

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

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

### **Closed Hearing**

### **ODR File Number**

23405-1920AS

### **Child's Name**

J.K.

### **Date of Birth**

[redacted]

### **Parent**

[redacted]

### **Local Educational Agency**

Pittsburgh School District  
341 South Bellefield Avenue  
Pittsburgh, PA 15213

### **Counsel for LEA**

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### **Hearing Officer**

Michael J. McElligott, Esquire

### **Date of Decision**

07/14/2020

## Introduction

This special education due process hearing concerns the educational rights of J.K. ("student"), a student who resides in the Pittsburgh School District ("District").<sup>1</sup> The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")<sup>2</sup> as a student who requires special education to address needs related to an emotional disturbance. The parties disagree over various elements of the student's programming, both as implemented in the past and as proposed for the future.

More specifically, the complaint filed by the student's parent claims: (1) that the student was denied a free appropriate public education ("FAPE") in the District's handling of a school-based January 2020 behavioral incident that resulted in the involvement of police, (2) that the student was denied FAPE related to a request for homebound services after the January 2020 incident through the end of February 2020, and (3) that the student should be placed outside of the District, in a setting with a therapeutic component.

The District counters that at all times it met its obligations to the student under IDEIA. Accordingly, the District argues that the parent is not entitled to any remedy.

For reasons set forth below, I find in favor of the District, although the order includes revisions to the student's individualized education program ("IEP") team and provisions for independent evaluations.

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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").

## **Issues**

1. Did the District's handling of the January 23, 2020 behavior incident deny FAPE to the student?
2. Did the District's handling of the parent's request for homebound instruction for, roughly, February 2020 deny the student FAPE?
3. Are the District's proposed program and placement appropriate?

## **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.

### Prior School Years

1. After attending preschool at the District, the student attended a charter school through 2<sup>nd</sup> grade. (School District Exhibit ["S"]-1).
2. From prior evaluations, the student was medically diagnosed with autism, disruptive mood disorder, and attention deficit hyperactivity disorder ("ADHD"). (S-2).

### 3<sup>rd</sup> Grade

3. In 3<sup>rd</sup> grade, the 2017-2018 school year, experienced multiple educational placements—the charter school, the District, and a residential treatment facility with educational services provided by another school district where the facility was located. (S-1).
4. The student began 3<sup>rd</sup> grade, the 2017-2018 school year, at the charter school. In October – December 2017, the student attended the District. In December 2017, the student attended an educational program with a therapeutic component. (S-1, S-3).
5. In February 2018, the District evaluated the student. The student’s full-scale IQ was in the average range and achievement testing did not reflect any learning disabilities or difficulties. (S-5).
6. Behavioral ratings indicated that the no teacher or educator from either the District or the therapeutic placement who worked with the student rated the student as clinically significant in any area, although one educator rated the student as at-risk in depression; one rater rated the student as at-risk in adaptability, social skills, and leadership, along with the adaptive skills composite; and one rater rated the student as at-risk in social skills and leadership, along with the adaptive skills composite. (S-5).
7. Behavioral ratings by the overnight residential supervisor, however, were dramatically different. That rater rated the student as clinically significant in aggression, conduct problems, anxiety, and depression, along with the externalizing problems and internalizing problems composites. The rater also rated the student as at-risk in hyperactivity and atypicality, along with the behavioral symptoms index. (S-5).

8. The February 2018 evaluation included an autism assessment. The evaluator characterized the results as “minimal to no symptoms” of autism. (S-5).
9. The evaluator concluded that the student did not exhibit academic needs in the educational environment and that the educator’s ratings, and reports of behavior in educational settings, did not support a need for special education. (S-5).

#### 4<sup>th</sup> Grade

10. In 4<sup>th</sup> grade, the 2018-2019 school year, the student attended a separate school district, which provided services while the student was in a residential treatment program. (Parent Exhibit [“P”]-1 at pages 17, 23-86, 137-140; S-2, S-8).
11. In the fall of 2018, the student was medically diagnosed with disruptive mood dysregulation disorder, ADHD, and unspecified anxiety disorder. (S-8).
12. Following two incidents in the fall of 2018 where the student was aggressive toward classmates, the school district evaluated the student “due to the seriousness of (the student’s) behaviors and diagnoses”. (S-8).
13. In December 2018, the school district issued its evaluation report. The school district assessed the student’s behavioral needs, including administering behavior rating scales and performing a functional behavior assessment (“FBA”). (S-8).

