*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. 27758-22-23**

**Child's Name:**
S.E.

**Date of Birth:**
[redacted]

**Parents:**
[redacted]

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**Hearing Officer:**
James Gerl, CHO

**Date of Decision:**
August 11, 2023

## BACKGROUND

The parents filed a due process complaint alleging that the school district violated the least restrictive environment provisions of IDEA and wrongfully predetermined the student's placement. The school district denies the allegations. I find in favor of the parents on both issues raised by the due process complaint.

## PROCEDURAL HISTORY

The parties agreed to only a small number of stipulations of fact in this case, but they otherwise efficiently presented their evidence. The hearing was completed in one in-person session plus a second virtual session.

Six witnesses testified at the hearing. Parents' exhibits P-1 through P-21 were admitted into evidence. School district exhibits S-1 through S-5 were admitted into evidence for background purposes only because they were outside of the relevant time period.

After the hearing, counsel for 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.

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

In addition to the two issues that are properly before the hearing officer, each party raises an issue that does not require extensive discussion. The parents assert a free and appropriate public education violation, and the school district raises a statute of limitations defense.

The parents argue that there is an issue of an alleged denial of a free and appropriate public education. The parents' complaint does not allege a denial of FAPE. The issue of denial of free and appropriate public education is, therefore, clearly beyond the scope of the due process complaint and, therefore, may not be considered. 34 C.F.R. § 300.511(d). The parents argue that because the school district's answer mentions the phrase "appropriate" education, the school district has placed FAPE into issue in this case. The parents cite no authority for this proposition, and no such authority exists. A fair reading of the due process complaint reveals that a FAPE issue is not presented and, therefore, may not be considered in this decision.

The school district argues that the complaint raises allegations beyond the two-year IDEA statute of limitations. The testimony and documentary evidence presented at the hearing, however, make it clear that the parents' allegations concerning least restrictive environment and predetermination occurred only within the two years prior to the filing of the due process complaint. Thus, the statute of limitations is not impacted by the complaint. Assuming, *arguendo*, that the parents' allegations did encompass the period prior to two years before the filing of the complaint, however, the parents'

brief does not address this issue and, therefore, opposition to the defense has been waived. See, JL v. Lower Merion School District, 81 IDELR 251 (E.D. Penna 2022); LB by RB and MB v. Radnor Township Sch Dist, 78 IDELR 186 (E.D. Penna 2021). Accordingly, in either event, the scope of the allegations of the complaint is deemed to be limited to the two-year period of time before the due process complaint was filed.

The two issues presented by the due process complaint that are properly before the hearing officer are the following:

1. Whether the parents have proven that the school district's placement of the student in the autistic support classroom at the intermediate unit violates the least restrictive environment mandate?

2. Whether the parents have proven that the school district wrongfully predetermined the student's placement in the autistic support classroom at the intermediate unit?

## FINDINGS OF FACT

Based upon the parties' stipulations of fact as read into the record during the due process hearing, 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 in the school district.

3. The student has been diagnosed with autism spectrum disorder at least since the time of the student's participation in early intervention.

4. The student entered early intervention through the intermediate unit.

5. The student transitioned to kindergarten in the intermediate unit.

6. The student has never attended the student's neighborhood school in the school district.

7. The student has just finished the school year in which the student was in [redacted] grade.

8. The student is eligible for special education and related services under IDEA and is protected under Section 504 of the Rehabilitation Act of 1973.

9. IEP revision meetings for the student were held on October 31, 2022; December 12, 2022 and January 17, 2023.

10. The parents at some point made a request to the school district that the student be placed at the student's neighborhood school.

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact: [1]

11. The student loves to play with [toys] and loves to sing and dance. (NT 72)

12. The student is eligible for special education and related services under the disability categories of autism, intellectual disability and speech language impairment. The student's IEPs placed the student in the full time center-based autistic support classroom at the intermediate unit. The student's IEPs include a behavior plan designed for the student to attend the

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

autistic support classroom at the intermediate unit. The student's IEPs provide for the related services of transportation, speech language therapy, occupational therapy and adaptive physical education. The IEPs were amended to include a 1:1 aide, which is called a personal care assistant in the school district. The student's IEPs place the student in the regular education classroom for zero per cent of the school day. The student's IEPs contain a placement section which includes various questions. The answer to the question, what supplementary aids and services were considered is "home district with itinerant support or (intermediate unit) classroom support." The answer to the question, what supplementary aids and services were rejected is "home district classroom." (P-16, P-19; NT 156, 205, 226-228, 146-147)

