

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

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 28864-23-24

Child's Name:

V.V.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Local Educational Agency:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

06/25/2024

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends the Howard Gardner Multiple Intelligences Charter School ("Charter School").¹ The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with a speech and language ("S&L") impairment.

The student's father filed the complaint which led to these proceedings. The father claims that through various acts and omissions of the Charter School in the spring and summer of 2023, in the run-up to the student's enrollment in the Charter School, and in the 2023-2024 school year, the Charter School committed procedural violations of the IDEA that led to a denial of a free appropriate public education ("FAPE") for the student. Additionally, the father claims that the Charter School interfered with his ability to meaningfully participate in the education of his child.

The Charter School counters that at all times it met its obligations to the student under IDEA, that there were no procedural violations in working with the student's father (and, in the alternative, if there were any

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 IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§711.1-711.62 ("Chapter 711").

procedural violations, any such violations did not amount to a substantive FAPE), and that it did not interfere with the father's ability to participate in the education of his child.

For reasons set forth below, I predominantly find in favor of the Charter School.

Issues

1. Did the Charter School commit any procedural violations of the IDEA?
2. If so, did any of those violations amount to a substantive denial-of-FAPE?
3. Did the Charter School deny the father an opportunity to meaningfully participate in the special education programming of his child?
4. Is the father entitled to any remedy?
5. Regardless of the answer to issue #1-4, does equity require that the parties be directed regarding aspects of the student's education?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. Before coming to the Charter School for [redacted], the student received [redacted] services for S&L impairment. (Charter School Exhibit ["S"]-1).
2. The student's father and mother are divorced and share joint custody over the student and the student's siblings. (See, e.g., Parent Exhibit ["P"]-21; NT at 61-166, 171-193).
3. In late August 2023, the Charter School's director of special education testified at a family court hearing in the Court of Common Pleas ("the Court") which holds jurisdiction over the parent's family law dispute. (P-6; NT at 61-166, 387-485).
4. [redacted] (NT at 61-166, 171-193).
5. The student's father felt that the appearance of the director of special education in front of the Court was untoward and was undertaken as the result of a personal animus by the director and/or the student's mother. (NT at 61-166; Father's Complaint at Hearing Officer Exhibit ["HO"]-1, Father's Amended Complaint at HO-2).
6. The appearance by the director of special education in front of the Court, on this record, was apparently undertaken in good faith to provide information to support and explain the actions which the Charter School would be taking for the student's programming at the Charter School, programming which the student's mother supports. (NT at 61-166, 171-193, 387-485).

7. In August 2023, shortly after the director's testimony in front of the Court and anticipating the student's enrollment in [redacted] for the 2023-2024 school year, the student's IEP team met to make decisions regarding S&L support at the Charter School. (S-4, S-5; Parent Exhibit ["P"]-3, P-4; Notes of Testimony ["NT"] at 61-166, 215-316, 387-485).
8. The student's father withheld consent for the student to receive educational services, or to have the early intervention IEP implemented at the Charter School. (P-5, P-7 at pages 1-4; S-6 at pages 1-4; NT at 61-166).
9. The student's mother consented to the implementation of the early intervention IEP for a period up to 90 days to allow the student's IEP team to assess the student and potentially re-evaluate the student. (S-6 at pages 9-12; NT at 171-193).
10. The Charter School, citing its obligations under provisions in Pennsylvania for the transition of a student from early intervention to school-aged services, implemented the early intervention IEP in accord with the mother's consent. (P-6, P-7 at pages 5-8; S-6 at pages 9-12; NT at 215-316, 387-485).
11. In late August 2023, as part of its [redacted] intake/screenings based on the student's performance, the Charter School began to provide regular-education reading and mathematics support to the

student through its multi-tiered system of support (“MTSS”). The student received one session in late August 2023. (S-13; NT at 319-377, 387-485).