14. The school district identified that student as a student with a health impairment who required special education. The school district developed an individualized education program based on the December 2018 ER. (S-7, S-8).

### 5<sup>th</sup> Grade

15. The student returned to the District for 5<sup>th</sup> grade, the 2019-2020 school year. (S-15).
16. The District utilized the IEP from 4<sup>th</sup> grade developed at the prior school district. (S-7).
17. The student's needs, as noted in the 4<sup>th</sup> grade IEP from the other school district, included the need to maintain a positive attitude in class, to be respectful of others, to take ownership for the student's actions, and to learn how to channel anger and frustration when overstimulated. (S-7).
18. The 4<sup>th</sup> grade IEP contained two goals, one for employing coping/de-escalation techniques when frustrated and one for requesting a break (instead of eloping or dis-engaging from task) when confronted with learning challenges. (S-7)
19. The student's placement through the 4<sup>th</sup> grade IEP was full inclusion in regular education 100% of the school day. (S-7).
20. In December 2019, the District developed its own IEP. (S-15).
21. The December 2019 IEP indicated that the student struggled most in unstructured settings, "especially those with a lot of noise". The IEP also noted that "(the student) has a difficult time

expressing...emotions appropriately when (the student) becomes frustrated, upset, angry, overstimulated, or when (the student) finds something to be unfair". The student was reported as having outbursts and needing to calm down thereafter, but interventions were reported largely to be successful. (S-15 at page 7).

22. The student's needs, as noted in the December 2019 IEP, included being respectful toward peers and teachers when presented with a non-preferred task and the appropriate expression of emotions/feelings when the student is frustrated or overstimulated. (S-15).
23. The December 2019 IEP contained one goal, the employment of self-regulation techniques when the student becomes frustrated, upset, or overstimulated. (S-15).
24. Although the December 2019 IEP does not document any self-harm, or harm to others, at the District, a program modification in the IEP documents the potential need for physical intervention with the student. (S-15).
25. The December 2019 IEP continued to recommend full inclusion in regular education 100% of the school day. (S-15).

#### January 2020 Behavior Incidents

26. On January 16, 2020, the student was involved in a 4-hour, escalated behavioral incident in school. The student threatened staff, would not comply with staff requests to move to designated quiet areas, made threats to staff, used profanity and made inappropriate gestures. The District summoned its mental health crisis-response

partners.<sup>3</sup> Later that day, the student was involved in a fight after school. (P-1 at page 7, 21-22, 87-91).

27. On January 22, 2020, the student was involved in an episode after school where students threatened each other and the student retrieved a [weapon] from home as part of the escalating behavior. The incident de-escalated and the student only showed the [weapon] for intimidation. (P-1 at page 7).

28. On the morning of January 23, 2020, the student's mother contacted the school about the afterschool incident the day before. At approximately 11:30 AM, the student was involved in a 2-hour, escalated behavioral incident in school. The student would not comply with staff requests, used profanity and inappropriate gestures, threatened staff, would not comply with staff requests to move to a quiet area, and [redacted]. The District summoned its mental health crisis-response partners as well as school police.<sup>4</sup> (P-1 at page 7; S-19).

29. Eventually, the student was calmed and released at the end of the school day into the custody of the student's mother. (NT at 48-49).

30. The crisis-response team indicated to the District that the student should be reported for a 302 process as a danger to self or others. A District employee initiated this process, and at 3:07 PM, a 302 warrant was sworn out for police to bring the student to an

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<sup>3</sup> The mental health crisis-response team requires parental permission to engage the student. The crisis-response team to work with the student on January 16<sup>th</sup>. (P-1 at page 7, 21-22; Notes of Testimony ["NT"] at 44-47).

