

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. 31614-25-26

Child's Name:

N.T.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

04/30/2026

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who resides in the Upper Darby 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 also brings a denial-of-FAPE claim under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³

The student's parent claims that the District failed to propose appropriate programming for the 2025-2026. As a result, the parent unilaterally enrolled the student in a private placement. Parents seeks tuition reimbursement for the private placement, including transportation arrangements.

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").

The District counters that its proposed programming was an appropriate offer of FAPE for the student in the 2025-2026 school year and, therefore, that no remedy is owed.

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

Issues

Is the parent entitled to tuition reimbursement for the student's private placement in the 2025-2026 school year?

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 School District

1. In January 2019, in the student's [redacted] grade year, the student was evaluated by a neighboring school district, where the student resided at the time. The student was found not to be eligible for special education because the student did not have a qualifying disability. (Joint Exhibit ["J"]-1).

2. In February/March 2020, in the student's [redacted] grade year, the student was re-evaluated by the neighboring school district and found eligible as a student with specific learning disabilities in reading comprehension and math problem-solving, as well as an other health impairment (attention deficit hyperactivity disorder) for needs with attention and focus. (J-2).
3. In June 2023, at the end of the student's [redacted] grade year, the student was re-evaluated by the neighboring school district and continued to be eligible for special education as a student with an other health impairment. The evaluator recommended supports in reading and mathematics but declined to continue the formal identification as a student with specific learning disabilities. (J-3, J-4).

[redacted] Grade / 2023-2024 School Year

4. In the summer of 2023, the student relocated to the District. (Notes of Testimony ["NT"] at 52-134).
5. In September 2023, the District developed an individualized education program ("IEP") for the student. (J-5).
6. In approximately December 2023, a private evaluator issued an evaluation report. (J-6; NT at 237-278).

7. The December 2023 evaluation report identified specific learning disabilities in listening comprehension and reading comprehension. The evaluation report also recommended support in mathematics. (J-6).⁴
8. The December 2023 evaluation report identified the student with an other health impairment for continuing difficulties with focus, attention, and executive functioning as a result of ADHD. (J-6).
9. In February 2024, the District accepted the private evaluation as a re-evaluation of the student for educational purposes. (J-9 at page 4).
10. In March 2024, the student's IEP was revised. (J-7, J-8).
11. In March 2024, the received permission from parent to conduct a functional behavior assessment ("FBA"). (J-9).
12. In May 2024, the District issued a re-evaluation report ("RR") for the student. (J-9).
13. In the May 2024 RR, the District continued to accept the results and conclusions of the December 2023 evaluation report and included updated parent input, curriculum-based assessments, IEP goal progress, and teacher input. (J-9).
14. The May 2024 RR continued to identify the student as a student with an other health impairment as a result of ADHD, with specific

⁴ The evaluator's findings as to listening comprehension and reading comprehension are clear. While weakness was identified in math computation, and below average performance in math problem-solving, the evaluator's findings were not as explicit. (J-6 at page 25; NT at

needs identified in reading comprehension, math calculation, behavior, and characteristics related to ADHD and anxiety. (J-9).

15. In May 2024, the District also issued its FBA. (J-10).

16. The May 2024 FBA identified class attendance and persistent tardiness as the behavior of concern in order to receive the positive reinforcement of socialization and to avoid non-preferred classroom or academic tasks. The student did not exhibit disrespect, defiance, or classroom disruption. (J-10).

17. In May 2024, the District revised the student's IEP, including goals in reading comprehension, math operations and problem-solving, class attendance, and following directions. The May 2024 IEP included a positive behavior support plan ("PBSP") based on the May 2024 FBA. (J-11).

18. The student finished the 2023-2024 school year at the District. (J-12).

[redacted] Grade / 2024-2025 School Year

19. For the 2024-2025 school year, the student's [redacted] grade year, the student's parent investigated private placements. (NT at 52-134).

20. In September 2024, the parties agreed that the District would support a private placement for the 2024-2025 school year. (J-23).

21. Under the plain terms of the parties' agreement, the parent agreed to provide consent for a District re-evaluation in the spring of 2025. The parties agreed to hold an IEP meeting by May 30, 2025. The parties further agreed that pendency for the student would be at the District, in its proposed program/placement for the 2025-2026 school year. (J-23).
22. The student attended the private placement in the 2024-2025 school year, the student's [redacted] grade year. (J-13, J-14; NT at 52-134, 185-222).
23. The private placement did not draft its own IEP for the student. Instead, it implemented the District's May 2024 IEP. (J-11; NT at 185-222).
24. In March 2025, the District declined to re-evaluate the student. (J-15).
25. In mid-May 2025, upon the request of the District, the private placement provided documents to the District related to the student's education at the private placement. Most of the documents provided were already in possession of the District, particularly the December 2023 private evaluation report and the District's March 2024 IEP, although there was documentation related to grades and attendance at the private placement. (J-24).

26. In late May 2025, the District proposed its IEP for the 2025-2026 school year. (J-16).
27. As in past IEPs, the May 2025 IEP indicated that the student's behavior interfered with the student's learning. (J-16).
28. The May 2025 IEP included present levels of academic performance from the private placement as well as content from the student's June 2023 RR, issued by the neighboring school district before the student enrolled in the District. (J-16).⁵
29. Present levels of IEP goal progress reported in the May 2025 IEP were from the May 2024 IEP, based on the goal-progress over the 2023-2024 school year, the latest goal-progress the District had. The private placement had not provided progress updates on the goals from the District's May 2024 IEP, which the private placement had implemented. (J-11, J-16, J-24; NT at 185-222).
30. As part of the present levels of functional performance, the May 2025 IEP included discipline records from the private placement. Those records indicated that the student was referred for two instances of minor disrespect (including one instance of roaming the school during class time), one instance of tardiness, two days of in-school

⁵ The May 2025 IEP labels this information as coming from the June 2023 re-evaluation (J-3, J-4), but the most recent RR issued by the District was in May 2024 (J-9) and did not include this content. The present levels information also did not include any content from the December 2023 private evaluation, which had informed the District's evaluative understanding of the student as of February 2024. (J-6).

suspension (inappropriate language, failure to follow directives), and a 3-day suspension for possession/use of a nicotine vape. (J-16).

31. In the May 2025 IEP, teacher input from the private placement was fairly consistent, showing relatively strong academic performance in classes but issues with socialization/distractibility and assignment completion. (J-16).

32. In the May 2025 IEP, input from the behavior analyst at the private placement indicated improvements in social skills and strengths in working with adults. The areas for improvement were consistent from prior behavioral needs: tardiness to class, being absent from class for excessive periods of time, and being in areas without authorization. The input also noted use of inappropriate language with peers, socialization that interfered with learning, and distraction. (J-16).

33. As part of the present levels of functional performance, the May 2025 IEP included information from the May 2024 FBA and PBSP issued by the District. (J-16).

34. As part of the present levels of performance, the May 2025 IEP included a general indication of interest in post-secondary study. The transition input from the private placement indicated that it would be undertaking career exploration and self-assessment related to transition planning. (J-16).

35. The May 2025 IEP indicated that the student's parent did not share any specific information related to parental concerns about the student's education. (J-16).
36. The May 2025 IEP included the student's needs as identified in the May 2024 RR: reading comprehension, math calculation, behavior, and characteristics related to ADHD and anxiety. (J-16).
37. The May 2025 IEP included transition programming for the student's post-secondary and employment plans. (J-16).
38. The May 2025 IEP included four goals, one each in reading comprehension, math problem-solving, class attendance/timely arrival, and assignment completion. (J-16).
39. The reading comprehension goal in the May 2025 IEP indicated that the student's baseline, from the private placement, was 50% accuracy on text-dependent questions on an 8th grade passage. The goal was written for 80% accuracy. (J-16).
40. The math problem-solving goal in the May 2025 IEP indicated that the student's baseline, from the private placement, was 65% accuracy on word problems in algebraic numeric operations and problem-solving. The goal was written for 80% accuracy. (J-16).
41. The attendance goal in the May 2025 IEP indicated implementation of the PBSP to limit tardiness and class-cuts to no more than six instances per quarter. (J-16).

42. The assignment-completion goal in the May 2025 IEP called for the student to follow teacher directions, and submit timely assignments, 80% of the time across all classes. (J-16).
43. The May 2025 IEP included specially-designed instruction and program modifications across academic environments, including 60 minutes of special education support per week in two 30-minute sessions weekly. (J-16).
44. The May 2025 IEP included extended school year (“ESY”) programming for instruction in reading comprehension and math problem-solving, as well as support for assignment-completion. (J-16).
45. The educational placement information in the IEP indicated that the student would be included in regular education environments 96% of the school day. (J-16).
46. The May 2025 IEP included a PBSP based on the May 2024 FBA, to address the two behavior goals in the IEP. (J-16).
47. The day after the IEP meeting, the parent disapproved the District’s program and placement offered through the May 2025 IEP. (J-17).
48. Two days after the District’s IEP meeting, the private placement proposed an
49. The student completed the 2024-2025 school year at the private placement. (J-13; NT at 52-134, 185-222).

50. In June 2025, the private placement held an IEP meeting to discuss its IEP for implementation in the 2025-2026 school year. (J-19).⁶
51. The June 2025 IEP at the private placement was largely drawn from the District's May 2025 IEP. (J-16, J-19).
52. The present levels of academic and functional performance in the private placement's June 2025 IEP was in its material aspects largely the same, although not exclusively identical, to the present levels information in the District's May 2025 IEP. (J-16, J-19).
53. The private placement's June 2025 IEP identified the student's needs as listening comprehension, reading comprehension, math calculation, and executive functioning. (J-19).
54. The private placement's June 2025 IEP did not contain any substantive transition goals or programming. (J-19).
55. The private placement's June 2025 IEP contained three goals, one each in reading comprehension, math computation/problem-solving, and assignment-completion. There was no goal addressing class attendance/tardiness. (J-19).
56. The goals in the private placement's June 2025 IEP are identical to the goals in the District's May 2025 IEP. The reading comprehension

⁶ The IEP from the private placement was dated for May 30, 2025. The IEP meeting was not held until June 16, 2026 (J-19 at page 3). With so many documents dated for the month of May across the record, the IEP for the private placement will be referred to as the 'June 2025 IEP' to allow for reasonable differentiation.

goal is written for 80% accuracy, with a baseline of 50% at the 8th grade level. The math goal is written for 80% accuracy, with a baseline of 65%. The assignment-completion goal is written for 80% assignment-completion in all classes. (J-19).

57. The private placement's June 2025 IEP included program modifications for the student. (J-19).

58. The private placement's June 2025 IEP indicated that the student qualified for ESY programming but only for the assignment-completion goal. The ESY programming did not include any programming for the academic goals in the student's IEP. (J-19).

59. In June 2025, after the IEP meeting at the private placement, parent's counsel communicated with District counsel that the parent would seek tuition reimbursement for a private placement in the 2025-2026 school year, albeit at a different private placement than the one the student had attended in the 2024-2025 school year. (J-21).⁷

60. In July 2025, the parent filed the complaint that led to these proceedings. (J-22).

⁷ The District made a point of the fact that the parent's 10-day notice referenced the second private placement and not the original private placement. This has no bearing on parent's tuition reimbursement claim. The parent undertook a unilateral private placement, and sought reimbursement, based on the District's offer of the May 2025 IEP. Whether the student ultimately attended placement A or placement B would clearly impact the development of the denial-of-FAPE evidence, but it doesn't undercut the parent's claim for tuition reimbursement.

61. In October 2025, the private evaluator who issued the December 2023 private evaluation issued another private evaluation of the student. (Parent Exhibit – 3).

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 a parent’s 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 programming at the private placement selected by the parents. At step three of the Burlington-Carter analysis, any equitable factors between the parties must be considered.

Discussion & Conclusions

Here, under the Burlington-Carter analysis, the parent is not entitled to tuition reimbursement. At step one of the Burlington-Carter analysis, it must be determined whether or not the District’s most-recently proposed program and placement is appropriate. In this case, this is the May 2025 IEP, the IEP on which parent based her decision regarding a potential private placement. That IEP is not inappropriate on a wholesale level—there are elements of the IEP that are appropriate. But the critical flaws in the

District's May 2025 IEP are inappropriate goals in reading comprehension and mathematics. These goals are not appropriately ambitious in light of the student's unique needs.

Neither of the goals in the May 2025 is written for ambitious progress over a year of schooling. The reading comprehension goal has a baseline of 50% accuracy on text-dependent questions on an 8th grade passage and was written for 80% accuracy at the same grade level. This is not appropriately ambitious. The math goal has a baseline of 65% for accurate algebraic calculation and problem-solving and was written for 80% accuracy. This, too, is not appropriately ambitious after a year of instruction in these areas. 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 robust special education programming should reflect a student's striving, not minimalistic approach to show seeming progress on inappropriately weak goals.

Thus, at step one of the Burlington-Carter analysis, the District's May 2025 IEP is inappropriate. At step two of the Burlington-Carter analysis, however, the private placement's June 2025 IEP is equally inappropriate.

The use of the word "equally" is aptly chosen because the private placement's June 2025 IEP utilizes the exact same inappropriate goals that render the District's May 2025 IEP inappropriate. In fact, the reading comprehension goal in the May 2025 IEP, even though it is not appropriately

ambitious, is more concrete than the same goal in the June 2025 IEP: Both goals include the identical baseline for accuracy at the 8th grade level, but the private placement's June 2025 IEP does not include the grade-level for goal accomplishment whereas the District's May 2025 IEP indicates that the goal is written for the 8th grade level as well. This is no cure for the inappropriateness of the goal in the May 2025 IEP, but it points out that the goal does not suffer from vagueness, as does the goal in the June 2025 IEP. Simply put, if the reading comprehension and mathematics goals in the District's May 2025 IEP fail to be appropriately ambitious, the same finding must apply to those goals in the private placement's June 2025 IEP.

The private placement's June 2025 IEP has a further deficit, namely the lack of a goal to address class-attendance/tardiness. While needs in attention and focus have been long-identified for the student, it is clear that at both the District and the private placement, issues related to class attendance, tardiness, and being in unauthorized areas without permission have also been long-identified. The private placement's June 2025 IEP does not address this need, either through a goal or a behavior plan.

Accordingly, the private placement's June 2025 IEP is inappropriate at step two of the Burlington-Carter analysis.

At step three of the Burlington-Carter analysis, the equities do not enter into the analysis. Neither party has the equities weigh for, or against, it. Said differently, with identical fatal flaws in both the District's May 2025

IEP and the private placement's June 2025 IEP, nothing in the equities between the parties compels a different result than the result dictated by steps one and two of the analysis.

Taken altogether, then, the District's May 2025 IEP is inappropriate. The private placement's June 2025 IEP is inappropriate for the identical content and reasons. The equities do not impact these determinations. Parent has not met her burden of proof on a claim for tuition reimbursement.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the May 2025 IEP proposed by the Upper Darby School District contains inappropriate academic goals. The June 2025 IEP proposed by the private placement duplicated the identical goals in its IEP. Therefore, the parent is not entitled to tuition reimbursement.

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

04/30/2026