

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. 30572-24-25

Child's Name:

W.S.

Date of Birth:

[redacted]

Parent:

[redacted]

Local Education Agency:

TECH Freire Charter School
2221 Broad Street,
Philadelphia, PA 19132

Counsel for the LEA:

Jeffrey Stacey, Esq.
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Hearing Officer:

Charles W. Jelley Esq.

Decision Date:

June 20, 2025

Background

The Local Education Agency (LEA) filed the pending Due Process Hearing Complaint seeking approval of its offer of a comparable services individual education program and its initial offer of a free appropriate public education and a revised individual education program, which included one-on-one educational aide, in the least restrictive setting. The Parent rejected each individual educational program and instead sought an order directing the hiring of the parent-selected one-on-one home health care aide, a family member, to support the Student during the school day. After a thorough review of the record, including both intrinsic and extrinsic evidence, I find that the LEA offered comparable services and implemented the Student's transfer IEP with fidelity. I further find the LEA timely reevaluated the Student, weighed the Parent's input, after which they offered the Student a Free Appropriate Public Education in the Least Restrictive Setting. Therefore, the LEA's request is Granted, and the Parent's request to select the one-on-one home health care aide is Denied.¹

¹ The following Findings of Fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited or given equal weight. However, in reviewing the record, while the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements not all testimony or exhibits were given proper weight. In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 USC § 1415(h)(4)(A).; and 22 Pa Code § Chapter 711. References to the record throughout this decision will be to the Notes of Testimony (N.T), while LEA Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. The Parents did not offer any Exhibits and the Hearing Officer accepted and made the LEA's Witness affidavit, after taking testimony, as HO #1.

Statement of the Issues

- a) Whether the LEA offered and implemented an appropriate or comparable individual education program in the least restrictive environment during the 2024-2025 school year, within the meaning of the IDEA? If not, what relief is appropriate?
- b) Whether the LEA, after evaluating the Student, offered and implemented appropriate individual education programs in the least restrictive environment during the 2024-2025 school year, within the meaning of the IDEA? If not, what relief is appropriate?

Findings of Fact

- 1. In the fall of 2024, the Student enrolled as a new [redacted]-grade student at TECH Freire Charter School –the LEA- at issue, with an IEP dated May 2024 (S-#23).
- 2. A different Charter School evaluated the Student on March 16, 2024, and the resulting Reevaluation Report was issued on April 15, 2024. (S-#23).
- 3. On May 17, 2024, the previous Charter School completed an individual education program (IEP). The previous Charter school IEP S-#1 noted, in the present levels, that the Student had a privately funded home health aide due to a medical condition called [redacted]-. (CS-23 p.2–3). The privately funded home health care aide is a member of the Student's immediate family. The May 2024 IEP did not include the private home health care aide as a related service or a supplemental service. (S-#23, August 25, 2024. The record does not include the previous Charter School's Notice of Recommended Placement NOREP. *Id.*
- 4. The transfer IEP was scheduled to be in effect from May 20, 2024, through May 19, 2025. (Ex.30. CS-1, p. 1).
- 5. In August 2024, when the Student transferred to the current LEA. The LEA agreed to implement the transfer IEP as is. (CS-23).
- 6. On September 30, 2024, around 10:11 AM, two Charter School staff members observed the Student and the one-on-one home

health care aide in a somewhat compromising position. The staff reported that the Student was in close proximity in a hallway corner, with the Student's arms around the neck and face of the one-on-one and close to the Student. The interaction caused a staff person, independent of the LEA's knowledge, to make a ChildLine abuse report. (S-#23). One staff member described the proximity as beyond what is necessary for professional interaction, and another referred to the contact as 'an inappropriate interaction. (S- #23).

7. This LEA's Policy #308 prohibits boundary-blurring behavior and requires that adults maintain professional, moral, and ethical relationships with students. (S- #23).
8. Policy #308 also addresses situations involving adults with pre-existing familial relationships with students and requires that proper conduct be maintained at all times. (S- #23).

Multiple staff interviewed described other incidents of boundary-blurring behavior by the Student, including lying on the floor beside the Student and requesting access to the staff bathroom with the Student. (S-#23).

