

FINDINGS OF FACT AND DECISION

Case Number: 159947

Student's Name:

Date of Birth:

District:

Hearing Requested By: Parent

Date of Hearing: March 15, 2016
March 29, 2016
August 2, 2016
August 16, 2016
September 7, 2016
October 18, 2016
November 2, 2106
November 16, 2016
November 30, 2016
December 20, 2016
January 10, 2017
February 15, 2017

Actual Record Closed Date: May 12, 2017

Hearing Officer: Martin J. Kehoe III, Esq.

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NAMES AND TITLES OF PERSONS WHO APPEARED ON MARCH 15, 2016

For the Student:

, Attorney (Via Telephone)

For the Department of Education:

, District Representative (Via Telephone)

NAMES AND TITLES OF PERSONS WHO APPEARED ON MARCH 29, 2016

For the Student:

, Attorney

, Parent

For the Department of Education:

, District Representative

NAMES AND TITLES OF PERSONS WHO APPEARED ON AUGUST 2, 2016

For the Student:

NONE

For the Department of Education:

NONE

NAMES AND TITLES OF PERSONS WHO APPEARED ON AUGUST 16 2016

For the Student:

, Attorney (Via Telephone)

For the Department of Education:

, District Attorney (Via Telephone)

, District Attorney (Via 19 Telephone)

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NAMES AND TITLES OF PERSONS WHO APPEARED ON SEPTEMBER 7, 2016

For the Student:

, Attorney

For the Department of Education:

, Attorney

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON OCTOBER 18, 2016

For the Student:

, Attorney

For the Department of Education:

, Attorney

, Attorney

, (Via Telephone)

NAMES AND TITLES OF PERSONS WHO APPEARED ON NOVEMBER 2, 2016

For the Student:

, Attorney

For the Department of Education:

, Attorney

, Attorney

,

NAMES AND TITLES OF PERSONS WHO APPEARED ON NOVEMBER 16, 2016

For the Student:

, Attorney

, Parent

, Interpreter

, (Via Telephone)

For the Department of Education:

Case No. 159947

, Attorney

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON NOVEMBER 30, 2016

For the Student:

, Attorney

, (Via Telephone)

For the Department of Education:

, Attorney

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON DECEMBER 20, 2016

For the Student:

, Attorney

For the Department of Education:

, Attorney

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON JANUARY 10, 2017

For the Student:

, Attorney

For the Department of Education:

, Attorney

, Attorney

,

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NAMES AND TITLES OF PERSONS WHO APPEARED ON FEBRUARY 15, 2017

For the Student:

, Attorney

, Parent/Guardian

, (Via Telephone)

, Interpreter

For the Department of Education:

, Attorney

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Introduction

This document constitutes the Decision and Order of the undersigned, the duly designated Impartial Hearing Officer (IHO) in an Impartial Hearing brought pursuant to the Individuals with Disabilities Education Act (IDEA) and the New York State Education Laws. The School District will be referred to as District, the parent as Parent and the student will be referred to as Student. This is a reimbursement case. A hearing was held on March 15, 2016; March 29, 2016; August 2, 2016; August 16, 2016; September 7, 2016; October 18, 2016; November 2, 2016; November 30, 2016; December 20, 2016; January 10, 2017; and February 15, 2017.

Overview

In this Decision and Order I will briefly outline the positions of the parties and review some student history and will then move to apply a three-prong analysis to this case, examining first whether the District met its burden to demonstrate the appropriateness of their program, second whether the Parent met her burden to demonstrate the appropriateness of the placement at Private School, and third whether equitable considerations favor the District or the Parent in this matter.

Parent's Position

In the complaint notice dated March 1, 2016 (Ex. A), the Parent alleges that the District denied the Student a Free Appropriate Public Education ("FAPE") for the 2015/16 school year. Specifically, the Parent alleges that her concerns were ignored at the Student's CSE meeting, that the District did not provide an adequate [redacted], the District did not provide a [redacted] [redacted] [redacted] [redacted] and a [redacted] [redacted], the District failed to provide [redacted] for the Student, despite discussion about the appropriateness of her classification at the CSE meeting, the District did not include [redacted] for the [redacted], the IEP goals are vague and overly broad, and do not pertain to [redacted], the District did not provide a [redacted] for the Student, and the recommended school placement did not meet the Student's individual special education needs.

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The Parent is seeking tuition payment for the Private School where she unilaterally placed the Student.

District's Position

In the due process response (Ex. 8), dated March 3, 2016, the District denied the allegations. The District offered testimony in support of the validity of its program.

Student History

At the time the Due Process Complaint Notice was filed, the Student was [redacted]. The Student attended the Private school for [redacted] and [redacted] [redacted] (TRP 211, 447). The Student received related services including [redacted] [redacted] [redacted] (TRP 212). The Student was in a class of [redacted] [redacted] last year (TRP 222). The Department Head testified that the Student was given related services this way to [redacted] [redacted] (TRP 216).

For a [redacted] (Ex. 3) dated February 10, 2015, the Student was evaluated with the [redacted] and the [redacted], and scored in the [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] (Ex. 3).

Analysis

A board of education may be required to reimburse parents for their expenditures for private education services obtained for a student by his or her parents, if the services

offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. Of Burlington v. Dep't. of Educ.*, 471 U.S. 359, 369-70 (1985).

Prong I

The purpose of IDEA is to provide students with a "basic floor of opportunity" of access to specialized instruction and related services that are individually designed to provide educational benefits. *Board of Education, Hendrick Hudson CSD v. Rowley*, 458 U.S. 176, 189-190, 102 S. Ct. 3034 (1982); *Walczak v. Florida UFSD*, 142 F.3d 119 (2nd Cir. 1998). Neither the IDEA, nor Article 89 of the New York State Education Law, requires a school district to provide special education and related services designed to maximize the potential of a disabled student. Nor do federal and state education laws require a school district to provide the best possible educational program and related services, or match those services requested by a parent. *Application of a Child With a Disability (City School District of Buffalo)*, S.R.O. Decision 04-20 (2004). Rather, the goals and mandates of the IDEA and N.Y. Education Law are relatively modest: namely, to provide appropriate specialized education and related services sufficient for the disabled student to benefit from his/her education. *Straube v. Florida UFSD*, 801 F. Supp. 1164, 1175-1176 (S.D.N.Y. 1992); *Moubry v. Independent School District*, 9 F. Supp.2d 1086, 1104 (D. Minn. 1998) (citing *Rowley*)

This straightforward obligation of the District is accompanied by the requirement to demonstrate the appropriateness of the program recommended by its CSE. (*Application of a Child Suspected of Having a Disability*, Appeal No. 93-9; *Application of a Child with a Handicapping Condition*, Appeal No. 92-7; *Application of a Handicapped Child*, 22 Ed Dept Rep 487 [1983]). To meet its burden, a board of education must show that its recommended program is reasonably calculated to confer educational benefits (*Bd. of Educ. v. Rowley*, 458 U.S. 176 [1982]). The recommended program must also be provided in the least restrictive environment (34 C.F.R. § 300.550[b]; 8

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NYCRR200.6[a][1]).

After review of the record, despite my observation that the District has presented a prima facie case, I ultimately find the District has not upheld their Prong I burden. I start my analysis looking at the relevant IEP and find that the Present Levels of Educational Performance (PLEPs) seem to reflect the Student's attributes, the goals and objectives speak to the Student's primary areas of concern, and the recommended program is designed to encourage more than trivial progress. However, I am persuaded by the Parent that the District's plans and provisions for the Student were based largely upon data collected at the Student's Private School, and I credit testimony that indicates that the recommendations based on such data cannot be supplanted and then re-assumed into such a different learning environment. I also find that, given the Student's extensive needs, the District failed to provide an appropriate physical placement to adequately educate the Student. I will outline this finding below.

The Relevant CSE Meeting

The [] testified that she requested new evaluations for the Student at the beginning of 2015, for the Student's three-year reevaluation (TRP 38). She testified that the Student's Teacher from the Private School provided details about the Student's functioning in the classroom during the meeting (TRP 46-47). She said the [] in the IEP were based on what the Private School staff members said they were doing with the Student (TRP 47-48).

The Committee on Special Education (CSE) held an Individual Education Program (IEP) meeting for the Student on May 1, 2015. The District School Psychologist, the Parent, the Special Education Teacher, who acted as a translator, the Consulting Teacher and a subject Teacher from the Private School participated at the Meeting (Ex. F).

The Parent testified that she expressed her concerns about the Student needing [] [] (TRP 454).

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On the IEP that resulted from this CSE meeting (Ex. 1), the Student was given a disability classification of [] []. The program was for [] [] [] []

[]

[] [] [] [] [] [] [] [] [] [] [] []

[]

[]

The Parent testified that she did not agree with the CSE recommendation because the Student was not given [] and []
[] (TRP 455).

CSE Regard for Parental Concerns

In her Complaint Notice (Ex. A), the Parent held that the District ignored her concerns at the CSE meeting. However, the record reflects that efforts were made to understand the Parent's concerns both prior to and during the CSE meeting. The Special Education Teacher and translator testified that she contacted the Parent prior to the CSE meeting regarding an evaluation (TR. 143) and that during the CSE meeting she assisted the Parent in [], asking her whether she understood and if she had questions (TR. 139-140). The Special Education Teacher further testified that the Parent contributed to the CSE meeting and that her contributions were considered by the CSE as they developed the IEP (TR. 140). Finding the Special Education Teacher's testimony credible, I dismiss this claim of the Parent.

Goals

The [] stated the [] goals were created at the CSE meeting, based on the discussion (TRP 105) and based on the Private School Teacher's input and that the [] goals were based on the report by the Private School []
[] provider (TRP 48).

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The [] offered a rationale for taking goals from the Private School report: There should be overlap between what the Student is learning in school and the IEP goals (TRP 122). She went on to explain the goals were not related to the school placement but the area of deficit (TRP 106-107). She also testified the reason the IEP did not include a [] goal, a [], or [] goal is because the goals are based on skill deficits, not content area (TRP 120-122).

While the District maintains that the goals operate irrespective of placement, the Consulting Teacher from the Private School testified that the goals which were created by the Private School need to be provided with the level of support that is given in that school (TRP 385). She testified that the CSE team members from the District created the IEP's goals using the goals from the Private School's progress report (TRP 382, 388). She added that they also based the goals on what she and a teacher reported at the meeting (TRP 386, 388).

A review of the goals (see IEP, Ex. 1) reveals them to be generally sound, given the Student's needs, but I am persuaded by the Consulting Teachers argument that the goals cannot be simply transposed from one environment to another. However, I do not make a finding regarding FAPE based solely on this. It is only after the District's individual failures are seen aggregately that I make a finding regarding FAPE.

[]
The [] testified the section in the IEP related to [] was based on the questionnaire she asked the Parent during the meeting for the []¹ as well as conversations with school staff about the Student's areas of deficit (TRP 53).

¹ The Consulting Teacher testified that the Parent was asked to complete a [] with the help of someone at the meeting and it was not provided before the IEP meeting (TRP 413).

The [] stated she did not send the Parent the [] prior to the meeting because of her need to complete the caseload efficiently (TRP 103).

Again here, I am persuaded by testimony: The [] testified that the way that she teaches the skills listed in [][] on the IEP would be different from the way they would be carried out by someone other than an [] because her [] approach includes [][][][][][][][][][][][][][][][].

[] (TRP 346). The [] further testified that the [] on the Student's 2016 IEP could not be adequately carried out without direction from a licensed [] (TRP 347-348; 351). I note that the IEP in question does not offer [].

The [redacted] stated that during the IEP meeting they learned the Student was receiving [redacted] at the Private School and the Private School representative said that the Student needed it, so she requested an [redacted] after the meeting² to determine the

² The [] testified that the Student was not given an [] before

I find here that the District acted to try to get to the bottom of the Student's [redacted] needs but that their evaluation of the Student was inadequate. In her current environment, the Student has been assessed in [redacted] informally [redacted] and formally [redacted] [redacted] [redacted] (TRP 318), and the [redacted] [redacted] testified that the screening tools used for the District [redacted] were designed for a [redacted] child and were inadequate to assess the skills of a [redacted] student (TRP 330-332). The [redacted] stated that she would have done an assessment of [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

[redacted] (TRP 334). She considered the District [redacted] inadequate also because it only assessed [redacted]⁴ and did not address [redacted] (TRP 337).

The Consulting Teacher stated that the CSE referenced the 2013-2014 IEP when determining the Student's related services. She reported on the Student's services at the Private School and said she did not agree with their *not* recommending ☐ (TRP 407-408).

I find the record offers sufficient evidence to justify an independent evaluation of the Student that is mindful of the Student's [] to assess her [] needs. The failure to evaluate based upon the unique needs of this Student contributes to my finding that FAPE was denied.

the CSE meeting because she had not been given [redacted] services (TR 71).

³ The District [REDACTED], dated September 22, 2015 utilized [REDACTED]. The evaluator found that the Student had strengths in [REDACTED], and although she could not master some items, the evaluator did not recommend [REDACTED] (EX. 12).

4 The November 22, 2011 Annual Plan recommended termination of [redacted] services because the Student's [redacted] were adequate for school-related activities (EX. 16).

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The [] testified that the recommended placement was based on the Student's []. She said the Student requires a [] program to meet her needs, and the team thought a [] was the most appropriate ratio (TRP 58). The [] testified that the [] is an appropriate recommendation for the Student and further noted that the Student did not display the kind of [] [] that a [] and [] settings are designed to address (TRP 58). However, the Consulting Teacher disagreed with the CSE recommendation for a [] [] program in a [] classroom, testifying that it would not provide a sufficient level of [] support for the Student to make progress (TRP 398).

We have one qualified educator saying a [] is just right for the Student and another qualified educator saying it is insufficient. To further muddy the waters, I look at another aspect of placement that is in dispute: In addition to holding concern about the student-to-teacher ratio, the Parent also argues that the Student requires a placement in a [] [] that will give her [] [].

The Parent testified that she visited the CSE's proposed placement for the Student and responded to her visit with an observation that [] She said that the CSE's prospective placement at a school with around [] students would not be a good setting for the Student (TRP 456-457). Similarly, the Consultant Teacher expressed concerns at the CSE meeting over [] [] (TRP 401-403).

The Consulting Teacher noted the difference between the approach of the CSE's prospective program and the way the Student's current placement managed this, specifically through "[] []" (TRP 409). The [] testified of the importance of this, saying the Student "[]

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_____”
(TRP 339).

Although the Student's _____ were discussed at the CSE meeting, the Consulting Teacher testified that the IEP did not include the _____ that she reported the student needed, as in _____
(TRP 406-407).

Having heard these varying opinions, I find the District, despite keenly holding to their position, did not *uphold* their obligation to prove that the placement they recommended was suitable for the Student.

Having found that the District did not uphold their burden of proof with regard to the Student's placement and the provision of _____ services, and having found that the District developed its goals for the Student in context of the Student's current environment rather than his prospective environment, I find that the Student was, on the basis of these aggregate failures, denied a FAPE⁵. I now move to consider whether the Parent's placement of the Student was appropriate.

Prong II

I must now consider whether the Parents met their burden of proving the appropriateness of the placement of the Student at the Private School. On Prong II, New York federal

⁵ _____

The Parent has claimed that the Student requires an _____ and _____, while the District maintains that the Student does not, claiming that _____. The _____ testified that an _____ and _____ were not necessary because _____ (TRP 55). She also testified that the Student's Teacher did not report any concerns with _____ at the CSE meeting (TRP 91) and said a _____ is only for _____ (TRP 94).

Trying to predict _____ in a different environment is clearly speculative at best, but I find that, given the information and resources available to them, the CSE did not have reason to suspect that an _____ and _____ were needed. Regarding this point, I find for the District.

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courts have held that parental placements are “subject to fewer constraints than that applied to the school authorities.” *Schreiber v. E. Ramapo Cent. Sch. Dist.*, 700 F. Supp 529 [S.D.N.Y. 2010] The Second Circuit has clearly stated:

“ . . . [P]arents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.” *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105 [2d Cir. 2007] *quoting Frank G. v. Bd. of Educ.*, [459 F.3d 356](#), 364 [2d Cir. 2006]

Moreover, parents "may not be subject to the same mainstreaming requirements as a school board." *Frank G. v. Bd. of Ed. of Hyde Park* [2d Cir. 2006] *quoting M.S. v. Bd. of Ed. of City Sch. Dist. of Yonkers*, 231 F.3d 96, 105 [2d Cir. 2000] *citing Warren G. v. Cumberland County Sch. Dist.*, [190 F.3d 80](#), 84 [3d Cir. 1999] (holding that "the test for the parents' private placement is that it is appropriate, and not that it is perfect").

Parents need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child. *Frank G. v. Bd. of Educ.*, [459 F.3d 356](#), 364 [2d Cir. 2006]. Parents learn about the unique needs of a handicapped child through first-hand knowledge, but parents may also rely on the experience of professionals.

Student's Needs

The Department Head testified that the Student needs
 (TRP 219). The Student needs (TRP 221). The Department Head stated and that

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[redacted]
[redacted] (TRP 228). The Student requires [redacted]
[redacted] (TRP 228). She stated the Student requires related services in [redacted]
[redacted] (TRP 228). She testified that [redacted]
[redacted] (TRP 229).

The Department Head also testified that the Student “[redacted]
[redacted]” (TRP 285).

The Consultant Teacher spoke of the Student’s need in her placement for [redacted]
[redacted], the importance of [redacted] in her program, and the need
for [redacted] (TRP 399-400). She also stated her concerns that the Student could
regress in [redacted] by being in a [redacted], as well as
concerns over [redacted] (TRP 401-403).

The Private School

The Department Head for the Private School testified that [redacted] students attended the
Private School last year, in grades [redacted] (TRP 199). [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]
(TRP 200). Students are taught in [redacted] with [redacted]
(TRP 201).

Student Progress

The Department Head testified that the Student made great progress during the 2015/16
school year: “[redacted]
[redacted]” (TRP 231), making progress in [redacted]
[redacted] (TRP 279-
281). [redacted] (TRP 231).

The Department Head testified that the Private School met all the Student’s special
education needs and academic areas, related services, and [redacted] (TRP 233).

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The Private School Progress report (Ex. M) and the Progress Report Final Review (Ex. O) showed

. In Progress Report (Ex. E) the proficiency levels and teacher comments showed that

.

The also reported progress in and said the Student showed improvement in – for example,

(TRP 338-339).

After reviewing the Student's needs in relation to the information provided about the Private School, as well as the Student's progress, I find that the Parent has sustained her burden of proof in relation to the appropriateness of her placement of the Student.

Prong III

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents where equitable considerations support the parents' claim (*Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 [1993]; *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In *Burlington*, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see *Gagliardo*, 489 F.3d at 111; *Cerra*, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (*Burlington*, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral

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placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; *M.P.G. v. New York City Dep't of Educ.*, 2010 WL 3398256, at 7 [S.D.N.Y. Aug. 27, 2010]).

Tuition reimbursement may be reduced or denied if parents do not provide notice of the unilateral placement either at the most recent CSE meeting prior to removing the child from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense." (20 U.S.C. § 612[a][10][C][iii][I] ; see 34 C.F.R. § 300.148[d]) This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools." (*Greenland Sch. Dist. v. Amy N.*, 358 F.3d 150, 160 [1st Cir. 2004])

Procedural History

Our narrative in Prong I left off at the CSE meeting. Here it resumes after the CSE meeting when the Parent's Attorney wrote to the CSE Chair in a letter dated August 4, 2015 (Ex. E), reminding the Chair of the concerns the Parent raised during the CSE meeting, and enclosed a copy of the Student's June 2015 progress report. She requested an [redacted], copies of the Student's 2015 [redacted] and [redacted] in her native language. In the letter, she stated the Parent visited the proposed placement but found it inappropriate for the Student because of [redacted]
[redacted]. She informed the CSE that if the District did not provide a timely and appropriate public school placement, the Student would attend the Private School and the Parent would seek tuition funding and [redacted] (Ex. E, pp. 3-5). The Parent's Attorney wrote another letter to the CSE Chair, dated August 14, 2015 (Ex. D) stating that she had not received a response to her previous letter, an authorization for an [redacted], or copies of the Student's assessments. She notified

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the Chair that unless given an appropriate placement, the Parent would enroll the Student in the Private School and seek tuition funding and [REDACTED], and enclosed a copy of the Student's final progress report (Ex. D).

