

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**

Consolidated Closed Hearing

ODR No. 29251-23-24

ODR No. 29409-23-24

Child's Name:

K.S.

Date of Birth:

[redacted]

Parent:

[redacted]

Pro Se

Local Educational Agency:

Upper Darby School District
8201 Lansdown Avenue
Upper Darby, PA 19082

Counsel for the LEA:

Michele J. Mintz, Esquire
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422

Hearing Officer:

Brian Jason Ford

Date of Decision:

06/27/2024

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's father (the Parent) filed a due process complaint against the Student's public school District (the District). The Parent alleges that the District violated the Student's rights under the Individuals with Disabilities Education Act (IDEA).¹ The Parent's due process complaint is ODR No. 29251-23-24.

IDEA due process complaints are presumptively sufficient, but the specific issues raised in the Parent's complaint are difficult to parse out. During the hearing, however, the Parent confirmed the issues presented for adjudication. NT 27-28.² The Parent alleged that the District violated the Student's right to a free, appropriate public education (FAPE) by conducting a special education evaluation that falls short of IDEA mandates, and then by placing the Student into a special education program that did not meet the Student's special education needs. To remedy these violations, the Parent demanded an independent educational evaluation (IEE) at public expense and compensatory education.

The District denied the Parent's claims, including the Parent's demand for an IEE. Denying the IEE triggered the District's obligation to file its own due process complaint to defend its most recent evaluation of the Student. The District did just that, and its due process complaint is ODR No. 29409-23-24. I consolidated the District's due process complaint with the Parent's due process complaint and heard both matters on a single record.

As set forth in greater detail below, I find no evidence of a FAPE violation in the record of this case. I also find that the District's most recent evaluation satisfied IDEA requirements. Consequently, I find in the District's favor.

Issues

The following issues were presented for adjudication:

1. Did the District's reevaluation of the Student, resulting in a report of May 11, 2023 (the 2023 RR) satisfy IDEA requirements?
2. Did the District violate the Student's right to a FAPE in violation of the IDEA during the time in question?

¹ 20 U.S.C. § 1400 *et seq.*

² References to "NT" are to the transcript (notes of testimony), P-# are to the Parent's exhibits, and S-# are to the District's exhibits.

The time in question is not specified in the Parent's complaint but is derived from the facts and circumstances of this case. Considering the time during which the Parent had physical and legal custody of the Student and the sequence of the evaluations and single IEP in the record of this case, I consider whether the District violated the Student's right to a FAPE from May 11, 2023, through the date of this decision.

Findings of Fact

I reviewed the record of this case in its entirety. Few if any facts pertinent to the dispute before me are in dispute.³ I make findings only as necessary to resolve the issues before me. I find as follows:

1. The Student is a child with a disability as defined by the IDEA. The Student has been identified as a child with an Intellectual Disability, Speech or Language Impairment, and Emotional Disturbance. S-22.
2. The Student enrolled in the District in 2021. The District was not the Student's Local Educational Agency (LEA) prior to the Student's enrollment. S-22.
3. On or about November 8, 2022, the Student was placed in foster care and the Student's foster parent (not the Parent who requested this hearing) gained educational decision-making rights for the Student. S-22.
4. While the Student was in foster care, the Student's foster parent provided consent for the District to reevaluate the Student. NT 68-69. The exact date that the reevaluation was initiated is not revealed in the record of this case. It appears, however, that the reevaluation started in April 2023 and concluded on May 11, 2023, with the issuance of the 2023 RR.
5. The 2023 RR was prompted in large part by an increase in the Student's defiant, inappropriate, and physical behaviors in school.

³ The dispute before me is a small subset of the quarrel between the parties. The complete dispute between the parties involves matters that go well beyond the scope of this hearing and my jurisdiction. Naturally, aspects of the broader dispute came up during the hearing, and facts concerning the broader dispute are contested. While the context of the parties' relationship to each other was insightful, my fact-finding and analysis is constrained to the issues properly before me. Facts relevant to those issues are almost entirely undisputed. The parties see those facts through different lenses and reach different conclusions, but there is no dispute about the facts themselves.

Those behaviors were increasing in intensity and frequency. *See, e.g.* S-22 at 1.

6. The District contracted with a third party to conduct a Functional Behavioral Assessment of the Student (the 2023 FBA). The 2023 FBA was completed on April 28, 2023. The 2023 FBA resulted in multiple recommendations to target the Student's inappropriate social interactions and poor self-regulation.⁴ S-14.
7. The 2023 RR included a summary of the Student's then-current IDEA disability classifications, the concerns prompting the reevaluation, and behavioral incidents in late April and early May 2023. The May 2023 behavioral incident resulted in District personnel physically restraining the Student. S-22 at 1-3.
8. The 2023 RR included a report of a twenty-minute, structured observation by the District's School Psychologist. During that observation, the Student was off task in school both in absolute terms, and relative to peers in the same classroom. S-22 at 3.
9. The 2023 RR included narrative input and recommendations from the Student's teacher. That narrative input included significant academic, behavioral, and social concerns. S-22 at 3-4.
10. The 2023 RR included medical concerns raised by the Parent before the Student entered foster care and input from the school nurse as well. S-22 at 4.
11. The 2023 RR incorporated the results of prior evaluations at length. The prior testing was conducted in May 2021, and included (S-22 at 4-27):
 - a. Observations of the Student during the 2021 testing;
 - b. Reports of a structured interview with the Student;
 - c. Standardized, normative assessments of the Student's intellectual abilities (the WISC-V, Nonverbal and the Wechsler Scale of Nonverbal Ability);

⁴ The behaviors "inappropriate social interactions" and "poor self-regulation" were defined with specificity in the 2023 FBA. S-14 at 2.

- d. A sub-set of a standardized, normative assessment of the Student's academic achievement (WIAT-III sub-tests for Listening Comprehension, Early Reading Skills, Math Problem Solving, Alphabet Writing Fluency, and Numerical Operations);
 - e. A wide-ranging, standardized behavior rating scale completed by the Student's teacher (the BASC-III);⁵
 - f. Two autism-specific, in-depth standardized behavior rating scales (the ASRS completed by the Student's teacher and the ABAS-3 completed by the Student's teacher and maternal grandmother);⁶
 - g. A narrative statement of the Student's present levels of academic achievement, strengths, needs, as found in 2021;
 - h. A Speech and Language Evaluation;
 - i. An Occupational Therapy Evaluation;
 - j. A Physical Therapy Evaluation; and
 - k. A Functional Behavioral Assessment (FBA) which included an administration of the VB MAPP.
12. Upon review of the prior testing, the IEP team determined that there was a need for additional data and the District conducted new testing. The new testing consisted of (S-22 at 31-39):
- a. A sub-test of the NEPSY-II Developmental Neuropsychological Assessment that targets a child's ability to maintain attention when having behavioral regulation issues (administered on April 14, 2023);
 - b. A rating scale to assess executive functioning (the CEFI);
 - c. A rating scale to assess ADHD symptoms (the Conners 4);

⁵ The BASC-III is usually completed by multiple raters, including parents. The 2023 RR incorporates a note taken at the time of the 2021 BASC-III administration that the District made multiple efforts to obtain ratings from the Student's maternal grandmother, but those ratings were not returned. S-22 at 11.

⁶ Like the BASC-III, the ASRS is usually completed by multiple raters. The 2023 RR includes the same note for the ASRS as it does for the BASC-III. S-22 at 14. The Student's maternal grandmother completed the ABAS-3.

- d. A rating scale to assess emotional disturbance (the SAED-3);⁷
 - e. An updated Occupational Therapy assessment; and
 - f. An updated Speech and Language reevaluation
13. The NEPSY-II sub-test, CEFI, and SAED-3 all revealed very high levels of need in the domains that they assess. *Id.*
 14. The Occupational Therapy assessment found a continuing need for school-based occupational therapy, even though the Student had made progress in this domain. See S-22 at 38.
 15. The Speech-Language Reevaluation found a continuing need for school-based speech-language therapy to address receptive and expressive language skills and articulation skills as well. These were necessary for the Student to access the District's curriculum. See S-22 at 39.
 16. Based on the review of prior testing, the Student's performance in school, and updated testing, the District found that the Student's primary disability was an Intellectual Disability, but that the Student met eligibility criteria for Speech or Language Impairment and Emotional Disturbance as well. S-22 at 40.
 17. The 2023 RR did not include new Autism testing. The Student had not previously been identified as a child with Autism for IDEA purposes. At the time of the 2023 RR the District had nothing indicating a medical Autism diagnosis. Rather, school personnel were under the impression that a medical diagnosis of Autism had been ruled out. Neither the Parent nor anybody with physical or legal custody of the Student had raised concerns about Autism. Nobody who worked with the Student in school suspected that the Student may have Autism. Rather, school personnel were under the impression that a medical diagnosis of Autism had been ruled out. See, e.g. NT 82-86, 99-100; S-22.

⁷ The CEFI, Conners 4, and SAED-3 solicit ratings from teachers and parents. The District solicited ratings from the Student's teacher and the person who was the Student's guardian at that time. Ratings from the Student's teacher are reported. Ratings from the Student's guardian are not reported. While there is some confounding evidence, I find that the Student's then-guardian did not return the rating scale. See, e.g. NT 80.

18. The 2023 RR included a compressive but succinct summary of the testing (both the results and interpretation of those results), and a clear statement of the Student's educational needs. S-22 at 40-41.
19. The 2023 RR included multiple recommendations to the IEP team for school-based program development, and several suggestions to help the Student at home as well. S-22 at 41-42.
20. At the time of the 2023 RR, neither the Parent nor anybody with physical or legal custody of the Student had raised concerns about Autism, and nobody who worked with the Student in school suspected that the Student may have Autism. Rather, school personnel were under the impression that a medical diagnosis of Autism had been ruled out. *See, e.g.* NT 85-86, 99-100.
21. The District issued the 2023 RR thirteen days after the third party completed the 2023 FBA. There is no reference to the 2023 FBA in the 2023 RR. S-14, S-22.
22. On May 11, 2023 (the same day as the 2023 RR), the District proposed an IEP for the Student (the 2023 IEP). The 2023 IEP placed the Student in a Life Skills support program at the supplementary level. P-1.
23. The 2023 IEP references and incorporates the 2023 RR. The 2023 IEP does not reference the 2023 FBA but includes behavioral accommodations and programming consistent with the 2023 FBA. P-1.
24. The 2023 IEP included curb-to-curb transportation, an individual Personal Care Assistant (PCA), group Speech and Language Therapy, and group Occupational Therapy. P-1.
25. The 2023 IEP had goals targeting self-regulation, social interactions, letter identification, sight word reading, single digit addition and subtraction, speech articulation, and motor integration. P-1.
26. The 2023 IEP included specific, targeted program modifications and specially designed instruction (SDI) that were directly related to the Student's goals and program. P-1.
27. While there is scant evidence on point, I find that the Student's then-guardian approved the 2023 IEP. *See, e.g.* P-1 at 1-2.

28. On May 22, 2023, the Student's IEP team revised the 2023 IEP's present education levels. P-1 at 2.
29. On October 30, 2023, the Student's IEP team reconvened. The record does not reveal the Parent's custody status at the time of that meeting, but the IEP indicates that the Parent attended the meeting. The team revised the present levels, related services, and SDI sections of the IEP. P-1 at 2.
30. On November 3, 2023, the Student's IEP team reconvened. Like the IEP team meeting four days prior, the record does not reveal the Parent's custody status at the time of that meeting, but the IEP indicates that the Parent attended the meeting. The team revised the IEP so that the Student's PCA would ride the bus with the Student. P-1 at 2.
31. On or about November 30, 2023, the Student was returned to the Parent. Educational decision-making rights were returned to the parent at this time as well. *Passim*.
32. On December 6, 2023, the Student's IEP team (including the Parent) reconvened. The team revised the Student's present education levels. P-1 at 1.
33. On January 12, 2024, the Student's IEP team (including the Parent) reconvened. The team revised the Student's present education levels. P-1 at 1.
34. On January 24, 2024, the Student's IEP team (including the Parent) reconvened. The team revised the Student's present education levels. P-1 at 1.
35. The IEP team meetings from October 2023 through January 2024 all concerned the Student's behaviors in school, many of which were troubling and some of which were dangerous, and the District increasing efforts to address those behaviors. P-1 at 9-15.
36. On February 21, 2024, the Parent requested a due process hearing by filing the due process complaint in ODR No. 29251-23-24.
37. On March 20, 2024, the District requested a due process hearing by filing the due process complaint in ODR No. 29409-23-24.

38. On April 5, 2024, the District issued a Notice of Recommended Educational Placement (NOREP) offering Extended School Year (ESY) services to the Student in the summer of 2024. The Parent approved that NOREP the next day. S-66.
39. On April 11, 2024, the District sought the Parent's consent to evaluate the Student again. S-67. The Student's behaviors in school had continued to escalate in frequency and intensity, causing District personnel to conclude that updated assessments are needed. *See, e.g.* NT 90. The Parent provided consent the next day. S-67.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses."⁸ One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review.⁹

I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the difference.

I do not assign equal weight or relevancy to all testimony. Significant portions of the Parent's testimony, while important and heartfelt, concern issues that go beyond the scope of my authority and are not related to the issues presented in this special education due process hearing.

Applicable Laws

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process

⁸ *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003).

⁹ *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

hearings, the burden of persuasion lies with the party seeking relief.¹⁰ The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise.¹¹ In this case, the District must prove that the 2023 RR was appropriate and the Parent must prove that the District violated the Student's right to a FAPE.

Evaluation Criteria

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations.¹²

Evaluations must "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" whether the child is a child with a disability and, if so, what must be provided through the child's IEP for the child to receive FAPE.¹³

Further, the evaluation must "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 must "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors."¹⁴

In addition, the District is obligated to ensure that assessments and other evaluation materials are (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.¹⁵

¹⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

¹¹ See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

¹² 20 U.S.C. § 1414(a)(2)(A).

¹³ 20 U.S.C. § 1414(b)(2)(A).

¹⁴ 20 U.S.C. § 1414(b)(2)(B)-(C).

¹⁵ 20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess “all areas of suspected disability”.¹⁶

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a “free appropriate public education” to all students who qualify for special education services.¹⁷ Local education agencies meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be “reasonably calculated” to enable the child to receive “meaningful educational benefits” in light of the student’s “intellectual potential.”¹⁸ Substantively, the IEP must be responsive to each child’s individual educational needs.¹⁹

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew F.* case was the Court’s first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id* at 3015.

Third Circuit consistently interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential.²⁰ In substance, the *Endrew F.* decision is no different.

A school district is not required to maximize a child’s opportunity; it must provide a basic floor of opportunity.²¹ However, the meaningful benefit standard required LEAs to provide more than “trivial” or “de minimis” benefit.²² It is well-established that an eligible student is not entitled to the

¹⁶ 20 U.S.C. § 1414(b)(3)(B).

¹⁷ 20 U.S.C. §1412.

¹⁸ *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).

¹⁹ 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

²⁰ See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003).

²¹ See, *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), cert. denied, 488 U.S. 925 (1988).

²² See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), cert. denied 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995).

best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement.²³ Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’”²⁴

In *Andrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²⁵ Appropriate progress, in turn, must be “appropriately ambitious in light of [the child’s] circumstances.”²⁶ In terms of academic progress, grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work.²⁷ Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student’s circumstances.

Discussion and Conclusions of Law

The 2023 RR was Appropriate

I begin with the District’s claim that the 2023 RR satisfied the IDEA’s procedural and substantive mandates. Walking through the IDEA’s requirements illustrates that those requirements were met.

The 2023 RR used “a variety of assessment tools and strategies.” Specifically, the 2023 RR included a third-party FBA, a summary of the Student’s current behaviors in school, a structured observation, teacher input, input from the Parent, significant information from prior testing, and new testing (targeted portions of the the NEPSY-II, the CEFI, the Conners 4, and the SAED-3) a new Occupational Therapy evaluation, and a new Speech and Language evaluation. The Student’s eligibility for special education was never in doubt, and these “tools and strategies” were all used to gain

²³ See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011).

²⁴ *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

²⁵ *Andrew F.*, 137 S. Ct. 988, 1001 (2017).

²⁶ *Id.* at 1000.

²⁷ *Id.*

information about what special education and related services the Student required to receive a FAPE.

Similarly, and for the same reasons, the 2023 RR did “not use any single measure or assessment as the sole criterion for determining ... an appropriate educational program for the child.” Multiple assessments were used to paint a comprehensive picture. Further, there is no dispute as to the technical soundness of any of the “instruments” selected by the District’s evaluators or the evaluators with whom the District contracted. Each of those instruments, both individually and as part of the 2023 RR as a whole, assessed cognitive, behavioral, physical, and developmental factors.

Most of the remaining factors listed at 20 U.S.C. § 1414(b)(3)(A) are not at issue in this case. No dispute was presented in either due process complaint or in the evidentiary record concerning racial or cultural discrimination in the assessments, the Student’s primary language, the assessment’s validity, or the evaluators who administered tests. In some instances, rating scales that are typically completed by multiple raters were completed by one rater. To the extent – if any – that this is a deviation from instructions provided by the rating scales’ producers, the deviation was explained and accounted for within the 2023 RR itself.

I find that the 2023 RR assessed all areas of suspected disability. A large amount of information was known about the Student prior to the 2023 RR. Despite this, the District and the Student’s foster guardian were seeing significant changes in the Student’s behavior and agreed that a new evaluation was necessary. The new evaluation not only considered what was already known, but was also comprehensive in its generation of new and updated data. The District’s broad, multidisciplinary approach to evaluating the Student’s behaviors and educational needs was appropriate.

The 2023 RR did not include new testing specific to Autism. At that time, the District had prior Autism testing but no actual knowledge that the Student may be a child with Autism. The record reveals no basis for the District to be charged with that knowledge at the time of the 2023 RR. I find that the District had no reason to suspect that the Student’s behaviors were related to Autism. While a new reevaluation is pending, I must determine if the 2023 RR satisfied IDEA mandates when it was conducted. On the record before me, the 2023 RR was appropriate when it was written.

No Evidence of a FAPE Violation

It is the Parent's burden to prove that the District violated the Student's right to a FAPE. The record of this hearing includes no evidence of a FAPE violation.

The legal standard for the analysis is described more fully above. In simpler terms, the Parent must prove what the Student's needs were and prove that the District's special education fell short of those needs. The only evidence in the record concerning the Student's needs is the 2023 RR (S-22) and the FBA (S-14). The only evidence in the record concerning the way in which the District programmed for the Student's needs is the 2023 IEP (P-1).

My analysis is constrained to the record before me.²⁸ As found above, the 2023 IEP flows directly from the 2023 RR and the 2023 FBA. Of equal importance, the 2023 IEP itself shows the District's responsiveness (in collaboration with the Parent) to the Student's changing needs after that IEP was put in place. That responsiveness primarily took the form of a series of IEP team meetings in which services were added and modified in response to the Student's increasing behaviors. When that proved ineffective, the District proposed another reevaluation. This is consistent with what the IDEA requires. There is no evidence in the record of this case that the 2023 IEP was not reasonably calculated to provide a FAPE at the time it was offered. There is no evidence that the District breached its ongoing obligation to provide a FAPE after the 2023 IEP was implemented. Rather, the record proves that the District acted in conformity with IDEA mandates in response to the Student's persistent behavioral challenges.

Summary

The issues presented in this case are a fraction of the total dispute between the parties. My analysis is constrained to those matters that are both raised by the parties and that fall within my jurisdiction. Specifically, I must determine if the 2023 RR complied with IDEA requirements, whether the 2023 IEP was appropriate when it was drafted, and whether the District otherwise violated the Student's right to a FAPE from the issuance of the 2023 IEP through the date of this decision.

²⁸ A staff "witness statement" concerning one of the Student's behavioral incidents from 2022 was entered into evidence as S-4. That document, the 2023 FBA (S-14), the 2023 RR (S-22), the 2023 IEP (P-1), the 2024 ESY NOREP (S-66), and the 2024 PTRE (S-67), are the only evidentiary documents in the record of this case. None of the testimony from any witness forms a preponderance of evidence that those documents do not paint an accurate picture of the Student's needs, or the special education that the District provided in response to those needs. This is the record from which I must resolve the issues before me.

I find that the 2023 RR satisfied all IDEA standards. The Parent, therefore, is not entitled to an IEE at the District's expense.

I find that the 2023 IEP was reasonably calculated to provide a FAPE at the time it was issued.

I find no evidence that the District's actions after the 2023 IEP was issued resulted in a violation of the Student's right to a FAPE. To the contrary, the record reveals that the District was responsive to the Student's needs and proposed a new reevaluation when that became necessary.

ORDER

And now, June 27, 2024, it is hereby **ORDERED** as follows:

1. The Reevaluation Report of May 11, 2023, was appropriate when it was written.
2. The District need not fund an Independent Educational Evaluation of the Student.
3. The District did not violate the Student's right to a Free Appropriate Public Education from May 11, 2023, through the date of this order.
4. Nothing herein alters the District's ongoing IDEA obligations to the Student.

It is **FURTHER ORDERED** that any claim raised by the parties and falling within my jurisdiction that is not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER