

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. 29718-23-24

Child's Name:

J.B.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

David Arnold, Esq.
Law Office of David G.C Arnold
Suite 270, 2200 Renaissance Blvd.
King of Prussia, PA 19406

Local Education Agency:

Mountain View School District
11748 State Route 106
Kingsley, PA 18826

Counsel for LEA:

Christopher Bambach, Esq.
Sweet Stevens Katz Williams
331 E. Butler Ave.
New Britain, PA 18901

Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

November 20, 2024

INFORMATION AND PROCEDURAL HISTORY

The Student is a high school-aged resident of the District now enrolled in the [redacted] grade. The Student is eligible for special education as a child with a specific learning disability (SLD) with needs in listening comprehension and a Speech Language Impairment under the Individuals with Disabilities Education Act (IDEA)¹ and has a disability entitling Student to protection under Section 504 of the Rehabilitation Act of 1973².

The Parents filed a due process Complaint and alleged the District denied the Student a FAPE for its failure to provide appropriate special education programming and perform adequate evaluations and that no academic progress has resulted. As relief, the Parents seek compensatory education and reimbursement for privately obtained speech therapy services. In response, the District asserted it fulfilled its legal obligations to the Student and that parental consent to proceed with the initial provision of special education services was not provided.

Based on the evidence of this hearing record, the claims of the Parents are denied.

ISSUES³

- 1) Did the District deny the Student a free appropriate public education (FAPE) from May 2022 onward;

¹ 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

² Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and the applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15)

³ Counsel agreed to the placement of the issues on the hearing record as stated. (N.T. 8-9)

- 2) If the District denied the Student a FAPE, what, if any, remedy is appropriate, including prospective reimbursement for provided related services?

FINDINGS OF FACTS

1. The Student is currently a [redacted] year old [redacted] grade student who lives in the District (Stipulation Nos. 1-3)
2. The Parents [redacted] (N.T. 26)
3. The Parent is an employee of [redacted] (N.T. 121-123)⁴
4. Since the [redacted] grade, in the Spring of 2020, the Student has received services through a 504 service agreement. The plan offered accommodations to address the Student's needs related to diagnoses of ADHD, generalized anxiety disorder, focus, attention, impulse control, comprehension and verbal expression. (P-8)
5. A June audiology evaluation initiated by the Parents concluded the Student had normal hearing. (P-5; N.T. 34)

2021-2022 School Year- [redacted] Grade

6. During the 2021-2022 school year, the Student was enrolled in the [redacted] grade in the District. In September, the Parents

⁴ Both parents filed the due process Complaint but one parent, [redacted], took the lead with respect to education decision making and participation in the hearing. References only to "Parent" in this decision refer to both parents.

requested a speech evaluation of the Student because of concerns about academics and receptive and expressive processing. (P-6; N.T. 34-36)

7. In November 2021, the District completed an evaluation of the Student. After administration of the CELF-5, RESCA, and ELPT-3 the District's speech-language pathologist (SLP) concluded that the Student's conversational speech was intelligible. No speech errors were observed, and fluency and vocal parameters were functional for communication, with no deviations noted. Pragmatic skills were functional for age and grade level. (P-8, S-4)
8. The ER concluded that the Student did not have a disability and was ineligible for special education. (S-4, p, 16, P-9; N.T. 229)
9. In February and March 2022, the Parents obtained a private auditory processing evaluation of the Student. At the first session, the evaluator checked the Student's hearing. At the second session, additional testing occurred. The evaluation concluded that the Student did not have an auditory processing disorder. (P-10, P-11; N.T. 40-41)
10. On April 11, 2022, the Parent requested a special education evaluation of the Student because of reading concerns. (P-12, P-13; N.T. 41-42)
11. After the 2021-2022 school year, the Student earned final grades of : Art-93, computer science-99, health-100, language art-86, math-89, mindfulness-100, music-86, and social studies-90. (P-38)

12. On August 10, 2022, the Student's 504 plan was reviewed. (P-26, S-3)

2022-2023 School Year

13. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District.

September 2022 ER

14. In September 2022, the District completed an evaluation of the Student. On WISC-V, the Student scored 91, in the average range. The Student performed average in visual-spatial skills, fluid reasoning, and processing speed. The Student performed in the low average range for verbal comprehension. The Student performed in the very low range in all areas of working memory. (P-14, S-6)
15. On the WIAT-IV, the Student demonstrated strength in mathematics calculations and average for math problem solving, basic reading, reading comprehension, receptive vocabulary, and sentence composition. The Student performed below average in the areas of spelling and essay composition. Significant weaknesses were noted with listening comprehension (oral discourse comprehension), which based on average scores on the KTEA-3 (used as a supplement to check validity) were viewed to be the result of poor attention and/or motivation. (S-6)
16. The evaluation noted the Student's ADHD diagnosis. However, it concluded that behavioral ratings were within the at-risk range for attentional difficulties, executive functioning, and hyperactivity at

school, indicating that the Student's symptoms did not rise to a level that would indicate a significant deficit. (S-6)

17. The ER concluded that the Student did not have a disability and was not eligible for special education. (P-14, p. 30, P-15; N.T. 44, 230-231)
18. The ER recommended that the Section 504 team reconvene to update the Student's needs and complete a transition assessment as part of the Section 504 to prepare for the [redacted] (S-6)
19. After the ER, the Parents requested the underlying testing data and materials related to the administered evaluation. The District denied the request. (P-16, P-17, P-18; N.T. 44-45)
20. In October 2022, the District agreed to fund an independent educational evaluation of the Student, after a parental request. (P-19, P-20; N.T. 232, 468)

December 2022-IEE

21. In December 2022, a New Jersey based bi-lingual speech-language pathologist conducted a literacy and language evaluation of the Student. For inclusion in the IEE, the evaluator administered The Listening Comprehension Test: Adolescent: Normative Update (LCT-A: NU) Select subtests from the Clinical Evaluation of Language Fundamentals-5: Metalinguistics (CELF-5:M) Test of Problem Solving-2 Adolescent (TOPS-2) Clinical Assessment of Pragmatics (CAPs) Select subtests from the Test of Integrated Language and Literacy (TILLS) Gray Oral Reading Tests -5 (GORT-5) (Form A): Spelling Performance Evaluation for Language and

Literacy-Second Edition (SPELL-2) and the Test of Written Language-Fourth Edition (TOWL-4) (Form A). (P-21, S-9)

22. The IEE provided to the District determined the Student had diagnoses of mixed receptive-expressive language disorder, a social pragmatic communication disorder, a specific reading disorder, and a disorder of written expression. (P-21, S-9, p. 33)
23. The IEE suggested long and short-term therapy goals to address the Student's oral language, problem-solving, pragmatic, reading, spelling, and writing abilities. (P-21)
24. On March 14, 2023, the Parents requested a meeting with the District to discuss the IEE. The District expressed concerns about the private evaluator's Pennsylvania licensure status and the interpretation of some of the administered assessments. After the meeting, the District requested consent from the Parents to reevaluate the Student. (P-23, P-24; N.T. 261-262, 286)
25. On April 18, 2023, the team revised the Student's section 504 accommodation plan. The IEE suggested some of the strategies. The plan provided accommodations to improve focus, attention, and impulse control, as well as assistance with comprehension and verbal expression. The revised plan offered twenty-three (23) accommodations that included preferential seating, study guides, chunking, graphic organizers, prompting, Chromebook for home use, speech-to-text for written work, extra wait time, and weekly check-ins. (P-26, S-3; N.T. 53, 101-102, 107)

26. On May 23, 2023, the District issued its RR that concluded the Student was eligible for special education as a child with a specific learning disability (listening comprehension) and speech and language impairment. (P-28; N.T. 231)
27. The RR included educator input and recommendations, 504 service agreement accommodations, previous evaluative data (2022 cognitive and achievement testing), health office records, classroom and state assessment data, speech-language IEE results, and social, emotional and behavioral functioning measures. (P-28)
28. On June 1, 2023, the Parents attended a team meeting to review the RR. (S-12)
29. At the end of the 2022-2023 school year, the Student earned grades of 87- ELA, 86-Geography, 87-Science, 81-Math, 96-Music, 95-Health, 86-Computer Science, 72-Design and Modeling, and 87-PE. (P-30, p. 10)
30. On June 20, 2023, the IEP team met to develop programming. The IEP offered itinerant learning support with goals to address speech (language, social pragmatic skills) and listening comprehension. Offered SDI included repeating directions, resource period for one period a day for re-teaching of concepts and grade check. Offered related services included thirty minutes of group speech-language therapy, one time per six-day school cycle. The Parents, along with an advocate, their attorney and the District's attorney attended the meeting. The IEP was marked as a "Draft

- Version". (P-30, p. 19-22; S-11, S-13, S-15; N.T. 55, 237, 440-441, 471)
31. The IEP indicated that after school resumed in fall 2023, the District would collect data to establish a baseline for the Student's listening comprehension goal. (P-30, p. 10-11)
32. A June 22, 2023, auditory processing evaluation, funded by the District, determined the Student had weaknesses with decoding, tolerance fading memory, integration and right ear advantage-left ear weakness. The evaluation concluded the Student had an auditory processing disorder based on adult normative data. (P-34; N.T. 239-240)
33. The evaluation recommended that the student receive speech and language therapy, programming to help with left ear dichotic deficits, an FM system trial, and a repeat evaluation in two years. (S-16)
34. Through email on June 22, 2023, the Parents requested a copy of the IEP with the revisions discussed during the June 20 meeting. (P-31; N.T. 56)
35. On June 30, 2023, a Parent attached a NOREP to an email that stated no additional concerns were present other than those discussed at the June 30 meeting. On the NOREP, the Parent requested an informal meeting and indicated that a finalized IEP had not been received and that a determination concerning

programming could not be made. (P-32, S-22, p. 2, 39; N.T. 55-56, 465)

36. On July 3, 2023, the District emailed the Parent, and attached the IEP developed on June 20, revised with iReady data and teacher input. The District wrote that "parts [would] be updated once we get back to school. After a few weeks, those parts should be updated. We can plan the next steps regarding those sections once that information is gathered". The IEP sent to the Parent was marked as "Final Version". (P-33, S-22, p. 1; 458-459)

37. On July 13, 2023, through a NOREP, the Parent requested an informal meeting before school resumed to consider programming in the light of the auditory processing evaluation results. (P-36, S-14; N.T. 59, 466)

38. On August 29, 2023, an IEP meeting occurred. At the meeting, the team discussed recommendations from the June auditory processing evaluation, the use of an FM system, progress monitoring from the private speech therapist, and the provision of speech-language services to the Student. The Parent declined a trial of an FM system for the Student. The Parent with an advocate, their attorney and the District's attorney attended the meeting. No revisions were made to the Student's programming. No IEP nor NOREP was issued following the August meeting. (P-33, S-17; N.T. 61-63, 88, 459-461, 466-467, 471-474)

39. On August 29, 2023, the District's speech therapist contacted the Student's private speech therapist to schedule a meeting. The

private therapist advised the SLP that the District should review the Student's progress report before meeting. The fee for the report was \$335. (P-37, p. 1-2)

40. Commencing on August 10, 2023, through the end of the 2023-2024 school year, the Student received private speech therapy services funded by the Parent. (N.T. 64; P-48, P-49, P-41, P-42; N.T. 63)

2023-2024 School Year

41. During the 2023-2024 school year, the Student was enrolled in the [redacted] grade in the District. No District special education services were provided to the Student during this time. (N.T. 64; P-48, P-49, P-41, P-42; N.T. 63)

42. On May 10, 2024, the Parents filed a due process complaint. (S-1)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

The burden of proof essentially consists of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 US 49, 62 (2005); *LE v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who filed the Complaint that led to this administrative hearing. Nevertheless,

application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58

During a due process hearing, the special education hearing officers are responsible for judging the credibility of witnesses, weighing evidence, and rendering a decision incorporating findings of fact, discussion, and conclusions of law. Hearing officers have an ongoing responsibility to make express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses. *JP. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also TE v. Cumberland Valley School District*, 2014 US Dist. LEXIS 1471 *11-12 (MD Pa. 2014); *AS v. Office for Dispute Resolution* (Quakertown Community School District), 88 A.3d 256, 266 (Pa. Commw. 2014).

Witness testimony included the Parent, the District and independent speech therapists, the Parents' literacy specialist/advocate, a learning support teacher and the Director of Special Education. This Hearing Officer found each of the witnesses to be generally credible as to the facts. Any conflicting testimony between the witnesses can be attributed to poor recall, differing perspectives and the emotional nature of the facts involved. In instances where testimony conflicted with the documentary evidence, the admitted documents were accorded more weight. The findings of fact were made as pertinent to resolving the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

IDEA CHILD FIND PRINCIPLES

Child Find and Evaluation

The IDEA and state and federal regulations obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); see also 22 Pa. Code §§ 14.121- 14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C.

§1414(a)(1)(C)(i). The obligation to identify students suspected of having a disability is referred to as "Child Find." LEAs are required to fulfill their child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). More specifically, LEAs are required to consider an evaluation for special education services within a reasonable time after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). School districts are not, however, required to identify a disability "at the earliest possible moment" or to evaluate "every struggling student." *Id.* The IDEA further defines a "child with a disability" as a child who has been evaluated and identified with one of a number of specific classifications and who, "by reason thereof, needs special education and related services." 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a).

The process of identifying children with disabilities is through an evaluation. Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are examined. 20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b). Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in

which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3).

General IDEA Principles: Substantive FAPE

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 US 176 (1982), the US Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to assist a child to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase free appropriate public education (FAPE) to require "significant learning" and "meaningful benefit" under the IDEA. *Ridgewood Board of Education v. NE*, 172 F.3d 238, 247 (3d Cir. 1999).

Through local educational agencies (LEAs), states meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *PP v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the US Supreme Court has confirmed, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, 500 US 386, 400, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017).

Individualization is, thus, a focal point for purposes of IDEA programming. Nevertheless, an LEA is not obligated to "provide 'the optimal

level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. MR*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the law demands services that are reasonable and appropriate in light of a child's unique circumstances, and not necessarily those that his or her "loving parents" might desire. *Andrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standards must be based on information "as of the time it was made." *DS v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same)

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have "a significant role in the IEP process." *Schaffer, supra*, at 53. Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they resulted in such "significant impediment" to parental participation, or in a substantive denial of FAPE 20 USC § 1415(f)(3)(E).

On a related note, the IDEA is clear, although a District must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child, mediation and due process procedures may not be used to compel agreement. 34 C.F.R. §300.300

Section 504 Child Find and Evaluation

Chapter 15 applies Section 504 in schools to prohibit disability-based against children who are "protected handicapped students." See 22 Pa. Code § 15.2. Unlike the IDEA, which requires schools to provide special education

to qualifying students with disabilities, Section 504 requires schools to provide accommodation so that students with disabilities can access and benefit from the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities. Under Chapter 15, Student's receive education through a service agreement, "executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student." 22 Pa. Code § 15.2. Service agreements become operative when parents and schools agree to the written document; oral agreements are prohibited. 22 Pa Code § 15.7(a).

Section 504 contains its own child find requirement that is similar, but not identical, to the child find requirement of the IDEA. Section 504 requires districts to annually "undertake to identify and locate every qualified [individual with a disability] residing in [the district's] jurisdiction who is not receiving a public education." Section 504 also requires districts to evaluate students "who, because of handicap, need or are believed to need special education or related services." 34 C.F.R. §104.35(b); 34 C.F.R. §104.35; 22 Pa. Code §15.6(d).

Pennsylvania's Chapter 15 regulations similarly obligate the LEA to obtain sufficient information to determine whether a child is a "protected handicapped student" and to involve the parents in that process. 22 Pa. Code §§ 15.5, 15.6. Evaluations are conducted by professionals familiar with handicapping conditions. The evaluation should include information from a variety of sources, including parents, medical personnel, school psychologists, teachers, and anyone who interacts with the student on a regular basis. If a student is determined to be eligible for services, a written service agreement must be developed to meet the needs of the student.

If a parent seeks to modify or change the service agreement, the parent should include relevant medical records with the written request. A school district has twenty-five days to respond to the parent after receiving the written request to modify a service agreement. 22 Pa. Code §15.6 (d)(e)(f).

Section 504 requires that districts "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. 104.33(a); 22 PA Code §15.1 To receive a free and appropriate public education as defined by Section 504, a student must be provided with regular or special education and related aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met. 34 C.F.R. § 104.33(b); *TF by DF and TSF v. Fox Chapel Area School District*, 62 IDELR 74 (W.D. Penna. 2013), affirmed in an unpublished decision at 589 F. App'x 594, 64 IDELR 61 (3d Cir. 2014).

The Third Circuit has interpreted the phrase "free appropriate public education" (FAPE) to require "significant learning" and "meaningful benefit." *Ridgewood, supra*, 172 F.3d at 247. Significantly, "[t]here are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not." *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F. Supp.2d 422, 427 (E.D. Pa. 2002). Considering whether an educational program for a child with a disability is appropriate "can only be determined as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2 1031, 1040 (3d Cir. 1993); see also *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same). In addition, a local educational agency (LEA) is not obligated to "provide 'the

optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012); *Andrew F. _____ U.S. _____*, 137 S. Ct. 988, 197 L.Ed.2d 3; *H.D. v. Kennett Consolidated School District*, (E.D. Pa. October 4, 2019)(although the Section 504 plan did not address all sources of the student's anxiety, the district was not obligated to offer the student the best possible education. Rather, it was merely required to offer appropriate services. Districts are not required to maximize the student's education by acquiescing each request the parents make).

Parents' Claims

In their Complaint, the Parent contends that since May 2022, the District failed to provide IEPs and Section 504 plans that properly addressed the Student's educational needs, perform proper evaluations, and that appropriate progress has not occurred. Based on the evidence of this hearing record, as outlined below, the Parents have not sustained their burden of proof.

First, the Parents contend the District denied the Student a FAPE through its failure to provide IEPs and 504 plans that adequately addressed the Student's educational needs. In support of this argument, the Parents point to several events, including the Student's 2020 diagnosis of ADHD, their continual academic concerns, and the December 2022 IEE that determined had diagnoses of mixed receptive-expressive language disorder, a social pragmatic communication disorder, a specific reading disorder and a disorder of written expression.

Since the 2019-2020 school year, as a [redacted] grader, the Student received services through a Section 504 agreement to address needs related

to diagnoses of ADHD and anxiety. Although the Parent contended that 504 plans were inadequate, they failed to present preponderant evidence supporting that claim. One 504 plan, ostensibly revised in April 2023 in response to the IEE, was introduced into evidence by the Parent. That plan contained a rich array of more than twenty (20) accommodations to improve the Student's focus, attention, and impulse control, as well as assistance with comprehension and verbal expression. Many were also listed in the IEE. Although insufficient testimony and evidence was presented to establish the inadequacy of the 504 plans, on its surface, the 504 plan was individualized and responsive to the Student's needs and provided FAPE.

Next, the Parents, in their Complaint, contended the District failed to evaluate the Student properly. Although the Student had very good academic achievement, parental concerns persisted into the [redacted] grade. A November 2021 District speech evaluation determined that the Student's [redacted]-grade skills were at the appropriate age and grade level. A privately obtained two-part auditory processing evaluation conducted later in the school year determined no disorder was present. Dissatisfied with the Student's reading abilities, the Parent requested a special education evaluation, completed at the beginning of the 2022-2023 school year for the Student now in the [redacted] grade. Although that evaluation concluded that the Student did not have a disability and was ineligible for special education, the District agreed to fund an independent education evaluation (IEE). The speech-language pathologist (SLP) who conducted the IEE concluded that the Student had diagnoses of mixed receptive-expressive language disorder, a social pragmatic communication disorder, a specific reading disorder, and a disorder of written expression. Although the Parent contends the District's evaluations were inappropriate, the evidence contradicted that assertion. The District conducted evaluations

were IDEA compliant, sufficiently comprehensive and utilized various assessment tools, strategies, and instruments to gather relevant functional, developmental, and academic information about the Student, all relating to areas of suspected disability. 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Although the IEE conducted by the SLP reached some dissimilar conclusions, without contradictory, compelling evidence that the District evaluations were improperly performed, the Parent's claim fails.

The Parents' contentions that the District failed to issue a NOREP and offer subsequent special education programming after the August 2023 IEP meeting must be addressed. The Parent suggests if this had occurred, they would have been able to consent to the provision of special education services. Since that did not occur, the Parent contends, no special education programming was offered; therefore, no consent or refusal to services could occur.

The Parents' suggestion that the lack of issuance of a third NOREP from the District somehow prevented their consent to the provision of services for the Student is unpersuasive. The record is clear: the Parent did not provide consent for the District to implement programming. During the summer of 2023, the Parent signed and returned two NOREPs to the District. The Parent signed the first NOREP, which was marked as a "draft," and requested an informal meeting and a finalized IEP. In response, the District provided the Parent with a revised IEP, designated as "final," but communicated that it would be fully updated once school resumed. After receiving the revised IEP, the Parent returned the second NOREP and requested an informal meeting.

The August IEP meeting was convened, and the findings from a district-funded June 2023 auditory processing evaluation of the Student and

future programming were discussed. 34 C.F.R. 300.502(c). Although the District was not obligated to automatically adopt the findings of the private evaluation, two key recommendations, a trial of an FM system that the Parent does not dispute was rejected, and speech and language therapy offered through the draft and final versions of the June IEP. While all recommendations from an IEE need not be included in the Student's IEP, they should be considered, and a rationale provided if there is a service or support a parent believes their child needs that the IEP team refuses to include in the IEP. Ultimately, the team's rationale for refusal should be included in a NOREP issued after the meeting. In this case, the Parent has presented no persuasive evidence that the Student's programming, as proposed in the final IEP, should have been modified or adjusted after receipt of the auditory processing report. A Notice Recommended Educational Placement (NOREP)/Prior Written Notice (PWN) is not required after every IEP meeting in Pennsylvania. However, it must be issued when a school proposes to initiate special education/related services, refuses certain changes to an IEP, disciplinary changes of placement and in other specific circumstances. At the August meeting, the Parent did not propose changes to the Student's **programming** and no revisions were made to the IEP. As such, the issuance of another NOREP to the Parent, in this matter, was not required.

Although the Parent requested an informal meeting, and it occurred, no consent was given to initiate special education services for the Student. Consequently, the Student had no IEP in place and received no attendant special education programming during the 2023-2024 school year. Reportedly, the 504 service plan did remain in place. On this hearing record, the Parent has provided no legal authority that requires a District to pursue a family to persuade them to initiate services for their child. This District

needed only to make “reasonable efforts to obtain informed consent.” 34 C.F.R. § 300.300. Based on the totality of evidence, this District’s actions were appropriate.

Moreover, because the Parent did not provide affirmative consent, the District’s hands were tied, and no programming could commence. No procedural mechanism exists for the District to compel the Parent’s cooperation through dispute resolution, nor may it proceed with initiating services to the Student. 22 Pa. Code § 15.8.⁵ Although a District follow-up phone call or inquiry to the Parent regarding the next steps and interest in the provision of services would have been courteous and perhaps a better practice, the Parent has presented no legal authority or persuasive evidence that it was required. Moreover, throughout the IEP meetings at issue, the Parent, a school district employee, was accompanied by legal counsel and an educational advocate. They also did not actively engage the District and assert the Student’s right to receive special education services.

The IEP developed in June 2023, although never implemented, was appropriate. This June, IEP offered itinerant learning support with goals to address speech (language, social pragmatic skills) and listening comprehension. Offered SDI was comprehensive and included access to a resource period for re-teaching of concepts and grade checks. Related services included group speech-language therapy. The evidence shows that the District never denied the Student a FAPE. Instead, the District created the June IEP based on data collected, private evaluations, and parental input. Overall, the proposed IEP addressed the concerns identified at that time.

⁵ If the parent fails to respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided. 22 Pa. Code § 15.8

I find it perplexing, and no satisfactory explanation or evidence was provided about what transpired between the pivotal August 2023 IEP meeting and May 10, 2024, due process complaint. The Parent suggests they were standing by awaiting further communication from the District through a NOREP or additional programming offer. They also contend they were compelled to initiate and maintain private speech therapy services for their Student. Despite this action, they made no overture or effort to secure entitled programming for their child.

The District did not deny the Student a FAPE; therefore, no relief is owed to the Parents. The Student's needs may have changed since more than a school year has elapsed since the last programming was developed. Since the Parents appear to now seek implementation of programming, a reevaluation should occur to obtain updated information about the Student's functioning and to determine special education needs.

ORDER

AND NOW, this 20th day of November 2024, in accordance with the preceding findings of fact and conclusions of law, it is ORDERED as follows.

1. Within ten (10) school days, the District is ordered to issue a NOREP/PWN to the Parents to conduct a reevaluation (RR) of the Student.

It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 29718-23-24

November 20, 2024