

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

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

### **Open Hearing**

#### **ODR File Number**

25714-21-22

#### **Child's Name**

T.R.

#### **Date of Birth**

[redacted]

#### **Parent**

[redacted]

#### Counsel for Parent

Pro Se

#### **Local Educational Agency**

School District of Philadelphia  
440 North Broad Street  
Philadelphia, PA 19130

#### Counsel for LEA

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#### **Hearing Officer**

Michael J. McElligott, Esquire

#### **Date of Decision**

03/01/2022

## **Introduction**

This special education due process hearing concerns the educational rights of T.R. ("student"), a student who resides in the School District of Philadelphia ("District").<sup>1</sup>

The parties disagree over the educational programming of the student under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA"), specifically as to whether the student was provided with a free, appropriate public education ("FAPE") under the terms of that statute.<sup>2</sup>

The parent claims that the District's educational programming for the student is inappropriate. The District counters that at all times it met its obligations to the student under IDEIA. Accordingly, the District argues that the student and parent are not entitled to any remedy.

For reasons set forth below, I find in favor of the District.

## **Issues**

1. Has the District met its obligations to provide FAPE to the student in the 2020-2021 and 2021-2022 school years?
2. If not, is the student entitled to any remedy?

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<sup>1</sup> The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

<sup>2</sup> It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818 (*see also* 22 PA Code §§14.101-14.162 ["Chapter 14"]).

## **Findings of Fact**

All evidence in the record, both exhibits and testimony, were considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. Prior to enrolling in the District, the student attended an early intervention program with an independent provider, although the program was housed at a District elementary school, [Elementary School 1] (School District Exhibit ["S"] – 4; Notes of Testimony ["NT"] at 96-164, 305-377).
2. The student has a neurological condition which diminishes the student's ability hold, retrieve, and manipulate information. The condition also often leads to symptoms and behavior that are aligned with autism. A previous evaluation for autism indicated that the student may present with mild autism but that the neurological condition is a factor in such a presentation. The student also had needs in speech and language ("S&L"), occupational therapy ("OT"), and behavior. (S-4, S-13; NT at 305-377).
3. In early intervention, the student's most recent individualized education program ("IEP") contained goals in task-persistence in non-preferred activities and transitioning from preferred activities, following directions, behavior (elopement and grabbing objects), peer play activities, fine motor skills, and expressive and receptive speech and language S&L skills. (S-4).

4. As part of the early intervention IEP, the student received direct instruction, S&L services, OT, and a classroom aide for support. (S-4).
5. In the spring of 2020, as the student would have been transitioning from early intervention to [school age programming] at the District, Pennsylvania schools were closed by executive order as a result of the COVID-19 pandemic. (NT 305-377).
6. Given the student's address, the student would have attended [Elementary School 2] in the District. The parent, however, had arranged with the principal of [Elementary School 1] to continue attending school at the District at [Elementary School 1] [redacted]. (NT at 96-164, 305-377).
7. This arrangement was not shared with the enrollment services at the District. Therefore, the District expected that the student would attend [Elementary School 2]. Not until early September 2020 was the student's enrollment clarified, with the student enrolled at [Elementary School 1] (S-3; NT at 96-164, 305-377).
8. The student attended [redacted] at [Elementary 1.] Due to the pandemic, physical locations at the District were closed and instruction was delivered online. (NT at 56-92, 96-164, 305-377).
9. In September 2020, the District proposed, and the parent agreed, that the early intervention IEP be kept in place until the District could perform a comprehensive evaluation of the student. The District requested, and received, consent to perform the evaluation. (S-4, S-7, S-8).

10. The District undertook its evaluation process, although given certain pandemic-related restrictions, the assessments and testing could not be completed until March 2021. The evaluation report (“ER”) was issued in April 2021. (S-10, S-13; NT at 219-261).
11. As part of the April 2021 ER, the student’s classroom teacher indicated that the student did not exhibit academic support needs, that the student’s needs were focused on behavior (in the home environment during online instruction) and following directions/directives. (S-13; NT at 56-92).
12. The April 2021 ER identified the student with a health impairment as a primary disability, with secondary disabilities in autism and S&L impairment. (S-13).
13. In academic assessments in the April 2021 ER, the student scored in the average range for mathematics and alphabet-writing, and below-average range for early reading skill (although the evaluator noted that the student’s lack of attention and distractibility in this test administration may have impacted the student’s score). (S-13; NT at 219-261).
14. The April 2021 ER contained behavior rating scales completed by the student’s mother. Multiple sub-scales, and overall indices, were scored by the student’s mother in the clinically-significant range, although the evaluator cautioned that the validity index of the assessment indicated that the mother’s scores should be interpreted with extreme caution. (S-13).

15. The April 2021 ER contained data that the student's executive functioning skills, including overall executive functioning, behavior control, and emotion control, were in the extremely elevated range. (S-13).
16. The April 2021 ER contained an assessment for autism, which yielded a probability score of "very likely" for the student being on the autism spectrum, requiring a substantial level of support. (S-13).
17. Through April 2021, the District provided academic instruction in the District's [redacted] curriculum, as well as S&L and OT services in accord with the early intervention IEP. The student was also provided with an aide. (S-4, S-24, S-32; NT at 96-164, 168-180, 297-300).
18. In April 2021, the student's IEP team developed the student's IEP. (S-15).
19. The April 2021 IEP recognized that the student had behavior support needs, although a functional behavior assessment ("FBA") was deferred until the student returned to an in-person educational environment. (NT at 96-164).
20. The April 2021 IEP contained three goals, including expressive S&L, fine motor skills, and behavior (transitioning from a preferred to a non-preferred activity). The IEP provided specially designed instruction, modifications, and related services in all of these areas. (S-15).

21. The April 2021 IEP recommended a placement in general education at [Elementary School 1] with inclusion services, for nearly the entire school day. (S-15).
22. The parent approved the program and placement. (S-15; NT at 96-164, 305-377).
23. Beginning in April 2021, the student's instruction and services were directed by the IEP. (NT at 96-164, 305-377).
24. Over the course of [the school year], the student's reading scores, on a computerized curriculum-based assessment, showed progress, although the composite early literacy score was below average, with the recommendation that the student receive support targeting reading skills. (S-30).
25. Over the course of [the school year], the student's math scores, on a computerized curriculum-based assessment, showed progress, with an average composite mathematics score. (S-31).
26. The student's [redacted] report card showed that that student received "outstanding" or "satisfactory" ratings in all academic areas and skill areas, although the student received "no grade" in certain behavior-related areas (handles conflict appropriately [3<sup>rd</sup> and 4<sup>th</sup> quarters], appropriate movement between activities [1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> quarters], respects school environment/materials [1<sup>st</sup> quarter], and works/plays cooperatively with others [1<sup>st</sup> quarter]). (S-27).

27. In September 2021, the student returned to [Elementary School 1], and to in-person instruction, for [the next] grade. (NT at 96-164, 305-377).
28. The student received academic instruction, along with OT and S&L services. (S-24, S-25, S-35; NT at 96-214, 168-180, 194-215, 265-285, 297-300).
29. In the fall of 2021, the student's family experienced a significant degree of turmoil, leading to a lack of communication between the parent and the District. (S-16, S-17, S-38; NT at 96-164, 305-377).
30. In the fall of 2021, due to various COVID-19 diagnoses/exposures, at certain points the student's class did not meet in person and, due to diagnoses/exposures within the student's family, the student was unable to attend school. (S-28, S-29; NT at 305-377).
31. The District attempted to arrange [to] meet with the parent, but these matters interfered with that effort until after the Thanksgiving holiday. (NT at 96-164, 305-377).
32. In the fall of 2021, the student's mother also lost access to her vehicle. With the need to arrange District transportation, the student began to attend [Elementary School 2] instead of [Elementary School 1] in December 2021. (S-40; NT at 96-164, 194-215, 305-377).
33. In December 2021, upon enrollment at [Elementary School 2], the District sought, and parent provided, consent for a FBA. The District also indicated, in an email, that it would administer a curriculum-based assessment in mathematics and would be updating



the student's reading and math achievement levels using a standardized achievement assessment. (S-36, S-40).

34. The student's [redacted] report card while at [Elementary School 1] included Bs and Cs in core academic areas (B in reading and science, and Cs in writing, oral communication, social studies, mathematics). (S-28).
35. The student's [redacted] report card while at [Elementary School 2] through late January 2022, included As, Bs, and a C in core academic areas (A in social studies and science, Bs in mathematics and oral communications, and C in reading). The student was assigned a "no grade" in writing. (S-28).
36. In January 2022, the student was administered a computerized curriculum-based assessment in mathematics, with certain sub-scores in the average range and certain sub-scores in the below average range. The total test composite was in the below average range. On this record, any updated achievement testing in reading and math, to the extent it was undertaken, was not produced as evidence. (S-37).

## **Discussion**

### ***IDEIA/Denial-of-FAPE***

*FAPE*. The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield

meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Here, the record supports a conclusion that the student’s IEP is reasonably calculated to provide meaningful education benefit in light of the student’s individual needs.

Academically, the student does not appear to require specially-designed instruction in reading and math. This is a point which will be addressed more specifically below, but over the course of [the two school years], in terms of the evidence produced on this record, the lack of any goals or specially-designed instruction in mathematics or reading is not a violation of FAPE.

The student’s needs, well understood even in early intervention, revolve around fine motor skills requiring OT, expressive and receptive language skills requiring S&L support, and behavior (especially involving transitions and, to a slightly smaller degree, interacting with others). The District’s evaluation process included detailed information about these needs and the April 2021 IEP provided appropriate goals for, and programming toward, those goals. Through its programming for the student, the District provided the student with FAPE.

One of the confounding factors in the District’s efforts to provide FAPE to the student, and weighing the evidence in this matter, is the array of significant events in the student’s life and education in the fall of 2021, including profound turmoil experienced by the student’s family—both in the nuclear family and involving extended or affiliated family members—, the

impact of COVID-19 diagnoses or exposures, and a change in the student's school. "Unsettled" or "complicated" are weak descriptions of these events.

Still, the District stood ready to provide the student with the instruction special education and related services (OT and S&L) that the student required and, where the student was able to attend school over those months, whether online or in person, the District provided that programming. Again, the District provided the student with FAPE.

There is one element in this record, however, which must be addressed and, to the extent it has not been addressed, which will be part of the order. In the April 2021 ER, on achievement testing, the student scored below-average in early literacy skills, and on curriculum-based testing [redacted], the student scored in the below-average range in reading. At [Elementary School 2], following the transfer from [Elementary School 1] in December 2021, the student's teacher included the following comments in the student's report card: "Has trouble reading unfamiliar words. Has trouble with reading comprehension." (S-29). Additionally, at [Elementary School 1] prior to the student's transfer to [Elementary School 2] in December 2021, the student's teacher included the following comments in the student's final [Elementary School 1] report card: "Low scores in class tests. Needs additional practice in math. Needs improvement in math skills." (S-28). And in January 2022, on curriculum-based testing in mathematics, the student's composite score was in the below-average range. All of this leads to a need to understand, in a detailed way, whether the student requires goal-driven special education in reading and math.

The District itself recognizes this. In an email in December 2021, after the transfer to [Elementary School 2] had been completed, a District educator emailed the student's mother, indicating "Just a note to let you know I'll be giving (the student) the KeyMath and Woodcock assessments after the holiday break to determine (the student's) levels in reading and

math.” (S-40 at page 1). The first assessment refers to the curriculum-based assessment undertaken in January 2022 at finding of fact 36. The record [is] not clear whether the other assessments—taken to mean the Woodcock-Johnson Tests of Achievement—were administered or considered by the student’s IEP team. Given the evidentiary markers laid out above, it appears that the District was appropriately attempting to gauge, in a more detailed way, whether the student might need support, or even goal-driven special education, in reading and/or mathematics. So, to the extent that this assessment has not been undertaken yet, it will be made part of the order in this decision.

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## ORDER

In accord with the findings of fact and conclusions of law as set forth above, the School District of Philadelphia ("District") has met its obligations to the student under the terms of the IDEIA and Chapter 14 in its programming for the student's [two school years], through the date of this order.

To the extent that the District has not administered the Woodcock-Johnson Tests of Achievement to the student to ascertain the student's achievement levels in reading and mathematics, the District, under the authority of this order, shall administer that assessment, including all relevant sub-tests, on or before March 15, 2022. Within 10 days of the date of administering the assessment, the student's IEP team shall meet to consider the results of the assessment and, if warranted, to consider changes to the student's IEP. Nothing in this paragraph should be read to limit the parties' ability to amend its provisions, so long as the amendment is in writing.

To the extent that the District has administered the Woodcock-Johnson Tests of Achievement, the provisions of the order in the paragraph above are vacated.

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

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire  
Special Education Hearing Officer

03/01/2022