

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. 29761-23-24

Child's Name:

J.S.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parents:

Pro Se

Local Educational Agency:

West Chester Area School District
782 Springdale Drive
Exton, PA 19341

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

11/19/2024

Introduction

This special education due process hearing concerns the educational program and placement of [Student] ("student"), a student who resides in the West Chester Area School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education. Parent claims that the District failed to identify the student in a timely way for eligibility under IDEA and, ultimately after the student was dis-enrolled from the District and placed in a private school, that the programming offered by the District failed to provide a free appropriate public education ("FAPE") under IDEA.

Specifically, the student's parent claims that, as of December 2021, the District had failed to identify the student as eligible for special education. The student continued in regular education, with supports and under the auspices of a Section 504 plan³, until January 2024, when the student was dis-enrolled from the District and began to attend a private placement. As a result, parent seeks compensatory education for the period of the 2021-

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ See Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504"). It is this hearing officer's preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See also 22 PA Code §§15.1-15.11 ("Chapter 15").

2022 (as of December 2021)⁴, 2022-2023, and 2023-2024 (through December 2023) school years. Parent also seeks tuition reimbursement as a remedy for the unilateral private placement undertaken in January 2024.

The District counters that, at all times, it designed and implemented appropriate programming for the entirety of the period of parent's claims. Therefore, the District argues, the student is not entitled to compensatory education, and the parent is not entitled to tuition reimbursement.

For the reasons set forth below, I find in favor of parent.

Issue

1. Is the student entitled to compensatory education for the following periods:
 - the 2021-2022 school year as of December 2021,
 - the 2022-2023 school year, and
 - the 2023-2024 school year through December 2023?
2. Is parent entitled to tuition reimbursement for the unilateral private placement undertaken in January 2024?

⁴ The District challenged the timeliness of parent's claim for remedy between December 2021 and May 2022, a point two years prior to the parent's filing of the complaint in May 2024. An evidentiary session was held at the outset of the hearing to determine whether parent knew or should have known ("KOSHK") of the alleged acts/omissions which form the basis of parent's complaint as to the period prior to May 2022. A KOSHK ruling was issued, finding that prior to May 2022 the parent did not know, nor should she have known, of the alleged acts/omissions in her complaint.

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered.

Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. In the 2020-2021 school year, the student attended [redacted] in the District. (School District Exhibit ["S"]-3; Notes of Testimony ["NT"] at 31-77, 1022-1089).

2021-2022/ [redacted] Grade

2. In the 2021-2022 school year, the student attended [redacted] grade in the District, transferring to a different elementary school. (S-3; NT at 31-77, 1022-1089).
3. The student received speech and language ("S&L") support for articulation and occupational therapy ("OT") support for sensory issues. (S-3; NT at 1022-1089).
4. In the fall of the school year, the student's mother shared concerns with the student's [redacted] grade teacher about the student's reading and behavior. The teacher did not view the student's reading or behavior to be problematic. (NT at 31-77, 285-351, 1022-1089).
5. In November 2021, the student was dismissed from S&L articulation support. (S-17 at page 1).

6. In January 2022, the student began to receive reading support through the District's multi-tiered system of support ("MTSS") program. (S-17; NT at 404-477).
7. The student's reading support was provided by a District reading specialist 30 minutes per day, four times per week. (NT at 4040-477).
8. In January 2022, the District's MTSS documentation indicates the following concerns: "Mom request for testing. Reading: concerns about encoding. (Mom think [the student] might be dyslexic)." (S-17 at page 1).
9. The January 2022 MTSS notes, in pertinent part, indicate the following: "Receives OT. Little motivation. Zones out during instruction. [The student's teacher] is concerned about [the student's] progress....Mom thinks [the student] may be autistic (aspergers)....Mom concerned with focus, does not make eye contact, yells, sensory issues." (S-17 at page 1; bracketed material edited for stylistic consistency and student confidentiality, parenthetical in the original).
10. The student received Tier II MTSS support. Confusingly, the District also refers to regular education support outside of MTSS as supporting students in tiers. Thus, the student received Tier II MTSS support as well as Tier II reading support. (S-17; NT at 404-477, 482-451, 556-659).

11. During their testimony, the District reading specialists sorted through this confusing nomenclature on the part of the District with ease. However, for the parent, the terms led to confusion as to what, exactly, type of support the student was receiving and/or led to assumptions as to which type of support an educator might be referring to. This confusion of terms also led to confusions in the record about what type of 'Tier II' support a witness might be testifying about. (NT at 404-477, 482-451, 556-659, 1022-1089).
12. In January 2022, as a result of the parent's concerns and teacher's input into the MTSS process, the District school psychologist undertook an evaluation of the student. (NT at 31-77, 117-178).
13. The District school psychologist spoke with the student's mother, and orally explained the difference between an IDEA evaluation and a Section 504 evaluation. Parent granted permission for a Section 504 evaluation. (S-2; NT at 31-77, 117-178).
14. The student's mother testified credibly that she thought that, regardless of the distinction, the student was being evaluated for special education. A handwritten note on the permission form says "for 504". Nowhere in the content of the document is there an indication that the evaluation will be for Section 504 services and not special education. (S-2; NT at 31-77, 117-178).

15. The District did not provide IDEA procedural safeguards and did not issue a notice of recommended educational placement (“NOREP”) that it was declining to perform an evaluation for special education. (NT at 31-77, 117-178).
16. In April 2022, the District issued its Section 504 evaluation. (S-3).
17. The reason for referral for the Section 504 evaluation was the mother’s “concerns for (the student) and (the student’s) behaviors, specifically regarding attention, focus, and a possible ADHD disorder.” The referral did not include the mother’s concerns, shared in January 2022, about the student’s reading and potential dyslexia. (S-3, S-17 at page 1).
18. The Section 504 evaluation contained parent input, teacher input, a classroom observation, testing observation/student interview, and assessments for attention and autism. (S-3).
19. On the attention ratings scales in the April 2022 Section 504 evaluation, the ratings of the student’s mother were consistently more elevated than the ratings of the student’s teacher, including generally higher scores across most areas as well as more at-risk and clinically-significant scores. (S-3).
20. Both the student’s mother and teacher rated the student in the clinically-significant range for inattention and emotional lability

(moody, emotional, may cry, lose temper, become frustrated easily), and attention-deficit hyperactivity disorder/predominantly inattentive (“ADHD”). The teacher rated the student in the clinically-significant range for two areas related to academic learning— learning problems/executive functioning and learning problems. (S-3).

21. On the autism ratings scales in the April 2022 Section 504 evaluation, the ratings of the student’s mother were consistently more elevated than the ratings of the student’s teacher, with the student’s mother rating the student with almost uniform clinically-significant scores. The teacher’s ratings were in the average range except for at-risk scores in self-regulation scale and the peer socialization, adult socialization, social/emotional reciprocity, stereotypy, and attention. (S-3).

22. The total autism rating scale for the teacher fell in the at-risk range, for the mother in the clinically-significant range. (S-3).

23. The Section 504 evaluation found that the student should receive regular education support for mild/high-functioning autism, ADHD, and executive functioning. The report did not address the learning problems evidenced in the teacher’s rating scales, the mother’s concerns in reading or the MTSS reading support. (S-3, S-17).

24. In May 2022, the District issued a Section 504 plan with modifications of the regular education environment. (S-5, S-6; NT at 82-116, 355-393).
25. In May 2022, the student was at level 14 on a District reading assessment, with a handwritten note: "Many errors & doesn't apply strategies independently. Great retell!". (Parent Exhibit ["P"]-4).
26. Reading progress notes through reading support were generally positive through the 2021-2022 school year, although the MTSS notes indicated that the student has difficulty "maintaining attention and has not demonstrated consistent progress for any period of time so far this year; (the student) doesn't show retention in learned skills and strategies; (the student) has low stamina to initiate work and then to remain on task; (the student) is showing lack of effort at times, states being tired and sick". (S-8, S-17 at page 2).
27. In her testimony, the student's [redacted] grade teacher tended to minimize the student's need for academic support, but the contemporaneous documentary evidence supports a conclusion that the student's academic performance was a deeper concern. (S-3, S-17; NT at 285-351).
28. In June of 2022, the student received a medical diagnosis of autism spectrum disorder. (S-7).

2022-2023/[redacted] Grade

29. In September 2022, the student was at level 14 on a District reading assessment, the same level on the assessment in May 2022. (P-4; S-17 at page 1).
30. In October 2022, the student remained at a level 14. (P-5).
31. In October 2022, the student's mother shared concerns with the student's [redacted] grade teacher about "(the student's) attention and [reading] struggles." (S-17 at page 3; parenthetical for student confidentiality, bracketed material for stylistic consistency).
32. In the student/teacher conferences in the fall of 2022, the District reported that: "Mom reported that she is VERY concerned about the student's reading progress. She would like a follow-up email after (the) MTSS meeting." (S-17 at page 3; capitalization in the original).
33. In November 2022, the District's MTSS documentation indicated that the student was "still at 14". The MTSS documentation indicated "(The student) still has difficulty with focus, attention, stamina, and sitting still during instruction despite the use of multiple interventions listed in 504 plan. (The student) has also shown limited progress in reading and writing." (S-17 at page 2).
34. In late November 2022, the student's MTSS documentation indicated the following: "Mom is still very concerned about (the

student). Feels something is wrong with the student. Mom asked about speech and OT being put back in place.” The MTSS ‘next steps’ indicated that the reading specialist “will create reading goal and report goal to mom”. (S-17 at page 1; NT at 482-551, 1022-1089).

35. In December 2022, the District reading specialist working with the shared the following through the MTSS process: (The student’s) “biggest areas of concern in my group are reading with fluency and accuracy....His rate of reading (fluency) and accuracy were quite low so I moved down to a...[redacted] grade passage. With the [redacted] grade passage, (the student) read 43 words correct per minute with 73% accuracy; the end of year goal for [redacted] graders is to read 69 words correct per minute with 98% accuracy. I have created the following goal for (the student) and will monitor (the) progress toward the goal weekly: Using a...[redacted] grade oral reading fluency passage, (the student) will read 60 words correct per minute with 85% accuracy in six trials.” (S-17 at page 3; NT at 404-477).

36. In December 2022, following a S&L assessment, the student began to receive MTSS services, one session per week for 30 minutes, for speech articulation, specifically the /th/ sound. (S-16, S-17 at page 1).

37. In January 2023, benchmark testing in mathematics indicated that the student’s score was at the 53rd percentile. At the January

2023 MTSS meeting it was reported that “Math is a struggle”. (S-11; NT at 1022-1089).

38. At the January 2023 MTSS meeting on January 25th, the following academic information was noted: “(The student) is still considered strategic/intensive at many [redacted] grade skills. Has not met (the) reading goal and is making very minimal progress. Reading team is adjusting groups and (the student) will be shifted into a lower reading group. Scheduled breaks are going well....Writing doesn’t make sense/inserting letters.” (S-17 at page 1; NT at 482-551, 556-659).
39. In the period December 2022/January 2023, the mother’s frustration with the District’s approach to the student’s needs in reading led her to retain a private tutor to provide specialized reading instruction. (NT at 1022-1089).
40. By April 2023, the student began to show progress in reading, specifically words-correct per minute, accuracy, sight words, and the District’s reading assessment. (S-15 at pages 8-9, S-17 at page 1; NT at 556-659).
41. The student’s mother testified that she felt the specialized reading instruction provided through private tutoring bolstered the student’s progress in reading. This conclusion is supported by the record in the spring of 2023. (S-13, S-17 at page 4; NT at 1022-1089).

42. In May 2023, the student's Section 504 plan was slightly revised. (S-12, S-15 at pages 1-6; NT at 355-393).
43. In May and June 2023, the student made progress on S&L articulation needs. (S-16).

2023-2024/ [redacted] Grade

44. In September 2023, parent communicated her concerns to the student's reading specialist that she felt the student was still exhibiting traits related to dyslexia ("[the student] reads alot of words backwards and pulls incorrect sounds"). The reading specialist responded that the student's "reading level is technically at grade level, but we will be focusing on closing some of those phonics gaps as well as working on fluency." (S-19 at pages 1-2).
45. The student continued to work in the specialized reading program with the private tutor, who shared information with the District at the mother's request. (S-19 at page 3-8; NT at 1022-1089).
46. In October 2023, the student's mother contacted the student's [redacted] grade teacher about the student's affect in [redacted] grade. The mother shared that the student's behavior was out of character, including at least one school-based incident in music class, and shared that the student had told her "school is really hard and (the student) is afraid (the student) is not doing well". (S-19 at pages 11-13; NT at 1022-1089).

47. In early November 2023, the student's MTSS documentation indicated that the student's [redacted] grade teacher had concerns about the student's academics (reading, writing, and math). (S-17 at page 1).
48. The reading data reviewed at the November 2023 MTSS meeting detailed various reading metrics, concluding that "reading level has improved but has these gaps". The MTSS team indicated that the student should be administered a reading assessment "to see if behind in word (recognition)". (S-17 at page 1; NT at 672-759).
49. The mathematics data reviewed at the November 2023 MTSS meeting indicated "does not know multiplication strategies; cannot skip count....does not seem to understand problems – not a full year behind". (S-17 at page 1; NT at 672-759).
50. The November 2023 MTSS meeting also addressed social/emotional/behavioral concerns: "Mom is concerned that (the student) doesn't have any friends. [The student] has one friend....Has no regard for personal space; in kids' faces. (The student) was not able to understand the issue on the bus....(The student) bullying other kids. (The school counselor and mom have) concerns about how (the student) feels about school but loves (the classroom teacher). Mom has trouble getting (the student) to come to school." The MTSS team

indicated that the school counselor would work with the student on social interaction and not initiating conversations. (S-17 at page 1).

51. The MTSS team was informed that, as of November 8th, the student's mother had requested that the District perform an evaluation. (S-17 at page 1).
52. As of November 2023, the student was involved in a number of behavior incidents which were a new experience in the student's education. In addition to the incident on the bus, the student was involved in an incident in physical education class and an incident at recess. (S-17 at page 1, S-19 at pages 18-19; NT at 672-759, 1022-1089).
53. The school principal, in responding to parent's inquiry about one of these behavior incidents and student discipline, indicated that "I do know (the student) relatively well and was taking into consideration (the student's) struggles with communication when looking at this situation as a whole". (S-19 at page 18).
54. In mid-November 2023, the student was suspended for one day. (S-18).
55. Shortly after the suspension, the student's mother emailed the student's teacher about submitting a form for potential enrollment at a private placement. (S-19 at pages 20-24; NT at 672-759, 856-924, 1022-1089).

56. The student continued to show progress with S&L articulation needs. (S-19 at pages 25-26).
57. Notwithstanding the indication to the MTSS team that parent was requesting an evaluation as of November 8th, the District took no action until late November when parent reached out again to the District about an evaluation. The District school psychologist indicated that it would take mother's request under advisement. (S-20 at pages 1-2).
58. On December 6th, the MTSS team met. The reading assessment undertaken as a result of the early November 2023 MTSS meeting indicated that the student was instructional in reading at the [redacted] grade level and frustrational at the [redacted] grade level. The MTSS documentation indicated that "since getting into trouble (the student) seems less engage in group." (S-17 at page 1).
59. The MTSS notes indicate that further data-gathering would be undertaken. (S-17 at page 1, S-20 at page 3).
60. On December 8th, the District requested permission to evaluate the student. S-20 at page 4, S-21).
61. In December 2023, the student was accepted into the private placement. The student's mother enrolled the student, and the student began to attend the private placement in January 2024. (S-20 at pages 61-62; NT at 856-924, 1022-1089).

62. Parent granted permission for the District's evaluation on January 5th, responding with the consent and requested parent input. (S-20 at pages 61-62, S-21).
63. In early March 2024, the District issued its evaluation report ("ER"). (S-22).
64. The March 2024 ER included parent input, which indicated the currents that underpin the student's educational history at the District: struggles with academics, focus, attention, executive functioning, socialization. The student's mother noted that the student's attitude toward school and learning seriously declined in the fall of [redacted] grade. (S-22 at pages 2-5).
65. In the parent input section, the March 2024 ER included input from the student's private counselor. (S-22 at pages 4-5).
66. The March 2024 ER included observation of the student in the private placement and teacher input from District educators. (S-22 at pages 5-9).
67. The input from the student's [redacted] grade teacher in the March 2024 ER indicated that the student struggled socially, academically, and behaviorally (toward peers). (S-22 at pages 10-11).
68. The March 2024 ER contained reading assessments over [redacted] and [redacted] grade that show a large degree of variance. One assessment over the course of [redacted] grade indicated that by

June 2023 the student was reading on grade level. One assessment in October 2023 indicated that the student obtained a reading level “reading level that is expected for students at the beginning of [redacted] grade”. One month later, the reading assessment in November 2023, undertaken as part of the MTSS process, obtained a reading level “instructional [redacted] grade level with improvement needed in all areas” and frustrational at the [redacted] grade level. (S-17 at page 1, S-22 at pages 11, 18-19, 58).

69. Over the period September 2022 through January 2023, on a phonics survey, the student showed progress in most phonics categories that were assessed. Over the period September – November 2023, the student showed scattered results—some phonics categories improved, some declined, some did not change at all. (S-22 at pages 20-21).

70. The March 2024 ER contained input from teachers at the private placement. (S-22 at pages 12-15).

71. The March 2024 ER contained a recitation of the student’s educational history at the District. (S-22 at pages 16-17).

72. The March 2024 ER contained student input from an interview with the evaluator. (S-22 at pages 21-22).

73. The March 2024 ER contained cognitive testing of the student, yielding a full-scale IQ of 94. The student’s general ability index,

accounting for potential deficits in working memory and processing speed, was 97. (S-22 at pages 22-33).

74. The March 2024 ER contained academic achievement testing of the student. (S-22 at pages 33-36).

75. The student's academic achievement scores were significantly discrepant (a standard score of 79.9 or less) in spelling, the written language composite, and the academic skills battery composite (accounting for the student's scores in math concepts & applications, letter & word recognition, written expression, math computation, spelling, and reading comprehension). (S-22 at pages 33-36).

76. The student's academic achievement scores in letter & word recognition and math computation were not strictly significantly-discrepant, but both scores were very low (standard scores of 81 in both areas). (S-22 at pages 33-36).

77. The March 2024 ER contained behavior rating scales. As with the behavior rating scales in the Section 504 evaluation, the ratings of the student's mother were consistently more elevated than the ratings of the student's [redacted] grade teacher from the District. Mother's ratings were generally higher across most areas and included more at-risk and clinically-significant scores. (S-22 at pages 38-42).

78. The teacher's ratings were mostly in the at-risk and clinically-significant level. The teacher rated the student as clinically-significant

in the adaptability, leadership, and functional communications sub-scales, and the adaptive skills composite. The teacher rated the student as at-risk in the aggression, conduct problems, attention problems, learning problems, withdrawal, social skills, and study skills sub-scales, and the externalizing problems, behavioral symptoms index, and school problems composites. (S-22 at pages 38-42).

79. The March 2024 ER contained executive functioning scales. As with the behavior rating scales, the ratings of the student's mother were consistently more elevated than the ratings of the student's [redacted] grade teacher from the District. (S-22 at pages 40-44).

80. The March 2024 ER contained autism rating scales. As with the behavior rating scales, the ratings of the student's mother were consistently more elevated than the ratings of the student's [redacted] grade teacher from the District. (S-22 at pages 45-51).

81. The student's mother rated the student as very-elevated in almost every area. The student's teacher rated the student as very-elevated social/communication and social/emotional reciprocity. (S-22 at pages 45-51).

82. The March 2024 ER contained adaptive behavior scales. As with the behavior rating scales, the ratings of the student's mother showed consistently lower levels of adaptive behavior than the student's [redacted] grade teacher from the District. (S-22 at pages 52-57).

83. The student's teacher rated the student with moderately-low levels of adaptive behavior in communication, socialization, motor skills, and the adaptive behavior composite. The teacher rated the student with a low level of adaptive behavior in daily living skills. (S-22 at pages 52-57).
84. The March 2024 ER found the student eligible under the IDEA as a student with a health impairment (related to ADHD and executive functioning difficulties) and autism. (S-22 at pages 59-60).
85. The March 2024 ER considered whether the student exhibited specific learning disabilities and concluded that the student did not. (S-22 at page 60).
86. In April 2024, the District proposed an individualized education program ("IEP") for the student. (S-24; NT at 764-828).
87. The April 2024 IEP indicated that the student does not exhibit behaviors that impede the student's learning or that of others. (S-24 at page 5).
88. The April 2024 IEP contained parent's concern about an inquiry for a functional behavior assessment and a statement that the student had not exhibited problematic behaviors at the private placement. The parent had submitted other concerns via email; instead of placing those concerns in the IEP, the IEP referred the reader to the email

sent by parent “available for review in (the student’s) educational record”. (S-24 at page 17; P-13).

89. The April 2024 IEP identified student needs in peer interactions, attention to task, written expression, basic reading, math computation, executive functioning, and self-advocacy. (S-24 at page 18).

90. The April 2024 IEP contained five goals, one each in written expression, reading comprehension, reading decoding, time-on-task, and social skills. (S-24 at pages 26-31).

91. The specially designed instruction in the April 2024 IEP called for one hour daily in reading instruction; 30 minutes daily in written expression; and 10 minutes daily for executive functioning check-ins, all in a special education classroom. The IEP called for 30 minutes of social skills instruction, three times per week, in a special education classroom. (S-24 at page 32).

92. The April 2024 IEP did not call for any specialized instruction for the student’s identified need in math computation. Instead, the regular education teacher would be consulted monthly to see “if regular education support continues to be appropriate”. (S-24 at page 33).

93. The April 2024 IEP called for a 1:1 personal care assistant to be with the student full-time through the school day. (S-24 at page 34; NT at 764-828).

94. The questions for the IEP team in the April 2024 IEP regarding the consideration, need, and advisability of supplementary aids and services were uniformly “discussed at meeting”, without any documentation of the team’s collaboration or response about the use of supplementary aids and services. The special education teacher who testified at the hearing indicated that this a District policy and that those questions are not documented in the IEP. (S-24 at page 38; NT at 764-828).
95. In the April 2024 IEP, the explanation of the extent that the student would not participate with regular education peers indicated only the instruction in written expression and social skills inside the special education classroom; the instruction in reading—the largest component of special education instruction—is not indicated. (S-24 at page 38).
96. The private placement which the student began attending in January 2024 is a school which specializes in working with students who experience some degree of learning difficulty or differences. (NT at 856-924).
97. The private placement serves students in grade kindergarten through 8th grade; approximately 140 students attend the school. (NT at 856-924).

98. The private placement provides to every student specialized curriculum and direct instruction for reading, written expression, and mathematics. Students are individually placed into academic work groups based on academic achievement. (NT at 856-924).
99. Where a student requires S&L, OT, or social/emotional/behavior support, those services are available at the private placement through specialists and school counselors. (NT at 856-924).
100. The private placement organizes itself in a trimester structure. The 2nd trimester progress report in February 2024 showed that the student was having success at the private placement, although the student had been attending the private placement for a handful of weeks. (P-18).
101. The 3rd trimester progress report at the end of the school year showed that the student made progress over the period January – May 2024. (P-19).
102. The student received services in S&L and OT at the private placement. (P-18, P-19).
103. Benchmark reading assessments at the private placement in the winter and spring of 2024 showed that the student made progress in reading. (P-20).
104. A benchmark reading assessment at the private placement in the fall of 2024 showed that the student was achieving in the average

range in reading comprehension and oral reading fluency but in the well-below average range in vocabulary, leading to a below-average reading composite. (P-21).

105. A benchmark mathematics assessment at the private placement in the fall of 2024 showed that the student was achieving in the average range in all areas, leading to an average math composite. (P-22).

106. The student returned to the private placement for the current 2024-2025 school year. (NT at 856-924, 1022-1089).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

Legal Framework

Denial-of-FAPE. The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child

receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning, with appropriately ambitious programming in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Child-Find & Evaluation. A determination of eligibility under IDEA, and identifying a student's individual need for special education, is the initial step in the provision of services under IDEA. A local education agency's duty to locate, evaluate, and identify students who might require special education is commonly referred to as an agency's "child find" obligation. (34 C.F.R. §300.111; 22 PA Code §14.121). In meeting its child-find obligation, once a school district receives parental consent, it initiates an evaluation process to see whether or not the student qualifies for special education. (34 C.F.R. §§300.300-300.311; 22 PA Code §14.123). If the student qualifies for special education through the evaluation process, the student receives an IEP to meet the goal-driven, individualized services required as a result of the student's needs related to the student's disabilities.

Specifically regarding the identification of specific learning disabilities, in Pennsylvania, a school district must utilize one of two methods to identify a student with a specific learning disability: a student's response to "scientific, research-based intervention" including regular monitoring of a student's response to high-quality instruction in a research-based curriculum; or a process to determine "whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade". (22 PA Code §14.125(2)). Specific learning disabilities can be identified in one of eight areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. (22 PA Code §14.125(1)).

Remedy – Compensatory Education. Where a school district has denied FAPE to a student under the terms of IDEA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

The evidentiary scope of claims, which is not a point of contention in this matter, and the nature of compensatory education awards were addressed in G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir.

2015) The G.L. court recognized two methods by which a compensatory education remedy may be calculated.

One method, the more prevalent method to devise compensatory education, is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. In most cases, it is equitable in nature, but the award is a numeric award of hours as remedy. The second method, a rarer method to devise compensatory education, is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated on a qualitative determination for the compensatory education to place the student in the place where he/she would have been absent the denial of FAPE. It, too, is equitable in nature, but the award is based on services or interventions for the student, or some future accomplishment or goal-mastery by the student, rather than being numeric in nature.

Both calculations are a matter of proof. The quantitative/hour-for-hour approach is retrospective, looking back to understand the cumulative denial of FAPE, and is normally a matter of evidence based on IEPs or other documentary evidence that provides insight into the quantitative nature of the proven deprivation. The qualitative/make-whole approach is prospective, looking forward to some point in the future where the proven deprivation has been remedied, and normally requires testimony from someone with

expertise to provide evidence as to where the student might have been, or should have been, educationally but for the proven deprivation, often with a sense of what the make-whole services, or future student accomplishment/goal-mastery, might look like from a remedial perspective. In this case, parents seek quantitative compensatory education, requesting a specific, numeric amount of compensatory education hours. (See Parent's Complaint at page 4 [section of the complaint notice entitled "How would you like to see this resolved? What are you seeking?"]).

Remedy – Tuition Reimbursement. In considering a parent's claim, long-standing case law and the IDEA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); see also 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). A substantive examination of a parent's tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

In the three-step Burlington-Carter analysis, the first step is an examination of the school district's proposed program, or last-operative program, and whether it was reasonably calculated to yield meaningful education benefit. Step two of the Burlington-Carter analysis involves

assessing the appropriateness of the private placement selected by the parents. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties to see if those equities impact an award of tuition reimbursement.

Discussion

Denial of FAPE. Here, the District denied the student FAPE (1) in its failure to evaluate the student as eligible for special education of April 3, 2023, (2) its failure to identify the student with specific learning disabilities in reading and written expression, and (3) to propose an appropriate IEP in April 2024.

Untimely Evaluation. First, as to the District's failure to evaluate the student sooner than it did in December 2023, the parent has shared consistent, concrete concerns about the student's reading since [redacted] grade (the 2021-2022 school year).⁵ The District won't be faulted for attempting to initially support the student through its MTSS and reading support processes. But by December 2022, the MTSS team had resulted in a process where the student had a reading goal—in the midst of the student's

⁵ While not a denial of FAPE, the District's decision at the outset to orally explain the difference between regular education support through a Section 504 plan and special education support through an IEP, rather than provide a NOREP-driven process that was explicit about the process being pursued set things on a path that ultimately ended in a mélange of regular education support when the student required special education. An example of this is the too-general consent form for the Section 504 evaluation, which contains no concrete reference to Section 504—it might be a consent form for any type of generic 'assessment'. (See S-2).

[redacted] grade year—which would not even raise the student’s reading achievement to [redacted] grade year-end levels. (See Finding of Fact [“FF”] 35). Indeed, by January 2023, the MTSS team received input that the student was making little progress on this reading goal, even with intensive intervention for [redacted] grade reading skills. (FF 38).

At this point, January 25, 2023, the District knew or should have known that it needed to evaluate the student for eligibility for special education. With parent having provided consent by February 2, 2023 and given sixty calendar days to complete the evaluation (22 PA Code §14.123(b)), it is the determination of this decision that the student should have been identified for special education services in reading, at least, as of April 3, 2023. The student’s IEP team, at that point, would have 30 days to craft the IEP (34 C.F.R. §300.323(c)(1)), and the District would have 10 days after approval of programming to implement the IEP (22 PA Code §14.131(a)(6)). Thus, by May 13, 2023, the District should have had special education programming in place for the student.

Ultimately, of course, after parent’s repeated concerns, continuing data and MTSS input that showed the student’s academic struggles, and an explicit request for an evaluation, in March 2024 the student was identified as a student eligible under IDEA. This eligibility determination, however, came approximately one year too late.

Identification. Second, the March 2024 ER identified the student with health impairments and autism. Based on this record in its entirety and the content of the March 2024 ER specifically, these are appropriate identifications. But the record fully supports a conclusion that the student also exhibits specific learning disabilities in reading and written expression. The latter of these is the more easily identified of the two. The student exhibits a severe discrepancy between intellectual ability and achievement in written expression, between the student's IQ of 94 and the written language composite of 78. (See FF 73, 74, 75). This identification is supported by the pattern of strengths and weaknesses exhibited by the student in written expression to that point. (See FF 33, 38, 47, 64, 67).

The student's specific learning disability requires a bit more parsing. There is no severe discrepancy between intellectual ability and achievement in reading, between the student's IQ of 94 and the student's achievement scores in letter & word identification (81), although that discrepancy could not be any closer to qualifying (with a cut-off score for severe discrepancy being 79.9. (See FF 73, 74, 76). Here, the District ignores the voluminous evidence that the student was a struggling reader, with the MTSS team documenting numerous instances of consistent struggles in reading, not only below grade-level but substantially below grade-level. (See FF 7, 8, 23, 25, 26, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 44, 47, 48, 58, 67, 68, 69). This documented pattern of strengths and weaknesses, over multiple school

years, coupled with a non-discrepant albeit very weak achievement score in letter & word recognition, support a finding that the student has a specific learning disability in basic reading.

And while this finding is based on the documentary evidence compiled by the District as to the student's needs in reading, the record taken in its entirety, including the April 2024 IEP, shows that the District explicitly recognizes the student's needs related to a specific learning disability in basic reading. The April 2024 IEP itself identifies the programming need, and the District ultimately recommends one hour of special education reading instruction daily for one hour. (See FF 89, 91).

Inappropriate IEP. Third, the April 2024 IEP is inappropriate in three significant areas. One, the IEP fails to include parent's full concerns. (See FF 88). Reference to an external document is not an appropriate way to document a parent's concerns; the appropriate way to include that content is to copy-and-paste, or at the very least accurately paraphrase, those concerns into the IEP. An IEP might be read by any number of educators or other constituents, including educators and constituents outside of the District; reference to a document which that reader does not have access to cannot place any reader in a position to understand the parent's concerns for the student, the student's education, and even specific aspects of the IEP.

Two, the inclusion of a 1:1 personal care assistant is entirely unnecessary and overly restrictive. (See FF 93). The IEP itself indicates that

the student does not exhibit behaviors that impede the student's learning or that of others. This is not to minimize the fact that the student's ADHD, executive functioning, and autism do not impact the student's learning behaviors, but the District recognizes that the behaviors do not "impede" learning. (See FF 87, 89). Given this, and the record taken as a whole, the student requires supports related to these identifications; but an adult with the student for the entirety of the school day is not required and is an intrusive and overly restrictive support.

Three, the April 2024 IEP is entirely devoid of any documentation of the supplementary aids and supports that the IEP team considered, related to the student's educational placement. (See FF 94). Akin to the first of these IEP deficiencies where a reader of the IEP is directed outside of the document for necessary content. Here, however, the deficiency is even more pointed—the content does not exist in some written, verifiable form. It is founded in reference to discussions at the IEP team meeting. This notion entirely abandons the purpose and form of an IEP, namely that it becomes an explicit explanation of a student's special education programming, not subject to recall or interpretation. Furthermore, the section itself is crafted for the IEP team to consider explicit questions (see S-24 at page 38). Reference to ephemeral discussions of the IEP team cannot take the place of concrete answers to multiple, pointed questions that the IEP team must answer *as presented in the IEP*.

Overall and in sum, this record supports a conclusion that the District denied the student FAPE in not identifying the student by April 3, 2023, in not identifying the student with specific learning disabilities in basic reading and written expression, and for specific deficiencies in the April 2024 IEP.

Compensatory Education. As set forth above, parent has carried her burden that the District denied the student FAPE. Therefore, as of May 13, 2023, the student is entitled to compensatory education for the District's failure to identify the student as eligible for special education under IDEA and to have special education programming in place.

In Pennsylvania, a student in the elementary grades K-6 is entitled to 900 hours of academic instruction in a given school year, approximately 5 hours per day in a 180-day school year (or 100 hours per month in a 9-month school year). (22 PA Code §11.3(a)). Using this as a starting point, the student went without necessary specially-designed instruction for the period May 13, 2023 through the winter break of 2023 when the student left the District and began to attend the private placement, approximately four-and-a-half school months. The student was not denied an education in a wholesale way—there was academic progress and progress through S&L services. So in that way, an award of five hours per school day is not appropriate.

Still, the basis of the denial-of-FAPE is that the student was not identified for special education, and both the parent's need to seek outside

private tutoring (which certainly helped the student to progress in the spring of 2023) and the student's peer/social issues and behavioral decline in the fall of 2023 can be attributed to the lack of goal-driven special education (as the District ultimately recognized in the April 2024 IEP). Taking all of these factors into consideration, the student will be awarded two hours of compensatory education per school day (40 hours per school month) for the four-and-a-half school months from mid-May 2023 through winter break 2023 that the student was without special education services.

Thus, utilizing a quantitative/hour-for-hour perspective and as a matter of these equitable considerations, the student will be awarded 180 hours of compensatory education.

Tuition Reimbursement. As for the parent's tuition reimbursement claim, at the first step of the Burlington-Carter analysis, the student's parent has carried her burden that the District's failure to have identified the student for special education as of April 2023 (and, in the end, requesting permission to evaluate the student only after the parent had moved definitively to apply for private schooling and on the cusp of that enrollment in December 2023), and did not have necessary special education programming in place when she undertook the unilateral private placement.

At the second step of the Burlington-Carter analysis, the private placement is entirely appropriate, meeting the student's individualized needs

and allowing the student to make meaningful education progress through significant learning.

At the third step of the Burlington-Carter analysis, nothing in the record weighs for or against either party in weighing the equities between the parties. The equities do not stand in the way or impact an award of tuition reimbursement.

Accordingly, tuition reimbursement will be awarded through the order below.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the West Chester Area School District ("District"), failed to meet its obligations to the student to identify the student in a timely way as of April 3, 2023 and, consequently, to have an individualized education program ("IEP") in effect for the delivery of special education as of May 13, 2023. For this reason, the student is entitled to 180 hours of compensatory education.

Additionally, the parent is entitled to tuition reimbursement for the unilateral private placement undertaken in January 2024. The District shall reimburse the parent for this program upon the parent providing, to District counsel, proof of payment for this tuition, and/or a billing statement from the private placement of any balance due for that tuition, for the period January 2024 through the date of this decision.

For the reasons set forth above, the April 2024 IEP is inappropriate due to material deficiencies. Therefore, the student's private placement shall be considered the student's pendent placement for the provision of special education, and the District shall support the student in the private placement until the District proposes an appropriate IEP.

The record is not clear as to the transportation arrangements for the student to attend the private placement. To the extent that the parent absorbs out-of-pocket expenses for transportation, the parent shall be reimbursed for transportation to/from the private placement for every day the student has attended, and will attend until the District proposes an appropriate IEP. The District shall reimburse the parent for this program upon the parent providing, through counsel, proof of payment for third-party transportation. For transportation provided by the family, a daily transportation log shall serve as the basis of reimbursement, using the mileage rate as allowed under Internal Revenue Service provisions for the period January 2024 through the date of this order. Going forward from the date of this order, reimbursement to the parent for transportation of the student shall continue on a monthly basis with the submission of documentation of the use of third-party transportation and/or a monthly transportation log by using the same Internal Revenue Service mileage rate then in effect.

Finally, the March 2024 evaluation report ("ER") must be revised to indicate that, in addition to identifications of the health impairments and autism already identified in the ER, the student qualifies for special education as a student with specific learning disabilities in basic reading and written expression. The most exact and clear way to address this revision of the student's identification status in the ER is left in the hands of the student's multi-disciplinary team ("MDT"), but the revision shall be considered by the MDT and made part of the March 2024 ER within 30 days of the date of this order.

Nothing in this order shall be read to interfere with the parties' ability to revise the terms or directives of the order, so long as the revision is mutually agreed-to in writing.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

11/19/2024