

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. 30599-24-25

Child's Name:

I.W.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Educational Agency:

Lower Merion School District
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Ardmore, PA 19003

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

07/09/2025

Introduction

This special education due process hearing concerns the educational rights of I.W. ("student"), a student who resides the Lower Merion School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with an other health impairment, based on wide-ranging medical diagnoses, as well as a student with vision impairment, and ("S&L") impairment. The diagnosis which impacts the student most profoundly is a cortical vision impairment ("CVI").

In the months prior to the 2024-2025 school year, the student transitioned from [redacted] services to [redacted] services at the District. The parents and District could not agree on a program and placement for the student in the 2024-2025 school year. As a result, parents privately funded an at-home program, utilizing a complement of private providers to meet the student's needs.³ Parents seek reimbursement for the private at-home program. The District counters that it proposed an appropriate program and placement, and parents are not entitled to reimbursement.

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 IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ As will be seen below, initially parents provided an at-home program at the family's residence. Eventually, the family secured space at a local [redacted], where the student's program is largely delivered. The term "at-home program", however, will be utilized to designate the privately-provided services for the student.

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

Issue

Are parents entitled to reimbursement for the private at-home program and placement for the 2024-2025 school year?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

CVI

1. CVI is a complex neurological condition that leads to some degree of vision loss. An individual with CVI does not necessarily have a physical impairment of eye function. Instead, CVI is the result of brain-based interpretation of visual data as it is processed by the brain. (School Exhibit ["S"] – 1; Notes of Testimony ["NT"] at 70-215, 413-541, 1350-1383, 1468-1567).
2. Specifically, CVI is diagnosed when (1) an eye exam cannot explain the visual impairment, (2) a neurological condition is present, and (3)

certain behavior manifestations (tantrums, anxiety), often related to expressive communication needs, are present. (NT at 1468-1567).

3. The student has been diagnosed with CVI, [redacted], global developmental delay, [redacted], among other diagnoses. (S-9, S-16; NT at 70-215, 221-282).
4. An instrument known as the CVI Range is the standard assessment to understand the level of functioning for a student with CVI. (NT at 413-541, 1468-1567).
5. The CVI Range is an assessment where a student with CVI is assessed across ten criteria visual/behavior criteria: color preference, need for movement in visual field, visual latency (delayed response), preferred visual field, difficulty with visual complexity, difficulty with visual novelty, individual response/requirement regarding light, difficulty with viewing at distance, disconnect of vision and reaching, atypical visual reflexes (lack of protective blinking). (S-1, 1468-1567).
6. Based on observational rating across these criteria, a student with CVI is scored cumulatively with a score of 0-10, with a score of 0 indicating little or no visual function and a score of 10 indicating near-complete visual function. Scores at 0-3 are (phase I) involve peripheral vision—automatic, low-acuity vision geared to light, movement, objects, utilized primarily as safety vision for reaction. Scores at 3-7 (phase II)

involve eye-to-object vision—conscious vision for accessing details.

Scores 7-10 (phase III), where “10” is a theoretical construct because the VCI will not allow entirely complete vision, involves deepening and expanding vision skills by adding novelty (new environments, new objects, new materials) and complexity to visual tasks. (NT at 413-541, 1468-1567).

7. The CVI Range should be conducted yearly, according to the parents’ expert witness, and over time, one hopes to see improvement in the CVI Range score. As a student moves from phase II to phase III, splinter skills may emerge where a student begins to exhibit areas of visual strength. (NT at 413-541, 1468-1567).
8. On a CVI Range assessment conducted by a private provider in December 2022, the student scored a 6.75, at the high end of phase II and “considered just at the beginning of Phase III”. (S-1 at page 1).
9. This CVI Range at phase II was adopted by subsequent evaluators. In January 2024, a teacher of the visually impaired working with the student scored the CVI Range for the student at 5.5-5.75. At the same time, a private evaluator obtained “similar CVI range scores of 5.0”. (S-2 at page 1, S-6 at page 6, S-7 at page 8, S-9 at page 10)
10. The January 2024 CVI Range scores are the most recent scores on this record, and the District adopted the indication that the student

was at phase II of the CVI Range. (S-16 at pages 11, 53-54; NT at 413-541).

11. Early Intervention The student attended early intervention programming through the local intermediate unit ("IU"). (S-6, S-9; NT at 70-215, 221-282, 1213-1342).
12. The student's placement was at a local, specialized school for the blind. (NT at 70-215, 221-282, 1213-1342, 1350-1383, 1663-1739).
13. The student's parents were concerned about regression in the student's behavior and affect, especially tantrums, [redacted] (which had been largely controlled to that point), emergent self-injurious behavior, and avoidance of swimming/water play at the school (a highly preferred activity). (NT at 70-215, 221-282).
14. A CVI specialist and teacher at the school for the blind who worked directly with the student (and who, by the time she testified at the hearing, was serving as the superintendent of the school) testified that the services for the student at the school for the blind were problematic in some respects. (NT at 1350-1383, 1755-1854).
15. By March 2024, the parents decided to have the student stop attending the school for the blind to begin education through an at-

home program of private services, housed in the family's residence.
(NT at 70-215, 221-282).

16. In May 2024, the parents and the IU entered into a settlement agreement for the private provision of services to the student over the period May-August 2024. (S-10 at pages 2-5).

School-Age Programming

17. In December 2023, while the student was still attending the school for the blind through the IU, the parents reached out to the District about potential programming, voicing dissatisfaction with the IU programming at the school for the blind and inquiring whether the District might establish a "pilot classroom" based on the evaluations and programming recommendations of private providers. The District responded that once the student was registered in the District, it would initiate its early intervention transition process for the upcoming 2024-2025 school year. (S-41; NT at 70-215, 744-849, 1213-1342).
18. In January 2024, the parents retained an educational consultant to assist them with advocacy regarding the student's programming.
(NT at 992-1095).
19. By late May 2024, the student was formally registered with the District. (S-11, S-42; NT at 70-215).

20. After a student formally registers with the District, the District's process for transition from early intervention normally includes communication/collaboration with the IU (or other early intervention provider) for information-gathering, an intake meeting between parents and the District's early intervention coordinator, and obtaining consent from parents for a District evaluation process. (S-45 at pages 96-97, S-46 at pages 20-24; NT at 1213-1342).
21. Parents wished to bypass the transition process by avoiding a District evaluation and contacted the District superintendent directly. Initially, the superintendent indicated that he felt an evaluation based on a review of records would suffice, and the superintendent communicated directly with the family's educational consultant; eventually, the superintendent indicated that he was placing the matter in the hands of the District employees, utilizing standard District procedures for transition from early intervention. (S-44 at pages 24-25, S-45 at pages 96-97, S-46 at pages 20-24; NT at 70-215, 744-849, 992-1095, 1213-1342).⁴

⁴ At some point in the summer of 2024, the superintendent accepted a new position and was no longer a part of District administration.

22. Ultimately, parents participated in the District's transition process for the student. (S-21; S-39; NT at 70-215, 221-282, 1213-1342).
23. In mid-June 2024, the District sought permission to evaluate the student. Parents did not provide permission
24. In late June 2024, the parents, the parents' advocate, District administrators, District counsel, and the parents' expert participated in a videoconference to discuss the District's approach to evaluating the student. (S-46 at page 319, 349, 389, 467; NT at 744-849).
25. The student's multi-disciplinary team, including District participants, agreed to the parents' preference that the student should be largely a record-review and consultations with providers, along with virtual observations utilizing videoconference technology. Parents returned permission for the evaluation in mid-July 2024. (P-83; S-12; S-46 at page 535, 586-587).
26. In July 2024, the District educators, along with IU educators who were participating in the evaluation process, met via videoconference to discuss the results of the evaluation process as those results were being developed. Potential placement options for the student, both in the District and outside the District, were discussed at that meeting so that the District understood the options available for discussion at the

initial multi-disciplinary team or individualized education program (“IEP”) team meetings. Parents were not included in the meeting with school personnel. (NT at 547-618, 744-849, 1213-1342).

27. District special education administrators testified that such meetings are commonplace as part of the early intervention transition process because such students are entirely new to the District and educators attempt to share information to concretize understandings, prior to the initial multi-disciplinary team or IEP team meetings. The school-based members of the team also confirm that their content is in the report and that it is accurate. (NT at 623-739, 744-849, 1213-1342).

28. An IU orientation and mobility (“O&M”) specialist, who was part of those teams and was included in the July 2024 meeting, testified that she felt the discussions at that meeting, without parents being present, was not appropriate. (NT at 547-618).

29. In mid-August 2024, the District issued the evaluation report (“ER”). (S-16; NT at 288-386).⁵

⁵ The date of the ER was August 12, 2025. (S-14). At the subsequent IEP meeting, the section of the ER outlining the student’s needs was revised to change “scanning in lower fields” to “looking forward during route travel”. (S-14 at page 91, S-16 at page 91). The District re-issued the ER on August 26, 2024 with this revision. (S-16). The ER dated August 26th is used for fact-finding.

30. The August 2024 ER contained parent input and information from past evaluations. The August 2024 ER also included summaries of records review by District and IU specialists, including a S&L therapist, an occupational therapist, a physical therapist, a teacher of the visually impaired, and an O&M specialist. (S-16 at pages 2-67).
31. The August 2024 ER contained progress information from December 2023 at the school for the blind which the student attended for early intervention. (S-16 at pages 67-69).
32. The August 2024 ER contained updated information gathered by District and IU specialists who gathered information from “observations and consultations with current therapy providers”. (S-16 at page 71).
33. Parents did not consent to having the District and IU specialists observe the student in person during the at-home program. The parents consented to allowing a virtual observation, utilizing a videoconference platform, by an assortment of specialists and an in-person observation by the District school psychologist at a summer day camp which the student attended. (S-16 at pages 71-73, 79-81, 83-87, 89-90; NT at 70-215, 221-282, 288-386, 413-541, 547-618, 623-739).

34. The August 2024 ER contained input from the student's private providers, gathered from conversations/consultations each had with District and IU specialists. (S-16 at pages 82, 85, 86, 88).⁶
35. The August 2024 ER contained limited assessment data. The student's mother completed behavior scales and adaptive behavior scales. (S-16 at pages 73-77).
36. The August 2024 ER identified the student with an other health impairment, vision impairment, and S&L impairment. (S-16 at page 91).
37. The August 2024 ER identified the following student strengths:
- With CVI modifications and highly motivating materials, (the student's) latency is reduced
 - (The student) is using 3D target for transition
 - Tolerates support during self-care skills/ feeding more independent
 - More independence in motivating self-help needs
 - Happy to be in school
 - More interaction near peers
 - Explore of new toys given CVI accommodations
 - More willing to try new things
 - Emerging sound imitation
 - Recognizes familiar items in photographs Anticipates communication exchanges
 - Demonstrates communicative intent
 - Visually observant of materials and people
 - Explores materials visually and tactually

⁶ The student does not have a teacher of the visually impaired providing services in the at-home program. Therefore, the IU teacher of the visually impaired did not have a colleague to consult. The IU teacher reached out to the parents' CVI expert, but the expert simply referred the teacher to prior evaluations from 2022 and 2023. (NT at 413-541; S-1, S-2, S-4).

- Accurately touches icons on (the) (alternative augmentative communication) device that are real, familiar pictures
- Looks while reaching with consistency
- Makes choices with familiar activities and materials
- Visually observant
- Curious about new environments
- Loves to move around and explore
- Near scanning of familiar environments and objects
- Transitions/transfers from various positions independently (S-16 at page 91).

38. The August 2024 ER identified the following student needs:

- Increased independence in adaptive living skills
- To develop functional early academic skills (letter/number knowledge, colors, shapes)
- Increased communicative functions using (a) (speech-generating device)
- Increased engagement with peers and adults
- Increased understanding of embedded directions
- Improve functional communication skills using multi-modalities
- Increased tolerance of complexity of array (tolerating more visual clutter in a systematic approach)
- Systematic scanning approach
- Distance scanning to locate targets (O/M)
- Looking forward during route travel (O/M)
- Improve functional gross motor skills
- Improve functional fine motor skills
- Improve independence with self-help tasks
- Accommodations for sensory processing (S-16 at page 91).

39. The August 2024 ER contained a summary of the various areas of student need in light of programming, including specific instructional and therapeutic recommendations— psychoeducational identification (other health impairment), S&L, vision, O&M, occupational therapy (“OT”), physical therapy (“PT”), and nursing. (S-16 at pages 91-95).

40. In late August 2024, the student's IEP team met to discuss the student's IEP. (S-13, S-15).
41. The August 2024 IEP indicated the special considerations that were necessary, given the student's needs in the educational environment, including vision impairment, communication needs, and the need for assistive technology. (S-15 at page 5).
42. The August 2024 IEP included an emergency care plan for the student's [redacted] disorder (both millisecond [redacted] lasting more than 30 seconds). (S-15 at page 6).
43. The August 2024 IEP included present levels of academic achievement and functional performance, taken from the August 2024 ER. (S-15 at pages 7-31).
44. The August 2024 IEP included a comprehensive list of parents' concerns, shared at the meeting:
- Parent advocate referenced the observation of (the student) trying to climb in the water tables at camp as an example of safety concerns.
 - Parent advocate said the parents see lack of peer interactions and want (the student) to be around other kids to develop peer interaction skills.
 - Parents stated that the psychological input summarized in the RR is consistent with what they see at home.
 - Parents stated the nursing input summarized in the RR is accurate.
 - Parents did not have any questions/concerns about the speech and language input.

- Parents did not have any questions/concerns about the vision input.
- With regards to the O&M input, the parent advocate stated vision is a big piece of safety in a new environment, and that there are layers of complexity when supporting (the student's) needs.
- Parent shared that the OT skills have been slowly evolving, and that they are constantly experimenting with sensory regulation strategies/tools. Recently, it was shared, the use of an ice pack was introduced to see if that was a tool that might support (the student's) regulation. Parent stated that (the student) requires sensory regulation tools/strategies about 60-70% of (the) day to help (the student) to sit and regulate.
- Parents did not have any PT questions regarding PT input but shared that the PT services (the student) receives are multifaceted including stretching/reflex integration/neurostimulation to support crossing the midline, balance, and coordination. It was also shared that when
- considering (the student's) gross motor development and skills, it is hard to know if related to developmental delays and/or epilepsy.
- Parent shared that there is no known cause for (the student's) epilepsy.
- It was shared that presently the OT/PT/O&M therapists work collaboratively to support (the student's) safety with walking and using the stairs.
- Parent referenced an example of (the student's) vision being inconsistent. It was shared that 2 days ago, (the student) walked into doors in (the) home that (the student) has been aware of before.
- With regards to PT, parent shared they have implemented braces, massaging, and pressure but are unsure what (the student) experiences because (the student) does not have verbal output to communicate it.
- It was shared that supporting (the student) is not a linear process because some days vision may become more involved than others.
- With regards to priorities for (the student's) education, the parent advocate stated that keeping (the student) moving and regulated in a safe manner are of great importance.
- The parent advocate inquired why (multiple disabilities) was not included as eligibility.

- The parent advocate stated that (the parents' expert) has said that the importance of (the student's) environment and totality of all of the input over (the student's) day is taxing and needs to be considered carefully. For example, if a person working with (the student) is wearing a visually stimulating shirt, this may throw (the student) off. It was said these types of situations are what lead to (the student's) performance being inconsistent.
- With regards to a goal for seeking out (the communication) device, parent shared that (the student's) difficulties are related to being in constant motion. It was shared that (the student) requires two adults to support (the student) with the device, one being to prompt, and the other to work on the device with (the student). Visually (the student) can start at an icon but doesn't follow through on the point due to vision. It is hard for (the student) to visually attend and discriminate. Parent shared they have purchased several devices to have in many locations in the home so to make the communication device more available to (the student). It was also shared that (the student) likes the auditory output.
- In settings with peers, it was stated that (the student) experiences too many distractions that impact (the) use of the device.
- Parent stated importance of using real life visuals.
- With regards to O&M, parent shared (the student) lacks lower vision fields and having (the student) focus on looking down puts (the student) at risk of being unsafe.
- Parent shared that when (the student) is moving to another area requiring distance scanning, they break down the process by having (the student) focus on reaching sights along the way and then moving to the next sight. When the goal is terminated, they provide (the student) with feedback.
- At home, (the student) knows all of the stairs. When walking down, (the student) holds the balusters, and when walking up (the student) puts (a) hand on the stairs or wall.
- At (the school for the blind), parent reported they would have (the student) push a child-sized shopping cart with the use of a cane to work on distance walking through the hallway. They focused on (the student) looking forward not down for safety reasons.

- At home, (the student) sometimes trips on near objects but then can navigate to reach a motivating item, such as a preferred food.
- At home, the family uses Bubble Guppies to help (the student) orient to the desired location. This helps to motivate (the student) to lift (the student's) head up when transitioning to locations.
- At home, parent reported that (the student) is able to pick up a toy and walk up the stairs.
- With regards to fine motor skills, parents report that when eating pretzels, (the student) will grab with a full fist, but when eating Lucky Charms, (the student) can discriminate and pick up just the marshmallow pieces. Parents think (the student) would benefit from learning how to use
- utensils but shared that at home (the student) eats mostly finger food. Parents shared that using a fork involves visual complexity.
- With don/doff (a) coat, parent asked if identifying (the student's) coat is part of the criteria for the goal.
- When discussing educational programming and placement, parent/advocate shared thoughts about creating a program where (the student) can receive...academics in a structured 1-1 environment at home for (the) morning hours, and then attending an afternoon program that
- would focus on peer interaction/socialization such as a lunch bunch for an hour. Parents stated they want their own team members involved directly in (the student's) services.

(S-15 at pages 32-33).

45. The August 2024 IEP contained a summary of how the student's disabilities impact the student in the educational environment and detailed the student's strengths and needs from the August 2024 ER.
(S-15 at pages 34-36).

46. The August 2024 IEP contained fifteen goals, most utilizing CVI accommodations, including an adaptive living skills goal (attending and responding), an early academic skills (letter/number knowledge,

colors, shapes), four S&L goals(both seeking out, and utilizing, speech-generating device; expressive and receptive communication with adults/peers; improve requesting/commenting/labeling), two vision goals (increased tolerance of complex array; systematic scanning of an array), two O&M goals (locating targets at distance; forward-looking route travel), two PT goals (descending stairs, kicking a ball), and three OT goals (grasp, don/doff clothing, use of eating utensils). (S-15 at pages 44-68).

47. The August 2024 IEP included specially-designed instruction, modifications, and accommodations in various areas, including general support and safety, an assistive technology evaluation within six weeks of the student entering a new educational setting, S&L, educational/academic support, O&M, nursing services, and vision support. (S-15 at pages 69-81).

48. Related services in the August 2024 IEP included vision support, S&L, PT, OT, O&M, as well as harnessed transportation with a bus aide, and a 1:1 aide daily throughout the school day. (S-15 at page 82).

49. In the August 2024 IEP, the IEP indicated that no supplementary aids/services were rejected, but that “the (student’s) needs exceed the supports available within the District” although the IEP stated that the student could “participate/have access to extracurricular activities

within the District....(with a District representative), in collaboration with the (the student's) family... can review and determine what appropriate extra-curricular activity the student will participate (in)". (S-15 at pages 86-87).

50. In the August 2024 IEP, where the IEP explains the extent to which the student will not participate with regular education students in a regular education setting, the IEP states:

"(The student) requires an intensive, systematic daily program that addresses complex needs (vision, communication, physical, educational) and requires access to consistent, daily integrated therapies (Vision, [S&L], OT, PT, O&M) and techniques with a supportive infrastructure and environment that is designed for accessibility (vision, academic, communication, social, physical) and provides efficient access to specialized staff, equipment, resources, and materials for ongoing diagnostic intervention. This needed level of intensity facilitates ongoing determination of strengths/needs and skills sets across all areas, while facilitating development of needed foundational skills across all domains. Due to the level of (the student's) needs, the IEP determined that (the student's) programming needs exceed the supports available in the (District) and would be met through programming in an out of district placement." (S-15 at page 87).

51. The August 2024 IEP indicated that parents would be provided with release forms to provide information to potential placements outside the District. "Upon receipt of consent to release records, referrals will be sent for consideration. The IEP will be revised to update placement upon acceptance." (S-15 at page 87).

52. In the August 2024 IEP, specific information as to the identity of a school building or the percentage of the school day that the student would spend in regular education settings were not completed. (S-15 at pages 88-89).

At-Home Program

53. In March 2024, after the student stopped attending the IU's early intervention program at the school for the blind, the parents worked with private providers to educate the student at home, at the family's residence. (NT at 70-215, 221-282, 860-963).

54. At some point in the late summer of 2024, the parents arranged for the student's programming to be delivered at a nearby [redacted], renting space in the building and adapting it for the student's program through September 2024. The student began to receive the at-home program at the site in early October 2024. (NT at 70-215, 221-282, 860-963).⁷

55. The at-home program consists of daily instruction by a special education teacher, from 9 AM to 1 PM over Monday-Friday. The student is supported all day on alternate days by a registered behavior technician (9 AM to 3 PM) and the behavior specialist (9 AM to 2 PM). (P-60, P-65, P-76; NT at 1103-1200).

⁷ Nothing in the record indicates on any level that the student receives [redacted] education as part of the at-home programming. The arrangement between the parents and the entity is entirely transactional.

56. Other supports include a consultation with the parents' expert witness or that witness's professional group (approximately 1 hour weekly), consultation with a specialized out-of-state school (approximately 1 hour weekly), behavior specialist (3 hours weekly), S&L and assistive technology (2 hours weekly), OT (2 hours weekly), O&M (1 hour weekly), PT (1 hour weekly). (P-63; NT at 1103-1200).⁸

57. The at-home program does not include direct vision support. Parents' expert and the out-of-state school provide recommendations for accommodations for implementation of the student's vision services by the special education teacher and other at-home team members. These professionals provide consultation at weekly meetings of the private provider group. (NT at 413-541, 860-963, 1103-1200, 1468-1567).

⁸ The hours detailed in this finding of fact are based on the testimony of the at-home special education teacher who provides the most direct instruction to the student and spends the most time with the student on a day-to-day basis. Therefore, her sense of the time spent by other professionals with the student would be the most comprehensive. She was also a highly credible witness whose testimony was accorded heavy weight.

The behavior specialist also serves as a coordinator of services in the at-home program, scheduling meetings of the at-home program providers. When the at-home program began to unfold at the site in October 2024, this witness put together a schedule of services. (P-60 at page 5). The entirety of the record on the nature and amount of services, between the direct testimony of the educators/service providers and the documentary evidence, leads to a conclusion that the schedule of services has changed markedly since October 2024, when the at-home program at the site had only just begun.

Finally, there has been a degree of turnover in the professionals working with the student, leading to intermittent staffing. At times, there has been a merging of duties or certain services not being provided as new providers were arranged. Thus, an absolutely precise sense of the services being provided at any one time cannot be determined. Again, though, the special education teacher's testimony provides the surest guide in this regard.

58. The student works with a behavior specialist through a positive behavior support plan that addresses tantrums, aggression, and self-injurious behaviors. (P-60, P-76; NT at 860-963).
59. The student receives O&M services as part of the at-home program. These services are largely community-based, at playgrounds and retail stores, working on the student's ability to exit a vehicle, navigate an environment, and engage in peer interaction. (P-26, P-28, P-76; NT at 1390-1455).
60. The student receives S&L services as part of the at-home program. These services are provided by a S&L therapist who specializes in complex speech needs. The therapist also provides *ad hoc* support for the student's assistive technology. (P-62; S-23; NT at 1574-1659).
61. The student receives OT services as part of the at-home program. These services are provided by a occupational therapist who has been the longest-serving private provider, working with the student since 2022. (P-45; NT at 1663-1739).
62. The team of private providers in the at-home program meet monthly to discuss the student's status, progress, and potential need for revisions to programming. (NT at 1103-1200).
63. The student's at-home program includes specially-designed instruction, modifications, and accommodations. The student's plan

includes fifteen explicit goals, including goals in pre-academic skills, play skills, engaging environments, S&L, behavior, OT, O&M, and PT. The student made progress across these goals areas. (P-76; NT at 1103-1200).

Proposed Placement Process

64. At the late August 2024 IEP team meeting, the team discussed potential placements, including potential placements at specialized schools outside of the District. (NT at 788-849).
65. Although the District understood the complexities of the student's needs, and recognized that the student would require highly specialized programming, the District did not predetermine or decide upon any placement prior to the August 2024 IEP meeting. (NT at 788-849).
66. At the end of the August 2024 IEP meeting, the District special education administrator at the meeting indicated that the District was interested in exploring a specialized out-of-District placement. The process would include seeking parents' consent to share information about the student with potential placements and arranging a tour of the placements. (NT at 788-849).
67. Contemporaneously with the August 2024 IEP meeting, the District issued a notice of recommended educational placement

("NOREP") recommending "full-time learning support, speech and language support, and vision support in an out of district placement that provides a highly structured program with staff trained to address (the student's) complex needs.". (S-17, S-18).

68. The August 2024 NOREP rejected a regular education placement and the provision of services in the District, as those placements, respectively, would not "allow for meaningful progress towards (the student's) goals" and the student's needs "exceed the supports available in the (District) and would be met through programming in an out of district placement". (S-17, S-18).

69. The August 2024 NOREP also listed as a rejected placement a specialized out-of-District, with the indication "This option is not rejected. The District recommends placement options to meet (the student's) needs and has initiated the referral process". (S-17, S-18).

70. The District provided releases to the parents to obtain consent for the District to communicate with two potential placements. The parents rejected the August 2024 NOREP and did not provide consent to allow for the District to reach out to potential placements. (NT at 744-849).

71. One of the potential placements was the school for the blind which the student attended as part of the IU's early intervention

programming. (NT at 70-215, 221-282, 744-849, 1350-1383, 1755-1854).

72. The superintendent of the school for the blind, who had consulted with parents and had worked on programming for the student when the student attended the early intervention program, testified that the school for the blind could implement the August 2024 IEP. (S-15; NT at 1350-1383, 1755-1854).

73. Based on her previous experience with the family, the superintendent of the school for the blind informed the District that it would not be interested in accepting the student because the school was aware that the parents would not support the placement. (S-27 at pages 1160-1165; NT at 744-849, 1350-1383, 1755-1854).

74. The second potential placement contacted by the District, a different specialized school, never responded to the District's overture. (NT at 744-849).

75. The parents' expert confirmed that the schools/programs she works with would not be available for the student. (NT at 1468-1567).

Credibility of Witnesses

All witnesses testified credibly. The testimony of the District supervisor of special education (NT at 744-849) and the private special education teacher in the at-home program (NT at 1103-1200) were found to be more persuasive than the testimony of other witnesses.

Legal Framework

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17; 22 PA Code §14.102(a)(2)(iv)), the child's special education programming 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 in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (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)).

A necessary aspect of the provision of FAPE requires that the placement of a student with a disability take into account the least restrictive environment (“LRE”) for a student. Educating a student in the LRE requires that the placement of a student with disabilities be supported, to the maximum extent appropriate, in an educational setting as close as possible to regular education, especially affording exposure to non-disabled peers. (34 C.F.R. §300.114(a)(2); 22 PA Code §711.3(b)(11); Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

Further, in considering parents’ claim for reimbursement, long-standing case law and the IDEA provide for the potential for reimbursement to parents 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 parents’ reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

In the three-step Burlington-Carter analysis, the first step is an examination of the school district’s proposed program, or last-operative program, and whether it was reasonably calculated to yield meaningful

education benefit. Step two of the Burlington-Carter analysis involves assessing the appropriateness of the private programming selected by the parents. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties to see if the stance or behavior of either party might impact the remedy.

Discussion & Conclusions

Here, the District will be ordered to reimburse partially the parents for the private at-home program and placement. But this matter is not a straightforward Burlington-Carter reimbursement analysis. There are facts undergirding the result that complicate that analysis and, ultimately, inform the award of reimbursement. In many ways, it is a hard result for both parties—the District may question why any reimbursement is owed, and the parents may question why the reimbursement is only partial. But it is the considered opinion of the hearing officer that partial reimbursement is the necessary result under the very unique facts of this situation.

Various Non-Reimbursement Issues

As an initial matter, there are certain issues which need to be addressed prior to an examination of the reimbursement analysis.

LRE. Considerations of the LRE do not play a significant role in the determination of an appropriate program and placement for the student. The

complexities of the student's needs, and the nature of appropriate programming in light of those needs, blunt an in-depth consideration of LRE as a guiding principle for the student's educational planning. The private at-home program and placement are highly restrictive. In their concerns for the student's education, the parents voiced that they seek peer interaction as part of a program/placement, but those opportunities are in their hands for the at-home program which, by its very nature, is highly restrictive. So, too, are the program and placement—a specialized school for children with blindness or other significant visual impairment— proposed by the District. In that way, LRE is not an overriding element of determining the appropriateness of either the parties' programs/placements.

Superintendent & Evaluation Process. In a similar way as an initial matter, the District was not bound by the representations of the District's then-superintendent regarding a potential evaluation process as the student transitioned from early intervention. It is not imputed to the parents that they should have known that the superintendent's representations were something they could not rely upon. But the structure and requirements of IDEA mandate the necessity of explicit, written permission from parents before an evaluation can take place, including prior notice of the nature and reason for the evaluation. Put simply, conversations and email exchanges, even with the highest-ranking school district administrator, cannot take the place of this formalized notice-and-consent process. Again, this is not

directed at the parents, who relied on such conversations and emails to formulate their expectations for the early intervention transition process at the District. But the superintendent's conduct in raising those expectations was misguided.

July Meeting of Educators. The July 2024 meeting of the District and IU educators was not a procedural violation of FAPE and did not interfere with the parents' participation in the evaluation or IEP processes. The evidence, especially the testimony of the District special education witnesses, is persuasive that the meeting was of a type that regularly occurs in the course of the helping the District to understand students new to the District through the early intervention process. The late confirmation of the student's registration (in May 2024), the unusual evaluation processes, the complexity of the student's needs, and a budding sense that the complexity of those needs might necessitate thinking about a wide range of options for the student's program/placement further informed the background of the District's meeting. Most importantly, the meeting was clearly geared to information-sharing and not decision-making.

Admittedly, the IU O&M provider felt that the conversation among the educators was not appropriate. But, on balance, the meeting and the nature of the conversation was not out of the ordinary, was understandable, and was not problematic from the perspective of the District's special education obligations to the student and parents.

Proposed Placement Process. There was no denial of FAPE in the District's handling of the August 2024 IEP and NOREP processes. The District was clearly proceeding in a measured, incremental way in the pursuit of potential placements outside of the District. No one from any outside placement was present at the IEP meeting because the team was discussing the IEP and potential placements. Certainly, the District held the view that the student required a wide assortment of finely-tuned services by particular specialists (a view held by the parents), services that it could not provide in an appropriate placement at the District. But that placement process would unfold through stages, with an approach to various placements, sharing of information with parents' consent, touring facilities, and looking for the appropriateness of the intersection between student, program, and placement. As with the July 2024 meeting, the District's handling of the placement process in August 2024 was not problematic from the perspective of the District's special education obligations to the student and parents.

Reimbursement Analysis

Step one of the Burlington-Carter analysis focuses on the school district's programming (whether implemented or proposed). Here, the August 2024 IEP, to be implemented in a specialized placement, is reasonably calculated to yield meaningful education benefit in the form of significant learning based on the student's unique needs. .

To understand the student's achievement and functional performance, the IEP contains voluminous content from the prior private evaluations and the District's evaluations (including input from the student's private providers). The goals address the student's wide-ranging needs, and the specially-designed instruction, modifications, and accommodations would allow for the student to access appropriate instruction and services. And the District was working to arrange a specialized placement where that programming could be delivered.

Normally, where step one of the Burlington-Carter analysis determines that the school district program is appropriate, there is no need to proceed further—the school district has met its IDEA obligations to the student, and there is no need to gauge the appropriateness of the parents' private program at step two of the analysis. Based on the unique facts of this matter, and the ultimate resolution residing at step three of the Burlington-Carter analysis, the analysis must proceed to step two.

At step two of the Burlington-Carter analysis, the student's at-home program is appropriate. Like the District's proposed program, the student receives instruction and services that are goal-driven and are geared to the student's complex needs. Most importantly, the student's at-home program, as implemented, is yielding meaningful education benefit in the form of significant learning based on the student's unique needs.

Step three of the Burlington-Carter analysis involves balancing the equities between the parties. This balancing of the equities is the crux of the decision between the parties. The critical equitable factor on which the result of this decision hinges is the stance of the school for the blind, the only viable placement option given the student's needs and the District's efforts.

The District met its obligations to the student by proposing an appropriate program and seeking out an appropriate placement, indeed the only placement available, given the complexity of the student's needs. In effect, the District has put itself in a position to offer FAPE to the student but has been stymied by the action of a third party. Ordering reimbursement, then, under the Burlington-Carter analysis would seem to be manifestly unfair to the District, which met its obligations to the student at step one.

Denying reimbursement to the parents, though, is equally unfair. The actions of a third party have interfered not only with the District's ability to provide FAPE, but it would seem to be manifestly unfair to the parents to have them shoulder the cost of an at-home program because the District cannot provide a program. And the parents' hesitancy about placement at the school for the blind is legitimate. Notwithstanding the finding that the District's proposed IEP, to be implemented at a specialized placement, is appropriate, there are significant strands in the record that make the parents' resistance to the school for the blind understandable.

To award reimbursement is unfair to one party. To deny reimbursement is unfair to the other party. It is the considered opinion of this hearing officer, then, that the situation is perfectly suited for a result where parents should be awarded 50% reimbursement. The order below will be fashioned accordingly.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Lower Merion School District ("District") shall reimburse the parents, at a rate of 50%, for the provision of private services for the student's 2024-2025 school year, including the summer of 2025. The services for reimbursement shall include special education, behavior support (both through a specialist and aides), vision, speech & language, occupational therapy, orientation & mobility, and physical therapy. The reimbursement shall include the meetings of the at-home education team.

The basis for reimbursement shall be documented by parents' proof of payment. Within 45 days of the date of this order, parents' counsel shall provide to school district counsel the proofs of payment for the renovation/preparation of the site or for any of the services above. Within 45 days of the date of the submission of the parents' proofs of payment, the District shall process the reimbursement.

The student's pendent placement shall be the at-home program, with reimbursement to the parents, at a rate of 50%, for the provision of private services as listed above.

Nothing in this order should be read to limit the ability of the parties to agree otherwise as to the provisions of this order, provided that the agreement between the parties is in writing.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ *Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire
Special Education Hearing Officer

07/09/2025