

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

Pennsylvania Special Education Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number:

26354-21-22

Child's Name:

N.B.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

09/15/2022

INTRODUCTION AND PROCEDURAL HISTORY

The student, N.B. (Student),¹ is a middle-elementary school-aged student who resides in and attends school in the Norristown Area School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).²

Student first entered the District during the 2019-20 school year and was provided a program that included regular education and special education along with related services. Student began to exhibit difficulty at the start of the 2021-22 school year and was reevaluated. The parties met several times halfway through that school year to discuss options, and ultimately did not agree on a program and placement. The Parents then filed a Due Process Complaint under the IDEA, and a pendency order was issued as the case proceeded to an efficient due process hearing.³

Following review of the record and for all of the reasons set forth below, the claims of the Parents must be granted in part and denied in part.

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. References to Parents in the plural is made when it appears that one was acting on behalf of both. The pendency order is HO-1.

ISSUES

1. Whether the District's proposed program and placement for Student is appropriate based on Student's needs;
2. If the District's proposed program and placement for Student is not appropriate for Student, what program and placement must the District provide;
3. Whether the District denied Student a free, appropriate public education over the 2021-22 school year; and
4. If the District denied Student a free, appropriate public education over the 2021-22 school year, should Student be awarded compensatory education?

FINDINGS OF FACT

1. Student is a mid-elementary school-aged student residing in the District. Student has been identified as eligible for special education based on Intellectual Disability and a Speech/Language Impairment. (N.T. 55; S-10 at 10; S-14 at 13.)
2. Student was diagnosed with global developmental delays at a very young age. (N.T. 54-55.)
3. Student was first enrolled in the District during the 2019-20 school year [redacted] and, except for a majority of the 2020-21 school

year,⁴ has remained in District schools. (N.T. 56, 65, 114; P-1; S-5 at 7.)

4. Student is very social and interacts well with peers. (N.T. 75-76, 271, 285.)
5. Student understands basic safety rules, but experienced difficulty navigating the school setting when returning to the District. (N.T. 75, 168.)
6. Student requires frequent redirection and at times encouragement to attempt and complete tasks at school. Student benefits from frequent breaks including those with movement, and hands-on (multisensory) experiences. (N.T. 200-01, 215-16, 269-70, 291.)
7. Student's Individualized Education Program (IEP) developed in the spring of 2021 identified needs in the areas of academic skills (early reading, mathematics, written expression skills), maintaining attention to tasks, following directions, executive functioning, coping skills, and adaptive behavior skills. That IEP addressed each of the needs, including goals with baselines and instruction on adaptive behavior skills as necessary. The IEP provided for a program of supplemental learning support, with Student participating in regular education except for one hour each day in special education for reading and mathematics, as well as time in occupational, physical, and speech/language therapy. (S-5.)

⁴ Student was homeschooled during that timeframe. (N.T. 114; S-44.)

2021-22 School Year

Fall 2021

8. Student was reevaluated following reenrollment with the consent of the Parents, with a reevaluation report (RR) issued in early September 2021. (N.T. 326; S-6; S-10.)
9. Parent input into the September 2021 RR reflected strengths including in the areas of socialization, expressing self, and motivation to complete tasks. They viewed Student's needs as academic skill development and support, early reading skills, and redirection to task. (S-10 at 1.)
10. The September 2021 RR summarized previous evaluation results, IEP progress, and input from related service providers. Teacher recommendations included multisensory instruction, chunking of tasks, repetition and guided practice, small group instruction for reading and mathematics, redirection, and social skills for communicating with peers and adults. (S-10 at 1-6.)
11. The District assessed Student's adaptive functioning for the September 2021 RR (Vineland Adaptive Behavior Scales – Third Edition completed by the Parents). Those results, when compared to same-age peers, indicated moderately low skills overall and in the low to moderately low range across domains (communication, daily living skills (including self-care and functioning in the community), and socialization (including relationships and coping skills)). (N.T. 419-20; P-4 at 8; S-10 at 7.)
12. Occupational therapy assessment for the September 2021 RR indicated weaknesses with visual motor integration, coordination, and fine motor skills. (S-19 at 7-10.)

