

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code §16.63 regarding closed hearings.

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

CLOSED HEARING

ODR File Number:

25146-21-22

Child's Name:

L.T.

Date of Birth:

[redacted]

Pro Se Parent:

[redacted]

Local Education Agency:

Springfield School District
111 W. Leamy Avenue
Springfield, PA 19064

Counsel for the LEA

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331 Butler Avenue
New Britain, PA 18901

Hearing Officer:

James Gerl, CHO

Date of Decision:

December 6, 2021

BACKGROUND

The parent filed a due process complaint alleging violations of IDEA [redacted]. I find in favor of the school district with regard to all issues presented by this complaint.

PROCEDURAL HISTORY

The hearing was completed in one efficient virtual session. The parties are commended for agreeing to a large number of stipulations of fact which significantly reduced the amount of time necessary for the hearing. Six witnesses testified at the hearing. Parent exhibits P-1 through P-23 were admitted into evidence. School district Exhibits S-1 through S-28 were admitted into evidence.

After the hearing, both parties presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

The due process complaint, as clarified by the parent at the prehearing conference convened herein, raised the following issues:

1. **Whether the parent has proven that the school district failed to implement the student's IEP?**

2. **Whether the parent has proven that the school district has denied a free and appropriate public education to the student [redacted].**

3. **Whether the parent has proven that the school district denied a free and appropriate public education to the student by failing to appropriately consider the student's disability in denying [redacted]?**

FINDINGS OF FACT

Based upon the parties' stipulations of fact, as agreed to by the parties, I make the following findings of fact.

1. The student and the student's mother are residents of the school district.

2. The school district is a public school district in the Commonwealth of Pennsylvania.

3. The student's date of birth is [redacted.]

4. The school district first identified the student as eligible for special education services in a March 28, 2019 Evaluation Report ("ER"). The ER identified the student as a child eligible for special education services

under the categories of Other Health Impairment and Speech/Language Impairment.

5. The student has been receiving special education from the district through an April 24, 2019 Individualized Education Program (“IEP”) after the district received the parent’s approval of a Notice of Recommended Educational Placement/ Prior Written Notice (“NOREP/PWN”) that proposed the initial provision of special education services.

6. [redacted]

7. [redacted]

8. During the 2020-2021 school term, the student was in the [redacted] grade. The IEP team developed an IEP on April 21, 2020, and that IEP was in effect for the student entering the 2020-2021 school term.

9. During the [redacted] grade, the student was virtually educated by a virtual academy offered through the school district for the entirety of the school year.

10. The District began the 2020-2021 school term on “all-virtual” model.

11. As of October 5, 2020, the District began offering a “hybrid” model of instruction that combined in-person and virtual instruction in addition to the virtual academy model.

12. In March 2021, the District began offering four days per week of in-person instruction in addition to the virtual academy option.

13. Parent served as the student’s learning coach during the student’s time in the virtual academy during the 2020-2021 school term. While attending the virtual academy, the student also received supplemental

virtual services via Zoom from district personnel [redacted,] social skills instruction and English language arts.

14. [redacted]

15. Parent contacted a school counselor on December 14, 2020, concerning math progress and future planning for the student and was told that the IEP team would reach out, but did not receive such contact until December 23, 2020, when the parent followed up.

16. A meeting was convened in January 2021 to discuss Parent's concern regarding the student's math skills, [redacted]. At the January 2021 meeting, the District indicated that it would convene the student's IEP team to discuss the parent's concerns.

17. The IEP team was convened on February 8, 2021 to consider the parent's request [redacted]. At the February 8, 2021 IEP meeting, the District recommended that the student be made available in person for assessment of the student's mathematics skills before any final determination was made [redacted].

18. On February 11, 2021, the District issued a NOREP/PWN to Parent, [redacted]

19. On March 2, 2021, the District issued another NOREP/PWN to reiterate the recommendations of the February 11, 2021 NOREP/PWN and to respond to parental concerns raised by email.

20. On March 18, 2021, and March 25, 2021, the District administered the [redacted] end-of-year math assessment to the student from the Pearson Envisions Math 2.0 Curriculum.

21. Parent attended both the March 18, 2021, and March 25, 2021 sessions at which the District administered the [redacted] end-of-year math assessment to the student.

22. An annual IEP team meeting for the student was convened on April 15, 2021.

23. At the April 15, 2021 IEP meeting, the team discussed the results of the [redacted] end-of-year math assessment.

24. At the April 15, 2021 IEP meeting, the team agreed to administer the Spring Measure of Academic Progress ("MAP") assessment to the student in both mathematics and reading.

25. [redacted].

26. On May 5, 2021 and May 16, 2021, the District administered the MAP Assessments to the student.

27. The IEP team convened on June 4, 2021, after completion of the MAP Assessments, to further discuss the parent's [redacted] request. [redacted]

28. In a NOREP/PWN dated June 10, 2021, [redacted].

29. The student's mother indicated disagreement with the June 10, 2021 NOREP/PWN on the same date and indicated the parent's intention to request a due process hearing.

30. [redacted].

Based upon the evidence in the record compiled at the due process hearing, I make the following findings of fact.¹

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; and "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is hereafter designated as "NT___").

31. The student is very social and very artistic. The student plays three musical instruments: [redacted]. (NT 83)

32. The March 28, 2019 evaluation report for the student included a speech/language component, which resulted in a determination that the student had a moderate fluency disorder and showed receptive and expressive language scores to be in the average and above average ranges on three speech language assessments: the Receptive One-Word Picture Vocabulary Test (RQWPVT); the Expressive One-Word Picture Vocabulary Test (EOWPVT) and the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5). (S-2; NT 92)

33. The Wechsler Individual Achievement Test (WIAT-III) assessment conducted in the school district's evaluation of the student resulted in reading scores in the average range which is not typical of students who are suspected of having reading disabilities. (S-2; NT 116)

34. [redacted] (S-7; NT 125 – 126)

35. Mathematics is incorporated into the [redacted] services provided to the student by the school district's special education teacher. (NT 250 – 253, 215)

36. Math tasks can cause frustration for the student and that frustration can sometimes be based upon straight computation. (NT 251 – 253, 261 – 264)

37. The student's mathematics skills are comparable to the student's peers [redacted] and are sometimes slightly below those of the peers, depending upon the particular activity. (NT 253)

38. The [redacted] end of the year math assessment is administered to [redacted] students at the end of the school year. The end of the year

math assessment determines how well students have mastered grade-level standards. (NT 180 – 181)

39. The first session of the [redacted] end of year math assessment for the student was given after school to accommodate the parent's desires to not have other children in the building. The assessment occurred in the library and the student received the following accommodations: the student was offered the student's choice of seating; the student received an explanation of the directions; the student was given scrap paper; the student was permitted to have a drink; the student received periodic check-ins; and the student was offered an opportunity to stop for the day – which the student accepted. (NT 181 – 183)

40. The second session of the administration of the [redacted] end of the year math assessment took place after school hours. The teacher administering the test provided the following accommodations: reviewed test-taking strategies with the student before the assessment; reminded the student that the student could ask for anything to be read to the student; reminded the student that the student could take breaks during the assessment; checked in on the student periodically during the assessment to see if the student needed a break; and provided the student with scrap paper. The student took a movement break and was permitted to use a scooter. The student was able to be redirected back to the assessment thereafter. The student asked to have two questions read aloud and the teacher administering the test read the questions aloud. (NT - 222 – 223, 229 - 230)

41. The student's score on the end of the year [redacted] math assessment was 16 of 36 points, or 48%. (P - 15, S – 20; NT 184)

42. The [redacted] end of the year math assessment included word problems but also included questions that involved straight calculation skills without requiring written explanations. (NT 272 – 273)

43. [redacted] (NT 256 – 258)

44. The MAP is a computer-based assessment used for all students to measure growth from the beginning of the year to the end of the year. (NT 186)

45. The student scored 224 (95th percentile) on the May 5 and 16, 2021 math MAP. Twelve [redacted] students in the school district scored higher than the student on the math MAP. (S-25, S-28)

46. The student scored 213 (83rd percentile) on the May 5 and 16, 2021 reading MAP. (S-25)

47. The assessments indicate that the student would have been appropriately placed in the [redacted] general education [redacted] math class. [redacted]. (NT 187 – 188, 257)

48. The student's IEPs include numerous accommodations, as well as goals for speech/stuttering awareness, goals with regard to social skills, staying focused and maintaining attention, speech support/stuttering awareness, fluency shaping, [redacted]. The student's IEPs also include the following related services: social skills group, 30 minutes per week; speech language therapy group, 30 x 30-minute sessions per year; [redacted], two 60-minute sessions per 6-day cycle and occupational therapy consult, one 15-minute session per trimester. The student has made progress toward the student's IEP goals. (S-17; S – 22; P-18; P-19)

49. The student's current IEP does not contain a provision that test or assessment questions should be read aloud to the student. (S-22; NT 200-204)

50. The student's IEPs includes social skills instruction because the student has social skills needs which at times manifest in the form of concerns with self-advocacy and perspective-taking. (S-17; S – 22; NT 231)

51. At the February 17, 2021 IEP team meeting, the school district staff expressed that because of the student's social skills needs, it would be more appropriate for the student to remain in a grade level class for mathematics. The special education teacher stated that the student would not be able to express the student's needs appropriately in a class consisting of [older students]. The team considered the student's needs in making the decision [redacted]. (S-17; NT 219 – 220, 236)

52. [redacted] (NT 276 – 285)

53. The student does not have a specific learning disability in reading. (Record evidence as a whole)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act (hereafter sometimes referred to as "IDEA") 20 U.S.C. § 1400, et seq.: an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate

public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to make appropriate progress in light of the child's circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. ____, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

3. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*.

4. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

5. To prevail on a claim of failure to implement an IEP, the parent must show that the school district failed to implement substantial or material provisions of the IEP. Melissa S by Karen S v. School District of Pittsburgh, 106 LRP 34297 (3d Cir. 2006); MP by VC v Parkland School District, 79

IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F.3d 770, 47 IDELR 182 (9th Cir. 2007).

6. [redacted]

7. [redacted]

8. [redacted]

9. [redacted]

10. The school district implemented the material provisions of the student's IEP.

11. The school district's decision [redacted] did not deny FAPE to the student [redacted].

12. The school district did not fail to properly consider the student's disability in making the determination [redacted].

DISCUSSION

1. Whether the parent has proven that the school district failed to implement the student's IEP?

At the prehearing conference convened prior to the hearing, the parent identified one of the issues in this case as whether the school district failed to implement provisions of the student's IEP, particularly with regard to the administration of assessments. The parent does not address this issue in the parent's post-hearing brief and, accordingly, the parent has waived the issue and the parent's contention is rejected.

Even assuming *arguendo* that the issue has not been waived, however, the record evidence does not support the parent's contention. At the prehearing conference, the parent alleged that the school district had

failed to implement the student's IEP by not reading aloud to the student all assessment questions. However, the student's IEP contains no provision that test or assessment questions be read aloud. The undisputed evidence in the record shows that the student's IEP was implemented by the school district in all material respects.

It is concluded that the parent has not proven that the school district failed to implement material provisions of the student's IEP.

2. Whether the parent has proven that the school district decision [redacted] denied a free and appropriate public education to the student?

The parent contends that the school district denied a free and appropriate public education to the student [redacted]. The school district denies that FAPE was denied.

The school district's procedure [redacted] is to administer the end of the year assessment to the student. In this case, the student scored 16 of 36, or approximately 48%, on the [redacted] end of the year math assessment.

In addition, the student scored 224 on the math MAP assessment. This score indicates that the student is a strong math student, but the score was lower than those of twelve other [peers] on that test. The team considered the MAP assessment and the end of the year assessment. The school district appropriately determined that the student's math skills were on par with the student's [redacted] classmates. [redacted]

Over the past five school years using similar procedures, [redacted].

The team's decision [redacted] also took into account the student's disability, in particular the student's social skills deficits as stated in the student's IEP. The student's IEPs provide for social skills instruction, particularly with regard to self-advocacy and perspective-taking. District staff brought up the student's social skills issues at the team meeting [redacted]. The special education teacher stated that the student wouldn't be able to express the student's needs appropriately in a class consisting of [redacted] graders. [Redacted.] The team properly considered the individual needs of the student [redacted].

The record evidence also reveals that the student was making meaningful progress under the student's IEPs. The district is not required to provide the student with the education viewed by the parent as an ideal education. [Redacted.] The student's IEPs provided a free appropriate public education.

The school district made a reasonable and appropriate determination based upon the student's individual ability and unique needs [redacted]. The placement [redacted] was appropriate for this student.

The exhibits produced by the parent include many documents that contain a large amount of data and articles that were not explained or interpreted by any expert or other witness at the hearing. The unexplained documents and data are, in many cases, difficult to interpret or decipher. The articles state opinions of unknown individuals who were not subjected to cross examination. Accordingly, such articles and data are accorded very little weight. In addition, the parent's post-hearing brief contains numerous references to a number of documents and websites and that were not offered into evidence at the hearing. Only the exhibits and testimony contained in the evidentiary record were considered in making this decision.

The parent's complaint and the parent's post-hearing brief both make reference to requested relief that includes a placement of the student at a particular private school [redacted]. It should be noted, however, that the parent offered no evidence at the hearing about the private school. Thus, even if the parent had proven a violation of IDEA [redacted], a placement or reimbursement for placement at a private school, such as the one sought by the parent, would have to be denied because there has been no showing that the private school is an appropriate placement for the student. Such evidence, and any other evidence about the private school, is lacking in this record.

The testimony of the school district staff was more credible and persuasive than the testimony of the parent and the parent's witnesses concerning this issue because of the demeanor of the witnesses, as well as the following factors: the student's parent changed her testimony with regard to the motive of the school district [redacted]. At first, the parent testified that the school district was trying to harm the student by intentionally setting the student up for failure. On cross-examination, however, the parent changed this testimony to claim that the school district's failure to [redacted] was due to "laziness" or administrative convenience. This contradiction impairs the credibility of the parent's testimony. In addition, the parent testified that the student had already mastered the [redacted] math curriculum. This testimony, however, was contradicted by the credible and persuasive testimony of the school district's [redacted] teacher that when investigating this claim by the parent, the staff of the virtual program that the student had been attending, as well as the district office, stated that the student at that time was only about 50% done with the current year's math program.

It is concluded that the parent has not proven that the refusal of the school district [redacted] denied the student a free and appropriate public education under IDEA. [redacted]

3. Whether the parent has proven that the school district denied a free and appropriate education to the student by failing to properly consider the student's disability [redacted]?

The parent contends that the school district failed to consider the student's disability [redacted]. The parent's contention in this regard is not supported by the record evidence.

The student's IEP included social skills instruction, particularly in the areas of self-advocacy and perspective-taking. The school district staff on the student's team raised and discussed the student's social skills needs [redacted]. The student's social skills issues were a factor in determining that the student was not an appropriate candidate [redacted]. Accordingly, the record evidence is clear that the school district did consider the student's disability-related needs [redacted].

Much of the evidence presented by the parent and a large portion of the parent's 20-page post-hearing brief relates to the parent's contention that the student has a specific learning disability in reading. This issue was not raised in the prehearing conference by the parent as one of the issues in the case. Because both parties have fully briefed the issue, and because the parent is not represented by legal counsel in this matter, however, the issue of an undiagnosed reading disability is considered herein.

The evidence in the record does not support the parent's contention that the student has a learning disability in reading. It should be noted that the March 28, 2019 evaluation of the student conducted by the school district found that the student had a moderate fluency disorder with regard to a stuttering issue, but also revealed that the student's reading scores were in the average range.

Moreover, the evidence reveals that any language difficulties that the student may have had did not impact the student's performance on the end of the year math assessment or any other math assessment administered by the school district. With regard to the end of the year [redacted] math assessment, the evidence revealed that the student was provided a number of accommodations by the persons administering the assessment. Among the accommodations provided to the student were the ability to have questions read to the student if the student so requested. The student did request that two of the questions on the exam be read to the student, and they were read to the student. It is clear that the school district appropriately took the student's disability into account [redacted].

In the parent's post-hearing brief, the parent points to testimony by the former district school psychologist that various discrepancies in the student's reading scores could indicate a disability. On cross-examination, however, the former school psychologist conceded that one does not typically see the types of scores that the student had on assessments where a student has a reading disability. The school psychologist testified further that the school psychologist had no suspicion that the student had a learning disability in reading.

Importantly, there is no evidence in the record that the student has ever been diagnosed with a specific learning disability in reading. There are

no evaluations that conclude that the student has a learning disability. There is no professional who testified to the existence of a learning disability. The evidence in the record does not support the parent's conclusion that the student has a specific learning disability in reading.

The testimony of the school district staff was more credible and persuasive than the testimony of the parent concerning this issue because of the demeanor of the witnesses, as well as the factors discussed in the previous section.

It is concluded that the parent has not proven that the school district denied a free appropriate public education to the student by failing to properly consider the student's disability [redacted]. [Redacted.]

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** that all relief requested in the due process complaint is hereby denied. The complaint is dismissed.

IT IS SO ORDERED.

ENTERED: December 6, 2021

James Gerl

James Gerl, CHO
Hearing Officer