

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve 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**

**ODR No. 26925-22-23**

#### **CLOSED HEARING**

**Child's Name:**

N.R.

**Date of Birth:**

[redacted]

**Parent/Guardian:**

[redacted]

**Counsel for Parent:**

None

**Local Education Agency:**

Upper Merion Area School District  
435 Crossfield Road  
King of Prussia, PA 19406

**Counsel for the LEA:**

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**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

04/15/2023

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, N.R. (Student),<sup>1</sup> is a primary elementary school-aged student who resides and attends school in the Upper Merion Area School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA).<sup>2</sup>

In late summer of 2022, the Parents filed a Due Process Complaint against the District challenging its educational programming for Student under the IDEA. The Complaint was amended before the matter proceed to a multiple-session hearing that was delayed at times for circumstances beyond anyone's control.<sup>3</sup> The Parents sought to establish that the District's evaluations of and programs for Student were not appropriate beginning in March 2021 on both substantive and procedural grounds; and they sought, among other remedies, compensatory education and reimbursement for a privately obtained evaluation. The District countered that its program met all applicable legal standards and denied that any relief was due. After multiple hearing sessions, this hearing officer issued an order directing the manner of completing the record,<sup>4</sup> to which neither party raised an objection.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

<sup>3</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. Citations to duplicative exhibits is generally not to all.

<sup>4</sup> HO-5.

Following review of the record and for all of the reasons set forth below, the claims of the Parents must be largely denied but granted in two specific respects.

## **ISSUES**

1. Whether the District's program for Student was substantively inappropriate at any time from March 2021 to the present;
2. Whether the District's program for Student was procedurally inappropriate at any time from March 2021 to the present, or amounted to retaliation against the Parents and Student;
3. Whether the District should be ordered to make any specific revisions to Student's educational program going forward;
4. If there are any substantive or procedural deficiencies in the District's program for Student, whether Student should be awarded compensatory education; and
5. Whether the Parents should be reimbursed for any private evaluations or be permitted to obtain private evaluations at public expense?<sup>5</sup>

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<sup>5</sup> One of the Parents attempted to withdraw the final issue during the hearing (N.T. 561), but the other Parent disagreed (N.T. 569).

## **FINDINGS OF FACT**

1. Student is a primary elementary school-aged student residing within and attending school in the District. Student has been identified as eligible for special education under the IDEA. (N.T. 42-43.)
2. Student has academic strengths such as with reading sight words and performing mathematics calculations. Student's weaknesses include pragmatic language, social skills, emotional regulation, sensory processing, and reading/listening comprehension. (N.T. 338-39, 341-42, 378.)
3. Student was identified as developmentally delayed in the spring of 2016 and then diagnosed with Autism Spectrum Disorder that summer. Other early diagnoses include hypotonia and recessive/expressive language disorder. (N.T. 303; S-74.)
4. Student qualified for early intervention services in 2017 on the basis of Autism. An evaluation in 2019 reflected delays across domains: cognitive, communication, social/emotional, physical, and adaptive development, as well as with fine motor skills. Student's Individualized Education Program in the fall of 2019 through the fall of 2020 provided for specialized instruction (direct and consultative); behavior support (direct and consultative); and occupational, physical, and speech/language therapy (direct and consultative). (S-74; S-75.)

### **Fall of 2020: Entry into District**

5. The Parents registered Student with the District in the summer of 2020 for entry into school-age programming. (S-3.)
6. An IEP was developed in July 2020 for Student and revised several times in the fall of that year, specifically addressing Student's participation in remote learning. This IEP contained significant

parental input and concerns. Needs identified in that IEP were for maintaining attention to task; improving social language and self-advocacy; expressing self-care needs; expressive language (responding to "how" and "why" questions); describing pictures and making predictions/inferences; and improving fine motor (school-based and self-care) and gross motor (balance and coordination) skills. (S-12.)

7. Annual goals in the July 2020 IEP addressed expressive language (answering "how" and "why" questions; describing a picture; making predictions; social skills; tacting and spontaneous comments); task completion during whole group activities; self-regulation in whole-group activities; cooperative play and independent functional play; developing multi-step school-related fine motor skills; and developing multi-step gross motor skills. All of the goals had baselines identified within the goal or are readily apparent in the comprehensive present levels section of the IEP. (S-12.)
8. Program modifications and items of specially designed instruction in the July 2020 IEP addressed a one-on-one paraprofessional for reinforcement, prompting, and data collection; direct social skills instruction; prompts, cues, modeling, and redirection; additional processing time; checks for understanding; a first, then strategy; use of timers and visual schedules; a sensory diet at predetermined intervals with sensory breaks; positive reinforcement provided promptly; specific data collection; chunking of materials for novel gross motor skills; reinforcement of whole body listening; preferential seating; a communication log between home and school; parental previews of schedule; and completion of sensory and other occupational therapy profiles. (S-12 at 56-59.)

9. Related services in the July 2020 IEP were for speech/language, occupational, and physical therapy (direct service and consultative); and support of a Board Certified Behavior Analyst (BCBA) (consultative with observation). Additional supports for the District staff were for review of relevant education documents and school psychologist consultation. (S-12 at 60-61.)
10. The program proposed for Student in the July 2020 IEP was for learning support at an itinerant level, with Student participating in the general education setting at all times except during related service therapy sessions and social skills instruction. (S-12 at 63-64.)
11. The Parents approved the Notice of Recommended Educational Placement (NOREP) following November 2020 revisions to the July 2020 IEP. (S-13.)
12. In the fall of 2020, the District proposed that Student return to one of its elementary schools after the COVID-19 pandemic closures. The Parents toured the school before Student returned. (N.T. 310.)

### **2020-21 School Year**

13. Assessment of occupational therapy-related skills by the District and a private provider in October 2020 identified needs in the areas of visual-motor integration, sensory perception, sensory integration, and praxis. Direct therapy was recommended by both. (P-22 at 1-5; S-12 at 20-22.)
14. Following Student's attendance in person at school in the District, staff working with Student began to identify problem behaviors. Another IEP meeting convened in February 2021, by which time Student had mastered the task completion goal. At another IEP meeting in March 2021, Student was reportedly at grade level expectations in reading fluency and comprehension. Along with updated parental input and

concerns, additional items of specially designed instruction following those meetings included a revision to the communication log, direct social skills instruction, and frequent IEP meetings for the remainder of the school year and into October 2021. Extended school year (ESY) services were recommended to address speech/language, occupational therapy, and behavioral needs. (N.T. 190-91, 193-94; P-24; S-14; S-15; S-16.)

15. A Functional Behavioral Assessment (FBA) was conducted in early March 2021. Behaviors of concern were: elopement from seat and classroom/building; being out of seat; refusal to comply with directives; flopping to floor; engaging inappropriately with peers; touching items without permission; opening doors inappropriately; whining/crying; yelling/screaming; and aggression toward others (infrequently observed). The behaviors were noted to occur more frequently during special classes and unstructured times, as well as in the afternoon compared to the morning. (S-17; S-18; S-20.)
16. The hypothesized functions of the concerning behaviors were (a) to gain access to preferred items, to gain access to sensory stimulation, and to gain attention when (1) access to preferred items/activities was denied (elopement, refusal to comply, flopping, inappropriate touching of items, inappropriate door use; and yelling/screaming); or (2) demands were presented (elopement, refusal to comply, flopping, whining/crying, yelling/screaming, out of seat, aggression); (b) to escape or avoid demands (elopement, refusal to comply, flopping, whining/crying, yelling/screaming, out of seat, aggression); and (c) to interact inappropriately with a peer when motivated to engage, to gain access to preferred items/activities, attention, or sensory stimulation (automatic positive reinforcement). (S-20.)

17. A Positive Behavior Support Plan (PBSP) was developed in late March 2021 following the FBA. The PBSP identified four antecedents to behaviors of concern: a need to transition to another area; denial of access to preferred items/activities; presentation of demands; and motivation to interact with a peer. A number of preventative antecedent strategies (including checks for motivation, sensory stimulation, alternative reinforcers, preview of expected behavior and rules, a visual schedule, chunking of directions); teaching of replacement behaviors (including language training, alternative sensory input, prompts and cues, practice with transitions, alternative reinforcers); and consequences for both replacement behaviors (including differential reinforcement, praise, a token economy) and problematic behaviors (interruption/blocking, minimal attention, cues, continuation of demand) were provided in the PBSP. (S-21.)
18. Student's IEP team met several times in April 2021 and developed behavior goals with baselines to address complying with directives; maintaining attention to task during whole group activities; transitioning successfully; and responding to peers independently. Student's goal for tacting was removed; and a goal for sharing with the group during morning meeting independently, a skill that Student exhibited only with prompting, was added. (P-24.)
19. Progress reporting in the spring of the 2020-21 school year reflected incremental to moderate progress that spring on most IEP goals, and mastery of the goal for functional play. (S-22.)

### **2021-22 School Year**

20. A new IEP was developed for Student in June 2021. Extensive teacher and parent input including information on Student's present levels was part of the IEP. Identified needs in this IEP were for maintaining



attention to learning tasks; independent use of social language and self-advocacy; making predictions and inferences; and improvement in gross and school-based fine motor skills. (S-28.)

21. Goals in the June 2021 IEP addressed independent sharing during morning meeting; maintaining attention to tasks in whole group activities; transitioning successfully; independently responding to peers; complying with directives; gross motor planning and coordination; responding to writing or drawing prompts; independent task completion during whole group settings based on a rubric; describing an element of a story; making predictions; using social language; and exhibiting self-advocacy skills. Each of the IEP goals had baselines within the goal or could be readily ascertained from the present level section. (S-28.)
22. Program modifications and items of specially designed instruction in the June 2021 IEP were for first/then strategies; additional processing time; a sensory diet and core exercises, with access to a swing throughout the day; use of a timer; a visual schedule and visual cues; behavioral strategies (positive reinforcement, prompts and cues); modeling for self-advocacy; a one-on-one paraprofessional; weekly direct social skills instruction (push-in); strategies for receiving directions and checks for understanding; written form of work or directions when given orally; preferential and flexible seating; a BCBA observation; a communication log and schedule preview for the Parents; and biweekly IEP meetings through October 2021 to monitor Student's transition to the new elementary school. (N.T. 641; S-28 at 34-37.)
23. Related services in the June 2021 IEP were for direct speech/language and occupational therapies, and for physical therapy consultation.

Other consultative services specified were for speech/language and occupational therapy, as well as the BCBA. (S-28 at 37-38.)

24. The program proposed in the June 2021 IEP provided for autistic support at an itinerant level at a different elementary school, with Student participating in the general education setting at all times except during related service therapy sessions and social skills instruction. ESY services in the summer of 2021 were also specified. (S-28 at 39-42.)
25. The Parents asked for an informal meeting on the NOREP issued for the June 2021 IEP. (S-29.)
26. The District BCBA consulted with the occupational therapist on Student's transition to the new elementary school. (N.T. 166.)
27. Student's IEP was revised over three meetings in October and November 2021 following Student's transition to the new elementary school. Significant parental input and concerns were incorporated. The specially designed instruction section slightly revised two of those items, including the direct social skills instruction to be in a small group; and direct language instruction for thirty minutes daily was added as a time when Student would not be in general education. Adaptive physical education was also added as an item of specially designed instruction. The Parent approved the NOREP for these changes. (S-35; S-81.)
28. A second FBA was completed in early January 2022 at the Parents' request. This FBA was focused on Student's elopement behavior. (N.T. 197-200; S-34; S-39; S-40; S-41; S-42; S-43; S-44; S-45; S-46.)
29. The January 2022 FBA defined elopement as movement of the body away from staff or an environment for more than ten seconds. A

second related behavior, bolting, was defined the same except that the duration was less than ten seconds. The hypothesized functions of those behaviors was to gain access to preferred item/persons when asked to transition or when such access was denied; and to escape/avoid presentation of demands. Data collected for the FBA reflected an average of 3 instances of elopement and 15 instances of bolting per day. (S-46.)

30. A new PBSP was developed in January 2022 following the second FBA. The PBSP continued to identify the antecedents to all of the behaviors of concern: a need to transition to another area; denial of access to preferred items/activities; presentation of demands; and motivation to interact with a peer. Several new preventative antecedent strategies (opportunities for walks, social interaction as contingent reinforcement, limited distractions for task completion); replacement behaviors (teaching and prompting of appropriate interactions, staff validation of understanding); and consequences for problematic behaviors (nonverbal redirection, overcorrection) were added in this PBSP. (S-46.)
31. Student's IEP was also revised at a meeting in January 2022 to reflect information from the new FBA. The Parents approved the NOREP after a few revisions to the PBSP. (S-48; S-50.)
32. The Parents approved a March 2022 NOREP for ESY for speech/language services only. (S-52.)
33. Student's IEP was revised in a meeting in late March 2022. Student had met several goals: the goal for sharing with the group, and a new goal was added for retelling a story of at least 250 words based on a 7-point rubric and also answering a "why" question; the goal for responding to peers, and a new goal was added for maintaining

conversational volleys independently with a scale of related functions such as appropriate body language; the goal for maintaining attention to task during whole group activities, and a new goal was added for remaining on-task through task completion and for whole-group instruction based on a 3-point rubric. Student also was determined to remain eligible for ESY in 2022. (S-82.)

34. The Parents provided consent for the District to conduct a reevaluation in March 2022. (S-54.)
35. In the second semester of the 2021-22 school year, Student's home-based BCBA was in the school setting for four hours each week at the request of the agency with agreement of the District. The District BCBA worked collaboratively with the home behavior therapists so that Student had consistent programming across both environments. (N.T. 139-40, 189, 491, 1282-85, 1288-90, 1304-06; S-32.)
36. Progress reporting in May 2022 reflected moderate progress (some anecdotal, some data-referenced) on most IEP goals with mastery of a behavioral goal and a portion of another; one of the behavior goals reflected variability and little improvement. (S-57.)

## **June 2022 Reevaluation**

37. The District issued a Reevaluation Report (RR) in June 2022. Student's Parents provided input and shared concerns as well as strengths and weaknesses for Student. (S-58.)
38. Classroom-based assessments for the June 2022 RR reflected reading skills from the advanced to below proficient ranges, and mathematics skills in the advanced to proficient ranges. (S-58 at 2-4, 26-29.)
39. Cognitive assessment for the June 2022 RR (Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V)) yielded variable Composite

scores ranging from the very low (Processing Speed Index) to high average ranges (Fluid Reasoning and Working Memory Indices), with a low average Visual Spatial Index score and an average Verbal Comprehension Index score. Student's Full Scale IQ was in the average range but was to be interpreted with caution due to the wide discrepancies in the scores. (S-58 at 7-11.)

40. Assessment of academic achievement (Wechsler Individual Achievement Test – Fourth Edition) revealed Composite scores ranging from the average (Reading) to Extremely High (Written Expression) ranges, with a Mathematics score in the very high range. (S058 at 11-13.)
41. The Parents completed the Social Responsiveness Scale – Second Edition for the June 2022 RR. The results reflected significant deficits for the total score, as well as in social awareness, social cognition, and social communication; mild deficits with social motivation; and moderate deficits with restricted/repetitive behaviors. (S-58 at 13.)
42. Assessment of speech/language skills for the June 2022 RR indicated some articulation weaknesses; another measure noted significant deficits in receptive and expressive language with areas of strength and weakness. Pragmatic language in particular was a specific need identified, and speech/language services were recommended. (S-58 at 17-25.)
43. Occupational therapy assessment for the June 2022 RR included rating scales for executive functioning, which revealed the Parents' clinically significant concerns with respect to self-monitoring and shifting, and at-risk concerns with inhibition, emotional control, initiation, working memory, and planning/organizing. The teacher endorsed clinically significant concerns with inhibition, shifting, emotional control, and

working memory; and potentially clinically significant concerns with self-monitoring and initiation. Additional rating scales to assess sensory processing reflected needs in the areas of sensory processing, praxis, and social participation. Results of an assessment of visual-motor integration identified a score in the below average range, and a low score in motor coordination. (S-58 at 13-17.)

44. The June 2022 RR identified educational strengths as sight word vocabulary, spelling, basic mathematics facts, mathematics reasoning and problem solving, as well as with visual and auditory information and conceptual relationships. Areas of educational weakness identified were: answering inferential questions; expressive and pragmatic language; articulation; repetitive and restrictive behaviors; social motivation and awareness; self-monitoring and initiating; inhibition and shifting; visual identification speed/accuracy; emotional control; and working memory. Student was identified as eligible for special education with a primary disability of Autism. (S-58 at 25.)
45. A new IEP was developed in June 2022. Significant parental input and concerns were included in this IEP. The IEP team also discussed a new social skills curriculum in June 2022, and the BCBA described it for the Parents and provided them with an internet link for additional information. (N.T. 120-22, 124, 353-54; S-65.)
46. Needs identified in the June 2022 IEP, as in the recent RR, were for answering inferential questions; expressive and pragmatic language; articulation; repetitive and restrictive behaviors; social motivation and awareness; self-monitoring and initiating; inhibition and shifting; visual identification speed/accuracy; emotional control; and working memory. (S-65 at 58.)

47. Annual goals in the June 2022 IEP addressed retelling a story based on a seven-point rubric as well as answering “why” questions; maintaining conversational volleys based on a scale of related functions such as appropriate body language; social skill role play of targeted skills based on a rubric; exhibiting multiple identified executive functioning skills independently during whole group activities; improving expressive language skills; answering inferential comprehension questions; making predictions in a story; social skills using responsive pragmatic language; and behavior (waiting/denied access throughout the school day; complying with demands; remaining on-task through task completion and for whole-group instruction based on a three-point rubric). All of the goals contained baselines within the goal itself or were readily apparent in the detailed present level section. (S-65.)
48. Program modifications and items of specially designed instruction in the June 2022 IEP were for first/then strategies; additional processing time; small group English/language arts instruction for reading comprehension; use of multiple assessments for reading comprehension; a sensory diet; use of a timer; a visual schedule and visual cues; behavioral strategies (positive reinforcement, prompts and cues); modeling for self-advocacy; a one-on-one paraprofessional; twice-weekly direct social skills instruction in a small group; strategies for receiving directions and checks for understanding; reinforcement of whole body listening; modeling for listening comprehension; coping and self-regulation tools and strategies; small group testing; encouragement of independence with routines; preferential and flexible seating; a communication log and schedule preview for the Parents; and monthly meetings with the Parents. (S-65 at 48-52.)

49. Related services in the June 2022 IEP were speech/language therapy (direct weekly individual and weekly small group) and occupational therapy (twice-weekly direct individual sessions). Consultative services were also provided for District staff by occupational, physical, and speech/language therapists and the BCBA. (S-65 at 52-53.)
50. The June 2022 IEP proposed a program of autistic support at an itinerant level, with Student not participating in general education during therapy sessions, social skills instruction, and direct reading comprehension instruction. The Parents did not approve the accompanying NOREP, noting their disagreement that the proposed IEP addressed Student's needs. (S-65 at 55-56; S-67.)
51. Student had 25 absences over the 2021-22 school year. (S-69.)
52. Student did not attend the District's ESY program in 2022. (N.T. 230.)

### **Private Evaluation**

53. The Parents obtained a private evaluation of Student in July 2022. Other than rating scales completed by one of Student's teachers and the paraprofessional, the private psychologist evidently did not communicate with anyone in the District or conduct an observation. (P-11 at 46-69).
54. The private psychologist administered a cognitive assessment, the WISC-V.<sup>6</sup> Student earned a Full Scale IQ score in the high average range, but as before there was variability among the Composites. (P-11 at 49-54.)

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<sup>6</sup> Had the private psychologist communicated with the District or have the opportunity to review the June 2022 RR, she would almost certainly not have administered the WISC-V so soon after the District did so for its RR, since many test instruments should not be re-administered within proscribed periods of time.



55. Assessment of academic achievement for the private evaluation (Kaufman Test of Educational Achievement) yielded scores generally in the average to very high ranges, with the exception of listening comprehension (low range). (P-11 at 55-57.)
56. Student's social perception skills were also assessed for the private evaluation. Results suggested that social skills instruction would benefit Student to address inferential reasoning and perspective-taking weaknesses. The Social Responsiveness Scale completed by the Parents revealed clinically significant concerns with social behavior; and a sensory profile similarly noted atypical sensory behaviors. (P-11 at 54-55, 60-61.)
57. With respect to behavioral/emotional functioning, rating scales for the private evaluation indicated a number of areas of significant concern. On the scales for behavior, the Parents endorsed a clinically significant concern with atypicality, and at-risk concerns with hyperactivity, somatization, social skills, leadership, and functional communication. One or both District raters (teacher and paraprofessional) endorsed clinically significant concerns with hyperactivity, aggression, conduct problems, atypicality, and withdrawal; and additional at-risk concerns with learning problems, adaptability, social skills, leadership, and functional communication. (P-11 at 58-59.)
58. Assessment of executive functioning was also conducted for the private evaluation through rating scales. The results varied, with the Parents reporting overall less concern, and generally mild; one or both District raters endorsed clinically significant concerns overall. Inhibition, self-monitoring, shifting, and emotional control were the areas of most concern by all raters. (P-11 at 59.)

59. Student's visual motor abilities were also assessed for the private evaluation, with somewhat variable results suggesting that Student had weaknesses in the areas of visual-spatial perception and finger dexterity, as well as overall. (P-11 at 55.)
60. The private evaluator made suggestions for Student both in the home and at school, with BCBA consultation one for the school setting. (P-11 at 62-69.)

### **2022-23 School Year**

61. In the fall of 2022, Student's home-based BCBA was able to observe Student at school each month, and the District and home BCBA continued to collaborate. The home agency did not seek additional services for the 2022-23 school year. (N.T. 492, 1283-85, 1304-08.)
62. Progress reporting as of November 2022 for the pendent IEP essentially reflected overall maintenance of skills despite a number of absences. (S-77.)

### **General Behavior Services at School**

63. A well-qualified and experienced District Board Certified Behavior Analyst (BCBA) provides consultative services to Student's team at school, but not direct services to Student. The consultative services often follow or are provided in conjunction with observations by the BCBA. (N.T. 62, 65-67, 177-83, 184-88.)
64. The District BCBA has met with all members of Student's school teams to review the PBSP and discuss its implementation and the collection of data. Other team members also have met and consulted regularly over the time period in question. (N.T. 66, 76-77, 185, 593, 594, 653-56, 712-13, 738, 822-23, 832, 835, 888-89, 1134, 1140-42; S-19; S-55.)

65. Behavioral data is taken throughout Student's school day during scheduled intervals by the paraprofessional and teachers. The paraprofessional has had training in collecting behavioral and other data. The BCBA reviews data collected for Student on at least a weekly basis. (N.T. 75-76, 184-85, 206-09.)
66. The District BCBA at times collects data taken by others in order to ensure inter-observer agreement. (N.T. 244-46.)
67. There are a few instances in the record where the data reported on behavior is inconsistent with other information in the record (e.g., S-63 at 5 compared to P-13 at 4).
68. Student's behaviors are variable and inconsistent for a number of reasons such as a weekend or other break in school, changes to routine, absences due to illness, and human nature. Student's behaviors also serve multiple functions. Changes in interventions and the PBSP can further lead to variability in behavior data. (N.T. 86-88, 90, 171, 191-92, 201, 215-16, 225-27.)
69. Student's behavior was overall managed in the general education setting over the 2020-21 school year through the time of the due process hearing, gradually more independently than prompt-dependent, to permit meaningful access to the curriculum and to engage and interact with peers. (N.T. 235-41.)

### **Implementation Over 2021-22 and 2022-23 School Years**

70. Student's special education teacher was with Student daily for lunch over the 2021-22 and 2022-23 years, and also provided social skills and language-based direct instruction beginning in the fall of 2021. The teacher did miss some social skills instruction sessions in the early fall of 2021 but has since provided them in the general education setting as well as in pull-out sessions. Student's occupational

therapist also worked on social skills at the start of the 2021-22 school year. (N.T. 579-81, 583, 585, 619-21, 657-62, 665-67.)

71. Student made progress in acquiring social skills over the 2021-22 and 2022-23 school years, showing more interest in interacting with peers from the fall of 2021 to October 2022. (N.T. 671-73, 723-24.)
72. The biweekly meetings continued beyond the period of transition to the entire 2021-22 school year because of inconsistent wording in the July 2022 IEP. (N.T. 641-44.)
73. Student's preferential seating has been determined in part by space constraints to ensure that Student was provided sufficient room for all materials and to allow for movement as necessary. Other considerations are proximity to distractions (N.T. 675-76, 730-31.)
74. Student used fidget items at times, but the staff has not been concerned about Student's use of those and engagement in class activities that demonstrated understanding. (N.T. 677-78.)
75. Despite strong sight word and reading fluency skills, Student exhibited difficulty with listening and reading comprehension when introduced in late fall of the 2021-22 school year. (N.T. 713-14, 717-20, 748-49.)
76. The new special education teacher met and worked with Student and the former special education teacher during a period of transition in October 2022. She also consulted with Student's paraprofessional. (N.T. 1133-35.)
77. During the current school year, Student has been able to leave the general education classroom when experiencing difficulty with the task in that setting. (N.T. 1121.)
78. The District uses a software program for its IEP documents that automatically places a dated footer anytime an action is taken with

respect to each document, including merely attaching it to an email message. That date does not necessarily reflect a simultaneous revision to its contents. (N.T. 1230-32.)

### **General Throughout Relevant Time Period**

79. There are a few instances where the progress monitoring data is not reported accurately on the data sheets (*e.g.*, S-73 at 4 (same as P-14 at 41).)
80. The parties have had regular and frequent communication over Student's tenure in the District, including a daily communication log between home and school, telephone calls, and email exchanges, in addition to discussions in the various meetings. (N.T. 446, 536-37, 639, 650-51; P-17; P-18; S-38; S-76.)
81. All of the District professionals working with Student at the District previously or currently are qualified and experienced to serve their roles. (N.T. 635-37, 737-37, 881-82, 967-70, 1130-32, 1309-10.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parents who filed for this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of fact-finders, are also responsible for making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be credible as to the facts as they recalled them. Any contradictions are attributed to lapse in memory or to differing perspectives, rather than an intention to mislead. The weight accorded the evidence, however, was not equally placed.

The Parents, unfortunately, diminished their own testimony by their repeated lack of adherence to this hearing officer's specific directives to witnesses who testify, and specifically reiterated to them during that testimony (see, e.g., N.T. 454, 460-62, 468, 471, 476, 478, 479, 487-88, 489-90). Their understanding of what occurred during the school day was based on speculation and the limited information that Student would share; the testimony of school events by the District witnesses who were present was credited over that of the Parents. Credibility and the weight of the evidence is discussed further below.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.<sup>7</sup>

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<sup>7</sup> The record in this case is voluminous, and the parties were directed to reference in their closings the specific portions of the exhibits they wished to emphasize; both parties did so without objection. It must also be noted that a number of the Parents' exhibits are combinations of documents or portions of documents that are largely duplicative of some of their other exhibits; some appear to be different versions of the same document but with

## **General IDEA Principles: Substantive Requirements**

The IDEA requires each of the states to provide a “free appropriate public education” (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Some years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

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

Individualization is, thus, the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Rather, the

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varying length and pagination. Other documents contained their own annotations. For these reasons, as well as in the interest of accuracy and completeness, the District’s exhibits were considered to be more probative of the education records and therefore cited much more frequently in this decision. The communication discussed at N.T. 1174-75 was never properly introduced at the hearing, and this hearing officer therefore deleted it from her email server without ever reading its contents.

law demands services that are reasonable and appropriate in light of a child's unique circumstances, and not necessarily those that his or her parents desire. *Andrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). "The IEP *must aim* to enable the child to make progress," but progress is not measured by what may be ideal. *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original). Nevertheless, the IEP team is required to monitor a student's progress toward IEP goals and make appropriate revisions as may be necessary. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320, 300.324.

## **Evaluation Requirements**

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C. §1414(a)(1)(C)(i). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and



(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]" 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to available assessments and observations. 34 C.F.R. § 300.305(a).

Finally, when parents disagree with an LEA's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Whether or not the LEA funds an IEE, a private evaluation that meets agency criteria and shared with the LEA must be considered. 34 C.F.R. § 300.508(c).

### **General IDEA Principles: Least Restrictive Environment**

The IDEA contains a crucial mandate that eligible students are to be educated in the "least restrictive environment" (LRE) that also satisfies meaningful educational benefit standards.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

The U.S. Supreme Court's *Endrew* decision further recognized that educational benefit for a child with a disability is wholly dependent on the individual child, who should be challenged by his or her educational program. *Endrew, supra*, 137 S. Ct. at 999. Also crucial to the LRE analysis is a recognition that its principles "do not contemplate an all-or-nothing educational system" of regular education versus special education. *Oberti*,

*supra*, 995 F.2d at 1218 (quoting *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1050 (5th Cir. 1989)).

### **General IDEA Principles: Procedural Requirements**

From a procedural standpoint, the family plays “a significant role in the IEP process.” *Schaffer, supra*, at 53.

The IEP proceedings entitle parents to participate not only in the implementation of IDEA's procedures but also in the substantive formulation of their child's educational program. Among other things, IDEA requires the IEP Team, which includes the parents as members, to take into account any “concerns” parents have “for enhancing the education of their child” when it formulates the IEP.

*Winkelman v. Parma City School District*, 550 U.S. 516, 530 (2007). Full participation in the IEP process does not mean, however, that parents have the right to control it. *See, e.g., Blackmon v. Springfield R-XII School District*, 198 F.3d 648, 657-58 (8th Cir.1999) (noting that IDEA “does not require school districts simply to accede to parents' demands without considering any suitable alternatives” and that failure to agree on placement does not constitute a procedural violation of the IDEA); *see also Yates v. Charles County Board of Education*, 212 F.Supp.2d 470, 472 (D. Md. 2002) (explaining that “parents who seek public funding for their child's special education possess no automatic veto over” an LEA’s decision). As has previously been explained by the U.S. Department of Education,

The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based on a majority “vote.” If the team

cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency's determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a State complaint.

*Letter to Richards*, 55 IDELR 107 (OSEP 2010); *see also* 64 Fed. Reg. 48 at 12472 (1999)(same). Moreover, choices of methodologies are generally left to the discretion of the LEA. *Lachman v. Illinois Board of Education*, 852 F.2d 290, 297 (7th Cir. 1988); *J.G. v. New Hope-Solebury School District*, 323 F. Supp. 3d 716, 723 (E.D. Pa. 2018).

### **Section 504 Principles**

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). With respect to discriminatory retaliation, the following relevant principles are applicable.

The elements of a retaliation claim require a showing by the filing party (1) that they engaged in a protected activity, (2) that defendants' retaliatory action was sufficient to deter a person of ordinary firmness from exercising his or her rights, and (3) that there was a causal connection between the protected activity and the retaliatory action.

*Lauren W. v. DeFlaminis*, 480 F.3d 259, 267 (3d Cir. 2007) (citing *Robinson v. Potter*, 453 F.3d 990, 994 (6<sup>th</sup> Cir. 2006) (other citations omitted)).

### **The Parents' Claims**

The Parents are obviously very involved and passionate advocates for Student; their dedication to Student's educational programming is

admirable. Their concerns as presented at the hearing are numerous and wide-ranging. These will be addressed as thoroughly as possible and necessary without needless repetition, but the essence of the Parents' claims is their desire for complete oversight of Student's school programming.

The first issue is whether Student's IEPs from March 2021 through the present comply with the substantive requirements of the IDEA. Each of the IEPs contained significant parental input and extensive information about Student's present levels of academic and functional performance; identified Student's educational strengths and needs; and targeted those needs through annual goals, items of specially designed instruction, and related services along with support for school staff. This hearing officer concludes that the goals were appropriately ambitious for Student based on Student's unique circumstances; were sufficiently objective, measurable, and informed by baseline performance in light of Student's abilities, strengths, and needs; and were reasonably calculated to confer meaningful educational benefit to Student, who has a number of areas of deficit including behavioral manifestations, at the time that the IEPs were developed.<sup>8</sup> This conclusion is made for all IEPs for Student by the District, including the proposed June 2022 IEP, which the District will be permitted to implement until a new IEP is developed.

The testimony of the District witnesses was accorded a high degree of weight in considering this and all issues. The description by the current special education teacher on how social skills are incorporated into Student's day in the natural environment was cogent, logical, and compelling (N.T. 1062-62, 1068-72, 1076, 1077-78). The testimony of the occupational therapist about Student's need to make incremental gains toward

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<sup>8</sup> The Parents' argument that the District failed to bring Student "up to grade level" in areas of weakness (Parent Closing at unnumbered p. 1) is not the standard for FAPE. Special education programming must be individualized but is not intended to guarantee any particular level of performance.

implementation of the goal for whole group task completion was similarly persuasive (N.T. 913-15), although this hearing officer does agree with the Parents that the variance in the implementation setting from the language of the goal should be made part of the progress monitoring reporting going forward. The related testimony by the same occupational therapist about how progress is reported on the goal that included handwritten work and the reasons for inclusion of that goal (N.T. 920-21, 990-93), as well as the goals for whole-body self-regulation, sensory processing and breaks, and responding to demands, and how that progress is reported (N.T. 929-31, 939-41, 943-44, 946, 969, 973-77, 981-82, 996-98) was also convincing and educationally rational. However, this hearing officer finds that defining the qualitative descriptors of prompting for Student (N.T. 374 LL 16-19, 995) should be made part of the progress monitoring reports going forward if not specified by the goal language itself. Finally in this area, the District BCBA further provided extensive and ultimately quite persuasive testimony about the methods used for data collection of Student's various behaviors, providing logical explanations for concerns the Parents raised about what they incorrectly perceived to be inaccuracies in the data reported and the need to evaluate progress over time (N.T. 206-10, 235-39); how she analyzes the data; and how behavioral progress is gauged. There is ample support in the record to conclude that the BCBA provides appropriate oversight of and training in data collection for the personnel working with Student.

Moreover, in addition to frequent communications between home and school, Student's IEP team met regularly and considered the Parents' concerns as well as whether Student's IEP required any revision, which is precisely what the law requires. With respect to implementation, the Parents have established that a few missed sessions of social skills may remain non-provided, and the District will be ordered to ensure that those

occur before the end of the 2022-23 school year. Their contention that Student is regularly removed from the general education classroom in violation of LRE principles is not supported by any evidence. In addition, the program as implemented must also factor in Student's return to in-person instruction in January 2021, a brand new educational setting for Student in the District that clearly required a period of time of adjustment and acclimation; and Student's absences during the relevant time period is another important consideration. In sum, the Parents have failed to meet their burden of persuasion that the implementation of Student's programming during the time period in question failed in any material respect to meet the District's substantive FAPE obligations.

The next issue is whether the programming was procedurally appropriate and, more specifically, whether the Parents were deprived of the opportunity to participate meaningfully in Student's programming decisions. The Parents expressed concerns with (a) District staff communicating with each other without including them (N.T. 334); (b) the District declining to provide information sufficient for them to understand how a particular curriculum was implemented (N.T. 345-46); and (c) consultations occurring without follow-up summaries provided to them (N.T. 346-48, 365, 375). There is nothing in the law that precludes LEA staff from communicating about students internally; indeed, one should expect that all District members of an IEP team would communicate on an ongoing basis throughout the school day, as has occurred here. The same is true of consultative services among LEA team members. Additionally, there is no requirement that an LEA share detailed day-to-day reports on how it implements its programming for a student, or even seek parental approval of the methodologies it employs. In any event, the regular meetings of the IEP team provided more than sufficient opportunity for the Parents to ask these types of questions, and the communication between the parties was

continuous over the time period at issue. To the extent that the District members of the IEP team may have directed the discussion at meetings, as the Parents assert, they have not established that following an agenda or focusing on the most critical areas for the team to consider at a given meeting denied them the ability to participate meaningfully. Similarly, the Parents have failed to meet their burden of persuasion on their claim that the District engaged in disability-related retaliation against them because the home-based BCBA merely does observations during the current school year.

The Parents challenged throughout the hearing the failure of the District to provide them with all raw data that it collected over the time period in question. The law requires periodic reports of progress on IEP goals, which is what the District has clearly provided.<sup>9</sup> They also asked numerous questions of witnesses about the relatively few instances of inaccurate data reporting that was apparent from the face of the data sheets as part of a voluminous record. This hearing officer cannot find any failure to comply with the IDEA because District staff, as all people do, occasionally make an error. In this case, these errors were not material and did not approach, much less rise to, the level of a FAPE denial. Taken together, the Parents have failed to meet their burden of establishing that the District denied them meaningful participation in Student's programming decisions or in any other procedural respect. The sole procedural contentions appropriate for remediation, as discussed above, warrant some revision to the progress monitoring reports in the future, along with the provision of any missed social skill sessions by a District teacher. The Parents have not, however, established any basis for an award of compensatory education.

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<sup>9</sup> The District assured the hearing officer at the final evidentiary hearing session of its compliance with a record request and agreed to check again for any missing records. Not all information about a student is an "education record" as defined in the law.



The next issue is whether the District should be ordered to provide any independent evaluations at public expense. The Parents did not expressly challenge the District's June 2022 RR at the time it was issued, but now contend that it was not appropriate. However, a review of that document reflects compliance with the IDEA. The June 2022 RR included cognitive and achievement testing; evaluation by two related service providers (occupational and speech/language therapists); and rating scales to evaluate Student's social behavior and executive functioning. Additional input from the Parents and teacher, including Student's present levels of performance, was incorporated. The June 2022 RR summarized and reviewed all data and available information that was gathered, and assessed all relevant areas of need.

This RR identified Student's areas of strength and weakness, determined Student's eligibility for special education, and made programming recommendations to address Student's unique profile. Viewed as a whole, the record evidence is preponderant in this case that the District's June 2022 RR was sufficiently comprehensive to identify Student's special education and related service needs in all areas of suspected disability. This RR thus served the purposes of a special education evaluation. To the extent that the Parents contend that the occupational therapy portion of the evaluation was inadequate because it did not more thoroughly assess sensory and other deficits, they have similarly failed to meet their burden; after all, any evaluation could include more assessments. Accordingly, the Parents are not entitled to an independent evaluation at public expense, although they may certainly always obtain one on their own for consideration by the District. The Parents should understand, however, that the District is not required to *adopt* everything in a private evaluation.

The Parents raise a few final additional contentions that merit brief discussion but do not warrant a remedy. They objected to the District's use

of terms to describe Student's behaviors that they consider to be derogatory (N.T. 340, 378-79), although it is unclear when such terms may have been used or in what context, or whether they are terms of art with particular meaning. The Parents further contended that a number of revisions to Student's IEP are necessary; of those within this hearing officer's jurisdiction, they specifically sought (1) a facilitated IEP meeting; (2) four hours weekly of BCBA support, with all behavioral support services supervised by their home BCBA; (3) an order for a sensory processing specialist be retained by the District; (4) a formal plan for progress monitoring; (5) daily early dismissal for Student because they do not believe that period of the day is beneficial for Student; and (6) the reinstatement of biweekly IEP meetings. Of these, a facilitated IEP is certainly encouraged by this hearing officer in this case for annual IEP meetings,<sup>10</sup> but there is no basis on this record for ordering these particular requested revisions. Finally, they described the scheduling of occupational therapy sessions as not "optimal" (N.T. 378), clearly indicating that they, albeit understandably, want an ideal program for Student. The law does not demand perfection, but rather a program that is appropriate for an individual student.

Finally, the Parents must understand that the District is required to employ qualified teachers, related service providers, and other staff who must make educational programming implementation decisions on an ongoing basis. There is nothing in this record to suggest that any of the District personnel working with Student and/or serving as IEP team members are unqualified, incapable of fulfilling their responsibilities to Student, or unwilling to properly implement Student's program. This hearing officer cannot conclude that any formal plan for implementation of

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<sup>10</sup> This service is available through the Office for Dispute Resolution.

Student's program or other assurances to the Parents beyond what the law requires is necessary.

By way of dicta, this hearing officer strongly encourages the parties to set aside their differences and work together to collaboratively plan a program for Student moving forward, and it is her sincere hope that an IEP facilitator will provide the guidance they will likely need to do so.

### **CONCLUSIONS OF LAW**

1. The District did not violate its substantive obligations to Student from March 2021 through the present.
2. The District did not violate any procedural obligations to Student or the Parents from March 2021 through the present.
3. The District complied with its LRE obligations.
4. Student is not entitled to compensatory education.
5. The Parents are not entitled to a private evaluation at public expense.

## **ORDER**

AND NOW, this 15<sup>th</sup> day of April, 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not deny Student FAPE on substantive grounds in the program provided to Student from March 2021 through the date of this order.
2. The District did not deny Student FAPE on procedural grounds in the program provided to Student from March 2021 through the date of this order.
3. The District did not violate principles of the least restrictive environment in Student's program from March 2021 through the date of this order.
4. The District did not retaliate against the Parents.
5. Within ten calendar days of the date of this order, the District shall convene a meeting of Student's IEP team to discuss revisions to the June 2022 IEP. To the extent the parties do not agree on revisions, the District may implement the June 2022 IEP as written without the consent of the Parents until a new IEP is developed by Student's IEP team and approved by the Parents.
6. Within ten calendar days of the date of this order, the District shall provide to the Parents a proposed plan to schedule before the end of the 2022-23 school year social skills sessions with a special education teacher for all of those missed at the start of the 2021-22 school year. The District may propose a total of ten thirty-minute sessions or, alternatively at its option, propose the number of sessions it determines were missed and identify those

by date to the Parents. The District is not ordered to provide data or other documentation of how it determined the number of missed sessions if it elects that option.

7. For all progress monitoring reports issued for Student after this order, the District shall include (a) a description of the applicable prompt levels for any goal that does not include that information in its language in the IEP; and (b) identification of any setting where a goal was implemented if there is a variance with that specified in the language in the IEP.
8. The District is not ordered to take any other action.
9. Nothing in this Order should be read to prevent the parties from mutually agreeing in writing to alter any of its terms.

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

Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 26925-22-23