13. The September 2021 RR identified a number of strengths for Student, including social skills, ability to follow routines, and motivation to attempt and complete tasks; Student also exhibited some strengths in the areas of occupational, physical, and speech/language therapy. Academic needs were noted for letter and sound identification as well as counting to 50; with related service areas of need also set forth. (S-10 at 10-11.)
14. The September 2021 RR concluded that Student remained eligible for special education under the primary category of Intellectual Disability and the secondary category of Speech/Language Impairment. (S-10.)
15. Student's regular education classroom for the 2021-22 school year had 21 students with the teacher and Student's one-on-one support staff (Personal Care Assistant, PCA). Student's special education reading and mathematics classes were provided in small groups with 2 adults including the teacher. (N.T. 194-99, 283, 303-04.)
16. Early in the 2021-22 school year, a one-on-one support person (PCA) was assigned to Student for regular education homeroom/morning meeting, reading, and mathematics instruction, and in January 2022, the PCA was also assigned to Student for regular education science and social studies classes as well as social/emotional skill instruction. The morning meeting time including support for getting organized for the school day. (N.T. 76-77, 174-75, 182, 199-200, 269, 275, 279, 282-84, 335; S-11 at 29; S-29 at 37.)
17. Student was in the regular education classroom for homeroom/morning meeting, portions of reading and mathematics, science, social studies, social/emotional skills, and special classes for the 2021-22 school year. All students in Student's regular education class participated in an instructional social/emotional program

addressing social skills, communication, and problem-solving skills during the 2021-22 school year. (N.T. 177-78, 267, 271-72, 275, 280, 282, 297-98.)

18. Student experienced difficulty with the content level of regular education academic classes at the start of the 2021-22 school year, particularly in mathematics; and Student's present levels were well below grade expectations. The regular and special education teachers provided assistance with organization and redirection when needed. Student required practice and repetition in order to learn new information and retain it; and would benefit from having tasks broken down. (N.T. 83-84, 207-08, 231, 267-70, 279, 289, 295-96, 304-05, 412-17.)
19. Student also experienced challenges with problem-solving at school during the 2021-22 school year. (N.T. 286-87.)
20. Throughout the 2021-22 school year until mid-May 2022, Student left school at 2:15 p.m. each day and went home with one of the Parents due to a gastrointestinal medical condition that required medication. Student missed writing instruction that was scheduled for the end of the day. (N.T. 75, 80, 127, 280, 282, 307-08; S-33.)

October 2021 IEP

21. A new IEP was developed in October 2021. At the time, Student's needs included those from the September 2021 RR in addition to number and sight word identification. (S-11.)
22. Annual goals in the October 2021 IEP addressed letter identification, letter-sound identification, beginning sight word recognition, number identification, and maintaining attention to task directives; other goals related to occupational, physical, and speech/language therapy. All goals contained baselines. Program modifications and items of

specially designed instruction (SDI) included all of the teacher recommendations from the September 2021 RR. Student's program was one of learning support at a supplemental level, with Student outside of the regular education setting for thirty minutes each of daily reading and mathematics instruction as well as related services. (S-11 at 1-51.)

23. After the October 2021 IEP meeting, the Parents asked about more intensive learning support services for Student. (P-6.)
24. Student's special education teacher worked with the regular education teacher over the 2021-22 school year to provide accommodations and modifications as necessary for Student, including modifying lessons and homework. (N.T. 199, 201-02, 286-87.)

December 2021 Reevaluation

25. The Parents had requested additional evaluation in October 2021 and provided their consent. A new RR was issued in December 2021. (S-1; S-14.)
26. Cognitive assessment for the December 2021 RR (Comprehensive Test of Nonverbal Intelligence – Second Edition) yielded scores similar to those in previous evaluations, with a full scale standard score of 54, in the very poor range; scores on the scales were also in that range. (S-14 at 10-11.)
27. Assessment of academic achievement (Wechsler Individual Achievement Test – Fourth Edition) for the December 2021 RR reflected scores across subtests and composites in the extremely low range (at or below the first percentile), with the exception of pseudoword decoding in the very low range (third percentile). Academic achievement was considered to be commensurate with ability. (N.T. 415-16, 438-39; S-14 at 11-13.)

