UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Williams S. Hart School District,
Plaintiff,
vs.
Kimberly Antillon, et al,
Defendants.

Case No.: CV 19-8328 CBM(GJSx)

AMENDED ORDER RE: MOTION FOR SUMMARY JUDGMENT (DKT. 30, 31, 33, 35.)

The matter before the Court is Defendants and Counterclaimants Kimberly Antillon and Bryon Antillon's Motion for Summary Judgment.[1] (Dkt. 31). Plaintiff William S. Hart Union School District ("District") filed an Opening Brief requesting a reversal of the Office of Administrative Hearing's ("OAH") decision and an Opposition to Defendants' Motion. (Dkt. 30, 32.) Defendants filed a Reply. (Dkt. 36.)

[1] Kimberly Antillon and Byron Antillon, parents on behalf of minor A.A., are the Defendants and Counterclaimants.

I. BACKGROUND

This case was brought under the Individuals with Disabilities Education Act ("IDEA"). A.A. was a sixteen-year-old eleventh grade student who qualified for special education as a student with autism at the time of the Administrative Law Judge's ("ALJ") decision. (Administrative Record Decision "Decision" at 3; Dkt. 24-1.) In the 2016-2017 school year she began exhibiting maladaptive behaviors after an alleged sexual assault at school, eventually leading to suicide ideation and hospitalization. (Decision at 3.) Subsequently, A.A. began attending Five Acres, a nonpublic school, where she received counseling and her emotional condition improved. (Id.) Five Acres was set to close at the end of the summer of 2019. (Id. at 4.)

In March 2018, she was assessed by Diagnostic Center, Southern California and was diagnosed with mild Intellectual Disability. (Id.) The Diagnostic Center found that A.A. functioned as a seven-year-old with "intellectual functioning" and adaptive behaviors in the low range. (Id.) She required significant prompting to complete daily living skill tasks. (Id.) The Diagnostic Center also made recommendations as to A.A.'s education environment, including the incorporation of supported work experience while in school and community-based instruction. (Administrative Record "AR" at 206, 203.) It also emphasized her need for adult supervision due to safety concerns. (Decision at 4.) The Diagnostic Center "recommended a change in special education eligibility" because A.A.'s assessment demonstrated "intellectual functioning failing" and that A.A. required "high levels of prompting to perform daily living skills." (Id. at 3.)

A. May 2018 IEP Meeting

On May 15, 2018, the District held an IEP meeting to review the Diagnostic Center's findings and recommendations. (Decision at 4.) Kimberly Antillon and Byron Antillon (collectively "Parents") were present along with their advocate Lori Waldinger, who accompanied them throughout the process. (Decision at 4, 7,

8.) The District offered a change from diploma track to certificate of completion, "nonpublic school placement," speech and language therapy, and school-based counseling. (Id.) It did not, however, offer a specific alternative site placement but instead offered to work with the family to locate an alternative placement. (Id.) The parents signed the IEP amendment. (Id.)

B. Placement Search

In the days immediately following the May IEP meeting, Wesley Hester, the District's Program Specialist, and Parents exchanged emails. (Id. at 5; A.R. 234–44.) In the emails, Mr. Hester mentioned possible placement at Casa Pacifica, The Help Group's Bridgeport Vocational School and the district public high school in a special day program. (Id.) He noted that "Bridgeport would be the program best suited for" A.A. and that they should also consider Casa Pacifica. (A.R. 242.) They discussed setting up tours of the programs and Parents eventually toured the recommended placements. (Decision at 7.) Parents also found a program called Imago Dei School run through Trinity Classical Academy ("Trinity"). (Id.) On May 22, 2018, A.A. underwent academic testing (a "screener") at Imago Dei "as part of the intake process to consider the student for enrollment." (A.R. 580–81.)

In June 2018, Ms. Waldinger, Defendants' advocate, sent a letter on behalf of Defendants to the District's special education director, Sharon Amrhein, expressing that the Parents did not find the schools that the District recommended to be suitable and liked the Imago Dei program. (A.R. 245.) She stated that Parents were hoping to meet to "discuss their concerns . . . and hopefully come to a mutual resolution." (Id.) On August 6, 2018, Parents sent another letter informing the District that they planned to enroll A.A. in Imago Dei and would be seeking reimbursement. (A.R. 246.)