<sup>4</sup> During the behavioral incident, the parent definitively could not be contacted to provide permission for the crisis-response team to work with the student on January 23<sup>rd</sup>. (NT at 44-47).



involuntary mental health examination at a local hospital [redacted]. (P-1 at pages 7-10; NT at 48).<sup>5</sup>

31. Inexplicably, the District never informed the parent that a 302 process had been recommended or initiated. Police removing the student from the family home after school hours came entirely as a surprise to the parent and student. (P-1 at page 17; NT at 167, 169).
32. The psychiatrist who met with the student as a result of the District's 302 referral discharged the student that evening, noting that the student was stable. The psychiatrist saw no threat in the student's affect and indicated that the student's behavior that day needed to be understood in the context of a distressing personal situation that arose outside of the school context. (P-1 at pages 14-19, especially at 19).
33. The discharge summary from the hospital included diagnoses of disruptive mood disorder, ADHD, and autism. (P-1 at page 18).
34. The student was suspended from school as a result of the January 23<sup>rd</sup> behavioral incident. (S-18 at page 2, S-19).
35. On January 29, 2020, the student's parent met with a team of District educators to discuss the January 23<sup>rd</sup> incident and additional matters related to the student's educational needs. The District requested and received permission to re-evaluate the student. (S-19 at pages 1-3; NT at 75-105).

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<sup>5</sup> The building principal was not present on January 23<sup>rd</sup>. She testified at one point that the District initiated the 302 process at the recommendation of the crisis-response partners and at another point that the crisis-response partners initiated the 302 process. It is clear from the complaint document and warrant that the 302 complaint was sworn out by a District employee. (NT at 44-47, 53-55; P-1 at pages 6-13, S-18 at pages 1-3).

36. On January 30, 2020, the student's private psychiatrist drafted a letter which the student's mother provided to the District. The letter addressed many of the points raised and discussed at the school-based meeting the day before (including the January 23<sup>rd</sup> incident, the student's District-based placement, and the possibility of a period of homebound instruction). (S-21).
37. On February 20, 2020, the parent filed a regulatory complaint with the Bureau of Special Education ("BSE") at the Pennsylvania Department of Education ("PDE"), alleging a number of regulatory failings on the part of the District and including claims of discrimination. (P-1 at pages 122-128; S-25; NT at 143-165).

#### February 2020 Behavior Incidents

38. On February 27<sup>th</sup>, near the end of the school day, the student was involved in a behavioral incident where the student was upset, using profanity, and making noise in a hallway. [Redacted]. (S-23).
39. On February 28<sup>th</sup>, the student was involved in a behavioral incident where the student was disrupting instruction. [Redacted]. School police were summoned and the student's mother was called. The student's mother retrieved the student from the school. (S-23; NT at 56-57, 75-105).
40. As a result of the January and February 2020 incidents, the District performed a FBA. The FBA noted that the antecedent to the student's problematic behaviors involved transitions from preferred tasks/situations to non-preferred tasks/situations. (S-27).

### Homebound Instruction

41. On March 2, 2020, the student's parent and educators met to discuss various topics, including homebound instruction. (P-1 at 130-131; S-18 at pages 7-8; NT at 105-142).
42. On March 4, 2020, the District approved the student for homebound instruction. The process of identifying and assigning a homebound instructor was interrupted by the mandatory statewide school closure on March 13, 2020 due to the COVID-19 pandemic which suspended homebound instruction for all students. (S-18 at page 9; NT at 105-142).

### March 2020 RR & April 2020 IEP

43. In March 2020, the District completed its re-evaluation of the student. (S-29).
44. The March 2020 re-evaluation report ("RR") contained updated cognitive and achievement testing. As had always been the case, the student's cognitive and achievement profiles, and academic performance, show no indications of difficulty in these areas. (S-29).
45. The March 2020 RR contained behavioral ratings. All raters—two teachers and the student's mother—rated the student as at-risk in multiple scales and composites. (S-29).
46. The same three raters completed an autism rating scales. The ratings were, in the words of the report, "consistent across time, settings, and raters", with the instrument yielding the conclusion of probable autism across all three raters. (S-29 at page 19).

47. The March 2020 RR identified the student as a student with emotional disturbance. (S-29).
48. In April 2020, the student's IEP team met to craft an IEP. (S-30).
49. The April 2020 IEP identified the student's needs as self-regulation (expressing/communicating emotions/feelings when overstimulated or frustrated), transitioning from a preferred task to a non-preferred task, being respectful toward peers/teachers when presented with a non-preferred task, and social skills (appropriately communicating with peers and adults when frustrated). (S-30 at page 11).
50. The April 2020 IEP included a positive behavior support plan which identified antecedent behaviors as not being able to access a preferred activity, or transitioning from a preferred to a non-preferred activity. (S-30 at page 12).
51. The April 2020 IEP contains two goals, one for self-regulation in communicating needs to peers and adults and one for navigating transitions from preferred tasks to non-preferred tasks. (S-30 at page 13).
52. The April 2020 IEP places the student in regular education for 89% of the school day and includes 45 minutes daily of group counseling and 45 minutes weekly of individual counseling.<sup>6</sup> (S-30 at pages 27, 31).

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<sup>6</sup> The April 2020 IEP and notice of recommended educational placement (S-31) indicate that the student will receive a supplemental level of special education services (20 – 80% of the school day spent in regular education). But the IEP clearly indicates that only the counseling services will be delivered outside of special education, and the placement data calculation

53. The student's mother sought then, and seeks now, a placement in an out-of-district program with a therapeutic component. The student's treating psychiatrist submitted a letter in support of this position. (S-36; NT at 166-198).
54. The District issued a notice of recommended educational placement, recommending itinerant emotional support services at the student's neighborhood school (the middle school which would be the student's natural transition into 6<sup>th</sup> grade for the 2020-2021 school year). (S-31).
55. In April 2020, the BSE issued its Complaint Investigation Report as a result of the parent's February 2020 complaint. The BSE investigator ordered that the District take corrective action in the form of training administrative and specialist staff in "crisis prevention (for) and crisis management of students with emotional disabilities". This training was held and was accepted by PDE as fulfillment of the corrective action. (P-1 at pages 132-136, 141-163; S-25, S-35; NT at 143-165).
56. Parent seeks an out-of-District placement with a therapeutic component. (NT at 166-198).

## **Discussion**

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yields an itinerant level of special education services (more than 80% of the day spent in regular education—89% to be precise). (S-30 at pages 29-31).

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 FAPE (34 C.F.R. §300.17), 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. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, F.3d (3d Cir. at No. 17-3605, September 18, 2018)).

Each of the areas of parents’ claims, along with the legal framework that governs those claims, is considered in the subsections below.

### ***January 23, 2020 Incident***

The District did not deny the student FAPE in its handling of the January 23, 2020 behavior incident. Parent, however, is rightly concerned about the handling of this incident.

The most puzzling, if not troubling, aspect of the incident is not the District’s handling of the incident in school that day—clearly, the student was exhibiting very problematic behaviors that required the response initiated by

the District (prolonged de-escalation strategies, and the involvement of mental-health crisis response as well as school police). And once the crisis-response team was involved, their hands—as well as those of the District—were tied because they could not obtain permission from the student’s parent to engage in therapeutic intervention. So in these regards, nothing in the District’s actions presents concern.

It is the actions involving the 302 process that give one pause. Again, perhaps that process was necessary—judging the incident from a perspective months later, one should be careful to gainsay the advice and actions of professionals experiencing the event. But the circumstances surrounding the 302 process leave more questions than answers.

Ultimately, the District swore out a 302 complaint that the student “is severely mentally disabled”, lacking “the capacity to exercise self-control, judgment, and discretion” to a degree that “he/she poses a clear and present danger of harm to others or to himself or herself”. One might hold that view of the student on January 23, 2020. But approximately 1.5 hours passed between the time the behavior incident ended at approximately 1:30 and the warrant was issued at approximately 3 PM, and the student was calmed over that time. And whatever the concern of the District employee who swore out the 302 complaint, the student was released to the custody of the mother, not enough of a ‘clear and present danger’, evidently, that the student could not be released into the community.

But what strikes the loudest note of discord is that the student had been calmed, and the District finally did establish contact with the student's mother before the school day ended. They released the student to her. Yet no one indicated to the parent at any time that, in the view of the District, a 302 process had already been initiated, or was going to be initiated. The family returned home at the end of an inarguably difficult school day; yet one genuinely feels the anguish of the parent, as she testified, in having the police appear thereafter to retrieve and involuntarily hospitalize the student without any context or discussion by the District with the family in terms of the 302 process it engendered.

Given these deep mis-steps, however, and whether one agrees with the District's view or not, there is (as indicated above) a factual basis for the District's actions. What is pointed out here is grounded in lack of communication and procedural error rather than a substantive wrong. Taken altogether, the District's acts and omissions did not amount to a denial of FAPE. And the BSE complaint investigation and the corrective action ordered as a result of that investigation satisfy this hearing officer that the District will be much more circumspect and communicative when taking such a deliberate step.

Accordingly, there is no basis for remedy through this decision related to the 302 process.



### ***Homebound Instruction***

After the January 2020 incidents, the parent broached the subject of homebound instruction for the student. The record supports a finding that homebound instruction, at that point, was unwarranted. First, the disruptive behaviors, at least on a scale as exhibited at that time, were new to the student. Second, the District was undertaking a re-evaluation process which should have unfolded in the educational environment. And third, homebound instruction is a highly restrictive setting which should be employed only when absolutely necessary for medical reasons; this was not the case as of late January 2020.

A month later, with another round of problematic behaviors and a FBA having been conducted, those dynamics had shifted. Whether they had shifted enough to warrant homebound instruction even at that time, the parties had a meeting of the minds that the student should move to homebound instruction. And transitioning to homebound instruction was underway when the COVID-19 school closure entirely removed the ability, at least in the short-term, to pursue it.

Accordingly, the District did not deny the student FAPE for failing to pursue homebound instruction over the period from late January through February 2020.

### ***April 2020 IEP***

The April 2020 IEP is reasonably calculated to yield meaningful education benefit in light of the student's unique circumstances. Thus, it is an appropriate proposal to provide the student with FAPE.

Parent's request for an out-of-District placement with a therapeutic component is overly restrictive. An aspect of providing FAPE requires that the placement of a student with a disability be in the least restrictive environment ("LRE"). Educating a student in the LRE requires that placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting which affords 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)). Furthermore, a school district must ensure that "(u)nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled". (34 C.F.R. §300.116(c)).

Here, the District's proposed placement in the school that the student would attend if not disabled, with academic programming (clearly a strength of the student) provided in the general education curriculum is the LRE for the student. And with the proposal for significant counseling support (both group and individual counseling), the program is appropriate.

There is an aspect of the IEP which, in the view of this hearing officer, requires revision. The student should be afforded access to a school counselor on an as-needed basis. Therefore, the IEP will be instructed to

revise the IEP to provide for explicit access to a school counselor when the student's need for self-regulation may require it.

Also, the student will be transitioning to middle school and, unlike the elementary school which was quite close to the student's home—the student walked to school—it will likely require bus transportation. Therefore, the IEP team will be directed to make explicit in its deliberations (a) a transition timeline/plan for the student's adjustment to middle school and (b) whether any support is necessary for the student during bus transportation.

There is one other aspect of the student's programming which needs to be addressed through the order below. The student has an autism diagnosis. While never formally recognized as an area for identification for special education services, consistently throughout this record the student has exhibited characteristics of autism which should, at a minimum, be probed further through an evaluation process. The student, for example:

- has long exhibited frustration and acting-out behavior when distracted or over-stimulated;
- is bothered by noise and requires a degree of quiet in classroom settings;
- takes lunch alone for quiet in cafeteria settings;
- has difficulty expressing needs and emotions with others;
- has difficulty transitioning; and

- has difficulty engaging in pragmatic social exchange, especially where the student feels preferred activity has been interrupted.

The expression of these characteristics are part of a complicated blend that includes mental health diagnoses and ADHD. To that end, parsing out how, or even if, autism might play a role in the student's programming is an open question. And the April 2020 IEP contains modifications and specially-designed instruction that address many of the needs that might be associated with autism, both generally and specifically with regard to this student.

But a formal inquiry into if/how autism might be part of the student's need for programming has not taken place.<sup>7</sup> Therefore, the order will structure a process for the selection and involvement of an independent autism evaluation and an independent speech and language evaluation (with a view toward pragmatic language and social pragmatics).

## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above:

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<sup>7</sup> In both of the District's evaluations, the February 2018 ER and the March 2020 RR, an autism assessment was conducted. In both cases, at least as this hearing officer reads those portions of the reports, the evaluations seek almost to minimize those results. In the February 2018 ER, there is scant content about the assessment, and in the April 2020 RR, the consistent ratings across teachers and parent yielding probable needs in autism are handled dismissively ("all [raters] endorsed Probable (but not Very Likely) [autism spectrum disorder]"). (S-29 at page 19).

The Pittsburgh School District has not denied the student FAPE in its handling of the January 23, 2020 incident, has not denied the student FAPE in its handling of the parent's request for homebound instruction in February 2020, and has proposed a program for the provision of FAPE with the April 2020 IEP.

In all relevant portions, the April 2020 IEP shall be revised to reflect that the student's proposed special education services are at an itinerant level of support at the neighborhood middle school the student would attend if not disabled.

The IEP team shall meet no later than 30 calendar days after the date of this order to add "as-needed" school counseling support as a related service in the April 2020 IEP. The IEP team shall also explicitly consider the design of (1) a transition plan for the student's transition to middle school and (2) transportation accommodations and supports that may be necessary for the student's successful experience on the bus.

Finally, for the reasons set forth above, under the authority granted to a hearing officer by 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the District shall fund a comprehensive independent autism evaluation and an independent speech and language evaluation for pragmatic language and social pragmatics, each under the terms that follow.

On or before July 21<sup>st</sup>, a District special education administrator shall provide, through e-mail communication to parent, the names and complete curricula vitae/resumes, of at least three (but no maximum number) independent evaluators experienced in conducting comprehensive autism evaluations for educational programming (“independent autism evaluator”), and the names and complete curricula vitae/resumes, of at least three (but no maximum number) independent evaluators experienced in conducting speech and language evaluations, with an emphasis on pragmatic language and social pragmatics (“independent S&L evaluator”), who will make themselves available to conduct these independent evaluations.

On or before July 28<sup>th</sup>, the student's parent, to the extent she wishes, may select the independent autism evaluator and the independent S&L evaluator from the individuals identified by the District to conduct the independent autism evaluation and the independent S&L evaluator (“selected independent evaluators”), indicating her selection by email communication to the District special education administrator who provided the curriculum vitae/resumes to the parent. As the parent considers which independent autism evaluator and independent S&L evaluator she might choose to conduct the independent evaluations, there shall be no contact by the parent with the potential evaluators.

When the parent has indicated the selected independent evaluators, the cost of the independent evaluations shall be at the selected independent

evaluators' rate or fee and shall be borne by the District at public expense. As those arrangements are made, the selected independent evaluators shall be made to understand that it is hoped, but not required or ordered, that the independent evaluation reports can be issued as soon as practicable, but no later than September 26<sup>th</sup>, sixty calendar days beyond July 28<sup>th</sup>, the last day for the selection of evaluators by the parent.

The selected independent evaluators shall also be made to understand, but not required or ordered, that the findings and recommendations in the independent evaluation reports shall be made with a view toward the student's potential eligibility for special education services as a student with autism and programming, if any, that the selected independent evaluators might recommend in that regard. The record review, input, observations, assessments, testing, consultation, scope, details, findings, recommendations, and any other content in the independent evaluation reports, shall be determined solely by the selected independent evaluators.

If by July 28<sup>th</sup>, the student's parent does not wish to select either or both of the independent autism evaluator and/or the independent S&L evaluator identified by the District, or she has not indicated by email her selection(s) to the District special education administrator, the District may consider this lack of choice and/or communication by the parent to place in the hands of the District the selection of the independent evaluators from the list it provided to the parent. The same timelines for the suggested

completion and issuance of the independent evaluation reports apply where the District has selected the independent evaluator(s).

After the selected independent evaluators have issued their independent evaluation reports, the student's multi-disciplinary team IEP shall meet to consider the findings of the independent evaluation reports ("independent evaluation IEP meeting"). At the independent evaluation IEP meeting, the District shall invite and include the independent evaluators as participants in the independent evaluation IEP meeting, making scheduling accommodations for the participation of the evaluators, in person or by telephone, as necessary. The District shall bear any cost or rate for the participation of the independent evaluators at the independent evaluation IEP meeting. To the extent that two separate independent evaluation IEP meetings are needed as a result of scheduling needs of the independent evaluators, the IEP shall meet twice to consider each independent evaluation report, and this paragraph applies to each of those separate independent evaluation IEP meetings.

The terms of this order regarding the involvement of the independent evaluators shall cease after their attendance at the independent evaluation IEP meeting(s), although nothing in the order should be read to limit or interfere with the continued involvement of the independent evaluator(s), as both parties may mutually agree, or as one party may make singular arrangements therefor.



Finally, nothing in this order should be read to interfere with or limit the ability of the parties to agree otherwise, so long as such agreement is in writing and specifically references this order.

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

07/14/2020