

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

DECISION

Child's Name: J. G.

Date of Birth: [redacted]

CLOSED HEARING

ODR File No. 18111-16-17 KE

Parties to the Hearing:

Parent
Parent[s]

Representative:

Parent Attorney
None

Local Education Agency
Philadelphia City School District
Office of General Counsel
Philadelphia, PA 19130

LEA Attorney
Judith Baskin, Esquire
Office of General Counsel
440 N Broad Street Suite 313
Philadelphia, PA 19130

Date of Hearing:

October 19, 2016

Date of Decision:

October 29, 2016

Hearing Officer:

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is an early-teenaged student who resides in the School District of Philadelphia (District) who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).² Student's Parent filed a Due Process Complaint against the District asserting that it failed in its obligations under the IDEA, amounting to a denial of a free, appropriate public education (FAPE) on both substantive and procedural grounds during the 2014-15 and 2015-16 school years. Student currently attends a charter school.

Upon assignment of the case to this hearing officer, she sent the parties informational materials that included, among other things, the timelines applicable to special education due process hearings with references to the federal regulations that set forth events that could result in adjustment to those timelines. The specific decision due date calculated from the date of the filing of the Complaint was also provided to both parties. After an unopposed continuance requested by the Parent, and a further rescheduling of the hearing without objection due to a District closure for a school holiday, the hearing convened on October 19, 2016 in a proceeding consolidated with that of Student's sibling by agreement of the parties. It became evident during discussions on and off the record that both parties intended to call witnesses who were not

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision, and will be redacted from the cover page prior to posting on the website of the Office for Dispute Resolution.

² 20 U.S.C. §§ 1400 – 1482. The federal regulations are found at 34 C.F.R. §§ 300.1 – 300. 818; and the applicable Pennsylvania regulations are found at 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). This decision will cite to the regulations where applicable as they are generally more accessible.

available on the date of the hearing. However, neither party moved for an extension of the decision due date as permitted by 34 C.F.R. § 300.515(c), and it was not possible to schedule an agreeable date for a second hearing session within the mandatory timelines.³ Accordingly, the record was concluded in a single hearing session.

The parties each presented evidence in support of their respective positions. The Parent sought to establish that the District failed to comply with its procedural and substantive obligations under the IDEA: procedurally in the timing of Individualized Education Program (IEP) meetings and a reevaluation, as well as the composition of IEP team meetings, and substantively in not appropriately addressing Student's needs in the area of reading. The Parent sought compensatory education for the 2014-15 and 2015-16 school years and placement in a different school that would be appropriate for Student's needs. The District maintained that there was no substantive denial of FAPE, that no reevaluation was due, and that any procedural irregularities did not deny Student FAPE; thus, the District contended, no remedy was warranted.

For the reasons set forth below, the Parent will prevail in part on the procedural issues, but no remedy will be awarded.

ISSUES

1. Whether the District complied with its procedural obligations to Student under the IDEA, including the composition of Student's IEP team meetings, during the 2014-15 and 2015-16 school years;

³ During off the record discussions, this hearing officer noted and explained the calculation of the hearing and decision timelines, with reference to the materials previously provided regarding those timelines. She also noted the limited number of days remaining between the actual hearing date and the decision due date. This hearing officer confirmed on the record the decision due date and her understanding that the testimony would be completed on October 19, 2016. (Notes of Testimony (N.T.) 214-15, 266-67) Neither party asserted that the testimony of any unavailable witness was necessary to a determination of the issues presented, nor objected to concluding the record on October 19, 2016. School District Exhibits (S-) 1 through 16 were admitted without objection.

2. Whether the District complied with its substantive obligations to Student under the IDEA, specifically with respect to providing appropriate programming to address Student's needs in the area of reading;
3. If the District did not comply with its procedural and/or substantive obligations to Student, should Student be awarded compensatory education; and
4. Should the hearing officer order the District to provide a placement to Student in a different school that will meet Student's needs?

FINDINGS OF FACT

1. Student is an early-teenaged child who is a resident of the District. Student is eligible for special education services under the IDEA. (N.T. 43)
2. Student currently attends a charter school. (N.T. 43-44)
3. Student was born prematurely (7 months gestation) and repeated second grade. (S-9 p. 2)
4. The District administered the Woodcock Reading Mastery Test (WRMT) to Student in March 2014. Results (in grade level equivalencies) were:

Word Identification	2.7
Word Attack	1.5
Word Comprehension	2.6
Passage Comprehension	3.4
Total Test	2.8

(N.T. 131-32; S-14)

5. An IEP developed in March 2014 (during third grade) provided for supplemental learning support with participation in regular education except for reading instruction 45 minutes per day and Speech/Language Therapy (300 minutes per term). Student's disability classifications were Other Health Impairment and Speech/Language Impairment. (S-11)
 - a. This IEP noted strengths in class participation and receptive and expressive language, with average ability in the areas of mathematics and written expression; needs were indicated with respect to reading decoding and comprehension, and sight word identification. Student's then-current reading level was reported to be at a 2.8 grade equivalency. (S-11 pp. 10-11)
 - b. Annual goals in the IEP addressed reading decoding (decoding unfamiliar words with 80% accuracy from a baseline 3.0 grade level to a goal of a 4.0 grade level); reading comprehension (answering comprehension questions with 80% accuracy

at Student's instructional reading level with no baseline indicated); reading fluency (increasing oral reading fluency and accuracy with 80% accuracy at Student's instructional level from a baseline of 95 words per minute to a goal of 130 words per minute); and speech fluency (increasing fluency in spontaneous speech with peers and adults). (S-11 pp. 18-25)

- c. Program modifications/specially designed instruction included test and assignment accommodations, repeated practice, high interest reading materials, and immediate feedback on reading comprehension. (S-11)
 - d. Student was determined to be eligible for Extended School Year (ESY) services. (S-11 p. 28)
6. The Parent approved the Notice of Recommended Educational Placement (NOREP) accompanying the March 2014 IEP. (S-11 pp. 44-46)
7. The District re-administered the WRMT to Student in June 2014. Results (in grade level equivalencies) were reported as:

Word Identification	2.7
Word Attack	2.7
Word Comprehension	3.7
Passage Comprehension	4.7
Total Test	3.3

(N.T. 131-32; S-14)

8. Student was reevaluated in the spring of 2015, with parental consent, for continued need for Speech/Language services. A reevaluation report (RR) was issued on March 17, 2015. The RR summarized parental input previously provided as well as assessments administered in 2013. According to those 2013 results, Student attained a low average Full Scale IQ, and achievement test scores were in the average range on all mathematics and oral language subtests and in the below average to average range on reading subtests. A Stuttering Severity Instrument revealed a result in the very mild range. The RR concluded that Student was eligible for special education on the basis of an Other Health Impairment but not a Speech/Language Impairment. (S-9, S-10)
9. The District re-administered the WRMT to Student in March 2015. Results (in grade level equivalencies) were reported as:

Word Identification	2.9
Word Attack	3.4
Word Comprehension	3.7
Passage Comprehension	4.1
Total Test	3.5

(N.T. 131-32; S-14)

10. An IEP was developed in March 2015 (during fourth grade) that provided for supplemental learning support, with participation in regular education except for reading instruction 45 minutes per day. (S-8)
 - a. Strengths reflected in the IEP included motivation in the areas of reading and assignment completion. Needs were identified as reading comprehension, sight word identification, and decoding. Student's then-current reading level was reported to be between a 2.8 and 3.5 grade equivalency. (S-8 pp. 10-11)
 - b. Annual goals in the IEP addressed reading decoding (decoding unfamiliar words with 80% accuracy from a baseline 3.5 grade level to a goal of a 4.5 grade level); reading comprehension (demonstrating various reading comprehension skills with 80% accuracy from a baseline 3.5 grade level to a goal of a 4.5 grade level); and reading fluency (increasing oral reading fluency and accuracy reading unfamiliar words with 100% accuracy from a baseline of 100 words per minute to a goal of 150 words per minute). (S-8 pp. 18-23)
 - c. Program modifications/specially designed instruction included test and assignment accommodations, small group and direct instruction in reading, high interest reading materials, and graphic organizers. (S-8)
 - d. Student was determined to be eligible for ESY services. (S-8 p. 26)
11. The Parent approved the March 2015 NOREP. (S-8 pp. 43-45)
12. Student was provided Corrective Reading for 45 minutes each day by a special education teacher during the 2015-16 school year. Several days a week, Student spent another 45 minutes continuing with reading interventions with the same teacher. (N.T. 129, 133-34)
13. In November 2015, the Parent made a written request for a complete copy of Student's education records. (S-12 p. 1)
14. The District re-administered the WRMT to Student in February 2016. Results (in grade level equivalencies) were reported as:

Word Identification	4.9
Word Attack	9.3
Word Comprehension	5.1
Passage Comprehension	4.0
Total Test	4.7

This Word Attack Score is not reported accurately⁴ and Student's actual Word Attack score was likely much lower. (N.T. 131-32, 152-54; S-14)

15. An IEP was developed in March 2016 (during fifth grade) that proposed supplemental learning support, with participation in regular education except for reading instruction 45 minutes per day. (S-7)
 - a. Strengths noted in the IEP included motivation in the area of reading and assignment completion; reading comprehension and written expression were areas of identified need. At the time this IEP was developed, Student was provided the Corrective Reading Program; Student's then-current reading level was reported to be at a 4.7 grade equivalency. (S-7 pp. 9-10)
 - b. Annual goals in the IEP addressed reading decoding (using Corrective Reading Module B2 from a baseline of answering 1 out of 10 unfamiliar words decoded accurately to a goal of 10 out of 10); reading comprehension (using Corrective Reading Module B2 from a baseline of answering 1 out of 10 fiction and nonfiction questions accurately to a goal of 10 out of 10); and written expression (writing paragraphs using related writing samples and attaining a score of 80% from a baseline of 0 using a scoring rubric). There was also a transition planning goal for choosing a high school. (S-7 pp. 17-23)
 - c. Program modifications/specially designed instruction included small group and direct instruction for reading and test and assignment accommodations. (S-7)
 - d. Student was determined to be eligible for ESY services. (S-7 p. 26)
16. A meeting of the Parent and special education teacher was held on March 8, 2016 when they reviewed the March 2016 IEP, but no other team members were present. The Parent did not sign the IEP on March 8, 2016. (N.T. 140-41, 143, 154-56, 168-69, 242-43, 260-61; S-7 p. 2)
17. In early April 2016, the Parent contacted the District in writing to ask when Student's IEP meeting would convene. She also reiterated her concerns that Student was older than classmates and that Student was experiencing social difficulties as a result, and further that Student was not making adequate progress in reading. Lastly, the Parent asked for a copy of Student's education records. (S-12 p. 2)
18. The District conducted a reevaluation in April 2016 issued a Reevaluation Report (RR) in April 2016. (S-4, S-6)
 - a. The RR included some parental input, including concerns that Student was performing below grade level despite Student's chronological age above

⁴ This hearing officer takes notice that the Total Test score (calculated by the District as an average of the other four scores (N.T. 131)) is mathematically more consistent with a Word Attack score of 4.8.

classmates, and Student's difficulty with social skills. The RR also noted Student's diagnosis of Attention Deficit Hyperactivity Disorder. (S-4 pp. 1-2)

- b. Recent assessments were reported in the RR, including results of the Pennsylvania System of School Assessment (PSSA) and benchmark tests and report card grades. Student had scored in the below basic range on the Reading and Mathematics portions of the PSSA. Student had a C grade in all classes at the time, but the RR noted basic performance on all benchmarks with the exception of mathematics, where Student scored in the below basic range. (S-4 p. 2)
 - c. The RR reflected needs in the areas of reading decoding and sight word fluency, reading comprehension, and writing skills. (S-4 p. 2)
 - d. The RR concluded that Student was eligible for special education on the basis of an Other Health Impairment. (S-4 p. 3)
 - e. The Parent waived the ten-day period for reviewing the RR on April 21, 2016. (S-5)
19. A revised IEP in June 2016 just before the school year ended added Student's current level in Corrective Reading (B2 Module). In all other respects, this IEP was the same as that from March 2016. A meeting of Student's IEP team, without the Parent, did convene on or about June 22, 2016 to review that IEP, and it was sent to the Parent. (N.T. 156, 165, 196-97, 200-01, 234; S-3 p. 8)
20. The District issued a NOREP for a program of supplemental learning support on June 22, 2016. The Parent did not return an approved NOREP. (N.T. 157; S-3 pp. 32-35)
21. The Principal of the elementary school that Student attended signed Student's IEPs despite never attending an IEP meeting. (N.T. 62, 80-81, 83)
22. The District provided all of Student's special education records to the Parent in September 2016, and some records were provided in late spring or summer of 2016. (N.T. 197-203, 230-31, 235)

Progress Monitoring

23. Reports of Student's progress on the March 2014 IEP goals through December 2014 is as follows.
- a. Reading Decoding (decoding unfamiliar words with 80% accuracy from a baseline 3.0 grade level to a goal of a 4.0 grade level): from 65% accuracy at Level B1 to 40% accuracy at Level B2
 - b. Reading Comprehension (answering comprehension questions with 80% accuracy at Student's instructional reading level with no baseline indicated): from 70% accuracy at Level B1 to 40% accuracy at an unspecified level

- c. Speech Fluency (increasing fluency in spontaneous speech with peers and adults) from 70-80% fluency to mastery

(S-15 pp. 1-6)

24. Reports of Student's progress on the March 2015 IEP goals through February 2016 is as follows.

- a. Reading Decoding (decoding unfamiliar words with 80% accuracy from a baseline 3.5 grade level to a goal of a 4.5 grade level): from 40% at Level B2 to 50% at Level C1
- b. Reading Comprehension (demonstrating various reading comprehension skills with 80% accuracy from a baseline 3.5 grade level to a goal of a 4.5 grade level): from 40% to 50% at unknown levels, although testing suggests Student was at the 4.6 grade level in December 2015 through February 2016
- c. Reading Fluency (increasing oral reading fluency and accuracy reading unfamiliar words with 100% accuracy from a baseline of 100 words per minute to a goal of 150 words per minute): from a baseline of 100 words per minute to 120 words per minute with 3 errors

(S-15 pp. 7-8, 12-15)

- 25. Reports of Student's progress on the March 2016 IEP goals through June 2016 reveals that the goals were introduced in May 2016 with the exception of the transition goal that was not implemented during the 2015-16 school year. (S-15 pp. 9-10)
- 26. In Corrective Reading, the B2 Module focuses on reading fluency, while the C1 Module focuses on reading comprehension. (N.T. 192-93)
- 27. Student's performance on the WRMT assessments reflected improvement even beyond the reported scores because more difficult words and passages were tested with each administration based on the prior performance. (N.T. 145-47)

DISCUSSION AND CONCLUSIONS OF LAW

GENERAL LEGAL PRINCIPLES

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly,

the burden of persuasion in this case rests with the Parent who requested this hearing.

Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses to be credible, testifying to the best of their recollection; any discrepancies in the testimony were minor and are attributable to memory rather than on any intentional lack of candor. It should also be noted that the Parent presented as a very devoted advocate for Student, and the District personnel all presented as qualified dedicated professionals. In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision.

GENERAL IDEA PRINCIPLES

The IDEA and state and federal regulations obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services.⁵ For children who are eligible for special education services, the LEA is required to provide a “free appropriate public education” (FAPE) to the student.⁶ FAPE consists of both special education and related services.⁷ In *Board of Education v. Rowley*,⁸ the U.S. Supreme

⁵ 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125.

⁶ 34 C.F.R. §§ 300.17, 300.101.

⁷ 34 C.F.R. § 300.17.

⁸ 458 U.S. 176 (1982).

Court held that the FAPE requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed.

SUBSTANTIVE FAPE

An LEA, including a school district, meets the obligation of providing FAPE to eligible students through development and implementation of an Individualized Education Program (IEP), which is “reasonably calculated to enable the child to receive meaningful educational benefits in light of the student’s intellectual potential.”⁹ The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit” under the IDEA.¹⁰ Most critically, of course, the IEP must be responsive to the child’s identified needs.¹¹ However, the LEA “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a basic floor of opportunity.”¹² It is also important to recognize that “the measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date.”¹³

The Parent expressed serious concerns over Student’s progress in reading. (N.T. 238-39, 240-44) While it is certainly understandable that the Parent would like Student to be reading on grade level, the fact remains that Student has a disability that impacts Student’s ability to read. Student is also older chronologically than same-grade peers, but Student’s academic functioning

⁹ *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations and internal quotation marks omitted).

¹⁰ *Ridgewood v. Board of Education*, 172 F.3d 238, 247 (3d Cir. 1995).

¹¹ 34 C.F.R. § 300.324.

¹² *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 533-534 (3d Cir. 1995) (internal quotation marks omitted).

¹³ *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993); *see also D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010).

must be viewed in the context of the instruction Student has received, not Student's age. The District is required to provide programming that addresses Student's disability and is reasonably calculated to provide meaningful benefit, but that mandate does not mean that it must eliminate a disability altogether.

There is no evidence that the reading program provided was in any way inappropriate for Student's needs. Further, the record establishes that Student made incremental progress toward IEP goals over the 2014-15 and 2015-16 school years. Additionally, the results of the WRMT reflect growth over time in most of the areas of reading that the instrument assesses; to the extent that those results reflect some variability, it is important to recognize that the WRMT scores provide mere snapshots of performance on a specific test,¹⁴ whereas progress monitoring on IEP goals provides a more robust measure of specific skill development. In sum, no substantive denial of FAPE has been established and the claim for compensatory education must be denied.

PROCEDURAL FAPE

As *Rowley* confirmed, the IDEA contains both procedural and substantive requirements. The Parent's first procedural claim is that the District failed to comply with certain obligations in convening IEP meetings and developing those programs. An IEP is to be developed by a team whose composition includes, at a minimum, the parents, a regular education teacher if the child may participate in regular education, a special education teacher, and an LEA representative who is qualified and knowledgeable.¹⁵ The evidence shows that the District developed IEPs at

¹⁴ It is also important to recognize that grade-level scores must be interpreted cautiously and carefully, as they can be misleading for many reasons. Salvia, J., Ysseldyke, J., & Bolt, S., *Assessment in Special and Inclusive Education* (11th ed. 2010) at 40-41; Sattler, J. M., *Assessment of Children: Cognitive Applications* (5th ed. 2008) at 104-106. For example, grade equivalents tend to exaggerate minor variations in performance; and, grade equivalents vary from instrument to instrument, and even from subtest to subtest, and are therefore quite difficult to compare. Sattler at 106.

¹⁵ 34 C.F.R. §§ 300.321, 300.322, 300.324.

meetings that were not attended by all who signed them; and the composition of the team at any given meeting during the relevant time period is impossible to determine. This circumstance amounts to a procedural violation.

The IDEA procedural obligations also include the related requirement that parents be permitted to participate meaningfully in making educational decisions about their children, and this critical concept extends to placement decisions.¹⁶ This is because parents play an important and significant role in these processes.¹⁷ Indeed, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents.¹⁸ However, a procedural violation is actionable under the IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefit.¹⁹

With respect to the opportunity for the Parent to participate in the development of Student's IEP, the Parent has demonstrated that the District did impede her ability to gather with the full IEP team and discuss Student's proposed program and placement over the 2014-15 and 2015-16 school years. Ultimately, Student was removed from the District by the Parent to attend a charter school in the fall of 2016. However, in this case, there has not been a showing that Student was deprived of appropriate educational programming as a result of the District's actions, or that the Student's educational program was directly affected by the extent of appropriate parental participation in the process over those school years. Thus, no remedy will be awarded for these procedural violations, but the District is reminded of those significant

¹⁶ 34 C.F.R. §§ 300.116(b), 300.501(b); *see also Letter to Veazey*, 37 IDELR 10 OSEP 2001) (confirming the position of OSEP that local education agencies cannot unilaterally make placement decisions about eligible children to the exclusion of their parents).

¹⁷ *Schaffer, supra*, at 53.

¹⁸ 34 C.F.R. § 300.513(a)(2).

¹⁹ *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010); 34 C.F.R. § 300.513(a).

obligations and, should Student return to the District in the future, it must adhere to all procedural requirements in developing an appropriate program for Student.

The Parent also raised a claim that reevaluations of Student were not completed in a timely manner. However, during the relevant time period, Student was reevaluated twice: once in March 2015, and once in April 2016. Eligible students are generally required to undergo reevaluation once every three years.²⁰ To the extent there is any claim regarding Student's reevaluations, no violation has been demonstrated.

Finally, there is preponderant evidence that the Parent was not timely provided with Student's education records following her requests. The IDEA includes specific provision for parental access to records as provided for in and defined by the Family Educational Rights and Privacy Act of 1974 (FERPA).²¹ Pennsylvania regulations are consistent.²² There was no request made of this hearing officer to intervene in the provision of records for Student in this matter; and, all records have apparently now been produced. Nevertheless, the District is reminded of these crucial mandates.

In sum, the Parent has demonstrated that the District committed several procedural violations of the IDEA, but there is no basis for awarding compensatory education.

PROSPECTIVE RELIEF

In Pennsylvania, the school district of residence is generally responsible for educating students residing within its boundaries, including children with disabilities, with some exceptions.²³ However, in this matter, Student is currently enrolled in a charter school. Like

²⁰ 34 C.F.R. § 300.303(b)(2).

²¹ 20 U.S.C. § 1232g; 20 U.S.C. §§ 1417(c); *see also* 20 U.S.C. § 1415(b)(1); 34 C.F.R. §§ 300.501, 300.611, 300.613.

²² 22 Pa. Code § 14.162(j).

²³ 24 P.S. §§ 13-1302, 13-1372; 22 Pa. Code § 11.11.

school districts, charter schools are public schools.²⁴ A charter school may be an LEA and thereby “assume the duty to ensure that a FAPE is available to a child with a disability in compliance with the IDEA ... and section 504.”²⁵ “When a child with an IEP transfers to a charter school or cyber charter school, the charter school or cyber charter school is responsible upon enrollment for ensuring that the child receives special education and related services[.]”²⁶

Accordingly, because the school district of residence is not the LEA, there is no obligation under the IDEA for it to develop a proposed program of special education.²⁷ This hearing officer therefore finds no basis to order the District to develop a program and placement for Student at this time.

CONCLUSION

Based on the foregoing findings of fact and for all of the above reasons, this hearing officer concludes that the District did commit procedural violations, but did not substantively deny Student a FAPE, and no remedy, including compensatory education and an order for a prospective placement, is due.

ORDER

²⁴ 24 P.S. § 17-1703-A.

²⁵ 22 Pa. Code § 711.3; see also 34 C.F.R. §§ 300.28, 300.209; *R.B. v. Mastery Charter School*, 532 Fed. Appx. 136 (3d Cir. 2013).

²⁶ 22 Pa. Code § 711.41(a).

²⁷ *I.H. v. Cumberland Valley School District*, 842 F. Supp.2d 762 (E.D. Pa. 2012) (describing the circumstances under which a school district of residence must propose an educational program).

AND NOW, this 29th day of October, 2016, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not convene proper meetings of Student's IEP team to develop Student's educational program during the 2014-15 and 2015-16 school years, and thereby committed procedural violations.
2. The District did not substantively deny FAPE to Student.
3. The District failed to comply with its obligations to timely provide the Parent access to Student's education records.
4. No compensatory education is due.
5. The District is not Student's LEA and is not ordered to develop an educational program for Student or to offer a placement.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are **DENIED** and **DISMISSED**.

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER