

*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. 31817-25-26**

**Child's Name:**

E.F.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Local Education Agency:**

Upper Merion Area School District  
450 Crossfield Road  
King of Prussia, PA 19406

**Counsel for the LEA:**

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980 Jolly Road  
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**Hearing Officer:**

James Gerl, CHO

**Date of Decision:**

January 12, 2026

## **BACKGROUND**

The parents filed a due process complaint seeking compensatory education from September 8, 2023 to the end of the 2024 – 2025 school year and seeking reimbursement for unilateral placement of the student in a private school from February of 2025 to the end of the 2025 – 2026 school year. The school district contends that it did not violate IDEA and that no relief be awarded to the parents. I find in favor of the parents with regard to the issue of whether the school district failed to implement material provisions of the student’s IEP by removing the student from direct instruction in reading in the learning support setting in order to provide occupational therapy services for the first six weeks of the 2024 – 2025 school year. I find in favor of the school district with regard to all other issues raised by the instant due process complaint.

## **PROCEDURAL HISTORY**

The parties to this case did an excellent job of stipulating to facts that are not in dispute. The parties stipulated to 63 specific and detailed facts. Because of the parties’ diligence in agreeing to stipulations of fact, we were able to focus upon the facts that are in dispute during the due process hearing. As a result, the time necessary for the hearing was shortened and the decisional process was completed more quickly.

The due process hearing was completed in one efficient virtual session. Seven witnesses testified during the due process hearing. Parents’ exhibits P-1 through P-20 and P-22 through P-88 were admitted into evidence. Exhibit P-21 was withdrawn. School district exhibits S-1 – S-12 were admitted into evidence at the hearing.

After the hearing, each party 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 convened in this case, presents the following issues:

1. Whether the parents have proven that the school district violated IDEA by not providing a Permission to Reevaluate form to the parents within 10 days of the parents' request for an evaluation?
2. Whether the parents have proven that the school district violated IDEA by failing to implement the material provisions of the student's IEP?
3. Whether the parents have proven that the school district denied a free and appropriate public education to the student? and

4. Whether the parents have proven that the school district should be ordered to reimburse them for a unilateral placement of the student in a private school from February of 2025 through the end of the 2025 school year?

### **FINDINGS OF FACT**

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

1. The student's date of birth is [redacted].
2. The student lives with the student's parents at a residence within the boundaries of the school district.
3. The school district was and remains the student's local education agency for the period of time relevant to this complaint.
4. The student has a [diagnosis] It is a lifelong condition. The student receives ongoing medical treatment for this condition.
5. The student is currently eligible for special education supports and services under the IDEA pursuant to classifications of Other Health Impairment and Specific Learning Disability.
6. The student was [redacted] school year.
7. The student enrolled in the district for [redacted] grade in the 2021 – 2022 school year at an elementary school starting on January 3, 2022. The student attended the elementary school for part of (sic) [redacted] grades.
8. The district issued an initial Permission to Evaluate on January 11, 2022 and the student's initial evaluation report was completed on March 11, 2022. The evaluation report (ER) found the student eligible under Specific Learning Disability in the areas of reading, writing, and math.

9. A functional vision assessment was completed on March 4, 2022 and concluded that the student did not require vision support at that time.

10. The student's initial IEP dated April 4, 2022 provided the following:

- a. 30 minutes small group direct instruction in reading in the learning support classroom daily;
- b. 20 minutes phonemic awareness instruction in the learning support classroom daily;
- c. 45 minutes math instruction in the learning support classroom on a daily [basis];
- d. IEP goals including:
  - i. One-minute timed Nonsense Word Fluency, goal of 55 words, baseline 13 words
  - ii. High frequency sight words, goal of 50 words, baseline 2 words
  - iii. One-minute timed number identification, numbers 0-20, goal of 45 numbers, baseline of 26
  - iv. One-minute timed addition and subtraction, numbers 0-10, goal of 15 problems, baseline of 2
- e. One-time occupational therapy screening;.
- f. Various other specially designed instruction (SDI) to address attention, academic needs, [redacted], classroom – parent communication, and organization support.

11. The student's IEP was revised on June 2, 2022 to add the following occupational therapy services:

- a. Goal: Fine motor task with functional visual – motor integration skills, drawing shapes, numbers, letters.
- b. Occupational therapy: 1x/week, 30 minutes/session.

12. The student’s IEP was revised on June 13, 2022 to add an assessment of Visual Perceptual Skills.

13. The student’s IEP was revised on October 28, 2022 to revise the following occupational therapy services:

- a. Goal: Removed previous goal, replaced with: Copy, dictation, and composition multi-sentence level samples.
- b. Occupational therapy: 2x/week, 30 minutes/session

14. An annual IEP was drafted on March 22, 2023. That IEP provided the student with *inter alia*:

- a. 30 minutes small group direct instruction in reading in the learning support classroom daily;
- b. 30 minutes writing instruction in the learning support classroom daily;
- c. 10 minutes phonemic awareness instruction in the learning support classroom daily;
- d. 40 minutes math instruction in the learning support classroom daily;
- e. IEP goals including:
  - i. One-minute timed 1st grade level, 87 words correct per minutes, baseline of 34
  - ii. High Frequency Words, 250 words, baseline of 127
  - iii. One-minute timed addition and subtraction, numbers 0-10

- iv. Copy, dictation, and composition multi-sentence level samples.
- v. Writing prompt, write 4 or more sentences on given topic.
- f. Occupational therapy: Twice per week, 30 minutes per session, individual;
- g. Following consideration of private vision assessments, the IEP provided SDI to assist with reminders for the student to wear glasses, reminders to use a finger as a guide when reading, colored visual cues, and opportunities to (sic) trial assistive technology to support the student;
- h. Various other SDI to address attention, academic needs, [redacted], classroom-parent communication, and organization support.

