

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

Pennsylvania Special Education Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number:

26934-22-23

Child's Name:

L.D.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer

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Date of Decision

12/30/2022

Introduction

This special education due process hearing concerns the educational rights of L.D. ("student"), a student who resides in the Philadelphia School District ("District").¹

The parties disagree over the educational programming of the student under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA"), specifically as to whether the District's most-recently proposed individualized education program ("IEP") is reasonably calculated to provide the student with a free, appropriate public education ("FAPE") under the terms of the IDEIA.²

For reasons set forth below, I find that the October 2022 IEP is an offer of FAPE (with one minor modification to the IEP, addressed in the order below).

Issue

Is the most-recently proposed IEP, from October 2022, appropriate to meet the educational needs of the student?

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).

Parents' complaint alleges that the student was not appropriately identified by the District, resulting in inappropriate programming over multiple school years. The dispute over programming continued through the parties disagreement over the District's last-proposed IEP in October 2022. The instant matter, at this ODR file number, was taken up to determine the appropriateness, or lack thereof, of the October 2022 IEP so that through a final decision the parties could gain clarity on the student's programming in the near-to-medium term. The retrospective issues in the parents' complaint related to alleged mis-identification and alleged inappropriateness of programming, or lack thereof, claims that range over multiple school years, are being taken up in a separate process at a different ODR file number.

Findings of Fact³

Exhibits of record and testimony were considered in their entirety in writing this decision. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue presented.

1. The student has been enrolled in the District since kindergarten. (Notes of Testimony ["NT"] at 61-115).
2. Following a transition to the District from early intervention services in the 2017-2018 school year, the student was found not to be eligible for services under IDEIA. The student received services under a Section 504 plan.⁴ (Parents Exhibit ["P"]-1, P-2, P-21, P-22).
3. At the outset of the 2021-2022 school year, [redacted], the student's behaviors in school required a safety plan for the student's safety and the safety of others as the result of hitting, head-banging, and throwing objects. The student also engaged in tantrums on a daily basis, for difficulty in safely transitioning into school in the morning, "crying/screaming while the teacher is delivering instruction", and difficulty with transitions "(the student) frequently [redacted] shuts down verbally when frustrated." (School District Exhibit ["S"]-1).

³ Given the fact that the evidence regarding alleged past denials-of-FAPE in the affiliated matter at a different file number will be more expansive, and the fact-finding in that matter will be more intricate, the findings of fact in this decision are streamlined to focus on the narrow issue of the appropriateness of the October 2022 IEP for current programming.

⁴ The Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504"), governs the provision of services to students with disabilities outside of IDEIA. 34 C.F.R. §§104.1-104.61 (see also 22 PA Code §§15.1-15.11 ["Chapter 15"]).

4. An evaluation process was undertaken to determine if the student was eligible for special education. (NT at 61-115, 240-303).
5. In December 2021, the District issued an evaluation report ("ER"). (P-6; S-3).⁵
6. The December 2021 ER indicated that the safety plan had been ineffective. (P-6 at page 1).
7. The December 2021 ER included medical diagnoses of oppositional defiance disorder, disruptive mood dysregulation disorder, unspecified depression, and intermittent explosive disorder. (P-6 at page 6).
8. The December 2021 ER included an occupational therapy ("OT") evaluation. The evaluator did not recommend OT services. (P-6 at pages 20-26; NT at 121-172).
9. The December 2021 ER identified the student as eligible for special education as a student with an emotional disturbance. (P-6 at pages 31-36).
10. Following the December 2021 ER, the student's IEP team met to develop an IEP. (NT at 61-115, 240-303).
11. Parents were not satisfied with the results of the December 2021 IEP meeting and requested a number of independent evaluations. The District agreed to fund an independent OT evaluation. (P-13; S-4; NT at 61-115, 240-303, 472-500).

⁵ The December 2021 ER was entered into the record as P-6 and S-3. For clarity, only the parents exhibit at P-6 will be cited.

12. In February 2021, the District issued an updated IEP, addressing some of parents' concerns. (S-5).
13. The February 2021 IEP noted the student's significant need for behavioral support. The IEP noted that the student did not exhibit academic needs, although removals from class and missed instructional time may impact academic achievement. (S-5 at pages 6-14).
14. The February 2021 IEP contained six goals, one each in reading, written expression, mathematics, and three behavior goals. (S-5 at pages 20-47).
15. The February 2021 IEP recommended a placement of approximately 77% of the school day in an emotional support classroom in a District elementary school that was not the student's neighborhood school. (S-5 at pages 53-55; S-6).
16. Over the period March–May 2021, the student was hospitalized in a partial hospitalization program as the result of behavior episodes. The student did not attend the District over this time. (P-7 at page 2; NT at 61-115).
17. In mid-May 2022, the independent OT report was issued. (P-15; S-8).⁶
18. The independent OT evaluator recommended IEP goals in handwriting, keyboarding, use of eating utensils, organization/task-approach/task-completion, and ball skills, to be addressed through two hours weekly of individual OT. (S-8; NT at 408-467).

⁶ The May 2022 independent OT report was entered into the record as P-15 and S-8. For clarity, only the District exhibit at S-8 will be cited.

19. In mid-May 2022, almost simultaneously with the issuance of the independent OT report, the student was discharged from the partial hospitalization program. (NT at 61-115).
20. Upon discharge, the partial hospitalization program performed a comprehensive evaluation for autism. (P-7).
21. The May 2022 autism evaluation diagnosed the student with autism spectrum disorder, with particular needs in social skills, rigidity, and difficulty with transitions. (P-7).
22. Upon receiving the independent OT evaluation and the autism evaluation, the District updated its evaluation of the student. (S-10; NT at 61-115, 311-369).
23. The student returned to the District for the remaining month of the 2021-2022 school year, with behaviors that were markedly reduced. (NT at 61-115, 240-303).
24. In June 2022, the District re-issued the December 2021 ER, incorporating the results of the independent OT evaluation and the autism evaluation. (S-10 at pages 2-3, 17-24).
25. The June 2022 ER identified the student as eligible for special education as a student with autism and an emotional disturbance. (S-10 at pages 40-44).
26. Based on the June 2022 ER, the student's IEP team met to develop a revised IEP. (P-16).
27. The June 2022 IEP recommended the support of a 1:1 aide. (P-16 at pages 7-8, 50).

28. The present levels of academic achievement and functional performance, as well as parental concerns, were updated in the June 2022 IEP. (P-16 at pages 12-15).
29. The student did not exhibit academic needs, although absences again played a role in assessing those needs. Written expression, however, was identified as an area of explicit need. (P-16 at page 15).
30. The June 2022 IEP contained the six goals from the December 2021 IEP, one each in reading, written expression, and mathematics, and three in behavior. The present levels of functional performance for the behavior goals included updated data from the autism evaluation. (P-16 at page 21-48).
31. The June 2022 IEP also provided for 30 minutes monthly of OT for handwriting support. (P-16 at page 50).
32. The June 2022 IEP recommended a placement of approximately 38% of the school day in both an autism support classroom and an emotional support classroom at a District elementary school that was not the student's neighborhood school. (P-16 at pages 55-57).
33. In June 2022, parents did not accept this program/placement. (NT at 61-115, 472-500).
34. In July 2022, the parents obtained a private psychoeducational evaluation of the student. (P-8; S-12; NT at 179-230).⁷
35. The July 2022 private evaluation identified the student as eligible for special education as a student with autism and specific learning disabilities in written expression and mathematics. The evaluator made

⁷ The July 2022 private evaluation report was entered into the record as P-8 and S-12. For clarity, only the parents exhibit at P-8 will be cited.

specific programming recommendations, including broad application in multiple instructional areas utilizing applied behavior analysis, social skills instruction (through speech and language [“S&L”] support), and development of fine-motor and gross-motor skills (through OT support). (P-8 at pages 26-31; NT at 179-230).

36. The July 2022 private evaluation supported the parents’ view that the student receive services within the District at the student’s neighborhood school. Alternatively, the evaluator opined that a private placement outside of the District might be pursued. (P-8 at page 31; NT at 179-230).
37. Upon receiving the July 2022 private evaluation in August 2022, just prior to the beginning of the current 2022-2023 school year, the District updated its evaluation of the student. (S-13).
38. In late August 2022, nearly simultaneously with the provision of the July 2022 private evaluation report to the District, parents filed the special education due process complaint that led to this proceeding. (Hearing Officer Exhibit -1).
39. In September 2022, the District issued an ER specifically addressing the results and recommendations of the private evaluator. (S-13; NT at 311-369).
40. The September 2022 ER continued to identify the student as a student with autism and emotional disturbance. Given the needs the District had identified in written expression, the District evaluator adopted the formal identification of the student as a student with a specific learning disability in written expression. The evaluator opined that the District did not see needs in mathematics which necessarily supported a formal identification of the student as a student with a

specific learning disability in mathematics; but given the testing result obtained by the private evaluator in this regard, the evaluator added this as an explicit disability category. (S-13 at pages 3, 6-7).

41. The September 2022 ER contained input and reflections of a District S&L therapist. The S&L therapist opined that the student does not require direct S&L instruction in social skills, that those skills can be addressed in the IEP through other strategies in various environments. (S-13 at pages 9-13; NT at 377-404).
42. In October 2022, the District proposed an IEP, the IEP at issue at his ODR file number. (P-17; S-14).⁸
43. The October 2022 IEP recommends that the student receive the support of a 1:1 aide throughout the school day with a plan to fade the involvement of an aide with demonstrable progress in behavior. (S-14 at pages 6-8).
44. The October 2022 IEP includes updated curriculum-based assessments in literacy and mathematics, which show that the student was performing at the 88th percentile at a grade equivalent level of 7.8 in literacy and the 81st percentile at a grade equivalent level of 6.3. (S-14 at pages 11-12).
45. The October 2022 IEP includes updated teacher input as of October 2022. (S-14 at page 17).
46. The October 2022 IEP contains six goals, one each in reading, written expression, and mathematics, and three goals in behavior. These are largely the goals which the District had been proposing since

⁸ The October 2022 IEP was entered into the record as P-17 and S-14. For clarity, only the District exhibit at S-14 will be cited.

December 2021, although the present-levels and some of the specially-designed instruction/program modifications have changed as new information developed with the various evaluations thereafter. (S-14 at pages 25-53).

47. The specially-designed instruction/modifications in the October 2022 IEP call for small-group social skills work in various educational settings, as well as discussions of social skills expectations and usage. (S-14 at page 55).
48. The October 2022 IEP provides for 30 minutes per month of direct OT services for handwriting. (S-14 at page 56).
49. The October 2022 IEP recommends a placement of approximately 20% of the school day in both an autism support classroom and an emotional support classroom at the student's neighborhood school. (S-14 at pages 60-62).
50. The inclusion of a 1:1 aide and placement in blended autism-support/emotional-support settings at the student's neighborhood school are the most significant revisions of the District's proposed programming over the December 2021 – October 2022 timeframe. (P-16, P-17; S-5, S-14).
51. The student's 1st quarter report card in the 2022-2023 school year showed high grade achievement. (S-15).
52. As of the date the record closed in November 2022, the student's in-school behavior was reported to have improved, especially as compared to the behavior difficulties in the fall of the prior year. (NT at 61-115, 240-303).

Discussion

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 in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some' 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)).

Here, the October 2022 IEP reflects programming and an educational placement that is reasonably calculated to provide the student with significant learning in light of the student's individual needs. While the student requires support in academic areas, especially in the area of written expression, this record shows that the student exhibits strong academic achievement. The student's needs revolve largely around managing behavior in educational environments as a result of the student's autism, identified by an outside provider in May 2022.

The October 2022 IEP provides a comprehensive sense of the present levels of the student's academic achievement/functional performance. The goals are targeted to the student's areas of need (some more explicit, some more along the lines of support). The specially-designed instruction and program modifications provide instruction and supports designed to allow the student to make progress on the IEP goals. And, critically, the student's placement will be largely in regular education settings in the student's neighborhood school. Taken all together, the programming and placement

outlined in the October 2022 is an offer of FAPE, as of the date of this decision.

The order below will, however, address one slight modification to the content of the IEP. The October 2022 IEP calls for 30 minutes per month of direct OT support for handwriting. The District OT testified credibly that the student's dislike of, and frustration with, handwriting should lead to increased focus on typed assignments/keyboarding. (NT at 121-172). The independent OT likewise testified credibly that, while handwriting is a non-preferred task for the student, gaining the ability to legibly write is a skill that cannot be abandoned. (NT at 408-467). The direct OT support for handwriting is proposed as only a few minutes per week; this amount will be doubled to allow for deeper, albeit not overly intensive, direct OT instruction.

Accordingly, as of the date of this decision, the October 2022 IEP, with a slight modification as outlined below, is an offer of FAPE for the initial provision of special education services to the student. The programming outlined in the IEP, in the placement proposed through the IEP, should begin forthwith.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Philadelphia School District shall make arrangements, as soon as practicable and mindful of the student's needs related to transitions, for the implementation of the October 2022 IEP. This IEP is an offer of FAPE, as of the date of this decision.

The October 2022 IEP shall be amended, however, to include direct occupational therapy services for 60 minutes per month, to be delivered on a weekly basis.

Nothing in this decision and order addresses the appropriateness, or inappropriateness, of evaluations, programming, alleged acts, or alleged omissions, by the Philadelphia School District prior to the date of this decision. Those determinations will be taken up as retrospective denial-of-FAPE claims in parents' complaint as those claims over multiple school years have been placed at issue in the affiliated matter at a separate ODR file number.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

12/30/2022