In the letter from the CSE Chair to the Parent (Ex. C), dated August 20, 2015, he wrote that she had a right to request a reconvene of the CSE and asked her to provide the CSE with updated material, so the CSE could review the materials and determine if a review was needed. He wrote the Student's [REDACTED] services were terminated based on an [REDACTED] annual review plan, dated November 22, 2011, but added that the CSE would consider the Parent's letter as a request for reevaluation (Ex. C).

In the letter from the Parent's Attorney to the CSE Chair (Ex. B), dated August 25, 2015, she informed him that the Parent wanted the CSE to reconvene as soon as possible, and restated her position about unilaterally placing the Student unless offered a suitable public school placement (Ex. B).

I credit the Parent for being active in communicating with the CSE and find that equities here favor the Parent.

The Request for the Independent [REDACTED]

The applicable federal regulation provides in material part as follows: (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) Initiate a hearing under Sec. 300.507 to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under Sec. 300.507 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent education evaluation, but not at public expense.

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(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation. (34 C.F.R. § 300.502[b]; *see also* 8 NYCRR 200.5[g])

In the face of the Parent's demand, the District has stood silent. The District has neither issued payment for the requested evaluation, nor did it initiate a hearing under Sec. 300.507 to show that its own evaluation was appropriate. Given the foregoing, I find entirely for the Parent.

It is therefore **ORDERED**

- **The District shall provide funding for an independent**
 by a provider of the Parent's choosing provided that the invoice is submitted within 90 days of this order.
- **The District shall provide funding to Private School for the 2015/16 school year.**

So Ordered,

Dated: May 16, 2016

MARTIN J. KEHOE III, ESQ.
Impartial Hearing Officer

MJK: ☐

PLEASE TAKE NOTICE

The parent and/or the New York City Department of Education has a right to obtain a review of this decision by a State Review Officer of the New York State Education Department under Part 200.5(k) of the Regulations of the Commissioner of Education, Section 4404 of the Education Law, and the Individuals with Disabilities Education Act.

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Directions and forms can be found on the Office of State Review website:
<http://www.sro.nysed.gov/RevisedRegulationsOverview.html>

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DOCUMENTATION ENTERED INTO THE RECORD**PARENT**

- A Impartial Hearing Request, 3/1/16, 8 pages
- B Letter from the Parent to the [] Chairperson, 8/25/15, 2 pages
- C Letter to the Parent in Response to her 8/4/15 Letter, 8/20/15, 1 page
- D Letter from the Parent to the [] Chairperson, 8/14/15, 25 pages
- E Letter from the Parent to the [] Chairperson, 8/4/15, 27 pages
- F IEP Annual Review Meeting Notes by [] of the [], Consulting Teacher, 5/1/15, 8 pages
- G School Location Site Report, 7/29/15, 4 pages
- H []'s 2015-2016 [] Class Schedule, undated, 1 page
- I []'s 2015-2016 [] Enrollment Contract, 4/25/15, 2 pages
- J []'s Tax Return from the 2014 Fiscal Year, undated, 5 pages
- K []'s 2015-2016 Attendance Detail, undated, 1 page
- L [], undated 6 page
- M []'s 2015-2016 [] Progress Report, March 2016, 20 pages
- N []'s 2015-2016 Tuition Affidavit and Cover Letter from [], 8/22/16, 2 pages
- O []'s 2015-2016 [] Progress Report Final Review, June 2016, 21 pages
- P [] Progress Report, Dec. 2015, 22 pages

DEPARTMENT OF EDUCATION

- 1 Individualized Education Program (IEP), 5/1/15, 13 pages
- 2 IEP Meeting Minutes, 5/1/15, 2 pages
- 3 [], 2/10/15, 16 pages
- 4 [] Report, February 2015, 24 pages
- 5 School Location Letter, 5/5/15, 1 page
- 6 [], 1/1/15, 4 pages

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- 7 , 11/6/14, 1 page
- 8 Due Process Response, 3 pages
- 9 Meeting Notice, 5 pages
- 10 Prior Written Notice, 7 pages
- 11 School Location, 2 pages
- 12 , 19 pages
- 13 , 19 pages
- 14 Correspondence, 4/20/15
- 15 Correspondence, 10/27/15
- 16 Annual Review, 11/22/11, 2 pages

IMPARTIAL HEARING OFFICER

IHO 1 DOE Closing Brief, 15 pages

IHO 2 Parent's Closing Brief, 28 pages