15. On March 26, 2023, the parents signed and approved the March 22, 2023 IEP via a Notice of Recommended Educational Placement dated March 22, 2023.

#### 2023 – 2024 School Year

16. The Trimester Marking Period Schedule for the 2023 – 2024 school year was as follows:

- a. MP 1: August 28, 2023 – November 15, 2023 (54 student instructional days)
- b. MP 2: November 16, 2023 – March 6, 2024 (67 student instructional days)
- c. MP 3: March 7, 2024 – June 11, 2024 (60 student instructional days)

17. On February 28, 2024, the student's IEP was revised to reflect:
  - a. Updated present levels of academic functioning.
  - b. Extended School Year eligibility due to concerns with regression and recoupment following extended breaks and a proposed ESY program for the summer of 2024.
  
18. The IEP team met on March 7, 2024 to generate the student's new annual IEP. This IEP provided for, *inter alia*:
  - a. 30 minutes daily reading instruction in the learning support room
  - b. 40 minutes daily math instruction in the learning support room
  - c. 30 minutes daily writing instruction in the learning support room
  - d. 30 minutes of occupational therapy, twice a week, individual
  - e. Instruction in phonemic awareness through a research-based program
  - f. Accommodations for local assessments and classroom assessments
  - g. IEP goals including:
    - i. One-minute timed 2nd grade decodable and high frequency words, 49 words
    - ii. One-minute timed 2nd grade reading passage, 100 words per minute.
    - iii. One-minute timed addition and subtraction, numbers 0-10

- iv. Copy, dictation, and composition multi-sentence level samples.
- v. Writing prompt, write 4 or more sentences on given topic.
- vi. Answer inferential and factual questions after reading story at Level I.
- h. Several SDI addressing test accommodations, direct instruction in reading, writing and math, adaptations and accommodations in classwork and homework, writing support, math accommodations, check-insurance to ensure understanding, chunking assignments, support for addition, opportunities for choice, [redacted], daily writing practice, visual supports, and access to AT; and
- i. ESY eligibility for ESY 2004.

19. Parent concerns documented in the March 7, 2024 IEP reflect ongoing changes in the dosage of the student's medication as it had been affecting sleep at night, and possible correlation to the student picking at [student's] forehead, but the parents indicated that was a habit that had been present for some time. In response, the team suggested a [redacted] at the student's seat to provide an alternative for the student's fingers to engage with instead of [student's] forehead.

20. On March 7, 2024, the parents shared with the IEP team a Confidential Report of Neuropsychological Evaluation dated November and December 2023.

- a. The report was conducted by a licensed psychologist and pediatric neuropsychologist from a hospital Metabolic Disease Program "in order to document [student's] current neuropsychological profile and to provide updated

recommendations in the context of ongoing concerns regarding [redacted] visual-perceptual, learning, and attention/executive functioning skills.”

- b. The report contained measures of cognitive skills and achievement assessments, tests of memory, visual-motor integration, visual perceptual skills, fine motor skills, executive functioning skills, attention skills, phonological processing, and behavior.
- c. The report found the student demonstrated a pattern of needs consistent with learning disabilities in reading, writing and math, as well as patterns of difficulties with attention and behavior regulation, and executive functioning skills in line with a recent diagnosis of attention-deficient / hyperactivity disorder (ADHD), combined presentation. The report also noted that, although some controversy exists regarding the label of “non-verbal learning disability” (NVLD), that the student exhibited a discrepancy between verbal and non-verbal skills such that using the NVLD framework could be helpful to understand [student’s] learning style and needs.

21. A NOREP was issued on March 7, 2024 for the IEP of the same date. The parents signed that NOREP, indicating approval of the action/recommendation, on March 22, 2024.

22. The student was eligible for but did not attend the district’s ESY 2024 program. The student attended summer programming at a private school for ESY 2024.

2024 – 2025 School Year

23. The Trimester Marking Period Schedule for the 2024 – 2025 school year was as follows:

- a. MP 1: August 26, 2024 – November 20, 2024 (58 student instructional days)
- b. MP 2: November 21, 2024 – March 5, 2025 (61 student instructional days)
- c. MP 3: March 6, 2025 – June 12, 2025 (62 student instructional days)

24. During the first six weeks of the 2024 – 2025 school year, the student's OT delivered the student's individual OT sessions at the following times:

- a. Week 1: September 9, 2024 and September 13, 2024 at 9:20 a.m. (during scheduled ELA instruction)
- b. Week 2: September 16, 2024 and September 20, 2024 at 9:20 a.m. (during scheduled ELA instruction)
- c. Week 3: September 23, 2024 student was unavailable, September 26, 2024 at 9:20 a.m. (during scheduled ELA instruction), September 27, 2024 at 9:20 a.m. (during scheduled ELA instruction)
- d. Week 4: September 30, 2024 and October 4, 2024 at 9:20 a.m. (during scheduled ELA instruction)
- e. Week 5: October 7, 2024 and October 11, 2024 at 9:20 a.m. (during scheduled ELA instruction)
- f. Week 6: October 14, 2024 and October 18, 2024 at 9:20 a.m. (during scheduled ELA instruction)

- g. Week 7: October 21, 2024 at 9:20 a.m. (during scheduled ELA instruction, and October 25, 2024 at 10:00 a.m. (during scheduled ELA instruction)
- h. Week 8: October 28, 2024 at 9:00 a.m., November 1, 2024 school holiday
- i. Week 9: November 4, 2024 at 12:40, November 8, 2024 at 10:00 a.m.
- j. Week 10: November 11, 2024 at 12:40
- k. Week 11: November 18, 2024: OT out sick, November 21, 2024 student unavailable
- l. Week 12: November 25, 2024 12:40, November 29, 2024 school holiday (scheduled for 9:20 a.m.)
- m. Starting November 25, 2024, through the end of the student's enrollment within the school district, the student's OT sessions occurred Mondays at 12:40 p.m. – 1:10 p.m. and Fridays at 9:20 a.m. – 9:50 a.m.

25. On October 28, 2024, the parents emailed the district with a specific outline of events that had occurred and requests to "rectify the negligence" in the student's provision of FAPE, including the following:

- a. A neuropsychological evaluation to include a review of records, speech, OT, approximately 20 specifically named formal assessments / tests, and a SETT assessment;
- b. Numerous IEP revisions, such as research-based curricula in reading, math, and writing, 1:1 reading instruction with a reading specialist daily for 30 minutes, 1:5 group reading

instruction daily for 30 minutes, revised IEP goals to include updated baselines and instructional levels;

- c. Consideration of private placement for one of seven schools; and
- d. 784 hours of compensatory education, or \$50,960.

26. The district and the parents exchanged emails on November 5 and November 6, 2024, indicating the administrators and case managers would follow up with the family to discuss the content of their email, including the need to schedule an IEP team meeting. On November 6, 2024, the student's case manager and special education teacher emailed the parents offering an IEP team meeting on November 21, 2024 to discuss the range of concerns in the preceding email.

27. The district issued progress monitoring reports at the conclusion of the first marking period on November 20, 2024, reporting the student's progress monitoring data on the student's IEP goals from September, October, and November 2024.

28. The IEP team met on November 21, 2024. The team discussed the parents' requests for IEP revisions as well as the parents' detailed requests for specific tests as part of the upcoming reevaluation report (RR).

29. On November 21, 2024, the parents, via email, requested a complete list of all assessments proposed to be conducted as part of the reevaluation, copies of data discussed in the IEP team meeting, a copy of the student's schedule, and a copy of the IEP revisions.

30. The district sent the parents written IEP revisions on or about November 27, 2024.

31. The 2024 Thanksgiving holiday fell on November 28, 2024.

- a. The district schools and offices were closed on November 28, and 29, 2024.
- b. The district schools and offices were open on November 22, 25, 26, 27, 2024, and December 2, 3, 4, 5, and 6, 2024.

32. On December 3, 2024, the parents emailed the student's special education teacher thanking her for sending them the student's schedule and IEP revisions. The parents stated in the email that they returned a signed signature page in the student's backpack that morning.

33. The district issued a Prior Written Notice for a Reevaluation and Request for Consent form on December 9, 2024. In that document the district proposed the following:

- a. Standardized assessments of cognitive abilities
- b. Standardized assessments of attention and executive functioning
- c. Standardized assessments of academic abilities
- d. Standardized assessments of language abilities
- e. Teacher input
- f. Related service provider input
- g. Nurse input
- h. Parent input / questionnaire
- i. Classroom observation
- j. Student interview

34. On December 11, 2024, the parents emailed the district and acknowledged receipt of the revised IEP from the November 21, 2024 meeting, asked for a NOREP for the November 2024 IEP team meeting, as

well as “details on which specific assessments from the list we requested, will be included in the Reevaluation Report.” It noted that the prior written notice (PWN) referred to “standardized assessments,” but requested that the school psychologist provide them with confirmation of the specific assessments that would be administered through the reevaluation process.

35. On December 13, 2024, the districts school psychologist, replied to the parents’ email, clarifying that the IDEA does not require evaluators to list every specific assessment they may perform in the PWN, as it is not always possible to know which testing instrument may be most appropriate ahead of time. He did share a list of initial thoughts as far as assessments he would perform but reserved the right to modify that based on the student’s presentation and performance. Those assessments included the WISC-V, NEPSY-II, WIAT-4, BASC-3, CASL-2, and one of three measures for executive functioning.

36. On December 15, 2024, the district offered the parents the opportunity to hold an informal meeting to discuss their remaining concerns. That same day, the parents rejected the offer for an informal meeting, sought a NOREP for the revisions, disagreed with the district’s PWN, as it did not list specific assessments, and provided citations to the IDEA and Chapter 14 of the Public School Code regarding NOREPs, IEP implementation, and evaluations.

37. On December 6, 2025, the parents requested mediation through the Office of Dispute Resolution.

38. The district issued a NOREP outlining the revisions from the November 21, 2024 meeting on December 18, 2024.

39. The IEP revisions from the November 21, 2024 IEP team meeting scheduled:

a. Goals

- i. Replacement of one-minute timed addition and subtraction problems, numbers 0-10 with two-minute timed 1st grade computation, scoring 18 points, baseline of 10;
- ii. Added: One-minute timed assessment, orally identifying number that is the larger quantity; and
- iii. Added: Five minutes timed 2nd grade level mathematical problem solving.

40. Mediation took place on January 30, 2025.

41. On January 27, 2025, the student completed prospective student testing with the private school.

42. On January 30, 2025, the parents returned to the district the December 9, 2024 PWN and provided consent to proceed with the proposed reevaluation.

43. On January 30, 2025, the district issued an amended PWN to include standardized assessments for adaptive functioning. The parents signed and returned that PWN indicating their consent on January 31, 2025.

44. On February 3, 2025, the student's mother emailed a teacher notifying him that the student's last day at the district elementary school would be February 12, 2025, as the student would be transferring to the private school.

45. On February 3, 2025, the parents emailed district staff and administrators to inform them that the student would remain at the district elementary school "for the next 10 business days" and that the last day would be February 14, 2025. The parents also requested that all remaining testing for the pending RR be completed before the student disenrolled.

46. That same day, on February 3, 2025, the district emailed the parents to offer an IEP team meeting to discuss their concerns.

47. On February 4, 2025, the parents emailed the student's general and special education teachers with a copy of the NICHQ Vanderbilt Assessment following an appointment with the student's primary care physician.

48. The district emailed the parents again on February 5, 2025, to again ask for a time to convene an IEP team meeting.

49. The parents emailed the district on February 5, 2025, asking for a clear and detailed outline of the meeting agenda before committing to attending an IEP team meeting.

50. On February 6, 2025, the parents returned the parent input form for the RR to the district's school psychologist.

51. On February 7, 2025, the district emailed the parents to offer three dates for an IEP team meeting prior to the student's departure, noting that the meeting agenda would consist of a review of the parents' concerns and their request for a private placement, which had been identified as the private school for the first time on February 3, 2025.

52. The parents replied on February 7, 2025, stating that their February 3, 2025 email was a courtesy to the student's teachers and staff to collect materials ahead of the student's departure. The parents stated that they were not required to provide the district with another IEP team meeting prior to the student's departure from the district and declined to convene an IEP team meeting.

53. The parents executed an enrollment contract with the private school on February 8, 2025 at 3:07 p.m. to enroll the student for the remainder of the 2024 – 2025 school year at a cost of \$17,708.00.

54. On February 10, 2025, the district issued a NOREP declining to pay for the student's private placement at the private school.

55. The parents submitted a withdrawal form to the district on February 11, 2025, noting the student's last day of February 14, 2025.

56. On February 20, 2025, the district sought additional consent to perform occupational therapy (OT) assessments following OT provider input and sent the parents a consent form, procedural Safeguards Notice, as well as a release of information. The district provided the parents with an update as to the progress of testing in the RR, feedback on difficulty scheduling time to test the student in the private school, and current scheduled dates for observations and testing. The parents returned the signed consent and release forms on February 21, 2025.

57. The district issued its Reevaluation Report on March 11, 2025 and emailed it to the parents that day. The report outlined the following:

- a. Identification of:
  - i. Specific Learning Disability (reading, writing, math)
  - ii. Other Health Impairment (ADHD)
- b. Needs in the areas of:
  - i. Below average math computation, math problem-solving and math
  - ii. Below average basic reading, reading comprehension, and reading fluency skills
  - iii. Significantly below average written expression skills
  - iv. Below average nonverbal cognitive abilities
    1. Fluid Reasoning and Visual – Spatial Process

2. Working Memory and Storage / Retrieval
3. Processing Speed and Response Inhibition
- v. Difficulties in task-monitoring and organization of materials in school setting
- c. Discrepancy between verbal and nonverbal cognition abilities consistent with a profile that may be indicative of a Nonverbal Learning Disability

58. On March 23, 2025, the parents emailed the district asking for copies via email by March 25, 2025 of any documents the team intended to review at its upcoming IEP team meeting.

59. The IEP team met on March 27, 2025 to review the RR and revise the IEP.

60. An annual IEP was drafted on March 27, 2025. The IEP provided the student with:

- a. 40 minutes daily reading instruction in the learning support room
- b. 40 minutes of daily math instruction in the learning support room
- c. 30 minutes of daily writing instruction in the learning support room
- d. 30 minutes of occupational therapy, twice a week, individual
- e. Accommodations for local assessments and classroom assessments
- f. IEP goals including:

- i. One-minute timed 3rd grade decodable and high frequency words, 55 words, baseline of 56 words on 2nd grade level
- ii. One-minute timed 3rd grade reading passage, 114 words correct per minute at 95% accuracy, baseline 98 wcpm 100% accuracy on 2nd grade level
- iii. Two-minute timed 1st grade math computation, scoring 18 points
- iv. One-minute timed assessment, orally identifying number that is the larger quantity
- v. Five-minute timed 2nd grade level mathematical problem solving, 24 points, baseline of 12 points.
- vi. Three-minute timed 3rd grade reading passage, identifying correct missing words from a choice of three
- vii. Complete a six-sentence topic aligned dictation or composition
- viii. Complete a four-sentence near or far point copying task
- g. Several SDI addressing test accommodations, direct instruction in reading, writing and math, adaptations and accommodations in classwork and homework, writing support, math accommodations, check-insurance to ensure understanding, chunking assignments, supports for attention, opportunities for choice, [redacted], daily writing practice, visual supports, and access to AT
- h. ESY eligibility for ESY 2025

61. The parents emailed the IEP team with written parental concerns on March 31, 2025. Those concerns included that the proposed IEP goals and

services were not appropriate or individualized to the student's specific needs as outlined within the RR issued by the district.

62. An IEP, NOREP, Procedural Safeguards Notice, and transition plan for middle school were sent to the parents on April 4, 2025.

63. The parents executed an enrollment contract with the private school on May 15, 2025 at 6:53 a.m. for the 2025 – 2026 school year at a cost of \$41,880.00.

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

64. The student loves [redacted], and the student [redacted]. (NT 130 – 132)

65. The student's identified educational needs in the 2022 evaluation by the school district, the 2024 independent educational evaluation and the 2025 reevaluation report by the school district are substantially consistent. All of these evaluations showed the profile of a student with a nonverbal learning disability, including deficits in fluid reasoning, working memory and visual- spatial processing. (NT 151, 255 – 257)

66. The March 23, 2023 IEP for the student included the following parent statements in the section on parent concerns: the student "...is making progress and doing great. They are seeing the same struggles at home that

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<sup>1</sup> (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT\_\_\_").

the team is seeing at school..., but they feel that the team has tools in place and are trialing options to help [the student]." The IEP notes that the student's disability causes the student to be "...in need of small group direct instruction ... provided in the learning support environment." (S-6)

67. The student was pulled from direct small group reading instruction in the special education classroom for occupational therapy services during the first six weeks of the 2024 - 2025 school year. Beginning after the November 2024 IEP team meeting, the pullouts for occupational therapy were changed from during direct reading instruction to during general education English language arts and math classes. Among the student's important educational needs was daily instruction in a small group in the learning support environment. Direct reading instruction was a material component of the student's IEP. (NT 333, 106, 192 - 193; P-26, P-35, P-6)

68. The student's teachers issued timely progress reports each trimester, in addition to providing additional information to the student's family. The student's IEPs required that the school district report progress concerning the student's IEP goals after each trimester. The school district utilized a number of assessments and methods to track the student's progress in addition to progress monitoring on goals. The parents received each of the school district's progress monitoring reports from the school district. (P-12, P-30; NT 188, 286 - 289, 117 - 119)

69. None of the changes to the student's IEP at the November 21, 2024 IEP team meeting constituted a change of identification, evaluation, placement or the provision of a free and appropriate public education. (P-33; NT 159 - 160, 336 - 337)

70. After the parents sent a number of e-mails requesting that a Notice of Recommended Educational Placement be issued as a result of the

November 21, 2024 IEP team meeting, the school district issued a NOREP in response to the parents' request. (NT 337)

71. The school district's March 11, 2025 reevaluation report was comprehensive in nature and assessed the student in all suspected areas of disability. The reevaluation identified educational needs for the student in reading, math, written expression, task monitoring, and organization of materials. (P-48)

72. The IEP developed for the student on March 27, 2025 provides goals and specially designed instruction that address each of the student's identified areas of need. The IEP also provided occupational therapy as a related service consistent with the recommendation made in the reevaluation report. (P-49; NT 263, 300)

73. Certain assessments administered to the student by the school district were timed assessments. In order for the assessments to provide valid and reliable data and to be administered consistent with the instructions of the publishers of the assessment, it is required that certain assessments be timed. Failure to time assessments could destroy the standardization of the testing process and affect the reliability or validity of the results of the assessments. (P-49; NT 292 - 299, 303, 263 - 264)

74. The student's IEPs during the relevant timeframe addressed the student's identified educational needs (P-6, P-10, P-14; NT 151, 255 - 257)

75. The program selected by the school district for the student's direct small group reading instruction in the learning support setting was Reading Mastery, a program based upon Orton - Gillingham principles that provides direct, explicit, systematic and multisensory instruction and addresses all components of reading (phonemic awareness, phonics, fluency / decoding, vocabulary and comprehension). (P-14; NT 180)

76. The student made progress in most of the student's IEP goals while in the school district. The student made good gains in oral and word reading fluency, nonsense word fluency, phoneme segmentation, comprehension and sight words. The student's writing program was based on Orton - Gillingham principles and the student made progress in writing skills. The math curriculum for the student was the Connecting Math Concepts methodology that provides direct explicit, systematic and multisensory math instruction aligned with core standards. The Connecting Math Concepts methodology is research based. The student's progress was slower in the area of math, but the student was making progress mastering math skills. The student's progress at the school district was consistent with what should be expected for a student with a nonverbal learning disability profile. (P-12, P-30, P-14, P-49; NT 258 – 260, 266 – 267, 177, 180 – 184, 294 – 295, 319 – 320, 178 – 180, 182 – 183, 320 – 322)

77. The private school selected by the parents for the unilateral placement of the student accepts only students with disabilities. (NT 227)

78. The private school selected by the parents for the unilateral placement of the student offers only one methodology for reading – Literacy for Adolescents, which is an Orton- Gillingham based program. All students at the school are taught using this methodology. (NT 225 – 227)

79. The private school selected by the parents for the unilateral placement of the student does not offer occupational therapy as a related service. (NT 226)

80. The student showed significant regression in reading and math while attending the private school selected by the parents for unilateral placement of the student. (NT 307 – 310; P-48, P-58; S-11)

81. The parents did not share the results of testing conducted by the private school with the school district. (NT 104 – 106)

82. The parents had decided to send the student to the private school three weeks before the student began attending the private school in mid-February, 2025. The parents expressed frustration at having to attend the March 2025 IEP team meeting. The parents stated at the meeting that the meeting was pointless given that the student would not be returning to public school and would instead be attending the private school at which the student had been unilaterally placed by the parents. (NT 103, 185 – 186, 261 – 263, 274 – 275, 298)

## **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 the 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 (hereafter sometimes referred to as “FAPE”). IDEA §615(b)(6)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make Permission to Evaluate forms

readily available for that purpose. If a request is made orally to any professional employee or administrator of a school entity, the individual shall provide a copy of the Permission to Evaluate form to the parents within 10 calendar days of the oral request. 22 Pa. Code § 14.123(c) The evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301(c)(1); 22 Pa. Code § 14.123(b).

3. To prevail on a claim of failure to implement an IEP, a parent must show that the school district failed to implement substantial or material provisions contained in the IEP. Abigail P by Sarah F v. Old Forge Sch Dist, 105 F.4th 57, 124 LRP 21769 (3d Cir 2024); MP by VC v. Parkland School District, 79 IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F 3d 770, 47 IDELR 182 (9th Cir. 2007).

4. 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 unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. \_\_\_, 137 S. Ct. 988, 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).

5. 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).

6. 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).

7. 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 the student 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).

8. IDEA requires that an IEP specify how a student's progress toward IEP goals will be measured and how such progress will be reported to the parent. 34 C.F.R. § 300.320(a)(3).

9. A local education agency is required to provide prior written notice to the parents of a child with a disability before it proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. Prior written notice must include a number of necessary components, including a description of the action proposed or refused, an explanation of why the agency proposes or refuses to take the action; and a description of other options that the IEP team considered and the reasons why those options were rejected. 34 C.F.R. § 300.503; 22 Pa. Code § 14-102(a)(2)(xxix). In Pennsylvania, the prior written notice is generally called a Notice of Recommended Educational Placement (hereafter sometimes referred to as "NOREP").

10. A parent cannot compel a school district to use a specific educational methodology. A school district is afforded the discretion to select from among various methodologies in implementing a student's IEP. Ridley School District v. MR and JR ex rel. ER, 680 F. 3d 260, 58 IDELR 271 (3d Cir. 2012); see EL by Lorsson v. Chapel Hill – Carrboro Board of Education, 773 F. 3d 509, 64 IDELR 192 (4th Cir. 2014); Lessard v. Wilton – Lyndborough Coop School District, 592 F. 3d 267, 53 IDELR 279 (1st Cir. 2010); In re Student With A Disability, 51 IDELR 87 (SEA WVa. 2008).

11. A school district must "...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are nondisabled 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); IDEA § 612(a)(5)(A); 22 Pa. Code § 14-195. The Third Circuit has stated that the least restrictive environment requirement sets forth a "strong congressional preference" for integrating children with disabilities in regular education classrooms. Oberti v. Board of Education, 995 F. 2d 1204, 19 IDELR 908 (3d Cir. 1993). The least restrictive environment requirement is a substantive requirement of IDEA. Oberti, supra at n.18.

12. In order to receive reimbursement of tuition for a unilateral private school placement, a parent must prove three elements: 1) that the school district has denied FAPE to the student; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not preclude the relief. School Committee Town of Burlington v. Department of Education, 471 U.S. 359, 103 LRP 37667 (1985); Florence County School District #4 v. Carter, 510 U.S. 7, 20 IDELR 532

(1993); Forest Grove School District v. TA, 557 U.S. 230, 52 IDELR 151 (2009).

13. Reimbursement of tuition for a unilateral placement may be reduced or denied if the parents fail to give the local education agency at least 10 business days' notice prior to the removal of the student that they are rejecting the public school placement, stating their concerns with the public school placement and that they are seeking to enroll the student in a private school at public expense. IDEA § 612(a)(10)(c)(iii)(bb); 34 C.F.R. § 300.148(d)(1)(ii).

14. 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 (at 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); Sch. Dist. of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area Sch. Dist., 71 IDELR 87 (E.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 Ed., 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).

15. Compensatory education is a remedy that is often awarded to parents when a local education agency 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 Sch. Dist. Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); see Reid ex

rel. Reid, supra. In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by a 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 approved by the 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).

16. The parents have not proven an actionable violation of IDEA concerning the timing of the school district’s response to the parents’ request for reevaluation of the student.

17. The parents have proven that the school district failed to implement material provisions of the student’s IEP.

18. The parents have not proven that the school district otherwise denied a free and appropriate public education to the student.

19. The parents have not proven that the school district must reimburse them for a unilateral placement of the student.

## **DISCUSSION**

### **I. Merits**

**1. Whether the parents have proven that the school district violated IDEA by failing to provide them with a Permission to Reevaluate the student within ten days after a written request from the parents?**

The parents contend that the school district violated IDEA by failing to provide them with a Permission to Reevaluate within ten days of their request for a reevaluation of the student. The parties have stipulated, and there is clearly no dispute, that the parents sent an email to the school district on October 28, 2024 requesting a number of items, including a reevaluation of the student. Thereafter, the school district convened an IEP team meeting with the parents to discuss their concerns as specified in their October 28 email. The IEP team agreed to certain revisions of the student's IEP. On December 9, 2024, the school district formally issued a Prior Written Notice/Permission to Evaluate to the parents. The parties agree to the material facts with regard to this issue. As the school district concedes in its post-hearing brief, the school district's formal issuance of a Notice of Recommended Educational Placement or Prior Written Notice to the parents was more than ten days after the parents' request. The school district's issuance of the NOREP/PWN was not timely. However, it must be taken into account that the school district was attempting to collaborate with the parents in order to address the parents' concerns during the relevant time period. Accordingly, it cannot be concluded that a short delay in the formal issuance of the document violates the spirit of IDEA.

Moreover, even assuming *arguendo* that the delay in responding formally with a NOREP to the parents' Request for Reevaluation constitutes a procedural violation of IDEA, the parties have stipulated that the parents did not return the signed consent form until January 30, 2025. To the extent that there was unreasonable delay in finalizing the consent needed for reevaluation process, the parents were at least equally guilty in delaying the process. Any procedural violation by the school district was clearly harmless.

Because there are no material facts in dispute with regard to this issue, a credibility analysis is not required.

Accordingly, it is concluded that the parents have not proven that the school district violated IDEA with regard to the timeline for responding to a request for reevaluation.

**2. Whether the parents have proven that the school district violated IDEA by failing to implement material provisions of the student's individualized educational program?**

The parents contend that the school district failed to implement material provisions of the student's IEP by pulling the student out of direct reading instruction and later English language arts and math regular education classes in order to provide the student occupational therapy services. The school district contends that the alleged failure to implement only constituted minor discrepancies and not a material violation of the provisions of the student's IEP.

It is true, as the school district's post-hearing brief mentions, that school districts frequently have difficulty determining which classes to pull students out of in order to provide related services during the school day. This scheduling difficulty, however, does not justify failing to implement material provisions of a student's IEP.

In this case, the unique individual circumstances of this particular student include an important need for daily small group direct instruction in reading in the learning support setting. Clearly direct instruction in reading in the learning support environment was a material component of the student's

individualized educational plan. The parties have stipulated, and the school district's closing written brief concedes, that for the first six weeks of the 2024 – 2025 school year, the student was pulled out of direct reading instruction in the learning support environment in order to receive the related service of occupational therapy. Although school district staff testified that the student received instruction to remediate the missing time, it is clear that the disruption of the student's schedule in order to provide occupational therapy during the very important direct reading instruction was a material violation of the student's IEP.

The parents would take it one step further and argue that pulling the student out of regular education classes for occupational therapy was also a material violation of the IEP of the student. There is no basis in the record for this claim, however. Although regular education classes clearly are also important, they are not a material component of the student's IEP like the direct reading instruction. The IEP team found direct reading instruction to be sufficiently critical to specify that it be provided daily through direct instruction in small groups in the learning support setting.

It is concluded that the parents have proven that the school district violated IDEA's prohibition on failing to implement material provisions of a student's IEP for approximately the first six weeks of the 2024 – 2025 school year.

Because there are no material facts in dispute with regard to this issue, a credibility analysis is not required.

It is concluded that the parents have proven that the school district violated IDEA by failing to implement material provisions of the student's IEP during the period of time in which the student was pulled out of small group

direct reading instruction in the learning support setting for the first six weeks of the 2024 – 2025 school year.

**3. Whether the parents have proven that the school district failed to provide a free and appropriate public education to the student while the student was enrolled in the school district?**

The parents allege both procedural and substantive FAPE violations. The parents allege the following procedural violations: that the school district failed to report progress towards the student’s IEP goals and that the school district failed to issue a Prior Written Notice/Notice of Recommended Educational Placement for the IEP team meeting on November 21, 2024. The substantive violation alleged by the parents is that the student’s IEPs failed to follow the recommendations of the school district’s school psychologist on March 11, 2025.

With regard to progress monitoring, the issues identified by the parents at the prehearing conference include that the school district failed to report progress on the student’s IEP goals. The school district contends that it properly issued all progress monitoring reports to the parents.

The record evidence does not support the parents’ argument concerning progress monitoring. Indeed, the student’s mother testified that she received each of the progress reports listed in the parties’ exhibits. The documentary evidence reveals that progress reports were provided to the parents showing the student’s progress on IEP goals. The student’s teachers testified that they timely issued progress reports to the parents each trimester.

The only argument in the parents' post-hearing brief with regard to progress monitoring by the school district contradicts the parents' due process complaint. The parents' post-hearing brief disagrees with the methodology employed by the school district in determining the student's progress, but nowhere in the parents' post-hearing brief do they contend that they did not receive timely progress monitoring reports from the school district, as required by law. The parents have not presented any argument or any evidence to support their claim in this regard, and their contention is rejected.

The parents also assert a procedural violation by the school district for allegedly failing to issue a Notice of Recommended Educational Placement after the November 21, 2024 IEP team meeting. The school district asserts that it was not required to submit the NOREP to the parents after said meeting.

IDEA requires a school district to issue a Prior Written Notice (frequently referred to in Pennsylvania as a "NOREP") when it proposes or refuses to initiate a change in the identification, evaluation, educational placement or the provision of FAPE to a child. In the instant case, there was no proposal or refusal by the school district to make a change with regard to any of the four specified categories. Accordingly, the school district was not required to issue a NOREP for the November 21, 2024 IEP team meeting. The parents' contentions are rejected.

Even assuming *arguendo* that the school district had committed procedural violations with regard to the allegations proposed by the parents, however, the parents have not demonstrated that the proposed violations are actionable. There was no showing that the alleged violations caused the student educational harm or significantly impaired the parents' ability to meaningfully participate in the process. Accordingly, even if procedural violations had occurred, they were clearly harmless.

The parents also allege a substantive violation of IDEA. The substantive violation alleged by the parents is that the school district's IEPs did not follow the recommendations of the school district's school psychologist. The parents do not elaborate upon this argument in their closing brief, and it is very difficult to follow their reasoning with regard to the particular issue. It would appear that the parents object to the use of timed assessments for the student because of the student's nonverbal learning disability. It was the persuasive and credible testimony of school district witnesses, however, that the failure to apply time limits on assessments with timing requirements that are standardized can result in invalid results or a breach of standardization. It is concluded that utilizing timed assessments for the student, consistent with the directions of the publisher of the assessments, is not a violation of IDEA.

It is significant to note that the parents do not argue in their post-hearing brief that the school district IEPs were not reasonably calculated to confer meaningful educational benefit upon the student in view of the student's unique individual circumstances. The parents have not argued that the IEPs do not meet the FAPE standard. The record evidence clearly indicates that the student's IEPs were reasonably calculated to confer meaningful educational benefit and that they were drafted consistent with the student's individual needs and unique circumstances. In particular, the school district school psychologist and instructional coach each testified credibly and persuasively that the student's IEPs appropriately addressed the identified educational needs.

Moreover, even though an IEP is a snapshot, and the school district is not required to show that the student made actual progress under an IEP, in this case, it is clear that the student did make good progress consistent with the student's [redacted] learning disability while at the school district. The

credible and persuasive testimony by school district staff supports this conclusion.

The main thrust of the parents' FAPE argument concerns a methodology dispute between the parties. The case law is clear that a parent cannot dictate educational methodology. The school district staff are free to choose among the various educational methodologies in order to implement an individualized educational plan and provide FAPE to a student. As the parties have stipulated, when their relationship began to seriously deteriorate on October 28, 2024, the parents sent an email directing the school district to "rectify the negligence" and demanding 20 specifically named formal assessments be administered to the student. The email also demanded certain specific educational methodologies be adopted- including a number of methodologies that the school district was already utilizing. A parent cannot compel a particular assessment or a specific educational methodology. The parents have not proven a violation of IDEA by showing that the school district did not always use their preferred assessment or educational methodology. The parents' argument is rejected.

The testimony of the school district staff was more credible and persuasive than the testimony of the parents and their witnesses on 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 parents did receive progress monitoring reports from the school district, which contradicts the opposite contention stated in the parents' due process complaint. The parents' contention that the student was not making progress under the student's IEPs is contradicted by the parents' statement at the March 2023 IEP team meeting, as reflected in the parent concerns portion of the document, noting that the student "...is making progress and doing great.

They are seeing the same struggles at home that the team is seeing at school..., but they feel that the team has tools in place and are trialing options to help [the student].” Furthermore, no weight is given to the independent testing conducted by the parents’ advocate. The evaluator who worked for the student’s family as an advocate was not a certified teacher or school psychologist and the evaluator did not follow standardized testing protocols with regard to timing of assessments.

It is concluded that the parents, with the exception of the discussion contained in the previous section on IEP implementation, have not proven that the school district denied a free and appropriate public education to the student during the relevant timeframe.

**4. Whether the parents have proven that they are entitled to reimbursement for private school tuition for unilateral placement of the student?**

The parents also seek reimbursement for a unilateral placement of the student in the private school. The school district contends that the parents have not proven that reimbursement is appropriate. An analysis of the three prongs of the Burlington Carter – TA standard follows:

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

As has been demonstrated in the previous sections of this decision, the school district has not denied a free and appropriate public education to the student, with the exception of the failure to implement during the six-week period in which occupational therapy was provided by pulling the student out

of direct reading instruction in the learning support setting. Although it is clear that the parents are entitled to compensatory education for the period of time during which material provisions of the student's IEP were not implemented, the brief period of denial of FAPE proven by the parents would not be sufficient to justify reimbursement for a unilateral placement. Moreover, the school district's implementation failure, involving the pull out of direct reading instruction to provide OT, ended well before the parents unilaterally placed the student in a private school. The implementation failure, therefore, cannot serve as the basis for reimbursement claim.

It is concluded that the parents have not proven that the school district committed a denial of FAPE that would justify reimbursement for a unilateral placement. Accordingly, the reimbursement request by the parents must be denied.

**b. Whether the parents have proven that the private school at which they have unilaterally placed the student is appropriate?**

The second prong of the Burlington – Carter analysis involves whether the parents have proven that their chosen private school is appropriate. It is not necessary to reach the second prong in this case because the parents have not proven the first prong. Assuming *arguendo* that the parents had proven the first prong, however, they have not proven that their private school is appropriate.

Although the bar is lower for parents to prove a private school appropriate than it would be for a public school district placing a student in a private school, parents must nonetheless show that the private school that they have selected for the unilateral placement will provide a program that is

reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances.

In this case, the parents have not proven that the private school that they have selected is appropriate for the student. The private school the parents have selected has no nondisabled students attending the school. In addition, the private school selected by the parents does not provide occupational therapy, which all parties contend the student needs as a related service in order to benefit from special education.

More importantly, the Orton - Gillingham assessments conducted at the private school showed regression for the student upon leaving the school district. The student was not receiving appropriate instruction at the private school.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the parents and the parents' witnesses concerning this issue. In particular, the representative of the private school's testimony was impaired by an apparent lack of knowledge of this particular student. At one point during direct testimony, the witness testified that the student's anxiety had disappeared while attending the private school. On cross-examination, however, the witness admitted that she had apparently mistaken the student for a different student and that there was no evidence that this student suffered from anxiety.

It is concluded that if it were necessary to reach the second prong of the Burlington – Carter analysis, the parents have not proven that the private school that they selected for unilateral placement was appropriate.

**c. Whether the parents have proven that the equities favor reimbursement?**

The third prong of the Burlington – Carter analysis involves a determination as to whether the conduct of the parties and any other equitable factors might weigh in favor or against reimbursement. It is not necessary to reach the third prong in this case because the parents have not proven the first prong. Even assuming *arguendo* that the parents had proven the first and second prongs, however, they have not established that the equities favor reimbursement.

In the instant case, the record evidence reveals that the parents failed to keep an open mind with regard to a public school placement for the student and that they had predetermined that the student would attend the private school that they had selected even before the IEP team meeting was conducted. At the March 2025 IEP team meeting, the parents expressed frustration with even having to attend an IEP team meeting because it was pointless given that the student was definitely returning to the private school for the next school year. It is clear that the parents had no intention of considering a public school placement.

In addition, the parents failed to provide the required 10-day notice of intention to withdraw the student and seek reimbursement for unilateral private school placement. If it were necessary to reach the third prong, the equities weigh heavily against reimbursement.

The requested relief for unilateral private placement must be denied.

**II. Relief**

The parents seek both compensatory education and reimbursement for unilateral placement as relief in this case. As has been demonstrated, reimbursement for unilateral placement is not appropriate and is not awarded.

Concerning compensatory education, the parents have proven that the school district violated IDEA by failing to implement material provisions of the student's IEP concerning direct small group instruction in reading in the learning support setting. Because the direct reading instruction was an integral part of the student's program based upon the unique individual circumstances of this particular student, an award of one hour of compensatory education for each hour of missed direct reading instruction during the first six weeks of the 2024 – 2025 school year is appropriate in order to remedy the educational harm caused by the IDEA violation. Because the parents proved no other denial of FAPE, their request for additional compensatory education is rejected.

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

## **ORDER**

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

1. The school district is ordered to provide one full hour of compensatory education to the student for each hour that it failed to implement the material provisions of the student's IEP concerning direct reading instruction during the first six weeks of the 2024 – 2025 school year.

The order of compensatory education is subject to the following conditions and limitations:

a. The student's parents may decide how compensatory education is provided. 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 education services shall be provided by appropriately qualified professionals selected by the parents. The cost to the school district of providing the awarded hours of compensatory education may be limited to the average market rate for private providers of those services in the county where the school district is located; and

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

3. Any and all other relief requested by the instant due process complaint is hereby denied.

**IT IS SO ORDERED.**

ENTERED: January 12, 2026

*James Gerl*

James Gerl, CHO  
Hearing Officer