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

ODR No. 29971-24-25

CLOSED HEARING

Child's Name:
R.L.

Date of Birth:
[redacted]

Parents:
[redacted]

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Hearing Officer:
Brian Jason Ford

Date of Decision:
10/18/2024

Introduction, Prior Hearing, Procedural History

This special education due process hearing concerns a child with disabilities (the Student). The Student's parents (the Parents) requested this hearing against the Student's public school district (the District). This is not the first due process hearing between these parties, and this matter is best understood in the context of the parties' prior hearing.

The prior due process decision, ODR No. 28203-2223, was decided on November 21, 2023, by Hearing Officer McElligott. In that matter, the Parents claimed that the District incorrectly identified the Student as a child with an Emotional Disturbance (ED) but failed to identify the Student as a child with a Specific Learning Disability (SLD). The Parents claimed that the District issued Individualized Educational Programs (IEPs) that were inappropriate for the Student, violating the Student's right to a free appropriate public education (FAPE), and forcing the Parents to place the Student at a specialized private school (the Private School). They demanded compensatory education, reimbursement for the Student's tuition at the Private School, and reimbursement for a private educational evaluation.

The prior decision awarded 50 hours of compensatory education as a remedy for a period when the District did not have an IEP in place for the Student. The remainder of the Parents' claims were denied.

The parties did not appeal the prior decision. Instead, on or about January 8, 2024, they executed a settlement agreement. Through that agreement, the parties reduced the compensatory education award to a dollar amount and decided how that money would be spent. The Parents also waived all claims against the District through the date of the agreement.[1]

The Student continued at the Private School through the 2023-24 school year. The District reevaluated the Student and issued a reevaluation report on April 6, 2024 (the 2024 RR). The Parents also obtained another private evaluation. Ultimately, the District concluded that the Student was a child with an SLD and OHI, but not ED. The District offered an IEP for the 2024-25 school year.

In this hearing, the Parents take the position that the 2024 RR and resulting IEP were inappropriate, that the District must reimburse the cost of the

[1] The settlement agreement was uploaded along with the Parents' exhibits as P-57. That exhibit was not introduced during the hearing. However, both parties referenced the settlement agreement by exhibit number in their closing briefs. There is no dispute that the parties entered into the settlement agreement and are bound by it. There is no dispute about the terms of the settlement agreement.

private evaluation, and that the District must fund the Student's placement at the Private School. The Parents also raise claims concerning the Student's IDEA eligibility categories. The Parents' due process complaint also included a demand for reimbursement for the 2024 summer program.

The Parents filed their due process complaint on July 2, 2024, the initiating this matter. The District interpreted the Parents' demand for reimbursement for the most recent private evaluation as a request for an Independent Educational Evaluation (IEE) at public expense. The District denied that request and filed its own due process complaint, as required by the IDEA, on June 14, 2024, to seek a determination that the 2024 RR was appropriate. I consolidated the matters.

The District moved to dismiss portions of the Parents' complaint. The Parents amended their complaint. More motions ensured, with a particular focus on the 2024 summer program. The Parents withdrew their demand for reimbursement for the 2024 summer program on August 15, 2024.

The parties could not resolve the dispute, and so a two-day hearing convened on September 4 and 5, 2024. Then, the parties filed post-hearing briefs/closing statements on October 3, 2024. The Parents included two additional documents with their brief: a Basic Educational Circular and another document that the Parents described as rebuttal evidence. The latter sparked a round of argument via back-and-forth emails in which the District raised several objections. The District averred that the document is not what the Parents say it is and does not mean what the Parents say it means. I wrote to the parties, explaining that I would grant any joint proposal to resolve the issue, provided that the proposal did not result in a lengthy delay. The parties did not send a joint proposal. Instead, the Parents filed additional documents that they also describe as rebuttal evidence and an additional brief. The District responded only to assert that the Parents' late filings do not reflect a joint statement or agreement between the parties, and that it objects to my consideration of the same.

Having reviewed the record of this case, I now find in favor of the District.

Post Hearing Evidence

Documents filed by the Parents after the hearing closed are improper and will not be considered. The two-day evidentiary hearing was the opportunity for the parties to present evidence. Both parties were placed on notice of procedures and practices concerning rebuttal evidence shortly after the Parents filed their complaint. Both parties confirmed on the record that they had no questions about those procedures. The Parents did not use those

procedures during the hearing. Instead, they attempted to file documents after the close of the evidentiary record such that they could not be challenged and would not be subject to cross examination. There are also authenticity and reliably problems with those documents, even if they were admissible. The District avers that the documents are not what the Parents say they are.

No matter what the documents are, the parents describe them as "readily available correct information" about the program that the District offered to the Student. This leaves one to wonder why such information was not offered during the hearing. Regardless, that window is closed, and I will not consider late evidence.[2] The same is true for a supplemental post-hearing brief that the Parents filed on October 14, 2024.

Issues

The issues presented for adjudication in this matter are:

1. Must the District identify the Student as a child with a Specific Learning Disability (SLD) in basic reading skills, reading comprehension, reading fluency, spelling, and math reasoning?[3] This issue was presented in the Parents' complaint, and the Parents bear the burden of proof for this issue.

2. Was the District's reevaluation of April 6, 2024 (the 2024 RR) appropriate? This issue was presented by the District in its due process complaint, and the District bears the burden of proof for this issue.

3. Are the Parents entitled to reimbursement for the June 10, 2024, private educational evaluation of the Student (the 2024 Private Evaluation)? This issue was presented in the Parents' complaint but, functionally, is subsumed by the District's issue. Reimbursement for the 2024 Private Evaluation is an appropriate remedy if the 2024 RR was not appropriate.

[2] Like all offered-but-excluded evidence, the documents will be marked as such and retained as part of the record of this case in accordance with ODR practices and will be certified as such in the event of appeal.

[3] In the amended complaint, the Parents wrote "SLDs in basic reading skills, reading comprehension/ fluency, spelling and math reasoning." During the hearing, the Parents said, "specific learning disability [in] basic reading skills, reading comprehension, fluency, and spelling." NT at 35. In their post-hearing brief, the Parents wrote, "SLDs in basic reading skills, reading fluency, reading comprehension, spelling and math reasoning."

4. Must the District reimburse the Parents for the Student's tuition, transportation, and one-to-one support at the Private School during the 2024-25 school year? This issue was presented in the Parents' complaint, and the Parents bear the burden of proof for this issue.

Findings of Fact

While large portions of the Parents' post-hearing brief read like an appeal of ODR No. 28203-2223, neither party appealed that matter. As explained to the parties at the outset of this hearing, the prior due process decision constitutes the law of the case, and the 138 findings of fact in the prior decision are binding on these proceedings.[4] Those facts are germane to this case, and are adopted and incorporated as if set forth at length herein.

I decline to copy and paste 30 pages of prior fact-finding into this decision. For context, however, those facts concern the following:

- An evaluation report the District issued in December 2021 (the December 2021 ER);

- An Independent Educational Evaluation that the Parents obtained in January 2022. The IEE was conducted and drafted by a Private Evaluator (the Private Evaluator);

- The severe discrepancy method for determining whether a student is a child with an SLD;

- An evaluation report that the District issued in April 2022 (the April 2022 ER), which was a revision to the December 2021 ER;

- An IEP that the District offered in May 2022 (the May 2022 IEP) and revisions to that document that the District offered in July 2022 – an offer that the Parents never approved but agreed to implement in October 2022;

- The response-to-intervention method for determining whether a student is a child with an SLD, which is used by the District with approval from the Commonwealth, and the District's Multi-Tier System of Support (MTSS) model of instruction (both in general and as applied to the Student);

[4] The parties also entered the transcript of the prior due process hearing as evidence in this case, marked as S-32 through S-35.

- An IEP that the District offered in February 2023 (the February 2023 IEP), which the Parents approved via a Notice of Recommended Educational Placement (NOREP);

- A re-evaluation report started in February 2023 and completed in April 2023, which included a Functional Behavioral Assessment (FBA), and was initiated in response to the Student's escalating negative behaviors in school (the April 2023 RR);

- An IEP that the District offered in May 2023, which was a revision to the February 2023 IEP. The Parents rejected that offer via a NOREP;

- An IEP that the District offered in June 2023, which was also a revision that the Parents rejected via a NOREP; and

- The Parents decision in the summer of 2023 to place the Student at the Private School

On November 21, 2023, Hearing Officer McElligott issued the final decision and order in ODR No. 28203-2223. By January 2024 the parties had executed a post-hearing agreement. Less than six months later, on July 2, 2024, the Parents filed the due process complaint initiating these proceedings. My fact-finding, therefore, concerns events between November 22, 2023, and July 2, 2024. Within that narrow band, events occurring before January 2024 cannot form a basis of liability for the District because of the settlement agreement and release.

I considered the record in its entirety. I find facts only as necessary to resolve the issues before me. I find as follows:

1. On February 1, 2024, the District issued a form seeking the Parents' consent to reevaluate the Student. The Parents provided consent on February 5, 2024. S-6.

2. On March 23, 2024, the Parents signed an enrollment contract with the Private School for the 2024-25 school year and provided a deposit for the Student's placement there. P-69.

3. On April 6, 2024, the District completed the reevaluation and issued a Reevaluation Report (the 2024 RR). S-8.

4. The 2024 RR included a review of existing information, a classroom observation by the District's school psychologist (the School Psychologist) in the Private School, administration of standardized,

normative tests of intellectual ability and academic achievement (the Woodcock-Johnson, WIAT-IV, KeyMath 3, and others), behavior rating scales completed by the Parents and teachers (the Conners 4 and the SAED-2), the School Psychologists interpretation of those tests, and a Speech and Language evaluation completed by the District's Speech and Language Pathologist (which included the CELF-5). S-8.[5]

5. The 2024 RR concluded that the Student qualifies for special education as a child with OHI and SLD. S-8 at 45.

6. The 2024 RR included many recommendations to the IEP team. S-8 at 51.

7. On May 6, 2024, the Student's IEP team convened, and the District issued an IEP proposing a program and placement for the Student during the 2024-25 school year (the May 2024 IEP). S-12.[6]

8. On May 12, 2024, the Parents rejected the May 2024 IEP via a NOREP. P-62.

9. The Parents had the Student tested again by the Private Evaluator, resulting in a private evaluation report dated June 14, 2024. P-64. The report is titled "Independent Educational Evaluation," but the District argues this is an inaccurate descriptor because the report was drafted for purposes of litigation. I will refer to the document as the "2024 IEE" for convenience.

10. The 2024 IEE includes a review of prior testing (including the 2024 RR), new testing, the Private Evaluator's analysis of the testing, educational recommendations, and legal conclusions. P-64.[7]

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[5] There is no dispute about the content of the 2024 RR. To the extent necessary to resolve this matter, portions of the 2024 RR are discussed in greater detail below.

[6] Throughout the reevaluation and IEP development process, both parties were represented by attorneys and communicated largely via counsel. The correspondence between counsel shows that both parties were actively engaged in the evaluation and IEP development process. Some of that correspondence was obnoxious (see, e.g. S-6 at 5) and much of it was counterproductive (see, e.g. S-28 at 7-9). But there can be no claims about meaningful participation, and none are presented.

[7] There is no dispute concerning the scores that the Private Evaluator obtained for the Student in 2024, although the parties interpret those scores differently. The Private Evaluator's analysis of the Student's needs is derived from a combination of the prior and current evaluations, and – looking at the 2024 IEE in isolation – it was sometimes difficult to know whether the Private Evaluator was rendering an opinion concerning the Student's current needs or the Student's needs historically. The Private Evaluator did, however, color code new testing that supplemented the 2024 RR, and I appreciate the effort to make the

11. On June 21, 2024, the Parents sent the 2024 IEE to the District. S-29 at 9.

12. On August 1, 2024, the IEP team reconvened. The District offered a revised IEP on August 5, 2024 (the August 2024 IEP).[8] S-14. The revisions include information from the 2024 IEE, and changes to the Modifications and SDI section of the IEP. *Id*.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). *See also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

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

Perhaps more importantly, the outcome of this case in no way hinges on a credibility determination.

Applicable Legal Principles

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document clear in those sections. I accord appropriate weight to the Private Evaluators educational conclusions, but no weight to the Private Evaluator's legal conclusions.

[8] As with the 2024 RR, there is no dispute concerning the content of the May 2024 IEP or the August 2024 IEP. To the extent necessary to resolve this matter, portions of those IEPs are discussed in greater detail below.

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), *citing Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). The parties' burdens for each of the issues presented is noted above.

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child's individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

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

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

Third Circuit consistently interpreted Rowley to mean that the "benefits" to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child's potential. *See T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew* decision in no different.

A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. *See, Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than "trivial" or "de minimis" benefit. *See Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). *See also Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. *See, e.g., J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew*, the Supreme Court effectively agreed with the Third Circuit by rejecting a "merely more than de minimis" standard, holding instead that the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id* at 1000. In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work. *Id*. Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

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

Evaluation Criteria

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and revaluations. 20 U.S.C. § 1414.

In substance, evaluations must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining" whether the child is a child with a disability and, if so, what

must be provided through the child's IEP for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A).

Further, the evaluation must "not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child" and must "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors". 20 U.S.C. § 1414(b)(2)(B)-(C).

In addition, the District is obligated to ensure that:

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

20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess "all areas of suspected disability". 20 U.S.C. § 1414(b)(3)(B).

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency…" 34 C.F.R. § 300.502(b)(1). "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that it's evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

"If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation." 34 C.F.R. § 300.502(b)(4).

Tuition Reimbursement

A three-part test is used to determine whether parents are entitled to reimbursement for special education services. The test flows from *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District v. Carter*, 510 U.S. 7 (1993). This is referred to as the "Burlington-Carter" test.

The first step is to determine whether the program and placement offered by the LEA is appropriate for the child. The second step is to determine whether the program obtained by the parents is appropriate for the child. The third step is to determine whether there are equitable considerations that merit a reduction or elimination of a reimbursement award. *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007). The steps are taken in sequence, and the analysis ends if any step is not satisfied.

Discussion

The Student's Eligibility Categories are Correct

I find that the IDEA provides no legal entitlement to a more specific or enhanced SLD designation. Consequently, the Parents demand for an enhanced SLD designation fail as a matter of law.

Under the IDEA, children with disabilities are entitled to a FAPE. "Child with a disability" is a defined term. The definition, found at 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8, creates a two-part test. First, the child must have at least one of 13 categories of disabilities. Second, "by reason thereof," the child must need special education and related services. *Id*.

Specific Learning Disability or SLD is one of the 13 recognized categories of disability. SLD is also a defined term:

> Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or

> written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

34 C.F.R. § 300.8(c)(10)(i); *accord* 20 U.S.C. § 1401(30)(A),(B).

For the period in question, there is no dispute that the Student is a child with a disability as defined by the IDEA. Rather, the parties disagree about what categories of disabilities are appropriate for the Student. The Parents argue that the Student should be identified as a child with an SLD in basic reading skills, reading comprehension, reading fluency, spelling, and math reasoning. The Parents argue that the Student is not a child with an ED.

The 2024 RR concluded that the Student is a child with SLD and OHI, and not ED. This appeared to be consistent with the Parents' demand, resulted in some confusion at the outset of the hearing, and prompted me to consider whether the issue was moot (NT 35-36):

> HEARING OFFICER: Okay. Then let me ask this way. Attorney Voigt, is there a current dispute concerning the student's disability categories?
>
> MR. VOIGT: Yes.
>
> HEARING OFFICER: Okay. And The District has identified the student as a child with a specific learning disability. Is it the other health impairment that the parents find objectionable?
>
> MR. VOIGT: No, we want The District to clarify that [Student] has a specific learning disability [in] basic reading skills, reading comprehension, fluency, and spelling. If The District does not identify the child's particular SLDs, then they will not program for them appropriately.
>
> HEARING OFFICER: I understand. I appreciate the clarification. And do the parents agree, though, that other health impairment is an additional appropriate classification for the student?

MR. VOIGT: Yes.

HEARING OFFICER: Okay. So there's no dispute about the other health impairment eligibility determination. Rather, it is the absence of specificity with the SLD determination to which the parents object?

MR. VOIGT: Yes, that's right.

The Parents argument, that the Student will not receive a FAPE unless the Student receives an enhanced SLD designation, fails at multiple levels. SLD, like all categories of disabilities recognized by the IDEA, is an eligibility criterion. Once an eligibility determination is made, however, the disability category may not serve as the basis of the child's program. Rather, eligibility establishes a child's entitlement to a FAPE. Then FAPE disputes are resolved through the Supreme Court's *Endrew* standard, described above. Under that standard, the child's needs and abilities must drive the child's program – not any diagnosis.

Choosing the correct eligibility category or categories is important, even if the category does not control substantive programming. Incorrectly choosing one eligibility category over another can result in a procedural IDEA violation.[9] Further, there are often logical connections between eligibility categories and programming. For example, if a child has a reading disability and qualifies with an SLD on that basis, one expects that child to receive reading interventions. But a child who qualifies for special education with an SLD may also require behavioral interventions to receive a FAPE. Such a child must receive behavioral interventions despite the absence of a behavioral diagnosis or eligibility classification.

As applied in this case, the District agrees that the Student is a child with an SLD and that the Student is entitled to special education. It is the District's obligation, therefore, to offer an IEP that is reasonably calculated to provide a FAPE. That obligation is the same regardless of whether the District writes the words "in basic reading skills…" after the SLD qualification. Including the language that the Parents demand does not change the Student's rights or the District's obligations. Any violation, therefore, is procedural in nature.

[9] In Pennsylvania, children with intellectual disabilities receive additional protections, illustrating an exception to the general rule that eligibility categories carry no special significance for a FAPE analysis once eligibility is established. *See* 22 Pa Code § 14.

While the violation, if any, is procedural, I am empowered to correct procedural violations. I find that the absence of an enhancement to the Student's SLD qualification is not a procedural violation because the Parents (and the Student) have no right to an enhanced SLD qualification. There is no basis for this argument in the IDEA or its federal or Pennsylvania implementing regulations. Under the IDEA, SLD is a qualifying category of disabilities. Understanding the nature of a child's SLD is important, and that understanding should be reflected in evaluations and IEPs; but the nature of a child's SLD does not change the name of the qualifying disability category.

The 2024 RR Was Appropriate, Reimbursement for the 2024 Private Evaluation Is Not Owed

It is the District's burden to prove that the 2024 RR was appropriate. The Parents are entitled to an IEE at public expense if the 2024 RR did not satisfy the IDEA's standards. As applied in this case, that entitlement would be satisfied by the District reimbursing the Parents for the 2024 IEE.

I find that the District satisfied its burden to prove that the 2024 RR was appropriate.

There is preponderant evidence that the 2024 RR satisfied requirements at 20 U.S.C. § 1414. The District used "multiple assessment tools and strategies." The District gathered "relevant functional, developmental, and academic information, including information provided by the parent." The District did not rely upon "any single measure or assessment," and the assessments that it did use were "technically sound." None of the factors enumerated at 20 U.S.C. § 1414(b)(3)(A) are implicated by the record of this case. I also find that the District assessed all areas of suspected disability, in compliance with 20 U.S.C. § 1414(b)(3)(B).

The bulk of the requirements above are procedural in nature, and the record of this case includes preponderant evidence of procedural compliance. However, the Parents' objections to the 2024 RR are substantive in nature. While the Parents do not have to prove anything, understanding their disagreement with the 2024 RR provides a logical starting point for the substantive analysis.

The Parents' disagreement is centered on the District's SLD determination but, unlike their complaint about the Student's eligibility category, the dispute becomes substantive at this level. To reach the conclusion that the Student is a child with an SLD, the District considered the Student's needs in reading, math, and writing (among others). The District concluded that the Student's needs in math reached a level where an SLD qualification was

warranted. The District also concluded that the Student needs in reading and writing did not rise to the level where an SLD qualification was warranted. P-60 at 49. As in the prior hearing, the District's response-to-intervention model for SLD determinations was a factor in the District's analysis.

A fair reading of the Parents' filings includes an argument that the District's conclusions that the Student's reading and writing needs did not reach an SLD qualification is false and, therefore, violates substantive evaluation requirements at 20 U.S.C. § 1414(b)(2)(A)(ii). That section of the IDEA mandates that reevaluations must include information "that may assist in determining … the content of the child's [IEP]." The Parents are correct that District violated this substantive evaluation requirement if the 2024 RR provided false information about the Student's reading and writing needs.

Critically, the question of whether the 2024 RR provides false information is not resolved by the District's eligibility determination because there is no dispute about the Student's eligibility for, or entitlement to, special education. With eligibility established, the question is not whether the District's eligibility categories were wrong, but whether the substantive information in the 2024 RR was false. Under the IDEA, evaluations and reevaluations "assist" IEP teams in determining what a child's IEP should include. The Student's IEP team was free provide special education in the areas of reading and writing to the Student regardless of the 2024 RR's conclusions about the basis of the Student's agreed-to eligibility.

I recognize that the conclusions of the 2024 RR, like any evaluation, surely influence IEP team decision-making. It is naïve to think otherwise. However, for cases where eligibility is not in dispute, if an IEP team receives sufficient information from an evaluation so that it can draft an appropriate IEP, and then fails to do so, the flaw is in the IEP, not the evaluation.[10]

The question, therefore, is whether the 2024 RR painted a clear, accurate picture of the Student's needs, and provided actionable information such that the IEP team could draft an appropriate IEP. I find that the 2024 RR satisfied this substantive standard.

The 2024 RR included a substantial amount of information concerning the Student's reading and writing abilities. To the very small extent, if any, that the Parent challenge the accuracy of that information, I find nothing in the record to support that challenge. For example, nothing suggests that the

[10] This absence of an eligibility dispute truly matters. An evaluation that reaches an incorrect conclusion about eligibility itself seldom reaches an IEP team, and so the analysis must be different in those cases.

Student's scores on the Woodcock-Johnson were anything but earned. From the Woodcock-Johnson alone, the 2024 RR included objective information about the Student's broad reading ability, basic reading skills (which includes oral reading fluency), and broad written language (including spelling, writing samples, and sentence writing fluency). The WIAT-4 also provided objective information about the Student's reading and writing abilities with a focus on indicators of dyslexia. These objective, norm-referenced measures were coupled with the Student's performance on curriculum-based assessments. The 2024 RR also included objective, norm-referenced assessments of the Student's cognitive abilities. These were presented both as index scores (like the full-scale IQ and the General Ability Index – both of which were found to be in the average range). Included with the testing was input from teachers who worked with the Student at the Private School, information from the first private evaluation, and information from the Parents. The District made all of this information available to the IEP team through the 2024 RR.

I find that the 2024 RR was substantively appropriate because it provided ample, accurate, and actionable information to the IEP team.

Having found that the 2024 RR was both substantively and procedurally appropriate, I must also find that the Parents are not entitled to an IEE at public expense. As applied in this case, that means the Parents are not entitled to reimbursement for the 2024 Private Evaluation.

The 2024 IEP Was Appropriate, Tuition Reimbursement is Not Owed

The first task in determining the appropriateness of the District's special education offer for the 2024-25 school year is determining what that offer is. The District's offer is whatever it proposed in an IEP before the Parents placed the District on notice of their intent to place the Student at the Private School for the 2024-25 school and seek reimbursement. *See* 20 U.S.C. § 1412(a)(10)(C)(ii), (iii). Alternatively, the District's offer is whatever it proposed in an IEP within ten days of receiving such notice. *Id.* Such notice is required by the IDEA. *Id*.

Surprisingly, the record includes no clear evidence establishing when the Parents gave the requisite notice to the District.[11] If the Parents sent the

[11] The absence of a notice in the record, by itself, could terminate the Parents' tuition reimbursement claim. Correspondence between counsel during the evaluation and IEP development process, however, leaves no doubt that the Parents always intended to keep the Student at the Private School and always intended to seek tuition reimbursement from the District. The same correspondence also leaves no doubt that the District was always aware of the Parents' intent. These factors, and the absence of a dispute in this regard, enable the analysis to proceed.

notice before July 25, 2024, the May 2024 IEP controls. Otherwise, the August 2024 IEP controls. Fortunately, the August 2024 IEP is a small revision to the May 2024 IEP, and the differences between the two do not alter the outcome of this hearing.

There are two differences between the May 2024 IEP and the August 2024 IEP. First, the District updated the Student's present education levels to include information from the 2024 IEE, which did not exist in May 2024. *See* S-14 at 10. Second, the August 2024 IEP adds items to the Modifications and SDI section concerning extra time for testing, availability of audio support for the Student when reading materials are above the Student's reading level, and additional behavioral supports. *See* S-14 at 63-64. None of those changes are outcome determinative. For ease of reference, I refer to the May 2024 IEP throughout the remainder of this section.

A large amount of time was dedicated to the parties' arguments and evidence concerning the District's methodology for making SLD determinations. The District is one of a small number of schools approved by the Commonwealth to use a response-to-intervention model as opposed to a discrepancy model. Those models, and the differences between them, are discussed in Hearing Officer McElligott's prior decision. In the prior hearing, the differences between the models resulted in a finding that the Student was not a child with an SLD. In this case, the District's response-to-intervention model resulted in a finding that the Student was a child with an SLD. However, the 2024 RR also concluded that the Student's SLD eligibility was based in the Student's math needs, and not the Student's reading and writing needs. At the same time, the 2024 RR provided a large amount of information about the Student's reading and writing needs to the IEP team. The question, therefore, is resolved by considering how the IEP team used the 2024 RR to draft an IEP that was responsive to the Student's needs.

The first 44 pages of the May 2024 IEP are a review of the Student's strengths and needs as understood at that time. Large chunks of that section are copied from the 2024 RR. I usually find it unhelpful and counterproductive to embed lengthy evaluation reports into IEPs. IEPs are supposed to be functional documents. The practice, however, does not render the IEP inappropriate.

Pages 45 through 50 of the May 2024 IEP review the Student's transition planning and testing accommodations (both for District testing and statewide standardized testing). These aspects of the IEP are not in dispute.

The Student's annual goals start on page 51 of the May 2024 IEP. The May 2024 IEP includes two math goals (page 51-52), a reading fluency goal

(page 53), a spelling goal (page 54), and a social skills/behavior goal (page 53). All of these goals are objective, measurable, and flow directly from needs identified in the 2024 RR. Except for the social skills goal, all of the goals have baselines derived from the 2024 RR.

The May 2024 IEP included program modifications and specially designed instruction (SDI) on pages 55 and 56. Those modifications and SDI constituted the special education that the District would provide to enable the Student to meet the IEP's goals. This included, among other things, "explicit, multisensory instruction in English Language Arts focusing on decoding, oral reading fluency, and encoding (spelling) with review and practice" 30 minutes per day in a special education classroom, and daily "small group (1 to 4 learners) for scheduled IEP skill instruction in ELA, Mathematics, and Social Skills."

As demonstrated by the May 2024 IEP itself, the IEP team considered the 2024 RR, recognized that the Student required reading and writing (spelling) interventions in order to receive a FAPE, and then provided goals and special education to address the Student's reading and writing needs. Consistent with its mandate under the IDEA, the District did not let the Student's diagnoses or eligibility categories drive the Student's program.

The Parents argue that, regardless of what is written in the May 2024 IEP, the District did not truly offer special education in response to the Student's reading needs. The Parents characterize the Student's program as a part of the District's response-to-intervention or MTSS program, which is available to all children in the District regardless of disability. Assuming that the Parents' characterization is correct, the outcome is the same. The IEP team considered the Student's needs as evidenced in the 2024 RR and drafted an IEP that is responsive to the Student's needs. It does not matter if some of the modifications and SDI in the May 2024 IEP are services that the District offers to all children. The broad availability of the Student's program to children with and without disabilities is not relevant to any assessment of the Student's individual needs or how those needs square with the program offered by and through the May 2024 IEP.

The inverse of these facts helps illustrate the point. If a child with a disability requires special education in reading to receive a FAPE, and the required special education reading intervention is available to all students, the LEA cannot declare by edict that the intervention is not special education simply because it is open to everyone. The LEA cannot exclude necessary programs from a child's IEP simply because those programs are available to all children in the child's school. Doing so would yield a substantively inappropriate IEP

under the *Endrew* standard for its failure to include the programming that the child requires to receive a FAPE.

In this case, the IEP team drafted reading and spelling interventions into the May 2024 IEP because those interventions were necessary – regardless of the Student's diagnosis, eligibility categories, or whether the interventions constitute special education or general education under the District's Commonwealth-approved response-to-intervention plan. This is what the IDEA requires.

The Parents also argue the May 2024 IEP is inappropriate because the methodologies and MTSS curriculum selected by the District to accomplish the goals set forth in the IEP will not be effective for the Student. As evidence for this claim, the Parents point to the Student's lack of success in similar programs in the past and the opinions of the Private Evaluator. Nearly identical arguments were presented and rejected in the prior hearing. I reject these arguments for the same reasons. For clarity, this is not a mark against the Private Evaluator's credibility or the sincerity of the Parents' belief about the benefits of the Private School's program over the District's offer. Examining the record in the light most favorable to the Parents, there is strong evidence that the Private School's program is better for the Student. But "better" is not the standard. A preponderance of evidence in the record proves that the May 2024 IEP was reasonably calculated to provide a FAPE at the time it was offered.

My finding that the May 2024 IEP was appropriate resolves the Parents' demand for tuition reimbursement. Described above, the *Burlington-Carter* test for tuition reimbursement starts with consideration of the appropriates of the District's offer. That offer – the May 2024 IEP – was appropriate. Consequently, the test ends at the first prong and I must conclude that the Parents are not entitled to tuition reimbursement.

Summary and Legal Conclusions

Both parties agree that the Student is a child with SLD and OHI, and not ED. The 2024 RR reached that conclusion. As a matter of law, the Parents are not entitled to add any enhancements or descriptors to the SLD designation, and so their demand for the same is denied. That by no means limits the District's obligations to thoroughly evaluate the Student and offer a FAPE through an IEP as required by the IDEA.

The 2024 RR was procedurally and substantively appropriate. Through the 2024 RR, the District found that the Student was eligible for special education under the Parents' preferred classifications. It is also true that the

2024 RR found that the Student's reading and writing difficulties did not, on their own, qualify the Student for special education. Nevertheless, the 2024 RR painted a comprehensive, accurate picture of the Student, including input from the Parents and the Private Evaluator, and provided actionable information to the IEP team in all domains.

The May 2024 IEP, which flows from the 2024 RR, was reasonably calculated to provide a FAPE at the time it was offered and, therefore, was appropriate under the *Endrew* standard. The Districts MTSS model is irrelevant to this conclusion because the District did not permit that model, or the Student's eligibility categories, or the Student's diagnoses, to either limit or proscribe the special education offered through the May 2024 IEP. Rather, the District offered a program in response to the Student's needs as identified in the 2024 RR – including reading and spelling.

The appropriates of the May 2024 IEP also resolves the Parents' demand for tuition reimbursement. To obtain tuition reimbursement under the *Burlington-Carter* standard, the Parents must first prove that the District's program offer was inappropriate. The District's offer is the May 2024 IEP, which was appropriate. The Parents, therefore, are not entitled to tuition reimbursement.

ORDER

Now, October 18, 2024, it is hereby **ORDERED** that the Parents' claims are hereby **DENIED** and **DISMISSED.**

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED.**

/s/ Brian Jason Ford
HEARING OFFICER