepared a rather extensive record but, commendably, agreed to significantly limit the exhibits and testimony to that which was directly relevant to the narrow issue presented.

believes would be appropriate over the Parent's objection?

FINDINGS OF FACT

1. Student is an early elementary school-aged student residing within the District. Student attended a District elementary school over the 2021-22 and 2022-23 school years and has been identified as eligible for special education under the IDEA. (N.T. 35-37, 457-58.)
2. Student has been seen and evaluated by medical professionals at Children's Hospital of Philadelphia over the years and also has had ongoing private occupational and speech/language therapy. (N.T. 459-62, 463-65, 467, 514-15; P-8; P-9; P-20; S-87.)

Early Educational History

3. Student was evaluated by a local Intermediate Unit (IU) in May 2021. Student was not able to complete most of the assessments attempted due to self-stimulatory behavior as well as limited communication skills. The IU identified areas of strength including emerging communication, fine motor, and preacademic skills; it also determined that Student met the criteria for Autism with deficits in adaptive development, communication, social functioning, cognitive development, and learning. (S-14.)
4. Annual goals in an Individualized Education Program (IEP) developed in August 2021 addressed functional communication and functional social engagement, as well as physical and occupational therapy needs. The IEP included a plan for addressing problem behaviors in addition to specific related services: occupational, physical, and speech/language therapy, and social skills group. Student's program would be implemented in a program of life skills at a supplemental

level, with participation in regular education during lunch, recess, snack, special classes, and special events in Student's neighborhood school. (S-14.)

District's Environment 2021-22 and 2022-23 School Years

5. Student is essentially nonverbal at school except for a few words, and has used picture icons and an AAC device to communicate. As of the end of the 2022-23 school year, Student typically communicated with single words with prompting but not independently. (N.T. 162, 167-78, 211, 270, 458.)
6. Student has engaged with peers very minimally at school and has required prompting to interact with them. However, Student has exhibited an emerging ability to imitate peers. (N.T. 269-70, 282, 286-87, 416-18, 440.)
7. Student has had the opportunity to attend lunch and recess with typical peers when problem behavior is not exhibited, and to specials under the same condition. The time spent in general education does not necessarily reflect the level of Student's availability for instruction. (N.T. 88, 135-36, 142-44, 405-07, 413-14.)
8. Student has engaged in aggressive behavior toward others at school, including pulling hair, hitting, and grabbing adults and peers. Student also has exhibited tantrum behaviors, yelling, and sometimes throwing objects. (N.T. 48, 170-71, 185, 257-58.)
9. Student is on a toileting schedule and does not typically communicate a need for the toilet. Student requires adult assistance for toileting and has engaged in aggressive behavior during those times. (N.T. 241-44.)

10. All District staff have been trained with safety care for body positioning and proactive strategies to minimize physical aggression during toileting. (N.T. 81-82.)
11. Student has had individual speech/language therapy twice each week as well as consultation by the therapist. (N.T. 162-63, 246-47.)
12. The District elementary school that Student has attended has more than 300 students in kindergarten through fifth grade. (N.T. 326.)

2021-22 School Year

13. Student entered school in the District in [redacted] during the 2021-22 school year, and had a full-time paraprofessional assigned to support Student. (N.T. 329-30, 458.)
14. Because of aggressive and other problems behaviors Student exhibited during the fall of 2021, Student's first year in the District, a District Board Certified Behavior Consultant (BCBA) conducted a Functional Behavior Assessment (FBA) for Student that was completed in December 2021. (N.T. 46-49; S-20.)
15. The December 2021 FBA identified physical aggression as the target behavior. This FBA resulted in two hypothesized functions of the target behavior: to escape a demand, and to access items or activities. (S-20.)
16. The District also conducted a reevaluation of Student with a reevaluation report (RR) completed in December 2021. This RR incorporated results of the recent IU evaluation and included additional assessments as well as the recent FBA. (S-21.)
17. New input into and assessments for the December 2021 RR by teachers and related service providers included behaviors at school;

occupational, physical, and speech/language therapy functioning; and social skills functioning. (S-21.)

18. The December 2021 RR summarized results of the Conners Early Childhood Rating Scale completed by the Parent and special education teacher. Overall on the behavior scales, the teacher's ratings reflected more concerns than those of the Parent. The teacher endorsed clinically significant concerns with defiance/temper; aggression; social functioning; atypical behaviors; and mood/affect; and elevated concern with inattention/hyperactivity. The Parent endorsed clinically significant concerns only with social functioning and atypical behavior. Both raters endorsed clinically significant concerns with all areas on the developmental milestone scales (adaptive skills, communication, motor skills, play, and pre-academic/cognitive skills). (S-21 at 17-20.)
19. The December 2021 RR identified Student as eligible for special education under the Autism category. Strengths included emerging skills in the areas of fine motor, visual motor, bilateral coordination, and self-help; interactions with adults and peers; and an interest in peers. Needs were for functional communication skills; further development of skills in the areas of sensory processing, fine motor, visual motor, bilateral coordination, and self-help; gross motor (lower extremity) strength; progression on developmental milestones; a larger variety of preferred items; and behavior (accepting no, compliance with adult-directed activities). (S-21 at 24-25.)
20. Recommendations in the December 2021 RR were for continuation of special education for development of developmental, functional, and pre-academic skills in a setting with a small student to teacher ratio; support for participating in some regular education; occupational,

physical, and speech/language therapy; social skills instruction; and a Positive Behavior Support Plan (PBSP). (S-21.)

21. An IEP was developed in January 2022 for Student. At that time, the Parent's concerns were about the time Student was with peers, and Student's self-help skills including feeding and toileting. (S-25.)
22. The January 2022 provided annual goals addressing functional life skills; functional communication (manding, use of two-word phrases, following one-step directions); occupational therapy (fine motor skills, self-help); physical therapy (gross motor skills); social skills (maintaining joint attention); and behavior (decreasing physical aggression). A number of program modifications and items of specially designed instruction were included in a program of life skills support at a supplemental level in the neighborhood school, with Student participating in regular education for recess, snack, and special classes. (S-25.)
23. Among the items of specially designed instruction in the January 2022 were a number of provisions for addressing the problem behavior: antecedent strategies (manipulation of environment to limit peer proximity, minimal distractions, access to preferred items, teaching positive incompatible behaviors); strategies promoting the replacement behavior (access to attention, modeling, reinforcement); and consequence strategies for the problem behavior (prompting, non-restrictive safety precautions). (S-25 at 46-47.)
24. Progress reports for the 2021-22 school year reflected incremental but steady progress toward Student's IEP goals and mastery of a few of those goals. (P-10.)

2022-23 School Year

25. During the 2022-23 school year, Student was accompanied full time by two adults, a one-to-one paraprofessional and a registered behavior technician (RBT). Student was very dependent on those support professionals but the District did rotate other staff in when possible. (N.T. 63-64, 170, 238, 282-84, 407-11, 429-30.)
26. During the 2022-23 school year, Student was in a life skills program that includes functional academics in a class of five students as well as special classes with typical peers. Student has been provided with intensive teaching sessions focused on verbal behavior but is highly prompt dependent. (N.T. 234-39, 240-41, 247-49, 253-55.)
27. The District speech/language therapist conducted a trial of an AAC device in the fall of 2022. Student has trialed two different applications on the device with the second a recommendation of the developmental pediatrician. (N.T. 163-87; S-96 at 19-30.)
28. In December 2022, the District reported that Student was engaging in a new, specific toileting behavior that was not seen at home. (N.T. 475-76, 553.)
29. Following the reports of the new toileting behavior, the Parent had Student medically evaluated. No medical cause was determined, but the Parent decided to have Student stop taking a medication that had been recently introduced. The behavior was essentially eliminated after that medication ended. (N.T. 79, 476-86, 503; S-90 at 4.)
30. A new IEP was developed in January 2023. At that time, Parent concerns were for the new toileting behavior and any consideration of a different placement for Student. Identified strengths and needs were similar to those in the December 2021 RR. (S-82.)

31. At the time of development of the January 2023 IEP, Student had made incremental but steady progress toward most IEP goals, including use of objects appropriately, manding, following directions, social skills (joint attention), and use of the AAC device, as well as on occupational and physical therapy goals. (P-10; S-82.)
32. Annual goals in the January 2023 remained essentially the same as those in the prior IEP, except that Student was to use the AAC device for using two-word phrases (for manding and tacting); new goals for functional life skills (imitation) and behavior (responding to directives and reducing tantrums) were added; and physical therapy goals were revised to reflect some progress on many of those skills. The program modifications and items of specially designed instruction essentially mirrored those in the previous IEP, with the addition of consultative services of a BCBA; and a revised PBSP was incorporated. (S-82.)
33. The PBSP in the January 2023 IEP maintained the content of the previous PBSP, but added a number of components. New antecedent strategies provided for a designated instructional area surrounded by a divider and staff placement to prevent physical interaction with peers. In replacement behaviors, indicating when Student was finished with an item or demand was added. Consequences for the replacement behavior added requesting a break. Other strategies in the January 2023 PBSP addressed a blocking protocol for physical aggression as well as the new toileting behavior. (S-82 at 50-53.)
34. The program proposed by the January 2023 IEP was for life skills and speech/language support at a full-time level, in the neighborhood school, with Student participating in regular education as Student tolerated depending on behaviors. (S-82.)

35. A second FBA was completed between January and March 2023. The behaviors of concern were physical aggression, engaging in tantrums, and the toileting behavior. The hypothesized function of the physical aggression was to escape demands and gain attention; that for tantrums was to access a preferred items or activity or escape a demand. The toileting behavior ceased while this FBA was underway. (N.T. 65; S-90; S-91.)
36. Student's IEP was revised in March 2023 to reflect Student's eligibility for extended school year (ESY) services. This IEP also provided data on the time that Student was in a general education setting between late November 2022 and late January 2023, with an average of nine minutes over the school day. (S-92.)
37. Student's IEP team met again in late April 2023. At that time, the District reported on a recent administration of the Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP), reflecting that Student did not yet exhibit a number of the early skills typical for children from birth to 18 months. Other updates to present levels were also provided, including data on instructional time over the course of the school day collected between late February and late April 2023, with inconsistent results ranging from 34 to 225 minutes per day. Continued data on total time in a general education setting through late April 2023 reflected an average of 52 minutes over the school day. (N.T. 90; S-102.)
38. Parent concerns at the time of the April 2023 IEP meeting included Student's peer interactions with two full-time staff members with Student at all times. Identified needs remained the same with a few gross motor skill weaknesses also listed. (S-102.)

39. Many of the goals in the April 2023 IEP were retained, but baselines were updated reflecting that Student had nearly mastered a few of the goals and was making progress on others; however, the level of prompting was omitted from many of the updated baselines. Behavioral data continued to indicate inconsistency. (P-12; S-102.)
40. The PBSP portion of the April 2023 was largely the same as in the prior IEP, but de-escalation techniques were added for calming. (S-102.)
41. Data collected after the April 2023 IEP meeting indicated continued inconsistent total instructional time and minutes in general education over the school day, but overall those results were not discrepant from the data provided in April. (S-103.)
42. As of the spring and summer of 2023, District professionals believed that Student needs a smaller educational environment with significant behavioral support as well as fewer transitions and distractions, in order to attain Student's fullest potential. (N.T. 272-73, 314, 325-26, 334-37, 344-45, 354-55, 371-72.)
43. As of the spring and summer of 2023, the Parent believed that Student benefits from interaction with and exposure to typical peers, and that peer modeling is important. (N.T. 493-95, 525-27.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof is generally viewed as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the District with its 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. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as each recalled them in light of his or her perspectives. The testimony actually contained few contradictions. The weight accorded the evidence, however, was not equally placed, with the documents particularly compelling on Student’s strengths, needs, and progress. The evidence will be discussed further below as is necessary.

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: Substantive FAPE

The IDEA requires each of the states to provide a “free appropriate public education” (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support

services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

Through local educational agencies (LEAs), states meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’ ” *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). 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 unmistakably 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).

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).

The Third Circuit in *Oberti* identified a two-pronged test for making a determination of whether a student's placement is in conformity with the LRE mandate in the IDEA. The first prong involves consideration of whether the child can, with supplementary aids and services, be educated successfully within the regular classroom. 995 F.2d at 1215. That question includes review of whether the LEA "has made reasonable efforts to accommodate the child in a regular classroom;" a comparison of educational benefit in the regular class with those in a special education setting; and consideration of potential negative implications on peers in the regular classroom. *Id.* at 1217-18. Then, if placement outside of the regular classroom is determined to be necessary, the second prong requires an assessment of whether the child has been included with non-disabled children to the maximum extent possible. *Id.* at 1215.

In assessing the first prong, the mere fact that a child might attain better academic progress in a segregated setting than in an inclusive setting is not the determining factor, because one must evaluate the unique benefits of the typical environment for the individual child, such as social skills and peer interactions. *Girty v. School District of Valley Grove*, 163 F.Supp.2d 527, 536 (W.D. Pa. 2001), *aff'd mem.*, 60 Fed. Appx. 889 (3d Cir. 2002)

(quoting *Oberti* at 1217). The U.S. Supreme Court's *Endrew* decision further recognized that educational benefit for a child with a disability is wholly dependent on the individual child, who should be challenged by his or her educational program. *Endrew, supra*, 580 U.S. at 399.

Also crucial to this analysis is a recognition that LRE principles "do not contemplate an all-or-nothing educational system" of regular education versus special education. *Oberti, supra*, 995 F.2d at 1218 (quoting *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1050 (5th Cir. 1989)). It is also generally true that LEAs are provided with broad authority to determine the site for providing special education services, as long as the selected location is appropriate. *White v. Ascension Parish School Board*, 343 F.3d 373, 382-83 (5th Cir. 2003); *Lebron v. North Penn School District*, 769 F.Supp.2d 788, 801 (E.D. Pa. 2011). Still, 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. The federal Office of Special Education Programs has explained this principle as requiring "first consideration" of the regular education classroom with supplementary aids and services. *Letter to Cohen*, 25 IDELR 516 (OSEP August 6, 1996).

General IDEA Principles: Procedural FAPE

Another core principle of the IDEA is that of procedural FAPE, which includes parent participation in educational decisions. *Schaffer, supra*, 546 U.S. at 53. The IEP is developed by a team, and a child's educational placement must be determined by that team based upon the child's IEP, as well as other relevant factors. 20 U.S.C. §§ 1414(d)(1)(B), 1414(e); 34

C.F.R. § 300.116; *Letter to Anonymous*, 21 IDELR 674 (OSEP 1994); see also *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258-59 (4th Cir. 1988). Special education law requires consent of the parents before certain actions may be taken. Where, however, a parent refuses to provide consent to a placement for the student, an LEA may file for a due process hearing to ensure that he or she is provided FAPE. *In re: Student with a Disability*, 119 LRP 37663 (SEA DC 2019).

The District's Claim

The District seeks to override the Parent's refusal to provide consent to its sharing of information about Student with private schools in order to proceed with referrals. The basis for its position is the belief of its professional staff that Student's needs may be better met in a non-public school environment at least until Student's significant deficits in communication skills and behavioral regulation are successfully addressed. The Parent views this recommendation as the District seeking to rid itself of the obligation to provide an educational program to Student (N.T. 545-47). This hearing officer does not share that perspective; the District witnesses provided genuinely convincing testimony that they have grave concern about Student having the opportunity to achieve Student's fullest potential in a public school setting.

As admirable as this belief may appear to be from an LEA perspective, the major flaw in the District's position is that it is contrary to the mandates in the IDEA. The law demands a program that is reasonably calculated to enable the student to make meaningful progress in light of the student's potential; and all of the testimony by the District witnesses as well as the Parent support the documentary evidence that Student has been making meaningful gains in light of Student's unique circumstances. Although the short time period during the 2022-23 school year when Student exhibited the new toileting behavior was clearly challenging and concerning, that

behavior was temporary and, after the medication stopped, Student resumed progress on IEP goals. Student also increased time spent in the regular education setting in comparison to that brief time period. The District's concern for the amount of time that Student is consistently available for instruction is certainly reasonable and understandable, but the IDEA does not require maximization of educational benefit. Rather, Student is entitled to a program that meets the *Oberti* standard.

The first prong, which is consideration of whether the child can, with supplementary aids and services, be educated successfully within the regular classroom, itself depends on three factors: whether the LEA has made reasonable efforts to ensure Student's access to regular education; a comparison of the benefits in the regular and special education settings; and consideration of potential negative implications on peers in the regular classroom. Here, the District has clearly taken reasonable steps to ensure Student's access to regular education; has considered the relative benefits of different settings; and has worked to limit negative implications on peers. Although the combination of these factors has unfortunately meant that Student sometimes has been unable to participate in regular education opportunities, the evidence is more than preponderant that Student has been exhibiting an ongoing interest in, and ability to imitate, peers who have and will continue to model appropriate behavior as well as social skills. As noted, consideration of this first *Oberti* prong does not depend on whether a student might fare better in a segregated setting; Student's needs for developing appropriate social skills and to have positive role models in this case outweighs the District's hope for better or maximum success in a more restrictive placement.

The second *Oberti* prong has similarly been met. With placement outside of the regular classroom necessary for a majority of the school day, the District has provided a program with Student included with typical peers

to the maximum extent possible, a conclusion that the Parent has never challenged. This hearing officer concludes that the least restrictive environment for Student at this time is that described in the January 2023 IEP in the District neighborhood school, where its professionals have continually, and appropriately, responded to the need for IEP revisions. This includes a recognition of Student's reliance on significant prompting and attachment to two individual support staff and the steps taken to address and fade that dependence.

This decision is based solely on the evidence presented at the hearing related to the District recommendation made in the spring of 2023. That is not to say that there may never come a time when consideration of a more restrictive placement may be necessary, and one might even be tempted to permit the referrals to private schools at this time in order to provide the IEP team with useful information on options for the future. Nonetheless, the precise issue here is whether the District has established a need to override the Parent's consent at this time, and the preponderant evidence of record demonstrates that the District has not met its burden of persuasion.

CONCLUSION OF LAW

The District has not established a basis for overriding the Parent's refusal to consent to private school referrals.

ORDER

AND NOW, this 28th day of July, 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the District's request to override the Parent's refusal to consent to private school referrals is DENIED.

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. 27912-22-23