28. Student's IDEA eligibility classifications remained the same in the December 2021 RR. Identified needs were for development of reading, writing, and mathematics skills; focus and attention; communication; socialization; and personal care skills; related service needs were also noted. (S-14 at 13-14.)
29. The school psychologist later elaborated on Student's communication and socialization needs, with the former including identification of home address, and the latter including recognition of risky social situations and controlling emotions. (N.T. 234-35; S-25.)

Spring 2022

30. An IEP meeting convened in mid-January 2022 at which the team discussed Student's schedule and options for additional support. At that time, Student was experiencing difficulty with the reading instruction, and the team agreed to trial an alternative program with Student for a portion of that period targeting reading skill deficits. (N.T. 91, 182-83, 194-95, 222, 316; S-15; S-20 at 14, 19.)
31. The Parent also requested a Functional Behavior Assessment (FBA) at the mid-January 2022 meeting. (N.T. 346-47; S-10 at 19.)
32. Needs specified in the January 2022 IEP were for letter and sound identification, sight word recognition, single-digit addition and subtraction, following directions, sustaining attention to task, focusing, socialization, and personal care and daily living skills; related service needs were also included. (S-10 at 20-21.)
33. The January 2022 IEP updated the goal baselines and added new goals for single-digit addition and subtraction. A new item of SDI provided for completion of the FBA. Student's program remained learning support at a supplemental level. (S-20.)

34. After initial disapproval, the Parents gave consent through a NOREP for implementation of the January 2022 IEP “on an interim basis” (S-21 at 3) pending another meeting. (S-21; S-22.)
35. Another meeting convened later in January 2022 to continue discussion of appropriate support for Student. The Parents and District representatives discussed the possibility of adding a social skills group for Student, and that was done. (N.T. 229-30, 271-72, 362.)
36. Another IEP meeting convened in February 2022 with further discussion of possible support for Student. (N.T. 95-96, 226, 356-57.)
37. The IEP developed as a result of the February 2022 IEP meeting proposed a program of learning support and life skills support at a supplemental level, with Student not participating in regular education during reading, writing, mathematics, and science/social studies instruction, as well as social skills and related services. PCA support increased to full-time. A proposed schedule provided for regular education participation for homeroom and lunch/recess. The District identified a different elementary school as the location of services. (S-24; *see also* HO-1.)
38. Additional needs in the February 2022 IEP were for decoding CVC words; communication; and organization. Other changes in the IEP reflected Student’s progress toward or mastery of goals: the letter identification goals were removed as mastered; the letter-sound goal was revised to add digraph identification; and new goals were for decoding CVC words, organizational skills, and providing specific personal information (birth date, address, and telephone number) when asked. Student’s participation in the weekly social skills group was also noted. New items of SDI were for direct instruction in social skills and a new speech/language evaluation. (S-24.)

39. The Parents did not approve or disapprove the NOREP accompanying the February 2022 IEP, but requested an informal meeting following their observation of the proposed classrooms. (P-9; S-26.)
40. The Parents visited the classrooms Student would transition to at elementary school proposed by the District in February 2022. (N.T. 98, 102-05, 139-41, 316-17, 366-67.)
41. Student became more dependent upon the PCA over the course of the 2021-22 school year. (N.T. 285.)
42. By the spring of 2022, Student no longer participated in regular education reading activities. (N.T. 282.)
43. The FBA was completed in March 2022. The identified behavior of concern was engaging in off-task behavior during instruction, and input from the Parents did not share that observation or any other behavior. Following several observations, the hypothesis of the function of off-task or distracted behavior at school was to gain access to attention. No new goals or items of SDI were set forth in the Positive Behavior Support Plan that followed. (P-11; S-28.)
44. A speech/language reevaluation completed in May 2022 yielded results indicating ongoing deficits particularly with listening comprehension, some aspects of semantics, and articulation. The therapist recommended that therapy continue for Student and that items of SDI such as repeated directions and explicit small group instruction in content areas be maintained. (S-32.)
45. The life skills classroom proposed for Student can provide direct, explicit instruction in reading, mathematics, writing, science, and social studies, in addition to social skills. The pace of instruction is generally slower than in regular education classes and there are many

opportunities for practice and repetition. Curriculum may be modified or replaced in life skills. (N.T. 370-71, 385-86.)

46. The learning support proposed for Student utilizes the regular education curriculum, but the pace is slower, and modifications and other supports are available. (N.T. 395-96.)
47. The District proposed learning support for Student for core academic subjects (reading, writing, and mathematics) and life skills support for science, social studies, and social skills, so that skills taught and practiced in those areas could be better addressed through a small setting in functional ways. Science and social studies in life skills could provide Student with opportunities to learn basic daily living skills such as relaying Student's routine personal information when asked. The proposed social skills instruction would address Student's need for organization and attention to task, as well as working with others and developing friendships, with components of reading and understanding the environment as well as safety awareness. (N.T. 104, 186-87, 227-30, 358, 363-65, 383-87.)
48. In the life skills classroom proposed for Student, there is a teacher and 2 paraprofessionals at all times. Related service providers may also be in the classroom. (N.T. 371.)
49. The Parents believe that Student needs full time learning support but not life skills programming. (N.T. 109-10.)
50. Student made gradual incremental progress on IEP goals over the 2021-22 school year, with some variability particularly with single-digit addition and subtraction and task completion. (S-24; S-34.)
51. As of June 2022, Student was not able to provide Student's full home address or telephone number. (N.T. 229.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In order to evaluate the claims in a dispute such as this, it is necessary to consider the burden of proof, a principle that is viewed as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who filed the Complaint seeking this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The Parents also accepted the burden of production, although one witness was taken out of order by agreement.

Special education hearing officers, who assume the role of fact-finders, are tasked with the responsibility of assessing the credibility of the witnesses who testify before them. *See J.M. v. Summit City Board of Education*, 39 F.4th 126, 145 (3d Cir. 2022); *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. 2008); *see also A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). A number of witnesses testified in this case, and this hearing officer found each of them to be credible as to the facts. The testimony was overall quite consistent where it overlapped, and any differences are attributed to lapse in memory or recall, or to differing perspectives, rather than any intention by a witness to mislead. The weight accorded the evidence that did differ to some degree among witnesses is discussed further below as

necessary,⁵ but the documentary evidence was crucial to understanding the dispute.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

The various states, through local educational agencies (LEAs), meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." " *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth."

⁵ Some of the testimony presented was nothing more than answers to a series of very leading questions, without objection, but was much less valuable than having those witnesses share their own accounts.

Endrew F. v. Douglas County School District RE-1, ___ U.S. ___, ___, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, accordingly, the fundamental consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child’s parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). “The IEP *must aim* to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018)(emphasis in original). IEP development, of course, must follow and be based on an evaluation as monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

General IDEA Principles: Least Restrictive Environment

The IDEA contains a crucial mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); *see also* *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

The Third Circuit in *Oberti* identified a two-pronged test for making a determination of whether a student's placement is in conformity with the LRE mandate in the IDEA. The first prong involves consideration of whether the child can, with supplementary aids and services, be educated successfully within the regular classroom. 995 F.2d at 1215. If placement outside of the regular classroom is determined to be necessary, the second prong requires an assessment of whether the child has been included with non-disabled children to the maximum extent possible. *Id.*

The U.S. Supreme Court's *Endrew* decision further recognized that educational benefit for a child with a disability is wholly dependent on the individual child, who should be challenged by his or her educational program. *Endrew, supra*, 137 S. Ct. at 999. Also crucial to the LRE analysis is a recognition that its principles "do not contemplate an all-or-nothing educational system" of regular education versus special education. *Oberti, supra*, 995 F.2d at 1218 (*quoting Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1050 (5th Cir. 1989)). Rather, LEAs are required to have available a "continuum of alternative placements" in order to meet the educational and related service needs of IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. Furthermore, the "continuum" of placements in the law enumerates settings that grow progressively more restrictive, beginning with regular education classes, before moving first toward special classes and then toward special schools and beyond. 34 C.F.R. § 300.115.

The IDEA applies to a "child with a disability." 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(a). The definition of a "child with a disability" is two-pronged: having one of certain enumerated conditions and, by reason

thereof, needing special education and related services. 20 U.S.C. § 1401(3). One of the specified disability categories is Intellectual Disability, which “means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.” 34 C.F.R. § 300.8(c)(6.) The DSM-5 explains that “adaptive functioning” is “how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and sociocultural background.”⁶

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have “a significant role in the IEP process.” *Schaffer, supra*, at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010).

The IEP proceedings entitle parents to participate not only in the implementation of IDEA's procedures but also in the substantive formulation of their child's educational program. Among other things, IDEA requires the IEP Team, which includes the parents as members, to take into account any “concerns” parents have “for enhancing the education of their child” when it formulates the IEP.

⁶ American Psychiatric Association (2013), *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Ed., at 37.

Winkelman v. Parma City School District, 550 U.S. 516, 530 (2007). Full participation in the IEP process does not mean, however, that parents have the final say. See, e.g., *Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) (noting that IDEA "does not require [LEAs] simply to accede to parents' demands without considering any suitable alternatives" and that failure to agree on placement does not constitute a procedural violation of the IDEA). As has previously been explained by the U.S. Department of Education,

The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based on a majority "vote." If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency's determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint.

Letter to Richards, 55 IDELR 107 (OSEP 2010); see also 64 Fed. Reg. 48 at 12472 (1999)(same).

The Parents' Claims

The first, and primary, issue is whether the District's proposed program and placement as of March 2022 is appropriate for Student. The Parents contend that it is far too restrictive and is not based on Student's actual needs. The District counters that Student's needs are significant and are appropriately met in the proposed environment and in accordance with its submitted schedule. In this hearing officer's view based on the record

presented, this issue must be resolved in a manner that differs from both of these positions to some degree.

The Parents' main objection to the proposal in the March 2022 NOREP is that it provides for a portion of the day to be life skills programming for adaptive skill functioning, a need that they contend Student does not have. While it is, perhaps, understandable that the Parents do not agree with the label of "life skills," the very definition of Intellectual Disability includes a component of deficits in adaptive skill functioning. The District properly evaluated Student to include a measure of adaptive behavior, the results of which indicate that Student has weaknesses across its domains. Student clearly has needs to develop awareness of risks in the environment, function in the community, use coping skills, problem-solve, and interact socially.

For purposes of assessing the LRE argument, the parties are in agreement that Student's needs cannot be met in the general education setting for academic instruction. Student will be able to participate in regular education for homeroom/morning meeting and lunch and recess. Thus, a placement in a special education classroom is both appropriate and necessary for Student, and meets both prongs of the *Oberti* test. Regardless of whether that classroom is considered to be learning support or life skills, the removal from general education is the same. Thus, the proposal for life skills for science, social studies, and social skills does not violate LRE principles.

The District's proposal of social skills through its life skills program will focus on each of Student's needs in adaptive functioning. As such, that portion of the proposal is appropriate. However, the recommendation to provide Student's science and social studies instruction through a life skills program does not meet the standard of appropriateness based on Student's unique circumstances. Student has been in general education science and social studies, with PCA support as of January 2022, since returning to the

District in the spring of 2021. (HO-1.) The testimony on what the science and social studies instruction will comprise was vague for a number of reasons, but a District representative explained the rationale as “correlate[ing] a bit” with Student’s IEP goal for relaying personal information when asked (N.T. 384-85). This testimony was candid and persuasively leads to the conclusion that this portion of the proposal was at best only tangentially related to Student’s special education needs and not based on Student’s individual circumstances including potential. It also merits noting that Student is not yet in an upper elementary school grade where more challenging academic content is presented.

Although the District contends that this life skills programming will permit its professionals to substitute an alternate curriculum in science and social studies if needed, Student has not yet had the opportunity to receive regular curriculum instruction in those subjects through a slower-paced setting with available supports. After all, the IDEA mandates that IEPs for all students with disabilities explain how the child will “be involved in and make progress in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(A)(i)(II)(aa). Moreover, accepting that the purpose of the proposed science and social studies instruction is for Student to learn and provide personal information, there appears to be no reason that aim cannot be made part of Student’s individualized social skills instruction and, indeed, is quite aligned with how it was described. The attached order will, however, provide a schedule for the IEP team to meet and review Student’s performance in those classes to determine whether further revision is needed.

In sum, the District’s proposal for social skills in the life skills program is appropriate, but at this juncture the portion of the proposal for science and social studies is not. Student’s IEP team will be provided with specific

directives for monitoring, reviewing, and considering revision to Student's IEP over the course of the current 2022-23 school year.

The next issue is whether Student was denied FAPE over the 2021-22 school year. Student returned to school in the spring of 2021, and had a modified daily schedule for medical reasons for the majority of the 2021-22 school year. The reevaluations in the fall of 2021 along with the IEPs and progress monitoring data reflected that Student was performing well below grade expectations over the course of that school year, but was developing early reading and early mathematics skills. Student made gradual, incremental progress on all of the IEP goals over that time period, with the team meeting periodically and revising the program as Student mastered goals and was ready to move on to more challenging skills. The Parents were participants throughout. The evidence is more than preponderant that Student made meaningful educational progress based on Student's unique circumstances including Student's potential for growth.

The Parents posit that, because the District proposed such a significant change to Student's programming in the late winter/early fall of 2022, the program prior to that NOREP must have been ineffective because Student's needs were well known all along. The record compels a contrary conclusion, with the parties working collaboratively and making more modest revisions to Student's program on a trial basis, such as increasing PCA support and introducing a different reading intervention, consistent with LRE principles. This hearing officer finds this approach was wholly reasonable in this particular case, particularly in light of the timing of Student's return to school, the modified schedule, and the Parents' lack of assent to the changes proposed in January 2022. Accordingly, the Parents' challenge to the program and request for compensatory education must fail. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996).

CONCLUSIONS OF LAW

The District's proposal for programming for Student is appropriate in part and not appropriate in part based on Student's unique circumstances.

The District did not deny Student a free, appropriate public education and no compensatory education is warranted.

ORDER

AND NOW, this 15th day of September, 2022, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's proposal for social skills in the life skills program is appropriate for Student.
2. The District's proposal for science and social studies instruction in the life skills program is not appropriate for Student at this time.
3. Within seven (7) calendar days of the date of this order, Student's IEP shall be revised to reflect that science and social studies instruction shall be provided through learning support rather than life skills support. Student's IEP team shall also consider whether Student needs full-time PCA support in the new program and placement. The District shall determine the location of Student's program and placement and, upon revision of the

IEP consistent herewith, the District may implement the February 25, 2022 IEP.

4. Within ten (10) calendar days of the end of the first trimester of the current school year, the IEP team shall convene to review Student's program and placement, including the science and social studies instruction, to determine if any revision is appropriate. If the District makes a recommendation for a revision with which the Parents disagree, the Parents may invoke pendency protections with no revision at that time.
5. If no revision is made at the end of the first trimester, then within ten (10) calendar days of the end of the second trimester of the current school year, the IEP team shall convene to again review Student's program and placement, including the science and social studies instruction, to determine if any revision is appropriate.
6. Student's IEP team may also convene at any other time as may be appropriate during the 2022-23 school year.
7. Nothing in this Order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 26354-21-22