C. August 2018 IEP

On August 22, 2018, the IEP team met and discussed A.A.'s placement and the Parents' request for reimbursement of A.A.'s attendance at Trinity. (Decision

at 7.) Parents had rejected the recommended placements of the district, enrolled A.A. at the Imago Dei program, and were now requesting tuition reimbursement. (Decision at 7; A.R. 249.)

The program offered by the District would not, according to the Parents, be an appropriate fit for A.A. (Decision at 7.) Parents did not believe Casa Pacifica was an appropriate fit because "it did not have a program for kids with intellectual disability." (A.R. 363.) Instead, Casa Pacifica focused on foster care youth and students with emotional disturbance. (Decision at 7.) Parents did not believe Bridgeport was appropriate because A.A. would have no interaction with "typically developing children" and students with "lower functioning" than A.A. (Decision at 7.) Finally, Parents were uncomfortable enrolling A.A. at the Golden Valley High School's program because it did not provide adequate safety measures. (Id.) Parents instead insisted on reimbursement for placement in the Imago Dei program. (Id.) The District asserted that they could not reimburse parents for a religious school placement. (Id.) Instead, the District reiterated its belief that Bridgeport was the best option for A.A., but that Casa Pacifica was also appropriate. (Id.)

D. Administrative Hearing

On January 22, 2019, Defendants filed a due process hearing before the OAH. (Id. at 1.) At the hearing, Trinity Principal Megan Howell testified and was unable to answer certain education question, such as what the specific eligibility criteria for a student to qualify for special education in the category of intellectual disability. (A.R. 584.) She was also unable to testify as to which grade level A.A. was "currently working." (Id. at 591.) However, Ms. Howell testified she had regular interactions with A.A., noting that A.A. would come to her with challenges A.A. was facing. (Id. at 603.) She also testified that she observed A.A. on a regular basis during recess and lunch, and had discussions with her about her social interactions. (Id. at 570.)

Ms. Howell testified that she observed A.A. had made substantial progress since starting at Imago Dei, A.A. was now capable of "discussing things that are difficult for her," and "had made improvement in [] her accurate assessment of herself in social situations." (Id. at 267, 601–03.) She also noted that A.A. was doing well in the job training and readiness assessments. (Id. 566.) A.A. received significant individualized attention, with multiple class of only one to three other students. (Id. at 569.) She attended some general education classes as well. (Id. at 567.) In those classes, she was given preferential seating and provided breaks whenever she needs them. (Id. at 568.) At the end of the year, the school conducts follow-up assessments. (Id. at 603.) Additionally, during this time A.A. was receiving counseling through Dynamic Interventions. (Decision at 11.)

The ALJ found in favor of Defendants and ordered reimbursement of tuition and counseling expenses. (Id. at 26.) The ALJ also found Trinity provided a functional academic curriculum, allowed for community-based outings and job training, and facilitated inclusion with typically developing piers. (Id. at 23.) The District filed this complaint arguing that the ALJ erred in finding that the District had not made a clear written offer of FAPE for the 2018-2019 school year and in ordering reimbursement for Defendants. The District also alleges that reimbursement for "non certified parochial school" was improper because "funneling [] public funds" to religious schools through tuition reimbursement would conflict with IDEA and federal and state law. The Parents filed a counterclaim seeking attorneys' fees and expenses.

II. JURISDICTION

The Court has jurisdiction over this action under the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 *et. seq.*; 34 C.F.R. § 300.1 (2006) *et seq.*

III. LEGAL STANDARD

"Though the parties may call the procedure a 'motion for summary judgment' . . . the procedure is in substance an appeal from an administrative determination, not a summary judgment." *Capistrano Unified Sch. Dist. v. Wartenberg By & Through Wartenberg*, 59 F.3d 884, 892 (9th Cir. 1995). A district court reviews an IDEA administrative decision under a modified de novo standard. *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471-73 (9th Cir. 1993); *see J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 438 (9th Cir. 2010) ("[C]omplete de novo review of the administrative proceeding is inappropriate."). "How much deference to give state educational agencies, however, is a matter for the discretion of the courts." *Jackson*, 4 F.3d at 1472.

"The burden of proof in the district court rests with . . . the party challenging the administrative decision." *Id.* (quoting *Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099, 1104 (9th Cir. 2007) (brackets omitted)). When considering a request for review of an administrative decision, the Court "must base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate." *Id.*; 20 U.S.C. § 1415(i)(2)(C).

IV. DISCUSSION

A. Clear Written Offer

The District contends that the ALJ erred by holding that the District was required to make a clear written offer of a single identifiable nonpublic school placement. Specifically, the District argues A.A. was not prejudiced by the District's offer of two locations, Bridgeport or Casa Pacifica, for A.A.'s nonpublic school placement.

The IDEA requires "written prior notice to the parents of [a] child . . . whenever the local education agent proposes to initiate or change; or refuses to initiate or change, the . . . educational placement of the child, or the provision of a free appropriate public education to the child." 20 U.S.C. § 1415(3). The Ninth

Circuit held that "this formal requirement has an important purpose that is not merely technical" and "should be enforced rigorously." *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994). A formal written offer is important in creating a clear record and in signaling to parents "the need to consider seriously" whether the placement is appropriate under the IDEA. *Id.* Thus, even where parents have made clear their intention to refuse the offer, a district is still required to make a clear written offer. *Id.* The Ninth Circuit has yet to directly address whether *Union* means that one specific program or school must then be offered to constitute a clear written offer, but other caselaw supports the ALJ's conclusion that it does.

In *Glendale Unified Sch. Dist. v. Almasi*, the court concluded that *Union* requires a school district to "formally offer a single, specific program." *Glendale Unified Sch. Dist. v. Almasi*, 122 F. Supp. 2d 1093, 1107 (C.D. Cal. 2000). The court reasoned that "[o]ffering a variety of placements puts an undue burden on a parent to eliminate potentially inappropriate placements, and makes it more difficult for a parent to decide whether to accept or challenge the school district's offer." *Id.* Although it is clearly best for the school district to initially suggest several placements for the parents to discuss and consider, "the school district must take the final step and clearly identify an appropriate placement from the range of possibilities" and "use its expertise to decide which program was best suited for [student]'s unique needs." *Id.* at 1108. Citing to *Union*, the Fourth Circuit held "as a matter of law that because [a school district] failed to identify a particular school, the IEP was not reasonably calculated to enable [the student] to receive educational benefits." *A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 681 (4th Cir. 2007). The court reasoned that "the school at which special education services are expected to be provided can determine the appropriateness of an education plan, it stands to reason that it can be a critical element for the IEP to address." *Id.* at 680.

The District cites to *A.V. By & Through Vaz Antunes v. Lemon Grove Sch. Dist.*, No. 16-cv-0803-CAB, 2017 U.S. Dist. LEXIS 26449 (S.D. Cal. Feb. 23, 2017), where the court affirmed an ALJ's decision that failure to identify a specific non-public school placement was not a procedural violation. *Id.* at *23. The court in *Lemon Grove* reasoned that school choice was an administrative decision and that educational placement only refers to the general program rather than a specific school. *Id.* The court in *Lemon Grove* did not address the Ninth Circuit's decision in *Union* when it determined that no specific school is required, and instead relied on case law primarily from district courts in other circuits. Thus, as expressed in *Glendale* and by the Fourth Circuit's *Alexandria City Sch. Bd.* case, allowing a district to simply offer "nonpublic school placement" is too vague to protect the interests discussed in *Union*.

The District also relies on *Marcus I. ex rel. Karen I. v. Dep't of Educ.*, 583 F. App'x 753 (9th Cir. 2014), in which the Ninth Circuit did not state that a specific placement was not required. Instead, the court concluded that any potential procedural error was harmless. *Id.* ("[E]ven if the . . . prior written notice did not make a sufficiently specific formal placement offer, procedural error did not significantly restrict [parent]'s ability to participate in the development of his educational program."). In *Marcus*, the issue was whether the parents' ability to participate in the development of the student's educational program was hindered by the District's lack of a specific formal placement offer. In contrast, the Parents' ability to participate in the development of A.A.'s educational program is not at issue in this case, and thus *Marcus* is not applicable.

Therefore, the ALJ did not err in finding that the District's failure to present a clear written offer of a single school violated A.A.'s FAPE rights.

B. Reimbursement for Imago Dei

The District argues that reimbursement for Imago Dei was improper because any "funneling of public funds" to the parochial school through tuition

reimbursement "would conflict with federal and state law against using public funds for the support of sectarian or denominational schools." Defendants contend tuition reimbursement for parochial school is appropriate if it is established that the District had not provided a FAPE.

1. Propriety of Reimbursement of Parochial School Tuition

When a court finds that a child was denied FAPE, it may award the reimbursement of tuition at a "private school" which the court has determined is a proper placement. 20 U.S.C. § 1412(a)(10)(C); *see also Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (concluding that the IDEA grants "the power to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act"). The IDEA confers "broad discretion on the court" in fashioning relief. *Burlington*, 471 U.S. at 369.

a. Establishment Clause

In *Zobrest v. Catalina Foothills Sch. Dist.*, the Supreme Court held that a deaf student was entitled to a district-funded interpreter at his private Catholic school. 509 U.S. 1, 10 (1993). The Court reasoned "because the IDEA creates no financial incentive for parents to choose a sectarian school, an interpreter's presence there cannot be attributed to state decisionmaking." *Id.* The court in *Zobrest* held that "[w]hen the government offers a neutral service on the premises of a sectarian school as part of a general program that 'is in no way skewed towards religion,' . . . it follows under our prior decisions that provision of that service does not offend the Establishment Clause." *Id.*

Courts have extended this reasoning to allow for tuition reimbursement in cases where the school district failed to provide FAPE and the parents subsequently enrolled students in a parochial school. *See Matthew J. v. Massachusetts Dep't of Educ.,* 989 F. Supp. 380, 392 (D. Mass. 1998) (finding

reimbursement to parochial school permissible under First Amendment); *Christen G. by Louise G. v. Lower Merion Sch. Dist.*, 919 F. Supp. 793, 820 (E.D. Pa. 1996) (same). The Ninth Circuit also affirmed an ALJ's decision to award tuition reimbursement to parochial schools. *See Bellflower Unified Sch. Dist. v. Lua*, 832 F. App'x 493, 496 (9th Cir. 2020) (awarding tuition reimbursement and holding that "[t]he fact that [school] is a parochial school does not change this analysis); *S.L. ex rel. Loof v. Upland Unified Sch. Dist.*, 747 F.3d 1155, 1160 (9th Cir. 2014) (awarding tuition reimbursement for tuition at parochial school when districts had denied FAPE). The District distinguishes cases cited by Defendants; however, offers no case law to support its argument and only relies on the text of the IDEA. Thus, reimbursement for education at a parochial school is not barred.

b. California Constitution

The District briefly argues that Article IX § 8 and Article XVI § 5 of the California Constitution prohibits reimbursement of parochial school tuition. The District only relies on the language of the constitution to argue any reimbursement would be impermissible. However, under both Article IX § 8 and Article XVI § 5, California courts have recognized that the use of public funds to assist in education at parochial schools is permissible when the benefit is incidental. *Bd. of Trustees v. Cory*, 79 Cal. App. 3d 661, 666 (1978) (applying incidental test under Article IX § 8); *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1385 (9th Cir. 1994) (applying incidental test under Article XVI § 5). Additionally, under the incidental test, the payment of funds to reimburse tuition to a student is permissible when the student "designates the school of his choice . . . since any benefit to a private school is an 'incidental' or 'indirect' effect of the direct benefit to the student." *Id.* Therefore, the District's argument fails.

2. Proper Placement Findings

The District argues that the ALJ's finding that the placement was proper was not supported by the record because the only witness from Imago Dei was not

sufficiently knowledgeable of the special education services for A.A., Imago Dei was using the May 2018 IEP instead of the more recent November 2018 IEP and placement was improper because Imago Dei is a highly restrictive environment (A.A. is the only female student in most of her classes).

