

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. 31669-25-26

Child's Name:

M.S.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Education Agency:

Millcreek Township School District
3740 W. 26th Street
Erie, PA 16506

Counsel for the LEA:

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Hearing Officer:

James Gerl, CHO

Date of Decision:

December 1, 2025

BACKGROUND

The parents filed a due process complaint alleging that the school district's evaluation was inappropriate, that the school district denied a free and appropriate public education to the student and that the school district predetermined the student's placement. The school district contends that its evaluation was appropriate, that it provided FAPE to the student at all times and that it did not predetermine the student's placement.

I find that the school district wrongfully predetermined the student's placement. I find in favor of the school district on all other issues.

PROCEDURAL HISTORY

The parties to this matter have a toxic relationship that was reflected in the contentious prehearing phase of this proceeding. The prehearing process was unusually busy- including a sufficiency challenge by the district that was denied as being without merit; and a stay put motion by the parents that was denied for lack of certification of conference but later resolved. In addition, there were multiple and protracted disputes about exhibits, educational records, emails from the parents that contained settlement discussions and apparent requests for legal advice, emails from the parents that continued to raise issues that were disposed of at the prehearing conference and a snafu at the law firm of counsel for the school district concerning whether communications about the case that were sent by Dropbox were suspect.

Because of the extremely difficult relationship between the parties, the parties were also unable to agree to any stipulations of fact. The unfortunate inability of the parties to agree to stipulations of fact, even concerning facts

upon which both parties obviously agree, unduly elongated the hearing and delayed the decisional process.

The hearing required two sessions: an in-person all-day hearing session and a subsequent virtual hearing session. Seven witnesses testified at the due process hearing. Joint exhibits J-1 through J-12 were admitted into evidence. School district exhibits S-1 through S-17 were admitted into evidence. The following parent exhibits were admitted into evidence: P-1 through P-4, P-6 through P-8, P-10, P-12, P-14 through P-25, P-26 through P-28, P-30, P-32. The following exhibits were not admitted because of a lack of relevance: P-5, P-11, P-13, P-29, P-31.

After the hearing, counsel for school district and the unrepresented parents each 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 extremely lengthy prehearing conference for this matter, presents the following issues:

1. Whether the parents have proven that the school district's February 2, 2025 reevaluation of the student was inappropriate?
2. Whether the parents have proven that the school district denied a free and appropriate public education to the student? and
3. Whether the parents have proven that the school district denied them meaningful participation in the process by predetermining the student's placement or program?

FINDINGS OF FACT

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

1. The student is [redacted] years old and was born on [redacted]. (J-13)
2. The student is [redacted]. (NT 152 – 154)

¹ (Exhibits shall hereafter be referred to as "J-1," etc. for joint exhibits, "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___").

3. From approximately August of 2021 through May of 2023, the student's [redacted] grade and the majority of the student's [redacted] grade school years, the student was homeschooled. (NT 91, 614 – 615; S-2)

4. From approximately September of 2023 through June of 2025, the student attended [redacted] grade and [redacted] grade in the school district. The student is currently attending a [redacted] school in the school district for [redacted] grade. (J-7, J-8; P-6)

5. The school district reevaluated the student and issued a reevaluation report on February 2, 2025. The student's team agreed that additional assessments were not needed to complete the reevaluation. The student's parents agreed to a "records review" reevaluation, meaning that no additional assessments of the student would be taken. The reevaluation was conducted by a qualified school psychologist and included a review of existing evaluation data, information provided by the parents, classroom-based assessments, classroom-based observations and observations by teachers and a paraprofessional who worked with the student in learning support and in the regular education classrooms. The evaluation concluded that the student continued to be eligible for special education under the primary disability category of Intellectual Disability and the secondary category of Other Health Impairment. The reevaluation report noted the student's skill deficits, as observed by the student's teachers and the paraprofessional. (J-5; S-16; NT 522 – 525)

6. The school district's February 2, 2025 reevaluation of the student was comprehensive, appropriate, and provided data regarding all areas of suspected disability of the student. (NT 521 – 522; J-5)

7. The student's IEP team met on the following dates and created IEPs or revised existing IEPs: May 5, 2023; October 17, 2023; February 23, 2024; May 13, 2024; September 18, 2024; February 20, 2025; February 27,

2025; March 27, 2025; April 1, 2025 and July 18, 2025. The resulting IEPs were not excessively long, and they did not contain unnecessarily vague or intentionally misleading statements. (J-6, J-7, J-8; NT 190 – 192)

8. By February 2025, the school district staff suspected that the student should be moved from the learning support setting to the life skills setting for certain core academic classes. (NT 225)

9. A Notice of Recommended Educational Placement was issued after the February 27, 2025 IEP team meeting to change the student's IEP to provide additional reading review and support for three of the six days of specials, as opposed to six of the six days of specials. (J-9; NT 663 – 665)

10. The student's IEPs during the relevant timeframe stated the student's present levels of performance and the student's needs, as identified in the various evaluations of the student, including executive functioning and ADHD needs, such as attention/concentration, memory and high activity levels; reading needs, including phonological awareness, phonological decoding, word identification, sight word fluency, passage fluency, and reading comprehensive; and the student's writing needs, including written expression, spelling and sentence formation. The IEPs included specially designed instruction to address and provide support in the student's identified areas of need, including: executive functioning and ADHD, reading, including the use of research-based reading/ phonics/ vocabulary programs, such as Sonday, Heggerty and LOGIC, Orton – Gillingham based programs; and writing, including the use of the research-based program HMH. (J-6, J-7, J-8, J-9; NT 174 – 177, 185 – 187, 193 – 194, 194 – 198, 206 – 207, 608 – 613, 339-340)

11. The student's IEPs during the relevant timeframe contained goals that addressed the student's identified needs in reading and writing skill deficits and provided for measurement of the student's progress on IEP goals,

including the following: decoding to build fluency; high-frequency word goal; reading comprehension goal; writing goal – sentence writing. (S-2; J-6, J-7, J-8; NT 208 – 212, 616 – 618)

12. The student made steady progress consistent with the student’s cognitive ability in reading in [redacted] grade. (S-2; NT 210 – 211, 619)

13. The pace of the student’s progress on IEP reading goals began to slow during [redacted] grade. (S-2; NT 210 – 213, 619)

14. The student failed to meet the student’s math goals in both [redacted] grades. (S-2; NT 222 – 225)

15. E-mails between the school district’s director of student services and the parents and their previous attorney reflected ongoing revisions to the student’s IEPs that were made between April 1 and July 18, 2025. (S-1; NT 636 – 637)

16. In April 2025, the student began receiving private reading instruction independent of the school that utilized the Barton system. The Barton system is an Orton – Gillingham based program. The Barton instructor broke standardization when administering an assessment to the student. (P-2, P-1; NT 544-545)

17. In late May 2025, students in the school district who were about to begin the next school year at the [redacted] school participated in an event called “Move Up Day.” The student’s special education teacher sent an e-mail to the mother stating that the student would attend Move Up Day at the [redacted] school in the district that had the life skills program. A different [redacted] school in the school district had the learning support program. The student’s special education teacher had assumed that the student would be attending the [redacted] school with the life skills program. When the student’s mother asked why the student was attending the Move Up Day

program at the [redacted] school with the life skills program, since the issue had not yet been settled, the special education teacher determined that he would need to confer with his supervisor to determine how to respond to the parents' e-mail. The school district's director of student services eventually permitted the student to attend the Move Up Day at the [redacted] school with the learning support program. (NT 264 – 265, 289 – 292, 659 – 660, 635, 301 – 302)

18. In late May 2025, the parents shared with the school district information concerning the student's private tutoring in the Barton system. (NT 652; P-1, P-2)

19. The school district issued a Notice of Recommended Educational Placement on July 18, 2025 that changed the student's placement for [redacted] grade from learning support to life skills support for English Language Arts, math and tutorial. The rest of the student's day would be in the regular education setting (J-10; NT 634)

20. On August 1, 2025, the school district's director of student services administered a Barton screener to the student, as a part of an attempt to provide a trial program in utilizing the Barton methodology in the student's program. The student did not pass task C of the Barton screener, which is a prerequisite for starting the Barton system. (S-3; NT 639 – 640, 651)

21. On September 18, 2025, an independent school psychologist conducted a pediatric neuropsychological evaluation of the student. The evaluation was obtained by the parents. The evaluator's administration of two of three testing sessions was conducted after the parents had filed the instant due process complaint. The evaluator administered a number of assessments to the student. The evaluation did not include any input from the staff of school district who worked with the student in the school setting. The evaluator ruled out Intellectual Disability for the student. The evaluator used outdated

definitions from a former version of the Diagnostic and Statistical Manual to reach the conclusion that the student was ruled out for an intellectual disability. The evaluator did not use the IDEA definition of intellectual disability. The evaluator focused on the student's strengths and did not take into account any of the student's deficits or unique individual areas of academic need. The evaluator recommended that the parents follow up concerning the student's medication management and seek the advice of a pediatric psychiatrist; and the evaluator recommended that the student would benefit in school from a learning support setting to address academic difficulties and should be provided any necessary accommodations. (P-27, P-32; NT 528-531, 531-538, 473 – 517)

22. The decision to move the student to life skills setting for certain academic classes was made prior to the July 18, 2025 IEP team meeting by school district staff without the input or participation of the student's parents. (Record evidence as a whole)

23. The student was performing academically well below any of the other students in the learning support class. (NT 225, 303)

24. The student's special education teacher and the educational assistant assigned to the student's classroom needed to spend a significant amount of time working solely with the student. (NT 225 – 226, 233 – 234)

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. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In conducting an evaluation, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. The child must be assessed in all areas related to the suspected disability on an initial evaluation. The evaluation must be comprehensive. Perrin ex rel JP v Warrior Run Sch Dist, 66 IDELR 254 (M. D. Penna. 2015); IDEA § 614; 34 C.F.R. §§ 300.301, 300.304 – 300.305; 22 Pa. Code § 14-123.

3. In conducting a reevaluation under IDEA, the IEP team and other qualified professionals must review existing data, information provided by the parents and observations of the student and on that basis determine whether additional data is needed to determine a student's continuing eligibility and the student's educational needs. 34 C.F.R. § 300.305.

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 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 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. 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).

9. IDEA does not require a school district to guarantee a particular result or to close the gap between children with disabilities and their non-disabled peers. JN and JN ex rel. JN v. Southwest School District, 56 IDELR 102 (N.D. Penna. 2015); see, Kline Independent School District v. Hovem, 690 F. 3d 390, 59 IDELR 121 (5th Cir. 2012); HC and JC ex rel. MC v. Katonah – Lewisboro Union Free School District, 59 IDELR 108 (S.D. NY 2012); District of Columbia Public Schools, 111 L.R.P 77405 (SEA D.C. 2011). Progress toward a FAPE is measured according to the unique individual circumstances of the individual student and not in comparison to other students. See, GD by Jeffrey and Melissa D v. Swampscott Public Schs, 122 LRP 6305 (1st Cir. 2022). The Third Circuit has specifically ruled that IDEA does not require that all (or even most) disabled children advance at a grade-level pace. KD by Dunn v. Downingtown Area School District, 904 F. 3d 248, 72 IDELR 261 (3d Cir. 2018).

10. Where a school district predetermines an IEP or a student's placement or program prior to an 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. WV. 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. 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.

12. 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.

13. 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.

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 (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); School District of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area School District, 71 IDELR 87 (N.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 Education, 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). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist., 606 F.3d 59, 54 IDELR 212 (3d Cir 2010). See, Branham v. District of Columbia, 427 F.3d 7; 44 IDELR 149 (D.C. Cir. 2005).

15. The parents have not proven that the school district's reevaluation of the student was inappropriate.

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

17. The parents have proven that the school district denied the parents meaningful participation by predetermining the student's placement.

DISCUSSION

I. Merits

1. Whether the parents have proven that the school district's reevaluation of the student was inappropriate?

The parents contend that the school district's February 2, 2025 reevaluation of the student was not appropriate. The school district contends that its reevaluation was appropriate. The parents have not proven that the school district's reevaluation was inappropriate.

The evidence in the record reveals that the school district's reevaluation of the student was comprehensive, appropriate and evaluated the student in all areas of suspected disability. The evaluator obtained information and observation from the student's teachers, related services, providers and paraprofessionals. The evaluation appropriately determined that the student continued to be eligible for special education and identified and made recommendations with regard to the student's educational and communication needs.

The parents' main argument here is that the reevaluation was not appropriate because the school district did not conduct any new assessments of the student. IDEA specifically provides that a school district must review data, including information submitted by the parents, and conduct observations of the student when beginning the reevaluation process. Thereafter, the student's team must determine whether additional

assessments are necessary. In this case, the student's team determined that there was sufficient data and that additional assessments of the student were not required. Indeed, the parents were in agreement that a records review only reevaluation was appropriate; that is, the parents agreed that no additional assessments of the student were necessary in order to complete the reevaluation process. Given the agreement of the parties that a records review only reevaluation was all that was needed for the student, it is clear that the parents have not proven that additional assessments were necessary. None of the evidence in the record suggests that additional assessments of the student were necessary in order to reevaluate the student. The parents' argument is rejected.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the witnesses called by the parents in this case. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the parents' testimony is contradicted by a prior inconsistent statement by the parents in which they agreed that a records-only reevaluation was appropriate. The parents' demeanor during cross-examination concerning this issue was evasive.

It is concluded that the parents have not proven that the school district committed an evaluation violation by conducting a records-only reevaluation of the student.

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

The parents contend that the school district denied a free and appropriate public education to the student. The school district argues that it

has provided a free and appropriate public education to the student at all times.

The parents allege numerous substantive and procedural violations of IDEA. The substantive violations include the following: that the student's IEPs did not properly address the student's reading, executive functioning or ADHD needs; that the student's IEPs underestimated the student's potential; that the student's IEPs were tailored to the available classroom types rather than the student's needs; and that the IEPs were not significantly changed from year to year.

Concerning the first alleged substantive violation, a review of the record evidence indicates that the student's numerous IEPs during the relevant timeframe properly addressed the student's needs in the areas of reading, executive functioning and ADHD. Each of the relevant IEPs contain present levels of performance for the student concerning these areas of need. In addition, each IEP included appropriate specially designed instruction and goals to address and support the student's identified needs. In addition, the IEPs and the testimony at the hearing revealed that the school district utilized a number of research-based reading/phonics/ vocabulary programs for the student, including the following: Sonday, Haggerty and LOGIC, all structured literacy-based programs. The school district also utilized a research-based writing program, HMM.

Although the appropriateness of an IEP must be measured at the time that it is written, and actual progress is not required, in this case, the student made steady progress commensurate with [student's] cognitive ability in reading in [redacted] grade. When the student's reading progress began to slow down during [redacted] grade, the school district staff made appropriate changes in the student's program. The evidence in the record clearly

demonstrates that the student's IEPs appropriately addressed the student's reading, executive functioning and ADHD needs during the relevant timeframe.

Concerning the parents' argument concerning the student's potential, the school district is not required to maximize a student's potential. The parents seem to be upset that the school district is not maximizing the student's potential, but the school district is not required to do that. Instead, an IEP must be appropriately designed and be reasonably calculated to confer meaningful educational benefit in view of the student's individual circumstances. This student's circumstances included needs in the area of reading and executive functioning, and that the IEPs developed by the school district appropriately addressed those needs. There is no evidence in the record to the effect that the school district underestimated the student's potential.

Concerning the parents' argument about classroom types, there is no evidence in the record that indicates that the school district tailored the student's program to classroom types rather than the student's needs. Instead, the record evidence shows that the student's IEPs were well tailored to meet the student's identified educational and communication needs. The parents' argument is rejected.

The parents also argue that the student's IEPs were not significantly changed from year to year. The record evidence reveals, however, that the school district did make appropriate changes to the student's program, as required by the student's progress or sometimes lack of progress. There is no evidence in the record to support the parents' contention with regard to IEPs not being changed.

The parents have not proven the student's IEPs were not reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances. It is concluded that the parents have not proven any substantive violation of IDEA concerning the student's IEPs.

It appears that a large part of the parents' FAPE argument is that there is a gap between the student's educational performance and that of the student's non-disabled peers. The Third Circuit has specifically ruled, however, that IDEA does not require a school district to guarantee a particular result or to close the gap between children with disabilities and their non-disabled peers.

In addition, the testimony parents' expert witnesses contained some serious methodological issues. The reading specialist broke standardization on one of the assessments administered to the student. The school psychologist used outdated definitions from the previous version of the DSM. Their testimony is afforded little weight.

The parents also allege that the school district committed certain procedural violations. Specifically, the parents contend that the student's IEPs were too long, that the IEPs contain language that was intentionally vague, and that the student's goals were reduced and/or difficult to track and measure.

The IEPs of this student are not excessively long. The student's special education teacher testified that he did not draft the student's IEPs to be any longer than they needed to be. There is no evidence in the record to support the parents' contention, and the contention is rejected.

The parents also argue that the IEPs contain language that was intentionally vague and misleading. The student's special education teacher

testified that he did not intentionally use vague or misleading language of any kind in the student's IEPs. There is no contradictory evidence in the record, and the parents' contention is completely without merit. The parents' contention that the school district somehow used intentionally vague or misleading language in the student's IEPs is rejected.

The parents contend that the school district committed an actionable procedural violation by reducing the student's goals or by developing goals that were difficult to track or measure. This argument contradicts the parents' argument to the effect that the student's IEPs were not significantly changed from year to year. There is no evidence in the record, however, that the student's IEP goals were inappropriately changed or reduced. There is also no evidence in the record that the IEP goals were difficult to track or measure. The parents' contention with regard to alleged procedural violations constituting a denial of FAPE are all rejected. Even assuming *arguendo*, however, that the parents had proven procedural violations, there has been no showing that any such violation was actionable because it adversely affected the student's education or significantly impaired the parents participation in the IEP process.

The heart of the parents' argument concerning denial of FAPE involves their claim that the school district should be providing the student reading instruction utilizing the Barton methodology. The law is clear, however, that a parent cannot compel a school district to use the parents' preferred methodology. Educators are permitted to choose among various methodologies in instructing the student, as long as the student's IEP is reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances. In this case, the school district utilized

various appropriate reading methodologies, which were research based, to instruct the student.

Moreover, the record evidence reveals that the parents have misread certain data to overestimate the success that the student has had with their preferred methodology. The parents have not proven that the student must receive the Barton methodology in order to receive a free and appropriate public education. IDEA does not permit parents to compel a school district to use their preferred methodology. The parents' argument, to the extent that they are intending that the student can only receive FAPE if the school district provides the Barton methodology, is rejected.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the parents' witnesses with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factor: the parents' changed their argument after first filing the due process complaint in this case. Previously, the parents had argued that the school district denied FAPE to the student because the student's IEPs did not provide sufficient supports. By the time of the due process hearing, the parents had abandoned that argument and instead argued that the FAPE violation that they were claiming was instead that the school district did not provide the correct supports, specifically with regard to their preferred reading methodology. This contradictory position goes to the heart of the matter and severely impairs the parents' credibility with regard to the FAPE issue.

It is concluded that the parents have not proven that the student was denied FAPE.

3. Whether the parents have proven that the school district denied them meaningful participation in the process by predetermining the student's placement or program?

The parents contend that the school district predetermined the student's placement or program. The school district contends that it did not predetermine the student's program or placement.

Courts have ruled that it is a violation of IDEA for a school district to predetermine a student's placement or program. The law provides for a rich, multidisciplinary IEP team to review the student's present levels of performance and determine the student's needs going forward, as well as the appropriate goals and specially designed instruction and accommodations to ensure that FAPE is provided to a student. The parents are an important part of this process. Accordingly, the courts have ruled that predetermination violates the core concept of IDEA that requires that the parents be afforded meaningful participation. In this case, the school district points to the fact that the parents have actively participated in every meeting concerning the student and have been afforded the opportunity to provide input. It is true that the parents have actively participated in the IEP process in this case. However, the record evidence reveals that the school district predetermined the important decision that the student would attend certain classes in the life skills setting, as opposed to the learning support setting.

The evidence reveals that the student's special education teacher arranged for the student to participate in Move Up Day in May of 2025 at the [redacted] school in the district that has the life skills setting rather than at the [redacted] school that had the learning support setting. It is clear from the testimony of the student's special education teacher that school district

staff had already determined that the student would be attending certain classes in the life skills setting rather than the learning support setting. It should be noted that the school district officially made the decision to place the student in the life skills setting for certain classes at the July 18, 2025 IEP team meeting.

However, the evidence in the record reveals that the school district staff had already determined before the IEP team meeting that the student would attend the life skills classes. In testifying about the Move Up Day incident in May, the special education teacher could not explain why, months before the IEP team meeting decision was allegedly made in July, the teacher arranged for the student to attend Move Up Day at the life skills [redacted] school. If the student was being considered to continue to attend those classes in the learning support setting, the student would have attended Move Up Day at a different [redacted] school.

Moreover, the student's special education teacher contacted his supervisor after having been confronted by the parent about why the student was attending Move Up Day at the [redacted] school that had the life skills classroom rather than at the [redacted] school that had the learning support classroom. The special education teacher could not provide a coherent explanation as to why he needed to contact his supervisor before responding to the parents' concern.

It should be noted that it is not inappropriate for school district staff to prepare for IEP team meetings; in fact, it may be preferable. School districts often have preliminary meetings to get ready for an IEP team meeting. School district staff cannot, however, determine the student's program or the student's placement in such meetings. Parents are, by statute, full members of the IEP team who are afforded the right to meaningful participation in the

IEP process. Parents are guaranteed this right to meaningfully participate in the process. When decisions are made without the parents' having had an opportunity to participate, the law is violated.

The school district attempts to explain the Move Up Day by noting that the school district offered to change the Move Up Day to the [redacted] school that has the learning support program after being contacted by the parent. It appears to be true that the school district did make an offer to change the Move Up Day, but the importance of the Move Up Day incident is not which event the student actually attended. Instead, the significance is that the special education teacher decided to send the student to the Move Up Day at the life skills [redacted] school. This shows that the placement decision was already a done deal. This fact is underscored by the fact that the special education teacher felt that it was necessary to contact his supervisor before replying to the parents' e-mail about the matter. This was clearly an "oops moment." One would not expect a teacher to have to consult a superior to answer a simple parent email unless the matter was serious or it revealed something. Moreover, in his testimony at the hearing, the special education teacher could not provide any coherent or persuasive reason why he would need to confer with his supervisor before answering the parents' e-mail about something so simple as Move Up Day. The only reasonable conclusion from this evidence is that the school district had predetermined that the student would be attending certain classes in the life skills setting months before the July IEP team meeting at which the change was allegedly made.

The move up day incident is indicative of the fact that the school members of the student's IEP team did not have an open mind concerning the student's placement. The school staff had been recommending the more restrictive setting for months before it was imposed in the July IEP. Moreover,

the student's teachers and aide felt that they were spending too much of their time with the student. There is no evidence in the record that the school district considered assigning another aide to the classroom or employing any other supplemental aids or services before determining that the student should be moved to the life skills setting. It should be noted that although the school district placement provides the student with more time of the school day with non-disabled peers, it changes some core academic subjects to a more restrictive setting without a thorough consideration of whether any supplementary aids or services might permit the student to continue to receive these subjects in the less restrictive setting. Accordingly, the school district's placement also runs afoul of the least restrictive environment provisions of IDEA.

It may well be true, however, given the other evidence in the record, that the life skills setting is, or soon will be, the appropriate place for the student to receive the student's ELA, math and tutorial. That decision, however, cannot be made only by school district staff without the participation of the student's parents.

The testimony of the parents' witnesses was more credible and persuasive than the testimony of the school district witnesses with regard to this issue. This conclusion made because of the demeanor of the witnesses, as well as the following factor: the testimony of the special education teacher concerning the Move Up Day incident was inconsistent and the special education teacher's demeanor was extremely evasive during testimony about the Move Up Day incident.

It is concluded that the parents have proven that the school district denied them meaningful participation in predetermining the student's placement in violation of IDEA.

II. Relief

The parents seek compensatory education. Because the parents have failed to prove a denial of a free and appropriate public education, however, an award of compensatory education would not be appropriate. Although the parents have not proven most of the allegations that they made in the due process complaint, the parents have proven that the school district wrongfully predetermined the student's placement.

The appropriate remedy for this violation is that the school district be directed to provide the student's English language arts, math and tutorial in the learning support setting rather than the life skills setting that it had predetermined. The student's IEP should be changed on a temporary basis to reflect that modification.

However, given the evidence in the record that makes it less than clear as to whether the learning support environment is the correct environment for which the student to receive English language arts, math and tutorial, it is further ordered that the IEP team meet again on or before February 15, 2026 to determine whether it would be more appropriate for the student to continue receiving English language arts, math and tutorial in the learning support environment, with or without additional supplementary aids, services or other supports, or whether it would more appropriate for the student to receive those classes in the life skills setting. The school district must permit the parents to participate in the IEP team meeting and duly consider their input. It is not required, however, that the parents agree with the final decision as to the appropriate setting for the student to receive these classes. Indeed, the local education agency is responsible for ensuring that the student's program provides FAPE. The parents' participation, however, is nonetheless an important component of the placement decision-making process.

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 amend the student's IEP, as described in detail in the relief portion of this decision; and
2. The student's IEP team shall be convened again on or before February 15, 2026 to consider the matters described in detail in the relief portion of this decision; and
3. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: December 1, 2023

James Gerl

James Gerl, CHO
Hearing Officer