

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 Due Process Hearing Officer

Final Decision And Order

Closed Hearing

ODR No. 27380-22-23

Child's Name:

G.L.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

Cheryl Cutrona, J.D.

Date of Decision:

July 17, 2023

INTRODUCTION

G.L. (hereafter "Student")¹ and Parents live within the boundaries of the Saucon Valley School District (hereafter "District"). The Student has been identified as eligible for special education services under the exceptionalities of Autism and Speech and Language Impairment. The parties stipulated that the Student is currently placed in itinerant learning support and receives occupational therapy (OT), social skills instruction, and speech and language therapy.

The Parent's² amended due process complaint was filed on December 27, 2022 claiming the District failed to address the Student's educational, behavioral, social and emotional needs, amounting to a denial of the Student's right to a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities in Education Act (IDEA)³, Section 504 of the Rehabilitation Act of 1973⁴ (Section 504), the Americans with Disabilities Act (ADA), and corresponding regulations. The Complaint proceeded to a four-day, closed, due process hearing that was convened via video conference on February 27, 2023⁵, April 3, 2023, May 8, 2023, and May 10, 2023.⁶

All evidence including the exhibits admitted to the record and transcripts of the testimony was considered by the hearing officer. The only

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including the details on the cover page, will be redacted prior to the decision's posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² [redacted].

³ 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818.

⁴ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61.

⁵ The hearing on February 27, 2023 was limited to "Knew or Should Have Known" (KOSHK) issues. The hearing officer's KOSHK ruling was entered on March 10, 2023 and is incorporated herein by reference.

⁶ References to the record throughout this decision will be to the Notes of Testimony (NT), School Exhibit (S-) and/or Parent Exhibit (P-) followed by the Exhibit number and page number, and Hearing Officer Exhibits (HO) followed by the exhibit number.

findings of fact cited herein are those needed by the hearing officer to explain the ruling. All exhibits and all aspects of each witness's testimony are not explicitly referenced below.

ISSUES

1. Did the District offer and provide FAPE to the Student from December 27, 2020 until the present?
2. If not, what should be the remedy?
3. Is the District's February 2022 Reevaluation Report (RR) appropriate?
4. Did the District deny the Parent meaningful participation in the Student's education?

For the reasons set forth below, the Parent's claims are denied.

FINDINGS OF FACT

1. In 2016, just prior to starting [redacted] in the District, a re-evaluation of the Student was conducted (S-3). The Student was found to be eligible to receive special education services under the exceptionalities of Autism and Speech and Language impairment (S-3, at 31).
2. During the 2019-2020 school year when the Student was in the [redacted] grade, because of the COVID-19 pandemic the Governor ordered that all Pennsylvania schools be closed on March 16, 2020. The District implemented a remote learning environment, implementing the Individualized Educational Program (IEP) to the maximum extent possible (S-34, at 6). When the students returned to brick and mortar in the Fall of 2020, because of COVID restrictions, the students were seated six feet apart, they were masked 100% of the time, there was no one-on-one or small group work, and there were no parties, or field trips (NT, at 44; 45). By December 2020, the commencement of the time in question here,

when the Student was entering the second half of [redacted] grade, the District had returned to in-person learning.

3. During the 2020-2021 school year, the 2020 IEP indicated that the Student continued to need special education services in the areas of: (1) language skills; (2) pragmatic language skills; (3) articulation skills; (4) handwriting and printing skills; (5) reading fluency and accuracy; and (6) math computation (S-24 at 21). The Student was assigned to a classroom co-taught by general education and special education teachers. The Student received itinerant learning support in the areas of reading, writing and math. The Student also received related services: Speech and Language Therapy, and OT (S-34, at 6-14). The IEP also included Program Modifications and Specially Designed Instruction (SDI), and noted that Therapeutic Support Services (TSS provided by an outside resource) and Behavioral Support Services (BSS) were also being provided (S-34, at 27). The Student was in a co-teaching classroom (NT, at 44-45; 78-79).
4. Between Fall 2020 and Spring 2021, the Student made progress: (1) in Reading, improving from an average of 52.6 wcpm at 86% accuracy on a [redacted]-grade reading probe in the Fall of 2020 to 89.3 wcpm at 96% accuracy on the same level probe by Spring of 2021; (2) improving reading comprehension scores on a [redacted] grade probe from an average score of 4.3 in the Fall of 2020 to an average score of 7.5 by the Spring of 2021; and (4) improving on a math computation probe at the [redacted]- grade level from an average score of 14.6 in the Fall of 2020 to an average score of 40.6 by the Spring of 2021 (NT, at 86-87; S-37, at 4-7).
5. Some of the goals on the 2019 and 2020 IEPs appeared to be essentially the same (S-24 compared to S-25), however, during testimony the teachers adequately explained that because the goals are grade normed,

those in 2019 were based on [redacted]-grade probes and those in 2020 were based on [redacted]-grade probes. So, while they appeared to be similar, the content levels were different (NT, at 46-47; 66; 86-87; 162-164) because they corresponded to the grade that the Student was in, and changed as the Student progressed from grade to grade.

