

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. 29078-23-24

Child's Name:

D.A.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

06/11/2024

Introduction

This special education due process hearing concerns the educational program and placement of D.A. ("student"), a student who resides in the South Eastern School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education. Parents claim that the District failed to provide the student with programming designed to provide a free appropriate public education ("FAPE") under IDEA.

The student's parents claim that the District failed to provide appropriate programming as of February 2022. As a result, parents undertook a unilateral private placement of the student. Parents claim that the District failed to implement appropriate programming for the student for the 2021-2022 school year as of February 2022, for the entirety of the 2022-2023 school year, and for the 2023-2024 school year through January 2024 when parents unilaterally enrolled the student in a private placement, including extended school year ("ESY") services in the summers of 2022 and 2023. Parents seek compensatory education for all of these periods when

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

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

the student was enrolled in the District and tuition reimbursement for the private placement which the student has attended as of February 2022.

The District counters that, at all times, it designed and implemented appropriate programming for the entirety of the period of parents' claims. Therefore, the District argues, parents are not entitled to remedy.

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

Issue

1. Is the student entitled to compensatory education for the following periods:
 - the 2021-2022 school year as of February 2022, including ESY services in the summer of 2022,
 - the 2022-2023 school year, including ESY services in the summer of 2023, and
 - the 2023-2024 school year through January 2024?
2. Are parents entitled to tuition reimbursement for the unilateral private placement undertaken by them in February 2024?

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as

necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

Prior Schooling – 2020-2021 School Year / [redacted] Grade

1. The student was enrolled in the District in [redacted], the 2018-2019 school year, and was identified as a student with a speech and language ("S&L") impairment. (Parents Exhibit ["P"]-2; School District ["S"]-43).
2. Thereafter, the student attended multiple school districts in the same area before returning to the District in the 2020-2021 school year, the student's [redacted] grade year. (P-2; S-43).
3. In December 2020, through a District re-evaluation process, the student was identified as a student with specific learning disabilities in basic reading and reading fluency, as well as a health impairment related to diagnoses of attention deficit hyperactivity disorder ("ADHD") and anxiety. (P-2; S-43).
4. In the December 2020 re-evaluation report ("RR"), the RR noted "reading skills are best measured at the [redacted] grade level on curriculum-based measures. (The student's) fall universal screening scores in reading were all in the Well Below Goal Range, with the majority at or below the 5th percentile...(The student's) written language skills were measured to be below average. In math, (the student's) scores on curriculum-based measurements were strong at

the [redacted] grade level and just below benchmark at the [redacted] grade level.” (P-2 at page 15).³

5. In December 2020, the student’s individualized education program (“IEP”) team met to design the student’s IEP. (P-4; S-31).

2021-2022 School Year / [redacted] Grade

6. The December 2020 IEP was in place at the outset of the student’s [redacted] grade year. (P-4; S-31).
7. In December 2021, the student’s IEP team met for its annual revision of the student’s IEP. (S-32).
8. In December 2021, curriculum-based measures were administered in reading and mathematics and formed the basis of the student’s present levels of academic performance. (S-32 at page 15).
9. The curriculum-based measure of reading in the fall of 2021 in the December 2021 IEP (a score of 294) had regressed to the level from the fall of 2020 as reported in the December 2020 IEP (a score of 294). The measure in the fall of 2021 had fallen markedly since the administration of the measure in the spring of 2021 (a score of 395). (S-31 at page 13, S-32 at page 15; S-44 at page 15).

³ The parties used duplicate party exhibits for many of the same documents. Where this is the case and page-specific citation is needed, only one of the duplicate documents will be cited.

10. The curriculum-based measure of mathematics in the fall of 2021 in the December 2021 IEP was different from the measure administered in the fall of 2020 in the December 2020 IEP. The score in the fall of 2021, at the outset of [redacted] grade showed that the student was proficient at the [redacted] grade level, a seeming stagnation from the student's mathematics achievement reported a year earlier in the December 2020 RR (strong at the [redacted] grade level and approaching [redacted] grade). (S-31 at page 13, S-32 at page 15; P-2 at page 15).
11. The December 2021 IEP indicated that the student was still struggling to master letter-sounds. (S-32 at page 24).
12. The December 2021 IEP recommended that the student spend 91% of the school day in regular education, including all academic instruction, with S&L services being delivered outside of the regular education setting. (S-32 at pages 29, 31).
13. In February 2022, due to ongoing concerns with the student's handwriting, the District performed an occupational therapy ("OT") evaluation. (P-9; S-40).
14. The February 2022 OT evaluation recommended direct OT services for handwriting. In February 2022, the District issued an updated RR, incorporating the OT recommendations. (P-10; S-44).

15. The February 2022 RR included updated curriculum-based measures in reading and math, given winter administrations of those measures in January 2022. (S-44 at page 15).
16. The student's score in the curriculum-based measure of reading increased from 294 to 331, but this score still failed to regain the level of 395 where the student had ended the [redacted] grade year. (S-44 at page 15).
17. The student's score in the curriculum-based measure of math slightly regressed, from 411 in the fall to 406 in the winter. The measure in the winter assessment showed that the student was in the 5th/6th percentile in mathematics for [redacted] graders. (S-44 at page 15).⁴
18. In March 2022, the student's IEP was revised to account for the OT evaluation. The present levels of academic performance were not updated to reflect the curriculum-based measures from the fall of 2021 or the winter of 2022. (P-11; S-32).

⁴ Here, an exhibit prepared by parents—P-53—is enlightening. It was prepared in the winter of 2024 as part of the private placement gauging the student's current-levels and need for programming. P-53 provides percentile charts which allow for assessment at any grade level K-8 with a concomitant national percentile rank for the student's score on the winter (in effect, mid-year) assessment utilized by the District for mathematics. Over time, grade to grade, as scores increase or decrease, it shows the percentile where the student ranks vis a vis age-level peers on the winter assessments in reading and math. P-53 at page 4 shows the curriculum-based measures in reading, and P-53 at page 5 shows the curriculum-based measures in math.

19. The student continued to be included in the regular education environment for 91% of the school day. (S-32 at page 31).
20. On the curriculum-based measure of reading in the spring of 2022, the student's score in the curriculum-based measure of reading increased from 331 to 370, but this score still failed to regain the level of 395 where the student had ended the [redacted] grade year. (P-37 at page 11).
21. On the curriculum-based measure of math in the spring of 2022, the student's scores continued to stagnate, if not slightly decline, registering at 405 (compared to 406 in the winter and 411 in the fall). (P-37 at page 12).
22. The student's [redacted] grade teacher could not testify with any certainty as to the student's reading level over the course of [redacted] grade. (Notes of Testimony ["NT"] at 258-316).

2022-2023 School Year / [redacted] Grade

23. The student's [redacted] grade year was particularly challenging. (NT at 63-193).
24. In December 2022, the student's IEP team met for its annual IEP revision. (P-14).
25. The present levels of academic performance in the December 2022 IEP indicate that the student had regressed on the curriculum-

based reading measure, from a score of 294 one year prior in the fall of 2021, and from the score of 370 from the spring of 2022, to a score of 282 in the fall of 2022. (P-14 at pages 10-11, P-37 at page 11; S-44 at page 15).

26. The student's reading comprehension score on the measure in the fall of 2022 was zero. (P-17 at page 4).

27. The present levels of academic performance in the December 2022 IEP indicate that the student continued to stagnate on the curriculum-based measure in math, scoring 408 in the fall of 2022, compared to a score of 406 in the winter of 2022 and a score of 411 one year prior in the fall of 2021. (P-14 at page 11; S-44 at page 15).

28. Over IEP meetings in November and December 2022, parent requested that the student's supports include a 1:1 aide to improve focus and task-completion. (P-16; S-3 at pages 7-8).

29. In January 2023, the District administered winter 2023 curriculum-based measures. (P-17).

30. The student's reading comprehension score on the measure in the winter of 2023 was zero. (P-17 at page 4).

31. In reading, the student's curriculum-based measure in the winter of 2023 increased from 282 to 340, although this score still failed to surpass the score of 383 where the student had ended the [redacted] grade. (P-37 at page 11).

32. In math, the student's curriculum-based measure in the winter of 2023 moved from 408 in the assessment in the fall of 2022 to 421 in the assessment in the winter of 2023. This score, however, placed the student at the 10th percentile for all [redacted] graders in the winter assessment. (S-10 at page 1; P-53 at page 8).
33. In February 2023, an independent educational evaluation ("IEE") was issued by an outside evaluator. (P-19; S-41).
34. The February 2023 IEE indicated diagnoses of post-traumatic stress disorder, opposition defiance disorder, ADHD, and dyslexia. The IEE indicated that a diagnosis of dysgraphia needed a further rule-in or rule-out. (P-19; S-41)
35. The February 2023 IEE also diagnosed the student with autism. (P-19; S-41).
36. In February 2023, the parents re-visited their request for a 1:1 aide. (P-18; S-3 at pages 9-10).
37. In April 2023, the student's IEP team met to discuss the student's programming and parents' ongoing concerns. Parents again requested that the District consider a 1:1 aide. (P-22, P-24; S-3 at pages 11-14).
38. In June 2023, curriculum-based measures for the spring administration of those assessments took place.

39. On the curriculum-based measure in reading for the administration in the spring of 2023, the student's score improved from 340 to 370, but this level still failed to achieve the level of 395, where the student had ended two years earlier, at the end of the [redacted] grade year. (S-32 at page 15; P-37 at page 11).
40. On the curriculum-based measure in math for the administration in the spring of 2023, the student's score improved from 421 to 452. (P-37 at page 11).
41. In June 2023, the student's IEP team met to make certain revisions to the IEP, including daily communication with parents, a points sheet to address the student's work-refusal behaviors, and the potential addition of a 1:1 aide. (S-35).
42. Present levels of academic performance in the June 2023 were not updated to reflect the student's scores on curriculum-based measures in reading and math. (S-35).
43. The June 2023 IEP indicated that the student would remain in regular education for 92% of the school day. (S-35).
44. In June 2023, a certified OT assistant who had been working with the student, but not a certified occupational therapist, performed an OT assessment of the student. (P-28).

45. The student's [redacted] grade teacher could not testify with any certainty as to the student's reading level over the course of [redacted] grade. (NT at 391-506).

2023-2024 School Year / [redacted] Grade

46. In August 2023, the student's IEP team met to revise the student's IEP, adding a 1:1 aide to support the student. (P-35; S-3 at pages 17-18, S-34; NT at 331-390).

47. The 1:1 aide was with the student for nearly the entirety of the school day, although other District duties pulled the aide away from the student for short periods of time. (NT at 331-390).

48. In August 2023, the District administered curriculum-based measures in reading and mathematics. (P-36; S-10).

49. In September 2023, the District utilized a new assessment for reading. On the curriculum-based measure for reading in the fall of 2023, the student scored a 473 on the administration of the measure. The score indicated that the student was achieving at the [redacted] grade level in reading. (S-10 at page 23).

50. In August 2023, on the curriculum-based measure for math the fall of 2023, the student scored a 431, which was a regression from the score of 456 in the spring of 2023, only three months earlier. The

score indicated that the student was achieving at the [redacted] grade level in math. (P-36, P-37 at page 11; S-10 at page 21).

51. In September 2023, the District issued a RR. (P-37; S-45).
52. The September 2023 RR included content from the February 2023 IEE as well as the June 2023 OT assessment. (P-37; S-45).
53. The September 2023 RR additionally identified the student as a student with autism. (P-37; S-45).
54. In October 2023, the student's IEP team met to revise the student's IEP. (P-39; S-36).⁵
55. In the present levels of academic performance, the October 2023 IEP included the curriculum-based measures in reading from the fall of 2023 (473, performing at the [redacted] grade level). (P-39 at pages 12-13).
56. In the present levels of academic performance, the October 2023 IEP includes the curriculum-based measures in math from the fall of 2023 (431, performing at the [redacted] grade level). (S-10 at page 21; P-39 at pages 13-15).

⁵ There was disagreement between the parties as to whether the October 2023 IEP was accepted and approved by the parties (NT at 63-193, 1062-1147). On this record, the testimony of the director of special education is credited, and the documentary evidence indicates that the parents accepted the October 2023 IEP. (P-40, P-41).

57. In the October 2023 IEP, an OT accommodation was added for [redacted], as the student's handwriting continued to be legible but entirely below grade level. (P-39 at page 42; P-49).
58. The October 2023 IEP reflected that the student would remain in the regular education setting for 89% of the school day. (P-39 at page 47).
59. From the outset of the 2022-2023 school year through October 2023, the student received only one session of S&L. (P-48 at page 5; NT at 762-802).
60. In January 2024, the District administered curriculum-based measures in reading and math. (S-10 at pages 21-24).
61. On the curriculum-based measure in reading for the winter 2024 administration, the student's score declined to 468 (from 473 in the fall 2023 administration). The score indicated that the student was achieving at the [redacted] grade level in reading and was achieving between the 5th and 6th percentiles for all [redacted] graders. (S-10 at page 23; P-53 at page 4).
62. On the curriculum-based measure in math for the winter 2024 administration, the student's score increased to 446 from 431 in the fall 2023 administration (although this score was still below the score of 452 from the spring 2024 administration at the end of [redacted] grade). The score of 446 indicated that the student was achieving at

the [redacted] grade level in math and was achieving at the 15th percentile for all [redacted] graders. (S-10 at page 21; P-53 at page 8).

63. Two weeks after the winter 2024 benchmark measure of 468 in reading, the student again took a diagnostic assessment. The student's score skyrocketed to 589. That score was discounted by the parties, and is discounted on this record, as the 1:1 aide provided the assessment orally and scribed the student's oral answers to her questions. (S-10 at page 23; NT at 331-390, 877-917, 575-669).
64. In January 2024, the student's IEP team met to revise the student's IEP. (P-42; S-37).
65. The District's sense of the student's needs shifted dramatically. (P-42).
66. The District proposed a highly-intensive placement, with two hours of reading instruction daily, in a classroom which the student would share with a fellow student who has an intellectual disability. (P-42; S-47; NT at 1026-1056).
67. The student would spend 49% of the school day in regular education. (P-42 at page 48).
68. The special education teacher who would work with the student under the January 2024 IEP was not a part of the IEP team at the

January 2024 meeting, or any IEP meeting at any time. (NT at 1026-1056).

69. In February 2024, the parents unilaterally enrolled the student in the private placement which the student has attended since that time. (P-52; NT at 63-193, 200-250).

70. The private placement serves 172 students in 1st – 12th grades (including ages 6 – 21). The students at the private placement have been identified with a number of disability profiles, including learning disabilities, autism, S&L impairment, and multiple disabilities as well as students who require emotional support related to diagnoses such as anxiety, ADHD, and depression. (P-51; NT at 200-250).

71. The private placement provides individualized, goal-driven programming—including related services such as S&L and OT—for each student. (P-51, P-58; NT at 200-250).

72. The student has an individualized IEP at the private placement. (P-58)

73. In February 2024, to assess the student's current level of academic achievement, the private placement administered the same curriculum-based assessments that the District had been using (in math, for multiple school years and in reading, in the student's [redacted] grade year). (P-53).

74. In reading, the student scored a 475 on the assessment administered by the private placement, determining that the student was achieving at the 1st/2nd grade level in reading, between the 6th and 7th percentiles for all [redacted] graders. (P-53 at pages 1-4; NT at 200-250).
75. In math, the student scored a 443 on the assessment administered by the private placement, determining that the student was achieving at the 1st/2nd grade level in math, between the 13th and 14th percentiles for all [redacted] graders. (P-53 at pages 5-8; NT at 200-250).
76. In February 2024, an additional curriculum-based measure was administered by the private placement as part of its assessment of the student's academic levels. (P-53 at pages 9-14).
77. The additional curriculum-based measure is scored in increments of 100s where "(a) student's diagnostic level represents their working grade level. So a level of 400 represents a readiness to start working on 4th-grade skills, and a level of 450 means the student is about halfway through the 4th grade curriculum". (P-53 at page 13).
78. The student's diagnostic level in language arts/reading was gauged between 140 – 200. The student's diagnostic level in math was gauged between 120 – 270. (P-53 at pages 9, 11).

79. The private placement runs on an 11-month school year, beginning each July. Students are in attendance in the month of July and from mid-August through mid-June. Two-week breaks are taken in the first half of August and the second half of June. (NT at 200-250).
80. The parents have been transporting the student to/from the private placement each day. (NT at 63-193).
81. In February 2024, roughly contemporaneously with the unilateral enrollment of the student at the private placement, parents filed the complaint which led to these proceedings. (P-44; S-1).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the student's mother (NT at 63-193) and the student's special education teacher, who worked with the student on social skills (996-1020), were judged to be quite persuasive and were accorded heavier weight.

Legal Framework

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP 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, with appropriately ambitious programming in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew 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)).

In considering parents' claim, long-standing case law and the IDEA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985); *see also* 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). A substantive examination of the parents' tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

In the three-step Burlington-Carter analysis, the first step is an examination of the school district's proposed program, or last-operative program, and whether it was reasonably calculated to yield meaningful education benefit. Step two of the Burlington-Carter analysis involves assessing the appropriateness of the private placement selected by the

parents. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties.

The legal framework surrounding parents' claim for compensatory education is considered below.

Discussion

Denial of FAPE. Here, there are dozens of exhibits and the testimony of thirteen District witnesses. In all of this evidence, there is one sad and inescapable conclusion: The student made no progress whatsoever in reading and math over the student's enrollment in the District.

There are any number of data points to support this conclusion. When the student returned to the District in the 2020-2021 school year, the student's [redacted] grade year, the December 2020 RR concluded that the student's "reading skills are best measured at the first grade level on curriculum-based measures....In math, (the student's) scores on curriculum-based measurements were strong at the first grade level and just below benchmark at the second grade level." (Finding of Fact 4). Approximately three years later, in February 2024, five months into 2023-2024 school year, the student's [redacted] grade year, the curriculum-based testing

performed by the private placement indicated that the student was achieving at the 1st/2nd grade level in reading and math. (Findings of Fact 77, 78).

Again, the student's curriculum-based measures administered by the District over the period encompassed by parents' claims tells the same tale. In June 2021, the student scored a 395 on the assessment in reading; in January 2024, the student scored a 468. (Findings of Fact 20, 61). In the fall of 2021, the student scored a 411 on the assessment in math; in January 2024, the student scored a 446. (Findings of Fact 17, 62). These numbers increase, but after two and a half years of instruction, the student should not be treading water. Indeed, the apples-to-apples comparisons of the percentile ranks given the winter administration of the curriculum-based measure show that the student fell further and further behind each year when compared to grade-level peers. (Findings of Fact 17, 32, 61, 62).

Added to these data-driven findings is anecdotal evidence of the District's denial-of-FAPE over the 2021-2022 and 2022-2023 school years, the student's [redacted] grade years. In December 2021, midway through [redacted] grade, the student was still struggling to master letter sounds. (Finding of Fact 11). Neither of the student's teachers in [redacted] grades could offer an opinion as to the student's reading level when each teacher taught the student. (Findings of Fact 22, 45). The student's reading comprehension scores in [redacted] grade were zero. (Findings of Fact 26, 30). And the District seemed oblivious to the data piling up year after year,

that the student was making no progress in reading and math, offering IEPs where the student spent nearly the entire day in regular education (91%, 92%, 89%). (Findings of Fact 12, 43, 58).

In sum, this record supports a conclusion that the District engaged in a wholesale denial-of-FAPE over the period February 2022 through January 2024, denying the student any opportunity to progress in reading or math.

Compensatory Education. Where a school district has denied FAPE to a student under the terms of IDEIA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

The evidentiary scope of claims, which is not a point of contention in this matter, and the nature of compensatory education awards were addressed in G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir. 2015) The G.L. court recognized two methods by which a compensatory education remedy may be calculated.

One method, the more prevalent method to devise compensatory education, is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. In most cases, it is equitable in nature, but the award is a numeric award of hours as

remedy. The second method, a rarer method to devise compensatory education, is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a qualitative determination where the compensatory education remedy is gauged to place the student in the place where he/she would have been absent the denial of FAPE. It, too, is equitable in nature, but the award is based on services or interventions for the student, or some future accomplishment or goal-mastery by the student, rather than being numeric in nature.

Both calculations are a matter of proof. The quantitative/hour-for-hour approach is retrospective, looking back to understand the cumulative denial of FAPE, and is normally a matter of evidence based on IEPs or other documentary evidence that provides insight into the quantitative nature of the proven deprivation. The qualitative/make-whole approach is prospective, looking forward to some point in the future where the proven deprivation has been remedied, and normally requires testimony from someone with expertise to provide evidence as to where the student might have been, or should have been, educationally but for the proven deprivation, often with a sense of what the make-whole services, or future student accomplishment/goal-mastery, might look like from a remedial perspective. In this case, parents seek quantitative compensatory education. (NT at page 38-41).

Here, the denial of FAPE is rooted in a total lack of progress in the areas of student's academic need, namely reading and math. As pointed out above, over the period of the compensatory education claim, the two chronological school years represented from February 2022 through January 2024, the student made practically no progress in either of these academic areas. Equitably, it amounts to a wholesale denial of FAPE over those years.

At the very time the student's progress—any student's progress—from the latter half of [redacted] grade (where a student should be building upon a foundation of basic academic skills in the early primary years) to the latter half of [redacted] grade (where a student should be deepening and sharpening those academic skills on the cusp of middle school studies), the student in this matter had ceased to make any progress, and the District had no answers or plans to address the student's needs or remediate the student's deficits. To repeat, it is a wholesale denial of FAPE in the form of denying the student the opportunity to gain basic academic skills in reading and math.

In Pennsylvania, a student in the elementary grades K-6 is entitled to 900 hours of academic instruction in a given school year. (22 PA Code §11.3(a)). Here, the period from February 2022 through January 2023 represents one school year of instruction; the period from February 2023 through January 2024 represents one school year of instruction. Therefore,

the student will be awarded 1800 of compensatory education for those two school years.

Parents also present a claim 180 hours of compensatory education for the District's failure to provide ESY services in the summers of 2022 and 2023. The student, with deficits that had the student doing academic work multiple levels below grade-level for the entirety of this record, clearly qualified for ESY services in both summers. Nothing in this record forestalls parents' claim for a quantitative award of compensatory education of 180 hours for the student, and so it will be awarded.

Thus, utilizing a quantitative/hour-for-hour perspective and as a matter of equity, the student will be awarded 1,980 hours of compensatory education.

Tuition Reimbursement. As for the parents' tuition reimbursement claim, the Burlington-Carter analysis clearly supports an award of tuition reimbursement for the parents' unilateral private placement. At step one of the analysis, the District's programming as designed and proposed in the last agreed-upon October 2023 IEP is inappropriate in itself as it was simply a continuation of the inappropriate programming over the prior school years. The January 2024 IEP is also inappropriate. Suddenly realizing, perhaps, the depths of the denial-of-FAPE, the District proposed a program that is overly restrictive. Most specifically, the student would spend multiple hours per day in a setting with a classmate with a significant cognitive disability. (Findings

of Fact 66, 67). Additionally, the special education teacher who would instruct the student under the auspices of the January 2024 IEP never participated in any IEP meeting, in January 2024 or otherwise. (Finding of Fact 68).

At step two of the Burlington-Carter analysis, the programming at the private placement is wholly appropriate. The private placement is geared to work with students, like the student here, who exhibit a mosaic of complex learning needs. The student receives individualized, goal-driven instruction through an IEP, over the course of a rigorous school year. And the private placement understands the student's current level of academic achievement. (Findings of Fact 70-79).

At step three of the Burlington-Carter analysis, the equities decidedly favor the parents. Throughout this record, the parents shared their concerns in a straightforward and collaborative manner. They watched as their child continue to struggle year by year and advocated for changes in the District's programming. By February 2024, a unilateral enrollment in the private placement is entirely supported on this record.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the South Eastern School District, in a wholesale way, failed to meet its obligations to the student to propose or implement appropriate special education programming for the 2021-2022 school year (as of February 2022), the summer of 2022, the 2022-2023 school year, the summer of 2023, and the 2023-2024 school year (through January 2024). Accordingly, the student is entitled to 1,980 hours of compensatory education.

Additionally, the parents are entitled to tuition reimbursement for the private placement they undertook in February 2024. The District shall reimburse the parents for this program upon the parents providing, through counsel, proof of payment for this tuition, and/or a billing statement from the private placement of any balance due for that tuition, for the period February 2024 through the date of this decision. The student's private placement shall be considered the student's pendent placement for the provision of special education, and so, going forward from the date of this decision, the District shall make any necessary arrangements with the private placement to support the student in the private placement.

Finally, parents shall be reimbursed for any out-of-pocket expenses incurred by the parents for transportation to/from the private placement for every day the student has attended, as documented with a transportation log by using the mileage rate as allowed under Internal Revenue Service

provisions for the period February 2024 through the date of this order. Going forward from the date of this order, reimbursement to the parents for their transportation of the student shall continue on a monthly basis with the submission of a monthly transportation log by using the same Internal Revenue Service mileage rate then in effect.

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

06/11/2024