

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

Open Hearing

ODR No. 31442-24-25

Child's Name:

E.T.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

02/23/2026

Introduction

This special education due process hearing concerns the educational program and placement of [redacted] (“student”), a student who resides in the Radnor Township 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. Parents claim that the District failed to provide the student with programming designed to provide a free appropriate public education (“FAPE”) under IDEA. Parents also bring a denial-of-FAPE claim under the Rehabilitation Act of 1973, particularly Section 504 of that statute (“Section 504”).³

The student’s parents claim that the District failed to provide appropriate programming in the 2022-2023 school year, with a claim for remedy as of June 2023 through the point the parents enrolled the student in the private placement in the summer of 2023.⁴ Thereafter, parents claim

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”).

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”).

⁴ In their complaint, parents asserted a claim for compensatory education for the very end of the 2022-2023 school year, accruing as of June 4, 2023. After the conclusion of the 2022-2023 school year, parents sought unilateral, privately-funded schooling and services for the student. Therefore, the bulk of parents’ claim for remedy is for reimbursement for private placement tuition and privately-obtained services. (Parents Exhibit [“P”]-1; Notes of Testimony [“NT”] at 22-24).

that the District failed to propose appropriate programming for the student for the 2023-2024 and 2024-2025 school years, including the summers of 2024 and 2025.⁵ Parents seek tuition reimbursement for the private placement, and reimbursement for private services, which they unilaterally undertook over those periods.

The District counters that, at all times, it proposed provided a FAPE to the student in the 2022-2023 school year and proposed appropriate programming for the student for the 2023-2024 and 2024-2025 school years. Therefore, the District argues, parents are not entitled to remedy.⁶

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

Issues

1. Is the student entitled to compensatory education for the period from June 4, 2023 through the point the parents privately enrolled the student in the summer of 2023?
2. Are parents entitled to tuition reimbursement for the student's private placement in the 2023-2024 and/or

⁵ In their June 2025 complaint, parents do not make a claim for reimbursement for privately-obtained services in the summer of 2025. During opening statements, delivered in September 2025, parents asserted this claim. Some evidence was introduced by private entities regarding services in the summer of 2025. Erring on the side of caution, then, the parents' claim for remedy will include claims for reimbursement for the summer of 2025. (See, collectively, P-1, P-77, P-94, P-94a; NT at 24).

⁶ P-2; NT at 25-27.

2024-2025 school year(s), including programming in the summers of 2024 and 2025?

3. Are parents entitled to reimbursement for private services in the 2023-2024 and/or 2024-2025 school year(s), including programming in the summers of 2024 and 2025?

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 aspects of each witness's testimony may not be explicitly referenced below.

Prior to Schooling at the District

1. In the 2021-2022 school year, the student attended a community-based [redacted] where a reading-advocacy organization provided reading instruction. (P-28; NT at 43-111, 690-792, 862-923).
2. In April 2022, the reading-advocacy organization provided a report of benchmark scoring in reading and mathematics for the middle-of-year and, in some measures, the end-of-year. (P-78).
3. In June 2022, the student's [redacted] report card continued to report benchmark scoring in reading and mathematics. (P-28).
4. In reading specifically, in phonemic awareness, the student was above benchmark at the beginning of the year and below benchmark (at the

14th percentile) at the middle of the year; there was no end-of-year reporting in phonemic awareness. (P-28).

5. In phoneme segmentation fluency, there was no beginning-of-year benchmark; the student was below benchmark at the middle of the year and above benchmark (at the 34th percentile) at the end of the year. (P-28).
6. In phonics, there was no beginning-of-year benchmark; the student was above benchmark at the middle of the year and below benchmark (at the 22nd percentile). The student's score was nearly identical across both benchmark assessments thus leading to falling below benchmark and scoring at a lower percentile. (P-28).
7. At the end of the year, the student's overall reading composite on the benchmark assessment was below benchmark, at the 21st percentile. The student demonstrated strength in phoneme-segmentation fluency and the deepest need for support in nonsense-word fluency/correct letter sounds. (P-28).
8. In mathematics specifically, the student was administered probes at the beginning of the year and the end of the year. The student made progress across all three benchmarks (beginning quantity discrimination, number identification fluency, next number fluency), although next number fluency was relatively in light of strong progress in the other two measures. (P-28).

9. The student's overall mathematics composite on the benchmark assessment was at benchmark in the middle of the year and above benchmark at the end of the year. (Percentiles were not reported for the math benchmarks.) (P-28).
10. In the June 2022 report card, the [redacted] reported that, in reading, the student "is still showing signs of struggle in the benchmark data but is responding well to the interventions and lessons....It should be noted that (the student) has made exceptional progress in reading." The report card described tier 3 supports in small group a setting, with targeted instruction. (P-28).
11. In the June 2022 report card, the [redacted] reported that, in written expression and mathematics, the student showed improvement in both areas. (P-28).
12. In the June 2022 report card, the [redacted] reported that the student often, but not always, maintains attention and filters out distractions. (P-28).
13. In July and August 2022, the student received services in a specialized reading curriculum. The student demonstrated strengths in phoneme awareness and sound identification, but demonstrated needs in fluency, sight words, and spelling. The instructor also noted significant issues with attention and task-persistence. (P-28, P-79).

2022-2023 / [redacted] Grade

14. The student began to attend District schools in the 2022-2023 school year, the student's [redacted] grade year. (NT at 43-111, 233-271, 283-333).
15. In mid-October 2022, parents requested an evaluation of the student and provided consent for the evaluation in the latter half of the month. (P-3).
16. In December 2022, the District issued its evaluation report ("ER"). (P-4).
17. After issuance of the December 2022 ER, the parents communicated with the District about the ER and provided the reading and mathematics benchmark assessment data from the [redacted]. In January 2022, the District re-issued the December 2022 ER to account for parents' concerns and to include this data. (P-5, P-80).
18. The December 2022 ER, as revised, contained parent input, including a review and analysis of the benchmark assessment data from [redacted]. (P-5).
19. The December 2022 ER, as revised, included teacher and evaluator observations. Neither teachers nor the evaluator noted any difficulties with attention or task-persistence, as the [redacted] had slightly noted and as the reading instructor from the summer had significantly noted. (P-5).

20. Teacher recommendation in the December 2022 ER, as revised, included continued development of reading fluency, sight word vocabulary, and reading comprehension. (P-5).
21. On cognitive testing in the December 2022 ER, as revised, the student scored at the solidly average range across most indices, with a full-scale IQ of 102. (P-5).
22. The December 2022 ER, as revised, included behavioral/emotional scales completed by parents and the student's teacher. All raters scored the student in the average range, with no at-risk or clinically-significant scores in any sub-scale or composites. (P-5).
23. The December 2022 ER, as revised, included executive functioning scales completed by parents and the student's teacher. All raters scored the student in the average range, with no elevated or clinically-significant scores in any sub-scale or index. (P-5).
24. The December 2022 ER, as revised, included multiple assessments of the student's reading and phonological ability. The results of the assessments in reading painted a very consistent picture of the student's strengths and needs in reading. (P-5).
25. As a reader, the student demonstrates relative strength in phonology, phonics, and decoding. But the student generally takes an inordinate amount of time sounding out words, which interferes with

the student's reading rate and fluency. These deficits in reading rate and fluency, in turn, interfere with the student's reading comprehension. (P-5; NT at 117-163, 283-333).

26. On standardized academic achievement testing, the student's decoding index was not statistically discrepant from the student's cognitive ability (although, consistent with the student's reading profile, the student showed strength in the pseudoword decoding subtest but marked weakness in the word-reading subtest). The student's reading fluency index, and both of its component subtests—oral reading fluency and orthographic fluency—, were all significantly discrepant from the student's cognitive ability. (P-5).⁷
27. Overall, the student's broad reading composite was statistically discrepant from the student's cognitive ability. (P-5).
28. On a phonological assessment in the December 2022 ER, as revised, the student was in the solidly average range, with non-discrepant scores, across all subtests and composites. (P-5).
29. The data on an assessment of integrated language and literacy in the December 2022 ER, as revised, is difficult to parse. It generally assesses oral language and written language, yet has subtests that would seem to assess a constellation of areas, including reading,

⁷ A statistically-significant discrepancy being 1.5 standard deviations below the student's cognitive ability (102), in this specific instance an academic achievement score below 87.

spelling, speaking, listening, social/pragmatic communication, and written expression. (P-5).

30. There is also some degree of professional disagreement about the usefulness and application of the results of the integrated language and literacy assessment given that its normative sample is exclusively students without disabilities (thereby leading to questions of skew with results on the instruments for students with disabilities). There is also professional disagreement about whether it is an instrument for understanding academic performance or speech and language ("S&L") performance and, consequently, who is qualified to interpret the instrument and make recommendations based on the results. (P-96).⁸
31. Notwithstanding these professional disagreements, the parents, through their advocate, requested that the particular assessment of integrated language and literacy be utilized in the evaluation. The District evaluator assessed the student on the instrument and made its findings part of his understanding and conclusions. (P-5; NT at 43-111, 117-163, 690-792).
32. The District evaluator opined, in the December 2022 ER, as revised, and at the hearing that the results of the integrated language and literacy assessment supported the results of the academic

⁸ Nothing in the record, or in the experience of the hearing officer, presents similar areas of professional disagreement with any other instrument or assessment utilized by professionals in evaluating the student.

achievement and phonological performance assessments, namely that the student's phonics and decoding skills were generally strong but that reading rate, fluency, and accuracy were areas of need which ultimately interfered with the students ability to comprehend. (P-5; NT at 117-163).

33. On standardized academic achievement testing, the student's written expression showed a statistically-significant discrepancy between the student's cognitive ability and all subtests and both of the assessment's index and composite scores (orthographic processing extended index and broad written expression skills composite). On certain subtests, however, the student did not follow directions and simply copied prompts rather than producing original writing. (P-5).

34. Likewise, the student did not follow instructions for the portion of the integrated language and literacy assessment. Thus, while the student produced a writing sample that was "generally age-appropriate and creative", the failure to follow directions lowered the student's scoring. Present in the results though, as with the academic achievement assessment, were multiple spelling errors. (P-5).

35. Notwithstanding the issues encountered by the evaluator, no issue invalidated results and both instruments supported a finding of deficits in the student's written expression. (P-5).⁹
36. On standardized academic achievement testing, the student's mathematics scores were not statistically-discrepant in the broad math composite (including its math problem-solving and numeric operations subtests). The math fluency composite (including its fluency subtests in addition and subtraction) were statistically-significant. The evaluator noted that the fluency subtest were timed, and the student was slowed by occasional finger-counting. Scores on the District's curriculum-based assessment at the start of the year, performance in the math curriculum to that point, and teacher input all led the evaluator to conclude that the student could progress with differentiated instruction and approaches in the regular education setting. (P-5).
37. The December 2022 ER, as revised, included a S&L evaluation. (P-5).
38. The S&L evaluation in the December 2022 ER, as revised, included input from the student's teacher, an evaluator observation, and standardized assessment. (P-5).

⁹ The evaluator noted also, consistent with the general observation about the student's reading, that elements of the written expression assessments were slowed by the student reading aloud words phoneme-by-phoneme. (P-5).

39. The teacher noted no concerns with the student's receptive or expressive language skills, and no concerns with student's pragmatic/social communication. The teacher reported that the student had a standard affect and interactions with adults/peers, and also reported that the student followed direction and complied with redirection. (P-5).
40. The S&L evaluator observed the student in the classroom setting and noted no concerns with her observation. (P-5).
41. The S&L evaluator also administered a standardized S&L assessment with results consistently in the average range across all indices (receptive language, expressive language, language content, language structure), and in the core language score. (P-5).
42. The S&L evaluator opined that the student did not qualify for S&L services. (P-5).¹⁰
43. The December 2022 ER, as revised, identified the student as a student with specific learning disabilities in basic reading, reading fluency, and reading comprehension, as well as a specific learning disability in written expression (writing conventions, generating ideas, and organization). (P-5).

¹⁰ After the S&L evaluation in the December 2022 ER, as revised, an occupational therapist included the results of an occupational therapy ("OT") evaluation. That content in the ER is not made part of these findings of fact as qualification for OT services was not placed at issue, or made part of the evidence, by either party.

44. Parents, through their advocate, shared views about the December 2022 ER, as revised. (P-80).
45. After the January 2023 revisions to the December 2022 ER, the student's individualized education program ("IEP") met to consider the student's IEP. (P-7).
46. The January 2023 IEP used the content of the December 2022 ER, as revised, for much of the understanding of the student present levels of academic and functional performance. (P-7).
47. The January 2023 IEP included the student's scores on curriculum-based measures in reading and mathematics. (P-7 at pages 16-26).
48. On a curriculum-based reading assessment, the student began the school year at a kindergarten reading level. At the time the January IEP was developed, the student had moved one level, to the end-of-kindergarten level. (P-7).
49. In the fall and mid-winter of the 2022-2023 school year, prior to the student's identification with specific learning disabilities, the student received regular education reading intervention through a multi-tiered system of support ("MTSS"). (P-7; NT at 283-333).
50. Over the period prior to the implementation of the student's IEP, the student made progress through the MTSS supports (delivered five

days per six-day cycle in reading, two days per cycle in writing, and three days per cycle in mathematics). (P-7).

51. On reading and mathematics benchmark testing and additional curriculum-based assessments, the student showed consistent patterns of need and made progress on those measures. (P-7).
52. In the January 2023 IEP, two classroom incidents were reported. One involved a “growling voice” that the student uses “very often”. When asked to use a normal voice, the student refused after multiple requests. The other involved somewhat disruptive behavior (failure to follow directions, being out of seat) where the student did not follow redirection. (P-7).
53. The January 2023 IEP included parent input and parental concerns, including memorizing, rather than processing, reading content, handwriting legibility, mathematics support, and lack of a specific reading program/curriculum named in the IEP. (P-7 at page 37).
54. The January 2023 IEP identified the following needs: sight word vocabulary, decoding, reading fluency, reading comprehension, writing conventions, writing organization, and generating ideas for writing.

The first six needs were addressed through IEP goals; the seventh need was addressed through specifically-designed instruction. (P-7).¹¹

55. The January 2023 IEP indicated that the student’s qualification for extended school year (“ESY”) services would be determined in the spring of 2023. (P-7).

56. The student’s educational placement calculation in the January 2023 IEP indicated that the student would spend 92% of the school day in regular education. (P-7).

57. The parents, through their advocate, submitted multiple pages of additional input following the January 2023 IEP meeting. (P-39, P-81, P-82; NT at 690-792).

58. On February 1, 2023, parents approved the notice of recommended educational placement (“NOREP”) although they included explicit reservations centered on their advocate’s input. (P-9).

59. On February 10, 2023, the January 2023 IEP was revised to include baseline data for the student’s IEP goals. (P-10 at pages 44-49).¹²

¹¹ The January 2023 IEP indicated that the student would continue to receive 25 minutes of reading instruction, five days per six-day cycle, and 25 minutes of writing instruction, two days per six-day cycle. In the IEP, this instruction was labeled as continuing MTSS support, but this was a drafting error. This instruction was delivered in a special education setting by the student’s special education teacher. (P-7 at pages 48, 51; NT at 338-437).

¹² The Findings of Fact that follow are not ordered as those goals appear in the January 2023 IEP. The four goals in reading, the area of the student’s deepest need, are presented first, followed by the two goals in written expression.

60. A decoding goal in the January 2023 IEP has a baseline of identifying 74% accuracy with “trick words” in a one-minute probe. The goal is written for 80% accuracy. (P-10 at page 47).
61. A nonsense-word fluency goal in the January 2023 IEP has a baseline of 11 nonsense whole words read in a one-minute probe. The goal is written for 13 nonsense whole words read. (P-10 at page 46).
62. An oral reading fluency goal in the January 2023 IEP has a baseline of 12 words correct per minute on a 1st grade probe. The goal is written for 47 words correct per minute. (P-10 at page 48).
63. A reading comprehension goal in the January 2023 IEP has a baseline of verbally identifying the main idea, with 60% accuracy on 3 out of 4 biweekly probes. The goal is written for 85% accuracy. (P-10 at page 49).
64. A writing organization goal in the January 2023 IEP has a baseline of scoring 3 out of 6 for organization on a grade-level writing rubric over multiple writing samples per semester. The goal is written for a score of 4 out of 6. (P-10 at page 45).
65. A writing conventions goal in the January 2023 IEP has a baseline of scoring 4 out of 6 for writing conventions on a grade-level writing rubric over multiple writing samples per semester. The goal is written for a score of 4 out of 6. (P-10 at page 44).

66. In late January 2023, the student was assessed privately with another set of benchmark assessments in reading. (P-44, P-45, P-46, P-47; NT at 797-851).
67. The student's early literacy composite on the January 2023 assessment was at the 8th percentile. (P-45).
68. On February 13 and 16, 2023, the parent completed paperwork for sharing District records with two private placements, one of which the student ultimately attended. (School District Exhibit ["S"] – 26; NT at 43-111).
69. From February – June 2023, the District completed progress monitoring on the six IEP goals. (P-25; S-18 at page 5-27).¹³
70. On the decoding goal in the January 2023 IEP, the student made progress on the goal. (P-25 at pages 10-14).
71. On the nonsense-word fluency goal in the January 2023 IEP, the student made progress on the goal. (P-25 at pages 5-9).
72. On the reading fluency goal in the January 2023 IEP, the student scored above benchmark on every probe. (P-25 at pages 15-19).
73. On the reading comprehension goal in the January 2023 IEP, the student made progress on the goal. (P-25 at pages 20-23).

¹³ The District exhibit contains other measures and assessments. Citation in the following Findings of Fact is to the parents exhibit, which contains self-contained IEP-goal progress monitoring.

74. On the writing organization goal in the January 2023 IEP, the student made progress on the goal on the last probe of the school year. (P-25 at pages 1-2).
75. On the writing conventions goal in the January 2023 IEP, the student's probes remained the same (4/6 on the scoring rubric). (P-25 at pages 3-4).
76. Over the course of the 2022-2023 school year, the student was privately assessed with benchmark assessments in reading and mathematics at the beginning of the year (September 2022), the middle of the year (January 2023), and the end of the year (May 2023). (P-40, P-41, P-42, P-43; NT at 797-851).
77. The student's reading composite score at the beginning of the year was in the 47th percentile; at the middle of the year was in the 23rd percentile; and at the end of the year was in the 15th percentile. (P-40).
78. The student's mathematics composite score at the beginning of the year was in the 36th percentile; at the middle of the year was in the 58th percentile; and at the end of the year was in the 56th percentile. (P-42).
79. In late July 2023, the parents provided notice to the District that they were undertaking a unilateral private placement and would look to the District for tuition reimbursement for the placement. (P-11).

80. The District responded shortly thereafter, indicating its view that the student had made progress under the terms of the January 2023 IEP. The District requested an IEP meeting. (P-13).

81. At some point after February 2023 (based on the parents' request for records to be sent by the District to the private placement), parents formally applied for admission to the private placement. The private school administrator testified that it might have been in February when the records request was made, but the administrator was unsure. On this record, it is unclear when, exactly, parents submitted an application for admission at the private placement. (S-26, S-32; NT at 43-111, 532-687).

2023-2024 / [redacted] Grade

82. In late August 2023, on the cusp of the 2023-2024 school year, the student's IEP team met. (P-12).

83. The IEP meeting resulted in certain revisions to the January 2023 IEP. (P-12, P-14, P-15, P-16; S-15).

84. The day after the August 2023 IEP meeting, but before the District had issued a NOREP, parents formally undertook the private placement. (P-12, P-14, P-15, P-16, P-90; S-15).

85. The January 2023 IEP, including the goal-baseline revisions of February 2023, was the programming in place when the parents made

the decision to undertake a private placement for the 2023-2024 school year. (P-10, P-12, P-14, P-90).

86. The student began to attend the private placement for the 2023-2024 school year. (NT at 43-111, 532-687).
87. In November 2023, the private placement performed a S&L screening. (P-73).
88. The S&L therapist performing the screening considered certain scores from the integrated language and literacy assessment and the S&L evaluation in the December 2022 ER, revised in January 2023. The therapist observed the student and administered certain S&L screeners. (P-73).
89. Based on the screening, the S&L therapist recommended S&L services for the student. (P-73).
90. Parents did not pursue S&L programming at the private placement. (NT at 43-111, 1054-1066).
91. At the private placement, the student had been receiving progress monitoring in oral reading fluency at the 1st grade level. By February 2024, the student had made steady progress across probes and the progress monitoring began to take place at the 2nd grade level. (P-66, P-68; NT at 532-687).¹⁴

¹⁴ To make sense of the finding, P-68 should be considered first then P-66, as the numbering of the exhibits does not match the chronology.

92. In December 2023 and January 2024, the District was contacted by a local journalist regarding an article that would explore reading instruction at school districts in the local geographic area. (S-27).
93. In February 2024, the article was published by a local newspaper, featuring the student, parents, the student’s advocate, and another witness who testified at the hearing. (S-27).
94. In March 2024, counsel for the parent contacted the District regarding an offer of programming for the 2024-2025 school year. (P-17).
95. In May 2024, the private placement administered a reading assessment that is routinely administered when a student begins the specialized reading curriculum utilized by the private placement. It had not administered the assessment at the outset of the school year when the student began to receive instruction through that curriculum. (P-71; NT at 532-687).
96. Over the course of the 2023-2024 school year, the student was assessed at the private placement with benchmark assessments in reading at the middle of the year and the end of the year, although one benchmark—oral reading fluency—was also assessed at the beginning of the year as well. (P-48, P-49, P-50, P-51; NT at 532-687).

97. On the benchmark assessment for oral reading fluency, the student showed stalled progress, moving from the 6th percentile at the beginning of the year, to the 11th percentile in the middle of the year, to the 7th percentile at the end of the year. (P-49).
98. On the benchmark assessment for vocabulary, the student regressed from the 54th percentile in the middle of the year to the 12th percentile at the end of the year. (P-50).
99. On the benchmark assessment for reading comprehension, the student regressed from the 30th percentile in the middle of the year to the 14th percentile at the end of the year. (P-51).
100. On the benchmark assessment in overall reading, the student regressed from the 24th percentile to the 6th percentile. (P-48).
101. Over the course of the 2023-2024 school year, the student was assessed at the private placement with benchmark assessments in mathematics at the beginning of the year, at the middle of the year and at the end of the year. (P-52, P-53, P-54, P-55, P-56; NT at 532-687).
102. On the benchmark assessment for number comparison fluency/triads, the student showed progress, moving from the 88th percentile at the beginning of the year, to the 92nd percentile in the middle of the year, to the 99th percentile at the end of the year. (P-55).

103. On the benchmark assessment for number sense fluency, the student showed progress, moving from the 82nd percentile at the beginning of the year, to the 89th percentile in the middle of the year, to the 93rd percentile at the end of the year. (P-56).
104. On the benchmark assessment for mental computation fluency, the student showed stalled progress, moving from the 74th percentile at the beginning of the year, to the 84th percentile in the middle of the year, to the 66th percentile at the end of the year. (P-54).
105. On the benchmark assessment for concepts and applications, the student showed steady regression, declining from the 76th percentile at the beginning of the year, to the 35th percentile in the middle of the year, to the 3rd percentile at the end of the year. (P-53).
106. On the benchmark assessment in overall mathematics, the student regressed from the 82nd percentile, to the 64th percentile, to the 41st percentile. (P-52).
107. Over the course of the 2023-2024 school year, the private placement issued quarterly reports. (P-30, P-31, P-32, P-33).¹⁵

¹⁵ The quarterly reports use numeric grades 1-3, with 1 indicating that a student has not yet developed a specific skill (it is not observable or only occasionally applied), with 2 indicating that a student has developed a specific skill, and with 3 indicating that a student can independently and consistently apply the skill. In the Findings of Fact that follow, any measure where the student was graded with a 1 is noted. Additionally, grading in social studies did not utilize the numeric grades.

108. In terms of classroom affect, participation, and study skills, the quarterly reports reflected that the student had difficulty following directions and was easily distracted. (P-30, P-31, P-32, P-33).
109. In the interactive humanities class, the quarterly reports reflected that the student did not have significant difficulties. (P-30, P-31, P-32, P-33).
110. In the arts class, the quarterly reports reflected that the student did not have significant difficulties. (P-30, P-31, P-32, P-33).
111. In the science/technology/engineering "makerspace" class, the quarterly reports reflected that the student did not have significant difficulties although the student was noted as having some difficulty following directions in the first quarter. (P-30, P-31, P-32, P-33).
112. In mathematics class, the quarterly reports reflected that the student did not have significant difficulties. (P-30, P-31, P-32, P-33).
113. In music class, the quarterly reports reflected that the student did not have significant difficulties. (P-30, P-31, P-32, P-33).
114. In physical education, the quarterly reports reflected that the student did not have significant difficulties. (P-30, P-31, P-32, P-33).
115. In reading comprehension, the quarterly reports reflected that the student did not have significant difficulties although the student was noted as having some difficulty in the first quarter identifying text

based on elements or type (fiction versus non-fiction). (P-30, P-31, P-32, P-33).

116. In writing, the quarterly reports reflected that the student did not have significant difficulties although the student was noted as having some difficulty in the first quarter writing with descriptive adjectives and adverbs. (P-30, P-31, P-32, P-33).
117. In the specialized reading curriculum, the student started at the first step of the curriculum, although the reading assessment that is routinely administered when a student begins the specialized reading curriculum was not administered at the outset of the school year. (P-30; NT at 532-687). The student continued to progress through the levels of the specialized reading curriculum. (P-30, P-31, P-32, P-33).
118. In late June 2024, the parents provided notice to the District that they were undertaking a unilateral private placement and would look to the District for tuition reimbursement for the placement. (P-18).
119. The District responded shortly thereafter, indicating it had received the March 2024 letter sent by parents counsel, had requested permission from the parents to request records from the private placement, and had requested that the parents register the student with the District if they intended to request an offer of FAPE through District programming. With the student having been registered with

the District on the day the District sent its letter, the District moved to schedule an IEP meeting. (P-19; S-16).

120. Although parents did not understand the importance of registering the student with the District, it was explained by a special education administrator at the hearing that the District requires registration so that it can account for the student as part of its student census with the Pennsylvania Department of Education ("PDE") and can confirm that it is appropriately informing PDE for PDE's funding formulas. (NT at 43-111, 495-517).

121. In late July 2024, the student's IEP team met to consider the student's programming for the student at the District in the 2024-2025 school year. (P-20).

122. The July 2024 IEP contained present levels of academic functioning based on the benchmark assessment data obtained by the private placement over the 2023-2024 school year. (P-20).

123. In July 2024, prior to the development of the IEP, the District conducted its own benchmark assessments in reading with a different instrument. The student was found to be at the 12th percentile in reading fluency, the 30th percentile in reading accuracy, and the 8th percentile in retell (reading comprehension). (P-20).

124. The District's benchmark assessment for the overall reading composite was at the 17th percentile. (P-20).

125. The District also administered a curriculum-based assessment of the student's reading. The student was found to be a beginning reader, at the pre-primer level, in the 3rd percentile. The student's results placed the student in the "urgent intervention" range. (P-20).
126. The District noted the student's results and programming in the specialized reading curriculum utilized by the private placement. The IEP noted that instead of the specialized curriculum utilized by the private placement, a curriculum geared largely to phonics instruction, the student might be better served by utilizing specialized reading curriculum that builds on phonics instruction by focusing in addition on fluency, accuracy, and comprehension. The District noted in the July 2024 IEP that it had such curriculum and specialists trained to deliver specialized reading curriculum. (P-20).
127. In July 2024, prior to the development of the IEP, the District conducted its own benchmark assessments in mathematics with an instrument different from the benchmark assessments at the private placement. The student scored at the 27th percentile in computation and the 28th percentile in concepts and applications. (P-20).
128. The District's benchmark assessment for the overall mathematics composite was at the 25th percentile. (P-20).

129. The District also administered a curriculum-based assessment of the student's mathematics. The student scored in the 63rd percentile. (P-20).
130. The July 2024 IEP noted that the benchmark scores were all in the average range but that given a seeming erosion in a relative strength in mathematics, the student's programming should be monitored for potential support to guard against further decline in performance. (P-20).
131. The July 2024 IEP noted that the convergence of teacher comments regarding writing at the private placement along with certain consultation with teachers at the private placement, coupled with the District's prior identification of goal-based IEP programming in written expression, the student would continue to need specialized instruction in writing. The IEP noted curriculum that the District that might be utilized in that regard. (P-20).
132. In the present levels of academic performance of the July 2024 IEP, based on these data points, the IEP identified four goal areas: nonsense word fluency, oral reading fluency, reading comprehension (retell), and written expression. (P-20).
133. The present levels of academic performance in the July 2024 IEP also included the content and results of the December 2022 ER, as revised in January 2023). (P-20).

134. As part of that ER content, the present levels noted that the private placement performed a S&L screening and recommended S&L services based on that screening. The July 2024 IEP indicated that upon returning to the District its own screening processes would be undertaken to see if the student required an updated comprehensive S&L evaluation. (P-20).
135. The July 2024 IEP contained updated parental input and concerns. (P-20).
136. The July 2024 IEP formally identified needs for goal-driven instruction in nonsense word fluency, oral reading fluency, reading comprehension (retell), and written expression. The July 2024 IEP also continued to include a need for generating writing ideas as part of specially-designed instruction. (P-20).
137. A nonsense-word fluency goal in the July 2024 IEP indicated that the District needed to establish a baseline within the first two weeks of the student's return to the District so that an updated goal in this area could be developed. (P-20 at page 25).
138. An oral reading fluency goal in the July 2024 IEP had a baseline of 13 words correct per minute on a 2nd grade probe (the 12th percentile). The goal is written for 87 words correct per minute (the 40th percentile). (P-20 at page 26).

139. A reading comprehension goal in the July 2024 IEP had a baseline retell score of 13 on a 2nd grade passage (the 8th percentile). The goal is written for a score of 35 (the 50th percentile). (P-20 at page 27).
140. A writing goal in the July 2024 IEP called for the student to use a teacher-created rubric and writing samples to include a problem and a solution, and at least two compound sentences with 80% accuracy on 4 out of 5 samples. The District would establish an exact baseline on this goal structure within the first two weeks of the student's return to the District. (P-20 at page 28).
141. The specially-designed instruction included three 25-minute sessions per six-day cycle for specialized reading instruction for phonics/decoding, two 30-minute sessions per six-day cycle for more broad-based specialized reading instruction, and two 25-minute sessions twice per six-day cycle for specialized instruction in writing. The instruction was generally, but concretely described, based on the specific curricular approaches mentioned in the present levels of academic performance. (P-20).
142. A program modification was also included for explicit monthly monitoring of performance in math concepts and applications. (P-20).

143. The July 2024 IEP indicated that a determination on ESY services in the summer of 2025 would be made in the late winter of 2025. (P-20).
144. The student's educational placement calculation in the July 2024 IEP indicated that the student would spend 92% of the school day in regular education. (P-20).
145. After the July 2024 IEP meeting, the District issued a NOREP. Parents disapproved the NOREP in early August, provided the District with notice that they intended to continue the private placement, and would seek reimbursement from the District. In late August 2024, the parents formally undertook the private placement for the 2024-2025 school year. (P-21, P-22, P-91).

2024-2025 / [redacted] Grade

146. The student attended the private placement for the 2024-2025 school year. (NT at 43-111, 532-687).
147. The July 2024 IEP was the programming proposed for the student when the parents made the decision to undertake a private placement for the 2024-2025 school year. (P-20).
148. The student received S&L at the private placement in the 2024-2025 school year. (P-34, P-35, P-36, P-37; NT at 532-687).

149. In early February 2025, the student began to receive private S&L services. (P-93; NT at 989-1048).
150. In late February 2025, the private placement administered the integrated language and literacy assessment which was part of the December 2022 ER, revised in January 2023. (P-73).
151. The results of the February 2025 integrated language and literacy assessment confirmed the profile that had developed throughout educators' understandings of the student, namely that the student exhibits weakness with written text and has stronger abilities with oral communication (all of the student's scores in oral language fell within the average range). (P-73).
152. Comparison of the February 2025 results in measures with written text with those in the December 2022 ER, revised in January 2023, indicated marked improvement in one area (reading fluency), slight improvement in some areas (non-word spelling, written expression/word, reading comprehension), maintenance of scores in one area (non-word reading), slight decline in one area (written expression/sentence), and marked decline in one area (written expression/discourse). (P-73).
153. In late March 2025, the student's private S&L therapist issued a language and literacy assessment. The evaluator testified that the assessment was particularly entitled an assessment and not an

evaluation because it was not comprehensive and was geared to a treatment plan and therapeutic intervention. (P-76; NT at 989-1048).¹⁶

154. Some of the instruments and conclusions, especially in reading and written expression, in the March 2025 S&L are beyond the expertise of the S&L therapist. This led to according those aspects of the assessment less weight and according the testimony of the evaluator less weight. (P-76).¹⁷

155. The private S&L assessment diagnosed expressive language disorder and social pragmatic language disorder. The evaluator testified that she did not observe the student in any setting (educational or otherwise) or observe the student interact with anyone. Her diagnoses were based entirely on testing. (P-76; NT at 989-1048).

156. The private S&L assessment made multiple recommendations, including recommendations in reading and written expression which are outside the witness's areas of expertise. (P-76).

¹⁶ The private S&L evaluator testified that the assessment was necessary to inform her services with the student. The student began to receive services, however, for two months in February and March 2025, over nine sessions, prior to the assessment being issued. (P-76, P-93; NT at 989-1048).

¹⁷ This diminution of weight is bolstered by the administration context of the assessments, which were conducted entirely using a videoconference platform and not in hard-copy, or in the presence of the evaluator. In the considered opinion of the hearing officer, this is a flaw that undermines the weight of the assessment when the focus is largely oral language, language processing, and listening. (P-76; NT at 989-1048).

157. The private S&L assessment contained a number of therapy goals, which the witness testified would inform goal-driven instruction and services in education. Again, many of these recommended goals lie outside of the witness's areas of expertise although there are recommended goals in oral language and pragmatic language. (P-76).
158. In early May 2025, the District requested permission to re-evaluate the student, permission which the parents granted. (S-10).
159. In late May 2025, the private placement administered the reading assessment that is routinely administered as part of the student's specialized reading curriculum at the private placement. (P-72).
160. Over the course of the 2024-2025 school year, the student was assessed at the private placement with benchmark assessments in reading at the beginning, middle, and end of the year (P-58, P-59; NT at 532-687).
161. On the benchmark assessment for oral reading fluency, the student showed progress, moving from the 8th percentile at the beginning of the year, to the 9th percentile in the middle of the year, to the 18th percentile at the end of the year. (P-58).
162. On the benchmark assessment for vocabulary, the student's progress was uneven going from the 72nd percentile at the start of the

year, to the 96th percentile in the middle of the year, to the 68th percentile at the end of the year. (P-59).

163. The private placement did not report benchmark assessments for reading comprehension or overall reading.

164. Over the course of the 2024-2025 school year, the student was assessed at the private placement with benchmark assessments in mathematics at the beginning of the year, at the middle of the year, and at the end of the year. (P-61, P-62, P-63, P-64, P-65; NT at 532-687).

165. In the findings of fact that follow, there is a consistent pattern where all benchmark scores for the middle of the year show a decline from the beginning of the year (some shallow declines and others significant declines) with progress from those lower scores to higher scores at the end of the year. Consistent with the student's performance in mathematics on this record, the student's scores were, however, very strong. (P-61, P-62, P-63, P-64, P-65).

166. On the benchmark assessment for number comparison fluency/triads, the student moved from the 99th percentile at the beginning of the year, to the 52nd percentile in the middle of the year, to the 97th percentile at the end of the year. (P-64).

167. On the benchmark assessment for number sense fluency, the student moved from the 94th percentile at the beginning of the year,

to the 55th percentile in the middle of the year, to the 88th percentile at the end of the year. (P-65).

168. On the benchmark assessment for mental computation fluency, the student moved from the 72nd percentile at the beginning of the year, to the 58th percentile in the middle of the year, to the 72nd percentile at the end of the year. (P-63).

169. On the benchmark assessment for concepts and applications, the student moved from the 43rd percentile at the beginning of the year, to the 5th percentile in the middle of the year, to the 64th percentile at the end of the year. (P-62).

170. On the benchmark assessment in overall mathematics, the student moved from the 80th percentile, to the 16th percentile, to the 76th percentile. (P-61).

171. Over the course of the 2024-2025 school year, the private placement issued quarterly reports. (P-34, P-35, P-36, P-37).¹⁸

172. In terms of social/emotional/behavioral information (including classroom affect, participation, study skills, etc.), the quarterly reports reflected that the student did not have significant difficulties following directions and was easily distracted. (P-34, P-35, P-36, P-37).

¹⁸ The quarterly reports use the same numeric grades 1-3, as described above. Similarly, the Findings of Fact that follow indicate where the student was graded with a 1. Additionally, grading in social studies did not utilize the numeric grades.

173. In the [social studies] class, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
174. In the arts class, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
175. In the "makerspace" class, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
176. In mathematics class, the quarterly reports reflected that the student did not have significant difficulties. In the quarterly reports for the 2 and 3 quarters, there was no indication in the grades or the narrative that might provide explanation, insight, or context for the student's across-the-board decline in benchmark assessments in mathematics for the middle of the year benchmarks. (P-34, P-35, P-36, P-37).
177. In music class, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
178. In physical education, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
179. In reading comprehension, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).

180. In science, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
181. In writing, the quarterly reports reflected that the student did not have significant difficulties. (P-34, P-35, P-36, P-37).
182. In S&L services, the quarterly reports do not include numeric grades. The S&L services are described as supporting the student across the curriculum and include narrative description. (P-34, P-35, P-36, P-37).
183. In the specialized reading curriculum, the student continued to progress through the levels of the specialized reading curriculum. (P-34, P-35, P-36, P-37).
184. On June 4, 2025, parents filed the complaint which led to these proceedings. (P-1).¹⁹
185. The student continued to receive private S&L services throughout spring and summer of 2025. Parents presented invoices for reimbursement of these services. (P-77, P-93).

¹⁹ As indicated near the beginning of this decision, parents' claim for remedy for reimbursement for services in the summer of 2025 will be part of the findings and ruling in this decision. The record included some evidence, however, that ranged beyond June 2025, into the summer of 2025 (a July 2025 District re-evaluation report, communications between the parties in July 2025, and a NOREP issued in August 2025; see P-24, P-87, S-13). As the evidence was marshaled and considered by this hearing officer, this evidence has not entered into the findings and ruling in this decision as that evidence touches on other, potentially substantive FAPE considerations and does not relate to the delivery of, and request for reimbursement for, services to the student in the summer of 2025.

186. The parents engaged an advocate/consultant worked continually with the parents from the student's [redacted] year (prior to registering in the District in [redacted] grade) through the date the record closed. The individual testified at one session and attended all of the other hearing sessions. Parents presented invoices for reimbursement of these services since the student registered in the District in September 2022 through October 2025. (P-94, P-94a; NT at 690-792).²⁰

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the District literacy instructor for MTSS services in the 2022-2023 school year was accorded heavy weight, both as to the nature of those services, their impact and effect, and, based on her experience in literacy education in the District, the District's general approach to literacy education. (NT at 283-333).

²⁰ The advocate/consultant styled herself with different terms throughout exhibits. In testimony, the student's mother utilized the term "advocate" and responded to questions which referenced that person as an "advocate". (NT at 43-111). Additionally, the parents presented two invoices, one for a "monthly client fee" with 111 units for compensation, the other for 37 units for compensation. It appears that the invoice was corrected to reflect the same "monthly" client fee over the period September 2022 through October 2025. (P-94, P-94a).

The testimony of the District S&L witnesses was accorded more weight than the private S&L evaluator/provider. The District S&L witnesses testified in very concrete and persuasive terms as to why (1) the assessment and position of the private placement in support of S&L services, as well as the private S&L evaluation and services, were all flawed and (2) the results and conclusions of the S&L evaluations supported the District's position that the student does not require S&L services. This evidence substantially outweighed the testimony of the private S&L evaluator. (929-980, 989-1048, 1083-1105).

Legal Framework

Denial of FAPE. 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.

386, 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Tuition Reimbursement. Long-standing case law and the IDEA 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 (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.

Finally, this Burlington-Carter analysis can be employed for analysis of any claim of reimbursement sought by parents, not just tuition, where they

assert that a denial-of-FAPE has led to the necessity of privately providing services (e.g., tutoring, related services, etc.).

Compensatory Education. 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)).

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, and 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 interventions for the student, 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 retrospective, looking back to understand the cumulative denial of FAPE, and 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 is prospective, looking forward to some point in the future where the proven deprivation has been remedied, and 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, parents have requested quantitative compensatory education. (NT at 24, 28). Thus, in this matter, any award of compensatory education is an equitable quantitative consideration in the hands of the hearing officer.

Discussion & Conclusions

Parents' claims will be examined as follows: First, parents' claim for compensatory education for the period from June 4, 2025 through the point where they enrolled the student in the private placement; second, parents' claim for tuition reimbursement in the 2023-2024 and 2024-2025 school years; and third, parents' claim for privately-obtained services over these periods.

June 2023 through Summer 2023. In terms of the parents' claim for a compensatory education remedy from June 2023 through the date the parents undertook the private placement, the legal question is whether the January 2023 IEP was reasonably calculated to provide meaningful education benefit and, as implemented, whether the student made progress under the terms of the IEP. The answer to this question is that the January 2023 IEP was not reasonably calculated to yield meaningful education benefit in the form of significant learning through appropriately ambitious programming for the student. This determination informs not only the discussion in this section but also informs the analysis at step one of the Burlington-Carter analysis in the next section.

The fundamental flaw in the January 2023 IEP is the inappropriateness of the goals. Only one goal in the January 2023 IEP is appropriately ambitious: The reading comprehension goal, written with a baseline for identifying main ideas and supporting details at 60%, with a goal of 85%.

(P-10 at page 49). Three of the remaining goals are not appropriately ambitious and, in fact, are quite weak: Nonsense word fluency to increase from 11 whole words read to 13 whole words read; decoding to increase from 74% accuracy on "trick words" to 80% accuracy; writing/organization to increase from a score of 3/6 to 4/6 on a writing rubric. (P-10 at 45-47).

One of the goals, in oral reading fluency, has an inappropriate baseline of 12 words correct per minute on probes. Every probe from February 2023 was above this baseline, with 16 being the lowest score and average scores in the 2 trimester being 17+ and in the 3 trimester being 23+. (P-10 at 48, P-25 at 15-19). The final goal, in writing/conventions, is not written to promote any progress, with a baseline of 4/6 on a writing rubric and a goal of 4/6. (P-10 at 44).

As written, then, most of the goals are inappropriate. In the Findings of Fact above, when considering progress-monitoring on these goals, the findings (except for the writing/conventions goal) list progress on all goals. But the progress is a function of goals that are not appropriately ambitious. Indeed, as written, the goals might be considered not even minimally ambitious which leads to an illusory conclusion that the student made "progress" on the goals.

This goal-writing is especially problematic when one considers that the January 2023 IEP was the initial IEP and the goals are supposed to be crafted for a year's worth of instruction and progress. Theoretically, one

might argue that with goal mastery, those goals could be revised. But goal mastery should reflect a student's striving, not weak, inappropriate goal-writing.

Additionally, parents were concerned that no specific, specialized curricula were listed in the IEP. This is not necessary for the provision of FAPE. In fact, school districts wisely stay away from naming specific curricula, in case a student's needs change, or the instructional approach needs to change, or the curricula becomes unavailable for some reason. But a concrete description of the type of specialized instruction should be listed in the IEP. That way, parents and educators (who might not have the exact context of the IEP team's discussions or might even be from another school district, should the student relocate) have a sense of how instruction will be designed, even if a specific curriculum is not identified.

This last point dovetails with a drafting error in the January 2023 IEP. At the hearing, it was clarified that the student would not receive regular education MTSS services as part of instruction under the IEP—the reading and written expression support would be special education, delivered in a special education setting. But someone reading the IEP might assume, with no fault, that the student was not receiving that instruction as special education but as a continuation of the student's MTSS support. In short, the reader of an IEP, both parents and educators, should understand on a

concrete level what special education instruction and supports will look like. This was not the case with the January 2023 IEP.

Having found that the January 2023 IEP was not appropriate, should the student be awarded compensatory education? Given the broadly inappropriate nature of five of the six goals in the IEP, the student is entitled to an award of compensatory education. Of course, having requested a quantitative compensatory education which accrues in early June of a school year, the nature of a quantitative compensatory education award is somewhat constrained. One might almost consider it unwarranted, but on this record, this hearing officer considers such a view to be formalistic.

The student will be awarded 30 hours of compensatory education. The calculation of the quantitative compensatory education award is based on a consideration of the goals as they were the basis of the student's special education over February – June 2023. This period encompassed approximately 140 minutes per six-day cycle of reading instruction and 50 minutes per six-day cycle of writing instruction. For ease of calculation, this will be considered programming on a calendar-week basis. Therefore, 190 minutes per week of instruction over the seventeen school weeks in February, March, April, May, and the first week of June yields a result of approximately 54 hours of instruction. Given this, however, there was special education instruction delivered under the IEP, and the student made progress (albeit contextualized as outlined above). Thus, the student will be

provided with 30 hours of compensatory education, approximately half of the instructional time under the IEP.

Accordingly, this award of compensatory education will be ordered below.

2023-2024 School Year. The conclusion above, that the January 2023 IEP was not reasonably calculated to yield meaningful education benefit in the form of significant learning which is appropriately ambitious for the student, is the basis for finding that the District's program is inappropriate at step one of the Burlington-Carter analysis for the 2023-2024 school year.

At step two of the Burlington-Carter analysis, however, the programming at the private placement did not provide appropriate progress for the student. Therefore, the parents' claim for tuition reimbursement for the 2023-2024 school year cannot be supported.

Specifically, on every objective measure of the student's benchmark assessments in reading stalled or declined over the course of the 2023-2024 school year. Oral reading fluency stalled, going from the 6th percentile to the 11th percentile to the 7th percentile. (P-49). Vocabulary declined from the 54th percentile to the 12th percentile. (P-50). Reading comprehension declined from the 30th percentile to the 14th percentile. (P-51). Overall reading declined from the 24th percentile to the 6th percentile. (P-48). These are deeply problematic assessment results for this student, whose

wide-ranging, long-identified, and most-significant needs are in multiple areas of reading.

In July 2024, after the 2023-2024 school year concluded, the District conducted its own assessments using separate benchmarks where the student scored at the 12th percentile in reading fluency, at the 8th percentile in reading comprehension (retell), and at the 17th percentile in overall reading. (P-20). On the District's curriculum-based assessment, the student was gauged to be a beginning reader at the 3rd percentile on the assessment. This consistency in the assessment data of the private placement and the assessment data of the District support a finding that over the course of the 2023-2024 school year, the education in reading provided by the private placement did not allow the student to make progress and, in fact, supports a conclusion that the student's performance declined.

On benchmark assessments in mathematics, the results are strong at points, as mathematics has been a consistent strength of the student. But on the benchmark assessment for concepts and applications, the student's scores declined from the 76th percentile, to the 35th percentile, to the 3rd percentile. (P-53). And overall performance in mathematics declined from the 82nd percentile to the 64th percentile, to the 41st percentile. Taken all together, these mathematics benchmark assessments do not amount to a fatal flaw in the student's programming at the private placement. But

coupled with the lack of progress, or declines, in reading, the result is a conclusion of a student who did not make appropriate progress over the course of the 2023-2024 school year.

Certainly, there are anecdotal indications that the student made some progress at the private placement. The quarterly grade reports by the student's teachers at the private placement indicate that they felt the student was achieving in the curriculum of the private placement. And that may be the case. But just as parents are wary of school districts who offer rosy pictures of students based on report cards while the objective assessment data paints a far different picture, and rightly so, the same holds true here—the picture painted by the grade reports at the private placement in the 2023-2024 school year is starkly different from the student's performance on private placement's objective measures.

Also, the student no doubt made progress through the sequential steps of the specialized, phonics-based reading curriculum employed by the private placement. Here, the opinion of the District school psychologist (NT at 117-163) is insightful. He opined that the student expends so much thinking ("cognitive load", in his phrase) in segmenting phonemes and phonetically attacking text that the student it interferes with fluency and accuracy and, consequently, reading comprehension. So while the student progressed from step-to-step in the specialized reading curriculum, the

benchmark assessments showed the stall, or decline, in the student's overall reading ability.

In sum, then, at step two of the Burlington-Carter analysis, the student failed to progress at the private placement in the 2023-2024 school year. Accordingly, parents' claim for tuition reimbursement for that school year is denied.²¹

2024-2025 School Year. In July of 2024, the student's IEP team met to develop an IEP for the upcoming 2024-2025 school year. This is the IEP upon which parents made their decision on unilateral private placement for that school year, and it is the IEP to be examined under the Burlington-Carter analysis. At step one of the Burlington-Carter analysis, the July 2024 IEP is reasonably calculated to yield meaningful education benefit in the form of significant learning for the student which is appropriately ambitious in light of the student's needs.

In the July 2024 IEP, the District cured the fatal flaws of the January 2023 IEP by crafting goals which are appropriately ambitious for the student. Granted, on two of the goals (nonsense word fluency, writing), the District needed to obtain baseline data to inform the goal-writing. In the first instance, the data it had needed to be updated; in the second instance, the goal was wholly new, and would utilize teacher-created materials. (P-20 at

²¹ At step three of the Burlington-Carter analysis, the equities do not weigh for or against either party as to either school year, 2023-2024 or 2024-2025. Therefore, step three of the analysis is not made part of the discussion.

25, 28). Lack of concrete goals, then, is not inappropriate—waiting until shortly into the school year to determine baselines is exactly what should be done.²²

In oral reading fluency, the goal is written for achievement at the 40th percentile (87 words correct per minute) from a baseline at the 12th percentile (13 words correct per minute). In reading comprehension, the goal is written for achievement at the 50th percentile (retell score of 35) from a baseline at the 8th percentile (retell score of 13). (P-20 at 26, 27). These are appropriately ambitious goals.

The District also placed any reader in a position to understand the type of instruction the student would receive. The specially-designed instruction in the July 2024 IEP is concretely described as to the type of specialized instruction the student would receive in reading and writing. In the present levels of academic performance, where the IEP analyzes the data the IEP team has and how that intersects with the student’s needs, the IEP mentions potential curricular choices. But, as indicated above, that is not necessary, nor is it binding. But with a concrete description of the specially-designed instruction, any reader—parents or educators—will know how special education instruction will unfold through the IEP.

²² It is noted that this is exactly what the District did with baseline data in the January 2023 IEP, where it attended timely to gathering the baseline data to have the goals finalized in February 2023. (P-10).

In sum, then, at step one of the Burlington-Carter analysis, the District proposed programming for the 2024-2025 school year that is reasonably calculated to yield meaningful education benefit in the form of significant learning, with programming that is appropriately ambitious in light of the student's needs. Accordingly, parents' claim for tuition reimbursement for that school year is denied.

Privately-Obtained Services. The Burlington-Carter analysis will be used to consider parents' claims for reimbursement for services, specifically for reimbursement of private S&L services and for reimbursement of the services of the advocate/consultant.

Utilizing the Burlington-Carter analysis for consideration of reimbursement for private S&L services, reimbursement for S&L services cannot awarded because, at step one of the analysis, the District has not placed itself in a position where there is a denial-of-FAPE in this regard.

In the fall of 2023, the private placement performed a S&L screening. On the basis of this screening, the private placement recommended S&L services. But Pennsylvania special education regulations are clear: A screening procedure is a precursor to an evaluation, sometimes a necessary precursor; but a screening cannot be the basis of the determination of the need for an IEP or for specialized services. (22 PA Code §§14.122(a), 14.123). The private placement decided to move to a formal

recommendation of S&L services based only on a screening process and not an evaluation. That cannot support a claim for reimbursement.

Indeed, the only comprehensive S&L evaluation on this record was conducted by the District in the December 2022 ER, revised in January 2023. That comprehensive evaluation persuasively laid out the reasons that S&L services were not necessary, and this continues to be the case in the student's programming— specialized S&L services are not necessary for the provision of FAPE at step one of the Burlington-Carter analysis.

This conclusion is not changed by the results of the private S&L assessment, by the provision of private S&L services, or by the provision of S&L support at the private placement. The private S&L assessment falls into a category similar to that of the screening procedure, namely that it is not a comprehensive evaluation that can be the basis of specialized services, or an IEP. Beyond the nature of the assessment, the process of the assessment itself is flawed in many regards and, between the testimony of the S&L witnesses from the District and the private S&L provider (NT at 929-980, 989-1048, 1083-1105), the former is credited over the latter. With the private S&L services based on the private S&L assessment, there is no basis for awarding reimbursement for those services. And the S&L services at the private placement are in the nature of support, not specialized services or instruction. In sum, parents' evidence has built an edifice around S&L services; but the student does not require S&L services for the delivery of

FAPE. Thus, the request for reimbursement, specifically, for private S&L services will be denied.

Utilizing the Burlington-Carter analysis for consideration of reimbursement for the services of the advocate/consultant, reimbursement for these services cannot be awarded. The Burlington-Carter analysis is complicated to a degree because the record does clearly set forth the nature of the services for which parents seek reimbursement. Reading the record in its entirety leads to a conclusion that much of the activity of, and services rendered, by this individual is advocacy from a legal or dispute-resolution perspective, not an educational perspective.

This is the conundrum in the terms "advocate" or "consultant". Across this record, this individual seems to be involved in legal advocacy, dispute-resolution advocacy, public policy advocacy, literacy-education advocacy, family-based advocacy, and student-centered advocacy. At times, the individual seems to be involved in consulting on the student's educational programming, both within, and sometimes outside of, the boundaries of the individual's background.

Ultimately, though, it is not clear exactly clear the basis for which the family seeks reimbursement. The individual has provided family-focused services, but the individual has also made herself available to media in the context of working with the family and has engaged in requesting attendance by the public at these proceedings as an expression of policy

positions. (S-27, S-31). The parents seek reimbursement, but the individual's invoices are directed for billing to their counsel. (P-94, P-94a). The invoices themselves are simply one page, indicating units of monthly charges without any specificity as to what services were provided. Coupled with doubt about where educational consulting, which may give way to advocacy in a legal or due-process capacity, which may give way to public policy or education policy work, awarding reimbursement cannot be supported on this record.

Whether or not there is an analysis to be performed at step one of the Burlington-Carter analysis, the analysis can be performed at step two. Namely, the parents' request for reimbursement for the services of the advocate/consultant is riddled with too much obscurity and doubt about what, exactly, would be reimbursed that an award of reimbursement for those services cannot be made.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student in this matter is awarded 30 hours of compensatory education. Parents' claims for tuition reimbursement for the 2023-2024 and 20240-2025 school years are denied. Parents' claims for reimbursement for

private speech and language services, and the services of an advocate/consultant, are denied.

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

02/23/2026