For a school to be a proper placement, such that tuition reimbursement is appropriate, it must be shown "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." *C.B. ex rel. Baquerizo v. Garden Grove Unified Sch. Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011). "The parent 'need not show that a private placement furnishes every special service necessary to maximize their child's potential,' but rather 'need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child.'" *Bellflower*, 832 F. App'x at 496 (quoting *Garden Grove*, 635 F.3d at 1159).

Here, the ALJ found the school appropriate because Imago Dei provided a functional academic curriculum, allowed for community-based outings, job training and inclusion with typically developing piers. The ALJ additionally noted that A.A. demonstrated progress in all components of her educational program. Although the District is correct that Ms. Howell was not knowledgeable about some of Imago Dei's special education services to A.A., such as the specific criteria for a student to qualify for special education in the category of intellectual disability or the particular grade level, she was knowledgeable about A.A.'s progress and class schedule. (A.R. 603.)

Overall, Imago Dei provided diagnostic testing prior to enrollment, provided A.A. with individualized academic instruction and as a result, the school noticed improvements. *Bellflower*, 832 F. App'x at 496 (finding that the school was appropriate for reimbursement purposes because it "provided [student] with diagnostic tests upon enrollment to assess her academic proficiency and needs and

provided [student] with one-on-one tutoring assistance and extra help from her teachers"). The October 2018 IEP form noted the goals of having A.A. learn to identify and express concerns with "no more than [two] teacher prompts," and Ms. Howell testified that A.A. can now "discuss things that are difficult for her," and "had made improvement in [] her accurate assessment of herself in social situations." Additionally, the school provides and assesses job readiness and found A.A. to be performing well.

The District describes the classroom as two or three people and argues that the classroom was too restrictive because A.A. was the only girl. However, Ms. Howell testified that A.A. had made friends outside of the special education program on her own at recess and lunch. Specifically, A.A. "developed a close relationship with a nondisabled girl in her same grade." She also testified that AA. attends some general education classes as well. In fact, in her May 15, 2018, IEP it was noted that she "has always done well in small group of one to two people." Although the District is correct in noting that Imago Dei was not "working on [A.A.'s] most recent annual IEP dated November 11, 2018," and instead was using A.A.'s November 16, 2017, IEP, the facts overall demonstrated that A.A. was receiving individualized education and showed progress.

For these reasons, the ALJ did not err in finding that Imago Dei was a proper placement and tuition reimbursement is appropriate.

3. Procedural Violation

The District argues that granting reimbursement for costs associated with A.A.'s education during the 2018-2019 school year (August 23, 2018, through June 23, 2019), including tuition and fees in the amount of $24,550 and individual counseling in the amount of $2,550, was error because Parents failed to give notice to the District on May 15, 2018, that Parents had decided to enroll A.A. in Imago Dei.

Pursuant to § 1412(a), tuition reimbursements may be reduced if the parents fail to inform the IEP team of their intent to reject the offer or fail to give ten days written notice. 20 U.S.C. § 1412(a)(10)(C)(iii)(I).

On May 22, 2018, A.A. underwent academic testing at Imago Dei "as part of the intake process to consider the student for enrollment." (AR 580.) The evidence also shows that on May 23, 2018, Parents were still working to schedule tours of the other locations recommended by the District. Additionally, Parents gave notice on August 6, 2018, of their intention to enroll A.A. at Imago Dei, two weeks prior to the August 22, 2018, IEP meeting. The Court finds that the parents had not made a decision to reject the District's recommendations on May 15, 2018. Therefore, the parents were not required to give written notice at the May 15, 2018, meeting.

C. Dynamic Intervention Counseling

The District asserts that the ALJ erred in awarding Defendants $2,550 in counseling reimbursement.

"Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when: (1) the school district failed to provide a FAPE; and (2) the private placement or services procured are (a) proper under IDEA and (b) reasonably calculated to provide educational benefit to the child." *Glendale*, 122 F. Supp. 2d at 1104. The IDEA confers "broad discretion on the court" in fashioning relief. *Burlington*, 471 U.S. at 369.

The ALJ, in awarding reimbursement for Dynamic Intervention Counseling, reasoned that Parents were under no legal obligation to accept the District's offer of counseling services. The District does not point to any legal authority that challenges the ALJs finding on this issue.

Having found the District failed to provide a FAPE, and the Imago Dei placement is proper and reasonably calculated to provide an educational benefit to

A.A., the Court affirms the ALJ's award of reimbursement for Dynamic Intervention Counseling services.

D. "Stay Put"

Defendants contend that the District is required to reimburse them for the 2019-2020 school year pursuant to the "stay put" provision of IDEA. The District argues that the ALJ did not make a determination that Imago Dei was an appropriate placement such that "stay put" is available. The District requests to strike Defendants' "stay put" argument and asserts that the "stay put" request is inappropriate because it was not raised as a counterclaim.[2]

The IDEA provides that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j). This includes during the judicial appeals process. *Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1040 (9th Cir. 2009). The "current education placement" is a legally significant term not defined in the IDEA, but courts interpret the term as "(1) the placement set forth in a child's last-implemented IEP or (2) a parents' private placement that is supported by a court or agency ruling." *Dep't of Educ. v. Ria L.*, No. 12-00007, 2012 U.S. Dist. LEXIS 155484, at *8 (D. Haw. Oct. 30, 2012). An administrative agency or judicial decision may implicitly establish a current educational placement for "stay put" purposes, so long as it adjudicates the appropriateness of the private placement. *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 904 n.1 (9th Cir. 2009).

Here, the ALJ reasoned that A.A.'s placement at Imago Dei had "addressed her need[s]" for a functional academic curriculum, life skills training, and

[2] Defendants argue "stay put" is an "automatic injunction" that does not need to be plead and alternatively, request that the Court consider Defendants' counterclaim as amended under Fed. R. Civ. P. 15(b) to include the "stay put" argument.

socialization and social communication and that she received an educational benefit. The ALJ found that "equity favors reimbursement" and therefore ordered the District to reimburse the parents in the amount of $24,550 for tuition and fees. While the ALJ concluded Imago Dei provided educational benefits to A.A., the ALJ made no specific findings that Imago Dei was an appropriate placement.

The Court finds that Imago Dei has been effective in implementing the recommendations from Diagnostic Center and A.A. has received education benefit from her academic and social development. Imago Dei is well-suited to meet A.A.'s future education needs. It provides highly individualized instruction and offers A.A. the ability to take classes with "neurotypical peers." Imago Dei offers practical skill job training, something that will become increasingly important as A.A. reaches adulthood. Additionally, the school conducts assessments every year. Therefore, the Court finds Imago Dei is an appropriate placement.

The District also contends that Defendants failed to exhaust administrative remedies before seeking a "stay put" relief for the 2019-2020 school year. In this case, the District was notified that the parents sought reimbursement under § 1415(j)'s stay-put provision on March 15, 2020. A stay put order for the 2019-2020 school year was not before the ALJ during the hearing because the issue involved at the hearing was reimbursement for the 2018-2019 school year. Therefore, the Court denies the District's "Request to Strike Improper Argument" based upon "stay put."[3] (*See* Dkt. 33) Defendants were not required to raise a

[3] The District also filed a Request to Strike Defendants' Statement of Disputed Facts and Request to Strike Arguments beyond the 25 page limit. (Dkt. 35.) In Defendants' Opposition to the District's Opening Brief, Defendants filed a supplement separate statement of disputed facts. (Dkt. 34.) Pursuant to Local Rule 56.1, the movant shall lodge a proposed Statement of Uncontroverted Facts and Conclusions of Law. There is no authority to support the District's second separate statement in their Opposition. Accordingly, the Court strikes Defendant's separate statement filed with their Opposition to the District's Opening Brief. (Dkt. 34-1, 35)

"stay put" argument in their counterclaim because pursuant to IDEA, the parents are entitled to reimbursement pursuant to "stay put." 20 U.S.C. § 1415(j).

V. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment and **DENIES** the District's request to reverse the OAH decision. The Court orders the District to reimburse the parents for the tuition at Imago Dei for the 2019-2020 school year. The Court **GRANTS** Defendants' request for reasonable attorneys' fees and cost for the underlying administrative action and this action pursuant to 20 U.S.C. § 1415(i)(3)(B)(i)(I), to be determined by the Court upon the filing of a motion for attorneys' fees.

IT IS SO ORDERED.

DATED: July 1, 2021

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE