

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. 31645-25-26

Child's Name:

R.C.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

December 2, 2025

BACKGROUND

The parents filed a due process complaint seeking reimbursement for a unilateral placement of the student for the 2023 – 2024 school year and for the 2024 – 2025 school year. The parents contend that the school district failed to make an offer of FAPE for the 2023 – 2024 school year. The school district contends that it had no duty to make an offer of FAPE for the 2023 – 2024 school year. The parents argue that the school district’s offer of FAPE for the 2024 – 2025 school year was inappropriate. The school district argues that its offer of FAPE for the 2024 – 2025 school year was appropriate.

I find in favor of the school district with regard to the issues raised by the complaint for both the 2023 – 2024 school year and the 2024 – 2025 school year.

PROCEDURAL HISTORY

Counsel in this case did an excellent job of stipulating to a large number of facts and in submitting joint exhibits. By agreeing to stipulations of fact and the admissibility of exhibits, counsel shortened the amount of time necessary for hearing and permitted the hearing to be conducted in one efficient virtual session. At the hearing, joint exhibits J-1 through J-14 were admitted into evidence. Two witnesses testified at the due process hearing.

After the hearing, counsel for each party 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

The due process complaint, as explained and clarified at the prehearing conference convened in this case, presents the following issues:

1. Whether the parents have proven that the school district should reimburse them for tuition for a unilateral placement of the student in a private school for the 2023 – 2024 school year? and
2. Whether the parents have proven that the school district should reimburse them for tuition for a unilateral placement of the student in a private school for the 2024 – 2025 school year?

FINDINGS OF FACT

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

1. The student was born on [redacted] and has resided with the student's parents within the boundaries of the school district during all times relevant to this matter.

2. Prior to the student's graduation, the student was eligible at all relevant times for special education services through the IDEA.

3. The student graduated at the conclusion of the [redacted] school year from private school, a parochial school. The student attended all four years of high school at private school.

4. Prior to that, the student attended another private school since March 2016, the student's [redacted]-grade school year.

5. The school district funded the student's placement at the other private school pursuant to a settlement agreement. The school district also paid for the student to have the benefit of a full-time aide, speech therapy, and behavioral therapy.

6. Under the terms of the settlement, the school district was to evaluate the student and offer an Individualized Education Plan ("IEP") for the 2021-2022 school year. The school district completed the evaluation on April 27, 2021.

7. The 2021 reevaluation report ("RR") included input from the student's teacher and parents; observations from two psychologists; academic and achievement testing; speech/language evaluation; behavior and emotional assessments; non-standardized administration of the Autism Diagnostic Observation Schedule, Second Edition ("ADOS- 2"); Autism Spectrum Rating Scales ("ASRS"); and a functional behavioral assessment ("FBA").

8. The student was again found eligible to receive services under the IDEA under a primary disability category of Autism and two secondary disability categories, Other Health Impairment ("OHI") and Speech or Language Impairment. The student was also determined to be eligible for

[redacted] services. Parents disagreed with the eligibility classification of Autism.

9. An IEP meeting was held on May 26, 2021. The proposed IEP included the student's present educational levels, transition goals, annual goals, several program modifications and specially designed instruction ("SDI"), speech and language therapy, and a positive behavior support plan.

10. On June 14, 2021, the school district issued a Notice of Recommended Educational Placement ("NOREP"). Parents rejected the offered IEP and placement, stating that they "do not believe this meets [the student's] needs."

11. On August 12, 2021, parents sent an email to the school district stating they were sending the student to private school and asking the school district to fund the student's placement at private school.

12. At approximately the same time, parents retained a private evaluator to evaluate the student.

13. On August 12, 2021, the school district replied to parents' email, stating its belief that the IEP was appropriate but that it was willing to reconvene the IEP team. The IEP team reconvened on August 27, 2021.

14. On August 28, 2021, the private evaluator commenced an evaluation of the student and conducted the evaluation in August and September, 2021.

15. Parents provided the private evaluation to the school district on December 23, 2021, shortly after the private evaluator issued a report on December 14, 2021.

16. On February 28, 2022, parents filed an administrative due process complaint with the Office for Dispute Resolution seeking to compel the school

district to fund the student's placement at private school for the 2021 -2022 school year.

17. On March 15, 2022, the parties met at an IEP meeting where the private evaluation was discussed, and the IEP was revised. A NOREP was issued on March 17, 2022 which was also rejected by the parents.

18. A due process hearing was held before another hearing officer on May 20, 2022 and June 8, 2022.

19. Following written closings by the parties, on July 15, 2022, the other hearing officer issued a decision in favor of the school district and denying the parents' request for tuition reimbursement.

20. On October 13, 2022, the parents appealed the other hearing officer's decision in federal court. Both parties moved for judgment on review of the administrative record.

21. On August 18, 2023, the judge issued a decision denying the parents' appeal and granting the school district's Motion for Judgment on the Administrative Record. (Student) v. (school district), No. 22-4080, 2023 U.S. Dist. LEXIS 145014 (E.D. Pa. Aug. 18, 2023).

22. On September 14, 2023, parents gave notice of appeal to the Third Circuit Court of Appeals. Following briefing by the parties, on August 2, 2024, the Third Circuit denied the parents' appeal and again affirmed the decision by the other hearing officer. (Student) v. (school district), No. 23-2702, 2024 U.S. App. LEXIS 19315, at *1 (3d Cir. Aug. 2, 2024).

23. The IEP at issue in the previous litigation expired on May 25, 2022.

24. The parents did not specifically request that the school district offer an IEP for the student for the 2022 - 2023 school year, or for the 2023 - 2024 school year.

25. On June 21, 2024, the parents wrote to the school district indicating that they were thinking about the student returning to the school district and asking for an offer of FAPE for the 2024 - 2025 school year.

26. On June 24, 2024, a special education supervisor responded and indicated that an IEP team meeting would be convened, and that the school district would issue a PTRE seeking permission to commence a reevaluation of the student. The District issued a PTRE on July 17, 2024, which the parents consented to.

27. On August 5, the IEP team convened to develop a proposed IEP for the 2024 - 2025 school year.

28. On August 12, 2024, the parents wrote to the school district indicating that they don't (*sic*) believe the school district has offered an appropriate program and placement and that they were going to place the student at private school for the 2024 - 2025 school year. They asked that the school district fund the tuition.

29. On August 15, 2024, the school district finalized the proposed IEP and issued a NOREP to the parents.

30. On October 24, 2024 the school district issued its updated Reevaluation Report. The October 2024 RR changed the student's primary classification to Other Health Impairment ("OHI"), with a secondary classification of Autism, and a tertiary classification of [redacted] with a Disability. Parents continue to disagree with the Autism classification.

31. Two rating scales (the Conners-3 and BRIEF-2) were submitted by the parents after the RR was finalized. The RR was updated to include the additional rating scales from the parents and submitted to the Parents on November 5, 2024.

32. On November 20, 2024 the district reconvened the IEP team to develop a new annual IEP following the completion of the school district's reevaluation. The finalized IEP and NOREP were sent to the parents on December 2, 2024. The parents rejected the November 20, 2024 IEP and maintained the student's placement at private school through the student's graduation on or about [redacted].

33. The student attended private school for the [redacted] school year and graduated at the conclusion of the school year.

34. On July 28, 2025, the parents filed a due process complaint seeking tuition reimbursement for the 2023 - 2024 and 2024 - 2025 school years.

35. Private School is a college preparatory school for young [redacted] in grades 9 through 12, located in Pennsylvania.

36. Private School is accredited/licensed by Pennsylvania Association of Independent Schools, Middle States Association for Secondary School Accreditation for Growth.

37. Private School has a total enrollment of 420; and a teacher to student ratio of 9 to 1.

38. The student's class schedule during the 2023 - 2024 school year included [redacted]. Class sizes ranged from 8 to 20 students.

39. The student's class schedule during the 2024 - 2025 school year included [redacted]. Class sizes ranged from 8 to 20 students.

40. The student participated in private school's program, which is designed for students who require accommodations and supports.

41. The student had an Academic Accommodation and Support Plan for each year the student attended private school, including 2023 - 2024 and 2024 - 2025 school years.

42. The student did not receive speech therapy during the 2023 -2024 and 2024 - 2025 school years at private school.

43. The student had access to a guidance counselor at private school on an as-needed basis.

44. The student participated with other students on the [redacted] teams during the 2023 - 2024 and 2024 - 2025 school years.

45. The student's grades are reflected in the student's report cards and progress reports.

46. If called to testify, private school staff would testify that it is their believe (*sic*) that the student made appropriate progress while at private school, and that the student's academics, social-emotional, and behavioral needs were met. They would also testify that it is their belief that the size of the school benefited the student at private school.

47. The parties agree to stipulate to the admissibility of the testimony of the parents' private evaluator from the previous due process hearing.

48. On August 20, 2024, the parent e-mailed the completed transition questionnaire to the district.

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

49. The student is a [redacted]. (NT 80 -81)

50. The school district has an excellent reputation. (NT 55-56)

51. The private independent evaluator who was retained by the parents prepared an evaluation of the student in the spring of 2021. The evaluator's report recommended that the student receive itinerant learning support two to three times per week in a smaller class environment that would help to support the student in executive functioning skills and organization and completion of work. The evaluator recommended that the student's education program address the student's organization issues and that it include a study hall component. The evaluator also recommended that the student have a behavior plan. The evaluator testified in a previous due process hearing involving these same parties that the student has a deficit in social skills and the evaluator recommended that the student receive social skills instruction. (J3, J-14)

52. In the spring of 2024, the parents placed a deposit with private school for the student to attend private school for the 2024-2025 school year. (NT 57 – 58)

53. When the school district received the parents' request for an offer of FAPE during the summer recess, before the 2024 – 2025 school year, the

¹ (Exhibits shall hereafter be referred to as "J-1," etc. for the joint exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

school district took steps to acquire additional updated information from the parents and from the private school. The school district considered its prior reevaluation report, as well as the private evaluation by the parents' independent evaluator, and information from the parents and the private school. (J-8; NT 89-91)

54. The August 5, 2024 IEP developed by the school district includes goals in the areas of social skills (that includes direct instruction); increased on-task behavior; [redacted](science) and speech (articulation). The IEP lists multiple accommodations and specially designed instruction, including in social skills, [redacted], executive functioning and items pertaining to the transition back to the public school. The IEP includes a listing of the skills that would be taught in the study and organization support class that would be provided in the learning support environment. (J-8; NT 91 – 99)

55. The August 5, 2024 IEP identifies the student's needs as 1) off-task behaviors, 2) social skills, 3) problem solving (social situations), and 4) speech (articulation). No disagreement was expressed at the IEP team meeting concerning the student's needs. (J-8; NT 92 – 93)

56. To address the student's needs in the areas of off-task behaviors, the school district proposed direct instruction in executive functioning with the SMARTZ curriculum, research-based program, in addition to a positive behavior support plan. (J-8; NT 96-97)

57. To address the student's needs in the areas of social skills and problem-solving in social situations, the school district proposed direct instruction in social skills with the Overcoming Obstacles curriculum, a research-based program. (J-8; NT 95 – 96)

58. To address the student's speech articulation needs, the school district proposed that the student would receive 60 direct speech-language therapy sessions of 15 minutes each session per year. (J-8; NT 99-100)

59. Because of the parents' previously expressed concerns regarding the appropriateness of the student being in an autistic support classroom, the school district proposed in the August 5, 2024 IEP that the special education instruction called for by the student's IEP take place in the learning support setting. The instruction being proposed by the school district would be the same whether provided in the autistic support setting or the learning support setting. (J-8; NT 98 - 99, 111 - 115, 65-66)

60. There would have been 10 to 15 students in the learning support class that the student would have attended pursuant to the August 5, 2024 IEP. In the student's regular education elective classes, there would have been up to 28 students. (J-8; NT 114-116)

61. The school district proposed that the student spend 88% of the student's day in the regular education environment, with 90 minutes every other day spent in the learning support classroom. In addition, the student would receive 60 direct speech-language therapy sessions of 15 minutes each per year. (J-8; NT 95, 99-100)

62. The school district utilizes block scheduling at the high school that the student would have attended. The learning support class that the student would have attended would have been divided into 45 minutes of direct instruction for social skills and off-task behaviors and the remaining 45 minutes as a study hall for the student to complete work from other classes in the learning support environment. (NT 94 - 97)

63. The IEP includes accommodations to help ensure a smooth transition from the private school back to the public school for the student.

The IEP provides for an open house with a walkthrough of the student's course schedule prior to the start of the school year, and an opportunity for the student to meet with the counselor, social worker, case manager and teachers prior to the start of the school year. (J-8; NT 100-102)

64. In response to the parent concerns about the size of the school district's high school, the school district added accommodations to the August 5, 2024 IEP that include access for the student to the loop bus to transfer of the student between school buildings, the ability for the student to leave class a few minutes early to avoid congestion, and the option for the student to go to an alternative location during large whole-school events. Because of block scheduling, the student would transition between classes three times per day. (J-8; NT 94, 100-102)

65. An IEP team meeting was convened on August 5, 2024. The August 5, 2024 IEP documents the questions and concerns that the parents expressed at the IEP team meeting and answers that were provided to the parents by school district staff. (J-8; NT 91, 104)

66. On August 12, 2024, the parents provided notice to the school district that they would continue the unilateral placement of the student at the private school and that they were seeking tuition reimbursement. (J-7, NT 103)

67. The parents received the finalized August 5, 2024 IEP on August 15, 2024. (NT 49-50; J-8)

68. The academic and accommodation support plans for the 2023 – 2024 and 2024 – 2025 school years utilized by the private school are substantially the same. (J-12)

69. The academic and accommodation support plans for the 2023 – 2024 and 2024 – 2025 school years at the private school do not provide for,

and the student did not receive, special education instruction at a designated time. Instead, check-ins can occur “as needed.” The academic and accommodation support plans for the 2023 – 2024 and 2024 – 2025 school years do not provide for, and the student did not receive, direct social skills instruction at the school. During the student’s time at the private school, the private school did not provide any school -based speech language therapy. (J-12; NT 74 – 79)

70. The student graduated from the private school in [redacted]and the student is now attending college. (NT 31- 32)

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 (hereafter sometimes referred to as “FAPE”). IDEA §615(b)(6)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. In order to receive reimbursement of tuition for a unilateral private school placement, a parent must prove three elements: 1) that the school district has denied FAPE to the student or committed another substantive violation of IDEA; 2) that the parents’ private school placement is appropriate; and 3) that the equitable factors in the particular case do not preclude the relief. School Committee Town of Burlington v. Department of

Education, 471 U.S. 359, 103 LRP 37667 (1985); Florence County School District #4 v. Carter, 510 U.S. 7, 20 IDELR 532 (1993); Forest Grove School District v. TA, 557 U.S. 230, 52 IDELR 151 (2009).

3. Reimbursement of tuition for a unilateral placement may be reduced or denied if the parents fail to give the local education agency at least 10 business days' notice prior to the removal of the student that they are rejecting the public school placement, stating their concerns with the public school placement and that they are seeking to enroll the student in a private school at public expense. IDEA § 612(a)(10)(c)(iii)(bb); 34 C.F.R. § 300.148(d)(1)(ii).

4. Under IDEA, a local education agency has no duty to provide FAPE to a student who was placed by the student's parents in a private school. 34 C.F.R. § 300.137; see, Special Dist. #1, Minneapolis Pub. Schs. V. RMM by OM and TM, 61 F. 3d 769, 70 IDELR 58 (8th Cir. 2017). However, Courts in the Third Circuit have held that where parent of such a private school student requests an IEP, or offer of FAPE, the local education agency must provide a proposed IEP to the parents. AB v. Abington Sch. Dist., 440 F. Supp. 3d 428, 76 IDELR 41 (E.D. Penna. 2020), (aff'd in **unpublished** decision), 841 A.F. Appx. 392, 78 IDELR 1 (3d Cir. 2021); see also, D.K. v. Abington Sch. Dist. 696 F. 3d 233, 59 IDELR 4 (3d Cir. 2012). In interpreting requests for an offer of FAPE for such a student, court's have narrowly construed what constitutes a request for an IEP or an offer of FAPE. Although no magic language is required of the parents, the local education agency's duty to provide an IEP is triggered only where the parents clearly and objectively manifest a desire for the local education agency to develop programming for the student or request an evaluation of the student. AB v. Abington Sch. Dist., supra.

5. 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 unique circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. ____, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

6. 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).

7. 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).

8. 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 the student 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).

9. A school district must "...to the maximum extent appropriate (ensure that) children with disabilities... are educated with children who are nondisabled 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); IDEA § 612(a)(5)(A); 22 Pa. Code § 14-195. The Third Circuit has stated that the least restrictive environment requirement sets forth a "strong congressional preference" for integrating children with disabilities in regular education classrooms. Oberti v. Board of Education, 995 F. 2d 1204, 19 IDELR 908 (3d Cir. 1993). The least restrictive environment requirement is a substantive requirement of IDEA. Oberti, supra at n.18.

10. The parents have not proven that the school district had a duty to offer an IEP to the student for the 2023 – 2024 school year.

11. The parents have not proven that the school district's August 5, 2024 IEP failed to offer a free and appropriate public education to the student for the 2024 – 2025 school year, and therefore, the parents are not entitled to an award of reimbursement for private school tuition for their unilateral placement.

DISCUSSION

1. Whether the parents have proven that the school district should reimburse them for tuition for a unilateral placement for the 2023 – 2024 school year?

The parents seek reimbursement for a unilateral placement of the student in a private school. This issue presented here is unusual in that, with regard to this particular school year, the parties have argued only a matter of law. There are no disputed material facts with regard to this issue.

The parents contend that the school district wrongfully failed to provide them with an IEP which would constitute an offer of FAPE for the 2023 – 2024 school year. The school district contends that it had no legal duty to provide an offer of FAPE to the parents because they did not request one.

It is undisputed that the school district did not offer an IEP to the student for the 2023 – 2024 school year. The parents argue that the school district's failure to provide an offer of FAPE requires that the parents receive reimbursement for their unilateral placement. The record evidence in this case, however, supports the school district's position. The law is clear that although the parents need not use any particular magic language to trigger a duty on the part of the local education agency to provide an offer of FAPE, the parents must clearly and objectively manifest a desire for the local education agency to develop a program for the student.

In this case, it is undisputed that the parents did not request an IEP or an offer of FAPE from the school district. It is concluded that the evidence compels a conclusion that the parents did not clearly and manifestly express a desire for the school district to develop a program for the student for the 2023 – 2024 school year.

It should be noted that the school district in its post-hearing brief cites an unpublished decision by the Third Circuit Court of Appeals in support of its argument. The Third Circuit has made it clear that lower courts and hearing officers should not rely upon unpublished decisions by the court. DF by AC v.

Collingswood Borough Bd. of Educ., 694 F. 3d 488, 59 IDELR 211 (3d Cir. 2012). Accordingly, the unpublished Third Circuit decision cited by the school district in its brief has not been considered in reaching this decision.

The parents argue that the family's continued litigation of a previous due process hearing constitutes a request for an offer of FAPE for the 2023 – 2024 school year. Merely litigating a previous IEP, however, is clearly not a request for an offer of FAPE for the 2023 – 2024 school year.

Moreover, there is a serious logical flaw in the argument advanced by the parents with regard to this issue. As the parties have stipulated, the due process complaint that the parties were in litigation over sought to compel the school district to fund the student's placement at a private school. There is no way that litigation intended to continue student's education at a private school could reasonably be construed to signal the parents' desire to return, or at least consider returning, the student back to public school for the 2023 – 2024 school year. Instead, the continued litigation would seem to indicate the exact opposite conclusion - that the parents wanted to maintain the student's private school placement and were pursuing litigation to continue that private school placement. Litigating a claim that reimbursement for a private school is required does not equate to a desire for the school district to develop a program for public school. It is concluded that the parents did not clearly and objectively manifest a desire for the school district to provide an offer of FAPE for the 2023 – 2024 school year. The parents' argument is rejected.

Because there are no material facts in dispute with regard to this issue, a credibility analysis is not required.

It is concluded that the school district did not have a duty to provide the parents with an offer of FAPE for the 2023 – 2024 school year. Accordingly, the parents have not proven that they are entitled to reimbursement for a unilateral placement of the student for the 2023 – 2024 school year.

2. Whether the parents have proven that the school district should reimburse them for tuition for a unilateral placement for the 2024 – 2025 school year?

The parents also seek reimbursement for a unilateral placement of the student in private school for the 2024 – 2025 school year. The school district contends that the parents have not proven that reimbursement is appropriate. The analysis of the three prongs of the Burlington Carter – TA standard follows:

a. Whether the parents have proven that the school district’s proposed IEP failed to constitute a free and appropriate public education for the student for the 2024–2025 school year?

The parents contend that the school district’s proposed IEP does not constitute a free and appropriate public education for the student. The school district argues that the IEP is reasonably calculated to confer meaningful educational benefit in view of the student’s unique individual circumstances.

The parents allege specifically that the August 5, 2024 IEP does not provide FAPE because the IEP has insufficient goals and specially designed instruction concerning the student’s weaknesses in social skills, social communication, and executive function and other ADHD needs, and because

the IEP provides insufficient planning for the transition of the student from the private school to the public school and because the size of the public school and the size of the classes the student would attend in the public school are too large.

The parents challenge the IEP goals as inappropriate. The evidence in the record, however, reveals that the IEP establishes goals in social skills instruction, on task behavior, [redacted] and speech. The goals are specifically designed to meet the student's unique individual needs. The IEP goals are appropriate.

The parents challenge the IEP as not addressing social skills. The IEP, however, includes a goal, as well as specially designed instruction, that specifically addresses the student's needs with regard to social skills, including direct instruction utilizing a research-based program. The IEP also includes a positive behavior support plan that is designed to address the student's social and behavioral needs.

In addition, the parents argue that the IEP does not address the student's executive functioning needs. However, the IEP includes direct instruction concerning off-task behaviors through a research-based program. In addition, the IEP also addresses executive functioning needs of the student through the positive behavior support plan.

The student's mother testified, and the argument is repeated in the parent's post-hearing brief, that the study and organization class the student would receive in the learning support setting, pursuant to the IEP, was too long in duration and provided too many special education supports for the student. This argument contradicts the parents' argument that the IEP does not provide sufficient supports for the student. The parents cannot have it

both ways. The IEP cannot simultaneously provide insufficient supports to meet the student's needs as the complaint states and at the same time provide excessive supports beyond the student's needs. Moreover, the report of the parents' independent evaluator, who testified in a previous due process proceeding with the same parties, recommends that the student receive itinerant learning support two to three times per week to ensure that the student is organizing and completing the student's work. The school district's IEP provides precisely what the parent's independent evaluator had recommended.

The parents also argue that the public school building was too big, that the classes would be too big for the student and that the school district did not take appropriate steps to ensure smooth transition of the student to public school. The parents' argument is not supported by the record evidence. The district's proposed special education class every other day for 90 minutes would include a relatively small class size of 10 to 15 students and provide social skills, executive functioning and other instruction in a relatively small class, as recommended by the parents' private evaluator. IDEA does not specifically require a "transition plan" for students returning to public school from a private school, but in the instant case, the school district nonetheless took appropriate steps to ensure a smooth transition. The IEP provided for a walkthrough of the student's core schedule prior to the start of school year and an opportunity to meet with the counselor, social worker, case manager and teachers prior to the beginning of the school year. The IEP also includes the accommodation of access to the loop bus to transfer the student between buildings and permits the student to leave classes a few minutes early to avoid congestion in the halls. The IEP also gives the student the option of going to an alternative location during big, whole-school events if the student elects to do so.

The August 5, 2024 IEP is reasonably calculated to provide meaningful educational benefit, and it is designed to address the student's unique individual needs and circumstances. The parents' arguments are rejected. It is concluded that the August 5, 2024 IEP constitutes an offer of a free and appropriate public education for the student.

The testimony of the school district witness was more credible and persuasive than the testimony of the student's mother concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factors: the student's mother was very evasive and combative on cross-examination. At one point during cross-examination the mother expressed difficulty in understanding the definition of "social skills instruction." The student's mother gave this testimony despite the fact that one of the major flaws cited by the parents in the August 5, 2024 IEP was that it contained inappropriate and insufficient social skills instruction. The student's mother was also evasive concerning why and when the parents made the decision to consider returning the student to public school.

It is concluded that the parents have not proven that the August 5, 2024 IEP offered by the school district denied a free and appropriate public education to the student for the 2024 – 2025 school year. Accordingly, reimbursement for the parents' unilateral placement must be denied.

b. Whether the parents have proven that the private school at which they have unilaterally placed the student is appropriate?

The second prong of the Burlington – Carter analysis involves whether the parents have proven that their chosen private school is appropriate. It is not necessary to reach the second prong in this case because the parents have

not proven the first prong. Assuming *arguendo* that the parents had proven the first prong, however, they have not proven that their private school is appropriate.

Although the bar is lower for parents to prove a private school appropriate than it would be for a public school district placing a student in a private school, parents must nonetheless show that the private school that they have selected for the unilateral placement will provide a program that is 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 private school that they have selected is appropriate for the student. Glaringly, the academic and accommodation support plans that are in evidence do not provide for special education instruction at any designated times. There is a reference to check-ins that can occur, "as needed." Such check-ins, however, do not constitute the type of specially designed instruction that the student requires. In addition, the plans offered by the private school do not provide for direct social skills instruction or speech-language therapy at the school. The private school's academic and accommodation support plans for the 2023 – 2024 and 2024 – 2025 school years are substantially the same, and, therefore, they are clearly not individualized to meet the student's unique needs. It is concluded that the program available to the student at the private school, as reflected by the evidence in the record, is not appropriate to meet the student's needs. The unique individual circumstances of this student include a need for direct social skills instruction. The private school selected by the parents would not provide social skills instruction to the student.

The credibility discussion in the previous sub-section of this decision is incorporated by reference herein. It is concluded that if it were necessary to

reach the second prong of the Burlington – Carter analysis, the parents have not proven that the private school that they selected for unilateral placement was appropriate.

c. Whether the parents have proven that the equities favor reimbursement?

The third prong of the Burlington – Carter analysis involves a determination as to whether the conduct of the parties and any other equitable factors might weigh in favor or against reimbursement. It is not necessary to reach the third prong in this case because the parents have not proven the first prong. Even assuming *arguendo* that the parents had proven the first and second prongs, however, they have not established that the equities favor reimbursement.

In the instant case, it is clear from the evidence in the record that the parents did not intend to enroll the student in public school. The parents had already made a deposit in the spring of 2024 to secure a place for the student in the private school for the 2024 – 2025 school year. Although the mother’s testimony concerning this point is impaired by bad memory about when the deposit was made and how much money was paid for the deposit and even whether any additional payments were made, it is clear that the parents did not intend to enroll the student back in public school. Moreover, as the parents concede, they failed to give the requisite 10-day notice of the unilateral placement to the school district. Instead, the parents notified the school district of their intention to seek reimbursement for the unilateral placement after schools had closed for the summer and during the summer vacation. The parents’ late notice to the school district concerning the unilateral placement was not reasonable and is consistent with an intent not to enroll the student in the school district.

The credibility discussion in the previous sub-sections of this decision is incorporated by reference herein. It is concluded that if it were necessary to reach the third prong of the Burlington – Carter analysis, the parents have not demonstrated that the equities favor reimbursement.

The requested relief of reimbursement for the unilateral private placement must be denied.

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: December 2, 2025

James Gerl

James Gerl, CHO
Hearing Officer