12. In the spring and summer of 2023, the student’s father felt that he had been purposefully excluded from the Charter School’s internal parent-teacher communication platform. The father was not excluded—settings in his own browser and computer interfered with his ability to engage on the platform. (NT at 61-166, 488-564).
13. In mid-September 2023, counsel for the father contacted the director of special education, reiterating father’s position that the Charter School could not and should not proceed with educational services over father’s objection. Father’s counsel also requested an independent educational evaluation (“IEE”) at Charter School expense. (P-9).
14. The director of special education indicated that an IEE could be granted only after disagreement with a re-evaluation by the Charter School. In late September 2023, the Charter School issued a permission-to-evaluate (“PTRE”) form, seeking the permission of parents to perform the re-evaluation. (S-7; NT at 215-316, 387-485).
15. The student’s mother returned the PTRE the same day it was issued, granting permission for the re-evaluation. The student’s father did not return the PTRE. The Charter School proceeded with the re-

evaluation process in accord with the mother's consent. (P-11; NT at 215-316, 387-485).

16. The student received six sessions of regular-education MTSS support in September 2023. (S-13).
17. In early October 2023, the Charter School administered its standard fall benchmarks to gauge the academic levels of reading and mathematics. This benchmark testing is administered three times per year (fall, winter, spring) to all Charter School students. (NT at 319-377).
18. The student's [redacted] fall benchmark in reading indicated that the student's composite score (252) indicated "needs most support" with a deficient scores in letter names and decoding. (S-9 at page 2).
19. The student's [redacted] fall benchmark in mathematics indicated that the student's overall status indicated that the student was "likely to need intensive support" with a deficient scores in counting, number identification, and quantity discrimination. (S-9 at page 4).
20. In late October 2023, counsel for the Charter School (an attorney different from the attorney who represented the Charter School at the hearing, although both attorneys are affiliated with the same firm) responded to the objections and queries lodged by father's counsel in his mid-September communication. (P-9, P-10).

21. The student did not receive any sessions of regular-education MTSS support in October 2023. (S-13).
22. As part of the re-evaluation process, the Charter School S&L therapist sent home to each parent, in the student's communication folder, a parent-input form for the inclusion of parental input in the re-evaluation report ("RR"). (P-12; NT at 61-166, 215-316).
23. The student's father disputes that the parent input form was ever provided to him. The S&L therapist testified that she provided the form in the student's communication folder. The testimony of the S&L therapist is credited. (S-12 at page 3; P-15 at page 57; NT at 61-166, 215-316).
24. In early November 2023, the Charter School issued its RR. (S-12; P-15 at pages 56-70).
25. The November 2023 RR included input from the student's mother but did not include input from the student's father. (S-12 at page 3; P-15 at page 57).
26. The November 2023 RR included information from [redacted] evaluations, as well as current levels of academic performance (the fall benchmark scores) and present levels of performance from the S&L therapist. (S-12 at pages 3-5; P-15 at pages 57-59).

27. The November 2023 RR included input from the student's [redacted] teacher and observational input from the S&L therapist. (S-12 at page 5; P-15 at page 59).
28. The November 2023 RR included S&L assessments in articulation and language development, as well as oral-motor and fluency observations. (S-12 at pages 7-8; P-15 at pages 61-62).
29. The November 2023 RR included pragmatic-language/social-communication input from the student's mother and [redacted] teacher. (S-12 at pages 8-9; P-15 at pages 62-63).
30. The November 2023 RR recommended that the student be identified as a student with a S&L impairment, with S&L services targeted to articulation/speech-intelligibility. The November 2023 RR also recommended continued monitoring of functional communication skills in school settings. (S-12 at page 9; P-15 at page 63).
31. After issuance of the November 2023 RR, the student's father voiced his displeasure with the lack of his input in the report and the overall conclusions of the November 2023 RR. The Charter School S&L therapist indicated that, upon instruction from the director of special education, the November 2023 RR was "locked" and could not be revised to allow submission of the father's input. (P-12; NT at 61-166, 215-316, 387-485).

32. In the first half of November 2023, prior to the meeting of the student's IEP team in mid-November, the student received five sessions of regular-education MTSS support. (S-13).
33. In mid-November 2023, the student's IEP team met to review the November 2023 RR and devise an IEP for the delivery of school-aged services at the Charter School. (S-12, S-14, S-15; P-15 at pages 56-70).
34. The November 2023 IEP meeting included counsel and was highly contentious. (NT at 61-166, 171-193, 196-213, 215-316, 387-485).
35. It appears that the parties engaged in an apples-and-oranges conversation regarding the level and type of services the student was receiving, and might receive, to meet the student's academic needs in reading and mathematics. (NT at 61-166, 171-193, 196-213, 215-316, 387-485).
36. The student's father, and affiliated attendees, appear to have considered any interventions or support to be 'special education', a designation and level of services to which the father is highly resistant. The Charter School attendees appear to have considered interventions or support to be 'regular-education MTSS services', providing extra academic help to bolster the student's learning outside the provision of special education. Therefore, the ongoing difference between the

father and the educators appears to be rooted in how each group views the 'intervention' that might be provided to the student. (NT at 61-166, 171-193, 215-316, 387-485).

37. The November 2023 IEP included the present levels of academic and functional performance. (S-15 at pages 7-9).
38. The November 2023 IEP noted that the student's strengths were affect (polite and cooperative), expressive and receptive language skills, and voice/fluency. The IEP noted that the student's need was in articulation, for clearer understanding in school and community settings. (S-15 at page 10).
39. The November 2023 IEP included one S&L goal (articulation for specific letter and phonetic combinations). (S-15 at page 18).
40. The November 2023 IEP called for individual S&L services in a small group setting. (S-15 at page 20).
41. Based on the placement information and data calculation for the student, the student would be in the regular education setting for 99% of the school day. (S-15 at pages 23-25).
42. The Charter School issued notices of recommended education placement ("NOREP") for implementation of the November 2023 IEP. The student's father voiced his displeasure with the meeting but did not return the NOREP. The student's mother returned the NOREP, indicating approval of the recommendation to implement the IEP. The

Charter School implemented the November 2023 IEP in accord with the mother's consent. (S-15, S-16).

43. At the November 2023 IEP meeting, the student's father reiterated a request for an IEE. The day after the meeting, the Charter School issued a NOREP, seeking permission to initiate the IEE process. In late November 2023, the student's father rejected the NOREP and indicated that he would be filing for special education due process. Father's complaint, which led to these proceedings, followed. (S-17; HO-1).
44. In mid-November 2023, with fall benchmark assessments completed and considered for all Charter School students, the Charter School indicated that the student qualified for regular-education MTSS supports in reading and mathematics. The student's father did not consent to those services continuing, and the Charter School acquiesced in the father's request. (S-9, S-35 at pages 1-9; NT at 61-166, 319-377).
45. In late November 2023, given father's vehemence that the student receive no services, including S&L services, the Charter School issued a NOREP for the student to be exited from special education. The student's father did not approve the Charter School's recommendation, referring to the special education due process complaint which he had recently filed. The student's mother rejected

the NOREP, indicating that she felt the student continued to need the S&L services outlined in the student's IEP. The Charter School continued to implement the November 2023 IEP in accord with the mother's consent. (S-18, S-19; NT at 215-316).

46. In November 2023, the father once again had issues with the parent-teacher communication platform, and the Charter School assigned a technology specialist to work with the father. (P-19 at pages 1-3; NT at 488-564).

47. At some point in late November/early December 2023, although the exact timing and number is unclear on this record, the student's father filed educator misconduct complaints against multiple Charter School educators. Educator misconduct complaints are lodged when an educator is alleged to have committed a serious criminal act or engaged in a severe dereliction of duty. The complaints were all considered to be unfounded by the Pennsylvania Department of Education. (HO-2; NT at 61-166, 196-213, 215-316, 488-564).

48. The filings of these complaints the student's father is viewed by this hearing officer as highly inappropriate.

49. In early December 2023, the Charter School informed that parent that, due to the volume and tenor of the father's email communication with Charter School staff, the Charter School was implementing a gatekeeping system where the father's email

communication should flow only to the Charter School chief administrative officer, who would then act as a conduit for communications back-and-forth between the father and Charter School staff. (P-19 at page 11;S-35 at pages 10-14; NT at 61-166, 488-564).

50. The student's father filed a complaint with the Office of Civil Rights ("OCR") at the U.S. Department of Education regarding the Charter School's December 2023 gatekeeping decision on the father's communications with Charter School staff. The complaint resulted in no action by OCR. (NT at 61-166, 488-564).
51. In early February 2024, the Court issued an order indicating, in part, "the school officials at (the Charter School) shall not modify or change anything regarding the minor children without the consent of both parents including, but not limited to, learning support; special services; therapy; academics; athletics; and extracurricular activities; also, no additional school services or activities may be commenced without the input and consent of both parents...". (P-21).
52. The student's father did not consent to the administration of winter benchmark assessments, so those assessments were not administered to the student. (NT at 319-377, 568-613).
53. In mid-February 2024, the student's father secured a private S&L evaluation. (S-24).

54. The private evaluator reviewed the November 2023 RR and IEP. (S-24).
55. The February 2024 private S&L evaluation included informal observation, a formal articulation assessment, and informal phonological assessment. (S-24).
56. The February 2024 private S&L evaluation concluded that the student qualified for goal-driven articulation S&L therapy. (S-24).
57. The February 2024 private S&L evaluation noted that the student had difficulty with phonemes and sound blends in simple words, recommending regular-education reading support. (S-24).
58. As part of a positive reinforcement reward for students at the Charter School, one of the student's siblings was selected for a lunch in a school conference room with friends, while watching a video of their choice. The students are in the room alone with the door open, for supervision, but no adult lunches with the students. In March 2024, the student's father characterized these as 'closed-door lunches' with the Charter School's chief administrative officer. (S-35 at page 19; NT at 61-116, 488-564).
59. The father's implication that the chief administrative officer was secluding himself with students is viewed by this hearing officer as highly inappropriate.

60. In March 2024, the student's father sent a picture from the Charter School's website of the chief executive officer smiling as he kneeled behind two young students, with his arms draped on the students. The student's father characterized the photo as "very disturbing", seeing in the photo the administrator "(groping) and fondling these young boys with a look of glee on your face". (S-35 at page 19).
61. The photo is clearly a publicity photo involving the administrator and students at the school and is not problematic. (NT at 488-564).
62. The father's description of the photo, and the administrator's affect in the photo, is entirely misplaced. The father's assertions are viewed by this hearing officer as wrongful and highly inappropriate.
63. In May 2024, the student's father appeared at the board meeting of a local school district and shared views related to the Charter School and specific educators at the Charter School. (NT at 488-564).
64. Over the course of the 2023-2024 school year, the student made progress in all areas of the articulation goal (ch, sh, th, L, J, S, in various word positions and as blends). (P-25).
65. The hearing was held over two sessions in May. In the midst of the hearing, this hearing officer ordered that the Charter School undertake [redacted] spring benchmark assessments for understanding the student's academic performance at the end of

[redacted] and the inclusion of those benchmark assessment scores as a revision to the RR. (NT at 370-377).

66. The student's [redacted] spring benchmark in reading indicated that the student's composite score (372) continued to indicate "needs most support" with all sub-scores (letter names, phonemic awareness, decoding and accuracy/fluency) scored as "well below benchmark". (S-37 at page 5).
67. The student's [redacted] spring benchmark in mathematics continued to indicate that the student's overall status indicated that the student was "likely to need intensive support" with a deficient sub-scores in all areas (counting, number identification, missing number, and quantity discrimination. (S-9 at page 4 [for rubric]; S-37 at page 5).
68. The student's [redacted] teacher testified credibly that the student is one of the lowest-performing student in reading and mathematics in her [redacted] class. She opined that the student does not have the academic skills necessary for success in [redacted] grade. (S-31, S-32; NT at 568-613).

Credibility of Witnesses

All witnesses testified credibly.

The relationship between the father and certain individuals at the Charter School are significantly strained. In the view of this hearing officer, that is unwarranted, as the father and the Charter School witnesses acted in the child's best interest, as each sees it, and all proceeded in good faith.

Certain acts of, and communications by, the father, however, unduly exacerbated the relationship; while not acts or communications in bad faith, these acts and communications—specifically noted above in fact-finding—can be considered inappropriate, given the entirely good-faith efforts of all Charter School personnel who worked with the student and who testified at the hearing.

Exempted from these strains between participants were the Charter School principal (NT at 319-377) and the student's [redacted] teacher (NT at 568-613) , who each had very limited interactions with the father. In that regard, the testimony of these two witnesses were accorded heavier weight, as the testimony is free of any subjectivity which results from the strains of the relationship.

Legal Framework

"Parent" under the IDEA. The definition of "parent" under the IDEA is very broad, with a number of individuals potentially qualifying for that role, including a biological or adoptive parent of the child, a foster parent, a legal

guardian, an individual with whom the child lives who is legally responsible for the child's welfare and acts in the place of a biological or adoptive parent (such as "a grandparent, stepparent, or other relative"), or a surrogate parent (who acts in the role of parent when no one else under this definition can be identified). (34 C.F.R. §300.30(a); 22 PA Code §711.3(b)(5)).

Where more than one person might meet the definition of "parent" under the IDEA, the biological or adoptive parent(s) must be considered to be the parent of the child, unless "a judicial decree or order identifies a specific person or persons under (the definition)...to act as the 'parent' of a child or to make educational decisions on behalf of a child". (34 C.F.R. §300.30(b), internal quotation in the original; 22 PA Code §711.3(b)(5)).

FAPE. To assure that a child eligible under IDEA receives FAPE (34 C.F.R. §300.17; 22 PA Code §711.3(b)(3)), the student's special education programming must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The IEP must outline programming that is appropriately ambitious in light of the student's strengths and needs, current levels of programming, and goals. (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)).

Provision of FAPE is for students who are eligible under IDEA as “children with disabilities”, namely students (1) who qualify under one or more of 13 identified disability categories and (2) who, as a result of the disability(-ies), require special education (34 C.F.R. §300.8(a),(c); 22 PA Code §711.3(b)(1)). “Special education” is the adaptation of the content, delivery, and/or methodology of the regular education curriculum, based on an eligible student’s unique needs, all as documented in the student’s IEP. Special education, delivered under the auspices of an IEP, allows a student to access grade-level regular education standards and make meaningful progress through the goals outlined in the IEP. (34 C.F.R. §300.39; 22 PA Code §711.3(b)(7)).

‘Special education’ is much more specialized than heightened regular education interventions, such as MTSS.³ Regular education interventions, such as MTSS, provide a boost for regular education students who might need additional support in areas of targeted need but who do not require special education. (See <https://www.pattan.net/Multi-Tiered-System-of->

³ MTSS can be used with both regular education students who need extra support and special education students who have IEPs. On this record, however, and more generally in the field of education, MTSS usually refers to students in the first group (regular education students who require support) while ‘special education’ usually refers to students in the second group (eligible students identified under IDEA as requiring IEPs). In the abstract the pools of students and the services they require can overlap; in practice, there is normally a distinct difference between the two pools of students and the services provided for each group.

[Support/MULTI-TIERED-SYSTEM-OF-SUPPORTS](#), retrieved June 24, 2024).

Colloquially, it is best understood as needs-based, structured 'extra help'. Levels of MTSS intervention (normally referred to as 'tiers' I, II, or III) vary as a regular education student might require more frequent, or intensive, extra help, receiving more support from tier to tier. At a certain point, a student receiving MTSS services—regardless of the tier—might be evaluated to see if the student requires special education.

Procedural Denial-of-FAPE. Determinations of denial-of-FAPE through special education due process must be made on substantive grounds. Denial-of-FAPE for proven procedural violations of IDEA may be remedied “only if the procedural inadequacies (i) impeded the child's right to a FAPE, (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or (iii) caused a deprivation of educational benefit.” (34 C.F.R. §300.513(a); 22 PA Code §711.3(b)(27)).

Child Find. One aspect of the provision of special education programming is a local education agency's duty to locate, identify and evaluate students who might require special education.⁴ This duty is

⁴ These transition-from-early-intervention provisions apply to any local education agency, whether a school district or charter school. For stylistic consistency, this section hereafter refers only to charter schools.

commonly referred to as a charter school's "child find" obligation. (22 PA Code §711.21). Where a student has not been identified as a student eligible under IDEA, and a charter school feels it should conduct a special education evaluation, it must seek a parent's permission to conduct an evaluation in any area of suspected disability. (See *generally* 34 C.F.R. §§300.300 – 300.307(a)(1-2)(b), 300.308 – 300.311; 22 PA Code §§711.3(b)(21-23)).

Where a student receives special education as part of early intervention programming (i.e., prior to school-aged K-12 enrollment in a charter school), a mandatory transition process must take place in the spring and summer prior to enrollment in school-aged programming. The charter school and parents may pursue a number of options, including implementation of the early intervention IEP at the charter school, agreed-upon revisions of the early intervention IEP, or a re-evaluation of the student by the charter school. (See Pennsylvania Department of Education policy guidance at <https://www.education.pa.gov/PolicyFunding/BECS/Purdons/Pages/EITransitionPreschool.aspx>, retrieved June 24, 2024).

If a re-evaluation process determines that the student no longer qualifies for special education, the charter school must issue a NOREP to that effect, with its recommendation. If an IEP (whether as adopted from the early intervention program or as revised) is issued by a charter school, and parents disagree with the IEP offered by a charter school, and parents

“initiate a due process hearing..., the (child) who will transition into kindergarten or school age programs must continue to receive the services described in (the early intervention) IEP [ensuring ‘status quo’] pending completion of...due process...”. (Id.; parenthetical material edited for style, bracketed material in the original including the internal quotes). (Id.)

Discussion & Conclusions

Each of the issues identified above will be considered in turn.

Procedural Violations. The Charter School did not engage in any procedural violations of IDEA. Taken chronologically over the course of the school year, the Charter School implemented early intervention programming for the student, as it should have, until it had a better understanding of the student and could, through a re-evaluation and/or IEP process, develop school-aged programming for the child. There is no procedural violation in this course of action.

Faced with an impasse between the parents, where one parent prefers a certain course of action and the other parent prefers a different course of action, it is not uncommon at all for a local education agency to act under the authority of one parent’s consent, where the school district or charter school has determined that the consent aligns with its view of appropriate programming for the student. This is not a hard-and-fast rule, and certainly may vary in individual situations, but educators who have a view as to

programming and make recommendations which one parent agrees with often utilize that agreement of one parent to implement the programming the educators feel is appropriate. To do otherwise is to invite stasis in the educational programming, as the adults in the child's life are at loggerheads. One can imagine the frustration of educators as, day by day, a student languishes (in their view) in programming that is sub-optimal. That frustration was palpable in the instant case where, as of November 2023, it was clear that the Charter School educators felt that continued regular-education MTSS support was necessary but the student's father opposed it. Ultimately, those educators desisted, and the Court spoke definitively to the issue of mutual consent in February 2024. But there is no procedural violation of FAPE by the Charter School aligning its actions with the consent of the student's mother and acting accordingly.

The Charter School handled the father's request for an IEE appropriately. When faced with his request early on in the school year, but with no school-aged RR in hand, the Charter School requested permission to evaluate the student and, with mother's consent, produced the November 2023 RR. With father reiterating his request for an IEE, the Charter School issued a NOREP to move forward with that process. The student's father, however, did not pursue it (albeit a private evaluation was secured by the father in February 2024). There is not procedural violation of FAPE in the Charter School's handling of the father's IEE request.

The Charter School implemented the November 2023 IEP upon receiving the approved NOREP from the student's mother. As outlined above, at least prior to the Court's order of February 2024, there is no procedural violation in moving forward with implementation of the IEP. Indeed, even the father's private evaluator opined that the goal-driven S&L services delivered through the November 2023 IEP were exactly suited to the student's needs.

In sum, then, whenever a pivotal procedural element arose between the parties, the Charter School met its procedural obligations under the IDEA to the student, and to the student's father particularly.

Substantive Denial-of-FAPE. While the Charter School's handling of the major procedural elements of IDEA involving the parents over the course of the 2023-2024 school year, there are two minor elements that must be explicitly addressed. First, there is the lack of father's input in the November 2023 RR. As indicated in the findings of fact, no fault can be imputed to the Charter School evaluator (the S&L therapist). The record supports a finding that she sent the input forms to father and he either did not retrieve those forms or neglected to complete/submit them. The strained relationship between the father and the Charter School, however, led to a communication dis-connect (one of many on this record) where the S&L therapist characterized the lack of father's input as 'not mattering'. Father

naturally took umbrage to this seemingly dismissive remark. The truth is that the therapist's statement is technically true—the eligibility and programming conclusions of the November 2023 RR would not have been materially changed by any input that the father submitted. But, obviously, parental input is always important, and so the father's sense of being devalued in the re-evaluation process is wholly understandable.

Not including the father's input does not amount to a substantive denial-of-FAPE. Yet even after the issuance of the November 2023 RR, however, the input of the student's father could have, and should have, been included in a revised RR. The order below will address this.

Second, a reader of this record will see that this hearing officer viewed with a degree of incredulity and pique the Charter School assertion that the Charter School felt that the November 2023 RR was "locked" and could not be revised to, for example, add father's input. A reader of the record should not over-invest in a view that the Charter School was deeply wrong in this. To be sure, it is the view of this hearing officer that newly-developed information of a material nature should always be included in a revision of a RR. And, here again, the content of the private S&L evaluation will be ordered below to be made part of the November 2023 RR. But the tenor of the hearing officer's interaction with witnesses on the issue is aptly described as pique—the practice did not, in this matter, amount to a substantive denial of FAPE.

Accordingly, even where the Charter School engaged in omissions of certain secondary procedures or content, neither of those omissions amounted to a substantive denial of FAPE for the student in the 2023-2024 school year.

Parental Participation. Clearly, the most significant aspect of the Charter School's interaction with the student's father was its decision, in December 2023, to instruct the father that all communications should flow through the Charter School chief administrative officer, who would act as a conduit for communication back-and-forth with Charter School staff. While on its face, this limitation may seem overly restrictive (indeed, father regularly characterized this procedure as a "gag order"), it is not common.

But where the volume of parent phone calls and/or emails interferes with the functioning of an educational environment, it is employed. (See, e.g., *In re: the Educational Assignment of R.W.*, 19185-1617AS). Here, it is not so much the volume of communications, for that was not made part of the record. But the tone and language of the communications are often very problematic. Added to this, the father engaged in activity that specifically targeted Charter School educators in the good-faith performance of their duties, including the entirely unwarranted filing of educator misconduct complaints against specific educators, sending at least one email with inflammatory allegations, and speaking out in a public forum about specific

educators. Within that context, the Charter School's implementation of gatekeeping for the father's email communications is supportable.⁵

Too, it is vital to note that the procedure is not exclusionary, in that the student's father was fully able to continue to communicate and to engage in the educational programming for his child. In that way, the gatekeeping may be intricate, or annoying, or may lead to slight delays in responses. But in no way was father's ability to participate in the student's education meaningfully impeded.

The record taken in its entirety, and specifically as it outlines the background and administration of the communication gatekeeping procedure through the Charter School chief administrative officer, does not support a finding that the student's father was denied the opportunity for meaningful participation in the education of the student.

Remedy. With findings that there is no procedural or substantive denial of FAPE by the Charter School, the student's father is not entitled to remedy. In the order below, the content of the February 2024 private S&L evaluation will be made part of the November 2023 RR. To the extent that the student's father had any out-of-pocket expenses for the preparation and

⁵ While not adopting or aligning with the results of the OCR investigation (which was not made part of this record), the fact that OCR did not feel reprimand or remedy was warranted is implicit verification that the communication gatekeeping procedure was not entirely out of bounds.

issuance of the report, however, the order will include reimbursement for the private report.

Directives to the Charter School or IEP Team. As has been highlighted at various points in this Discussion section, the Charter School will be directed to make part of the November 2023 RR any parent input submitted under the terms of this order. In a similar way, the Charter School will be directed to make part of the November 2023 RR the content of the February 2024 private S&L evaluation.

More concerning is the fact that the student has missed out, as a result of father withholding his consent, on necessary regular-education MTSS support in reading and mathematics. Father's concern, and it is understood and valued by this hearing officer, is that the student's potential entry into special education services for academics be handled gingerly. By denying that student the opportunity in [redacted] for consistent, regular-education MTSS support, he has not invited the very thing he hopes to avoid, for the student is clearly behind in reading and mathematics, and significantly behind, where the Charter School would hope the student should be on the cusp of [redacted] grade. The order will address this.

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Finally, as a matter of *dicta*, this hearing officer wonders if required mutual consent by both parents for the broad range of educational services is appropriate. The student's father and the Charter School have a deeply strained relationship. Over the course of the 2023-2024 school year, the father's lack of consent has, in effect, left the student without necessary academic supports and services. The student's academic progress has stalled at a critical juncture, namely the acquisition of foundational literacy and mathematics skills. The Court knows its mind, and certainly has more context for the background, views, behaviors, and interactions of the parents. But where IDEA consistently requires—as it does— notice, consent, action, and engagement of "a parent" and not "the parents", allowing for unilateral consent by one parent for educational services may be advisable.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Howard Gardner Multiple Intelligences Charter School ("Charter School") has met its obligations to the student and parents under federal and Pennsylvania special education statutes and regulations, and has not denied the student a free appropriate public education in any way.

To the extent that a decision has not already been made on the student's grade promotion to [redacted] grade, or the student's repeat of [redacted], on or before July 12, 2024, the student's IEP team shall meet to consider whether or not the student should be promoted to [redacted] grade or should repeat [redacted].

Regardless of the grade-level placement decision, the Charter School shall continue to implement the November 2023 IEP for the provision of special education in the form of speech and language services for articulation.

Regardless of the grade-level placement decision, the Charter School shall make available to the student, as soon as practicable after the start of the 2024-2025 school year and in accord with its decision-making for any regular education student in similar circumstances, the regular-education MTSS services in reading and mathematics which benchmarking data indicates is appropriate. The nature and tier of intervention shall be at the sole discretion of the Charter School reading and/or mathematics specialist(s) who would provide services for any regular education student in similar circumstances. Furthermore, the Charter School shall assess the student utilizing the standard fall, winter, and spring benchmark assessments in reading and mathematics as it would for any regular education student in similar circumstances.

On or before July 8, 2024, the Charter School shall provide, through direct email communication by the Charter School chief administrative officer to the student's father, the parent input documents that were provided to him in the fall of 2023 as part of the re-evaluation process. To the extent that the student's father wishes to have his input included in a revision of the November 2023 re-evaluation report, on or before July 12, 2024, the student's father shall complete and return the parental input. The completed parent-input form(s) shall be scanned and saved in PDF format and emailed to the Charter School chief administrative officer as an email attachment. To the extent that the student's father does not return the parental input form(s) as outlined in this order, the Charter School may proceed with the understanding that the student's father does not wish to add his input to the November 2023 re-evaluation report.

On or before July 12, 2024, the Charter School shall add to the November 2023 re-evaluation report the content of the February 2024 private speech and language evaluation. To the extent that the student's father paid out-of-pocket for the private evaluation, the Charter School shall reimburse the father for that expense. On or before July 12, 2024, the father, through his counsel, shall submit to the Charter School, through its counsel, (a) proof of billing for the expense and (b) proof of payment for the expense. With that expense documented as to amount and payment, the Charter School shall process reimbursement for the expense.

Any claim not specifically addressed in this decision and order is denied and dismissed. With the issuance of this final decision, jurisdiction over this matter is hereby relinquished.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

06/25/2024