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.

By Order dated September 11, 2025, by the Honorable District Judge Joel H. Slomsky, ODR File Number 28514-23-24 was remanded. This is the remanded hearing officer decision.

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

CLOSED HEARING

ODR No. 31908-25-26

Child's Name:
I.M.

Date of Birth:
[redacted]

Parent:
[redacted]

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Current Hearing Officer:
James Gerl, CHO

Date of Decision:
December 31, 2025

BACKGROUND

In a decision dated March 15, 2024, in ODR File No. 28514, Hearing Officer Charles Jelley found that the charter school had committed numerous IDEA evaluation violations, including a very flawed initial evaluation and failure to duly consider the results of an independent educational evaluation. The hearing officer found further that the evaluation violations resulted in substantively inadequate IEPs for the student. Hearing Officer Jelley found further that the parent had failed to establish that the student should be awarded a prospective private placement and determined that the parent had not proven that the student was entitled to compensatory education. Hearing Officer Jelley, however, did award relief to the parent. Specifically, the hearing officer required the charter school to review the results of the independent educational evaluation that had been already completed and within 15 days of the decision invite the parent to a meeting to review the report. Additionally he required an updated reevaluation report by the charter school and a new IEP team meeting to discuss the results. In addition, to further remedy the evaluation violations by the charter school, Hearing Officer Jelley ordered four specific independent educational evaluations to be completed within 60 days of the hearing officer's decision. The additional independent educational evaluations ordered by the hearing officer include the following: a functional behavioral assessment, a speech and language assessment, an occupational therapy assessment, and an assistive technology assessment. The March 15, 2024 decision by Hearing Officer Jelley is incorporated by reference herein.

The parties appealed Hearing Officer Jelley's decision and on September 11, 2025, the United States District Court for the Eastern District of Pennsylvania remanded this matter to the hearing officer. The district court specified that the purpose of the remand was to have the hearing officer either

reconsider his conclusion in rejecting the "hour-for-hour" compensatory education approach or to explain in more detail why the facts show that this form of compensatory education relief is not appropriate in this case.

Unfortunately, the distinguished hearing officer, Charles Jelley, retired prior to the remand order by the District Court and is no longer employed by the Office for Dispute Resolution. This matter was reassigned to me to address the court's remand order.

PROCEDURAL HISTORY

The parties to this case seem to have lost sight of the fact that the case is about the education of a young person. Counsel for the parties have encountered extreme communication issues- very rare in special education cases. The level of contentiousness is very high. Almost everything done by one party was vigorously contested by the opposing party. Indeed, the parties seem to be more interested in relitigating all issues involved in this case rather than confining themselves to the narrow issue remanded by the District Court. As a result, obtaining the parties' argument concerning the remand issue has been extremely difficult and unnecessarily time-consuming.

After the remand by the district court, I attempted to convene a Zoom meeting, or telephone conference call, with counsel in order to determine appropriate next steps. Because of the extremely unusual communication difficulties between counsel, I was unable to obtain cooperation even in scheduling a preliminary meeting to discuss procedures going forward.

By e-mail, counsel for the parent requested that additional evidence be submitted beyond what was submitted before Hearing Officer Jelley. I denied

this request as being beyond the scope of the remand order by the District Court.

Because counsel for the parties did not provide the requested input regarding dates and times for a conference, I imposed a briefing schedule upon the parties without the benefit of their input. Counsel for the parent requested that the parties be permitted to submit reply briefs. I denied that request because no persuasive reason to support it was provided with the request. Counsel for the charter school requested the parties be permitted to submit oral arguments in addition to briefs. I denied that request because no persuasive reason to support it was supplied with the request.

Counsel for the parties then submitted simultaneous briefs. The parent's brief was 24 pages long. The charter school's brief is 22 pages with numerous attachments.

Although the remand briefing of this matter was closed at that point, counsel for the parent submitted an unsolicited filing citing additional caselaw just six business days before my target decision date. In order to permit counsel for the charter school to have an opportunity to respond to the unsolicited filing by the parent, the eleventh hour filing by the parent was deemed to be a request for an extension of my target decision date. The target decision date was therefore extended, and counsel for the charter school filed a responsive filing. The parent then moved to strike the charter school's response. Much of the first round of briefing was unrelated to the narrow issue specified in the remand order by the court. The unsolicited filing with additional legal authority filed by the parent was about a decision that has nothing to do with the compensatory education question remanded by the District Court. Moreover, the new case cited by the parent was from the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit has a unique,

and in my opinion, improper formula for analyzing whether a local education agency has provided a free and appropriate education to a student that includes least restrictive environment as a factor in whether FAPE has been provided. See, Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 26 IDELR 303 (5th Cir. 1997). This analytical formulation is clearly incorrect inasmuch as LRE is a placement issue and not a FAPE issue. Even assuming arguendo that the question of whether the charter school had provided FAPE was properly before me, which it is not because of the narrow remand order by the District Court, a decision by the Fifth Circuit would not be considered persuasive or entitled to much weight.

The lengthy response to the parent's unsolicited filing by the charter school contains no new authority or argument that concerns the narrow issue of whether quantitative compensatory education should be awarded as relief in this case. The parent's motion to strike is denied; both the unsolicited filing by the parent and the response thereto by the charter school are given no weight.

All arguments submitted by the parties that concern the specific remand issue 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 have been omitted as not relevant or not necessary to a proper determination of the material issues as presented.

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

Reconsider whether hour-for-hour compensatory education should be awarded or provide an explanation concerning why hour-for-hour compensatory education is not appropriate to be awarded in this case.

CONCLUSIONS OF LAW

Based upon the arguments of the 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 in addition to those contained in Hearing Officer Jelley's March 15, 2024 decision in ODR File No. 28514:

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 § 711.3.(b)(26).

2. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable in nature. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (at n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F. 3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch. Dist., 606 F. 3d 59, 54 IDELR 212 (3d Cir 2010); Sch.

Dist. of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area Sch. Dist., 71 IDELR 87 (E.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Ed., Albuquerque Public Schools, 530 F. 3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir 2010). See, Branham v. District of Columbia, 427 F.3d 7; 44 IDELR 149 (D.C. Cir. 2005).

3. Compensatory education is a remedy that is often awarded to a parent when a local education agency violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley Sch. Dist. Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); See Reid ex rel. Reid, supra. In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by a denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or "cookie cutter" method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The "cookie cutter" or quantitative method has been approved by reviewing courts where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K. v. Annville Sch. Dist., 39 F.Supp.3d 584, 114 LRP 36251 (M.D. Penna. 2014).

4. The evaluation violations, and the substantive IEP violations that are adjacent to evaluation violations, committed by the charter school in this

case are appropriately remedied by the four independent educational evaluations and related relief ordered by Hearing Officer Jelley.

DISCUSSION

REMAND ISSUE: Reconsider decision to not award quantitative compensatory education or else provide further explanation why quantitative compensatory education is not appropriate in this case.

The scope of the discussion and analysis that follows is limited to the issue specified by the remand order of the Court. The briefs of both parties invite me to make substantive changes to Hearing Officer Jelley's decision, but that is not what the Court's remand Order instructed. The requests by both parties to go beyond the District Court's remand Order are rejected.

Pursuant to the district court's remand instructions, I have reviewed the reasoning of the previous hearing officer's decision in detail, and I have carefully considered and reviewed the arguments set forth by new counsel for the parent and counsel for the charter school concerning this question. Based upon review, consideration and analysis of the parties' arguments and the facts of this case, I have concluded that an award of quantitative (sometimes called hour-for-hour or hour for day) compensatory education is not appropriate in this matter.

It is indeed unfortunate that the distinguished hearing officer Charles Jelley has retired. It is not possible to know exactly what Hearing Officer Jelley was thinking at the time that he wrote the decision in this case. I have, however, carefully studied the reasoning and analysis of Hearing Officer Jelley as set forth in the decision.

It is important to note at the outset that there are four different types of issues that may be raised in an IDEA due process complaint. IDEA specifically permits a party to file a complaint based upon identification (including child find and eligibility cases), evaluation (school evaluations and independent educational evaluations), placement issues (including but not limited to least restrictive environment issues, residential placements, prospective private placements, issues concerning the stay-put clause, and certain disciplinary changes of placement), and the denial of a free appropriate public education.

There is an unfortunate tendency among some people to conflate all violations of IDEA under the heading of denial of a free appropriate public education. This confusion of the different actionable types of violations may result in a lack of clarity, particularly concerning appropriate IDEA remedies. Although allegations concerning a denial of FAPE are likely the largest group of alleged violations that go to a due process hearing, denial of FAPE is only one of the four types of issues that can be brought for hearing in a due process complaint. The other three types of violations are also quite important. Congress had strong public policy reasons for delineating these four specific areas of actionable violations. Each type of violation also requires a somewhat different approach in terms of determining an award of appropriate equitable relief. A hearing officer or reviewing court has broad powers to fashion appropriate relief upon finding a violation of IDEA, and the relief ordered to remedy a violation should be carefully tailored to the type of violation and the unique facts and equities of the particular case.

In this case, the primary thrust of the reasoning and analysis in Hearing Officer Jelley's decision was that the charter school had committed egregious evaluation violations. In specific, the initial evaluation conducted by the

charter school was extremely flawed and completely inadequate. Thereafter, the charter school failed to give due consideration to an independent educational evaluation obtained by the parent. These particular evaluation violations are at the very heart of the determination of appropriate relief awarded in the decision.

The hearing officer also found that certain IEPs denied FAPE to the student, but the gravamen of the findings by the hearing officer concerned problems with the IEPs that were a direct result of the charter school's highly inappropriate evaluation. The flawed evaluation resulted in inadequate or improper baselines and other inadequate or insufficient data and information about the student that would have been gleaned from an adequate evaluation of the student. Similarly, a later IEP was not appropriate because it did not give due consideration to the findings and recommendations of an independent educational evaluation obtained by the parent. In analyzing the violations found by Hearing Officer Jelley, it is clear that the FAPE violations were incidental to, and in fact the direct result of, the charter school's failure to conduct a comprehensive and appropriate initial evaluation of the student and the charter school’s failure to properly review the results of an independent educational evaluation provided by the parent. The findings regarding the denial of FAPE were linked to and the direct result of serious evaluation violations by the charter school.

When considering relief to be awarded for a violation of IDEA, a hearing officer or a court, has broad equitable powers to fashion an appropriate remedy. In general, compensatory education is an effective remedy for a denial of FAPE by a local education agency. In general, the appropriate relief for an evaluation violation is not compensatory education, but rather an order to conduct an appropriate evaluation or an award of an independent

educational evaluation at public expense. That is precisely what Hearing Officer Jelley did in this case. The record evidence reveals that the charter school failed miserably to conduct an initial evaluation and then later to give due weight to an independent educational evaluation obtained by the parent. Given the extent and severity of the evaluation violations by the charter school, the hearing officer issued relief appropriate to address these specific violations by ordering the charter school to fund four separate independent educational evaluations of the student. The four separate IEEs would provide the information that the previous inadequate evaluation did not obtain. The remedy fashioned by the hearing officer was well tailored to the educational injury that resulted from the violations of IDEA committed by the charter school on the specific facts of this case.

Compensatory education is frequently awarded when a local education agency has denied FAPE to a student. Most courts in the country have shown a distinct preference for the qualitative model of compensatory education over the quantitative model of compensatory education. The qualitative model focuses upon the educational harm suffered by the child as a result of the FAPE denial and fashions a remedy to address the specific harm suffered by the child. The quantitative method of determining compensatory education, which has been frowned upon by many courts, merely looks at the period of time during which FAPE was deprived and awards the parent an amount of money equal to compensatory education services calculated by the period of time times the number of hours of deprivation of FAPE or sometimes one hour per day of deprivation of FAPE depending upon the severity of the deprivation. Because of the mechanical and nonspecific method of calculating compensatory education involved in the quantitative method, numerous courts have criticized the method, calling it a "cookie cutter" approach. As the court in Reid, *supra*, stated "… this cookie-cutter approach runs counter to

both the 'broad discretion" afforded by IDEA's remedial provision and the substantive FAPE standard that the provision is meant to enforce." Indeed, the hour-for-hour approach to compensatory education may result in some students getting a windfall while other students are short-changed. As the Reid court notes "[s]ome students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. In addition, courts have recognized that in setting the award, equity may sometimes require consideration of the parties' conduct, such as when the school system reasonably requires some time to respond to a complex problem."

In Pennsylvania, it is extremely uncommon for lawyers to present evidence to support a qualitative compensatory education award. The reluctance to submit such evidence could possibly be the result of the Supreme Court's decision to not permit expert witness fees to be awarded to a prevailing parent in these cases. Arlington Central Sch Dist v Murphy, 548 U.S. 267, 45 IDELR 267 (2006).

District courts within the Third Circuit have frequently upheld quantitative awards of compensatory education by hearing officers. These courts have, nonetheless, not permitted quantitative compensatory education awards as a consolation prize whenever there has been a FAPE violation. Instead, the courts generally require that the hearing officer conduct an individualized analysis of the facts of the case even where awarding compensatory education based upon the quantitative method. See. Jana K, *supra*. Indeed, compensatory education is not a type of money damages or a contract remedy; instead, it is an equitable remedy for educational harm caused by a denial of FAPE. Jana K, *supra*.

In the instant case, it is not possible to conduct an individualized inquiry as required by the courts. As the charter school has argued in its brief, the evidence submitted by the parent has not proven any facts from which an individualized approach to a compensatory education award could reasonably be conducted. Most glaringly, there is no evidence in the record as to the period of denial of FAPE. In addition, there is no evidence in the record concerning at what point the charter school likely should have recognized that its IEPs were ineffective and needed to be changed.

As a result, any award of compensatory education would be completely speculative and not individualized to address the harm done to the student. It is concluded that an award of compensatory education of any kind is not appropriate in this case because the parent failed to offer evidence in the record that would permit an individualized calculation of a quantitative compensatory education award.

It is important to note that this is not a case where Hearing Officer Jelley concluded that the student should be punished because the parent's former lawyer made a strategic mistake by arguing only for qualitative compensatory education and then failed to put on evidence of qualitative educational harm. A parent is not held to strict pleading standards in an administrative hearing under IDEA as they would be in legal proceeding in a court. The parent hasn't waived quantitative compensatory education because she argued only for qualitative compensatory education. But the parent also failed to present any evidence from which the hearing officer could have calculated an individualized quantitative compensatory education award. Accordingly, no compensatory education award is appropriate in this matter. Hearing Officer Jelley carefully conducted an individualized analysis and concluded that the relief appropriate to address the educational harm to the student because of

the egregious evaluation violations by the charter school consisted of four specific independent educational evaluations to be funded by the charter school, complimented by the charter school appropriately completing its own reevaluation plus subsequent IEP team and other meetings to review the new data on the student that had been lacking during the student's education at the charter school. It is concluded that the decision by Hearing Officer Jelley denying compensatory education, but carefully crafting an equitable remedy of independent educational evaluations in four separate areas, plus a series of other mandatory actions by the charter school, was an appropriate and individualized award of equitable relief specifically designed to equitably address the evaluation violations proven by the parent in this case.

In the charter school's brief, it argues, among other things, that the "*sua sponte*" independent educational evaluations awarded by Hearing Officer Jelley in this case were inappropriate. This argument is inconsistent with the decision by the District Court in this case and is rejected. The sole issue on remand from the District Court was to provide an explanation or reconsideration of the non-award of qualitative compensatory education. Moreover, the four IEES are clearly the appropriate equitable relief in view of the specific evaluation violations of IDEA committed by the charter school. The relief awarded was also clearly within the broad equitable powers of the hearing officer to award appropriate remedies for violations of IDEA. The charter school's argument is rejected.

Similarly, the parent's brief includes arguments that I should find additional violations not found by Hearing Officer Jelley, such as a violation of Section 504. This argument is also inconsistent with the remand decision directive from the District Court. The court remanded to the hearing officer

only a specific narrow issue regarding compensatory education. The parent's argument is also rejected.

The award of relief by Hearing Officer Jelley was carefully designed and surgically tailored to equitably address the harm to the student caused by the specific violations of IDEA by the charter school in this case. The relief awarded was consistent with an individualized analysis of the facts proven in this case, the unique individual needs of the student and educational harm suffered by the student as a result of the serious evaluation violations by the charter school. It is concluded that no award of compensatory education (whether qualitative or quantitative) is appropriate based upon the administrative record of this case.

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** that no compensatory education be awarded to the parent in this case. The relief as awarded in Hearing Officer Jelley's March 15, 2024 decision in ODR File No. 28514 is appropriate to remedy the violations of IDEA found therein.

IT IS SO ORDERED.

ENTERED: December 31, 2025

James Gerl

James Gerl, CHO
Hearing Officer