

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.*

**Pennsylvania Special Education Due Process Hearing Officer  
Final Decision and Order**

**Closed Hearing**

**ODR No. 29861-23-24**

**Child's Name:**

A.C.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parent:**

Pro Se

**Local Educational Agency:**

Philadelphia School District  
440 North Broad Street – Suite 313  
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**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

08/09/2024

## **Introduction**

This special education due process hearing concerns the educational rights of A.C. ("student"), a student who attends school in the Philadelphia School District ("District").<sup>1</sup> The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")<sup>2</sup> as a student with an intellectual disability and speech/language ("S&L") impairment.

The student's parents filed the complaint which led to these proceedings. The parents claim that the student's placement should continue in the upcoming 2024-2025 school year at the District school which the student attended in the 2023-2024 school year.

The District counters that its proposed change in placement, to a different school in the District, is the appropriate placement for the student in the upcoming school year.

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

## **Issue**

What is the appropriate placement for the student  
in the 2024-2025 school year?

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

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

## **Findings of Fact**

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

### [redacted] Programming

1. The student attended an [redacted] program for a number of years prior to enrolling in the District. (School District Exhibit ["S"]-1).
2. In January 2023, the individualized education program ("IEP") from the [redacted] program was revised. (S-1).
3. The January 2023 [redacted] IEP contained seven goals, including one in receptive language, two in expressive language, one in task-focus, two in task-persistence, and one in social skills. (S-1).
4. The student received regular education instruction, special education instruction, and S&L services in [redacted]. (S-1).
5. At the end of the 2023-2024 school year, the student transitioned from [redacted] at the District. The student attended a neighborhood school, the school the student would attend if not in special education. (S-1, S-21; Notes of Testimony ["NT"] at 18-78, 198-227).

### [redacted]/ 2023-2024 School Year

6. The District implemented the January 2023 [redacted] IEP pending a District evaluation process. (S-2, S-3, S-4; NT at 18-78, 114-178).

7. In November 2023, the District issued its evaluation report ("ER"), identifying the student as a student with an intellectual disability and S&L impairment. (S-6).
8. Following the issuance of the November 2023 ER, the District scheduled an IEP meeting in December 2023 to discuss the ER and the IEP. A District school psychologist could not attend the IEP meeting, and parents asked that the meeting be rescheduled. (S-15, S-16; NT at 114-178, 198-227).
9. The December 2023 IEP indicated that the student's behavior did not impede the student's learning or that of others. (S-16 at pages 6-7).
10. The December 2023 IEP contained eight goals, including one in S&L (articulation), one in following directions, one in task-persistence, one in focus/attention, one in letter-writing, one in item identification/matching, one in letter sounds, and one in social skills. (S-16 at pages 6, 25, 28, 31, 34, 38, 41, 42).
11. In addition to specialized instruction, the December 2023 IEP recommended 180 minutes per week of S&L instruction. (S-16 at page 45).
12. The District recommended that the student attend a life skills classroom in a different school. Neither the IEP nor the notice of recommended educational placement ("NOREP") which was prepared for the District's recommended placement did not identify the school

that the District was recommending. (S-16 at pages 49-50, 53-57; NT at 198-227).

13. The December 2023 IEP indicated that the student would spend 91% of the school day in special education. (S-16 at page 51).<sup>3</sup>
14. The student's most significant needs were grounded in expressive language, including articulation and intelligibility. The student also required support in following directions and staying on task. (S-6; NT at 18-78).
15. As a [redacted] student in the beginning of the [redacted] year, academic instruction was focused on foundational school-readiness and academic skills. (S-6; NT at 18-78).
16. Initially, the student's classroom teacher did not notice outsized needs for student support. As the school year progressed, however, the student required more intensive classroom support to stay on task and to avoid occasional disruptive classroom behavior. (NT at 18-78).
17. Eventually, a special education case manager provided a degree of behavior monitoring and support in the classroom. (NT at 114-178).

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<sup>3</sup> The placement calculation in the December 2023 IEP indicates that the student would be in regular education for 91% of the 399 minutes in the school day, but the classification of the placement, a specialized life skills placement, indicates that the student would be in full-time special education (greater than 80% of the student's schooling). This is a production error in the IEP, as the entirety of the record indicates that the student will be in special education for 363 minutes per day, not 28 minutes per day. (S-16 at pages 49, 51).

18. The student received S&L services, based on the January 2023 [redacted] IEP, throughout the [redacted] year. (S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14).
19. The December 2023 IEP meeting was rescheduled to April 2024. Parents did not attend the April 2024 IEP meeting. (S-17, S-18; NT at 114-178).
20. The IEP meeting was rescheduled to May 2024, and the IEP was re-dated. (S-19, S-26).
21. The May 2024 IEP is largely identical to the December 2023 IEP. (S-16, S-26).
22. The May 2024 IEP repeated the special consideration that the student's behavior did not impede the student's learning or that of others. (S-26 at pages 6-7, 21-29).
23. Some special education was revised in the May 2024 IEP; the S&L programming remained the same. (S-26 at pages 30-31).
24. The placement recommendation in the May 2024 IEP was the same as in the December 2023 IEP—the student would be special education for 91% of the school day, in a life skills classroom at a school which was not identified in the IEP or accompanying NOREP. (S-26 at pages 35-41).<sup>4</sup>

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<sup>4</sup> The District proposed an IEP on June 24, 2024. (S-29). Parents' complaint was filed with the Office for Dispute Resolution on June 10<sup>th</sup> and was received by the District on June 11<sup>th</sup>. Thus, the operative IEP, last proposed prior to the filing of parents' complaint, is the May 2024 IEP. (S-26).

25. On literacy benchmark testing throughout the school year, the student made slight progress. Progress was relatively flat until the final administration in spring 2024, when the student's progress improved markedly. Still, the student's achievement level across all administrations peaked at the 4<sup>th</sup> percentile. (S-24).
26. On mathematics benchmark testing throughout the school year, the student regressed. The student's achievement level in the fall administration was at the 20<sup>th</sup> percentile, declining to the 1<sup>st</sup> percentile in the spring administration. (S-25).
27. Throughout the [redacted] year, continuing into the summer months when the hearing was concluded, the student received tutoring from a community-base academic support program. (NT at 89-108).
28. The student's tutor was a long-time special education teacher in a large urban school system. The tutor had relocated and was supplementing her income through tutoring while working in the District as a full-time special education teacher. (NT at 89-108).
29. The tutor testified that she worked one-on-one with the student in two tutoring sessions weekly, for one hour in each session. (NT at 89-108).
30. The tutor testified that the student had significant expressive language needs, but she did not observe any receptive language needs. (NT at 89-108).

31. Behaviorally, the tutor testified that the student exhibited consistent lack of focus and distractibility, although the student was easily re-directed with prompting. (NT at 89-108).
32. The tutor testified that the student made academic progress: The student knew the alphabet, was working on letter sounds, CVC words, and sight words. The student could count to 20, add with manipulatives to 20, and subtract with manipulatives to 10. (NT at 89-108).
33. The tutor testified that the student needed support in handwriting. (NT at 89-108).
34. In her opinion, the tutor felt that the student needed S&L therapy, occupational therapy ("OT") for handwriting, and a focus on academic programming with support for attention/focus/distractibility. (NT at 89-108).
35. The student's father testified, with particular emphasis (given his professional background and [redacted]), that a functional behavior assessment ("FBA") should be performed to see how the student's task-approach skills and occasional acting-out behavior might be addressed. (NT at 89-108).



## **Credibility of Witnesses**

All witnesses testified credibly. The witness whose testimony was accorded the most weight was the private tutor who is a deeply experienced special education teacher who worked over directly with the student. (NT at 89-108).

## **Legal Framework**

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

A necessary aspect of the provision of FAPE requires that the placement of a student with a disability take into account the least restrictive environment ("LRE") for a student. Educating a student in the LRE requires that the placement of a student with disabilities be supported, to the

maximum extent appropriate, in an educational setting as close as possible to regular education, especially affording exposure to non-disabled peers. (34 C.F.R. §300.114(a)(2); 22 PA Code §14.102(a)(2)(xii); Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1993)).

## **Discussion & Conclusions**

Here, the student's placement should remain at the school which the student attended in the 2023-2024 school year. There are a number of reasons for this determination.

First, the student has yet to receive a fully supported program in the current school. In transitioning from [redacted], the comparable-services and re-evaluation dynamic took place in the fall of 2024. By December 2023, the student's multi-disciplinary team/IEP team were ready to consider the student's programming. At first, the teams were deficient from the lack of a school psychologist (a mandatory attendee, given the student's identification as a student with an intellectual disability; 22 PA Code §14.123(a)). Then, upon rescheduling, the parents did not attend. The result is that the student completed [redacted] under a comparable-services IEP, not an IEP geared to school-aged programming based on the November 2023 IEP. Implementing such programming, especially at the outset of the educational journey for this young student, is necessary to gauge the student's potential progress in school-aged programming.

Second, the May 2024 IEP itself lacks academic goals. The District is not faulted here as the exact foundational academic needs of the student are still coming into view. But it is clear from the achievement testing in the November 2023 ER, the benchmark testing throughout the year, and the private tutor's results that the student has the ability for academic learning. Goals in these areas need to be added to the IEP and will be made part of the order.

Third, it is clear that the student's behavior needs, specifically attention, focus, task-approach, and task-persistence, are the most significant impediments to the student's learning. The May 2024 IEP must be revised to indicate that the student engages in behaviors that impede the student's learning and the learning of others. As a result of this determination, a FBA and positive behavior support plan must be developed.<sup>5</sup>

Fourth and finally, a full-time life skills placement for nearly 100% of the school day in a specialized classroom is overly restrictive, at least at this point in the student's educational journey. Taken in its entirety, LRE considerations weigh in favor of a placement with supports for attention and task, both in regular education settings with regular-education peers, as well

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<sup>5</sup> Based on the OT recommendations of the private tutor, the District will also be directed to undertake an OT evaluation for the student's handwriting.

as special education settings. All of this can be accomplished in the current placement.

In sum, then, the student will remain in the school which the student attended in the 2023-2024 school year. The IEP team will be directed to undertake certain revisions of the student's IEP, as well as an OT evaluation.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student's placement shall remain in the school which the student attended in the 2023-2024 school year.

On or before September 9, 2024, the student's IEP team shall meet to revise the student's May 2024 IEP to add academic goals in reading and mathematics. In crafting these goals, the District shall invite to the IEP meeting the private tutor—an experienced special education teacher— who works with the student who works with the student, for her input about appropriate goals in these areas.

On or before September 9, 2024, the IEP team shall revise the student's IEP to accurately reflect its determinations for specific programming, including the specially designed instruction and program modifications, related services, and supports for school personnel. The IEP team shall also revise the placement indications and placement-data calculation. This provision of the order is not exclusive or exhaustive; the IEP team may revise any portion of the student's IEP as it deems any revision to be necessary.

On or before September 30, 2024, the District shall have undertaken a functional behavior assessment and developed a positive behavior support plan for inclusion in the IEP.

On or before August 16, 2024, the services of a 1:1 paraprofessional shall be added to the student's IEP as a support for on-task behavior and redirection. The District shall have the 1:1 paraprofessional in place for the student on or before September 9, 2024.

This order shall serve as consent for the District to undertake an occupational therapy evaluation for potential needs in handwriting and fine-motor skills. In accord with 22 PA Code §14.123(b), the 60 calendar-days timeline for issuance of the report shall begin on the first day of student attendance for the 2024-2025 school year.

Nothing in this order shall limit the student's IEP team to amend its provisions, provided the amendments are in writing and indicate agreement between the parties as to the amendments.

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

*s/ Michael J. McElligott, Esquire*

Michael J. McElligott, Esquire  
Special Education Hearing Officer

08/09/2024