

DELAWARE DEPARTMENT OF EDUCATION¹
SPECIAL EDUCATION DUE PROCESS HEARING PANEL

In the Matter of:)
))
C. C. (“Student”))
v.) DE DP # 22-04
REDACTED School District (“ District”)) Dates of Hearing: 11/5/21 and
) 11/8/21

Counsel for Petitioner/Student: Alexander Corbin, Esq.
Counsel for District: Jennifer Kinkus, Esq.

DECISION AND ORDER

INDEX OF NAMES FOR DECISION AND ORDER

ACTUAL NAME	REPLACEMENT NAME/TERM USED
REDACTED	Student
REDACTED	Mother
REDACTED	Private School
REDACTED School District	District
REDACTED	District’s Child Find Coordinator
REDACTED	District’s School Psychologist
REDACTED	District’s Speech Language Pathologist
REDACTED	District’s Lead Secondary School Psychologist
REDACTED	District’s Director of Special Services
REDACTED	Private School’s Head of Upper School
REDACTED	Student’s Teacher at Private School
REDACTED	Student’s Therapist

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A. SUMMARY

This Panel denies Student’s Complaint which is a request for reimbursement of Private School Tuition..

B. PROCEDURAL BACKGROUND

Student, on September 17, 2021, filed a Due Process Complaint (hereinafter “Complaint”) against District alleging District denied Student a free and appropriate education (“FAPE”) for the 2020-2021 School Year and requesting tuition reimbursement for the 2020-2021 School Year and attorney’s fees and costs. As the dispute did not resolve at the resolution hearing between the parties on October 4, 2021, a trial was conducted on November 5, 2021 and November 8, 2021 by zoom. The parties submitted a joint exhibit binder on or about October 29, 2021 which was updated by the parties by agreement prior to the first day of trial, and which contained about 428 pages. The parties further submitted a joint stipulation of facts on October 29, 2021. The exhibits in the Joint Exhibit Binder were admitted as evidence by agreement of counsel on the first day of trial, November 5, 2021. The parties submitted post trial briefs on November 19, 2021. This is the Panel’s decision after consideration of all of the testimony, stipulations, exhibits and arguments in the post-trial briefs and otherwise in these proceedings.

C. TESTIMONY AND EXHIBITS

As a preliminary matter while all of the, stipulations, testimony and exhibits as well arguments in the post trial brief submitted or otherwise made at trial was considered by the Panel prior to reaching this decision for the sake of brevity, not all are set forth in this decision.².

1. Summary of Important Joint Stipulations.

a. Student is REDACTED years old.

b. From about 2014 through 2018-19 School Year ending June, 2019, Student attended a Public Charter School in REDACTED and transferred to Private School for the 2019-20 School Year starting in September, 2019 .³

c. On July 30, 2020, Parents⁴ notified District for the first time via email that Parents were considering placement of Student in the District for the 2020-2021 School Year starting September 8,2021, and requested that the District develop an Individualized Education Plan (“IEP”) and appropriate programming for Student at District.

d. Student was currently eligible for special education services under the January 7, 2019 Evaluation Summary Report.

e. Student’s primary disability classification is Learning Disability and has a secondary disability classification of Other Health Impairment.

f. While Student was initially registered by Parents in the District for the 2020-2021 School Year at the REDACTED School, on August 25, 2020, Parent emailed the Principal, indicating that “{a}t this time, we do not feel that the programming

² Neither the absence of mention in this decision or the or the placement in this section, instead of the Findings of Fact does not mean a lack of consideration. Rather, it a function of the lack of time in drafting this decision.

³ While not in the joint stipulations, Student has remained at the Private School since September, 2019 and this is a finding of fact.

⁴ REDACTED PARENT was the Parent who did the majority of the communications.REDACTED PARENT was the only parent that testified. However, REDACTED PARENT attended the hearings as much as possible as well as the IEPS and there is an entire absence of any objection to positions REDACTED PARENT took in these matters.

services and placement in REDACTED School District is offering the upcoming school year will meet [Student]'s educational needs. We are providing notice that we intend to place [Student] at [Private School⁵] for the 2020-2021 school year, and we would ask the District to fund the tuition”.

g. The parties conducted the first IEP meeting on September 2, 2020 and Parents for Student participated. This was before the first day of school in the District which occurred September 8, 2020.

h. On September 14, 2020, after they had received the first IEP, Parents emailed District indicating that they agreed Student needed special education services, however they did not feel the program offered by the District was appropriate, and Student would attend the Private School for the 2020-2021 School Year. Parents sent the same note again when Parents returned the Signed Prior Written Notice to District on September 17, 2020.

i. The parties did a second IEP Meeting on September 24, 2020. Parents participated in this second IEP meeting on September 24, 2021 and the District offered a second IEP, to which Parents on October 2, 2020 emailed the District that while they didn't agree to the “appropriateness of the IEP⁶,but they would like to hear from the program discussed to get a better understanding.”

j. After the District completed a Speech and Language Evaluation on October 12, 2020, the District and Parents conducted another IEP meeting on October 29, 2020 where an IEP was presented. Following this meeting, Parents emailed District on November 13, 2020 that they did not agree with the program or placement offered at

⁵ Redacted in decision

⁶ This is the Second IEP offered by District which was offered at the September 24, 2020 meeting.

this IEP meeting and that the Student would continue at the Private School for the 2020-2021 school year.

k. The tuition for Private School for the 2020-2021 was \$27,675 and of which Parents received, \$4,500 for financial support.

2. District's Child Find Coordinator

The District's Child Find Coordinator was the liaison for children such as Student who had been attending private school, who were seeking special education services in the District and in transitioning such children to District.⁷ The District's Child Find Coordinator held that position for ten (10) years at the relevant times and had a Masters in Special Education and over nineteen (19) years' experience in Special Education when REDACTED dealt with Student.⁸

Shortly after, Parent's first contact to the District on July 30, 2020, on August 5, 2020⁹, District's Child Find Coordinator talked with REDACTED PARENT on the telephone. In most relevant part, REDACTED PARENT told District's Child Find Coordinator that Student had no current behavioral issues but had anxiety when previously bullied in a Delaware public charter school but had no medical diagnosis for anxiety or psychiatric disorders.¹⁰ REDACTED PARENT had a lot of concerns as to Student being on an academic degree track at this initial call. REDACTED PARENT also expressed a concern as about Student's articulation indicating Student recently was making speech sounds incorrectly.¹¹ The District's Child Find Coordinator indicated to REDACTED PARENT REDACTED would be requesting the records from the Private

⁷Tr. 11/5/21 at 31-32.

⁸ Joint Exhibit J-61

⁹ Tr. 11/5/21 at 42.

¹⁰ Tr. 11/5/21 at 37-38

¹¹ Tr. 11/5/21 at 39-40

School and asked REDACTED PARENT whether there was anybody else to talk to or obtain records from, **at which time REDACTED PARENT supplied no other names.**

¹² The information District’s Child Find Coordinator received from the Private School did not come all at once, but during the course of the month of August, 2020 ¹³ and included May/ June 2019 report from Dr. Herzl received in the middle of August 2020.¹⁴

The District’s Child Find Coordinator also sent out documents to be completed by Parents and Student. Student with REDACTED PARENT assistance completed the Transition Survey for Students on or about August 19, 2020.¹⁵ REDACTED PARENT completed the Transition Survey for Parent on or about August 19, 2020 ¹⁶ and the Parent Questionnaire- IEP Development (Secondary) on August 21, 2021. ¹⁷These did not indicate that Student currently suffered any psychological issues. ¹⁸ In the Parent questionnaire for IEP development Parent sent on August 21,2020, when asked about any medical information for the team to consider (evaluations, diagnoses, **therapy,** medication etc.) answered “Yes all have been submitted”.¹⁹ At that juncture, the District merely had knowledge of Student’s ADHD.²⁰

¹² Tr. 11/5/21 at 40- 41.

¹³ Tr, 11/5/21 at 43-44. See also, Joint Exhibit 30, J30-303.

¹⁴ While Dr. Herzl’s report relayed Student in 2019 had gaps in Social Comprehension but had excellent interpersonal skills that could confuse a casual observer. 11/5/21 at 143-144 discussing J23-253

¹⁵ Joint Exhibit 1

¹⁶ Joint Exhibit 2

¹⁷ Joint Exhibit 3

¹⁸ Exhibits 2 and 3

¹⁹ Exhibit 3, J3-008. Joint Exhibit 3, No. 5 J-008.

²⁰ Tr. 11/5/21 at 50.

The District did not receive parental consent to evaluate Student as to REDACTED speech/ articulation until on or about August 27, 2020.²¹ That is throughout August 2020 , the District was still collecting information about the Student.

On August 25, 2020²², Parents notified District that Student would be attending Private School for the 2020-2021 school year and that they would be requesting the District fund the tuition.²³

Despite this, the District continued to plan for Student. The District learned on or about August 27, 2020 from REDACTED PARENT, who filled out Student Background information that the Student was seen at a hospital specializing in mental health, Rockford , twice and Wilmington Hospital’s mental health division once²⁴ and the very next day, August 28, 2020, the District’s Child Find Coordinator asked for when this occurred and for documents concerning the visits, and REDACTED PARENT replied that day even though one of the visits was in July that “REDACTED PARENT didn’t save any paperwork”... “they discharged REDACTED . REDACTED **does have a therapist and a psychiatrist. But REDACTED sees regularly. Sorry I can’t give you more than that**”²⁵. As of then, the District’s Child Find Coordinator testified that the Private School had provided no information concerning Student's psychological treatment or counseling. ²⁶

The District’s Child Find Coordinator attended the September 2, 2020 IEP Meeting²⁷ where an IEP was presented (hereinafter “9/2/20 IEP”). The District’s Child Find

²¹ Exhibit J-4 , J4-012

²² This was only 4 days after Parents returned the Parent Questionnaire.. Exhibit 3, J3-009

²³ Tr. 11/5/21 at 54, See J 32, J32-311

²⁴ Joint Exhibit 33, J33-313-314.

²⁵ Tr. 11/5/21 at 56-57. Exhibit 33 J 33-313

²⁶ Tr. 11/5/21 at 56-57.

²⁷ Tr. 11/5/21 at 59.

Coordinator testified that in Math,²⁸ Reading²⁹ the Student would, in addition to regular period instruction, receive specialized services directly from the teacher as well as in small group instruction³⁰ utilizing research-based methods.³¹ Similarly for written expression, in the IEP, Student was to receive small group instruction with research-based interventions a minimum of four times a week of at least 15 minutes a piece.³² The REDACTED PARENT questions at the September 2, 2020 IEP Meeting were as to the Student being on a diploma track and being pulled out of class. At the First IEP meeting on September 2, 2020, the District brought up issues of Student's anxiety/mental health, however REDACTED PARENT testified that the District did not need to focus on that since Student was better since at Private School and these issues were related to bullying at a prior school.

As to the setting where Student would receive services in the 9/2/20 IEP, the District's Child Find Coordinator testified that under the IEP, Student would be educated in a "C" setting meaning Student would spend less than forty percent (40%) of REDACTED day in a general setting and receive core academic classes in a small group setting and REDACTED electives, as well as career pathways in a general setting.³³ The District also proposed that the Student receive a complete assistive technology evaluation when Student was in the District so they could evaluate Student's needs within the context of their school setting. District also proposed Student receive a functional

²⁸ Tr, 11/5/21 at 68- 72

²⁹ Tr, 11/5/21 at 72-79.

³⁰ Tr, 11/5/21 at 72, 78

³¹ Tr, 11/5/21 at 75. On Cross, District's Child Find Coordinator explained that in all the IEPs it sent the services set forth was set forth as minimums and that District informed parents it may be more but would not be less and Student's teacher would decide how much more if at all dependent on how Student reacted to instruction in District.. Tr. 11/5/21 at 165, 169.

³² Tr, 11/5/21 at 83

³³ Tr, 11/5/21 at 98-100

behavioral assessment when Student was at the District to see if Student's anxiety in the District environment triggered the need for additional supports.³⁴ The meeting ended with the District's belief that its IEP and program were sufficient for Student's educational needs and REDACTED PARENT indicating disagreement as Private School was working for Student³⁵

After the meeting, REDACTED PARENT e-mailed questions about the program offered in the 9/2/2020 IEP, which the District's Child Find Coordinator answered. When the REDACTED PARENT returned the initial 9/2/2020 IEP indicating her rejection, the District requested a meeting for possible revision of the IEP based on the REDACTED PARENT concerns to which the REDACTED PARENT agreed if it were short, about an hour, REDACTED could attend.³⁶ This second meeting occurred on 9/24/2020 where REDACTED PARENT indicated that Student's psychological emotional problems were presently being experienced, were ,a relevant need³⁷ . Thus, the District proposed a revision to the IEP that the Student's services be done at a different school, REDACTED DISTRICT SCHOOL, where there was a small group C setting known as STEP where Student would receive direct instruction in social and emotional learning in a self-contained setting, and in general education classrooms less than forty percent (40%)of the Student's school day³⁸ without the pull-outs, that REDACTED PARENT had indicated as problematic. The District offered the STEP program in response to REDACTED PARENT new information that Student's

³⁴ Tr, 11/5/21 at 102

³⁵ Tr, 11/5/21 at 103-104. Joint Exhibit 36, J36-322

³⁶ Tr, 11/5/21 at 110-111.

³⁷ Running away, cutting REDACTED Tr, 11/5/21 at 114. See also Tr. 11/5/21 at 176,

³⁸ Tr, 11/5/21 at 114-116. A C Setting means that Student is not in students in general setting more than 40% of day.

emotional needs were both present and severe,³⁹ and asked REDACTED PARENT to look at program informally, at which time then a 3rd meeting would be set up when District had the results of Student's speech and language evaluation.⁴⁰

The District modified its IEP on 9-24-21⁴¹ sent it to REDACTED PARENT who returned it indicating disagreement with the IEP but that REDACTED would look at STEP program to get a better understanding.⁴² The District's Child Find Coordinator testified while REDACTED PARENT spoke with folks from the STEP program REDACTED did not observe it in action.⁴³ In this 9/24/20 IEP, the District's Child Find Coordinator explained on cross examination that while Student would be getting access to 10th grade level materials, they would be taught to Student in a specially designed instruction on a level that Student could understand.⁴⁴

A third IEP meeting was done with the district on or about October 29, 2020 to discuss the results of the Student's speech and language evaluation.⁴⁵ At that meeting, the speech language evaluation was discussed and some accommodations were made for Student's mild word retrieval difficulties. The October 29, 2020 IEP was mailed to Parents who again indicated it was insufficient.⁴⁶ The District's Child Find Coordinator ended REDACTED direct testimony with REDACTED opinion that the IEP met

³⁹ Tr. 11/5/21 at 172.

⁴⁰ Tr, 11/5/21 at 117-118.

⁴¹ Joint Exhibits 12 and 13. On cross, District's Child Find Coordinator admitted the 9/24/20 IEP did not name a specific program for reading instruction in the IEP and the reason was that teachers have access to multiple programs and use what is needed for Student. Tr. 11/5/21 at 155.

⁴² Tr, 11/5/21 at 118 and J13-138.

⁴³ Tr, 11/5/21 at 119

⁴⁴ Tr. 11/5/21 at 162-164

⁴⁵ Tr. 11/5/21 at 130

⁴⁶ Tr, 11/5/21 at 136

Student's needs and supplied a good program as it was based on all of the information the District had access to and considered all team members concerns.⁴⁷

3. **District's School Psychologist** The District's School Psychologist⁴⁸ testified that REDACTED duties for the District were both to conduct assessments for intellectual and social emotional for students consult with staff, parents, and students and supply resources when needed. REDACTED was involved in the creation of the IEPs for Student from August, 2020 onwards with specific responsibility for drafting sections 4 and 5, and those sections in the IEP relating to Student's Social and Emotional Goals.⁴⁹

The District's School Psychologist testified that at the first IEP meeting on September 2, 2020. REDACTED PARENT questioned whether or not Student needed counseling in school.⁵⁰ REDACTED PARENT expressed REDACTED did not want Student pulled from classes or treated differently than other students, but that Student probably needed some help with the transition to a new school and that Student was getting help from an outside source.⁵¹ Notwithstanding, the IEP inclusion of therapy at school was appropriate as supported in reports reviewed, including Dr, Herzl's, but also because REDACTED was a new student in school⁵². Thus, in the September 2, 2020 IEP Student was to have individual Psychological counseling at least 30 minutes per week where they would assess student as to triggers for anxiety, and support Student with evidenced based strategies to cope with anxiety. Also, getting Student to recognize

⁴⁷ Tr, 11/5/21 at 137-139

⁴⁸ As to REDACTED qualifications, District's School Psychologist was a Dr. of Psychology, was an adjunct professor, and more critically had about 20 years' experience as a School Psychologist See Joint Exhibit 62.

⁴⁹ Tr, 11/5/21 at 186

⁵⁰ This was also testified District's Director of Special Services at TR. 11/5/21 at 268,

⁵¹ Tr, 11/5/21 at 192, 195-196

⁵² Tr. 11/5/21 at 196-197

REDACTED successes to bolster REDACTED confidence and to increase REDACTED self-advocacy skills.⁵³ As to daily monitoring, Student would use check in/check out with an adult twice daily.⁵⁴ Further if Student attended District, District required a release from Parents from Student's private therapist so the District's Psychologist, so District's Psychologist could create a consistency in the psychological management of Student with Teachers at District.⁵⁵

The District's School Psychologist further testified that the Second IEP of 9/24/20 where Student would be in a C setting in the STEP program was appropriate⁵⁶ and that if Student needed more to be done, it would be done.⁵⁷

4. **District's Speech Language Pathologist, The** District's Speech Language Pathologist testified that REDACTED did a full speech language evaluation as REDACTED PARENT has expressed a concern that Student's articulation skills had regressed.⁵⁸ After varied testing, the vast majority of which the District's Speech Language Pathologist testified that Student was in the average range. Thus, Student did not need Speech Language services⁵⁹. However, recommendations were made to the teaching of Student that were placed in REDACTED third IEP.⁶⁰ Interestingly, Student's counsel did not ask any questions to this witness even about class size in the STEP program even though REDACTED PARENT testified that REDACTED thought REDACTED had been told

⁵³ Tr, 11/5/21 at 198-202. Moreover, there was a consultation goal which allowed District to work with the Student's private therapist. Tr. 11/5/21 at 204

⁵⁴ Tr, 11/5/21 at 205

⁵⁵ Joint Exhibit 8, J8-072, Tr. 11/5/21 at 204-205

⁵⁶ Tr. 11/5.21 at 212.

⁵⁷ Id. Previously REDACTED had testified that with a child new to school such as Student it was routine to adjust their IEPs within 60 days of attending school, even referring to these as 60-day IEPs. Tr. 11/5.21 188-189.

⁵⁸ Tr.11/5/21 at 219-220.

⁵⁹ Tr. 11/5/21 at 227.

⁶⁰ Tr, 11/5/21 at 230.

by District's Speech Language Pathologist that class size in the IEP with STEP was 18 but was not certain as to whether this witness said it.⁶¹

5. **District's Director of Special Services.**

For the past six years The Districts Director of Special Services testified that REDACTED was in charge of special education and related services for District when REDACTED PARENT, on July 30, 2020 first requested the District plan for Student.⁶² REDACTED got back to REDACTED PARENT within four (4) or so days and involved the District's Child Find Coordinator in about the same time.⁶³ The District's Director of Special Services attended the first IEP meeting of September 2, 2020.

As to Assistive Technology, REDACTED said the District wanted its experts observe Student in REDACTED classroom at District setting to curtail it to Student needs there. But as to some of the Assistive Technology they placed in the IEPs, they based it on what their records review indicated worked for the Student.⁶⁴

The District's Director of Special Services initially testified that the Assistive Technology Assessment could not have been started at the Private School when the REDACTED PARENT contacted the District as the Student was not in school in August, 2020.⁶⁵ As to why testing did not start in August 2020 for the Universal Protocol for Accommodations in Reading (UPAR), to accomplish this they needed feedback from the Student's teachers in the District.⁶⁶ Similarly, to do a Functional Behavior Assessment

⁶¹ Tr, 11/8/21 at 683 and that Director of Special Services corrected this saying it was 4-8 or 8-12 Id. at 684

⁶² Tr, 11/5/21 at 233-236

⁶³ Tr, 11/5/1 at 236-237.

⁶⁴ Tr. 11/5/21 at 244.

⁶⁵ Tr, 11/5/21 at 247. As to the evaluation beginning at Private School in September or October 2020 and completing it at District, the reason it was not done then was because Parents has informed District Student wouldn't be attending District. Id at 356.

⁶⁶ Tr. 11/5/21 at 249-251.

(FBA) completely, District needed to see the Student in the school environment at District to identify issues there as a FBA requires observations in the environment Student would encounter within the District.⁶⁷ Moreover, District's Director of Special Services testified that REDACTED PARENT was told at first meeting of the intent for the IEP team to reconvene to possibly adjust the Student's IEP within 60 days in October. 2020⁶⁸ The District's Director of Special Services testified that the 9/2/20 IEP provided Student FAPE.⁶⁹

The District's Director of Special Services testified that Mastery of Goals was not necessarily required by FAPE as FAPE required meaningful progress as it relates to a Student's disability.⁷⁰ As the Student was to be in REDACTED DISTRICT SCHOOL in the 9/2/20 IEP, the District's Director of Special Services answered as to REDACTED PARENT question as to the number of students in the setting C for the First IEP was typically in the range of 7-12 Students and that while there would be more Students' in the world language class, the District requires a World Language for a typical diploma desired by REDACTED PARENT, that class had two teachers, a regular education teacher and a special education teacher.⁷¹

The District's Director of Special Services testified that amongst the new information that REDACTED PARENT provided at the September 24, 2020 meeting was a concern that REDACTED PARENT expresses a concern that Student would hurt

⁶⁷ Concerning Student's anxiety, REDACTED PARENT relayed at this meeting it was in the past, triggered by Student being bullied in Charter School. Tr. 11/5/21 at 252 .

⁶⁸ Tr, 11/5/21 at 253-254.

⁶⁹ Tr, 11/5/21 at 257-267

⁷⁰ Tr, 11/5/21 at 254

⁷¹ Tr. 11/5/21 at 269-270

REDACTED and suffered from suicidal ideation⁷² and this new information caused REDACTED to discuss the emotional support program for Student at REDACTED DISTRICT SCHOOL whereas at REDACTED DISTRICT SCHOOL the particular small group setting was equipped with more supports for academics.⁷³ At REDACTED DISTRICT SCHOOL two (2) different programs were discussed. The first was LEAP where Students stayed in the same classroom all day because student's fragile emotional state did not allow them to transition throughout the building. REDACTED PARENT indicated that this did not sound like Student.⁷⁴ Then there was a STEP program for Students that could transition in the building and go into different group settings in the school but have a built in small emotional support class in their schedule where students work with a psychologist and teachers on emotional regulation, coping strategies and strategies to reduce anxiety⁷⁵ as well as Student receiving REDACTED core academic subjects in a small group as well as in the foreign language.⁷⁶ As to the number of Student's in the STEP small group classes, District's Director of Special Services testified that typically was less than ten.⁷⁷

The District's Director of Special Services testified that District started phasing Students to in person classes October 13, 2020 with classes being live in the beginning of November, 2020.⁷⁸

⁷² Tr, 11/5/21 at 285. Whereas up through the September 2, 2020 IEP meeting. REDACTED PARENT related that the issues were of Student adverse emotional reaction to bullying which REDACTED did not experience at Private School and Parents had no information concerning Student's visit to Rockford and there was no treatment there. Tr 11/5/21 at 375. Moreover, that not every child who visits Rockford needed the more intensive emotional supports at REDACTED DISTRICT SCHOOL. Tr 11/5/21 at 379-380.

⁷³ Tr, 11/5/21 at 286.

⁷⁴ Tr. 11/5/21 at 287.

⁷⁵ Tr. 11/5/21 288.

⁷⁶ Tr. 11/5/21 290-291

⁷⁷ Tr. 11/5/21 at 295

⁷⁸ Tr 11/5/21 at 299.

The District's Director of Special Services testified that REDACTED first proposed the STEP program on September 24, 2020 was the Least Restrictive Environment as unlike at the time of the First IEP meeting September 2, 2020 meeting, REDACTED PARENT in the September 24, 2020 had relayed Student's emotional support needs were active and severe, and the REDACTED DISTRICT SCHOOL STEP program had a more integrated emotional support program which eased a potential transition for the Student. The ⁷⁹ District's Director of Special Services indicated that the October 29, 2020 with its minor changes as to Speech and Language , District had offered FAPE.

As to Private School, the District's Director of Special Services testified that their diploma was not held to state standards, ⁸⁰ whereas the programs offered at all times to Student led to traditional diplomas that would allow college as a future possibility.⁸¹

The District's Director of Special Services contacted the Private school about viewing Student in February, 2021 only to learn that it was not possible as Student was attending Private School remotely and therefore, REDACTED first observed the Student remotely on April 15, 2021.⁸²

As to the programs offered by Private School set forth in Exhibits 25 and 50 ⁸³, the District's Director of Special Services testified that they were too vague, missing levels of services the Student would receive. REDACTED testified similarly that the report

⁷⁹ Tr, 11/5/21 at 307.

⁸⁰ Tr, 11/5/21 at 314.

⁸¹ Tr at 313-315 going on testify that Private School did not require a foreign language at that of the 5 student REDACTED knew that went to Private School, REDACTED knew of only 1 attending a 4-year college. REDACTED further clarified that some student with disabilities who achieved modified diplomas had access to certificate programs at DelTech. Id at 348

⁸² Tr . 11/4/21 at 323 and there were 16 students in class with 2 teachers and 9 of the students were in person and noted that the only coping strategy used was for Student to take a walk outside. Id at 238.

⁸³ Tr. 11/5/21 at 332-336.

cards at the Private School were vague as well, and used supplements such as Khan⁸⁴ for specially designed direct instruction unlike the District. The District's Director of Special Services testified that children the age of Student were typically invited to attend IEP meetings and that the Student did not attend because of the families preference.⁸⁵ The District's Director of Special Services testified that the reason they had not sent a release for REDACTED PARENT to provide notes from Student's private counselor prior to September 2, 2020 was REDACTED PARENT insistence that Student was doing better and the focus needed to be on academics.⁸⁶

6. District's Lead Secondary School Psychologist. The District's Lead Secondary School Psychologist serves amongst REDACTED other duties at the District as the Psychologist for the Districts STEP (Students Transition Educational Programming) classroom at REDACTED DISTRICT SCHOOL , where with 4 -8 other children, Student would have a class for direct instruction in social and emotional learning areas including coping with anxiety stress using an evidence based researched curriculum, receive opportunities to request for discrete breaks, to use the STEP Classroom as a workspace as needed throughout a Student's day, and received Daily check-ins⁸⁷.⁸⁸ On October 9, 2020, the District's Lead Secondary School Psychologist attended another IEP meeting with Parents with the STEP program as it pertained to Student was discussed. The District's Lead Secondary School Psychologist testified that many of the Student in STEP had similar emotional needs to Student and this Program was an appropriate

⁸⁴ Tr. 11/5/21 at 342-343. REDACTED later testified that District uses Khan as a supplement mainly in General but generally not for Students with disabilities . Id at 346-347.

⁸⁵ Tr. 11/5/21 at 363.

⁸⁶Tr at 11/5/21 at 388.

⁸⁷ These were a morning and mid-day check-in daily. Tr. 11/8/21 at 443

⁸⁸ Tr. 11/8/21 at 418-422

placement for Student.⁸⁹

On Cross, District's Lead Secondary School Psychologist specified that the Student would receive REDACTED core academics per the IEP in a small group setting while in the STEP program taught by special education teachers with 8-12 students and would not be pulled out for these.⁹⁰ The Student's World language instruction would be in similar small group setting.⁹¹

7. **Student's Therapist.** The Student's Therapist was Student's first witness. The Student's Therapist is a licensed therapist with REDACTED PRIVATE AGENCY primarily working with children and families in the foster care and adoption communities, but also works with children and families dealing with anxiety and depression.⁹² The Student's Therapist started treatment with Student⁹³ in June, 2019 when Student presented with suicidal ideation and planning, attachment need, anxiety and low self-esteem that was triggered by Student perception REDACTED disappointed people, felt REDACTED was messing up and kids teased REDACTED at school.⁹⁴

The Student's Therapist testified that Student's attachment issues started from REDACTED feelings of abandonment by REDACTED birth REDACTED PARENT in REDACTED and that they have led to Student not initially trusting change such new persons in REDACTED life such as teachers, therapist etc... Most recently since the summer 2021 there has been growth in this areas.⁹⁵ The Student's Therapist testified

⁸⁹ Tr. 11/8/21 at 437.

⁹⁰ Tr, 11/8/21 at 441-442.

⁹¹ Tr., 11/8/21 at 445.

⁹² Tr. 11/8/21 at 466-467, Joint Exhibit 67.

⁹³ It was a mixture of Family Therapy and some individual treatment of Student weekly from June 2019 until June 2021 Tr. 11/8/21 at 498

⁹⁴ Tr 11/8/21 at 470-473

⁹⁵ Tr. 11/8/21 at 478-482.

District did not reach out to REDACTED as to how to work with Student.⁹⁶ However, Student's Therapist later clarified after reviewing REDACTED notes that REDACTED did not believe the possibility of Student attending District was discussed with REDACTED, only the possibility of Student attending Private School and merely learned about the possibility of Student attending District a couple of weeks before the hearing in November, 2021.⁹⁷ Parents never made Therapist aware about or asked any advice about a possible change from Private School to District during the relevant time.⁹⁸

8. Private School's Head of Upper School. The Private School's Head of Upper School for Undergraduate Education with an undergraduate degree in Elementary Education, a minor in Special Education and a Master's in School Leadership and has been with Private School for 22 years and is presently the Director of Programs and Instruction at Private School and head of the upper school at Private School.⁹⁹ The Private School's Head of Upper School testified that Private School educates children who have struggled in other schools that are going to benefit from a small structured language based classroom with accommodations and assistive technology.¹⁰⁰ The 2020-2021 Private school year started around September 9, 2020.¹⁰¹

The Private School's Head of Upper School testified there are two tracks at Private School, a college prep track and a separate track called the SUCCESS program for students whose abilities for example are not sufficient for coursework in Algebra.

⁹⁶ Tr. 11/8/21 at 484-485

⁹⁷ Tr. 11/8/21 at 489-493

⁹⁸ Tr. 11/8/21 at 496-497

⁹⁹ Tr. 11/8/21 at 513-515.

¹⁰⁰¹⁰⁰ Tr. 11/8/21 at 516.

¹⁰¹ Private School's Head of Upper School testified around September 8, 2020 the Wednesday after labor day (tr. 11/8/21 at 518) which the Panel Chairs review of a 2020 calendar was September 9, 2020. This one-day difference is irrelevant. The relevance as to start dates is that District and Private School started within a day of one another and after the First IEP.

Student is in the SUCCESS track. While the Private School's diploma for SUCCESS track student. is not approved by the State., it is approved from the Middle States Association and some colleges accept it as this year Private School has a Student going to Widener out of the SUCCESS Track. ¹⁰²

While the Student was an REDACTED grader when REDACTED first entered the Private School, REDACTED went into the SUCCESS track which is grades REDACTED but the Student's curriculum in Success depends on what level of a student is on, and can range from an elementary school curriculum to a high school curriculum. It conforms to the Student's instructional level. As to management of a student's anxiety, the Private School's Head of Upper School stressed that was not REDACTED area but the province of the school psychologist but that the whole set up as a small teacher student ratio allows this to be accomplished. ¹⁰³.

Prior to the pandemic, the Private School allowed the District to do observations live to conduct assessments. Since the pandemic, they have allowed remote observations.

The Private School's Head of Upper School testified that the Private School lays out the accommodations and modifications that it will deliver to the Student in the SAMP. The SAMP is a fluid document and it is impossible to include everything, they try to include as much as possible, but deviate from it based on a child's need. ¹⁰⁴ As to the Student, the only modification in Student's SAMP was that REDACTED was going to be taught in instructional level. ¹⁰⁵ REDACTED PARENT had complained about Private

¹⁰² Tr. 11/18/21 at 520-522

¹⁰³ Tr. 11/8/21 at 527-529.

¹⁰⁴ Tr. 11/8/21 at 531-532

¹⁰⁵ Tr. 11/8/21 at 532-533.

School's academics.¹⁰⁶

The Student's classes at Private School mostly have less than ten(10) students, some are taught by teachers uncertified in special education. The Student is not taking a World Language class. The Private School's Head of Upper School did specifically answer as to how an English Language Arts Teacher would work with a reading specialist if Student had a reading comprehension issue or as to how a teacher measured progress deferring that answer to the teachers.¹⁰⁷ As to counseling, the Student had an appointment once a week for 45 minutes with the Private School's Counselor or a graduate student REDACTED was supervising.¹⁰⁸ As to the strategies to relieve Student's anxiety in class, the Private School's Head of Upper School did not know of any other than being able to step outside classroom and deferred that question to teacher.¹⁰⁹

8. Student's Teacher at Private School. The Student's Teacher at Private School has bachelors in Behavioral Sciences and is presently enrolled in a Master's Program for Educational Studies, Special Education which REDACTED started in 2016 stopped for 2 or 3years, started again and estimates it will take a year to complete.¹¹⁰ Student's Teacher at Private School is the lead teacher in SUCCESS program.

When the Student first came to the Private School in 2019, Student's Teacher at Private School testified REDACTED was taught at a 5th or 6th grade instructional level but could not testify where Student's Instructional Level was at end of the school year, 2020-2021, in question.¹¹¹ All of Student's academic instruction in 2020-2021 was in

¹⁰⁶ Tr. 11-8-21 at 533-534.

¹⁰⁷Tr. 11-8-21 539-540

¹⁰⁸ Tr. 11-8-21 at 542.

¹⁰⁹ Tr. 11-8-21 at 545

¹¹⁰ Joint Exhibit 66. Tr. 11/8/21 at 553.

¹¹¹ Tr. 11/8/21 at 555. See also Tr. 11/8/21 at 556.

one classroom with about 8 student with pull outs from the school psychologist.¹¹² The Student's Teacher at the Private School testified that the Student's emotional functioning would interfere with REDACTED learning as Student would keep everything inside, not let go of issues, and become distracted. The strategies REDACTED testified to was student taking a break or going to the Private Schools Psychologist. The Student still struggles to ask for help.¹¹³ As to Student's progress with REDACTED mental and social emotional issues through the hearing, the Student's Teacher at Private School said. "I don't know that there is significant progress." The Student's Teacher at the Private School Student's progress as to self-advocacy is about the same as when Student first entered the Private School. The Student's Teacher at the Private School testified that Student has made progress as to academics over the last couple of years.¹¹⁴

On cross examination when asked about what evidence-based instruction was used in the Comprehension and Communication Class, "we do have brain based stuff..."¹¹⁵ The Student's Teacher at Private School would pull Student into a breakout room in the back of classroom but did not notice it increasing Student's anxiety.¹¹⁶ Except for a lunch group where Student did not participate choosing to eat alone, the student's Teacher at Private School could not recall anything else to help Student with peer-to-peer interactions.

9. REDACTED PARENT . REDACTED PARENT relays that when first discussing Student with the District REDACTED did discuss Student's issues with anxiety,

¹¹² Tr. 11/8/21 at 561

¹¹³ Tr. 11/8/21 at 566-567.

¹¹⁴ Tr. 11/8/21 at 570.

¹¹⁵ Tr. 11/8/21 at 588-589, 590. REDACTED couldn't recall anything specific.

¹¹⁶ Tr. 11/8.21 at 590-591.

REDACTED presented District with the Dr. Herzl report which had “astronomical” information concerning Student’s anxiety, but that there was a lot brought up about bullying, later indicating that it was teasing and some of the alleged bullying was assumed or misconstrued by Student, rather than actually occurring.¹¹⁷ REDACTED PARNET described a primary factor in leaving the Charter School for the Private School was the Charter School’s suggestion that the Student was better suited for a less academic program, one teaching basic skills that did not lead to a typical diploma, delivered out of a “special little room”.¹¹⁸ The Student wanted to go to college and Parents wanted that door not to be closed and while the Private School allowed for this, REDACTED PARENT wanted to see what the District could provide as it was free and they had extracurriculars such as football that the Private School did not¹¹⁹ REDACTED PARENT wanted to explore all options, not that REDACTED PARENT was unhappy with Private School.¹²⁰

At the first IEP meeting REDACTED PARENT expressed deficiency as to the goals, for example, the Math goal being 3 days per week 10 minutes per session and felt the same about Reading and Comprehension, basically that there was not enough help and it would trigger anxiety and impede Student from learning¹²¹ REDACTED PARENT testified this same issue existed in all of the IEPs.¹²²

The REDACTED PARENT testified that REDACTED gave District everything

¹¹⁷ Tr 11/8/21 at 605-607.

¹¹⁸ Tr, 11/8/21 at 610

¹¹⁹ Tr, 11/8/21 at 612

¹²⁰ Tr. 11/8/12 at 613.

¹²¹ Tr. 11/8/21 at 616. REDACTED PARENT worried that District would give Student a work page and Student would have to ask for help REDACTED . Tr. 11/8/21 at 618.

¹²² Tr. 11/8/21 at 619

REDACTED had from the Charter school and Dr. Herzl and was unclear as what REDACTED PARENT expressed to the District as to when the Student threatened suicide explaining, “Time is all crazy with Covid brain.”¹²³ REDACTED PARENT said REDACTED could not recall when REDACTED mentioned the Student’s recent suicidal threats at which IEP meeting, then said it was probably the 24th¹²⁴ As to REDACTED PARENT’S lack of paperwork from Rockford, a mental hospital in Delaware, REDACTED said there was none as REDACTED left before evaluation.¹²⁵ REDACTED PARENT testified that on January 29, 2021, Student had to be hospitalized for 14 to 16 days for mental health issues.¹²⁶

As to the program at REDACTED DISTRICT SCHOOL REDACTED PARENT did testify that STEP was discussed as it was not always in one room and agreed with that Student has issues with being in one room all day at Private School, but that rotating into general education class would not fit Student’s need as Student would feel REDACTED stands out as different from other Students.¹²⁷ REDACTED PARENT indicate REDACTED was told by District there were between 8 and 12 people in the program, but that District’s Speech Language Pathologist stated there were 18.¹²⁸ REDACTED PARENT also testified that REDACTED had concerns with the IEP teaching grade levels for Student as Student could not learn at grade level, but rather would pretend to

¹²³ Tr. 11/8/21 at 622

¹²⁴ Tr. 11/8/21 at 624-625,

¹²⁵ Tr. 11/8/21 at 625

¹²⁶ Tr. 11/8/21 at 627. REDACTED PARENT relayed this as the next episode which was taken to mean that Student was hospitalized for 14-16 days for mental health reasons..

¹²⁷ Tr. 11/8/21 at 630-631

¹²⁸ Tr. 11/8/21 at 632. This witness testified 11/5/21 and this was not a part of direct or cross when there was a free opportunity to ask REDACTED this in cross. REDACTED PARENT’S testimony as to this is not regarded as credible perhaps due to memory issues of REDACTED PARENT .

learn and learn nothing.¹²⁹ REDACTED PARENT testified that teaching Student a foreign language was futile and above Student's level.¹³⁰ REDACTED PARENT testified REDACTED always expressed REDACTED wanted Student on the track where REDACTED could possibly go to college¹³¹ and that a language class was a State requirement.¹³² REDACTED PARENT testified in REDACTED opinion the program and IEPs would lead to emotional and educational regression for Student and while there was some regression the 2020-2021 school year at Private School REDACTED attributed that to COVID.¹³³ As to the issues with School, REDACTED later intimated that the issue was one of the teachers at private school not teaching enough instead doing what REDACTED PARENT could provide for free at home.¹³⁴

On cross examination, REDACTED PARENT testified that what Private School provided that District was not in the first IEP was District was all virtual.¹³⁵ As to the 2d IEP on September 24, 2020, REDACTED PARENT testified that nobody explained how the transfers between classrooms would look on the virtual screens.¹³⁶ Even if the 2d IEP were in live classrooms REDACTED PARENT testified that the length of the classes in ninety (90) minute increments were too long for Student with ADD and rotating in general classroom with "normal" students would make Student feel REDACTED stands out and harm REDACTED .¹³⁷ REDACTED PARENT also expressed confusion as to

¹²⁹ Tr. 11/8/21 at 635-636

¹³⁰ Tr. 11/8/21 at 637. REDACTED PARENT also testified that at one juncture REDACTED was told the Spanish teacher was not a special education teacher. Tr. 11/8/21 at 640.

¹³¹ Tr. 11/8/21 at 639

¹³² Tr. 11/8/21 at 638.

¹³³ Tr. 11/8/21 at 642-643

¹³⁴ Tr. 11/8/21 at 653. REDACTED PARENT later went on to specify this was occurring in Private School with Kahn Academy instead of teacher instruction in Math.

¹³⁵ Tr. 11/8/21 at 672-673

¹³⁶ Tr. 11/8/21 at 675

¹³⁷ Tr. 11/8/21 at 677 noting that mixing with general education students harmed REDACTED in REDACTED CHARTER School. Id. At 685

recalling what REDACTED was told about the different programs in the IEP. ¹³⁸

REDACTED PARENT admitted to agreeing to pay Private School the tuition in February, 2020 because “at the end of the day, regardless of how it panned out, we wanted REDACTED to be in that school.”¹³⁹

REDACTED PARENT explained that REDACTED did indicate to Private School that REDACTED was working with District to get money Student to attend Private School for the relevant school years 5 day after first inquiring about Student’s enrolling in District testifying it as fighting the system and It is no Child left behind. Right? Parent added that if District came up with something great but otherwise we wanted to get the tuition covered.¹⁴⁰

When Private School emailed the email concerning REDACTED request that District pay Private School tuition indicating the intent to District, REDACTED PARENT email indicates upset.¹⁴¹ REDACTED PARENT first indicated to District that REDACTED intended to send Student to Private School before the first IEP meeting because REDACTED felt REDACTED had to as a matter of protocols. ¹⁴²

D. FINDINGS OF FACTS

1. There was no explanation as to why Parents waited until July 30, 2020 to contact District to request a program and IEP for Student with special educational needs for a School Year that would start September 8, 2020. . Petitioner was aware that their

¹³⁸ Tr. 11/8/21 at 681

¹³⁹ Tr. 11/8/21 at 689 REDACTED PARENT went on to testify that this was not much of a risk as REDACTED thought District would not accommodate Student. Tr. 11/8/21 at 692 basing this on REDACTED experience in other public schools.

¹⁴⁰ Tr. 11/8/21 at 697.

¹⁴¹ Tr. 11/8/21 at 698-699

¹⁴² Tr, 11/8/21 at 700. Mother explained that she did know of District’s services in general. Tr. 11/8/21 at 701

REDACTED Student had been at Private School since 2019 and Student had never been educated at District who prior to contact had no knowledge as to Student's needs.

2. Through the month of August 2020 and through the last IEP meeting, District acted timely and diligently to acquire all relevant information as to Student.

3. Parents, during the initial phases until the Second IEP meeting on September 24, 2020, minimized to District, the nature of Student's psychological and behavioral needs related to REDACTED education, relaying them as anxiety caused by bullying at a prior school and not suffered presently by Student.¹⁴³ In the forms Parent sent to District set forth as Joint Exhibits 1, 2, and 3 on August 19, 2020 and August 21, 2020, there was no mention of a present psychological issue with Student and rather on August 21, 2021, a mere 17 days before School would start at District, at a time when the only such issue which District was made aware of by Parents of Students, was ADHD, Parents indicated that they had submitted to the IEP team all medical information, evaluations, diagnoses, therapy medication etc... for Student.¹⁴⁴ At the First IEP meeting, REDACTED PARENT when the District brought up Student's Students recent visits to REDACTED PRIVATE mental health hospital that they learned on August 27, 2020 and anxiety. REDACTED PARENT told District they do not need to focus on that as Student was doing fine at Private School.¹⁴⁵

¹⁴³ on August 5, 2020, District's Child Find Coordinator talked with REDACTED PARENT on the telephone. In most relevant part, REDACTED PARENT told District's Child Find Coordinator that Student had no current behavioral issues but had anxiety when previously bullied in a Delaware public charter school but had no medical diagnosis for anxiety or psychiatric disorders. REDACTED PARENT had a lot of concerns as to Student being on an academic degree track at this initial call. Tr. 11/5/21 at 37-38. District's Child Find Coordinator indicated REDACTED would contact Private asked REDACTED PARENT as for anybody else REDACTED should talk to or obtain records and REDACTED PARENT offered no names. Tr. 11/5/21 at 41-42. This was regarded as credible.

¹⁴⁴ Joint Exhibit 3, J3-008 answer to question 5 and Tr. 11/5/21 at 50.

¹⁴⁵ Tr. 11/5/21 at 94-96. REDACTED PARENT also indicated they were related to bullying at REDACTED CHARTER SCHOOL where Student had not attended and were historic.

4. Student was actively in counseling to manage severe present behavioral/psychological concerns at the time District devised all IEPs . Yet, Student's treating therapist did not even know of any possible prospective transfer of Student to District for which REDACTED could treat Student prior to ease any transition to District. This gap of knowledge was part of a pattern that indicates Parent did not plan to enroll Student in District. Another example was when District less than a week before the IEP meeting became aware of Student's visits to Rockford and therapy and immediately asked REDACTED PARENT for information about these, REDACTED PARENT replied **REDACTED does have a therapist and a psychiatrist. But REDACTED sees regularly. Sorry I can't give you more than that**¹⁴⁶. REDACTED PARENT could have offered to sign a release. REDACTED PARENT did not. REDACTED PARENT could have asked Student's therapist to contact District. REDACTED did not. This evidences an unwillingness to disclose . Another was REDACTED PARENT'S failure to supply the name of the therapist when asked about other persons in the District's earlier inquiry about who District should speak to. Even at the first IEP meeting, REDACTED PARENT questioned the Student's need for counseling at District. Parents indicated in a written form in August, 2020 that District had all information it needed was evidence this nondisclosure was purposeful.¹⁴⁷ Moreover, there was an e-mail where REDACTED PARENT indicated to Private School that REDACTED was seeking District's contribution for Private School's tuition that when REDACTED PARENT saw that e-mail was shared with District, expressed being upset. Moreover, over five(5) months prior, Parents committed to send Student to Private School. REDACTED

¹⁴⁶ Tr. 11/5/21 at 56-57. Exhibit 33 J 33-313

¹⁴⁷ REDACTED PARENT'S explanation that REDACTED did not realize District wanted written documentation (Tr. 11/8/21 at 664) was not found credible

PARENT'S own testimony indicates a purpose was financial contribution from District towards Private School tuition. Now there are other examples of this pattern not mentioned here¹⁴⁸, but they all point to the same conclusion that Parents purposely did not provide District with the severity and contemporaneousness the mental health, emotional health and social issues that impaired Student

5. When District on September 24, 2020, first learned of the severity and contemporaneousness nature of mental health, emotional health and social issues Student suffered (cutting REDACTED and running away), District immediately modified its IEP and posed the REDACTED DISTRICT SCHOOL with its emotional and social learning programs as a placement for Student. The dual nature of Parents academic goal in having Student graduate with a secondary school potentially qualifying degree caused District and Parents to discuss the STEM Program at REDACTED DISTRICT SCHOOL where all of Student's academic classes would be delivered in a small group setting as well as a course regularly scheduled directed to Student's mental health emotional and need for social learnings in a classroom with few students. This coupled with the regularly scheduled individual private counseling and consultation of the counselor with all of Student's teachers to modify program to Student's mental health and needs for social learning coupled with the STEM programs free access of Student to the STEM room for discrete breaks for mental respite and academics as needed to allow Student to cope with anxiety and other learning obstacles were all virtually suggested the moment the Parents made the District aware of the full and present nature of the Student's mental/emotional and social challenges at the September 24, 2020 meeting.

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6. The most credible testimony was that Parents always planned to send Student for the 2020-2021 school year to Private School because of the success Student had there the previous year and because Student's failures in public education at REDACTED CHARTER SCHOOL. Parent in applying for Student at District was looking for financial contribution towards the cost of the Private School in the event District failed to provide an adequate program for Student. REDACTED PARENT had agreed to pay for the Private School in February, 2020 about 5 months before first applying for Student at District. This led REDACTED PARENT to deemphasizing Student's emotional/psychological needs until almost a month and half after first approaching District and not discussing with Student's therapist any measures of mitigation of an adverse reaction to Student transferring to District, despite Student's prior expressions of potential suicide.

7. No testimony was provided that Private School was sufficiently addressing Student's emotional/ psychological and social learning needs during the 2020-2021 school year. There was insufficient testimony to demonstrate that Student had made academic progress at Private School's Director of Special Services testimony and the exhibits coupled with REDACTED PARENT complaint established that Private School's academic program was inappropriate for Student..

8. As to management of a student's anxiety, Private School's Head of Upper School stressed that was not REDACTED area but the province of the school psychologist but Private School's psychologist never testified. Private School's Head of Upper School testified REDACTED did not know of any strategies other than Student being permitted to be excused to step outside the classroom deferring this question to teacher.

9. Student's Teacher at Private School testified as strategies only that Student would take a break or go to School Psychologist. As to the impairment Student's emotional issues presented to REDACTED learning, Student's Teacher at Private School testified I don't know that Student has made significant progress and the Student's inability to ask for help, self-advocacy was about the same as when Student entered school. There was inadequate testimony as to how Student's academic progress was measured in the 2020-2021 School Year at Private School . Student's Teacher at Private School testified that another teacher was responsible for the Progress measurements and failed to describe the same at trial. That other teacher was no longer there and REDACTED PARENT apparently complained about the Schools substitution of free content instead of teacher actual teaching academics during Private School's 2020-2021 school year. Student's Teacher at Private School also did not testify that Student was utilizing Private School's programs such as the lunch group to increase REDACTED ability to engage with peers. Student preferred to eat alone. Student had to be hospitalized for REDACTED psychological reaction to a wrongful peer interaction REDACTED initiated during the 2020-2021 school year.

10. While Parents attended all the IEP meetings and asked about the programs they did so with no intent of sending Student to District and were not acting in a truly collaborative fashion to design an IEP with District. Their efforts were pretextual. The lack of information as to Student's mental health from the first forms they sent District until September 24, 2020 disclosure by REDACTED PARENT of the present and severe impediment Student's psychological challenges presented to Student's learning, to the lack of even discussing the effect a transfer would have with Student who had been suicidal with Student's therapist show at the very minimum their lack of engagement

with the process. It is believed this was borne from a lack of intent of Parents to ever send Student for the 2020-2021 to anywhere but Private School, as evidenced by their contract with Private School five (5) month before notifying District of any intent to plan for Student. and their emails to Private School saying their intent was to get payment by District for private school only 5 days after first asking District to Plan for Student and before they could reasonably expect a program to be set up.

DECISION

The request for tuition reimbursement is denied. The educational programs that the District proposed at all the IEP meetings offered the Student a Free and Appropriate Public Education (“FAPE”). For Student, it has not been shown that the Private School they selected is appropriate for the Student’s needs. Providing tuition reimbursement in this case is inequitable to the District who acted timely and collaboratively whereas Parents did not.

E. RATIONALE

As a general matter, District had the burden to prove that they complied with their obligations under the IDEA. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 527 (3d Cir. 1995). The Parents have a right to reimbursement for their unilateral placement of Student at a private school if there was a violation of the IDEA and that the private school placement was appropriate.” T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 582 (3d Cir. 2000) (citing *Florence Cty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 15 (1993)). This is a tuition reimbursement case. In considering the parents' tuition reimbursement request, there is the following 3-part test:

1. Has District failed to provide FAPE to Student;

2. Whether the parental placement in a private school is appropriate; and
3. Whether the equities warrant reimbursement, be it partial or in full.

Forest Grove School District v. T.A., 557 U.S. 230, 246-47. This is referred to as the *Burlington/Carter*¹⁴⁹ test.

1. District provided FAPE to Student. While Parent first sought a program for Student on July 30, 2020 for a school year starting September 8, 2020. District provided an IEP and described a program sufficient for Student to make meaningful educational progress. District provided in all IEPs to Student “an educational program reasonably calculated to enable a child to make progress in light of the child’s circumstances.” K.D. v. Downingtown Area Sch. Dist. 904 F.3d 248 (3d Cir. 2018) (quoting *Endrew F., ex rel. Joseph F. v. Douglas City Sch. Dist.* RE-1, 137 S.Ct. 988, 1001 (2017)). District does not have to provide an ideal IEP. They could not do so in light of Parent giving them only 40 days until School started for a student who had never been at District, while not immediately relaying the severe and present nature of Student mental health needs and initially portraying Student’s mental health needs as related to bullying at a prior Charter School,

“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.* at 255 (quoting *Endrew F.*, 137 S.Ct. at 999). The IEP need not provide the optimal services but must be tailored to provide appropriate goals and supports to allow the child to make reasonable progress. See C.F. v. Radnor Twp. Sch. Dist., No. 17-4765, 2019 U.S. Dist. LEXIS 41264 at 24-25 (E.D. Pa. Mar. 14, 2019) citing Parker C. through Todd v. W. Chester Area Sch. Dist.,

¹⁴⁹ developed in part from Burlington Sch. Comm. v. Dep’t of Educ., 471 U.S. 359 (1985) as modified by Florence County School District IV v. Shannon Carter, 510 U.S. 7 (1993).

No. CV 16-4836, 2017 U.S. Dist. LEXIS 104068, 2017 WL 2888573, at *7 (E.D. Pa. July 6, 2017). In this case all the IEPs are reasonable in light of the facts Parents shared as to Student,

When District changed its IEP in September 24, 2020, it was because REDACTED PARENT had made them aware at this second IEP meeting that Student emotional challenges were severe including self harm and suicide as an issue and in the present. This led to the 2d IEP offered in the September 24, 2020 with amendments which were improvements to the first IEP through the addition of regular (every other day) emotional support instruction with evidence based programs the classroom available and staffed with appropriate personnel for student to obtain emotional support daily as a “home base” for Student in the event REDACTED needs same, with twice daily check ins from qualified personnel for Students with psychological emotional, regular school psychological counseling for Student, consultive counseling by a psychologist with teachers to better adapt the program to Student’s psychological, emotional and needs for social learning and all service delivered to Student is setting where no more than 40% of REDACTED day will be with the general student body and all academics delivered in a small group setting with less than 12 students . While the Student would have nonacademic elective such as physical education, driving education and career elective with the general school population, it is not believed that these will trigger emotional decompensation with the level of supports Student receives. Moreover, REDACTED PARENT indicated that REDACTED did not believe delivery of all education in one classroom was appropriate for Student. For example, physical education does not have the same academic rigors of math for most and does not appear at all area where Student feels singled out as different. This second IEP is not evidence that the first IEP was insufficient it is rather shows the District’s address of a greater need when they were made aware of it.

The last program IEP delivered October 29, 2020 had a small difference of some additional language supports for Student and was slightly improved but the September 24 and October 9 programs were sufficient albeit the District was awaiting testing results which lead to the October 29, 2020 slight change of additional language supports.

All of the programs from the IEPs were based on what Parents shared with Student's and provided for Student to make meaningful educational progress.

Student's first objection is that the IEP does not require Mastery in Subject as a goal and cites a publication that Student's counsel did not provide as an exhibit or otherwise as evidence. However, the measure District was required to meet is not always mastery, District in all the IEPs set "goals for meaningful improvement relating to a student's potential." Coleman, 983 F. Supp. 2d at 563 (citing P.P. ex rel. Michael P., 585 F.3d at 729-30).

This Panel does not find that District's failure to require Student demonstrate 80% accuracy in some of the goals and requiring 75% accuracy will trigger anxiety and frustrate Student's ability to make meaningful educational progress, This argument by Student ignores all of the other goals, supports in the IEPs as a whole as well as District's accommodation to modify grade level materials to Student's unique instructional level. Student's counsel's argument lacks evidence.

Student's Counsel's second argument is that the September 2, 2020 IEP lacks sufficient programming for Student's social emotional functioning. This is inaccurate. There was weekly individual Psychological counseling with specific measures to lessen Student's anxiety that considered a prior report from Dr Herzl and prior teachers¹⁵⁰ Also, there were twice daily check-in with Student so the District would be aware timely to both prevent any mental health issues

¹⁵⁰ Joint Exhibit 7, J7-053. The District cannot consider information as to Mental Health of Student that Parents do not share.

from arising and deal with them timely as they arose. There was also a functional behavior assessment to be done when Student was at District to identify any mental health triggers so they could be accommodated as well as assistive technology assessment to ease Student's access to education and reduce any anxiety,¹⁵¹

Student's counsel argues that District should have obtained a release from Student's therapist before the September 2, 2020 IEP meeting. While it is true they did not. This is a "red herring" as the Therapist did not even know of the prospect of sending Student to District as it was not discussed with REDACTED until a few weeks before the November 2021 hearing and also, because it ignores the following reality. Parents, not District have the right to release the mental health records of a Child and should have if they deemed it important. Parents did not disclose in the initial forms they supplied District the names of the Student's therapist. Rather District's witnesses are believed that until September 24, 2020 Parents portrayed Student's emotional and psychological needs as in not being presently relevant and being in the past. Parents could have fostered the dialogue with the Therapist as Therapist has this sort of dialogue with Private School and Parents, they did not.. Despite this District proposed in all IEPs that Parents provide a release to District's psychologist when Student arrived at school to both enhance the ability of School Psychologist to consult with the Student's teacher as how to best manage his psychological issues with the Student Private Therapist.¹⁵²

Student next argues that this Panel should not consider District's testimony that the standards in the IEP were a minimum, the District could do more. This Panel is not doing so and rather making this decision considering the total services in the four corners of the IEPs all of which describe Student's placement in a C Setting where he has less than 40 % of his time in

¹⁵¹ The Panel accepts as reasonable that the District's testimony Functional Behavior Assessment had to be done while Student was at District as accuracy of the measure depended upon the environment. As to the Assistive Technology Assessment, this could not be done at Private School before September 2, 2021 as Student was not in Private School and also because the District's contention that this was specific to what was in their environment is believed.

¹⁵² Joint Exhibit 8, J8-072, Tr. 11/5/20 at 202-204

general education and all of which have an individual weekly counseling and meet the requirement that Parents consistently expressed that Student be working towards a degree that would allow REDACTED to go to college. .

Next Student's counsel argues the only IEP this Panel should consider is the September 2, 2020 IEP and not the later IEPs of September 24 or October 29, 2020. The Panel disagrees. Parents by the start of Private School September 9, 2020 had portrayed Student's emotional and psychological needs as not in the present or severe. Rather, Parents emphasized Student's need for an IEP and program that would allow REDACTED to get a degree common to children applying to college. District's witnesses are consistent that Parent failed to relay prior to September 24, 2020 the present and severe nature of Student's mental health issues. District could not act on information it had no access. When District asked Parent for a mental health record for Student in August, 2020, REDACTED PARENT answered, **REDACTED does have a therapist and a psychiatrist. But REDACTED sees regularly. Sorry I can't give you more than that**¹⁵³ REDACTED PARENT could have supplied names and addresses of the therapist and psychiatrist and offered to call said providers and release them to speak to District. REDACTED did not, even though school was starting in less than 2 weeks. So, when REDACTED PARENT finally tells District about the severity and present nature of Student's mental emotional health challenges including suicidal and self-harm behaviors on September 24, 2020, the District' responded the same day with the suggestion of REDACTED DISTRICT SCHOOL where part of Student's regular education being a class geared to Student mental health challenges. It shows had District known sooner of the present severity of Student's mental health , it would have offered regular class study for emotional support sooner. The later changes for example of

¹⁵³ Tr. 11/5/21 at 56-57. Exhibit 33 J 33-313

additional language in the Third IEP supports shows the willingness of District to do what it said it would do when it got the speech and language evaluation.

2. The parental placement in a Private School is not appropriate and this is not because Private School is not the least restrictive environment. Student's counsel has not shown that Private School has evidence-based academics appropriate for Student in 2020-2021. REDACTED PARENT, at trial, admitted the academics were not "up to snuff," but attributed that to a teacher no longer there and more to the challenges the pandemic presented to all. However, more troubling to the Panel to this is what the representatives from Private School failed to explain. Both the Private School's Head of Upper School and Student's Teacher at Private School failed to explain what they were doing to promote Student's making progress in his emotional social and psychological challenges to learning other than allowing Student to go for walks and seeing Private School's Psychologist or a Student that Psychologist REDACTED supervises. Nothing with specificity by either Private School witness described programs other than a lunch group that Student would not participate. There was no evidence about what was done in Student's Private School Psychologist office to foster psychological and emotional growth as the Private School Psychologist did not testify. Moreover, we have Student's Teacher at Private School indicating Student did not make significant growth in these areas. There was no evidence as to evidence-based methodologies being employed at private school. REDACTED testimony as to "Brain stuff" was not evidence of an evidence-based methodology.

As to academics, at best REDACTED PARENT'S testimony as to complaining about the lack of academics is inconsistent with Student's Teacher at Private School that Student had progressed at Private School, but could not explain the metric used to show

progress testifying they were the other Teacher's creation not REDACTED . Nor did Private School Teacher say or when academic progress was made. Was it in the 2020-2021 school year or before or after? This contradicts the argument that academic progress was made in 2020-2021.

2. The equities do not favor awarding reimbursement of tuition. Rather, the equities favor district. Parents never explained why they waited until a little more than a month for District to Plan an IEP for Student never educated in District. Notwithstanding, District acted promptly only to have Parents not immediately supply the severe and present nature of Student's psychological obstacles to learning. Instead until September 24, 2020 and after the start of Private School, Parents portrayed Student's psychological challenges as insignificant as a result of prior bullying and not being a present issue . Parents neither gave access to Student's therapist to speak with District or involved Student's therapist in discussing the possible transfer of Student to District and a role she could play. These omissions were caused by Parent's intent never to transfer Student to District. District has shown that it planned for Student with an IEP designed for Student to make meaningful educational progress as soon as September 2, 2020 before the start of Private School and about a month after Parents first came to District to Plan. When meaningful new information was made known to District on September 24, 2020, District as soon as possible modified its IEP to offer Student an emotional support regular class built into a different placement and a home base for Student to contact when emotional needs surfaced with evidence-based curriculum individual and consultive counseling and other supports tailored to Student's needs.

For all of these reasons, Student's request for tuition reimbursement for the 2020-2021 School Year is denied. Attorney's fees are not within this Panel's jurisdiction.

ORDER.

This is a final order and pursuant to 14 Del. Admin. Code 926.16.1 and 926.16.2, any party aggrieved by the findings and decision may appeal to the Family Court in and for the State of Delaware or the United States District Court for Delaware if done within ninety (90) days of this decision.

So Ordered this 1st day of December , 2021

/s Gary R. Spritz

Gary R. Spritz, Esq., Panel Chair

/s/ Dr. Vicki McGinley, Ph.D.

Dr. Vicki McGinley, Ph. D.. educational panel member

/s/Kristen Pidgeon

Kristen Pidgeon. lay panel member