

*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. 29148-23-24**

**Child's Name:**

Q.H.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Local Educational Agency:**

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**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

07/23/2024

## Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends school in the Scranton 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 health impairments (anxiety and inattention) and speech/language ("S&L") impairment.

The student's mother filed the complaint which led to these proceedings. The parent claims that the District failed in its child-find duty to identify the student earlier than it did, in January 2024, under the terms of the IDEA. The parent seeks compensatory education.

The District counters that at all times it met its obligations to the student under IDEA. Its primary defense to the parent's claims is that the student's excessive absences did not place it in a position to identify or to program for the student's needs.

For reasons set forth below, I find in favor of the District on the child-find issue, although in the order there will be a directive to the IEP team.

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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").

## **Issues**

1. Did the District fail to timely identify the student for services under IDEA?
2. If not, is the student entitled to compensatory education?

## **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.

### 2021-2022 / [redacted]

1. In August 2021, the student was enrolled in [redacted] in the District. (School District Exhibit ["S"]-3).
2. In [redacted], the student was absent without excuse for 83 of 180 instructional days. (Parent Exhibit ["P"]-4 at pages 1-2; S-34 at pages 1-2).
3. The student was not present for curriculum-based benchmark testing in reading for the fall administration. (P-11 at 4-6; S-33 at page 1).
4. On curriculum-based testing in reading for the winter administration, the student scored at the 3<sup>rd</sup> percentile overall, with subs-score percentile scores of 8<sup>th</sup>, 4<sup>th</sup>, 2<sup>nd</sup>, and 6<sup>th</sup> (respectively) in first sound fluency, letter naming fluency, phoneme segmentation fluency, and nonsense word fluency. (P-11 at pages 4-6; S-33 at page 1).

5. The student was not present for curriculum-based benchmark testing in reading for the spring administration. (P-11 at 4-6; S-33 at page 1).
6. The student has S&L articulation needs, testified to credibly by the student's grandmother. The [redacted] teacher testified that she noted no S&L articulation needs. (Notes of Testimony ["NT"] at 72-93, 513-549).
7. Throughout the student's [redacted] year, the District provided the required truancy documentation and student attendance improvement plans. (S-5, S-6, S-7, S-8, S-9, S-10).
8. The student ended [redacted] below-basic, or was not evaluated, in almost every category of reading skills throughout [redacted]. (P-4 at pages 1-2; S-34 at pages 1-2).
9. The student ended [redacted] below-basic, or was not evaluated, in almost every category of mathematics skills throughout [redacted]. (P-4 at pages 1-2; S-34 at pages 1-2).
10. The student's mother requested that the student repeat [redacted]. The request was denied and the student was promoted to [redacted] grade, including support for that position from the student's [redacted] teacher. (S-31; NT at 50-72, 93-169, 513-549).
11. The District policy for grade-promotion in elementary grades indicates the following: "The classroom teacher and the principal will decide whether a student is promoted or retained. They will use

student performance data, report card grades, and reading levels to inform the decision.” (P-9 at page 19).

12. The building principal and [redacted] teacher did not consult or utilize this data/performance-driven criteria to make the decision to promote the student to [redacted] grade. (NT at 93-169, 513-549).

### 2022-2023 / [redacted] Grade

13. In [redacted] grade, the student was absent without excuse for at least 50 of 180 instructional days. (P-4 at pages 3-6; S-34 at pages 3-4).<sup>3</sup>
14. On curriculum-based testing in reading for the fall administration, the student scored zero across all assessments (phoneme segmentation fluency, nonsense word fluency – letter sounds, and nonsense word fluency – whole words read). (P-11 at pages 1-2; S-33 at pages 2-3).

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<sup>3</sup> The attendance records for [redacted] grade come from the student’s [redacted] grade report card, although there are apparently two versions of this report card. One report card records 50 days of unexcused absence and contains no teacher comments at its end (P-4 at pages 5-6, S-34 at pages 3-4). A second report card records 52 days of unexcused absence and contains teacher comments for the [redacted] grade year at its end. (P-4 at pages 3-4). Attendance records for [redacted] grade were also included in the record (S-35 at pages 1-5), but these appear to be unreliable. The records are not in chronological order and comparison of certain date-ranges across the pages indicates that days of unexcused absence are not consistently recorded. For example, on S-35 at pages 4-5, unexcused absences are recorded on March 15<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, and 27<sup>th</sup>. These dates are entirely missing from the attendance records on S-35 at page 2. Likewise, unexcused absences are recorded on March 1<sup>st</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup>, and 14<sup>th</sup> on S-35 at pages 1-2, but these dates are entirely missing from S-35 at page 4.

15. On the curriculum-based testing in reading for the fall administration, the reading composite score “is a combination of multiple reading scores and provides the best overall estimate of early literacy skills and reading proficiency”. The benchmark goal for proficiency in the fall of [redacted] grade is a score of 113. The student’s score was 2. (P-11 at page 3; S-33 at page 4).
16. In October 2022, the student’s mother again requested that the student be sent back to [redacted] to repeat the [redacted] year. (P-15; NT at 50-72, 93-169, 169-213).
17. The principal and [redacted] grade teacher consulted, briefly, and decided that the student should continue in [redacted] grade. They did not review the student’s reading scores or grades. (NT at 93-169, 169-213).
18. On curriculum-based testing in reading for the winter administration, the student scored at the 5<sup>th</sup> percentile on nonsense word fluency – letter sounds, and scored zero on nonsense word fluency – whole words read. (P-11 at page 2; S-33 at page 3).
19. On the curriculum-based testing in reading for the winter administration, the benchmark reading composite score for proficiency in the winter of [redacted] grade, providing the best measure of early literacy skills and reading proficiency, is a score of 130. The student’s score was 8. (P-11 at page 3; S-33 at page 4).

20. On curriculum-based testing in reading for the spring administration, the student scored at the 6<sup>th</sup> percentile on nonsense word fluency – letter sounds, and scored zero on nonsense word fluency – whole words read. (P-11 at page 2; S-33 at page 3).
21. On the curriculum-based testing in reading for the spring administration, the benchmark reading composite score for proficiency in the spring of [redacted] grade, providing the best measure of early literacy skills and reading proficiency, is a score of 155. The student's score was zero. (P-11 at page 3; S-33 at page 4).
22. The [redacted] grade teachers who worked with the student testified that they noted no S&L articulation needs. (NT at 169-213, 213-247).
23. Throughout [redacted] grade, the District provided the required truancy documentation and student attendance improvement plans. (S-11, S-12, S-13, S-14, S-15).
24. The truancy proceedings in [redacted] grade ultimately included criminal referral to the district magistrate in February 2023. (S-16, S-17, S-18, S-19, S-20).
25. The student ended [redacted] below-basic in almost every category of reading skills throughout [redacted] grade. The student was graded as 'improving' every quarter in fluency. The teacher noted

that the student's excessive absenteeism impacted the student's progress. (P-4 at pages 3-4; S-34 at pages 3-4).

26. The student ended [redacted] below-basic, or was not evaluated, in every category of mathematics skills throughout [redacted] grade. (P-4 at pages 3-4; S-34 at pages 3-4).
27. At the end of [redacted] grade, the student had not mastered the alphabet, could not identify upper-case and lower-case records, had no concept of phonics, or, unsurprisingly, no reading fluency. (NT at 169-213, 213-247).
28. The District promoted the student to [redacted] grade.

#### 2023-2024 / [redacted] Grade

29. In [redacted] grade, the student was absent without excuse for 41 of 180 instructional days. (P-4 at pages 11-12; S-34 at pages 5-6).
30. On curriculum-based testing in reading for the fall administration, the student could generate only scores of zero in nonsense word fluency – whole words read, oral reading fluency – word count, and oral reading fluency - accuracy. The student's score for nonsense word fluency – correct letter sounds was six (the student successfully pronounced six letter sounds across all words in one



minute when presented with a random assortment of VC or CVC nonsense words). (P-11 at page 7; S-33 at page 5).<sup>4</sup>

31. On the curriculum-based testing in reading for the fall administration, the benchmark reading composite score for proficiency in the fall of [redacted] grade was not reported by the District. The student's score was zero. (P-11 at page 7; S-33 at page 5).
32. In November 2023, the student's mother requested an evaluation for special education eligibility. (P-2; S-23, S-25).
33. On curriculum-based testing in reading for the winter administration, the student's scores generally improved. The student scored one on the test of nonsense word fluency – whole words read; scored eight on oral reading fluency – word count; and scored 44% on oral reading fluency - accuracy. The student's score for nonsense word fluency – correct letter sounds improved from six to 37. (P-11 at page 7; S-33 at page 5).
34. On the curriculum-based testing in reading for the winter administration, the benchmark reading composite score for proficiency in the winter of [redacted] grade was not reported by the District. The student's score was eight. (P-11 at page 7; S-33 at page 5).

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<sup>4</sup> The reading benchmark scores for the student's [redacted] grade year are reported at P-11 at pages 7-9, but these three pages are duplicates. Therefore, only P-11 at page 7 will be cited.

35. In January 2024, the District issued its evaluation report ("ER").  
(P-2; S-25).<sup>5</sup>

36. In the January 2024 ER, the student's [redacted] grade teacher reported the following regarding the student's achievement in reading:

"(The student) remains unfamiliar with several alphabet letters and their sounds....struggles to put sounds together to form three letter CVC words....identifies only a handful of sight words...can not recall most of the ([redacted] and [redacted] grade) sight words I have introduced this year....is not able to read fluently. (The student) is cooperative during small group instruction but struggles to complete the work provided which is on the [redacted] grade level." (S-25 at page 2).

37. In the January 2024 ER, the student's [redacted] grade teacher reported the following regarding the student's achievement in writing:

"(The student) does not write letters using the correct size, shape or spacing....does not understand the concept of letters touching lines and capital versus lowercase letters and when to use them....can not write a simple sentence with correct capitalization and punctuation....does not

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<sup>5</sup> P-2 and S-25 are identical exhibits in that both contain the material elements of the January 2024 ER. S-25 will be cited.

remember the letters at times. ie -when a word is spelled for (the student) and (the student) has to write it (the student) forgets letters.” (S-25 at page 2).

38. In the January 2024 ER, the student’s [redacted] grade teacher reported the following regarding the student’s achievement in mathematics:

“(The student) struggles to identify numbers to 100. When asked to write larger numbers or find page numbers (the student) struggles. (The student) has difficulty understanding simple addition and subtraction. (The student) can not identify coins or count the money as well as count by 5 or 10. Word problems present great difficulty as (the student) is unable to read the problem and then can not decide on whether to add or subtract. Basic skills have not been learned.” (S-25 at page 2).

39. The January 2024 ER included behavioral rating scales. The student’s [redacted] grade teacher rated the student as clinically significant in the anxiety, atypicality, withdrawal and functional communications scales, and the school problems composite. The teacher rated the student as elevated/at-risk in the attention problems, leadership, and study skills scales, and the internalizing

problems, behavioral symptoms index, and adaptive skills composites. (S-25 at pages 22-26).

40. The January 2024 ER included attention rating scales. The student's [redacted] grade teacher and parent both rated the student with consistently very-elevated or clinically consistent scores in multiple areas. Both raters' scores indicated symptomology for attention deficit hyperactivity disorder (predominantly inattentive type). (S-25 at pages 28-31).
41. The January 2024 ER included executive functioning rating scales. The student's [redacted] grade teacher and parent both rated the student with a clinically elevated level on the cognitive regulation index, including clinically elevated levels across all sub-scales (initiation, working memory, planning/organizing, task-monitoring, and organization of materials). (S-25 at pages 31-33).
42. In winter benchmark assessments in reading reported in the January 2024 ER, different from the assessments reported in the findings of fact above, the student scored at the 20<sup>th</sup> percentile on the vocabulary sub-test and 1<sup>st</sup> percentile on the oral reading fluency sub-test. A reading composite score was not reported. (S-25 at page 34; S-39).
43. In winter benchmark assessments in mathematics reported in the January 2024 ER, different from the assessments reported in the

findings of fact above, the student scored at the 3<sup>rd</sup> - 40<sup>th</sup> percentile on various sub-tests and the 4<sup>th</sup> percentile on the mathematics composite score. (S-25 at page 34; S-39).

44. In winter benchmark assessments in writing reported in the January 2024 ER, the student scored at the 3<sup>rd</sup> percentile on the words spelled correctly sub-test, the 2<sup>nd</sup> percentile on the correct word sequence sub-test, and the 1<sup>st</sup> percentile on the total words written sub-test. (S-25 at page 36; S-39).
45. The January 2024 ER contained a S&L evaluation. (S-25; NT at 271-331).
46. The S&L evaluation in the January 2024 ER identified the student with articulation needs, noting that the student's "speech is intelligible but noticeably in error", with distortion errors and "distorted vocalic /r/...present for all variations". (S-25 at pages 36-37).
47. The S&L evaluation in the January 2024 ER also identified needs in expressive and receptive language. (S-25 at pages 36-37).
48. The January 2024 ER noted that the student's history of excessive absences interfered with a determination of eligibility for specific learning disabilities. (S-25 at pages 37, 48).
49. The January 2024 ER identified the student as eligible for special education as a student with health impairments related to anxiety and

ADHD symptomology/inattention, and as a student with S&L impairment. (S-25 at pages 46-47).

50. The [redacted] grade teachers who worked with the student testified that they noted no S&L articulation needs. (NT at 247-271, 293-332, 332-349, 360-415, 443-470).

51. In the fall of [redacted] grade, the District provided the required truancy documentation and student attendance improvement plans. (S-21, S-22).

52. In February 2024, the student's mother was involved in court proceedings related to the student's truancy. (S-24, S-26, S-27).

53. In February 2024, the student's IEP team met to craft the student's IEP. (S-29).

54. The February 2024 IEP included five academic goals (counting to 50, number identification, letter identification, letter sounds, and writing ten word responses), and five S&L goals (correct verb-tense, articulation, two for vocabulary [opposites, functions, categories], wh-questions). (S-29 at pages 22-31).

55. The student's programming in the February 2024 IEP includes 40 minutes daily of reading instruction, 40 minutes daily of mathematics instruction, and twelve 30-minute sessions per quarter for group S&L services. (S-29 at page 32).

56. In March 2024, the student's mother approved implementation of the February 2024 IEP. (S-28).
57. On curriculum-based testing in reading for the spring administration, the student's scores stalled or regressed in all areas except for nonsense word fluency – correct letter sounds which slightly improved from 37 to 40. The benchmark score for proficiency in that sub-test at the end of [redacted] grade is 58. (P-11 at page 7; S-33 at page 5).
58. On curriculum-based testing in reading for the spring administration, the student scored zero on the test of nonsense word fluency – whole words read; the benchmark score for proficiency in that sub-test at the end of [redacted] grade is 13. The student's score on oral reading fluency – word count declined from eight to six; the benchmark score for proficiency in that sub-test at the end of [redacted] grade is 87. The student's score on oral reading fluency – accuracy declined from 44% to 38%; the benchmark score for proficiency in that sub-test at the end of [redacted] grade is 97%. (P-11 at page 7; S-33 at page 5).
59. On the curriculum-based testing in reading for the spring administration, the benchmark reading composite score for proficiency in the spring of [redacted] grade, providing the best measure of early

literacy skills and reading proficiency, is a score of 237. The student's score was six. (P-11 at page 7; S-33 at page 5).

60. In May 2024, the student's mother was ordered by the local Court of Common Pleas ordered to appear at a subsequent hearing or face the issuance of an arrest warrant. (S-38).

61. In the spring of [redacted] grade, the student underwent benchmark testing, the same testing administered and reported for the first time during the evaluation process for the January 2024 ER (benchmark testing which is different from the benchmark testing reported immediately above). (S-39).

62. The only scoring in reading (the vocabulary sub-test) repeated from the winter testing improved markedly, rising from the 20<sup>th</sup> to the 59<sup>th</sup> percentile. (S-39).

63. All of the mathematics sub-tests were repeated from the winter testing. Every sub-test declined markedly, including the mathematics composite, which declined from the 4<sup>th</sup> percentile to the 1<sup>st</sup> percentile. (S-39).

64. The student ended [redacted] grade with below-basic, or basic, grades in almost every category of reading, writing, and mathematics. The report card noted that excessive absence impacted the student's progress. (P-4 at pages 5-6; S-34 at pages 1-2).



65. The student's [redacted] grade teacher and the student's special education teacher testified that she felt the student should be promoted to [redacted] grade. (NT at 247-271, 293-332, 443-470).

## **Credibility of Witnesses**

All witnesses testified credibly. The witness whose testimony was accorded the most weight was the S&L pathologist, who performed the S&L evaluation (NT at 271-331). Inexplicably, notwithstanding the credibility of the S&L therapist's testimony and the neutral, assessment-driven identification of the student's concrete articulation needs (including an IEP goal in that regard), every District witness who worked with the student and testified explicitly to the issue of S&L articulation needs said that they did not notice any articulation needs. To repeat, it is inexplicable that so many experienced educators would be insensible to a student's clear need. The testimony of each of these District witnesses is not simply accorded less weight; their testimony is entirely discounted regarding the student's need for S&L articulation services.

## 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)).

*Child Find*. One aspect of the provision of special education programming is a school district's duty to locate, identify and evaluate students who might require special education. This duty is commonly referred to as the "child find" obligation. (22 PA Code §14.121). Where a student has not been identified as a student eligible under IDEA, and a school district feels it should conduct a special education evaluation, it must seek a parent's permission to conduct an evaluation in any area of suspected disability. (*See generally* 34 C.F.R. §§300.300 – 300.307(a)(1-2)(b), 300.308 – 300.311; 22 PA Code §14.123).

## **Discussion & Conclusions**

Here, both parties—the student’s mother and the District—have abysmally failed the student through the first [redacted] years of formal schooling. The parent has clearly failed the student in not ensuring that the student attends school. Each year, the student’s attendance has improved (from 83 unexcused absences in [redacted], to 50 days in [redacted] grade, to 41 days in [redacted] grade), but it was still absolutely unacceptable even in [redacted] grade, to the point where truancy proceedings have been appropriately triggered.

Likewise, the District has clearly failed the student in not retaining the student in [redacted] at the end of that school year, in not returning the student to [redacted] early in the [redacted] grade year, and in promoting the student from [redacted] grade to [redacted] grade. Incredibly, it appears on this record that the District is contemplating a repeat of its slavish devotion to grade-promotion by promoting the student to [redacted] grade. Recognizing that the student’s excessive absences are attributable to the student’s family, the District is going to place into [redacted] grade a student who is working through IEP goals on counting, number identification, letter identification, letter sounds, and, in effect, no writing skills.

Every adult involved in this child’s education, on this record, has shrugged their shoulders in contemplating their duty to the student. The

parent and fellow family members shrug their shoulders when it comes to delivering the child to school each day. The educators shrug their shoulders, blindly promoting the student from grade to grade, knowing that the student is nowhere near reading, calculating, or writing at the grade-level where the District has assigned the student.

This hearing officer is at a loss to find words to describe the educational abandonment, on this record, this child has experienced at the hands of adults, both family and educators.

These sad, but necessary, observations aside, this decision must explain the intersection of the student's special education needs and the District's legal obligations in that regard. In that narrow regard, the District has met its child-find obligations to the student. Even at this juncture, it is impossible to untangle the student's lack of age-normed or grade-normed achievement from the impact of absenteeism.<sup>6</sup> The student has missed, without excuse, nearly a third of the instructional days from [redacted] through [redacted] grade (not including time missed for excused absences and tardiness). There is simply no way to fault the District for any failure of

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<sup>6</sup> Entirely in the nature of dicta, the academic achievement scores reported in the January 2024 ER (S-25) do not make sense. Given the point about absenteeism and its effect on the student's learning, those scores do not enter into the dynamic of the student's formal identification as a student with potential learning disabilities. In the January 2024 ER, the student's academic achievement scores were very low, but, even with that, seem to be effervescent in light of the IEP goals drafted a month later, where a student halfway through [redacted] grade is working on the most basic literacy and math skills—letter identification, letter sounds, number identification, etc.. As the student's attendance (hopefully) improves, and the student makes progress (hopefully) on literacy skills, independent updated achievement testing may be in order.

its child-find obligation. And, ultimately, it accurately identified the student's needs for support related to the health impairments of anxiety and inattention, and related to S&L articulation and expressive/receptive language needs. Thus, there is no denial of FAPE regarding child-find.

Still, the critical inflection points of grade-promotion from [redacted] to [redacted] grade and from [redacted] grade to [redacted] grade were both missed opportunities to build, early on, foundational literacy skills for the student. Now, on the cusp of [redacted] grade (when classmates are deepening intermediate literacy skills, moving steadily toward the District's [redacted] school years in [redacted] grade), the student would be working on mastering the alphabet, letter identification, letter sounds, number identification, and counting. It is yet another opportunity to halt this forced, and needless, march through grade levels.<sup>7</sup> The IEP team, including the building principal, will be ordered to meet to consider explicitly whether the student should be retained in [redacted] grade for the 2024-2025 school year.

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<sup>7</sup> The student will be [redacted] years old when the 2024-2025 school year begins. This is a wholly appropriate developmental age for any [redacted] grader, let alone the social, emotional, behavioral, and functional presentation of this student.

## ORDER

In accord with the findings of fact and conclusions of law as set forth above, the student has not failed in its child-find obligation.

On or before August 9, 2024, the student's IEP team shall meet to consider explicitly whether or not the student should be promoted to [redacted] grade or should repeat [redacted] grade. At a minimum, this IEP meeting shall include the parent, a [redacted] grade teacher, a [redacted] grade teacher, a special education teacher, the building principal, and a special education administrator. Anyone else which either party feels should be part of the IEP meeting may also attend.

This grade-placement IEP meeting shall include consideration of the January 2024 ER, the February 2024 IEP (as amended in May 2024), IEP goal progress-monitoring, and any other data any team member feels is material to the grade-placement decision, including "student performance data, report card grades, and reading levels" as mandated by the District's grade-placement policy.

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

07/23/2024