

*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 08/07/2025, by the Honorable Nitza I. Quiñones, ODR File Number 28414 /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. 31706-25-26**

**Child's Name:**

A.M.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

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**Hearing Officer:**

James Gerl, CHO

**Date of Decision:**

October 22, 2025

## **BACKGROUND**

In a decision dated February 9, 2024, ODR File No. 28414, I found that the parents had not proven that they were entitled to reimbursement for a unilateral placement. My February 9, 2024 decision is incorporated by reference herein.

In an opinion dated August 7, 2025, the United States District Court for the Eastern District of Pennsylvania remanded this case to me for further proceedings, specifically to consider whether the stipulations of fact agreed to by the parties, but not included in my decision, concerning the student's prior experience in the school district, as part of the determination of whether the school district provided FAPE to the student for the 2023 – 2024 school year. In its remand order, the district court wrote:

"The 50 stipulated facts omitted from the Hearing Officer's Final Decision and Order (stipulated facts 46 through 96) set forth Student's special education service needs and Student's experience in the District's supplemental life skills programming through 2018, 2019 and 2020. Most significantly, these omitted stipulated facts appear to show that the district itself reached the conclusion in late 2019 that its supplemental Life skills program was not appropriate for Student and that Student should be placed in an out-of-district placement. Parents and the District eventually agreed to Student's out-of-district placement at [Private school at issue here], which [the student] began attending on May 20, 2021.

The heart of the parties' current dispute is whether Student's return to the district's supplemental life skills programming – deemed inappropriate for the student in previous school terms – will provide Student a FAPE. In his Final Decision and Order, the Hearing Officer concluded that the district's proposed supplemental life skills programming will provide Student a FAPE, but he did so without giving any consideration to Student's previous placement, experience, and results in similar programming during previous school terms. Though Student's

previous experience in this programming may not be dispositive with respect to either Student's current needs and/or the appropriateness of the district's proffered within-district programming, the Hearing Officer committed plain error by not considering Student's previous experiences and results in the district's special programming. Accordingly, the Hearing Officer's Final Decision and Order is vacated, and this matter is remanded to the Hearing Officer for further proceedings consistent with this Court's decision."

After considering and reviewing all of the stipulated facts and all of the other evidence in the record, I find in favor of the school district on the issue of FAPE.

### **PROCEDURAL HISTORY**

After the remand by the district court, I convened a Zoom meeting with counsel for the parties on August 26, 2025. Counsel for both parties agreed that no additional evidentiary hearing sessions were needed in order to comply with the remand order.

Counsel also agreed to a briefing schedule, and counsel for each party submitted a timely remand brief. 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**

Whether, when considering all of the stipulations of fact agreed to by the parties related to the student's previous experience in the school district and all other evidence in the record, the parents have proven that the school district denied free and appropriate public education to the student for the district's 2023 – 2024 school year?

### **FINDINGS OF FACT**

Findings of fact numbered 1 through 69, as set forth in my February 9, 2024 decision in ODR File No. 28414 are incorporated by reference herein.

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

70. The district issued a Reevaluation Report on April 9, 2018, finding student eligible for continued special education services under the primary exceptionality category of intellectual disability and secondary exceptionality of autism. It exited student from physical therapy. The April 9, 2018 Reevaluation identified student's strengths as improved functional academics; improved use of [AAC] to type; improved use of [AAC] to participate in general and special education class; improved independence with toileting; improved ability to remain in seat and on task; improved use of [AAC] appropriately; improved typing of complete sentences with few grammatical errors on [AAC]; and enjoys music and videos. It identified needs as improve functional academics; improve independence with use of [AAC]; improve

initiation of communication with [AAC]; improve self-regulation skills to complete independent work; increase number of communication partners; and reduce support to increase overall independence when typing.

71. The April 9, 2018 Reevaluation included a speech language assessment. The evaluating speech therapist noted, "The focus of therapy has been for [student] to participate and communicate more in class and to decrease the amount of support [the student] is given .[redacted]" The speech therapist further reported, "[student] types using a QWERTY keyboard and requires support at the [redacted](occasionally reduced to support at the [redacted]) as [the student] moves from letter to letter. Currently [the student's] supported point communication partners include the following: (the) parents; (the) teacher; (the) paraprofessional; (the) speech therapist; (the) occupational therapist, and some peers when provided additional support." The speech therapist attempted to administer the Peabody Picture Vocabulary Test (PPVT4) but was unable to do so "due to [student's] willingness (sic) to participate."

72. The April 9, 2018 Reevaluation included a Report Summary of a Functional Behavioral Assessment. Identified Behavior of Concern was "out of seat," which was as defined as "standing up from chair and walking or running around the room to take objects, particularly water bottles, off of desks and tables. [Student] walks or runs around the room or leaves the classroom and enters the hallway."

73. The district issued an IEP on April 19, 2018 ("April 19, 2018 IEP"). It identified student's grade as [redacted] and communication needs, assistive technology, and behaviors as special considerations. It identified student's strengths as: improved functional academics; improved use of [AAC] to type; improved use of [AAC] to participate in general and special education class; improved independence with toileting; improved ability to remain in seat and

on task; improved use of [AAC] appropriately; improved typing of complete sentences with few grammatical errors on [AAC]; and enjoys music and videos. Identified needs were to improve functional academics; improve independence with use of [AAC]; improve initiation of communication with [AAC]; increase number of communication partners; and reduce support to increase overall independence when typing.

74. The April 19, 2018 IEP included a speech and language goal; functional academic goals for reading, writing/typing, and math; and two occupational therapy goals. SDI included paraprofessional support throughout the day across all settings. The April 19, 2018 IEP provided for supplemented life skills support with related services, including occupational therapy (individual) (30) 30-minute sessions per IEP year, physical therapy (consult) (2) 30-minute sessions per IEP year, PCA for toileting (720) 10-minute session per IEP year, speech (individual) (60) 30-minute sessions per IEP year, and speech (large group) (30) 30-minute sessions per IEP year. PennData reported that student was in the regular education classroom for 60% of the school day.

75. Some of the goals or baselines in the April 19, 2018 IEP refer to a “[redacted]” (“[Student] may require more support initially when [the student] transitions to junior high school and needs to type with unfamiliar partners.”).

76. The April 19, 2018 PBSP reported behaviors of concern as “1. Elopement: Any time [student] leaves the classroom without permission. This behavior has decreased in frequency; however, during times when [student] is having difficulty or is with new people, it may happen 1-2 times per day for a 3-day period. 2. [redacted]. This currently happens about 1-3 times per day.” The PBSP identified skill deficits in the areas of participation, social interaction, communication, communication, self-regulation, motor, functional

life, and play skills. The goal in the PBSP was: "During group and individual instructional activities, [student] will remain on task and seated while demonstrating appropriate use of materials and [the student's] AAC device[.]" The district reported baseline for the goal as: [student] is able to remain seated and on task using materials and AAC appropriately for individual instruction on 7/10 trials. [The student] is able to remain seated and on task using materials and Application for Adjudication of Claim appropriately during group instruction in the special education classroom and in the general education classroom when an adult is sitting in close proximity on 7/10 trials. [the student] will occasionally get out of [the student's] seat and will go into [the student's] videos on [the student's] [AAC] during instruction. Elopement is seldom and can occur when [the student] appear [sic] anxious or when new people are present (new teacher, substitute, etc.). [student] occasionally will jump out of [the student's] chair and go around the room in search of an item in both the special and general education classroom, but is able to be redirected to return to [the student's] seat. Student stays seated more often when an adult is in close proximity to where [the student] is sitting.

77. The district convened an IEP meeting in April of 2018. Student's transition to [redacted] was discussed. Parents inquired about paraprofessional support during inclusion, and what types of inclusion and electives would be offered to student. Student transitioned to the [redacted] school for the 2018-2019 school year— advancing from [redacted] grade.

78. The district convened an IEP meeting on August 31, 2018, at the beginning of student's first year at the [redacted] school. Parents told the district that student was experiencing [redacted], was receiving psychiatric care, and that medication management was being worked on. Parents explained that student had been using facilitated communication at school and home for seven years and asked that a representative from the [redacted]

school attend a facilitated communication presentation. Parents also inquired about student participating in clubs and requested that STEM be added to student's schedule.

79. At the beginning of [redacted] grade, due to safety and behavior concerns, including elopement from the classroom, parents and District agreed that student would be moved from inclusion science and social studies to functional social studies and science. (September 17, 2018 IEP revision) As a result of this schedule change, student's inclusion in the regular education classroom was reduced from 60% to 28% of the school day.

80. The PBSP was not revised.

81. The district used a daily communication log in the 2018-2019 school year. Beginning on September 18, 2018, the daily communication log included tallies of behaviors, including running around classroom, eloping from class, [redacted], grabbing at people, and unable to focus during instructional time. Many of these behaviors were occurring multiple times daily.