13. The student's IQ is in the 57 to 61 range, which is in the first percentile. (NT 119-122, 161, 168 – 170; P-15)

14. The student has no interaction with nondisabled peers in the placement at the autistic support classroom at the intermediate unit. (P-4, P-16, P-19; NT 104, 107 – 108, 180)

15. The student would benefit from interaction with nondisabled peers, especially with regard to modeling the appropriate behavior and language of nondisabled peers. (NT 44 – 45, 78-79, 104-110, 166; P-4)

16. The school district did not consider using supplementary aids and services to achieve placement of the student in a regular education classroom. (P-4, P-16, P-19; NT 33, 101, 110 – 111, 192 – 194)

17. The district considered the student's [redacted] size as a factor in determining the student's placement. (NT 70, 74 – 75, 190 – 191)

18. The student has exhibited problem behaviors in the autistic support classroom at the intermediate unit, including physical aggression

towards adults in the classroom, elopement and screaming. (NT 153, 249-252)

19. The student's behaviors improved substantially during the last school year. The student's teacher uses a "quiet room," to which the student is permitted to go when the student's behaviors become a problem. The use of the quiet room is effective at controlling the student's problem behaviors. (NT, 234 – 243, 256 – 257, 70 – 71)

20. The student's [parent] asked for the student to be mainstreamed at the student's neighborhood school at various IEP team meetings during the last two school years. In response, the parents were told that the school district "cannot accommodate" the request because of the lack of resources. (NT 33, 39, 69 – 70, 85 – 87, 174 – 175, 185 – 187)

21. The special education director told the student's [parent] at one of the IEP team meetings in the 2022 – 2023 school year that there was "no way" that the student could attend a regular education classroom at the student's neighborhood school. (NT 183 – 184)

22. In a parent – teacher conference in January or February 2023, the student's classroom teacher told the student's [parent] that the student could succeed with the student's nondisabled peers in a less restrictive classroom at the neighborhood school. (NT 41 – 42, 64-66, 75 – 76, 243)

23. The student is being hindered or held back in the autistic support classroom at the intermediate unit because the other students are not nearly as advanced as the student and are nowhere near the student's level academically. (NT 243, 258 - 260)

24. The student can be successfully educated in a regular education classroom for at least part of the school day with the use of supplementary aids and services. Such a placement would require a plan, including

preventative measures, and would include a number of supplementary aids and services, including: a modified curriculum with grade level aligned content; a 1:1 paraprofessional; a behavior plan geared to the student participating for some of the school day in a regular education classroom; an assistive technology communication device if appropriate; and the availability of a special education classroom or a quiet room for the student to go to if the student's behaviors become a problem. (P-4; P-3; NT 89 – 136, 234 – 235, 243, 258 – 260)

25. The school district agreed to the [parent's] request for the student to attend extended school year services during the summer of 2023 at the neighborhood school after the due process complaint in this matter had been filed. (NT, 42-43, 67-69, 177 – 178)

## CONCLUSIONS OF LAW

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

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education (hereafter sometimes referred to as "FAPE"). IDEA §615(b)(6)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162. A least restrictive environment violation is a placement violation. Oberti v. Board of Education, 995 F.2d 1204, 19 IDELR 908 (3d Cir. 1993).

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

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

the possible negative effects of the child's inclusion on the education of other children in a regular classroom. When considering negative effects, the court must keep in mind the school's obligation to provide supplementary aids and services to accommodate the child's disabilities. Oberti, supra.

4. Supplementary aids and services are defined as "…aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and non-academic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with…" the least restrictive environment requirements. 34 C.F.R. § 300.42.

5. In determining the least restrictive environment placement, consideration should be given to ensure that a child with a disability is not removed from education in the regular education classroom solely because of needed modifications in the education curriculum. 34 C.F.R. § 300.116(e); 22 Pa. Code § 14.145(3).

6. One relevant factor in determining the least restrictive environment placement is that the student's school should be as close as possible to the child's home. 34 C.F.R. § 300.116(b)(3). Unless the IEP requires some other arrangement, the child should be educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.116(c)

7. A school district violates IDEA's least restrictive environment mandate where it merely pays lip service to the requirement and where district staff could not identify supplementary aids and services considered to keep the child in the general education classroom. Hanna L by George L and Susan L v. Downingtown Area Sch Dist, 63 IDELR 254 (E.D. Penna 2014); See, Sch Dist of Philadelphia v Post, 70 IDELR 96 (ED Penna 2017).

8. The fact that a school district's compliance with IDEA's least restrictive environment provisions can be challenging does not excuse a district's noncompliance with the LRE requirement. See, Knox County, Tenn. v. M.Q. by N.Q. and J.Q., 62 F.4th 978, 82 IDELR 214 (6th Cir. 2023.)

9. The least restrictive environment requirement is a substantive requirement of IDEA. Oberti, supra at n.18; See, TM by AM and RM v. Cornwall Central School District, 752 F.3d 145, 63 IDELR 31 (2d Cir. 2014).

10. Where a school district predetermines an IEP or a student's placement prior to the IEP team meeting, it deprives the parents of a meaningful opportunity to participate in the process and thereby violates IDEA. 34 C.F.R. 300.501(b)&(c); See, Deal v. Hamilton County Bd of Educ, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); JD v. Kanawha County Bd of Educ, 48 IDELR 159 (S.D. WVa. 2007). The key is that school district staff must keep an open mind regarding placement at the team meeting and duly consider the parents' input. See JD v. Kanawha County Bd of Educ, 48 IDELR 159 (S.D. W. Va. 2007); CH by Hayes v. Cape Henlopen Sch Dist, 606 F. 3d 59, 54 IDELR 212 (3d Cir. 2010); Rockwell Independent Sch Dist v. MC ex rel. MC, 816 F. 3d 341, 67 IDELR 108 (5th Cir. 2016).

11. The cost of services or a lack of resources is not a defense to a local education agency's noncompliance with IDEA. Cedar Rapids Comm. Sch Dist v. Garret F., 526 U.S. 66, 29 IDELR 966 (1999)

12. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (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).

13. The parents have proven that the school district violated the least restrictive environment requirement by placing the student in the autistic support classroom at the intermediate unit.

14. The parents have proven that the school district wrongfully predetermined the student's placement at the autistic support classroom in the intermediate unit.

## DISCUSSION

## I. Merits

### 1. Whether the parents have proven that the school district's placement of the student in the autistic support classroom in the intermediate unit violated the least restrictive environment mandate of IDEA?

The parents contend that the student's placement violates the least restrictive environment mandate of IDEA. The school district contends that the placement of the student in the autistic support classroom at the intermediate unit is the least restrictive environment for the student.

At the outset, it should be noted that both parties have constructed a false dichotomy with regard to the choice of placement for the student. Both

parties seem to believe that the only two choices for placing the student are either the highly restrictive placement at the intermediate unit or a full-time regular education classroom at the student's neighborhood school. The facts in this case demonstrate that the student's unique circumstances require that the student be placed in a regular education classroom for at least part of the day, not necessarily in either of the two choices that the parties have determined are possible. In addition, although IDEA expresses a clear preference in educating children with a disability in their neighborhood schools, it is possible that the least restrictive environment for any particular student could be a school other than the neighborhood school.

In analyzing the facts of this case when applied to the Oberti test, it is clear that the placement of the student in the autistic support classroom at the intermediate unit, where the student has no interaction with non-disabled peers, violates IDEA's least restrictive environment requirement. The first prong of the Oberti test involves a determination of whether education of the student in a regular education classroom with the use of supplementary aids and services can be achieved satisfactorily. In applying the three factors to consider set forth in the Oberti decision for weighing the first prong of the analysis, it is clear that this student may be educated in a satisfactory manner for at least part of the school day in a regular education classroom with the use of supplementary aids and services.

The first Oberti factor involves an examination of the steps that the school district has taken to include the student. In the instant case, it is apparent that the school district has not taken any steps of any kind to include the student in a regular education classroom. In particular, the special education director admitted in her testimony that the school district has not considered any supplementary aids and services in order to place the student

in a regular education classroom. When the parents requested that the student be placed in a regular education classroom at the student's neighborhood school, the response of school officials was always that they could not accommodate the request. The school district's brief argues that the school district considered the regular education classroom at each IEP team meeting but rejected the choice. The district's argument, however, ignores the fact that even the student's IEPs demonstrate that supplementary aids and services were not considered. The IEP forms require a statement of the various supplementary aids and services that were considered to include the student in regular education classes. The student's IEPs listed no specific supplementary aids or services that the district had considered. The IEPs merely list that the regular education classroom was rejected without mention of any specific supplementary aids or services that could have been utilized to include the student in a regular education class. It goes without saying that "home district classroom" is a placement and not a supplementary aid or service. It is clear that the school district has not considered, or even paid lip service to, using any type of supplementary aids or services to enable the student to participate in regular education classes. The first factor of the Oberti test weighs heavily in favor of the parents.

The second Oberti factor involves a comparison of the educational benefits the child would receive in a regular education classroom with supplementary aids and services versus the benefits the student would receive in a segregated special education classroom. In the instant case, the student's classroom teacher candidly testified that the student's segregated classroom at the intermediate unit was hindering the student and holding the student back because the other children in the classroom were not nearly at the student's level of performance. In other words, the student's teacher believes that the student needs a less restrictive placement. The teacher's testimony

is buttressed by the credible and persuasive testimony and the report of the parents' inclusion expert that the student can be successfully educated in a regular education classroom with a modified curriculum and proper planning and the provision of appropriate supplementary aids and services. The school district's brief argues that significant weight should not be given to the testimony of the parents' "purported" expert. At the hearing, however, the school district, after counsel had exercised the opportunity to conduct *voir dire* of the expert, had no objection to the expertise of the witness, and the parents' witness was qualified as an expert on inclusion at the due process hearing. More importantly, the inclusion expert's testimony was very credible and persuasive. Also, the unrebutted evidence in the record shows that this student in particular would benefit from interaction with nondisabled peers. The second factor of the Oberti test weighs heavily in favor of the parents.

The third Oberti factor involves consideration of the possible negative effects of the child's inclusion on the education of other children in a regular classroom. In analyzing this factor, the Third Circuit noted that it must be kept in mind that the school district has an obligation to provide supplementary aids and services to accommodate the child with a disability. In this case, the student has had issues with problem behaviors, mostly directed towards adults in the classroom. However, the unrebutted testimony of the student's classroom teacher was that the student's problem behaviors substantially improved over the course of the last school year. Moreover, the student's behavior plan has not been modified to consider the steps necessary for the student's participation in the regular education classroom. The behavior plan would be an important supplementary aid and service to ensure the student's successful participation in a regular education classroom without disrupting the learning of other students. As the parents' inclusion expert testified persuasively, the student could be assigned to a regular education

classroom, at least for one or two substantive subjects, with appropriately modified and grade-aligned curriculum. The expert testified further that if the student's behaviors became a problem, the student could be removed to a special education classroom or a quiet room for a period of time. This suggestion is consistent with the testimony of the student's classroom teacher that the use of a quiet room is very effective for the student in the current placement when the student's behaviors become a problem. It is concluded that parents have proven that with proper planning and use of appropriate supplementary aids and services, the student can participate in the regular education classroom for at least part of the school day without causing disruption or other negative effects for the learning of other students. The third factor identified by the Oberti test also weighs in favor of the parents.

Some arguments raised by the school district's brief need to be addressed. One argument is that the student must earn the opportunity to participate in a regular education classroom by first improving problem behaviors in the segregated placement at the intermediate unit. The school district cites no authority for this precondition to IDEA compliance, and, indeed, no such authority exists. IDEA does not require students to earn a school district's compliance with the LRE requirement of the special education law.

Another theme throughout the school district's brief and the testimony of the school district witnesses is that the school district cannot "accommodate" or does not have the resources to place the student in a regular education classroom. This argument is inconsistent with settled law. The U.S. Supreme Court has expressly rejected the argument that a school district's lack of money or lack of resources is a defense to IDEA

noncompliance. Cedar Rapids Comm. Sch Dist v. Garret F., 526 U.S. 66, 29 IDELR 966 (1999). The argument is rejected.

The school district also argues that the student's very low IQ prevents the student from being successful in a regular education environment. Again, the school district cites no authority in support of this argument and no such authority exists. The district's argument ignores that it is required to use supplementary aids and services, such as a modified curriculum with grade-aligned content, as explained in detail by the parents' inclusion expert, in order to allow students with disabilities to participate in the regular education classroom. See, 34 C.F.R. § 300.116(e); 22 Pa. Code § 14.145(3). The school district's argument that the student's IQ is too low to participate in general education classes is rejected.

The testimony of the parents, the student's classroom teacher and the parents' inclusion expert concerning this issue was more credible and persuasive than the testimony of the school district witnesses because of the demeanor of the witnesses, as well as the following factors: the testimony of the special education director was impaired by conflicting testimony concerning whether the student's size was a factor in placement decisions and by varying and conflicting testimony with regard to whether the special education director had told the student's [parent] that there was "no way" that the student could attend a regular education classroom in the neighborhood school.

It is concluded that the parents have proven that under the Oberti test, the student may be satisfactorily educated in a regular education classroom with the use of supplementary aids and services. Accordingly, the parents have proven that the school district's placement of the student in the autistic

support classroom at the intermediate unit violates IDEA's least restrictive environment mandate.

## 2. Whether the parents have proven that the school district wrongfully predetermined the student's placement in the autistic support classroom at the intermediate unit?

The parents contend that the school district wrongfully predetermined that the only possible placement for the student was in the autistic support classroom at the intermediate unit. The school district denies the allegation.

The record evidence supports the parents' contention that the school district wrongfully predetermined the student's placement. The statement by the special education director to the student's [parent] that there was "no way" that the student could be placed in regular education classes is a clear indication that the school district had predetermined the student's placement. The failure to consider the parents' request and discuss it at an IEP team meeting with full discussion of the team denied the parents' right to meaningful participation in the placement process. This conclusion is further supported by the fact that district staff repeatedly told the parents that they could not accommodate the parents' request for inclusion without any meaningful discussion. The school district did not keep an open mind with regard to the parents' request.

The conclusion that the school district wrongfully predetermined the student's placement is further supported by the fact that the school district completely ignored its duty under the special education laws to consider the use of supplementary aids and services to permit the student to participate in regular education classes. See discussion of the previous issue. It is clear from the testimony of the school district witnesses that that they predetermined

that the only possible placement for the student was the autistic support classroom at the intermediate unit.

The testimony of the parents and the parents' inclusion expert as to this issue is more credible and persuasive than the testimony of the school district witnesses for the reasons set forth in the discussion of previous issue above.

It is concluded that the parents have proven that the school district wrongfully predetermined the student's placement, thereby denying the parents meaningful participation in the placement process.

## II. Relief

To remedy the school district's violations of IDEA going forward, the student's IEP must be amended to include participation by the student in a regular education classroom for at least one substantive class with all appropriate supplementary aids and services, including, at a minimum, the following: the curriculum must be modified to be grade level "aligned," as explained by the parents' inclusion expert; the use of a special education classroom or a quiet room if the student displays disruptive or inappropriate behaviors; the continued assignment of a 1:1 aide for the student to assist the student in the general education classroom and elsewhere; an assistive technology communication device if appropriate; appropriate modifications to the student's behavior plan to ensure that it applies to the student's participation in both the regular education classroom and a special education classroom (or quiet room); and any and all other supplementary aids and services that may be helpful and appropriate. The changes should be implemented pursuant to an inclusion plan, substantially similar to the plan outlined by the testimony and report of the parents' inclusion expert.

Although IDEA expresses a strong preference that a student with a disability be placed at the student's neighborhood school, if an appropriate placement at another school in the school district would permit the student's participation in one or more regular education classes with the supplementary aids and services as described above, it is not necessary that the placement be at the neighborhood school. The IEP team may determine a placement should be at a school other than the neighborhood school if the placement meets the LRE requirements and allows for the provision of a free and appropriate public education to the student.

The parents also seek an award of compensatory education for the school district's violations. Such an award, however, is not appropriate in this case. Compensatory education is a remedy designed to repair the harm caused by a deprivation of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligoneer Valley School District Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); Gwendolynne S. by Judy S. and Geoff S. v. West Chester Area Sch. Dist., 78 IDELR 125 (E.D. Penna. 2021). In this case, there is no issue concerning a free and appropriate public education. See discussion regarding statement of issues above. The parents have proven only placement violations.

More importantly, the parents' inclusion expert testified credibly and persuasively that there is no remedy for the past harm caused by the district's failure to place the student in the least restrictive environment. Thus, the parents have not demonstrated any harm that can be remedied by compensatory education. Accordingly, it is concluded that an award of compensatory education is not appropriate in this case.

Because all relief under IDEA is equitable relief and should be flexible in nature, and because special education under IDEA requires a collaborative

process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as both parties and their lawyers agree to do so in writing.

## ORDER

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

1. The school district is ordered to convene the student's IEP team in order to amend the student's IEP as described in detail in the relief portion of this decision on or before October 1, 2023;

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

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

IT IS SO ORDERED.

ENTERED: August 11, 2023

*James Gerl*

James Gerl, CHO
Hearing Officer