

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

26708-21-22

Child's Name

J.Y.

Date of Birth

[redacted]

Parents

[redacted]

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Hearing Officer

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Date of Decision

11/29/2022

Introduction

This special education due process hearing concerns J.Y. ("student"), a student who resides in the Penn-Delco School District ("District").¹ For the student's entire educational history, from enrollment in kindergarten in the 2017-2018 school year through March 2022, the student attended private school. Throughout that period, the District provided equitable participation ("EP) services to the student in physical therapy and occupational therapy. At various points over that period, the student was re-evaluated by the local intermediate unit ("IU"), as well as by the District. At various points over that period, the District also proposed individualized education programs ("IEPs"). The student enrolled in the District in March 2022 and attended through the end of the 2021-2022 school year.

The student has been identified as a student who is eligible for special education under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student with the health impairment of attention deficit hyperactivity disorder ("ADHD"), as well as a student with autism. The parents claim that the student should have been additionally identified as a student with specific learning disabilities.

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

² 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").

By allegedly failing to identify the student appropriately under IDEIA, and consequently to provide appropriate special education programming, the parents claim that the District denied the student a free appropriate public education ("FAPE"). Analogously, the parent asserts these denial-of-FAPE claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³ Parents seek compensatory education for the student's approximate 10-week enrollment at the District and reimbursement for a unilateral private placement for summer 2022 programming and the 2022-2023 school year. Parents also seek reimbursement for a private evaluation process and report.

The District counters that the student does not qualify as a student with specific learning disabilities. The District asserts that, in considering the IU re-evaluations, performing its own evaluations, and offering IEPs over the period prior to March 2022, it met its obligations to the student. After the student began to receive special education services at the District in March 2022, the District asserts that it has appropriately educated the student. 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.

³ It is this hearing officer's preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See also 22 PA Code §§15.1-15.11 ("Chapter 15").

Issues

1. Did the District meet its child-find obligations to the student for the relevant period as of late June 2020?⁴
2. Did the District offer appropriate IEPs to the student while the student was enrolled in private schools prior to March 2022?
3. Were the District's IEPs, as implemented or proposed, provide FAPE to the student for the period March 2022 through the end of the 2021-2022 school year? If not, is the student entitled to compensatory education?
4. Are parents entitled to reimbursement for a unilateral placement for extended school year ("ESY") programming for the summer of 2022?
5. Are parents entitled to reimbursement for a unilateral placement for the 2022-2023 school year?
6. Are parents entitled to reimbursement for a private evaluation obtained in the course of the 2021-2022 school year?

Findings of Fact

⁴ Parents' complaint was filed on June 29, 2022. Parents seek a quantitative award of compensatory education for alleged educational deprivations for the two years prior to the filing date of this complaint, or June 29, 2020. (Hearing Officer Exhibit ["HO"]-1). Additionally, based on a District motion to dismiss, certain requests for remedy were dismissed or limited. See Ruling re: SD Motion to Dismiss. (HO-5).

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.

Educational History Prior to June 2020

1. In April 2017, the student was evaluated by the IU for early intervention services. The evaluation identified needs in rote counting, replicating shapes, and gross motor skills (balance, strength, coordination, motor planning). (Parents Exhibit ["P"]-1).
2. For the 2017-2018 school year, the student enrolled in a private kindergarten program. (School District Exhibit ["S"]-15 at page 6).
3. In November 2017, the District proposed an IEP to address needs in physical therapy ("PT") and occupational therapy ("PT"), as well as school readiness skills. The District noted that assessments of attention and behavior, as well as classroom observations, indicated that the student likely had ADHD. (S-15 at pages 10, 16-20).⁵

⁵ The student was evaluated by the District in October 2017, the results of which were summarized in the November 2017 IEP. The evaluation itself was not made part of the record. See *also* S-19.

4. In November 2017, the District also proposed an equitable participation plan ["EPP"] for the student to receive similar OT, PT, and classroom support services at the private school. (S-14).
5. Parents rejected the November 2017 IEP and maintained the student's placement at the private school under the terms of the EPP. (S-13).
6. The student continued to attend various private schools over the ensuing school years. (Notes of Testimony ["NT"] at 68-224).
7. In December 2019, the student was re-evaluated by the IU at parents' request due to academic concerns. (P-3; S-19).
8. The December 2019 re-evaluation report ("RR") was a comprehensive psycho-educational evaluation, including OT and PT evaluations. The student was identified with a health impairment (ADHD) and found that the student had needs in attention and self-regulation, support in mathematics, and continued needs in OT and PT. (S-19 at pages 24-25⁶; P-4, P-5).
9. The District was not provided with a copy of the December 2019 RR by parents and did not receive the RR from the IU until April 2020. (P-38 at pages 9-10).
10. In February 2020, in response to an oral request for OT and PT re-evaluations, the District issued an evaluation request form to memorialize the request. There is no follow-up permission to request an evaluation, as prior written notice, in the record. (P-54).

⁶ The December 2019 RR also appears in the record at P-3. To avoid duplicated citation, only the District exhibit is cited here.

11. In March 2020, the Commonwealth closed schools as a result of the COVID-19 pandemic.
12. In March 2020, the District issued an OT evaluation, except for sensory processing, which could not be completed due to the school closure. The evaluator adopted the sensory processing assessment from the December 2019 RR. The evaluator identified continuing needs in fine motor skills and attention/self-regulation with recommended goals in handwriting and planning/sequencing. (P-6).
13. In April 2020, the District issued a PT evaluation, completed prior to the school closure. The evaluator recommended continued skill development in gross motor skills, including ball skills and strengthening abdomen/core. (P-7).
14. In April 2020, the District received the December 2019 RR performed by the IU and adopted it as the RR for the student. (S-19; P-37 at pages 8-10).
15. Based on the receipt of the December 2019 RR, the District developed an IEP in May 2020. (P-8).
16. The May 2020 IEP included updated levels of academic and functional performance, including results from the December 2019 RR and input from the parents and the student's private school teacher. (P-8 at pages 8-17).
17. The May 2020 IEP included goals in OT and PT, and program modifications in the academic environment, addressing attention, organization, following directions, and mathematics. (P-8 at pages 25-32).

18. The May 2020 IEP proposed a placement with the student in the regular education environment for 94% of the school day. (P-8 at page 37).
19. The parents did not approve the recommended educational program/placement outlined in the May 2020 IEP and requested that the student continue to receive EP services through an EPP at the private school the student was attending. (P-9).
20. The May 2020 IEP was the District's offer of programming when the relevant period for parents' claims accrued in late June 2020.

Educational History after June 2020

21. In the 2020-2021 school year, the student attended private school under the terms of a September 2020 EPP. (P-10, P-51).
22. In the 2021-2022 school year, the student attended private school under the terms of a September 2021 EPP. (P-11, P-51).
23. In October 2021, the student's IEP team reviewed data, and the District undertook a re-evaluation of the student in light of parental concerns. (P-16 at page 5).
24. In December 2021, the District issued the RR. (P-16; NT at 413-506).
25. The December 2021 RR contained the results of prior evaluation processes and updated current-assessment data for OT and PT, and grades at the private school. (P-16 at pages 2-7).

26. The December 2021 RR contained observation data from the school psychologist, as well as input and recommendations from the student's current teacher at the private school. (P-16 at pages 8-9).
27. The December 2021 RR contained updated achievement testing. The student's math fluency (automaticity) and written expression scores were statistically discrepant from the student's most recent cognitive assessment (IQ 82). (P-16 at pages 12-15).⁷
28. The December 2021 RR contained an executive functioning assessment, where the student's teacher rated the student as clinically significant in all subtests (initiation, working memory, planning/organizing, task monitoring, organization) of cognitive regulation, as well as the 'shift' subtest (a measure of transitioning and flexibility). (P-16 at pages 15-17).
29. The December 2021 RR contained a behavior assessment, where the student's teacher rated the student as clinically significant in attention problems and learning problems subtests, and the school problems composite. (P-16 at pages 17-20).
30. The December 2021 RR contained a student self-rating on anxiety, depression, anger, disruption, and self-concept. The student's self-rating for anxiety was mildly elevated, for depression was moderately elevated, for anger and oppositionality was extremely elevated, and for self-concept was much lower than peer average. (P-16 at pages 21-22).

⁷ The District school psychologist testified credibly that updated cognitive testing was not necessary, as cognitive testing was most recently performed in the December 2019 RR and was consistent with the cognitive testing in October 2017. (NT at 413-506; S-19 at page 36, S-15 at page 6).

31. The December 2021 RR contained updated OT and PT evaluations. (P-16 at pages 22-34).
32. The December 2021 RR identified the student as a student with the health impairment of ADHD. The evaluator identified needs in attention, task-focus, self-regulation, organization, math computation, written expression (planning/organizing/written response), OT, and PT. (P-16 at page 35).
33. The District evaluator declined to identify the student as having a specific learning disabilities in math calculation and written expression, as the student's attention, organization, and focus needs related to ADHD, as well as the OT needs, clouded such a finding. (P-16 at page 37; NT at 413-506).
34. The District evaluator deferred any identification of emotional disturbance as those concerns surfaced mostly out of parental and self assessments and input rather than teacher assessment and input. The evaluator recommended continued monitoring of potential emotional support needs in the educational environment. (P-16 at page 37; NT at 413-506).
35. The District evaluator made educational recommendations, and included recommendations from the OT and PT evaluators. (P-16 at pages 37-39).
36. In December 2021, on the date that the December 2021 RR was issued, the student shared with an IU counselor that the student was [having mental health concerns]. Later that very day, the student shared that the student was going to a psychiatric appointment at a local children's hospital. The Parents were notified by the IU and the counselor urged that these instances be shared with the private

psychiatrist. The incident was not shared with the District. (P-15; NT at 114).

37. In late December 2021, the parents requested an independent educational evaluation (“IEE”) at public expense. The District denied to fund the IEE and parents undertook the evaluation as a private evaluation. (P-39 at page 38-39).
38. On January 7, 2022, the student’s teacher completed an assessment for the private evaluation. (P-22 at pages 104-115).
39. On January 17, 2022, the student’s parent completed an assessment for the private evaluation. (P-22 at pages 92 – 103)
40. On January 18, 2022, the private evaluator administered assessments to the student. (P-22 at pages 33-91).
41. In mid-January 2022, in the midst of the testing for the private evaluation, the student’s IEP team met to devise an IEP for the student based on the December 2021 RR. (P-19).⁸
42. The January 2022 IEP included updated levels of academic and functional performance, including results from the December 2021 RR and input from the parents. (P-19 at 12-21).
43. The January 2022 IEP included parents’ updated concerns registered with the District as a result of parents’ reading of the December 2021 RR, with indications as to how those were addressed in the IEP. (P-19 at pages 21-24).

⁸ The January 2022 IEP is cited at P-19. Below, March 2022 and May 2022 IEPs will be cited respectively as P-23 and P-28. Those IEP/IEP revisions are contained in one cumulative IEP document at S-74, but the segmented IEP documents in parents’ exhibits are more accessible.

44. The January 2022 IEP identified the needs outlined in the December 2021 RR and where— between goals, specially-designed instruction/modifications, or both—those needs were addressed in the IEP. (P-19 at pages 24-25).
45. The January 2022 IEP contained goals in self-regulation, math computation, written expression, OT, and PT. (P-19 at pages 33-40).
46. The January 2022 IEP contained myriad specially-designed instruction and program modifications to address the student’s needs in attention/focus/organization/planning, task-approach and task-completion, instructional strategies in math computation and written expression, behavior and redirection, transitions, and self-assessment and self-regulation, as well as the related services of OT and PT. (P-19 at pages 41-71).
47. The January 2022 IEP planned for transition from the private school to the District. (P-19 at pages 15, 71).
48. The January 2022 IEP indicated that the student would qualify for ESY programming, which would be made concrete once the District could collect data on goal-progress. (P-19 at page 72).
49. The January 2022 IEP recommended a learning support placement for 79% of the school day. (P-19 at page 76).
50. At some point after January 18, 2022, the private evaluation was issued. (P-22; NT at 246-344).
51. The January 2022 private evaluation contained cognitive and achievement testing, as well as assessments of expressive/receptive language, orthographic and writing tasks, executive functioning, and attention. (P-22).

52. The January 2022 private evaluation contained a cognitive assessment. Accounting for the student's executive functioning needs, the student's general ability index was 83. (P-22 at pages 11-15).
53. The January 2022 private evaluation contained language assessments, which did not yield scores consistent with language needs. (P-22 at pages 15).
54. The January 2022 private evaluation contained writing/orthographic assessments, which exhibited generally low or very low skill levels. (P-22 at pages 15-18).
55. The January 2022 private evaluation contained achievement testing. Utilizing the general ability index of 83, the student exhibited statistically significant discrepancies in numerical operations and math fluency in addition, subtraction, and multiplication, and in all areas of written expression except for spelling. (P-22 at pages 2-3, 18-22).
56. The January 2022 private evaluation contained attention and executive functioning assessments which mirrored the results of similar assessments by the District. (P-22 at page 23).
57. The January 2022 private evaluation contained the information from the December 2021 IU counseling note about the student's mental health issues ([redacted]). The private evaluator performed a clinical assessment where the student shared similar mental health concerns. (P-22 at pages 8-9, 23).
58. In early February 2022, the parents disapproved the District's recommended placement as reflected in the January 2022 IEP, citing the content of the private evaluation. (S-36).

59. On the same February date that the parents rejected the District's January 2022 program/placement, the private evaluator issued a letter at the request of parents' counsel seeking the evaluator's opinion of the District's programming (both January 2022 and prior). (P-52; S-36, S-61).
60. In March 2022, the student's IEP team met to revise the January 2022 IEP in light of the results and recommendations of the private evaluation. (P-23).
61. The March 2022 IEP contained the parents' updated concerns in light of the private evaluation. (P-23 at pages 25-30).
62. The March 2022 IEP included two additional goals in reading comprehension and active listening (to help the student manage the "cognitive overload" of instruction). (P-22, P-23 at pages 47-48).
63. The March 2022 IEP included additional specially-designed instruction/program modifications, including a more concrete indication of specially-designed mathematics instruction. (P-22 at pages 49-79).
64. The March 2022 IEP significantly adjusted the student's placement. The recommended placement was changed to a different District school with a smaller special education setting with more adult support. The student would also spend more time in the special education setting; the amount of time spent in regular education was reduced to 23%. (P-23 at pages 25, 82-84).
65. As part of the IEP team's deliberations in February and March 2022, the parents shared with the District that the student had been diagnosed with autism by an outside medical professional. The District

requested permission to evaluate the student in light of this new information. (P-26).

66. In mid-March 2022, the parents approved the recommended program/placement outlined in the March 2022 IEP. (P-24; S-72).
67. In early May 2022, after approximately 30 instructional days, the student's IEP team met to consider the student's adjustment to/progress in the District. (P-28).
68. Information added to the May 2022 IEP included updated parental concerns and PT goal progress, as well as a slight adjustment to the student's placement (an increase from 23% to 26% in regular education settings). (P-28 at pages 16, 39, 41, 79).
69. In May 2022, the District issued a RR regarding its assessment for a potential identification of autism as part of the student's educational profile. (P-30).⁹
70. The May 2022 RR included updated parental information of medical diagnoses of anxiety and autism, including information related to medications and work with medical and psychiatric professionals. (P-30 at pages 3, 7).
71. The May 2022 RR contained updated academic classroom performance and goal progress. (P-30 at pages 11-17).
72. The May 2022 RR contained classroom observations by a speech and language ("S&L") therapist, an occupational therapist, and a District school psychologist. (P-30 at pages 18-21).

⁹ The May 2022 RR also appears in the record at S-45. To avoid duplicated citation, only the parents exhibit is cited here.

73. The May 2022 RR contained input from the student's regular education teacher, special education teacher, and school counselor. (P-30 at pages 21-22).
74. The May 2022 RR contained an autism rating assessment. The parent's ratings were uniformly in the very-elevated range. The student's regular education and special education teachers indicated ratings uniformly in the average range. (P-30 at pages 25-28).
75. The May 2022 RR contained an in-depth, structured autism observational assessment. (P-30 at pages 28-29).
76. The May 2022 RR contained multiple S&L assessments of the student's articulation, voice, core language, pragmatic language, and social language. The S&L evaluator did not note any elevated or problematic scores in these areas. (P-30 at pages 29-36).
77. The May 2022 RR identified the student as a student with autism, in addition to ADHD. (P-30 at page 36).
78. The evaluator in the May 2022 RR took a very nuanced view of the student's educational needs related to autism. On the in-depth, structured autism observational assessment, the evaluator found that the student exhibited markers of autism. On the autism rating scales, however, educators, did not see the degree of autism-related behaviors that were exhibited in the home environment. Additionally, the evaluator opined that the co-morbid diagnoses of anxiety and ADHD should be factored into an understanding of the autism identification. (P-30 at pages 37-38).
79. In the May 2022 RR, given all of these indications and the fact that the student had only been in the District for a handful of weeks,

the evaluator did not recommend concrete changes to the student's IEP. Instead, the evaluator recommended that the student's pragmatic and social functioning continue to be monitored for potential revisions to the student's IEP. (P-30 at pages 37-38).

80. In April and May 2022, the parents reported to the District that, as part of information related by the student to medical professionals, the student claimed to be head-banging at the District. The student's teacher had not seen any head-banging or self-injurious behavior in school. (P-25, P-39 at pages 50-51; NT at 68-224, 596-697).

81. In early May 2022, the District proposed that the student's math and writing goals would be the focus of ESY programming. Parents rejected this general recommendation. (S-29).

82. In mid-May 2022, the District outlined the schedule and teacher for its ESY programming. In early June 2022, due to the original teacher's unavailability, the District amended the identity of the teacher. (S-42, S-49; NT at 513-589).

83. The student had problematic interactions with a fellow student. Parents were deeply concerned; the student's teacher felt that the problematic interactions were centered on the other student's disability profile and needs and that those interactions were addressed in an appropriate way in light of both students' strengths/needs. (NT at 68-224, 596-697).

84. Toward the end of the school year, the parents produced drawings of the students which, in the parents' view, supported the need for additional programming for emotional support. The student's teacher did not see the same elements in the drawings that the parents did. (p-43; NT at 68-224, 596-697).

85. Over the course of March – June 2022, the student’s daily behavior was consistently appropriate. (S-4; NT at 596-697).
86. In mid-June 2022, the District revised the student’s IEP in light of the May 2022 RR. (P-31).
87. In light of parents’ report about the student’s claims of head-banging, the June 2022 IEP also included a crisis intervention plan in case the student ever exhibited self-injurious behaviors in school. (P-31 at pages 21-22, 86).
88. The June 2022 IEP included a goal in self-advocacy. (P-31 at page 54).
89. The June 2022 IEP included ESY goals for continued work by the student over the summer on the self-regulation, math computation, written expression goals, active listening, OT and PT goals. (P-31 at pages 88-91).
90. Given the student’s performance in the District, the June 2022 IEP recommended that the student spend more time in the regular education setting, increasing such time to 45% of the school day. (P-31 at pages 14, 94).
91. In mid-June 2022, based on parents’ concerns with the student’s drawings and social/emotional functioning, the District requested permission to perform a psychiatric evaluation of the student. Parents withheld consent fo the psychiatric evaluation. (S-53).
92. In late June 2022, just prior to the filing of the special education due process complaint, the parents disapproved the June 2022 IEP. (P-32).

93. By June 2022, the student had made progress on all IEP goals. (P-31 at pages 21-25, 30-32, 34-35; P-57; NT at 596-697, 718-788, 794-855).
94. In the summer of 2022, the parents unilaterally enrolled the student in a private program for ESY programming. (P-35; S-64).
95. The parents undertook a unilateral private placement for the student for the 2022-2023 school year. (P-40, P-46; NT at 68-224, 356-405).
96. The private placement works with students with specialized learning academic needs. It generally does not provide a deep level of services to students with behavioral or therapeutic needs. (P-46; NT at 246-344, 356-405).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the District school psychologist (NT at 413-506) and the District supervisor of special education (NT at 513-589) was found to be highly credible and was accorded heavy weight in both instances.

Discussion

IDEIA/Child-Find

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), local education agencies are under a “child find” obligation, requiring states, through local education agencies, to ensure that “all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated.” (34 C.F.R. §300.111(a)(i); see 22 PA Code §14.121). This provision places upon local education agencies the “continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability under the statutes.” P.P. ex rel. Michael P. v. West Chester Area School District, 585 F.3d 727, 738 (3d Cir. 2009). See *also* 22 PA Code §14.122(a). In Pennsylvania, however, “(IUs) are responsible for child find activities necessary to provide (EP) services consistent with 34 CFR §§300.130—300.144, regarding children with disabilities enrolled by their parents in private schools.” (22 PA Code §14.121(d); parentheticals edited for stylistic consistency).

The analysis of parents’ child-find claim below will also apply by analogy the Court’s holding in I.H. v. Cumberland Valley School District, 842 F. Supp. 2d 762 (M.D. Pa. 2012)). In I.H., the Court reasoned that a student enrolled full-time in a cyber charter school—which held the FAPE obligation

for the student—was still entitled under IDEIA to the offer of an IEP from the student’s school district of residence. (I.H. at 773). Therefore, by analogy, where a student resides in a school district and parents wish to engage the school district regarding the evaluation status of the student, the district of residence must evaluate the student, or at least inform itself of the student’s evaluation profile through any IU evaluation which has been undertaken and adopt the findings of that evaluation. (See *also* Moorestown Township Board of Education v. S.D., 811 F.Supp. 2d 1057 (D. N.J. 2011)).

Regardless of which entity ultimately holds a child-find obligation, including perhaps multiple entities at the same time, the evaluation of children who are suspected of having disabilities must take place within a reasonable period of time after that entity is on notice that an evaluation for a disability may be warranted. Ridgewood Board of Education v. N.E., 172 F.3d 238, 250 (3d Cir. 1999).

Where a local education agency conducts an evaluation under its child-find obligation, that evaluation must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” whether the student is a child with a disability and, if so, what must be provided through the student’s IEP in order for that student to receive FAPE. (34 C.F.R. §300.304(b); 22 PA Code §14.102(a)(2)(xxv)). The evaluation must assess “all areas related to the suspected disability”, must

“use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors”, and must “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” and (34 C.F.R. §300.304, generally, and specifically at §§300.304(b)(2-3),(c)(4); 22 PA Code §14.102(a)(2)(xxv)).

Finally, in Pennsylvania, “to determine that a child has a specific learning disability, the school district or intermediate unit shall address whether the child does not achieve adequately for the child’s age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child’s age or State-approved grade-level standards....” and “shall...(use as a potential identifying process)...a process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.” (22 PA Code §14.125(1),(2)(ii)).¹⁰

¹⁰ The “following areas” quoted in the citation include nine areas where Pennsylvania recognizes qualification for a specific learning disability, which include the areas which serve as the basis of parents’ claims—spelling, written expression, mathematics problem-solving, and mathematics calculation. (22 PA Code §14.125(1); see HO-1 at pages 1, 23).

Taking all of this together, the record supports a conclusion that the District met its child-find obligations to the student, as a student residing in the District and receiving services under an EPP. From the initial IU evaluation in April 2017, to its evaluation in October 2017, to its adoption of the comprehensive IU re-evaluation in December 2019, to its re-evaluations of the student in December 2021 and May 2022, the District was consistently aware of the student's needs.

Clearly, the student's overriding needs related to attention/focus/organization/task-approach. The District was consummately aware of these needs at every point in its work with the student. And any notion that the District did not explicitly identify the student with specific learning disabilities is not a denial of FAPE, as the IEPs proposed by the District consistently programmed for the student's academic needs as it understood those needs at any moment in time (see below). Simply not using the term "specific learning disability" does not discount the fact that (a) the District was aware of the student's needs and (b) provided appropriate programming, whether in the form of goals or specially-designed instruction, or both.

The District also showed itself open to, and interested in, understanding the student's needs as new information came to light. Once a medical diagnosis of autism was made, the District moved to evaluate the potential needs related to autism. With the parents' concerns related to the student's drawings and social/emotional affect were shared with the District, it requested permission for a psychiatric evaluation to understand what, if any, issues might be present. In both of these instances, the evidence in this record is credible that the District did not see these things, or share the same level of concern as parents. Still, the District was never dismissive of the concerns or took those concerns lightly. It always responded as its child-

find obligation requires: The student was evaluated in these areas of concern to see if there were potential impacts for the student's learning.

Accordingly, the District fully met any child-find obligation it held.

IDEIA/Offer-of-FAPE Prior to March 2022

The analysis of parents' claims regarding the District's alleged failures in its obligations to the student prior to March 2022, those claims fall squarely within the reasoning of I.H., cited above. In I.H., the student was enrolled full-time in a cyber charter school and the Court recognized that the charter school held the FAPE obligation for the student. Still, under the IDEIA, the Court found that the student was entitled to the offer of an IEP from the student's school district of residence. (I.H. at 773). In short, the Court found that the parents were entitled to see the details of programming as to how the school district of residence would seek to educate the child as they considered a potential placement decision. The holding in I.H. would seem to require that, where a student is receiving EP services under an EPP and parents approach a school district of residence for an IEP, the school district must propose an IEP document for the parents' consideration.

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, or 'some' 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); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Here, the student was enrolled in private schools for the entirety of the student's education from kindergarten (2017-2018) through March of 2022, where the student received EP services under an EPP. The relevant period for parents' claims regarding IEP programming accrue as of late June 2020.

As of June 2020, the District had proposed the May 2020 IEP for consideration by the parents. The IEP was comprehensive in every regard, such that the parents were placed in a position to know how the District viewed the student's needs and how it would provide programming for the student. On its face, the May 2020 IEP gave parents full information as to the education available to the student at the District. Parents chose to return the student to the private school, as was their prerogative. But the District met its obligation to the student, under the reasoning of I.H., to place the parents in a position to understand their options by proposing an IEP for the parents' consideration. After May 2020, the student continued to participate in EP under the terms of an EPP until the parents re-engaged the District in an explicit re-evaluation/programming conversation in the fall of 2021.

Accordingly, the District met its obligation to offer an IEP which the parents could weigh in terms of the educational options that were available at that time.

IDEIA/FAPE after March 2022

The same provisions related to provision of FAPE in the section immediately above apply here. (Endrew F., Rowley, Dunn; 34 C.F.R. §300.17), regarding IEPs reasonably calculated to yield meaningful educational benefit to the student in the form of significant learning in light of his or her individual needs. As of March 2022, the student enrolled full-time at the District, which then implemented IEP programming.

IEPs Generally. Based on the December 2021 RR, the District proposed a comprehensive IEP in January 2022. Thereafter, the IEP was revised both in light of the parents' various concerns with the January 2022 IEP and then in light of the private evaluation issued at approximately the same time. This led the March 2022 IEP.

The March 2022 IEP, through which the student was ultimately educated at the District, is wholly appropriate. In terms of its understanding of the student's needs at that time through the present levels of performance and in light of parents' concerns, the goals, the specially-designed instruction and related services, and the student's placement, the March 2022 IEP is reasonably calculated to provide significant learning in light of the student's unique educational needs.

Beyond its design, the record shows that the student made progress in all goal areas in the IEP. From the design and implementation, the documentary evidence and testimony weigh decisively in favor of a finding that the March 2022 IEP was reasonably calculated to provide, and indeed did provide, the student with significant learning in light of the student's unique needs.

As indicated above, the District was always willing to make part of its understanding of the student an updated sense of evaluation, and the revised information in the May 2022 IEP, and the proposed June 2022 IEP, show how those understandings made their way into programming. And this entire chronology of events unfolded over a very condensed period of time—from December 2021 at the earliest with the issuance of the District RR, but programmatically only over the approximately ten weeks from mid-March through early June 2022.

The record taken in its entirety fully supports a finding that the student met its obligation to provide FAPE to the student over the period of March – June 2022.

ESY 2022. Once the student had entered the District, such that it could assess for itself the exact needs for ESY programming (as the student's qualification for ESY was something that the District never disputed), it proposed through the June 2022 IEP the goals and instruction that would form the basis of that programming. This aspect of the proposed IEP is

appropriate, targeting the student's most important behavioral (self-regulation) and academic (math computation and written expression) needs, as well as the student's most long-standing needs (OT and PT).

Accordingly, the District's proposed ESY programming for the summer of 2022 was reasonably calculated to yield meaningful education benefit in critical target areas for the student to maintain learning and skills.

Section 504

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE, both regarding appropriate evaluations and programming. (34 C.F.R. §104.32, 104.33; 22 PA Code §15.1).¹¹ The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (See *generally P.P. v. West Chester Area School District*, 585 F.3d 727 (3d Cir. 2009)).

¹¹ Pennsylvania's Chapter 14, at 22 PA Code §14.101, utilizes the term "student with a disability" for a student who qualifies under IDEIA/Chapter 14. Chapter 15, at 22 PA Code §15.2, utilizes the term "protected handicapped student" for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term "student with a disability" will be used in the discussion of both statutory/regulatory frameworks.

Therefore, the foregoing analysis is adopted here— in terms of both the student’s evaluation history and the programming proposed or delivered as of June 2020, the District met its obligations to the student.

Remedy - Compensatory Education

Where a school district has denied FAPE to a student under the terms of IDEIA, and by analogy under the terms of Section 504, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

As set forth above, the District met its child-find and programming obligations to the student. Therefore, there is not compensatory education remedy.

Remedy - Reimbursement

Parents claim that they should be reimbursed for (1) their unilateral placement of the student in private ESY programming for the summer of 2022, (2) their unilateral placement of the student in a private placement for the 2022-2023 school year, and (3) the private evaluation.

Long-standing case law and the IDEIA provide a framework for the potential tuition reimbursement if a school district has failed in its obligation

to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); see also 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). This framework involves the three-step Burlington-Carter analysis. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)). The Burlington-Carter analysis will be utilized to examine the parents' claims for not only for reimbursement for the ESY program and school-year program but for the private evaluation as well.

In the three-step Burlington-Carter analysis, the first step is an examination of the school district's FAPE obligations to see whether the school district has met those obligations. If the school district has failed in those obligations, step two of the Burlington-Carter analysis involves assessing the appropriateness of the placement or services undertaken by the parents as a result of the school district's denial of FAPE. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties to see if the equities might, or should, impact any reimbursement remedy.

ESY 2022. At step one of the Burlington-Carter analysis, the District's proposed ESY programming in the June 2022 IEP is appropriate, as outlined above. Therefore, with the District having met its obligations to the student through a proposal of appropriate programming, there is no reimbursement

remedy available for the parents' unilateral placement of the student for ESY-2022.

2022-2023 School Year. At step one of the Burlington-Carter analysis, with the student's progress over the period March – June 2022 and the District's programming as outlined in the June 2022 IEP, as outlined above the District has met its FAPE. Therefore, there is no tuition reimbursement remedy available for the parents' unilateral placement of the student for 2022-2023 school year.

Private Evaluation. At step one of the Burlington-Carter analysis, the District's December 2021 RR is appropriate, as outlined above. Indeed, everything that the student's multi-disciplinary and IEP teams would need to understand the student's needs is contained in that RR. The private evaluation reinforces this understanding but does not add to it in any profound or significant way. Therefore, with the District, having met its evaluation obligation to the student through the December 2021 re-evaluation process and report, there is no reimbursement remedy available for the private evaluation.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Penn-Delco School District has met its evaluation and programming obligations under IDEIA and Section 504.

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

11/29/2022