

*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. 32337-25-26**

**Child's Name:**

L.C.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parents:**

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**Hearing Officer:**

James Gerl, CHO

**Date of Decision:**

May 26, 2026

## **BACKGROUND**

The parents filed a due process complaint alleging that the school district denied a free and appropriate public education to the student. The school district contends that it provided FAPE to the student. I find in favor of the school district on this issue.

## **PROCEDURAL HISTORY**

The parties to this case have an extremely toxic relationship. Unfortunately, the parties' apparent dislike for each other spilled over into the due process hearing.

It is instructive that one of the student's teachers testified that she would be surprised if the parents had said that school district staff were good people. (NT 165) The teacher testified further that she was not sure whether the parents disliked her or maintained animus toward her. (NT 165) It should be noted that this is not the parties' first due process proceeding. The record reveals that there was a previous due process complaint between the same parties in which IDEA's stay put provision (also called pendency) was invoked. (NT 704, 732-735).

In addition, one of the lawyers in this case was 50 minutes late for the first hearing session. One of the parties was 55 minutes late for the first hearing session. Also, despite the fact that any witness who testifies in an administrative special education hearing, or any proceeding of any kind, is absolutely entitled to respectful treatment, one of the lawyers asked a witness, "Is there a reason that you don't appear to be forthcoming when I ask you these questions...?" (NT 178) It is apparent that the parties do not have a collaborative working relationship.

The toxic relationship of the parties also adversely affected the prehearing phase of the proceeding. Counsel seemed to have had some difficulty communicating with each other and failed to even confer before filing prehearing motions or requests. In addition, despite the fact that time is of the essence in any case involving education of a young person, both parties resisted efforts to reduce the amount of time necessary to hear and decide the case. The parties objected to the time limits and other restrictions set forth in the uniform prehearing directions and in my prehearing procedures. The parties were informed that the following principles are applicable to the procedures to be applied in IDEA due process hearings: IDEA envisions that each party will have a fair opportunity to present its evidence. The case law recognizes, however, that there are limits to what a party may present, and it has been established that the specific procedures to be applied at hearings are within the discretion of the hearing officer. Also, it is rudimentary that time is of the essence in IDEA administrative hearings. These cases concern the education of a young person. There is a strong public policy underlying the unusually tight timelines that are applicable to IDEA administrative proceedings. 34 C.F.R. §§300.515, 300.510; 22 Pa. Code § 14.162(q). (HO-1)

The United States Supreme Court has instructed that special education "hearings are deliberately informal and intended to give the ... (hearing officers) ... the flexibility that they need to ensure that each side can fairly present its evidence." Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 44 IDELR 150 (2005). See, Comments to Proposed Regulations, Federal Register, Vol. 71, No. 156 at p. 46704 (OSEP August 14, 2006); Letter to Anonymous, 23 IDELR 1073 (OSEP 1994). Many other courts have ruled that hearing officers have broad discretion to determine and regulate the procedures at an IDEA hearing. Moreover, the time allocations and other specific procedures that I use, as well as the long-standing Office for Dispute Resolution uniform

prehearing directions applicable to these hearings, were fairly recently upheld by the United States District Court for the Eastern District of Pennsylvania in Ryan S v. Downingtown Area School District, 124 LRP 18574 (E.D. Penna. 2024). (HO-1)

Thus, the law permits parties a fair opportunity to present their evidence, but recognizes that time limits and other procedures determined by the hearing officer are necessary to ensure that these hearings are completed without unnecessary delay in compliance with the strong public policy underlying the federal and state timelines applicable to these cases involving the education of a young person. The parties' general objection to limitations and other special education hearing procedures was rejected.

Because the parent's complaint raised an issue regarding a prospective private placement, which requires the parents to meet a higher legal standard, however, at the prehearing conference I granted extensions of some of the time limits and other time-saving provisions in the uniform prehearing directions and my hearing procedures in order to ensure that both parties had a full and fair opportunity to present their evidence. The expansion of limits was noted on the record at the due process hearing.

The due process hearing required two in-person sessions. Eleven witnesses testified at the hearing, including the student's mother, who testified both in the parents' case-in-chief and again as a rebuttal witness. The following parent exhibits were admitted: P-1, P-2, P-4 through P-26. Parents' exhibits P-3 and P-11 were withdrawn. P-27, P-28 and P-29 were conditionally admitted with the requirement that testimony be elicited concerning what these videos are and what they mean. No such testimony was provided at the hearing or discussed in the parents' post-hearing brief. Accordingly, parents' exhibits P-27, P-28, and P-29 are accorded no weight.

School district exhibits S-1 through S-24 were admitted into evidence. Additional videos requested by the parents were placed in the school district exhibit folder as S-25 through S-29, and those parent exhibits were admitted into evidence. In addition, hearing officer exhibit 1 (HO-1) was admitted into evidence.

After the hearing, counsel for both parties 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).

### **ISSUE PRESENTED**

It should be noted that the parent's post-hearing brief raises issues in addition to the issue, and sub issues, agreed to at the prehearing conference and at the beginning of the hearing. For example, the parents' proposed

findings of fact include multiple new failure-to-implement issues. These issues are not properly before the hearing officer and were not considered herein.

The due process complaint, as explained and clarified at the prehearing conference, presents the following issue:

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

### **FINDINGS OF FACT**

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

1. The parents and student are residents of the district.
2. The student has a date of birth of [redacted], and is currently in [redacted] grade.
3. The student is eligible under the IDEA as a child with a disability and is identified under the exceptionalities of autism, intellectual disability, and a speech and language impairment.
4. In 2019, the student was diagnosed with Autism Spectrum Disorder and was identified as having a [redacted], which is consistent with [unique] neurodevelopmental disorder. In September of 2025, the student was diagnosed with [disorder].
5. The student repeated [a grade] during the 2023 – 2024 school year, at the parents' request.
6. During the 2023 – 2024 school year, the student was placed in a blended program of autistic support one session per day and learning support for two sessions a day for a total level of support at a supplemental level. In

addition, the student received speech and language therapy, physical therapy occupational therapy, adaptive physical education, and personal care assistant.

7. The learning support setting consisted of one session that was one-on-one and one that was small group with one teacher and no more than four students.

8. At the start of the 2024 – 2025 school year, the student was placed in a blended program of one session of autistic support a day and learning support for two sessions a day for a total level of support at a supplemental level.

9. The learning support settings consisted of one session that was one-on-one and one session that was small group with one teacher and no more than four students.

10. Data that is reported in quarterly progress reports for the first half of the school year was collected by the district through the student's assigned case manager, who was the learning support teacher assigned to work with the student.

11. The learning support teacher conducted probes on the goals once per week.

12. In November of 2024, the district proposed to change the student's placement to supplemental autistic support for about four hours per day. In addition, the student continued to receive speech and language therapy, physical therapy, occupational therapy, adaptive physical education, and a personal care assistant.

13. The parents rejected this placement, and the district implemented the prior pendent IEP with a blended program of autistic support for one

session a day and learning support for two sessions a day for a total level of support at a supplemental level as the student's pendent placement.

14. The parents agreed to permit the district to implement the placement proposed in November of 2024 in March of 2025, and the student was moved to that placement for the remainder of the 2024 – 2025 school year.

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

15. The student is a [redacted] person. (NT 153 – 155)

16. The student has global developmental delays, including in the areas of cognitive, communication, motor, and adaptive skills. The student requires assistance in all areas of daily living, including feeding. (S-17; record evidence as a whole)

17. The student's IEP for the 2023 – 2024 school year included goals for requesting an edible, using a handrail, walking up and down steps, eating off a [utensil], pulling apart an object, initiate movements, initiate a natural action with play activity, identify correct person in field of three and respond to an exchange. The student also received individual and group speech language therapy, physical therapy, occupational therapy, adaptive physical education and a 1:1 personal care assistant. The specially designed

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<sup>1</sup> (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; "HO-1," etc. for the hearing officer exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT\_\_\_\_").



instruction in the IEP included applied behavior analysis (ABA) techniques and incorporated music into the student's instructional program. The student was in the regular education classroom approximately 50 % of the school day. The IEP offered the student extended school year services for the summer of 2023 and 2024. (S-4, S-5; NT 589 – 592, 666 – 669)

18. During the student's sessions in the learning support setting, the student received one session that was one-on-one in which the student would work on IEP goals and one small group setting with one teacher and no more than four students working on English Language Arts skills. In the student's autistic support session, the student received some related services and also worked on the student's IEP goals in the classroom with eight students, one teacher and three paraprofessionals. (NT 458, 462, 663 – 666)

19. The student's IEP team met for IEP revisions in December of 2023 and February of 2024. (S-6, S-7)

20. Over the course of the 2023 – 2024 school year, the student made progress in most areas measured between May 2023 and May 2024 as shown by the Carolina Curriculum assessment. (S-18, S-12, S-20; NT 671 – 673)

21. The school district completed a reevaluation report for the student on May 15, 2024, finding that the student continued to be eligible for special education under the primary eligibility category of intellectual disability, a secondary category of autism and a tertiary category of speech language impairment. The reevaluation included a review of prior testing and records, input from the parent, a review of the student's scores on the VD-MAPP and Carolina Curriculum, assessment of adaptive skills through the Vineland-3, assessment of sensory needs through the Sensory Profile 2 and review of the student's speech needs. (S-9)

22. During the 2023 – 2024 school year, the school district and Intermediate Unit conducted an augmentative and alternative communication (AAC) evaluation and identification process in order to identify an AAC device that would be appropriate and useful for the student's communication needs. The process involved determining the student's communication needs and identifying potential devices that would be appropriate. Three different devices were identified. Then those three devices were trialed by the student in the school setting for a period of six weeks each in order to obtain comparable data. The process also included staff and parent training on the devices including how to operate the device and the implementation strategies associated with the device. Following the AAC assessment process, the school district team recommended a specific AAC device for the student, the Accent 1000 device with Unity Family language software. The recommended tablet-type device has a ten-inch screen, weighs about three pounds and has military-grade durability and a silicon protective case. (S-8, S-3, S-13; NT 514 – 531, 572)

23. The parents agreed with the team recommendation of the Accent 1000 device with Unity Family language software, and the school district/IU began the process of ordering the device through the parents' insurance. The parents had opted not to have the school district purchase the device. Instead, the parents opted to have the school district and Intermediate Unit submit the device justification paperwork to the parents' insurance company for approval so that the parents would own the device. The funding packet paperwork was submitted on approximately April 29, 2024. On June 12, 2024, the parents notified the school district that they had received an independent private speech language evaluation and that they wanted a different AAC device for the student. The school district and Intermediate Unit then withdrew the funding packet. (NT 531-533, 579-581)

24. In the summer of 2024, the parents obtained a report from an independent speech language evaluator. The evaluator did not speak with any staff of the school district or the intermediate unit concerning the student's program. The evaluator concluded and recommended that the student should have an AAC device that is portable and weighs 3 pounds or less. The evaluator recommended that the student use the Accent 1400 device that has a fourteen-inch screen and weighs approximately six pounds, or almost nine pounds with the eye gaze bar and mount. The parents purchased the device recommended by this evaluator. The IU speech therapist conducted multiple trainings of school district and IU staff who worked with the student concerning the Accent 1400 device. (S-16; NT 401-404, 536-548, 707-708)

25. In July 2024, the parents' expert witness school psychologist conducted a psychoeducational evaluation of the student. The evaluator recommended that the student receive formal music therapy and in-school individual ABA instruction five days per week, four hours per day, in 30-minute blocks by a registered behavior technician supervised by a board-certified behavior analyst. The evaluator's report states that all students with significant needs require at least 25 hours per week of applied behavioral analysis instruction. The evaluator did not speak to the persons administering the student's home-based ABA instruction program or review any records from that program. The evaluator also did not speak to any of the student's teachers or other school district staff concerning the school district's educational program with the exception of attending one IEP team meeting in November 2025. (S-15; NT 278 – 285)

26. On October 25, 2024, the school district conducted a reevaluation report for the student which reviewed and considered the two independent evaluations obtained by the parents and considered and incorporated some of the information from these outside evaluations into its reevaluation process.

The reevaluation report concluded that the student continued to be eligible as having a primary disability category of intellectual disability, secondary category of autism, and a tertiary category of speech language impairment. (S-17; NT 701-703)

27. In November 2024, after reviewing the report of the parent's expert witness school psychologist, the school district proposed an IEP for the student that would move the student to supplemental autistic support for approximately four hours per day. The IEP contains goals for taking turns, putting puzzle pieces in place, engaging toy operation, placing items in containers, putting an item down on a designated space, ascending and descending steps, using the word "eat" to request an edible, and using the word "more" to request an item. The specially designed instruction in the IEP continued to include various applied behavioral analysis techniques and incorporated music into the student's instructional program. The student would be in the regular education classroom approximately 38% of the school day. The IEP provided the student extended school year services for the summer of 2025. (S-18; NT 701-704)

28. The school district proposed the additional time for the student in autistic support in the November 2024 IEP, but the change of placement did not occur until March of 2025 because the parents filed a due process complaint and invoked the stay put provision of IDEA to prevent the placement from occurring. That due process complaint was withdrawn in March 2025. (NT 704, 732-735)

29. When the November 2024 IEP began to be implemented in March of 2025, after the parents withdrew the due process complaint, the student received at least one hour per day of direct 1:1 instruction with the teacher and three associate teachers. The skills and many of the student's IEP goals were worked on in various ways throughout the day in addition to the 1:1

instruction. ABA principles were used with the student in the autistic support classroom. (NT 486 – 490, 588 – 599; S-4, S-18, S-22)

30. The IEP team met in March of 2025. At that meeting, school district staff proposed a gradual transfer to the new program, but the gradual transfer was rejected by the parents, and a new schedule was developed. Some additional changes were made to the student's specially designed instruction at that meeting. (S-20)

31. On November 17, 2025, the school district proposed a new IEP that continued to offer supplemental autistic support similar to the program offered for the 2024 – 2025 school year with the same related services and an offer of extended school year for summer. The IEP included specially designed instruction for "the use of evidence-based practice (EBP)." EBP was offered throughout the school day. EBP is a model of professional decision-making which integrates the best available evidence for working with students with autism spectrum disorder. The EBP were derived from the National Autism Center's National Standards Projects. The techniques include: antecedent-based intervention, differential reinforcement, intensive teaching trials (discreet trial training), exercise (sensory breaks), functional communication training, modeling, shaping, chaining, differential reinforcement, social skills training, task analysis, visual supports, social stories, reinforcement, pivotal response training, natural environmental training, extinction, response-redirection, self-management, scripting, structured play, peer modeling, time delay and video modeling. The student would be in the regular education classroom approximately 20 % of the school day. The IEP offered the student extended school year services for the summer. (S-22; NT 595 – 598)

32. The student has made progress under the student's IEPs. The November 17, 2025 IEP notes that as of November 2025, the student had

maintained all skills and had not lost any skills on the VB-MAPP from when it was administered in March of 2024. The student made some progress on the student's IEP goals. The student made progress in physical therapy and in occupational therapy. The student has made progress climbing steps. The student has made progress signaling that the student wants "more." The student has begun to sit next to the other students when they are on the carpet together. (NT 603 – 604, 621-625, 702 – 704; NT 670 – 674, 245-246, 320-321; S-7; S-12, S-17, S-18, S-20, S-21, S-22; record evidence as a whole)

33. The student's IEPs during the relevant timeframe offered the student extended school year services. (S-7, S-18, S-22)

34. The student likes music. The school district incorporated music into the student's school program. Music did not improve the student's learning. (NT 666-669, 693-698; S-4, S-7, S-18, S-29)

35. In addition to the school program, the parents also provide the student with a home-based applied behavioral analysis program. The parents have not shared the records from the home-based program with school district staff. The school district IEPs provide that the staff from the home-based program are invited to observe the student's school program, and home-based staff have observed the student at school on a number of occasions. The parents changed the methodology utilized by the home-based program because of ineffectiveness in approximately March or April 2026. (NT 87 – 88, 115 – 121, 124-128, 157-161, 352-354; P-1)

### **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. 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. 386, 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).

3. 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).

4. 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).

5. 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).

6. 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 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).

7. 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); AM by AJ and JM v Interboro Sch Dist, 126 LRP 2503 (E.D. Penna. 2026); see, Crofts v. Issaquah Sch. Dist. No. 411, 80 IDELR 61 (9th Cir.



2022); 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).

8. Although a school district should base a student's IEP components upon peer-reviewed research to the maximum extent practicable, the school district staff retains flexibility to devise an appropriate program in light of available research. School staff need not select the service with the greatest body of research, and the law does not provide that a failure to provide services based upon peer reviewed research results in a denial of FAPE. Ridley Sch. Dist. v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012).

9. A school district must provide a related service, such as speech language therapy or occupational therapy to a student with a disability only when the related service is necessary for the student to benefit from special education. 34 C.F.R. § 300.34; Irving Independent School District v. Tatro, 468 U.S. 883, 555 IDELR 511 (1984); Cedar Rapids Community School District v. Garrett F., 526 U.S. 66, 29 IDELR 966 (1999); Mary Courtney T. v. School District of Philadelphia, 575 F. 3d 235, 52 IDELR 211 (3d Cir. 2009).

10. 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.

11. 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.

12. The least restrictive environment mandate 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).

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

## **DISCUSSION**

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

The parents contend the school district denied a free and appropriate public education to the student. The school district argues that a FAPE was provided. The parents have not proven that the school district denied a free and appropriate public education to the student.

At the heart of this dispute is the parents' contention that the school district should provide the student with an ideal, or perfect or "best practices" education. The parents contend that the school district is legally obligated to employ their preferred methodology for the duration and intensity that they dictate in order to provide FAPE to the student. However, the law does not require the school district to provide an ideal education, or the best possible education, to a student with a disability. Also, the law does not permit a parent to dictate the type, duration or intensity of educational methodology.

The parents desire for their child to receive an ideal education is understandable; every parent wants the best for their child. IDEA only requires, however, that a student receive an appropriate education, not the best possible education. The parents' use of the ideal education standard is evidenced throughout their post-hearing brief, including on the next to the last page, in a demand that the school district program with scientific "best practices." In addition, many of the questions that counsel for the parents

asked of witnesses were clearly geared toward a best practices or an ideal standard. Such questions included those about the philosophy of response to intervention. Response to intervention is only mentioned in IDEA as an option for determining whether or not a student has a specific learning disability. See, 34 C.F.R. § 300.507(a)(2). There is no dispute in this case concerning the student's eligibility and no argument that the student has a specific learning disability. The confusing questions regarding response to intervention, or the desirability of trying alternative strategies, or on the philosophy of scientific instruction did not yield any testimony that is relevant to an issue in this case because such questions presume the wrong legal standard. Similarly, the parents offered a number of exhibits that are research articles or similar publications concerning the education of children with autism in general. There was no testimony at the hearing concerning the reliability or validity of the articles or their meaning. More importantly these articles relate to children with autism in general and not to the unique individual needs of the student, who is the subject of this case. Stereotypes about groups or categories of children with disabilities and an overemphasis on labels are antithetical to the individualization that is at the heart of IDEA. Endrew F, supra; 34 C.F.R. § 300.304(a)(6); Heather S v. State of Wisconsin, 125 F. 3d 1045, 26 IDELR 870 (7th Cir. 1997); Osage R-1 School District v. Sims ex rel. BS, 841 F. 3d 996, 56 IDELR 282 (8th Cir. 2011); School District of Philadelphia v. Post, 262 F. Supp. 3d 178, 70 IDELR 96 (E.D. Penna. 2017). Accordingly, these articles are afforded little weight.

Moreover, the parents' contention that the school district is required under the law to use the duration, intensity and type of methodology that they dictate in order to maximize the student's potential is far beyond what is legally required of a school district under IDEA. The parents' position is inconsistent with the legal standard for FAPE established by the Supreme

Court. The correct legal standard is whether the student's IEPs were reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances. In this case, the parents have not proven that the IEPs were substantively flawed.

It should be noted that the school district in this case did provide the student with research-based ABA-based instruction. This is clearly the parents' preferred methodology. The only dispute, therefore, is whether or not the parents can dictate the duration and amount of such instruction. The parents have not proven that the student needed additional amounts or lengthier sessions of ABA instruction in order to achieve meaningful educational benefit.

The parents' desired program, which would involve having the student spend more time one-on-one with an adult, also runs afoul of IDEA's least restrictive environment requirement, which the Third Circuit has held is a substantive requirement of IDEA. The parents' suggested program would have the student spend less time with other students, including non-disabled peers. The parents' argument is rejected.

The parents offered the testimony of two expert witnesses concerning their demand for additional ABA-based instruction. The parents' expert school psychologist's opinion is entitled to little weight. The school psychologist did not speak to the persons who were providing the student's home-based ABA instruction. The school psychologist also did not speak with the educators or school district or Intermediate Unit staff that work with the student, with the exception of attending one IEP team meeting. In addition, the school psychologist did not speak with the school district staff who provided music instruction to the student. The source for almost all of the information considered by the expert school psychologist was the parents. More

importantly, the report and testimony of the expert school psychologist do not provide an individualized explanation concerning why the witness believes that this particular student's school program requires four hours of ABA-based instruction five days a week. The only support in the expert's report for this conclusion is a sweeping generalization that all students with significant needs require 25 hours of ABA-based instruction per week. There is no individualized analysis concerning the duration and amount of ABA services needed by this specific student.

The parents' expert behavioral analyst did not observe the student in any educational setting and did not speak with any of the staff from the school district or the Intermediate Unit concerning the student's school-based program. The parents' expert behavioral analyst did not prepare a report with regard to her conclusions and gave no testimony to explain why this particular student might require a school program with 20 hours per week of ABA-based therapy. The opinions of these two experts are afforded very little weight because of the demeanor of the witness and the reasons set forth herein.

The parents also called a speech language evaluator who evaluated the student. This evaluator did not speak with school district or intermediate unit staff in conducting the evaluation. Significantly, the recommendations of the evaluator are contradictory; she asserted that the student's AAC device must be portable no more than three pounds in weight. She recommended a device, however, that weighed approximately six pounds, or almost nine pounds with the eye gaze bar and mount. In contrast the AAC device recommended by the intermediate unit and the school district, after a thorough and comprehensive evaluation of the student's AAC needs, weighs three pounds. The report and testimony of the parents' speech language evaluator is afforded very little weight for these reasons as well as the demeanor of the witness.

Moreover, although it is not required that a school district show that a student made actual progress under the student's IEPs in order to provide FAPE to a student, in this case, the student did make actual progress. Both parties agree that the student is untestable and that the student's disabilities and delays are severe. Nonetheless, the student's teachers and related service providers testified credibly and persuasively that the student did make slow progress under the student's IEPs. Given the student's unique individual circumstances, which include significant delays and challenges, the progress is meaningful.

The parents point to a number of alleged flaws in the student's educational program, as identified at the prehearing conference and confirmed at the beginning of the hearing. First, the parents contend that the school district's IEPs were deficient because they did not provide music therapy as a related service. A related service is only required under IDEA when the related service is necessary for the student to benefit from special education. The parents' brief does not address the legal standard for related services. More importantly, no evidence in the record supports the argument that the student needs music therapy as a related service in order to benefit from special education. Significantly, the school district did provide music education to the student in direct response to a request from the parents. Although the student likes music, the credible and persuasive testimony in the record was that student's learning was not enhanced by the music education. The parents have not proven that the student needs music therapy in order to benefit from special education. The parents' argument that the IEPs were deficient because they did not include music therapy as a related service is rejected.

The parents also contend that the school district denied FAPE to the student because the persons who work with the student were not sufficiently

trained on the alternative assistive communication (AAC) device that the student used during school. It was the credible and persuasive testimony of the Intermediate Unit speech language pathologist and of the special education director that staff who worked with the student were trained on the student's AAC device. The parents presented a witness to testify about AAC programming and assessments. The testimony of this witness went beyond the issue of staff training on the AAC device, which was the only AAC issue presented for review at this hearing, but for the aforesaid reasons, that testimony is also afforded very little weight. It should be noted further that the school district, through the Intermediate Unit, conducted a thorough and comprehensive evaluation of the student's AAC needs. The parents criticize the AAC process utilized by the school district and Intermediate Unit, but it must be noted that after the student trialed three devices at school, and the Intermediate Unit recommended a particular AAC device for the student, the parents agreed with the recommendation of the specific AAC device and software. The school district and IU staff had begun the process of getting approval from the parents' insurance company because the parents opted to submit the request to their insurance. The parents then changed their mind and decided to utilize a different AAC device that was not recommended by the Intermediate Unit and the school district. The Intermediate Unit and the school district then withdrew the funding package for the first device. Thereafter, the second, non-recommended AAC device was obtained. The staff that worked with the student were then trained on the second device. The record evidence does not support the parents' argument concerning lack of staff training on the AAC device and the argument is rejected.

The parents also contend that all goals contained in the student's IEPs were inappropriate with the exception of certain related services goals. There is no evidence in the record to support the parents' contention in this regard,



with the exception of the parent's non-credible and conclusory disagreement with certain goals. This testimony is afforded little weight. Indeed, the record reveals that some of the goals proposed by the student's parents were adopted by the IEP team. Moreover, even if the parents had proven that the language of one or more goals was inappropriate, any such procedural violation would require a showing that the procedural violation adversely affected the student's education or severely impaired the participation rights of the parents. No such evidence is in the record. Thus, even assuming *arguendo* that there had been a procedural violation with regard to any particular goal, it is not actionable under IDEA. The parents' argument concerning goals is rejected.

There are three additional areas of alleged flaws in the student's IEPs that the parents asserted before the hearing but have apparently abandoned. The parents contended that the IEPs were substantively inadequate because they did not include parent training as a related service, because school district staff failed to coordinate with private program staff and because the IEPs provided for inappropriate extended school year services. The parents offered no evidence to support any of these contentions. In addition, there is no significant argument contained in the parents' post-hearing brief to support the allegations. Accordingly, it is concluded that the parents have waived these three arguments. JL v Lower Merion Sch Dist, 81 IDELR 251 (E.D. Penna 2022); LB by RB and MB v Radnor Township Sch Dist, 78 IDELR 186 (E.D. Penna 2021). The arguments are rejected.

The testimony of the school district and Intermediate Unit witnesses was more credible and persuasive than the testimony of the parents' witnesses. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the parents' expert witness school psychologist, expert

witness behavioral analyst and speech evaluator's testimony is accorded little weight because of the factors previously outlined. The testimony of the student's mother was not credible or persuasive because the mother was unable to state what the student had learned through the parents' home-based ABA program and the mother conceded that the parents had never shared the records of the home-based program with the school district. In addition, much of the mother's testimony on direct examination was elicited through very leading questions; although the technical rules of evidence do not apply at administrative hearings, they are sometimes useful in evaluating the credibility of testimony. Moreover, the school district attempted to implement changes to the student's IEP in November of 2024. The parents then filed a previous due process proceeding and invoked the stay put rule to prevent implementation of those changes until March of 2025. The parents cannot purposely delay implementation of a school district program for months and then turn around and claim that the school district program was inappropriate for the student. The parents' inconsistent position in this regard adversely affected the credibility and persuasiveness of the testimony of the mother and the parents' witnesses. Similarly, the mother's credibility and persuasiveness are adversely affected because the parents initially agreed to the AAC device recommended by the Intermediate Unit and school district, but the parents then canceled that order and ordered a different AAC device. The parents cannot first accept and then refuse to accept the AAC device recommended by the school district and then complain about AAC issues.

It is concluded that the parents have not proven that the school district denied a free and appropriate public education to the student.

Note: it is not necessary to address relief because the parents have not prevailed. However, it should be noted that prior to the hearing the parents

sought, among other things, the prospective private placement of the student. Such relief requires that a parent meet a higher legal standard. Indeed, the parties were granted extensions of certain time limits and other procedures specifically because the parents were raising this unusual issue. There is no argument in the parents' post-hearing brief, however, except for a conclusory statement near the end, for a prospective private placement. The legal standard for a prospective private placement is not addressed by the parent's brief. Because no relief is awarded, however, it is not necessary to address the standard for such relief.

### **ORDER**

Based upon the foregoing, it is **HEREBY ORDERED** that all relief requested in the due process complaint is hereby denied. The complaint is dismissed.

**IT IS SO ORDERED.**

ENTERED: May 26, 2026

*James Gerl*

James Gerl, CHO  
Hearing Officer