82. March 25, 2019 is the last day on which behaviors were tallied. Then, the district reported the following behaviors and frequency: Running around classroom: 52 times; [redacted]; grabbing at items/people: 597 times; unable to focus during instruction: 5 times; elope from classroom: 1 time (1 attempt; prevented); [redacted] 34 times.

83. On January 15, 2019, the district convened an IEP meeting. The IEP reports parent concerns. PennData reported that student was in the regular classroom for 28% of the school day. Progress monitoring on the PBSP goal from November 20, 2018 reports that in the 38 days student was in school [the student] was out of [the student's] seat 374 times during individual instruction and 185 times during group instruction.



84. The district issued an IEP on April 17, 2019 ("April 17, 2019 IEP"). It identified student's grade as [redacted] and communication needs, assistive technology, and behaviors as special considerations. It identified student's strengths as follows: improved functional academics since September 2018; improved use of personal AAC device to answer multiple choice questions (with guided access engaged); improved participation in general and special education classes; improved independence for walking in the hallways; improved independence packing and unpacking school bag at the start and end of each day; [redacted], adaptive PE, music and videos, [redacted]; is able to carry [the student's] lunch bag to the cafeteria independently.

85. The April 17, 2019 IEP identified student's needs as follows: increase functional reading (answer literal comprehension questions from [the student's] readings & typing [the student's] responses, and identifying weekly vocabulary words); increase functional math skills (identifying how much money is needed to purchase an item); and increase functional writing/typing skills (typing modeled sentences using correct grammar & punctuation with gradual decrease in support); increase functional language skills (ability to express wants and needs, as well as answer social and curricular questions); improve visual motor skills (typing on computer or iPad); and improve independence with self-care skills (feeding self-using a fork).

86. The April 17, 2019 IEP included goals for the following: functional math; functional reading; functional academics in the area of writing/typing; speech and occupational therapy. It included SDI and modifications, including paraprofessional support throughout the day across all settings. The IEP provided for supplemented life skills support with related services, including: occupational therapy-individual (30) 30-minute sessions per IEP year; PCA for toileting (720) 10-minute session per IEP year; speech-individual (individual) (60) 22-minute sessions per IEP year; speech (large group) (30) 30-minute

sessions per IEP year; 1:1 paraprofessional support; Quinn FBA 1 time; and behavior support 2 hours/week. PennData reported that student was in regular education for 34% of the school day.

87. The April 17, 2019 PBSP reported two behaviors of concern: as "1. Elopement: Any time [student] leaves the classroom without permission. This behavior has increased in frequency; from marking period 2 (9 times) to marking period 3 (54 times). [redacted] This currently happens about 3-5 times per day." The PBSP identified skill deficits in the areas of participation, social interaction, communication, self-regulation, motor, functional life, and play skills. The PBSP goal was: "During group and individual instructional activities, [student] will remain on task and seated while demonstrating appropriate use of materials and [the student's] AAC device." The baseline for individual and group instruction was an average total of 22 and 18 times per day, respectively.

88. The district reported, "Elopement can occur when [student] appears anxious, agitated or when new people are present (new teacher, substitute, etc.). [Student] often will jump out [the student's] chair and go around the room in search of an item in both the special and general education classrooms, and is sometimes able to be redirected to return to [the student's] seat. [Student] stays seated more often when an adult is seated next to [the student].

89. The April 17, 2019 IEP included an Elopement Plan.

90. The district issued a Reevaluation Report on June 17, 2019, finding student eligible for continued special education services under the primary exceptionality category of intellectual disability and secondary exceptionality of autism. In addition to updated OT and Speech evaluations, the RR included a physical therapy assessment based on School Function Assessment from Spring 2018 and Functional Vision Assessment. The

Reevaluation Report identified student's strengths as follows: improved functional academics since September 2018; improved use of personal AAC device to answer multiple choice questions (with guided access engaged); improved participation in general and special education classes; improved independence packing and unpacking school bag at the start and end of each day; improved independence walking in the hallways; [redacted], adaptive PE, music and videos, and [redacted]; and is able to carry [the student's] lunch bag to the cafeteria independently. It identified classroom needs as increase functional reading, math, and writing/typing. Behavioral needs were identified as follow: decrease negative attention-seeking behaviors as defined by out of seat with disruption (baseline: student successfully left seat 7 times in one hour); decrease elopement behavior (baseline: student eloped from classroom one time with 4 hours of observation; decrease perseverative behaviors (baseline: frequent, daily occurrences noted in home and school settings); [redacted].

91. The June 17, 2019 Reevaluation included an FBA completed by a BCBA (Case Primary Behavior Analyst) of (private company that contracted with school district).

92. The district's FBA reported the following behaviors in school:

| Problems Presented  | Described As   | Frequency                              |
|---|--|--|
| Negative Attention Seeking Behaviors (including out of set [sic] with disruption) | Actions to receive a response from others to include but not limited to: out of seat, playing with/manipulating items, ripping, throwing items, grabbing peers' possessions, [redacted]. | Frequently through the day             |
| Elopement   | Attempt or success at leaving classroom or   | Daily occurrences with slight decrease |

|                                |  |                            |
|--------------------------------|--|----------------------------|
|                                | designated area of building  | reported in past months    |
| Inappropriate Physical Contact | Behaviors typically directed towards adults including but not limited to: pinching, pulling hair, hitting, [redacted]  | Occasionally               |
| Preservative Actions           | Repetition of actions beyond their usefulness such as holding item in mouth and pretending to drink, [redacted], twirling pieces of string between fingers, [redacted], tapping front of pants | Frequent daily occurrences |
| [redacted]                     | [redacted]   | Occasionally               |

93. The behavioral plan “present[ed] projects, for team members to develop in order to establish the details of the plan.”

94. The district convened an IEP meeting on July 16, 2019 and issued an IEP on the same date (“July 16, 2018 IEP”). It identified student’s grade as [redacted] and communication needs, assistive technology, and behaviors as special considerations. It did not identify blind or visually impaired as a special consideration.

95. The July 16, 2019 IEP identified student’s strengths as follows: improved functional academics since September 2018; improved use of personal AAC device to answer multiple choice questions (with guided access engaged); improved participation in general and special education classes; improved independence packing and unpacking school bag at the start and end of each day; improved independence walking in the hallways; [redacted], adaptive PE, music and videos, [redacted]; and able to carry [the student’s]

lunch bag to the cafeteria independently. The IEP identified student's classroom needs as increase (sic) functional reading, math, and writing/typing skills. Behavioral needs were to decrease negative attention-seeking behaviors as defined by out of seat with disruption, elopement behavior, preservative behaviors, and [redacted]. Speech needs were to increase functional language skills, to increase functional communication system, and to increase pragmatic language skills. Occupational therapy needs were to improve visual motor skills (typing on computer or [AAC]), and independence with self-care skills.

96. The July 16, 2019 IEP included the following goals: functional math; functional reading; functional academics for writing/typing; speech; and occupational therapy. SDI included paraprofessional support throughout the day across all settings. It provided for supplemental life skills support with related services, including: occupational therapy-individual (30) 30-minute sessions per IEP year; speech-individual (individual) (60) 20-minute sessions per IEP year, and speech (small group) (30) 30-minute sessions per IEP year; 1:1 PCA; and BCBA services 3 hours per week to build staff capacity. Supports to school personnel included consultative support from the district teacher of students with visual impairments, 10 monthly sessions per IEP school year. According to PennData, student was in the regular classroom 34% of the school day.

97. The July 16, 2019 PBSP reported two behaviors of concern: "1. Elopement: Any time [student] leaves the classroom without permission. This behavior has increased in frequency; from marking period 2 (9 times) to marking period 3 (54 times). 2. [redacted]. This currently happens about 3-5 times per day." The PBSP identified skill deficits in the areas of participation, social interaction, communication, self-regulation, motor, functional life, and play skills. There was one PBSP goal: "During group and individual

instructional activities, [student] will remain on task and seated while demonstrating appropriate use of materials and [the student's] AAC device." In marking period 4, during individual and group instructional activities, the district reported that student got out of [the student's] seat an average total of 33 times during individual instruction, and an average total of 14 times per day during group instruction.

98. The PBSP included the following comment regarding student's eloping behavior: "Elopement can occur when [the student] appears anxious, agitated or when new people are present (new teacher, substitute, etc.). [the student] often will jump out [student's] chair and go around the room in search of an item in both the special and general education classrooms, and is sometimes able to be redirected to return to [student's] seat. [the student] stays seated more often when an adult is seated next to [Student].

99. The July 16, 2019 PBSP included an elopement plan.

100. The IEP team met again on September 12, 2019—student's [redacted] grade year.

101. The Daily Communication Log for the 2019-2020 did not include tallies of behaviors of concern. They did at times note those behaviors, "[redacted]), "(refusal) unable to do work due to behavior" (11/11/19).

102. The district convened an IEP meeting on October 30, 2019. A behavior analyst from [private] attended the meeting.

103. The October 30, 2019 IEP revision included reports of the following behaviors: "[redacted] Agression~14/day Elopement ~9.5/day."

104. The October 30, 2019 IEP includes the following from the life skills support teacher:

- Morning- can be difficult
- Math

- [redacted]
- Rooms has [sic] been cleared
- [redacted] and elopes the room.

105. The district proposed "More intensive supports-> look at different programs (IU, Approved Private Schools ->parents can look)"

106. The PBSP goal in the revised October 30, 2019 IEP remained the same as the PBSP goal in the July 16, 2019 IEP.

107. The October 30, 2019 IEP did not report a type or level of support or PennData.

108. Parents signed consents for release of confidential records to [the] IU, [and other specific programs] on November 6, 2019.

109. Parents signed consents for release of confidential information to [two private schools] on November 19, 2019.

110. Parents signed consents for release of confidential information to [the private school at issue here] on February 9, 2020.

111. The IEP team met again on February 13, 2020. [A private behavior analyst] attended the meeting and signed in as BCBA.

112. The February 13, 2020 IEP reported that parents visited a private school on February 28, 2020 and recorded their concerns as "i. Safety (elopement) school is on a hill; ii. Distance of the school (toileting); iii. therapy outside services (toileting); iv. No behavioral supports but loved the atmosphere of the school."

113. The February 13, 2020 IEP included the following regarding efforts to locate an appropriate out of district placement for student:

b. [One private school] did not accept student because it thought that [the student] needed more intensive supports than what they

could provide [but] suggested [the private school at issue here]. Parents did the tour and [the private school at issue here] want to do observations.

i. School district will send out the records to the school so they can come and observe.

ii. It's in [location] (closer to home.) They could also have a van.

114. The February 13, 2020 IEP proposed full time autistic support.

115. The February 13, 2020 PBSP included four goals for elopement; [redacted]; aggression; and destruction.

116. The district issued a NOREP for Full Time Life Skills support at [a private school] on February 27, 2020. Parent disapproved the NOREP on March 5, 2020 and filed for due process.

117. Beginning on March 13, 2020, District schools were closed due to the COVID-19 pandemic. Student began receiving virtual instruction at that time.

118. The district convened an IEP meeting remotely on April 1, 2020. The IEP proposed full time autistic and life skills support in an Approved Private School (nonresidential).

119. On May 26, 2020, the district issued a NOREP for full time autistic support at an alternative placement. It concluded that [b]ased on behavioral data, parent input and academic progress, [student] is in need of a therapeutic structured environment." Parents disapproved the NOREP.

120. The district convened an IEP meeting on June 5, 2020 via Zoom. The district issued a NOREP for ESY and supplemental life skills support with



speech, OT, vision consult, transportation, BCBA services and a PCA and parents approved the NOREP.

121. Student began attending [the private school at issue here] on or about May 20, 2021, pursuant to a settlement agreement with the district. The district continued to fund student's tuition, related services and transportation for [the private school at issue here] through ESY for the 2022-2023 school year.

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

122. The student's educational needs and unique circumstances have changed substantially since the student's experience in previous school terms in the school district during 2018, 2019 and 2020. (record evidence as a whole)

### **CONCLUSIONS OF LAW**

The conclusions of law set forth in my February 9, 2024 decision in ODR File No. 28414 are incorporated by reference herein.

## **DISCUSSION**

**Whether, when taking into consideration the stipulated facts related to the student's previous experience in the school district programs and all other evidence in the record, the parents have proven that the school district denied a free and appropriate public education to the 2023 – 2024 school year?**

The scope of the discussion and analysis that follows is limited to the issue specified in the remand order. Pursuant to the district court's remand instructions, I have considered and reviewed the student's previous experience and results in the school district programs during 2018, 2019 and 2020, as set forth in the stipulated facts that were not included in the previous decision as well as all other evidence in the record. Based upon my review, consideration and analysis of those additional stipulations of fact and all other evidence in the record pertaining to the student's prior experience and results during the specified time period, I have concluded the parents have not proven that the school district denied a free and appropriate public education to the student for the 2023 – 2024 school year.

It is clear from the evidence in the record that the student's educational needs had changed dramatically from the time when the student attended school in the district to the time of the school district's April 2023 reevaluation which served as the basis for the May 10, 2023 IEP. The exhibits and the credible and persuasive testimony at the hearing demonstrate that the student, who was then [redacted] years old, needed an educational program with a strong focus on vocational skills – including supports and services to address independence, adaptive skills and vocational skills. The school

district's May 10, 2023 IEP includes a strong post-secondary transition program that addresses the student's then-current identified needs.

Also, as a nonverbal [redacted], the student needed to master and use the augmentative alternative communication device (hereafter sometimes referred to as "AAC"), which the student seldom used at the private school. Effectively using the AAC device would be extremely important to the student after the student's time in school is over. The AAC speech goal in the school district's IEP appropriately addresses this critical need.

IDEA specifically recognizes the significance of a post-secondary transition program near the end of a special education program. IDEA § 614(d)(1)(A)(i)(viii); 602(34); 34 C.F.R. §§ 300.321(b), 300.43. In the instant case, all of the evidence in the record, including all of the stipulated facts, reveal that the unique individual circumstances and needs of this student at the time that the IEP in question was drafted were that the student required a robust transition program focusing on the student's community, vocational, adaptive and independence needs. See, Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 137 S. Ct. 988, 69 IDELR 174 (2017) (requiring that the appropriateness of an IEP be measured in a manner that includes a child's unique individual circumstances.)

A review and analysis of the omitted stipulated facts from the previous decision that pertain to the student's past experience in the school district does not change the nature of the student's needs, which were determined by the school district's comprehensive and appropriate April 2023 reevaluation. The stipulated facts and other evidence of the student's needs and programs in previous years do not shed light upon his educational needs at the time that the May 10, 2023 IEP was drafted. The reevaluation concluded correctly that that student needed a robust post-secondary transition program with a strong

focus on vocational skills, independence, adaptive skills, and training and use of AAC device. The May 10, 2023 IEP appropriately focuses upon the student's unique circumstances and needs at that time. Consideration of the student's prior experience and programming in the school district does not change this conclusion.

In their remand brief, the parents argue that the student's needs have not changed from the student's previous time in the school district when the student was approximately [redacted] old. The parents rely upon the fact that the student's IQ score has remained relatively the same and that the student made only minimal academic progress in the last few years. The parent's argument ignores the fact that the student was nearing the end of the student's time in special education and that the student's current needs, as determined by the April 2023 reevaluation, included that the student required a program with a strong vocational emphasis and a robust post-secondary transition program as a part of the student's individualized educational program.

The parents' remand brief also relies upon labels and stereotypes similar to those utilized in the testimony of their expert to the effect that any child with an autism category of disability requires an autism level of support rather than a life skills level of support. Such stereotypes and labels are not appropriate, and they ignore the changing and unique needs of each individual young person with a disability. As the Supreme Court has ruled, services under IDEA are determined based upon a student's unique individual circumstances and needs and not upon the disability label or the category of eligibility. What must be determined in analyzing whether FAPE has been provided is the appropriateness of the educational program, or IEP, at the

time that it was drafted, and not what label is assigned to a child or what label is assigned to a level of support.

The argument asserted by the parents in their remand brief is rejected. It is concluded that after reviewing and considering all stipulated facts and all other evidence in the record, the student's educational needs had changed dramatically since the student's prior experience in the school district. The May 10, 2023 IEP offered by the school district appropriately addresses the student's unique individual circumstances and needs at the time that it was written, and it constitutes FAPE.

The credibility determinations contained in my February 9, 2024 decision in File No. 28414 are incorporated by reference herein.

Additionally, it should be noted that, even assuming *arguendo* that the school district's May 10, 2023 IEP had denied FAPE to the student, my February 9, 2024 decision in File NO. 28414 concluded that tuition reimbursement for a unilateral private school placement was not appropriate because the parents had also not proven the second and third prongs of the Burlington / Carter analysis. That is, they had not proven that their selected private school was appropriate or that the equities favor reimbursement. Accordingly, the relief sought by the parents - tuition reimbursement for a unilateral private school placement - would not be appropriate to award under the three-part analysis set forth by the Supreme Court even if a reconsideration of the student's prior experience and programming yielded a conclusion that the school district's May 10, 2023 IEP had not offered FAPE.

## **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: October 22, 2025

*James Gerl*

James Gerl, CHO  
Hearing Officer