

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

## **Pennsylvania Special Education Hearing Officer Final Decision and Order**

### **Closed Hearing**

#### **ODR File Number**

25912-21-22

#### **Child's Name**

J.G.

#### **Date of Birth**

[redacted]

#### **Parents**

[redacted]

#### Counsel for Parents

*Pro Se*

### **Local Educational Agency**

Pittsburgh School District  
341 South Bellefield Avenue  
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#### Counsel for LEA

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### **Hearing Officer**

Michael J. McElligott, Esquire

### **Date of Decision**

05/03/2022

## **Introduction**

This special education due process hearing concerns the educational rights of J.G. ("student"), a student who resides in the Pittsburgh School District ("District").<sup>1</sup> The parties disagree over the student's special education programming under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")<sup>2</sup>.

The student's parent feels that the student's current program and placement are appropriate. The District has proposed a different program and placement.

For the reasons set forth below, the District's proposed program and placement are appropriate. The order will address a transition schedule to allow the student to transition from the current program and placement to the new program and placement.

## **Issue**

What is the appropriate program and placement for the student?

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<sup>1</sup> The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

<sup>2</sup> It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

## **Findings of Fact**

All evidence in the record, both exhibits and testimony, were considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. The student is currently in [early elementary] (2021-2022 school year) and has been enrolled in the District since kindergarten. (Parent's Exhibit ["P"]-3; School District Exhibit ["S"]-5).
2. The student has been identified as a student with an intellectual disability. (P-3; S-5).
3. The student repeated the [redacted] (2018-2019, 2019-2020 school years) and was promoted to [the next grade] thereafter (2019-2020). (Notes of Testimony ["NT"] at 258-293).
4. Throughout the student's enrollment at the District, the student was largely included in regular education environments with special education and related-services support. (NT at 35-66, 258-293).
5. Multiple evaluations, by both the District and outside evaluators, found that the student should be identified as a student with an intellectual disability, based on multiple assessments (including cognitive testing, achievement testing, adaptive assessments), classroom performance,

and observations. (P-1, P-3, P-4; S-3, S-4, S-5, S-6; NT at 36-66, 68-87, 90-143, 193-197, 146-170, 205-230, 233-255, 258-293).

6. The student did not perform well in online learning environments, necessitated by the COVID-19 school closure in the spring of 2020 and the District's re-opening plan in the 2020-2021 school year. (P-1; S-3, S-6; NT at 174-193, 258-293, 295-303, 306-312).
7. At the outset of the 2020-2021 school year, [redacted], the student could not identify any letters or letter sounds independently. In the midst of the school year, the student could [identify] two letters. Both of these assessments utilized videoconference platform given the District's re-opening plan. The student's behavior interfered with these assessments, including hitting the mother, making noises, and excessive laughter. (S-5 at page 11).
8. In the fall and winter of the [2020-2021] year, computer-based curriculum assessments in reading yielded no data due to the student's lack of engagement in the videoconference platform. In spring of [2021], by April 2021, the District had returned to in-person instruction. The spring assessment was given in person; the student did not register a score on the spring assessment. (S-5 at page 11).
9. In the midst of the [2020-2021] year, the student could identify two numbers 0-20, neither of which was independent. The student showed

elementary counting skills (counting objects to six). The student's behavior interfered with this assessment. (S-5 at page 12).

10. During instruction and progress-monitoring in [2020-2021] during remote instruction, the student's behavior would often interfere with instruction. (S-5 at page 12).
11. In [the 2020-2021 school year], the student's individualized education program ("IEP") contained three goals—number identification 0-10, letter identification of letters in the student's name, sight-word identification. (S-5 at pages 12-14).
12. The student made very little goal progress on the IEP goals. The student's behavior often interfered with instruction and progress monitoring. (S-5 at pages 12-14).
13. In [the 2020-2021 school year], both in the virtual environment and in-person after April 2021, the student received occupational therapy ("OT") and speech and language ("S&L") support. (P-3 at pages 14-16, 18).
14. The S&L support focused on peer interaction and independent expressive communication. The OT support focused on fine motor skills, often requiring hand-over-hand guidance whether by the student's mother or the occupational therapist upon the return to in-person instruction. (P-3 at pages 14-16).

15. In the spring of 2021, after the return to in-person instruction, the District requested permission to re-evaluate the student. Parent withheld consent for a re-evaluation, so in May 2021 the District issued a re-evaluation report (“RR”) based on records review. (P-3).
16. The May 2021 RR identified continuing academic needs in letter identification, number identification, pre-primer sight-word identification. The RR identified continuing OT needs (fine motor skills—letter formation, scissor skills, clothing fasteners) and S&L needs (expressive communication, engagement with adults and peers). (P-3 at page 23).
17. The May 2021 RR also noted some behavioral needs (following directions, attention to task) and adaptive needs (some support in attending to meals and in removing outerwear), most importantly toileting [redacted]. (P-3 at pages 23, 31).
18. The May 2021 RR indicated that the student should have a 1:1 personal care assistant as part of programming. (P-3 at page 31).
19. The student returned to the inclusive regular education environment for [the next] grade. (NT at 35-66, 174-193, 258-293).
20. The return to full-time in-person instruction in [the next] grade, the current 2021-2022 school year, has greatly benefited the student. (NT at 68-87, 174-193, 258-293, 295-303, 306-312).

21. In the first quarter of [the 2021-2022 school year], the student exhibited small but measurable progress on IEP goals. (P-1).
22. In November 2021, with a full return to in-person instruction, the District conducted a functional behavioral assessment ("FBA"). (S-4).
23. The behaviors of concern [redacted] for the FBA were ignoring instruction, verbalizations, loud volume, tapping/hitting furniture, restlessness, and pushing items off tables/desks. (S-4).
24. Educators working with the student this school year confirmed these behaviors across environments. (NT at 68-87, 146-170, 205-230, 258-293).
25. Educators also testified that as the year progressed and after the November 2021 [FBA] had been issued, the student increasingly engaged in behavior that involved bumping into, or engaging in unwelcome physical contact, with peers. (NT at 146-170, 205-230, 258-293).
26. In December 2021, the District proposed a program/placement where the student's goals would remain the same but the student's placement would change from an inclusive regular education environment to a life skills classroom to provide instruction in a classroom with a smaller teacher-to-student ratio, the support of a

classroom aide, and intensified instruction in adaptive needs/functional skills, including toileting. (NT at 35-66, 90-143, 193-197).

27. The December 2021 IEP included three OT goals (cutting, printing first/last name, and clothing fasteners), a S&L goal (functional communication—appropriate attention-seeking, turn-taking, expressive language), a toileting goal, identifying numbers 0-20, identifying letters A-Z, identifying sight words, and a behavior goal (following directions, reducing restlessness, keeping hands/feet to self, appropriate peer interaction). (S-6 at pages 36-48).
28. The December 2021 IEP contains a positive behavior support plan, based on the FBA. (S-6 at pages 49).
29. The December 2021 IEP contains specially designed instruction and program modifications. The IEP contains OT and S&L therapies. (S-6 at pages 51-53).
30. A personal care aide was included as part of the toileting goal in the December 2021 IEP for progress-monitoring, and for generalized hand-over-hand assistance or inattention, but the District had difficulty hiring a staff member. As of the date of the hearing, the toileting goal was not being implemented due to lack of staffing, although the life skills teacher was attending to [assisting] the student as her schedule allowed. An aide was not listed as a program modification or related service in the IEP. (S-6 at pages 41, 51-53; NT at 35-66, 90-143).



31. The student's IEP called for the student to be included in regular education environments for science, social studies, library, music, art, physical education, lunch, and recess. On a daily basis, over the school building's 6-day instructional cycle, the student will be in regular education environments multiple times during each instructional day. (S-11; NT at 90-143, 193-197).
32. The District formally recommended that the student's placement be changed from an itinerant level of support in an inclusive environment to a supplemental level of support in a life skills classroom. Parent disagreed with this recommendation and requested a due process hearing. (S-7).

### **Witness Credibility**

All witnesses testified credibly and a similar degree of weight was accorded to each witness's testimony.

### **Discussion**

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives a free appropriate public education (34 C.F.R. §300.17; 22 PA Code

§14.102(b)(iv)) [“FAPE”], an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

The provision of FAPE also requires that the placement of a student with a disability take into account the least restrictive environment (“LRE”) for a student. Educating a student in the LRE requires that the placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting as close as possible to regular education, especially affording exposure to non-disabled peers. (34 C.F.R. §300.114(a)(2); 22 PA Code §711(b)(11); Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

Here, the District’s proposed program/placement are appropriate and will provide the student with an IEP, in a classroom and curricular setting, reasonably calculated for significant learning in light of the student’s individual needs.

The student is ending the [2021-2022 school] year and the District’s proposed IEP will be implemented for the student’s [next school] year (the

2022-2023 school year). The curriculum at that point will continue to deepen, as the student's peers move into more intricate instruction in literacy and numeracy. While the early primary grades to this point in the student's education [redacted] allowed the student to be somewhat—although certainly not stringently—aligned with classmates in terms of the instruction the student was receiving, the student's instruction on literacy and numeracy skills, centered on letter, elementary sight-word, and number identification, as well as name-spelling, needs to be intensified to allow the student to move to a position where reading and arithmetic become part of the student's academic instruction.

While the appropriateness of the District's proposed placement is important for the student's continued academic progress, the student's functional needs—with toileting being pre-eminent among them—need the intensive instructional setting of a life skills classroom. Both signaling the need to use the bathroom and gaining the skills necessary for successful toileting, [redacted] are absolutely critical, [and] must be a focus of the student's program in the life skills classroom.

In short, the District's proposed programming and placement as outlined in the December 2021 IEP, are both appropriate and should form the basis of the student's programming.

Clearly, the District's proposed placement will be more restrictive, as the student will move into an environment where the student's exposure to

regular education peers will be reduced. This is an important issue and cannot be embraced lightly. First, however, the appropriateness of a program for any student is paramount. It is a deep dis-service, if not a denial of FAPE, to a student to have him or her placed in an overly restrictive educational environment. But it is equally problematic, if not a denial of FAPE, for a student to be in an educational placement which is less restrictive but does not allow the student to engage in significant learning. In this matter, the student's programming falls into the latter category—an appropriate placement for this student requires intensive academic instruction on rudimentary literacy and numeracy concepts, with an equally intensive focus on functional life skills.

Second, and importantly, the District has calibrated the student's placement to allow for the maximum inclusion of the student with regular education peers, in academic classes (science and social studies), special classes (art, library, music, physical education), and unstructured time (lunch and recess). Here, the testimony of the life skills teacher who would teach the student was highly persuasive—she recognizes the significance of the need for any student, and this student particularly, to engage with regular education peers.

Having said all of this, the order will address particularly two elements of the student's programming. One, it is imperative that the student's program include consistent instruction in, and progress-monitoring for,

toileting. This fundamental functional skill must be a top priority. This hinges on the diligence and commitment of a personal care aide, which must be made an explicit element part of the student's IEP as a related service. Two, the student will be moving to a new classroom environment under the terms of the December 2021 IEP. The District must implement a transition program to expose the student to that classroom, and if possible peers with whom the student will be educated. Again, the order below will address these issues.

Finally, both parties have comported themselves admirably in this matter. The love and concern which the parent, as well as caregiving and support for the parent from siblings and the student's grandmother, exhibits for the student is deep and sincere. Throughout this record, parent's role has been tooted in abiding, good faith support for her child in seeking what she thinks is in the student's best interest. There is no artifice or manipulation in anything the family has undertaken here. In the same way, throughout this record, the District's educators also exhibited nothing but the highest aspiration for the student's progress and well-being. The District proceeded incrementally to provide appropriate instruction and services and moved to its current position only when multiple data points and experiences with the student moved it to this position; there was no rush to educational judgment, and that is to be lauded.

No doubt, there is a significant disagreement between the parties about how best to educate the student, but at home and at school, the student is surrounded by caring adults.

## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the school district's proposed program and placement, as outlined in the December 2021 IEP, are appropriate for the student.<sup>3</sup>

The related services section of the December 2021 IEP shall be amended to include the related service of a 1:1 personal care aide, with that related service to be provided in *all environments*, with a frequency *throughout the student's school day* with an anticipated duration through *12/19/2022*. To the extent the school district has not been successful in securing a personal care aide for the student as of the date of this order, those efforts must be diligently pursued. Should the student not have a 1:1 personal care aide as part of the student's programming as of the first day of instruction in the 2022-2023 school year, the student's program would be rendered inappropriate as of that date until this related service is secured.

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<sup>3</sup> In the school district's exhibits, there was a copy of the December 2021 IEP with apparent revisions in February 2022, at least as that document was entitled in the table of contents for the exhibits (at S-8). This exhibit was not made part of the record and, as such, was not reviewed by any witness or this hearing officer. Therefore, this decision and order apply only to the December 2021 IEP, as proposed at that time and made part of the record at S-6.

In order to integrate the student into the life skills classroom as a familiar environment, over the weeks of Monday, May 9, 2022 and Monday, May 16, 2022, the school district shall begin the student into one instructional period where instruction is delivered in the life skills classroom. Over the weeks of Monday, May 23, 2022 and Monday, May 30, 2022, the school district shall maintain that period and add a second instructional period where the student receives instruction in science or special classes outside of the classroom but attends this second period of instruction with classmates. Over the week of Monday, June 6, 2022 and the half-week of Monday, June 13, 2022, the school district shall maintain these two periods of instruction and add the lunch/recess period with the life skills classroom. When the two instructional periods are incrementally added to the student's day is left within the discretion of the school district with the lunch/recess period being dictated by the schedule of the life skills classroom. Thus, by the end of the current school year, the student will be experiencing instruction in, and around the rhythm of, the life skills classroom, as well as becoming familiar with peers from the life skills setting.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire  
Special Education Hearing Officer

05/03/2022