

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 31770-25-26

Child's Name:

J.W.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

April 13, 2026

BACKGROUND

The parents filed a due process complaint alleging that the school district's August 8, 2024 evaluation was inappropriate and that the school district denied a free and appropriate public education to the student from the beginning of the 2024 – 2025 school year to December 4, 2024 and between December 4, 2024 and the present. The school district contends that its evaluation was appropriate and that it provided FAPE to the student at all times.

I find in favor of the parents on the evaluation issue and on the denial of FAPE between the beginning of the 2024 – 2025 school year and December 4, 2024. I find in favor of the school district with regard to the issue of the provision of FAPE after December 4, 2024.

PROCEDURAL HISTORY

The lawyers in this case did an excellent job of stipulating to uncontested facts. Before the hearing, the parties stipulated to forty-six separate facts. The excellent work by the lawyers resulted in a more efficient hearing.

The hearing was convened in two virtual sessions. Sixteen witnesses testified at the due process hearing. Joint exhibits J-1 through J-31 were admitted into evidence. In addition, school district exhibits S-3 through S-8, S-14 through S-16, S-19, S-21, S-23, S-28 and S-37 were admitted into evidence. All other school district exhibits were withdrawn. No additional parent exhibits were offered.

After the hearing, counsel for both parties presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the

arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

The due process complaint, as explained and clarified at the prehearing conference for this matter, presents the following issues:

1. Whether the parents have proven that the school district's August 8, 2024 evaluation of the student was inappropriate?
2. Whether the parents have proven that the school district denied a free and appropriate public education to the student?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. The student is a [redacted]-year-old, [redacted] grade student.
2. The student has medical needs, mostly related to [redacted].
3. The student has a nurse who assists in administering [redacted].
4. The student has attended an elementary school in the district since [student] enrolled at the beginning of [student's] [redacted] school year (2024-25).
5. Prior to enrolling in the district, the student received early intervention ("EI") services from three Intermediate Units.
6. The student was originally evaluated by the IU at nine months old and was found eligible for services due to developmental delays in all domains.
7. From the time the student was nine months old until the student transitioned to school-age programming in the district, the student was evaluated multiple times as a part of early intervention ("EI") programming and [student] was provided with EI services, mostly from the IU.
8. Over those years, the student received a combination of occupational therapy ("OT"), physical therapy ("PT"), speech and language ("S/L") therapy, and specialized instruction ("SI").
9. Beginning in September 2023, the student attended an IU-run [redacted] program.
10. Pursuant to the IU's November 2, 2023 EI IEP, the student received one 30-minute session per week of group OT, one 30-minute session per week of group S/L therapy, and one 30- minute session per week of individual PT.

11. In anticipation of the student's transition from EI programming to school-age programming, the district conducted a reevaluation of the student to determine [student's] continued eligibility for special education programming and [student's] then-current strengths and needs.

12. The student transitioned to school-age programming in the fall of 2024.

13. On August 8, 2024, the district issued its Reevaluation Report. The district concluded that the student was eligible for special education services under the primary disability category of Other Health Impairment ("OHI") and the secondary disability category of Speech or Language Impairment ("SLI").

14. According to the August 8, 2024 Reevaluation Report, the student lacked pre-academic and [redacted]-readiness skills.

15. On September 17, 2024, the district convened an IEP team meeting to develop the student's initial school-age IEP during the student's [redacted] school year.

16. Pursuant to the September 17, 2024, IEP and NOREP, the district proposed that the student receive 90 minutes per day of direct instruction in the learning support classroom.

17. Pursuant to the September 17, 2024, IEP and NOREP, the district offered the student one 30-minute session per week of OT, one 30-minute session per week of physical therapy and one 30-minute session per week of speech/language therapy.

18. On October 2, 2024, the district reconvened the IEP team at the request of the student's mother.

19. At this October 2, 2024, IEP meeting, the district discussed feeding accommodations, as well as adding support for handling heavy objects.

20. The district proposed a functional behavioral assessment ("FBA") to formally assess the student's interfering behaviors.

21. As of November 5, 2025, a [redacted] nurse was present to monitor the student's [redacted] and administer supplemental [redacted].

22. On November 19, 2024, the student had a medical episode in school.

23. The student's doctor indicated that the student needed a one-to-one at all times and could not be left alone.

24. On the following day, November 20, 2024, the district convened an IEP team meeting to review the completed November 6, 2024 FBA and to develop a Positive Behavior Support Plan ("PBSP"), as well as to discuss the medical incident from the day before.

25. At that meeting, the student's mother requested that the district provide the student with a personal care assistant ("PCA") and develop a safety plan.

26. On December 4, 2024, the district reconvened another IEP team meeting to discuss the new health plan and to introduce the newly proposed PCA to the family.

27. According to the December 4, 2024 IEP issued as a result of that meeting, the student's IEP was revised to include a PCA for the entire school day, as well as a communication notebook for home/school communications.

28. On December 11, 2024, the district issued a revised FBA/PBSP that included a seizurereaction plan for the student.

29. On April 10, 2025, the district convened an IEP team meeting in response to the student's parents inquiring about retention in [redacted] for an additional school year.

30. On May 22, 2025, the district convened an annual IEP team meeting to develop a new annual IEP for the student.

31. Pursuant to the May 22, 2025 IEP, the district offered to the student 60 minutes per day of reading instruction and 60 minutes per day of math instruction in the learning support classroom, as well as two 30-minute sessions per week of OT, two 30-minute sessions per week of speech/language therapy, and one 30-minute session per week of PT.

32. On September 22, 2025, the district convened an IEP meeting at which additional supports for the student were discussed.

33. The district issued a revised IEP pursuant to which the student received 60 minutes of reading instruction and 60 minutes of math instruction each day in the learning support, two 30-minute group speech/language therapy sessions each week, one 30-minute group OT therapy session each week, one 30-minute individual OT session each week, one 30-minute group PT session each week, one 30-minute social skills group with a guidance counselor each week, and 390 minutes each day with a PCA.

34. The parent had originally requested that the student be retained. After the district agreement, the parent determined that the student should no longer be retained and should be moved to the [redacted] grade.

35. On July 23, 2024, the district conducted a physical therapy evaluation of the student that was not incorporated into the August 8, 2024 Evaluation Report.

36. The November 6, 2024 functional behavioral assessment included a Quick Reference Guide for the student with recommended interventions and

indicated it was essential that the Guide be provided to all individuals working with the student.

37. Each witness who testified had the necessary educational background and certification and/or licenses required by law for their respective position(s).

38. A PCA acted as the student's personal care assistant for the 2025-26 school year. She started this role on the first day of school in September 2025 and continues in the role to the present.

39. The student's special education / learning support teacher for the 2025-26 school year started this role on the first day of school in September 2025 and continues in the role to the present.

40. The student's general education [redacted] grade teacher for the 2025-26 school year started this role on the first day of school in September 2025 and continues in the role to the present.

41. A speech language pathologist conducted the speech and language evaluation of the student that was incorporated into the August 8, 2024 evaluation report. The SLP possesses all necessary and appropriate credentials to have conducted the evaluation. She has never provided direct therapy services to the student.

42. Another SLP provides direct speech and language therapy services to the student. She possesses all necessary credentials to provide these services. She did not participate in the evaluation process that resulted in the August 8, 2024 Evaluation Report.

43. An occupational therapist provides direct occupational therapy services to the student. She possesses all necessary credentials to provide these services. She did not participate in the evaluation process that resulted in the August 8, 2024 Evaluation Report.

44. A physical therapist conducted the July 23, 2024 physical therapy evaluation and provides direct physical therapy services to the student. She possesses all necessary credentials to provide these services.

45. The student suffered a seizure in the evening of Friday, February 13, 2026. The student's grandmother informed the district, through the nurse who rides the bus with the student, of the seizure and corresponding trip to the emergency department first thing in the morning on the next school day (Tuesday, February 17, 2026).

46. The district contacted the student's mother to obtain additional information regarding medications and changes in treatment plan(s) that cannot be answered at this time. The student is waiting for an appointment with a neurologist to determine next steps.

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

47. The student's date of birth is [redacted]. (NT 72)

48. The student is a [redacted]. (NT 72 – 73)

49. The student was [redacted]. The student had a [redacted] and as an infant was diagnosed with [redacted]. The student is eligible for special education under the primary disability category of Other Health impairment

¹ (Exhibits shall hereafter be referred to as "J-1," etc. for joint exhibits, "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

and a secondary category of Speech-Language Impairment. (J-6, J-8; NT 167-168)

50. The August 8, 2024 evaluation of the student by the school district did not include teacher ratings or a formal observation of the student. The cognitive testing of the student in the evaluation revealed that some of the student's cognitive skills were in the borderline or extremely low range, but a full-scale IQ score was not obtained because the student was not able to understand or complete certain subtests. The evaluator recommended that the student receive hand-over-hand assistance from adults, at least at first, as well as techniques to keep the student on task and paying attention. (J-6; NT 150, 160, 162 – 163, 169 – 171, 632 – 633)

51. The school district's evaluation of the student included a physical therapy evaluation. The results of the evaluation were not included in the evaluation report because of a technical error involving a change in the IEP software used by the district. The physical therapist who conducted the evaluation discussed the results with the parents. (NT 532-534)

52. The school district's evaluation was conducted by a qualified school psychiatrist. The assessments were performed according to instructions. The student was assessed in all areas of suspected disability. (J-6; NT 132 – 133, 355 – 359, 550 – 551)

53. The school district's evaluation of the student revealed that the student does not have social skills deficits. The evaluation recognized that the social skills were among the student's strengths. The evaluator recommended that the student receive social skills group in order for the student to work on language skills in a social situation. (J-6; NT 152 – 154)

54. The student's mother requested a 1:1 aide for the student before the beginning of the [redacted] school year. The parent requested that the

personal care assistant or 1:1 aide be assigned to the student to keep the student on track and to make sure that the student was moving toward where the student needed to be moving. (NT 38 – 39, 60 – 61; J-12)

55. The school district refused to provide a personal care assistant, or 1:1 aide, for the student because of a district policy that prohibits the assigning of a PCA, or 1:1 aide, until after the school district conducts a functional behavioral analysis of a student and observes the student for a period of time. (NT 607 – 609, 524, 652 – 655)

56. The personal care assistants, or 1:1 aides, who work with the student are the support staff for the student. The PCAs that work with the student redirect the student to keep the student on task, prevent elopement, help the student transition through the school, assist with getting the student to the toilet, and help the student get things from the student's cubby. The PCAs also help the student with the student's academic work, including modifying assignments and using hand-over-hand technique. The PCAs that worked with the student were given a binder with the student's IEP, functional behavioral analysis report, positive behavior support plan and individual health plan. (NT 257 – 271, 434 – 463)

57. The PCA assigned to the student during the [redacted] school year had previously graduated from nursing school. The PCA assigned to the student for [redacted] grade received medical training as a nursing assistant, or CNA. (NT 282, 300, 463, 468)

58. The school district conducted a functional behavioral analysis (FBA) of the student. The FBA was completed by a board-certified behavior analyst on October 16, 2024. (S-16; NT 563 – 568, 569 – 573)

59. The school district developed a positive behavior support plan for the student based upon the results of the functional behavioral analysis. (J-15; NT 568 – 569, 574 – 577)

60. The student responded well to the strategies in the positive behavior support plan with a decreasing trend for Out of Area, slight increase for Off Task, and a slight decrease for Task Refusal. The student met two behavior goals in December 2025. (J-33; NT 576 – 577, 420-421)

61. The school district provides a [redacted] nurse for the student. The nurse has been provided since the parents provided medical documentation and prescription orders. The [redacted] nurse works with the student during the student's lunch period. The [redacted] nurse is trained in administering [redacted] and administers the [redacted] to the student. The [redacted] nurse is the same nurse who accompanies the student 1:1 on the school bus. (NT 79, 111 – 112, 121; S-5)

62. Before the [redacted] nurse was in place, the school nurse administered [redacted] to the student. (NT 83)

63. After the student experienced a seizure in November 2024, the school district assigned a nurse to ride the school bus with the student 1:1 for seizure protection. The school district contracts with a private nursing company to provide the nurse. (NT 483, 626 – 627, 93, 111, 115, 121 – 122)

64. After the student's seizure, a doctor's note was provided by the parents to the school district on November 20, 2023. The doctor's recommended seizure plan was adopted by the school district. The seizure plan was disseminated to staff that work with the student and staff were trained on the seizure plan. (J-17, J-15, S-37; NT 83 - 84, 88 – 89, 90, 433)

65. The seizure plan for the student was incorporated into a health and safety plan for the student. (J-36; J-15)

66. School district staff were uncomfortable attending IEP team meetings for the student because of the way that they were spoken to and because the meetings were contentious. (NT 228, 512 – 513, 604 – 605, 650-651)

67. In May 2025, the student's IEP team agreed to increase the student's time in the learning support classroom to include 60 minutes per day of math and 60 minutes per day of reading in response to a parent request. (NT 213; J-22)

68. In May 2025, the student's IEP team increased the student's speech-language therapy and the student's occupational therapy from once weekly for 30 minutes to twice weekly for 30 minutes each. (NT 373, 546; J-22)

69. The student benefits from being in the general education setting. The student is exposed to the general education vocabulary and to school routines and procedures. The student has the opportunity to build relationships with peers. The student is well liked by others. (NT 222, 216 – 217)

70. The student is able to communicate and appropriately interact with fellow classmates. The student has friends at school and is well-received by peers and adults. (NT 216 – 217, 515, 458 – 459, 287)

71. The student is thriving and making substantial progress under the student's IEPs since the PCA was assigned on December 4, 2024. The student can now write the student's name. In [redacted], the student made progress in the areas of rote counting and phonemic awareness, as well as social progress. In [redacted], the student began being able to hold a writing instrument, cut properly and recognize individual letters, as well as to count. In [redacted] grade, the student made progress in the areas of math, reading

and social skills. The student has made progress with regard to problem behaviors. (NT 53 – 54, 57, 206, 209, 210 – 211, 216 – 217, 235 – 236, 290 – 292, 419 – 421, 425, 466, 481 – 483, 509, 515, 529-531, 548, 616; J-33, J-11)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (hereafter sometimes referred to as “IDEA”): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In conducting an evaluation, a local education agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability. The evaluation must be comprehensive. When conducting an evaluation, a school district must review appropriate existing evaluation data, including classroom-based assessments and observations by a teacher or related service providers, and on that basis determine whether any additional data are needed to determine

whether the student is eligible, as well as to identify the child's special education and related services needs. Perrin ex rel JP v Warrior Run Sch Dist, 66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

3. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child's circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

4. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

5. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

6. For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. Ridley School District v. MR and JR ex rel. ER, supra; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

7. IDEA does not require a school district to guarantee a particular result or to close the gap between children with disabilities and their non-disabled peers. JN and JN ex rel. JN v. Southwest School District, 56 IDELR 102 (N.D. Penna. 2015); see, Kline Independent School District v. Hovem, 690 F. 3d 390, 59 IDELR 121 (5th Cir. 2012); HC and JC ex rel. MC v. Katonah – Lewisboro Union Free School District, 59 IDELR 108 (S.D. NY 2012); District of Columbia Public Schools, 111 L.R.P 77405 (SEA D.C. 2011). Progress toward FAPE is measured according to the unique individual circumstances of the individual student and not in comparison to other students. See, GD by Jeffrey and Melissa D v. Swampscott Public Schs, 122 LRP 6305 (1st Cir. 2022). The Third Circuit has specifically ruled that IDEA does not require that all (or even most) disabled children advance at a grade-level pace. KD by Dunn v. Downingtown Area School District, 904 F. 3d 248, 72 IDELR 261 (3d Cir. 2018).

8. Where a student with a disability has behaviors that impede the student's learning or the learning of others, the student's IEP team must consider the use of appropriate positive behavior interventions and supports and other strategies to address those behaviors. IDEA § 614(d)(3)(B)(1); 34 C.F.R. § 300.324(a)(2)(i); 22 Pa. Code 14.133; Sean C by Helen C v. Oxford Area School District, 70 IDELR 146 (E.D. Penna. 2017); Lathrop R II Sch. Dist. v. Gray ex rel BG, 611 F. 3d 419, 54 IDELR 276 (8th Cir. 2010).

9. A school district must provide a related service, such as speech language therapy, occupational therapy or nursing services, to a student with

a disability only when the related service is necessary for the student to benefit from special education. 34 C.F.R. § 300.34; Irving Independent School District v. Tatro, 468 U.S. 883, 555 IDELR 511 (1984); Cedar Rapids Community School District v. Garrett F., 526 U.S. 66, 29 IDELR 966 (1999); Mary Courtney T. v. School District of Philadelphia, 575 F. 3d 235, 52 IDELR 211 (3d Cir. 2009).

10. A school district must "...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are non-disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); Individuals With Disabilities Education Act (hereinafter sometimes referred to as "IDEA") § 612(a)(5)(A); 22 Pa. Code § 14.145.

11. The Third Circuit has stated that the least restrictive environment provision sets forth a "strong congressional preference" for integrating children with disabilities in regular classrooms. Oberti v. Board of Education, 995 F.2d 1204, 19 IDELR 908 (3d Cir. 1993). The court adopted a two-part test for determining whether a district is in compliance with IDEA's mainstreaming requirement. First, the court must determine whether education in a regular classroom with the use of supplementary aids and services can be achieved satisfactorily. Second, if the court finds that placement outside a regular classroom is necessary for the child to benefit educationally, then the court must decide whether the school has "mainstreamed the child to the maximum extent appropriate," that is, whether the school has made efforts to include the child in school programs with nondisabled children whenever possible. In determining the first prong of the

two-part test, the court set forth three factors to be determined: First, the court should look at the steps that the school has taken to try to include the child in a regular classroom. Second, the court should consider in determining whether a child with a disability can be included in the regular classroom, comparing the educational benefits the child will receive in a regular classroom with supplementary aids and services versus the benefits the child will receive in a segregated special education classroom. Third, the court should consider the possible negative effects of the child's inclusion on the education of other children in a regular classroom. When considering negative effects, the court must keep in mind the school's obligation to provide supplementary aids and services to accommodate the child's disabilities. Oberti, supra.

12. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch Dist., 606 F.3d 59, 54 IDELR 212 (3d Cir 2010); School District of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area School District, 71 IDELR 87 (N.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist., 606 F.3d 59, 54 IDELR 212 (3d Cir 2010). See, Branham v. District of Columbia, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005).

13. Compensatory education is one remedy that may be awarded to a parent when a school district violates the special education laws. In general,

courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley School District Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); Gwendolynne S by Judy S and Geoff S v West Chester Area Sch Dist, 78 IDELR 125 (ED Penna 2021); see Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005). In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by the denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or “cookie cutter” method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The “cookie cutter” or quantitative method has been permitted by courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014).

14. The parents have proven that the school district's evaluation of the student was not comprehensive and therefore was not appropriate.

15. The parents have proven that the school district denied a free and appropriate public education to the student from the beginning of the 2024 – 2025 school year through December 4, 2024.

16. The parents have not proven that the school district denied a free and appropriate public education to the student from December 4, 2024 to the present.

DISCUSSION

I. Merits

1. Whether the parents have proved that the school district's evaluation of the student was inappropriate?

The parents contend that the school district's August 8, 2024 reevaluation of the student was not appropriate. The school district contends that its reevaluation was appropriate.

The parents have proved that the school district's reevaluation was not appropriate. The uncontested evidence in the record shows that the school district's reevaluation did not include any classroom observations of the student or any input from the student's teachers. These necessary evaluation components are missing. Accordingly, it is concluded that the reevaluation was not comprehensive in nature because it did not include all required elements. The parents have proven that the school district reevaluation was not appropriate.

The parents also alleged that the reevaluation contained additional flaws; however, the record evidence reveals that the school district reevaluation was otherwise in compliance with IDEA's requirements. To the extent that other problems with the reevaluation are asserted, the argument is rejected.

To the extent that there are any disputed facts with regard to this issue, the testimony of the parent was more credible than the testimony of school district witnesses. This conclusion is based upon the demeanor of witnesses, as well as the following factor: the documentary evidence supports the

testimony that the district did not include required elements in the reevaluation.

It is concluded that the parents have proved that the school district committed an evaluation violation.

2. Whether the parents have proved that the school district denied a free and appropriate public education to the student?

a. Beginning of the 2024 – 2025 school year to December 4, 2024.

The parents contend that the school district denied a free and appropriate public education to the student from the beginning of the student's [redacted] school year through December 4, 2024 because the school district failed to assign a 1:1 aide to the student. The school district contends that it did not assign a 1:1 aide to the student until December because of school district policy.

The parents have proven that the school district denied a free and appropriate public education to the student from the beginning of the [redacted] school year through December 4, 2024. Until December 4, 2024, the student's IEPs were not reasonably calculated to confer meaningful educational benefit in view of the student's unique individual circumstances. The parents requested that the student be assigned a personal care assistant (hereafter sometimes referred to as "PCA"), or 1:1 aide, before the beginning of the school year because the student needed help getting from place to place, as well as redirection in order to stay on task.

Indeed, the school district's own reevaluation of the student recommended that the student receive hand-over-hand assistance from adults, at least at first, as well as the use of techniques to keep the student on task and paying attention. Thus, the unique individual circumstances of this child include the need for constant adult attention and/or supervision. Moreover, as the PCAs who worked with the student testified at the hearing, they helped the student with much more than behavior issues, including academic work, modifying assignments, giving hand-over-hand assistance, getting from place to place, the use of a cubby, and getting to the toilet. Clearly, the unique individual circumstances of this particular student included the need for a 1:1 aide.

The school district did not assign a PCA, or 1:1 aide, to the student at the beginning of the school year because the district has a firm policy that no student may be assigned a PCA unless the school district has first completed a functional behavioral analysis and observed the student for a period of time. By applying this policy, the school district is violating IDEA. The school district's decision not to assign a PCA to the student was not based upon an individualized determination of the student's needs. Instead, the school district followed some general rule that it has adopted that necessitates a delay in the assignment of aides. Rather than assign a 1:1 aide to this student in view of the student's unique individual circumstances, as defined at least in part by the school district's own reevaluation, the school district blindly followed a rigid policy that does not take into account the individual circumstances of a child with a disability. This complete lack of individualization is the opposite of what is required by IDEA. There is certainly nothing wrong with conducting an FBA before developing a behavior plan, but using the FBA to delay a needed 1:1 aide is not permissible.

It is also significant that the school district conceded that the student needed a PCA as of December 4, 2024. It is clear from the evidence in the record that the student also needed a PCA prior to that date.

Accordingly, it is concluded that the school district denied a free and appropriate public education to the student from the beginning of the 2024 – 2025 school year through December 4, 2024. The period of the denial of FAPE is from the beginning of the school year until the date that the student was assigned a PCA by the school district.

As with the previous issue, there are not many facts that are contested by the parties. To the extent that there are any disputed facts, however, the testimony of the parent and PCAs who testified at the hearing was more persuasive and credible than the testimony of the other school district witnesses concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factor: the school district's own reevaluation report supports the student's need for a PCA.

It is concluded that the school district denied a free and appropriate public education to the student from the beginning of the student's [redacted] school year through December 4, 2024

b. December 4, 2024 to the present.

The parents also contend that the school district also denied a free and appropriate public education to the student from December 4, 2024 to the present. The school district argues that it has provided a free and appropriate public education to the student.

The parents have not proved that the school district denied a free and appropriate public education to the student from December 4, 2024 to the

present. The record evidence reveals that during this time period, the student's IEPs were reasonably calculated to confer meaningful educational benefit in view of the student's unique individual circumstances. The parents point to a number of alleged flaws in the student's IEPs, but the parents have not proven that the IEPs were substantively inadequate.

It is revealing that the student's mother testified that the student is making progress in the school district but not sufficient, in her opinion, to be on grade level for [redacted] grade. The legal standard for a free and appropriate public education does not require that a student be on grade level. As the Third Circuit has made clear, a school district is not required to demonstrate that a student is on grade level in order to provide FAPE under IDEA. The parents' argument is premised upon a misunderstanding of the legal standard for FAPE, and it is rejected.

Moreover, although actual progress is not required, in this case it is clear that the student made meaningful progress under the student's IEP. The student is thriving. During [redacted], the student made progress in the areas of rote counting, and phonemic awareness. The student began to be able to hold a writing instrument, cut properly, and to make individual letter recognition. In [redacted] grade, the student made progress in the areas of math, reading and social skills. The student met behavior goals, and the student's problem behaviors have decreased since December of 2024. The student can now write the student's own name and put on a jacket. It is clear from the evidence in the record that the student's IEPs after December 4, 2024 were reasonably calculated to, and in fact did, confer meaningful educational benefit in view of the student's unique individual circumstances.

The parents have challenged certain specific elements of the IEP, but none of these challenges amount to a showing that the IEPs were

substantively inadequate. For example, the parents contend that the student was not provided with sufficient related services, including speech, occupational therapy and nursing or health services. The parents' argument, however, is contradicted by the testimony of the student's mother, who stated that the student does not need more occupational therapy or speech.

IDEA requires a school district to provide a related service only when the related service is necessary in order for the student to benefit from special education. The parents contend that the student needed more speech, occupational therapy, and nursing services, but no evidence in the record supports the parents' contention that such additional related services are necessary in order for the student to benefit from special education. It should be noted that the parents' brief cites certain internet articles to support the argument. The internet articles cited by the parents were not offered into evidence, no witness testified about them, and no cross-examination on the contents thereof occurred. Accordingly, the internet articles cited by the parents are not part of the record evidence, and they were not considered in reaching this decision.

No evidence in the record supports the parents' contention that the student required additional time in speech language therapy or occupational therapy in order to benefit from special education. The parents' argument is rejected.

The parents argue that the school district denied FAPE by not providing sufficient nursing as a related service or otherwise not attending to the student's health/medical needs. It should be noted that the parents' post-hearing brief/written closing argument did not address this sub-issue. Accordingly, the parents have waived the sub-issue. JL v Lower Merion Sch

Dist, 81 IDELR 251 (E.D. Penna 2022); LB by RB and MB v Radnor Township Sch Dist, 78 IDELR 186 (E.D. Penna 2021).

Moreover, the evidence in the record is clear that the school district also appropriately met the student's nursing and school health needs. The school district provided a [redacted] nurse and a nurse to ride the bus with the student. After receiving a doctor's note stating that the student had a seizure disorder, the school district adopted the seizure plan suggested by the doctor and incorporated it into a health plan. Moreover, two PCAs that were assigned to the student after December 4, 2024 had nursing backgrounds.

There is no evidence in the record to support the parents' contention that the school district did not appropriately provide the related service of nursing. The school district appropriately met the student's nursing, medical, and school health needs. The argument is rejected.

The parents contend that the school district IEPs did not appropriately address the student's behaviors and social/emotional needs. This argument is also not supported by the evidence in the record. The school district conducted a functional behavioral analysis of the student and developed a positive behavior support plan. The credible and persuasive testimony of the board-certified behavioral analyst was that the positive behavior support plan was working for the student and that the student's behaviors had improved. It is clear from the record that the school district adopted appropriate strategies to address the student's problem behaviors.

The parents, in their post-hearing brief/written closing, focus upon one of the PCAs making certain mistakes in the coding of certain behaviors. The parents' argument, however, overlooks the general success of the behavior

plan and the student's actual improved behaviors. The parents' argument is rejected.

The parents also argue that the school district did not provide appropriate social/emotional instruction for the student. The data in the record, however, indicates that the student does not have social/emotional needs. Indeed, the unrebutted testimony in the record is that social skills were a strength for this student. In addition, the student made social progress while enrolled in the school district. One witness referred to the student as being "[redacted]."

The evidence in the record does not support the parents' contention that the school district did not appropriately address the student's behaviors or properly program for social/emotional needs. The argument is rejected.

The parents also argue that the school district failed to modify or change the student's program after it was not successful. The premise of the parents' argument - that the student's IEPs were not successful - is not supported by the evidence in the record after December 4, 2024. Indeed, after the assignment of a PCA on December 4, 2024, the student's IEPs were reasonably calculated to confer meaningful educational benefit to the student.

Moreover, the record reveals that the school district did make certain changes to the student's program at the parents' request. The student was provided additional speech-language therapy and occupational therapy at the parents' request. In addition, the school district increased the student's time in the special education learning support setting as a result of a request by the parents. The parents' contention is not consistent with the facts. The parents' argument with regard to alleged failure to change the student's IEPs is not supported by the evidence in the record and it is rejected.

The parents also argue that the student's IEPs were inappropriate because the student did not receive more time in special education, as opposed to general education. The evidence in the record, however, reveals that the student received a free and appropriate public education since the assignment of a PCA on December 4, 2024. Because the student was receiving FAPE in the current setting, additional special education was not required.

Moreover, IDEA requires that the student be educated in the least restrictive environment. Accordingly, least restrictive environment considerations weigh against moving the student to the more restrictive setting advocated by the parents when the student is receiving FAPE in the less restrictive setting. The parents' argument is rejected.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the student's mother testified that the student was receiving adequate related services but that the student was not making appropriate progress on grade level for a [redacted] grader. The parents' testimony in this regard indicates that the parents' argument concerning denial of FAPE is a misapplication of the legal standard. In addition, the parents' due process complaint alleges that the school district refused to retain the student in [redacted] and that the parents were required to obtain a [redacted] nurse privately. These due process complaint allegations are contradicted by the parties' stipulations and by the evidence in the record. These contradictions further impair the credibility of the parents' testimony.

It is concluded that the parents have not proven that the school district denied a free and appropriate public education to the student after December 4, 2024.

II. Relief

The parents have proven an evaluation violation. The parents contend that the appropriate relief for the evaluation violation is compensatory education because the student's educational program was flawed as a result of the improper evaluation. The record evidence, however, does not support the parents' argument. The evidence reveals that the student received FAPE after the student was assigned a PCA on December 4, 2024. Moreover, although FAPE was denied prior to December 4, 2024, the FAPE denial was the result of not providing a 1:1 aide. The failure to provide the 1:1 aide was not the result of a faulty evaluation. Indeed, the results of the evaluation supported the student's need for an aide. No evidence in the record supports the parents' argument that the evaluation caused a denial of FAPE. Compensatory education is not appropriate for this violation.

Instead, the appropriate remedy for the evaluation violation is not compensatory education but rather an independent educational evaluation at public expense. The parents did not request this relief, but an independent educational evaluation is tailored to remedy the specific violation of IDEA and is the equitable remedy that is appropriate on these facts. Because the school district's evaluation was not sufficiently comprehensive in that it did not include observations of the student or teacher input, the parents should be allowed the opportunity to pursue an independent educational evaluation and provide the information gleaned from that evaluation to the IEP team for consideration of any changes to the student's program that might be appropriate going forward.

The parents have also proven that the school district denied FAPE to the student for the time period that the student was not assigned a PCA, which is from the beginning of the 2024 – 2025 school year through December 4, 2024. The school district suggests that any compensatory education be qualitative in nature, but no evidence in the record supports a qualitative award. The appropriate remedy for this particular denial of FAPE is a full day of compensatory education to the student for each school day during the period of denial of FAPE. Given the clear unique needs of this particular student for a PCA or 1:1 aide, quantitative (or day-for-day) compensatory education is appropriate and is awarded.

Because all relief under IDEA is equitable relief and should be flexible in nature, and because special education under IDEA requires a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein, so long as both parties and their lawyers agree to do so in writing.

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** as follows:

1. The school district shall provide the parents with an independent educational evaluation at public expense. The evaluation shall be consistent with the school district's criteria applicable to independent educational evaluations. The independent educational evaluation shall be completed on or before August 1, 2026; and

2. The school district is ordered to provide one full day of compensatory education to the student for each school day during the period of denial of FAPE, as described above.

a. The student's parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device for the student's educational and related services needs;

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory services shall be provided by appropriately qualified professionals selected by the parent. The cost to the school district of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the district is located; and

3. The parties may adjust or amend the terms of this order by mutual written agreement signed by all parties and counsel of records; and

4. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: April 13, 2026

James Gerl

James Gerl, CHO
Hearing Officer