

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the 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 No. 28774-23-24

Child's Name:

N.F.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parents:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

07/02/2024

Introduction

This special education due process hearing concerns the educational program and placement of N.F. ("student"), a student who resides in the Tredyffrin-Easttown School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education. Parent claims that the District failed to provide the student with programming designed to provide a free appropriate public education ("FAPE") under IDEA.

Parent claims that the District failed to implement appropriate programming for the student for the 2021-2022 school year as of November 2021. Shortly thereafter, parent undertook the unilateral private placement for the remainder of the 2021-2022 school year, for the entirety of the 2022-2023 school year, and for the 2023-2024 school year, including summers 2022 and 2023. Parent seeks compensatory education for the period in November 2021 when the student was still in District programming. Parent seeks tuition reimbursement for the private placement

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").

which the student has attended as of November 2021, in addition to reimbursement for privately-obtained speech and language (“S&L”) services.

The District counters that, at all times, it implemented appropriate programming for the student in November 2021 and proposed appropriate programming thereafter for the entirety of the period of parent’s claims in the 2021-2022, 2022-2023, and 2023-2024 school years. Therefore, the District argues, parent is not entitled to remedy.

For the reasons set forth below, I find in favor of the District.

Issue

1. Is the student entitled to compensatory education for a span of weeks in November 2021?
2. Is parent entitled to tuition reimbursement for the unilateral private placement undertaken in November 2021 for the 2021-2022 school year, the 2022-2023 school year, and/or the 2023-2024 school year?
3. Is parent entitled to reimbursement for privately-obtained S&L services?

Findings of Fact

All evidence in the record, both exhibits and testimony, was 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.

Evaluations Prior to 2021-2022

1. In November 2016, in the fall of the student's [redacted] grade year, the student was initially evaluated for special education. (Joint Exhibit ["J"]-6, J-7).
2. The November 2016 evaluation report ("ER") identified the student as a student with a health impairment, specifically related to attention deficit hyperactivity disorder and the need for support given deficits in working memory. (J-7).
3. The November 2016 ER recommended that the student continue to receive support in reading but deferred any identification of the student as having a specific learning disability. The ER also recommended consultation with a S&L therapist for potential support in oral language. (J-7).
4. The November 2016 ER also recommended support to assist the student with impulsivity, task initiation/completion, and resiliency. (J-7).
5. In February 2019, in the midst of the student's [redacted] grade year, the student was re-evaluated. (J-26).
6. The February 2019 re-evaluation report ("RR") continued to identify the student as a student with a health impairment, with continuing

needs in working memory, focus, attention to task, and self-regulation. (J-26).

7. The February 2019 RR concluded that the student did not have any specific learning disabilities. Certain deficits in phonological memory were attributed to the student's executive functioning needs. (J-26).
8. The February 2019 RR recommended occupational therapy ("OT") support for sensory needs in some educational settings. (J-26).

[redacted]Grade / 2020-2021 School Year

9. In February 2021, in the midst of the student's [redacted]grade year, the student's individualized education program ("IEP") team met to design the student's IEP. This February 2021 IEP was in place as [redacted] grade ended and the student would be moving to 7th [redacted] grade for the 2021-2022 school year. (J-49).
10. The February 2021 IEP identified the student's needs as those identified in the February 2019 RR. The IEP contained two goals, one for task-completion and the other for self-regulation/coping skills. (J-49).
11. Upon entering [redacted] grade in the 2021-2022 school year, the February 2021 IEP included organization, coping, and resiliency support for 255 minutes, three times per instructional cycle. The IEP also included 15-minute OT sessions, 1-2 times per quarter. (J-49).

12. As part of the February 2021 IEP meeting, the student's mother indicated concerns over the student's programming. In March 2021, the District sought and received consent from the parent to conduct a re-evaluation of the student. (J-1; Notes of Testimony ["NT"] at 166-264).
13. In May 2021, the District issued the RR. (J-2, J-55, J-56, J-57, J-58; NT at 52-154).
14. The May 2021 RR contained a reading inventory assessment which found the student to be instructional in word recognition at the 5th – 7th grade level and in reading comprehension at the 5th grade level. (J-2 at pages 8-9; NT at 844-915).
15. The May 2021 RR contained a standardized reading assessment in word identification and spelling. The student scored in the average range in the four composite scores (word identification, spelling, fundamental literacy ability index, and sound-symbol knowledge), but consistent weakness with irregular words. (J-2 at pages 9-10).
16. The May 2021 RR identified needs in oral expression, work with irregular words and some sound-symbol configurations, along with the executive functioning deficits which had long been a part of the student's learning profile (working memory, attention, organization, task initiation/completion), as well as self-regulation and emotionality. (J-2).

17. The May 2021 RR recommended continuation of 15-minute OT sessions, 1-2 times per quarter. (J-2).
18. Due to parent's ongoing concern, a S&L evaluation was undertaken, and the May 2021 RR was revised to include the S&L evaluation. (J-3).
19. In June 2021, the District issued the revised RR, including the results of the S&L evaluation. (J-3, at pages 32-36; NT at 1012-1087).
20. The June 2021 RR identified the student with a S&L impairment along with the previously-identified health impairments. The June 2021 RR recommended supports in oral expression (word-finding and expression in narratives/explanations, explaining problem-solving, and justifying answers). (J-3).

[redacted] Grade / 2021-2022 School Year

21. Over the summer of 2021, the parent and members of the student's IEP team communicated regarding an IEP meeting in August 2021. (J-63).
22. In August 2021, the student's IEP team met, and the District issued a notice of recommended educational placement ("NOREP"). (J-64).
23. The student's mother approved the August 2021 NOREP, in part, and disapproved the NOREP in other parts. The student's mother

attached a multi-paged addendum to explain her views on the RRs, IEP, and programming in general. (J-64).

24. Given the response of the student's mother, the District did not accept the programming as approved, and the IEP team continued to meet to work on the IEP. (NT at 166-264, 702-829).

25. Conversations amongst the student's mother, including advocates and other individuals providing support for/advice to the parent, continued into September 2021. (J-63; NT at 166-264, 1207-1254).

26. In early September 2021, the student's mother submitted an application to the private placement where the student ultimately enrolled. (J-71).

27. In mid-September 2021, the District provided a revised IEP for the IEP team's consideration. (J-155)

28. In mid-September 2021, the student's mother approved the NOREP but indicated concerns she had with aspects of the IEP. (J-74, J-75, J-155).³

29. The September 2021 IEP is the last agreed-upon IEP. (J-75, J-155).

³ Early on in the hearing, J-5 was introduced and testified to as the September 2021 IEP. The parties realized that this version of the IEP was incorrect, and J-155 became the correct version of the IEP, to which almost every witness testified. The parties indicated that the use of J-5 early in the proceedings was not prejudicial to the record.

30. The September 2021 IEP contains present-levels information from prior evaluations, including S&L and OT evaluations, prior IEP goal progress, input from teachers, and parent concerns. (J-155).
31. The September 2021 IEP identified the student's strengths and needs. The student's needs were identified as oral language, sound-symbol retrieval, working with irregular words, working memory and a broad array of executive functioning needs, and self-regulation/sensory processing/processing emotionality. (J-155).
32. The September 2021 IEP contained five goals: task completion, coping skills, spelling/encoding, written expression, and S&L (oral expression). (J-155).
33. The September 2021 IEP included 43 minutes per session once daily over a six-day cycle, for support in writing and organization; 43 minutes per session three times over a six-day cycle, for reading support; 43 minutes per session three times over a six-day cycle, for writing support; and 30 minutes of group S&L per session for 52 sessions over the annual course of the IEP. (J-155).
34. The September 2021 IEP included up to 30 minutes per month of consultative individual S&L therapy, and 15 minutes once or twice per quarter of individual OT services. (J-155).

35. The placement calculation in the September 2021 IEP indicated that the student would spend approximately 79% of the school day in regular education. (J-155).
36. In September 2021, the private placement where the student's parent had submitted an application performed a baseline reading assessment. The student's standard scores in all areas were in the average range and did not indicate the need for specialized reading instruction. (J-65; NT at 557-696).
37. In September 2021, a private S&L evaluator issued a private evaluation report. (J-69, J-87; NT at 410-498).
38. The S&L evaluator assessed the student in multiple areas of language but did not report all scores, especially if those scores fell in the average range. Therefore, the private S&L evaluation presents an incomplete picture of the student's strengths and needs in language, and is unreliable as a comprehensive understanding of the student's S&L needs. (J-69; NT at 410-498).
39. The S&L evaluator diagnosed the student with a mixed expressive-receptive language disorder, social pragmatic communication disorder, specific reading disorder, and disorder of written expression. (J-69).

40. In October 2021, the parent, through counsel, sent the SD a 10-day letter, indicating that she would be pursuing a unilateral private placement at public expense. (J-85).
41. In November 2021, the student began to receive private S&L services. The S&L therapist who worked with the student was not the individual who performed the September 2021 S&L evaluation. (J-88; NT at 1269-1319).
42. The November 2021 S&L plan was based on the results of the September 2021 S&L evaluation and included goals and programming in listening comprehension, oral language, phonemic awareness, and pragmatic language. The plan also included goals and programming in areas that lay outside of S&L services, including extensive goals in reading, spelling, and written expression. (J-88).
43. In November 2021, the student began to attend the private placement. (NT at 166-264).
44. The private placement specializes in working with children who have “language-based learning disabilities such dyslexia, dysgraphia, and dyscalculia”. Class sizes are small, staff are all trained in specialized literacy education; the witness from the private placement described it as a “language-intensive” program. (See, e.g., J-98 at page 1; NT at 557-696).

45. All students at the private placement receive “embedded executive functioning support for academic skills”. (See, e.g., J-98 at page 1).
46. The private placement utilizes benchmark testing in the fall, winter, and spring to gauge concrete student progress. (NT at 557-696).
47. In the fall administration of the oral reading fluency benchmark, the student was in the below average range, at the 20th percentile. (J-95).
48. Based on the intake reading assessment, working with the student in the fall of 2021, and the benchmark assessment, the student did not qualify for intensive reading instruction. The private placement gauged the student’s learning profile with the most significant needs in working memory and processing speed. (J-65, J-95; NT at 557-696).
49. Over the course of the 2021-2022 school year, the student continued to receive private S&L services. (J-104, J-154; NT at 1269-1319).
50. Benchmark testing in oral reading fluency showed that the student made progress in the winter and spring administrations, with performance at the 22nd percentile in the winter and the 29th percentile

in the spring. By the spring benchmark assessment, the student had moved into the average range of performance. (J-95).

51. On benchmark testing in mathematics, the student scored at the 72nd percentile, in the average range, in the winter and in the 82nd percentile in the spring administration. (J-99 at page 8, J-101).

52. In the 2021-2022 school year, the student performed well in all academic areas, including specialized areas of reading and writing. (J-97, J-98, J-99).

53. The student's programming at the private placement in the 2021-2022 school year did not include explicit instruction or support in executive functioning, instead relying on the embedded practices utilized with all students. Where teachers would assign numeric scores (1-4) to assess performance, the student achieved "3"—emerging, or demonstrates with support— in many areas that would be characterized as executive functioning. (J-97, J-98, J-99).

54. In February 2022, parent requested, through counsel, an IEP for the 2022-2023 school year, the student's upcoming [redacted] grade year. (J-100).

55. In March 2022, the District proposed an IEP for the student. (J-105; NT at 702-829).

56. The March 2022 IEP included updated present-levels information. At the District's request, the parent provided the second

quarter report card from the private placement, the intake assessments at the private placement for reading and mathematics, benchmark assessment results from the fall and winter administrations, as well as the private S&L evaluation from September 2021 and progress notes from the private S&L services. (J-105).

57. The student's identified needs in the March 2022 IEP were the same as the last agreed-upon IEP, from September 2021. (J-105).

58. The March 2022 IEP contained six goals: task completion, coping skills, spelling/encoding, written expression, and two goals in S&L (expressive language and listening comprehension). (J-105).

59. The March 2022 IEP included 43 minutes per session once daily over a six-day cycle, for support in writing and organization; 43 minutes per session eighteen times over the annual course of the IEP for direct instruction for coping and social communication; 43 minutes per session three times over a six-day cycle, for reading support; 43 minutes per session three times over a six-day cycle, for writing support; and 30 minutes of group S&L per session for 52 sessions over the annual course of the IEP. (J-105).

60. The March 2022 IEP included up to 30 minutes per month of consultative individual S&L therapy, and 15 minutes once or twice per quarter of individual OT services. (J-105).

61. The March 2022 IEP included extended school year (“ESY”) services for the student in the summer of 2022 for the S&L goals in the IEP. (J-105).
62. The placement calculation in the March 2022 IEP indicated that the student would spend approximately 79% of the school day in regular education. (J-105).
63. The District issued a NOREP accompanying the March 2022 IEP. Parent rejected the NOREP and sent a 10-day letter, indicating that she intended to return the student to the private placement. (J-106, J-107).
64. The student received a handful of private S&L sessions in the summer of 2022. (J-112, J-154; NT at 1269-1319).

[redacted] Grade / 2022-2023 School Year

65. In May 2022, the student’s parents made arrangements with the private placement to provide OT and S&L services as part of the programming at the private school for the 2022-2023 school year. (J-109, J-110; NT at 557-696).
66. In the 2022-2023 school year, the student’s oral reading fluency benchmark scores entirely flatlined. The student scored in the 121, 122, and 126 across the fall, winter, and spring benchmarks, respectively at the 17th, 16th, and 18th percentiles. (J-120).

67. On benchmark testing in mathematics, the scores in the fall and winter administrations were steady, with the student scoring at the 63rd and 62nd percentiles, improving in the spring administration to the 76th percentile. (J-118).
68. In the 2021-2022 school year, the student performed well in all academic areas, including specialized areas of reading and writing. (J-122, J-123, J-124, J-125).
69. The student's programming at the private placement in the 2022-2023 school year contained more explicit mention of support (or need) in executive functioning than in the previous school year. (J-122, J-123, J-124, J-125).
70. One area where, when assessed using the 1-4 numerics, the student consistently seemed to be assessed in a lower capacity (3s) across subjects was for the skill of "perseveres through difficult tasks and takes setbacks in stride". (J-122, J-123, J-124, J-125).
71. Although rare, when assessed using the 1-4 numerics, teachers assessing the student with 2s were almost always in areas of executive functioning. (J-122, J-123, J-124, J-125).
72. The private placement did not assess or evaluate the student's needs for S&L services. The student's S&L services at the private placement were based on the flawed S&L evaluation from September 2021. (NT at 557-696).

73. The student received S&L and OT programming throughout the 2022-2023 school year. (J-122, J-123, J-124, J-125).
74. In S&L, the student's goals included expressive and receptive language. In OT, the student's goals included two targeted specifically to executive functioning (both following directions). S&L and OT goals also included goals outside of these related service specializations, with goals purely in written expression (editing work, paragraph writing, capitalization, punctuation, and sentence structure). There was no grading or progress monitoring in S&L or OT for the 3rd quarter. (J-122, J-123, J-124, J-125).
75. In January and February 2023, in anticipation of the annual revision of the student's IEP in March, the District asked the parent to allow it to gather updated baseline data for IEP goals and for consent to speak with the private placement. (J-130 at page 7).
76. Parent refused to allow the District to gather updated baseline data but eventually provided consent for the District to contact the private placement for updated information on the student's programming and achievement to that point in the 2022-2023 school year. (J-128).
77. At the same time, the District asked the student's parent to make the student available so that the District could administer

assessments of its own. Parent would not make the student available for testing or assessments. (J-129).

78. The District formally requested permission to re-evaluate the student the same day that it received parent's denial of its informal request for updated testing. (J-129).
79. In March 2023, the District issued an IEP without the benefit of updated baseline, assessment, or evaluation data. (J-130).
80. The March 2023 IEP included updated present-levels information obtained from the private placement. (J-130).
81. The March 2023 IEP included six goals: task completion, coping skills, spelling/encoding, written expression, and two S&L goals (expressive language and listening comprehension). The baselines in the March 2023 IEP goals were based on information/data obtained from the private placement. (J-130).
82. The March 2023 IEP included similar supports and direct instruction in the student's areas of need as had been contained in the March 2022 IEP. (J-130).
83. The March 2023 IEP included ESY services for the student in the summer of 2023 for the S&L goals in the IEP as well as the spelling/encoding goal. (J-130).

84. The placement calculation in the March 2023 IEP indicated that the student would spend approximately 79% of the school day in regular education. (J-130).
85. The District issued a NOREP accompanying the March 2023 IEP. Parent rejected the NOREP and sent a 10-day letter, indicating that she intended to return the student to the private placement. (J-131, J-132, J-133).
86. In April 2023, the student's parent provided consent for a re-evaluation. (J-129).

[redacted] Grade / 2023-2024 School Year

87. In May 2023, the private placement performed a brief S&L screening, utilizing one assessment, as the basis of its S&L programming for the 2023-2024 school year. (J-135).
88. In July 2023, the District issued a comprehensive RR. (J-138; NT at 272-406, 1092-1163, 1169-1197).
89. The July 2023 RR contained content from prior evaluations and updated information from the private S&L evaluation from September 2021. (J-138).
90. The July 2023 RR contained updated input from the student's mother, both broad-based and as to S&L particularly. (J-138).

91. The July 2023 RR contained updated grades and assessments from the private placement, although some of its specific inquiries of the private placement about certain aspects of programming and assessments were not answered. (J-128, J-138).
92. A reading inventory administered by the District as part of the July 2023 RR indicated that the student was instructional at the 8th grade level. (J-138).
93. A reading assessment (the same assessment administered to the student by the District in April 2021 and by the private placement in September 2021) showed that the student scored in the average range across all composites—as was the case in the prior administrations—although there were marked deficits in the spelling sub-tests, again consistent with prior administrations. (J-138).
94. The July 2023 RR contained observations of the student at the private placement by a District school psychologist and S&L therapist. (J-138; NT at 272-406, 1092-1163).
95. The July 2023 RR included input from teachers at the private placement, including the S&L therapist at the private placement. (J-138).
96. The July 2023 RR contained extensive additional testing and assessments, especially in S&L. (J-138).

97. The July 2023 RR continued to identify the student as a student with health impairment and a S&L impairment. (J-138).
98. The student's needs identified in the July 2023 RR were similar to the needs identified in the past: executive functioning, working memory, processing, emotional regulation, listening comprehension, expressive language, and pragmatic language (including social pragmatics). (J-138).
99. Based on the July 2023 RR, the student's IEP team met to consider the student's IEP. (J-139).
100. The present-levels information in the July 2023 IEP was revised from prior IEPs, containing information exclusively from the July 2023 RR. (J-139).
101. The July 2023 IEP contained six goals: two in executive functioning (task initiation/completion, organization), decoding/encoding, three in S&L (expressive language, listening comprehension, pragmatic language). (J-139).
102. The July 2023 IEP included 45 minutes per session once daily over a six-day cycle, for academic support and organization skills; 45 minutes per session three times over a six-day cycle, for direct literacy instruction; 45 minutes per session three times over a six-day cycle, for direct instruction in executive functioning; 30 minutes of group S&L per session for 52 sessions over the annual course of the IEP; 45

minutes of counseling for coping and social skills, ten times over the annual course of the IEP; and up to one 30-minute session monthly of individual consultative S&L therapy. (J-139).

103. The decision on ESY for the summer of 2024 was deferred until data could be gathered in the 2023-2024 school year to see if the student qualified for ESY services. (J-139).

104. The placement calculation in the July 2023 IEP indicated that the student would spend approximately 78% of the school day in regular education. (J-139).

105. In August 2023, the District issued a NOREP for implementation of the July 2023 IEP. The student's parent disapproved the IEP and sent a 10-day letter indicating that she was returning the student to the private placement for the 2023-2024 school year. (J-140, J-141).

106. In August 2023, the student's parent contracted for S&L services to be provided by the private placement in the 2023-2024 school year. The student did not receive OT services. (J-144).

107. In the first quarter of the 2023-2024 school year, the student performed well in all academic areas at the private placement, including S&L which included expressive language, receptive language, and pragmatic language. The S&L services again included the mechanics of written production, although more S&L content was present for orthographic content. (J-149).

108. In November 2023, the parent filed the complaint which led to these proceedings.

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the S&L therapist who performed the September 2021 S&L evaluation (NT at 410-498) was accorded little weight, as her testimonial defense of leaving assessment data out of the September 2021 S&L evaluation report was wholly unconvincing. In contrast, the testimony of each of the District S&L therapists (NT at 1012-1087, 1092-1163, 1169-1197) was accorded heavy weight. Each of these therapists testified in strong and certain terms as to their assessment of the student and/or the basis for their programming recommendations.

It must be noted, too, that the testimony of the mother's friend (NT at 1207-1254) was received as lay/fact testimony and not as expert testimony. This individual has a breadth of experience in reading/literacy education, but the witness was presented as a lay/fact witness—specifically, over her personal relationship and interaction with the student's mother and personal advice she gave to the student's mother—and did not testify out of her deep expertise (see NT at 1203-1207).

Legal Framework

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, with appropriately ambitious programming in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

In considering parent's claim for remedies, where a school district has denied FAPE to a student under the terms of IDEA, 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)). Long-standing case law and the IDEA also provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability.

Compensatory Education. The evidentiary scope of claims, which is not a point of contention in this matter, and the nature of compensatory education awards were addressed in G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir. 2015) The G.L. court recognized two methods by which a compensatory education remedy may be calculated. One method, the more prevalent method to devise compensatory education, is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. In most cases, it is equitable in nature, but the award is a numeric award of hours as remedy. The second method, a rarer method to devise compensatory education, is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a qualitative determination where the compensatory education remedy is gauged to place the student in the place where he/she would have been absent the denial of FAPE. It, too, is equitable in nature, but the award is based on services, or some future accomplishment or goal-mastery by the student, rather than being numeric in nature.

Both calculations are a matter of proof. The quantitative/hour-for-hour approach is normally a matter of evidence based on IEPs or other documentary evidence that provides insight into the quantitative nature of the proven deprivation. The qualitative/make-whole approach normally

requires testimony from someone with expertise to provide evidence as to where the student might have been, or should have been, educationally but for the proven deprivation, often with a sense of what the make-whole services, or future student accomplishment/goal-mastery, might look like from a remedial perspective. In this case, evidence was not produced regarding a qualitative/make-whole compensatory education remedy. Thus, any compensatory education remedy was considered as a quantitative/hour-for-hour compensatory education remedy.

Tuition Reimbursement. Where a school district has failed in its obligation to provide FAPE to a child with a disability, tuition reimbursement is an available remedy where parents have undertaken a unilateral private placement (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)). A substantive examination of the parents' tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

In the three-step Burlington-Carter analysis, the first step is an examination of the school district's proposed program, or last-operative program, and whether it was reasonably calculated to yield meaningful education benefit. Step two of the Burlington-Carter analysis involves

assessing the appropriateness of the private placement selected by the parents. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties.

Discussion

Denial of FAPE. Here, at the outset, one is struck by how absolutely consistent this record is in terms of how the student presents as a learner over the course of the school years in question (and even before that). The student's overarching need is for instruction and support in a wide range of executive functioning—working memory, processing speed, task approach/initiation/completion, organization. From the initial November 2016 ER through to the July 2023 RR, and with every evaluation in between, the consistent and marked need for support in executive functioning is present.

Likewise, the student has never been identified as a student with a specific learning disability in reading. Yet the student requires substantial supports in reading and always has exhibited that need. Even the private placement, which serves students with a range of disabilities but has a particular focus and expertise in literacy education for students with reading disabilities, did not find that the student qualified for its intensive reading program. But the student received direct reading instruction.

The student has always had a relative strength in mathematics and has always struggled with spelling and with written expression. There has always been an undercurrent of the need to address emotionality and coping skills.

And, again consistently, the student has exhibited the need for S&L support. This latter need emerged later than the other needs listed here, but over time it has morphed into various aspects of specific need (expressive language, receptive language, listening comprehension, social pragmatics).

It is a complex mosaic of need, but its trajectory through the student's education, both at the District and at the private placement, is clear.

In terms of the provision of FAPE, the record supports a finding that the District provided FAPE to the student, under the terms of the September 2021 IEP, for the brief period of claim in November 2021 and in the subsequent IEPs it proposed in March 2022, March 2023, and July 2023.

The September 2021 IEP, in place as of November 2021, yielded meaningful education benefit to the student in the form of significant learning based on the student's unique needs. Those needs were well understood by the District, and the September 2021 IEP contained goals to address those needs, with appropriate instruction, modifications, and services to allow the student to access individualized education and make meaningful progress. Now, for that specific aspect of parent's claim—roughly a month of instruction—the sample size (as statisticians and sports fans are

wont to say) is small. But nothing on this record indicates that the District failed to meet its obligations to the student in November 2023, in the weeks before the student departed for the private placement.

Once the student had enrolled in the private placement, the subsequent IEPs—in March 2022, March 2023, and July 2023—were each reasonably calculated to yield meaningful education benefit to the student in the form of significant learning in light of the student’s unique needs. With each IEP, the District understood the student’s learning needs and designed IEP goals and instruction/services calculated to allow the student to progress educationally toward those goals. Said another way, had the student returned from the private placement to the District at any point after leaving the District, a robust, appropriate IEP was in place to allow the student to enter immediately into the process of significant learning in light of the student’s unique needs.

Accordingly, in the implementation of the September 2021 IEP and in the design of the March 2022, March 2023, and July 2023 IEPs, the District met its obligations to provide FAPE to the student, or to stand ready to provide FAPE.

Compensatory Education. Given the analysis above regarding denial of FAPE, parent is not entitled to a compensatory education remedy for the period of November 2021.

Tuition Reimbursement. Given the analysis above regarding denial of FAPE, the District met its obligation to the student in offering appropriate programming through the September 2021, March 2022, March 2023, and July 2023 IEPs. With the District providing FAPE, or offering programming that is an appropriate offer of FAPE, the District has met its burden to the student outlined at step one of the Burlington-Carter analysis. Thus, there is no need to proceed to the second or third steps of the Burlington-Carter analysis.

This analysis and conclusion apply to tuition reimbursement at the private placement as well as parent's claim for reimbursement for private S&L services. The Burlington-Carter analysis applies whenever parents undertake a unilateral provision of services because, in their view, the local education agency has failed to provide FAPE to their child. Most frequently, this is cast as 'tuition reimbursement' for a private schooling placement. But the rationale, and the concrete Burlington-Carter analysis, applies to any situation where parents undertook unilateral action in the education of their child for which they feel they should be reimbursed. Here, that applies to the parent's claim for reimbursement for private S&L services. But the District met its obligations, specifically in this instance, in providing or proposing appropriate S&L goals and programming for the student.

Accordingly, parent is not entitled to tuition reimbursement at the private placement for the 2021-2022 school year (after November 2021),

the 2022-2023 school year, or the 2023-2024 school year, nor for reimbursement for the private S&L services.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, on this record the Tredyffrin-Easttown School District has met its obligations to provide, or propose, a free appropriate public education to the student for the 2021-2022, 2022-2023, and 2023-2024 school years.

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

07/02/2024