6. The Parent complained that the IEP did not include specific SDI for reading fluency, reading comprehension, social skills, or pragmatic language skills. The teachers who testified during the hearing credibly explained that many SDI are not subject specific, but rather are based on the child's unique needs and written to apply across disciplines to ensure access to the general curriculum. For example, repetition, re-teaching, drill of previously learned and new topics, sensory breaks, positive reinforcement, use of headphones, collaboration with TSS and BSC, and chunking assignments can be used across the subject areas (S-29, at 38-42; S-39, at 31-33; S-43, at 42-44; NT, at 63; 106-107; 121-126; 148).
7. The Student transitioned into the middle school for [redacted] grade at the beginning of the 2021-2022 school year. The Parent testified that the transition resulted in: (1) [Parent's] ability to receive information from the District regarding the Student's education programming and related services becoming more difficult (NT 2/27/23, at 43-44); (2) The Student was initially assigned to the wrong regular education classroom that was not co-taught and where masks were required. This issue was resolved when the Student was moved to a co-taught classroom and the Student was not harmed as a result of this administrative error (NT 2/27/23, at 44-46; NT 154-156); (3) Speech and language services were not provided as required by the Student's 2021 IEP between August 2021 and January 2022 (NT 2/27/23, at 47); and (4) Social skills instruction was not provided (NT 2/27/23, at 47-50). During [redacted] grade, the Student continued to be assigned to a co-taught classroom (NT, at 99).

8. The Student's 2021 & 2022 IEP required 60, 30-minute Speech and Language Therapy sessions (S-35, at 29; S-43, at 44). As the result of a staffing issue, the District did not provide Speech Therapy between August 2021 and January 2022 (S-35; NT, at 139-140; 158-159; 165-166; 184-191). The District notified parents in November 2021 and the new therapist started January 5, 2022 (NT, at 190, 201; S-46, at 47). The speech and language therapy sessions that were missed were made up before the end of the 2021-2022 school year (NT, at 138-139; 160; 186; 202-204; 212; 226-227; S-29, at 28; S-35, at 29; S-46, at 5; S-47, at 17; 20-21; 27-28). Testing and progress monitoring indicated that the Student's speech skills did not regress due to the missed services (NT, at 207; 227-228; S-41, at 20-22; S-23, at 29-33; S-45, 1-4).
9. The Math Computation goal in the Student's 2021-2022 IEP contained no baseline in the March 2021 original or in the December 2021 revision (S-35, at 25; S-39, at 40; NT, at 75; 150). The Math teacher who testified could not explain why the baseline was missing because she did not draft the goal. Progress monitoring and reporting for that goal was completed despite there being no baseline (S-45, at 13). The Math teacher explained that she collected the data from the Student's curriculum-based assessments to report on the goal (NT, at 150). The 2022-2023 IEP Math Computation and Math Problem-solving goals both included baselines (S-43, at 38-39).
10. Social skills instruction was not specifically listed in the 2021 IEP (NT 2/27/23, at 47-50). The Case Manager testified however that the Student was pulled out every other week to attend social skills instruction provided by an external service provider (NT, at 159). Additionally, twice weekly between December 2020 and June 2021, the Student participated in a social communication group with about six other students as part of the Student's speech and language services. The group focused on

pragmatic language skills, including conversational skills, nonverbal communication, eye contact, problem solving and social situations (NT, at 386). The therapist who conducted the group credibly testified that the pragmatic language skills are be speech therapy, not specifically social skills learning (NT, at 392), but that "social skills" is an "umbrella term" under which pragmatic language skills fall (NT, at 397).

11. The February 28, 2022 RR (S-41), conducted by the School Psychologist and other school specialists, was comprehensive and addressed the Student's areas of need. The RR included a review of records, testing, rating scales, and classroom observations. The following standardized tests were administered: the Woodcock Johnson IV, the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) to assess cognitive ability and the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) for assessing academic achievement. The following rating scales were completed by various teachers and the Parent to assess the Student's social-emotional and behavioral functioning: the Behavior Assessment System for Children, Third Edition (BASC-3), the Social Responsiveness Scale, Third Edition (SRS-3) and the Social Skills Improvement System (SSIS). The Student was observed in Language Arts and in Math using the Behavioral Observation of Students in Schools (BOSS). The Student was also observed during testing. An OT evaluation was conducted by the Occupational Therapist. It included observations, a handwriting evaluation, a sensory profile, and the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI). The Speech Therapist conducted a speech evaluation that included observations using "wh" questions and semantics, pragmatics, parent input, and testing using the Comprehensive Assessment of Spoken Language, Second Edition (CASL-2). The CASL-2 is an age-normed assessment with observations (S-41, at 20-22; NT, at 212-234). The results indicated that

the Student's pragmatic subtest scores improved between 2019 and 2022 from 74 to 78, on the inferences subtest from 72 to 82, and on the meaning-from-context subtest from a 72 to a 87 (S-41, at 21; S-23, at 33; NT, at 233-234). The Speech Therapist concluded there was no need for testing in other areas of speech. The Parent did not raise any other speech-related concerns (NT, at 230-231). The March 22, 2022 Functional Behavioral Assessment (FBA) incorporated a review of records; interviews with teachers, the speech therapist, and Parents; direct observations of the Student; and data analysis (S-42). The FBA did not recommend a Positive Behavior Plan (PBP) at that time (S-42, at 4).

12. The 2022 RR also assessed the Student's social skills (S-41, at 16-17) and information was gathered from Student's Parent and two teachers that identified areas of need in terms of social skills (S-41, at 16-17; NT, at 493-495). In general, the RR concluded that the Student struggled with social interactions due to social cognition, social communication, and restricted interests (NT, at 520).
13. The 2022 RR recommended that the Student (1) continue to receive special education and supports in basic reading, reading comprehension, reading fluency, written expression, math calculation, and math problem-solving; (2) accommodations to support processing speed needs (e.g., chunking of lengthy assignments and guided notes); (3) supports/services in the areas of social cognition and social communication; (4) the OT evaluation concluded that the Student no longer needed direct OT services, and could benefit from SDI (e.g., using noise cancelling headphones) and consultation for specific issues (NT, at 538-539); (5) Speech and Language Therapy with a focus on pragmatics; and (6) any other supports/services deemed appropriate (S-41, at 22).
14. At the September 13, 2022 IEP revision meeting, the team reviewed the Student's progress to date for the school year, reviewed the progress

on making up the missed speech services, revised the math computation goal, and added social skills instruction every other week to the SDI (S-47, at 5, 12-13, 32, 37; S-51, at 3; NT, at 424-425).

15. On November 28, 2022, another IEP team meeting was held to revise the IEP. The team reviewed the Student's progress, goals in speech reading fluency and math problem solving were revised, and SDI was added related to language arts assessments (S-48, at 5, 12-13, 22-23, 29, 30, 32, 37). The Parent rejected the NOREP issued with this revised IEP and filed a Complaint requesting Due Process (S-48, at 43).
16. As evidenced by the Report Cards from 2020-2021, 2021-2022, and 2022-2023 (to date), while participating in co-taught, regular education classes, with the support described herein, the Student achieved passing grades (S-36; S-44; S-54).

Parent's Claims

The Parent contended that the District failed to timely and properly evaluate the Student in all suspected areas of need, including but not limited to a comprehensive psychoeducational evaluation and Functional Behavioral Assessment (FBA). The Parent alleged that the Student's IEPs were inappropriate and failed to provide the Student with sufficient and appropriate special education and related services, particularly in the areas of reading, written expression, mathematics, attention/behaviors of concern, executive functioning skills, and social skills, including but not limited to, pragmatic language, coping skills and speech and language therapy. The Parent also contended that the District did not properly monitor the Student's progress. And, that the District excluded the Parent from meaningful participation in the Student's education by, among other things, failing to listen to the Parent's repeated requests.

District's Claims

The District argued that the only evidence presented regarding the Parent's concerns with the program was that the Student missed speech services, which were made up and did not adversely affect the Student. The District further argued that the Parent's allegation that the Student was not provided social skills instruction is inaccurate. The District contended that the Parent presented no credible evidence to support the contention that any portion of the Student's program was inappropriate. The District maintained that the evidence is clear that the Student was offered an appropriate program and made progress in all areas of need. The District urged the Hearing Officer to deny the Parent's requested relief because the Parent failed to establish a denial of a FAPE and that the District's 2022 Re-Evaluation (RR) is appropriate under the law.

GENERAL LEGAL PRINCIPLES

Burden of Proof

In general, the burden of proof essentially consists of two elements: the burden of production and the burden of persuasion. Here, it should be recognized that the burden of persuasion lies with the party seeking relief: the Parent. *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 burden of persuasion must be established by a preponderance of the evidence. *Jaffess v. Council Rock School District*, 2006 EL 3097939 (E.D. Pa. October 26, 2006). A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. *Comm. v. Williams*, 532 Pa. 265, 284-286 (1992).

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in *Schaffer* called " equipoise." On the

other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See *Schaffer*, above.

In the present matter, based upon the above rules, the burden of persuasion rests upon the Parent, who filed the Complaint, to prove by a preponderance of the evidence that the District failed to offer and provide FAPE, that its February 2022 RR was not appropriate, and that the District failed to provide the Parent with meaningful participation in the Student's education. The evidence demonstrates that the Parent has failed to meet the burden of proof for every claim. Therefore, the Parent's Complaint must be denied.

Credibility Determinations

Special education hearing officers, in the role of factfinders, are charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *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).

During the four days of testimony, the hearing officer finds that the witnesses testified credibly and in a forthright manner. The general education and special education teachers went above and beyond to ensure that their answers were truthful, particularly when they repeatedly refused to respond to questions that went beyond their knowledge or area of expertise.

Eligibility under IDEA

The Individuals with Disabilities Education Act (IDEA)⁷ requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to assist a child to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase "free appropriate public education" to require "significant learning" and "meaningful benefit" under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

The Individualized Education Plan (IEP)

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's IEP Team, which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement

⁷ 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

of the special education and related services to be provided to the child." Id. § 1414(d)(1)(A)(i). A FAPE, as the IDEA defines it, includes individualized goals, "specially-designed instruction" and "related services." Id. § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. Id. §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D) To be eligible for special education services under IDEA, the student must (1) meet the requirements of one or more of the disability categories identified in the regulation and (2) require specially designed instruction to benefit from that instruction.

Re-evaluation Reports (RR)

The IEP is based on an evaluation or an RR. The IDEA establishes requirements for evaluations that are substantively the same for initial evaluations and reevaluations. 20 U.S.C. § 1414.

The IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]" 20 U.S.C. §1414(a)(1).

IDEA and its implementing regulations sets out procedural requirements designed to ensure that all of the child's individual educational needs are examined: (1) the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information; (2) 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 (3) 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); see also 34 C.F.R. §§ 300.303(a), 304(b).

The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B).

And, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3).

If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b)(1); *PP by Michael P and Rita P v. Westchester Area School District*, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009).

Meaningful Participation

IDEA requires that parents of a student with a disability be afforded meaningful participation in the IEP process and in the education of the student. *DS & AS ex rel DS v. Bayonne Bd of Educ*, 602 F.3d 553, 54 IDELR 141 (3d Cir 4/22/10); *Fuhrmann ex rel Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1036, 19 IDELR 1065 (3d Cir. 1993); *MP by VC v Parkland Sch Dist.*, 79 IDELR 126 (ED Penna 2021); 34 C.F.R. § 300.501. See, *Deal v. Hamilton County Bd of Educ.*, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004); *JD v. Kanawha County Bd of Educ*, 48 IDELR 159 (S.D. WV. 2007).

For a procedural violation to be actionable under IDEA, the parent must show that the violation results in a loss of educational opportunity for the student, seriously deprives the parents of their participation rights, or causes a deprivation of educational benefit. *Ridley School District v. MR and JR ex rel. ER*, supra; IDEA § 615(f)(3)(E); 34 C.F.R. § 300.513(a).

DISCUSSION

FAPE

Areas of Need

Over the time in question, the Student's areas of need remained consistent. The record shows that the District properly identified those needs, programmed for them, and monitored them. The Student attended a co-taught classes and participated in itinerant and related services. And, the Student made appropriate progress in those areas of need.

Speech Therapy

The evidence in this case establishes that the speech services missed during the Fall of 2021 when the assigned therapist was out on leave were made up and did not harm the Student. The District notified the Parent, hired a new therapist, and committed to and did, indeed, make up the services. Subsequently, progress monitoring and testing show that the Student did not regress as a result of the missed sessions. Because there was no harm to the Student as a result of the missed services and the missed services were made up, the Parent has not proven that relief is due. See *F.V. v. Cherry Hill Twp. Bd. of Educ.*, No. 121CV18096KMWSAK, 2023 WL 2662697, at *11 (D.N.J. Mar. 28, 2023).

Social Skills Instruction

Prior to the September 13, 2022 IEP revision meeting when Social Skills Instruction was added to the IEP as an SDI requiring one 30-minute session every other week, social skills instruction was offered by an outside

provider for a period of time; although no specific details were given. In the absence of a special IEP goal, the record demonstrates that social skills supports were offered in a variety of ways: (1) Related Services: in the Speech and Language therapy social communication group that focuses on pragmatic language skills; (2) Behavior Goal: that addresses respectful, responsible and safe behavior; (3) SDI: regarding social communication training, active listening and “expected and unexpected behavior” across the school day as teachers and other support personnel monitors social interactions with peers and, when necessary, provides support such as offering coping strategies, and explaining social inferences (e.g., like the use of sarcasm) and emotions (e.g., zones of regulation).

The IEP

Goals

The IEP goals are measurable and individualized to meet the unique needs of the Student. In addition to being confused about goals that contain similar wording, the Parent was also concerned because one Goal did not include a baseline. Best practice is to include baseline data in every goal so that progress can be accurately measured. However, one missing baseline for a single Math goal during one school year does not equate to a denial of FAPE. In this case, despite the missing baseline, progress was monitored, data was collected and, over the school year, the Student made progress in math despite the missing baseline. The subsequent IEP was corrected and a baseline was included for every goal.

The hearing officer finds that the Parent failed to prove that the IEP goals were insufficient to offer and provide a FAPE.

Specially Designed Instruction (SDI)

The Program Modifications and SDI in the Student’s IEPs are appropriate despite the Parent’s concerns about nonspecific SDI. The nonspecific SDI included in the IEPs properly provided for supports to ensure

access to the general curricula. The hearing officer finds that because the panoply of SDI in the Student's IEPs are not necessarily written for specific subjects, a lack of SDI that address specific subject areas does not prove that the IEP is inappropriate.

Appropriateness of the 2022 RR

There is no evidence in the record to prove that the 2022 RR violated any of the IDEA procedural or substantive requirements, or that the District's ultimate conclusion is incorrect. The evidence in this case proves that the RRs in question complied with the evaluation criteria detailed above. The School Psychologist reviewed the previous evaluations prior to testing. The RR was sufficiently comprehensive based on the Student's needs and educational progress, they included a variety of assessment tools and strategies, no single measure was used as the sole criterion to determine the educational program, and the instruments used were technically sound, valid, research-based tests. Furthermore, the IEP based on the contested RR offered appropriate placements, program modifications, and SDI. Therefore, the District did not fail to provide the Student with FAPE under either IDEA, Section 504 or any of the corresponding regulations.

Meaningful Participation

The Parent did not prove that the District failed to provide a FAPE to the Student by denying the Parent meaningful participation in the Student's education. The record shows that the District provided ample opportunities for the Parent to meaningfully participate in the Student's education at all times. The Parent was given notice of all IEP meetings, participated in the IEP meetings, received the Procedural Safeguards as required by law, and regularly communicated with the teachers and the District.

The Parent's claim that the District "persistently" lacked communication with the Parent falls flat. The record clearly shows that the Parent freely communicated with the District by email, telephone, and in

person, and that the District responded in a timely manner listening to and taking the Parent's concerns into consideration. The Parent actively participated as an IEP Team member and her input was taken into consideration in developing the IEPs.

Furthermore, the District did not fail to timely notify Parent of the missing Speech Therapy services in a way that interfered with [Parent's] ability to seek outside services or timely develop and implement a plan to do so. The District did not immediately notify the Parent after a few sessions were missed, but it did not intentionally withhold information. The record shows that once the staffing issue became permanent, the District's initial attempt to remedy the situation was unsuccessful thereby extending the interruption in services. The resulting temporary deprivation lasted about a semester. The District notified the Parent, hired a new Speech Therapist who immediately developed a plan of action to make up the missing sessions. The missing sessions were made up, and the subsequent progress monitoring and testing demonstrated that the Student did not regress as a result. Therefore, the Parent failed to meet its burden of proving that the District did not provide the Parent with a meaningful opportunity to participate in [the] child's education.

LEGAL CONCLUSIONS

1. The District offered and provided an appropriate educational program reasonably calculated to assist the Student to benefit educationally from the instruction and the Student made measurable progress. Therefore, the Parent's FAPE claims under IDEA, Section 504, and the corresponding regulations are denied.
2. The District's February 2022 Reevaluation Report (RR) is appropriate under the law.

3. The District did not deny the Parent meaningful participation in the Student's education.

ORDER

AND NOW, this 17th day of July 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The Parent's claims are dismissed in their entirety.
2. No relief is ordered.

It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. Jurisdiction is RELINQUISHED.

Cheryl Cutrona

Cheryl Cutrona, J.D.

Hearing Officer

Date of Decision

July 17, 2023

ODR 27380-22-23