9. Pending the completion of the Department of Human Services, on October 1, 2024, the LEA held a meeting with the Parent and the home health care aide, a family member. During the meeting, the LEA informed the Parent that the LEA would provide a one-on-one Charter School-funded aide and sought permission to reevaluate the Student and gather medical input and records. Finally, the LEA advised the Parent that the private aide would no longer be permitted on the property. (CS-#23 ¶5-7; CS-#4).
10. On October 1, 2024, the Parent refused to allow the Student to attend school without the privately funded home health care aide. To ensure the continuation of services, the Charter School then issued a NOREP proposing a temporary change in placement to homebound/virtual instruction, pending an internal investigation and the result of the Department of Human Services investigation. The Department had directed that the aide not be allowed to live in the home pending the results of the investigation. (CS-#4 p. 1).
11. Again, on October 6, 2024, the Charter School determined that a privately funded home health care aide would not be welcomed in the school, and the LEA would assign another school-funded one-on-one aide at no cost to the family. (S-#23).

On or about October 7, 2024, the LEA issued another NOREP confirming that Charter would provide a staff-assigned aide. (S-#23 ¶7; S-#8; S-#4).

12. The school nurse, the Student's case manager, and the Director of Student Services met on the morning of October 7, 2024, to ensure the Parent that support was in place for the Student's return to the building. *Id.*
13. The IEP team considered continuing homebound instruction but rejected that option, reasoning that the Student could benefit from in-school instruction. (S-#5 p. 1). The recommended placement in the October 2024 NOREP was in the school's Itinerant Learning Support. The Parent rejected the proposal and did not return. (CS-4 p. 1). Instead, the Parent wanted to interview and approve the aide. (*Passim*).
14. A meeting was scheduled for October 10, 2024, but the Student's Parent requested an extension to meet with the LEA and legal counsel. (S-#4 p. 1). During this interim, the case manager supported the Student via home-based instructional support, including work sent by email, text, phone, and Zoom contacts. (S-#4 p. 1).
15. On or about October 21, 2024, the LEA held a second team meeting with the Parent and once again offered to provide a one-on-one aide. (S-#23 ¶9; S-#9; S-#5).
16. On October 21, 2024, the Charter School issued a second NOREP proposing the reinstatement of in-school services with additional one-on-one aide support. (S-#5 p. 1). The LEA also proposed itinerant Learning Support level math support within the regular education classroom. (S-#5 p. 1).
17. On or about November 7, 2024, the LEA issued a permission to reevaluate (PTRE). to reevaluate the Student. The Parent declined consent. (S-#23 ¶10; S#10; S-#6).
18. On December 4, 2024, the LEA filed a due process complaint seeking authority to implement the NOREP changes and permission to override the Parent's refusal to consent to the reevaluation. (S-#23 ¶11).
19. On January 7, 2025, the hearing officer held the initial session; during the hearing, the Parent consented to reevaluation. The hearing was adjourned to ample time to complete the reevaluation. (S-#23 ¶12; S-#11; S-#14).
20. On January 10, 2025, the Parent signed a consent to reevaluate form. (S-#23 ¶14; S#12; S-#14 at 2).

21. On March 7, 2025, the LEA issued the Reevaluation Report and proposed to identify the Student as a person with a learning disability. (CS-23 ¶15-16; Ex.13. CS-19).
22. On March 27, 2025, the LEA held an IEP meeting to review the results of the reevaluation and proposed a new IEP. The absence of medical records supporting the role of an aide meant that the IEP did not include a one-on-one aide. (S-#23 ¶17-18; S#14; S-#20).
23. Later, on March 27, 2025, the Parent provided documentation that the Student required a one-on-one aide during the school day to support the medical diagnosis. The document stated that the one-on-one support was a "medical necessity." (S-#23 ¶20).
24. On March 28, 2025, the LEA issued a NOREP seeking permission to implement the proposed March 27 IEP. (S-#23 ¶21; S-#15; S-#22).
25. On March 28, 2025, the Charter School proposed in a NOREP to remove temporary virtual programming and resume in-person services per the updated IEP. (S-#22 p. 1). The NOREP recommended an Itinerant Learning Support from March 28, 2025, to March 26, 2026. (S-#22 p. 2).
26. On April 2, 2025, the Parent submitted a letter from a primary care physician dated February 11, 2025, recommending a one-on-one aide. (S-23 ¶22; S-#16; S-#17).
27. On April 24, 2025, the LEA revised the IEP, which included one-on-one support services. (S-#23 ¶23; S-#17; S-#21).
28. On April 24, 2025, the Charter issued a revised IEP that included goals related to mathematics and executive functioning and confirmed the Student's classification as having a specific learning disability in math. This IEP included one-on-one aide services. (S-#21 p. 1, 9).
29. On May 6, 2025, the Parent approved the March 28, 2025, NOREP. (S-#23 ¶24; S-#22). On May 07, 2025, despite approval, the Student did not return to school in person. (S-#23 ¶25).
30. The NOREP was signed and approved on May 6, 2025. In signing the executed NOREP, consent was given to the proposed placement. (S-#22 p. 2).
31. In preparation for the due process hearing on June 9, 2025, the LEA signed an Affidavit confirming all dates and educational steps taken by the LEA to provide a FAPE. (S-#23).
32. The IEP notes that the Student exhibits symptoms such as dizziness, pain, and dissociation and that these symptoms are significantly impacted by anxiety. (S-#21, p. 5).

33. The IEP incorporated updated medical documentation submitted by the Parent, including a letter from a Primary Care provider recommending the provision of a home health care aide familiar with the Student's needs. (S-#21, p. 5).
34. As part of specially designed instruction (SDI), the IEP provides a full-time one-on-one aide to monitor the Student. The IEP also offered support for physical and emotional symptoms related to the health condition and to support emotional regulation. (S-#21, p. 9).
35. Additional SDIs include check-ins with a social worker for 10 minutes per week and access to a calming environment to reduce anxiety. (S-#21, p. 9).
36. The IEP includes one annual goal focused on emotional regulation and using coping strategies to return to a calm state following distress. (S-#21, p. 8).
37. The IEP confirms that the Student will continue to participate in the general education setting for 100% of the school day. (S-#21, p. 11).
38. The IEP proposed to change the Student's primary disability from other health impairments to a specific learning disability. There were no signs of intellectual disability, vision or hearing impairments, emotional disturbance, or environmental disadvantage as the primary causes of [redacted] academic challenges. (S-#3 p. 12).
39. Although the Parent signed the NOREP and consented and agreed to the IEP goals, SDI support, and the LEA-funded aide during the school day, the Parent rejected the one-on-one aide support, and the Student remained on virtual instruction. As such, the Student did not return to the school building. (*Passim*). The school ended, and the Student was promoted to the next grade. (*Passim*).

Applicable Legal Standards

Legal Standard for FAPE

Under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. § 1400 *et seq.*, a free appropriate public education (FAPE) must be provided to all eligible students with disabilities. A FAPE is provided through an individual education program that includes special education and related services: (a). Provided at public expense and under public supervision and direction, (b). Meet the standards of the state educational agency, (c). Include appropriate preschool, elementary, or secondary education, and (d) Are provided in

conformity with an individualized education program (IEP) that meets the requirements of 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320.

Transfer Obligations Between Local Education Agencies

Under 34 C.F.R. § 300.323(e), when a student with an IEP transfers to a new LEA within the same state, the new LEA must provide a FAPE, including services comparable to those described in the existing IEP until the new LEA either adopts the prior IEP or develops a new one.

Substantive Adequacy of the IEP

The Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982), held that an IEP must be reasonably calculated to enable the child to receive educational benefits. The Court refined this standard in *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017), requiring an IEP to be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. See also *M.S. v. Downingtown Area Sch. Dist.*, 82 IDELR 32 (E.D. Pa. 2022).

Procedural Compliance with IDEA

The LEA must also comply with the procedural requirements of IDEA, including timely evaluations (34 C.F.R. § 300.301), parent participation (34 C.F.R. § 300.322), written prior notice (34 C.F.R. § 300.503), and issuance of a NOREP when a placement change is proposed (22 Pa. Code § 711, *et seq*).

Selection and Appropriateness of Personnel Assignments

The IDEA does not guarantee a parent the right to select specific school personnel, such as a particular teacher, aide, or driver. The LEA has the discretion to assign qualified personnel so long as the personnel meet state qualifications and the IEP does not specify an individual by name. See *T.M. v. Cornwall Cent. Sch. Dist.*, 63 IDELR 31 (2d Cir. 2014); *Blanchard v. Morton Sch. Dist.*, 52 IDELR 3 (W.D. Wash. 2009), *aff'd*, 54 IDELR 277 (9th Cir. 2010, unpublished); 34 C.F.R. § 300.156.

Assignment of a One-On-One Aide

Where a student's IEP requires the support of a one-on-one aide, the LEA has met its obligations by assigning a trained staff person to fulfill that role. The LEA is not required to assign a family member or previously retained private aide unless specifically required by the IEP. See *Miami-Dade County Sch. Bd.*, 117 LRP 35725 (SEA FL 2016); *Central Dauphin Sch. Dist.*, 8 ECLPR 21 (SEA PA 2019); 34 C.F.R. § 300.320(a)(4)–(5).

The Pennsylvania Department of Education has issued a Basic Education Circular regarding the provision of 1:1 services to students in Pennsylvania schools, including charter schools. While charter and school districts "may" rely on a parent-provided individual to implement those services, they are not required to do so:

The LEA may meet its obligation to provide one-to-one support using services funded by medical assistance, such as TSS services, to the extent that the Student qualifies for such services under the medical assistance system. However, eligibility for one-to-one support through medical assistance and reliance on the use of medical assistance cannot be a precursor or condition to the provision of one-to-one support services. Nor may the LEA require a parent to utilize or obtain medical assistance or other insurance or suggest that the Parent must appeal any medical assistance denial of services as a condition to obtain one-to-one support. "*Special Education FAPE and One-to-One Support Obligations for Students with Disabilities*," Basic Education Circular, Pa. Dep't of Education (last reviewed by PDE July 2024).

CONCLUSIONS OF LAW

Based on the evidence presented and the applicable legal standards described above, I now conclude and find as follows:

1. The LEA accepted and implemented the transfer IEP in good faith. 34 C.F.R. § 300.323(e).
2. The LEA acted within the scope of its responsibilities to investigate and apply its policies reasonably. 34 C.F.R. § 300.323(e).

3. The LEA acted reasonably in providing comparable services in the form of virtual educational support during the Department of Human Services Investigation and its internal investigation 34 C.F.R. § 300.323(e).
4. The LEA acted within the scope of its responsibility to restrict the privately funded home health care aides' access to the school building. 34 C.F.R. § 300.323(e).
5. The LEA offered the Student a FAPE and an IEP that was reasonably calculated to provide benefit through the assignment of an LEA-funded one-on-one aide, specially designed instruction, specialized transportation, and supplemental aides and services comparable to those found in the Student's prior IEP. 34 C.F.R. § 300.323(e); *Rowley; Endrew*; 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320.
6. The LEA was not required to provide a private home health care services aide selected by the Parent. *Rowley; Endrew*; 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320.
7. The LEA's reevaluation of the Student was otherwise appropriate.
8. The LEA developed and offered an IEP that was reasonably calculated to enable the Student to make progress appropriate in light of the circumstances. *Rowley; Endrew*; 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320.
9. The LEA complied with all procedural requirements under IDEA, including evaluation timelines, parent participation, offering a FAPE, and providing prior written notice. *Rowley; Endrew*; 20 U.S.C. § 1414(d) and 34 C.F.R. § 300.320.
10. The LEA appropriately exercised its discretion to assign qualified personnel to serve as the Student's one-on-one aide. *Miami-Dade County Sch. Bd.*, 117 LRP 35725 (SEA FL 2016); *Central Dauphin Sch. Dist.*, 8 ECLPR 21 (SEA PA 2019); 34 C.F.R. § 300.320(a)(4)–(5). See also *T.M. v. Cornwall Cent. Sch. Dist.*, 63 IDELR 31 (2d Cir. 2014); *Blanchard v. Morton Sch. Dist.*, 52 IDELR 3 (W.D. Wash. 2009), *aff'd*, 54 IDELR 277 (9th Cir. 2010, unpublished); 34 C.F.R. § 300.156.
11. The LEA was not obligated to provide the Parent's preferred individual (e.g., a relative) as a one-on-one aide. (34 C.F.R. § 300.116(b)(3); *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003).

12. Each IEP offered during the 2024-2025 school year by this LEA was reasonably calculated to provide a FAPE in the LRE. 20 U.S.C. §1401 *et seq.*

Analysis, Conclusions, and Application of Applicable Legal Principles

This Local Educational Agency (LEA) met with the Parent, weighed the input, and offered the Student a Free Appropriate Public Education (FAPE) in accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, including in the context of an intrastate transfer. The LEA also complied with its procedural obligations regarding providing a complete and comprehensive evaluation of an appropriate IEP. Finally, it offered qualified staff, including the assignment of a one-to-one aide.

Procedural Compliance and Transfer Obligations

When a student with an IEP transfers within the same state during the school year, the receiving district is obligated to provide services comparable to those described in the previous IEP until it adopts that IEP or develops a new one. See 34 C.F.R. § 300.323(e). The LEA, in this case, obtained the prior IEP, implemented the transfer IEP, and later offered comparable services promptly. At all times relevant, the LEA and its staff worked with and communicated with the Parent to develop an appropriate IEP. The LEA promptly began implementing special education and related services aligned with the Student's prior IEP upon enrollment. Where necessary, the LEA provided equivalent services through staff and maintained continuity in specialized instruction, support, and listed accommodations. Courts have emphasized that services need only be 'similar' or 'equivalent,' not identical. See 71 Fed. Reg. 46,681 (2006). Consistent with the guidance in the *Y.B. v. Howell Twp. Bd. of Educ.*, 79 IDELR 31 (3d Cir. 2021), the LEA met its legal obligation to provide the Student with FAPE. There is no evidence of undue delay or material deviation from the prior IEP. Thus, the LEA met its obligation to provide comparable services under § 300.323(e).

Assignment of Aide and LEA Staffing Discretion

During the abuse investigation, the LEA correctly assigned a one-to-one aide to assist the Student based on the documented needs related to executive functioning, behavioral regulation, and academic focus. The LEA's authority to assign qualified personnel is supported by

federal regulation (34 C.F.R. § 300.116(b)(3) and case law, including *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003). In *White*, the court held that parents may participate in placement decisions but do not have the right to select or approve individual staff. The aide assigned had appropriate qualifications and received training aligned with the Student's IEP goals. While IDEA affords parents the right to meaningful participation in the IEP process (34 C.F.R. § 300.322), it does not grant parents the authority to approve or interview staff. Attempts to condition the implementation of services on such approval are inconsistent with established law and policy. See *Letter to Hall*, 21 IDELR 58 (OSEP 1994). In this matter, the Parents' rejection of LEA-funded aide support was not based on a procedural error or that the staff was otherwise unqualified, but instead on an impermissible assertion of control over staffing. Therefore, I now conclude that the LEA acted appropriately in assigning staff without parental approval.

Conclusion

From August 2024 and throughout the school year, the LEA afforded, and the Parent meaningfully participated in all relevant meetings. The LEA met its legal obligations under IDEA during and after the Student's intrastate transfer. Initially, the LEA provided comparable services consistent with 34 C.F.R. § 300.323(e). Then, when needed the LEA offered, and the Parent refused the LEA's assignment of a qualified one-to-one aide. At no time did the LEA cede authority over personnel decisions.

Therefore, I now conclude that the LEA offered FAPE throughout the relevant period. Any assertion or counterclaim that the LEA denied FAPE must fail in light of these procedural and substantive findings. Embodied in the persuasive Department of Education's guidance policy is a settled principle of special education law: that it is the Local Educational Agency (LEA)—not the Parent—that bears the legal obligation to ensure the provision of a Free Appropriate Public Education (FAPE) to eligible students. See *Y.B. v. Howell Twp. Bd. of Educ.*, 79 IDELR 31 (3d Cir. 2021)(finding no violation of FAPE where the LEA provided comparable services without undue delay or material deviation from the prior IEP); See also 34 C.F.R. § 300.323(e); 71 Fed. Reg. 46,681 (2006) (explaining LEA obligations regarding the timely provision of services following a student's transfer).

The Parent's refusal to allow the Charter to implement this otherwise appropriate IEP obstructed the LEA's ability to fulfill its FAPE

obligations. Accordingly, I now find the LEA complied with its legal obligations and provided the Student with a FAPE throughout the 2024–2025 school year.

ORDER

And Now, this 20th day of June, after hearing all of the evidence and after reviewing the exhibits and closing statements, I now find in favor of the LEA, the temporary change in placement, the reevaluation, and the revised offer of a FAPE was appropriate. The Parent's assertions to the contrary are denied.

June 20, 2025

/s/ Charles W. Jelley, Esq.
Special Education Hearing Officer
ODR FILE # 30572-24-25