

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:

24472-20-21

Child's Name:

J.Z.

Date of Birth:

[redacted]

Pro Se Parent:

[redacted]

Local Education Agency:

Mid Valley School District
52 Underwood Road
Throop, PA 18512

Counsel for the LEA

Rebecca Young, Esq.
King, Spry
1 West Broad Street, Suite 700
Bethlehem, PA 18018

Hearing Officer:

James Gerl, CHO

Date of Decision:

July 5, 2021

BACKGROUND

The parent filed a due process complaint. At the prehearing conference by telephone conference call, it was determined that the complaint presented three issues: whether the student was denied a free and appropriate public education because the parent was denied meaningful participation in the IEP team process or the student's education; whether the school district denied a free and appropriate public education to the student because the student's IEPs were not reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances; and whether or not the school district violated IDEA by making a mental health referral for the student. I find for the school district on each of these issues with the exception that there was a procedural violation concerning whether the parent's request for an interpreter at an IEP team meeting was appropriately considered by the school district.

PROCEDURAL HISTORY

The parent proceeded in this hearing without legal counsel. Previously, a continuance had been granted at the request of the parent so that the parent could obtain legal counsel and the parent was briefly represented by a lawyer during the prehearing phase of this proceeding. Thereafter, the lawyer who had been representing the parent, however, withdrew from this case. The parent appeared at the hearing without an attorney.

This hearing was conducted in one virtual session. The parties were not able to agree to any stipulations of fact prior to the hearing, which unnecessarily prolonged the hearing.

Five witnesses testified at the hearing. School district Exhibits S-1 through S-10 were admitted into evidence at the hearing. The parent placed a number of documents and screenshots into the dropbox file for electronic exhibits, but failed to mark them according to the prehearing instructions that were provided to the parent by e-mail, as well as explained in detail at the prehearing conference by telephone conference call. Because the parent did not have legal representation, the hearing officer permitted the parent the opportunity to properly mark and submit up to 20 of the parent's exhibits within ten days after the hearing had ended. At the close of the hearing, the hearing officer again explained the requirements for marking exhibits in accordance with the prehearing directions. The parent failed to take advantage of the opportunity to submit exhibits within ten days of the end of the hearing. Accordingly, no parent exhibits were admitted into evidence at the hearing or thereafter.

Throughout the due process hearing, the parent used extremely inappropriate language, including the "F" word (NT 30, 31, 73, 212 – 214, 225, 270, 278, 291) and disrespected various witnesses (NT 69, 163, 180, 278). Such disruptive conduct cannot be tolerated. Accordingly, warnings were issued to the parent that if such language or disrespect continued, it might result in adverse consequences to the parent's case. (NT 70 – 72, 212, 269 – 280) Other than said reprimands, however, no sanctions or adverse consequences were imposed upon the *pro se* parent or the parent's case as a result of the inappropriate language and conduct.

After the hearing, counsel for the school district and the parent were offered the opportunity to submit a post-hearing brief/ written closing argument and proposed findings of fact. Counsel for the school district took advantage of the opportunity and submitted a post-hearing brief, but the

parent did not do so. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

As clarified at the prehearing conference by telephone conference call, the due process complaint raised the following issues:

1. Whether the student was denied a free and appropriate public education because the student's parent was denied a meaningful opportunity to participate in the IEP team process or the student's education?

2. Whether the parent has proven that the school district denied a free and appropriate public education to the student because the student's IEPs were not reasonably calculated to confer educational benefit and appropriate given the student's unique circumstances?

3. Whether the parent has proven that the school district violated IDEA by making a mental health referral pertaining to the student?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I make the following findings of fact.¹

1. The student is a [teenaged], [high school] student, who transferred to the school district for 6th grade at the beginning of the 2017 – 2018 school year. (S-6; NT 188)

2. The student is eligible for special education under the eligibility categories of autism and speech language impairment. (S-6)

3. An IEP team meeting was convened for the student on October 8, 2019. Among those attending the IEP team meeting was a regular education teacher. (S-1; NT 81 – 84, 106, 257 – 260)

4. The student's IEPs at the school district provide that the student receives itinerant special education services. (S-1, S-3, S-4, S-7, S-8, S-9, S-10)

5. The student's IEPs at the school district provide that the student receives thirty minutes per week of speech language therapy as a related service (S-3; NT 56 – 60, 203 – 215, 282)

6. The speech language therapists who implemented the student's IEPs worked on articulation and slowing down the rate of speech of the

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

student. The student has made progress towards the student's IEP speech goals. (NT 282 – 284)

7. Although the student is very smart, the student has struggled with the completion of homework. Because of the student's struggles with homework, the student's IEPs provide specially designed instruction and modified grading protocols that require that the student not be penalized for the failure to complete homework assignments. (S-3, S-7; NT 77 – 78; 95 – 97; 113 – 116; 192 – 193, 199)

8. An executive functioning goal for the student was added to the student's IEP for the 2020 – 2021 schoolyear. (S-3, S-7; NT 289)

9. The student's mother requested an interpreter for an IEP team meeting convened on October 6, 2020. The school district special education director was aware that the student's mother had a hearing impairment. The school district special education director did not consider providing an interpreter for the student's mother at the October 6, 2020 IEP team meeting. (S-2; NT 144 – 147; 217 – 218)

10. The student's mother participated in the October 6, 2020 IEP team meeting by telephone. Toward the end of the IEP team meeting, the student's mother expressed some difficulty hearing what was being said. (S-3, S-8; NT 217 – 220)

11. Because of the parent's difficulty in hearing what was being said at the previous IEP team meeting, the school district convened an in-person IEP team meeting on November 13, 2020. Because of the coronavirus pandemic, the school district had not convened any other in-person IEP team meetings during this time period. At that time the special education director had to get special permission from the superintendent in order to

convene an IEP team meeting in person. (NT 217 – 220, 228-229, 164-165; S-3)

12. During the November 13, 2020 IEP team meeting, the school district's special education director would walk over to where the parent was seated to go line by line through the IEP, as the various components of the IEP were being discussed by the team, in order to ensure that the parent understood the program being provided. (NT 171 – 172)

13. At the November 13, 2020 in-person IEP team meeting, the team, including the student and the student's mother, agreed that the student would be removed from the student's Spanish class and enrolled in a transition class to help with organization and completion of assignments. (S – 3; NT 79, 199 - 201)

14. A mediation involving the parties was convened on November 20, 2021. (S – 3; NT 79)

15. The student's mother generally communicated with teachers and other school district staff in an abusive and harassing manner. As a result of the harassment, the student's teachers filed a complaint with their union. Thereafter, the school district adopted a communication protocol which required that the parent communicate directly with the special education director, who would then funnel any questions or comments to the student's teachers or other staff and then convey their response to the student's mother. In addition, any parent/teacher conferences or speech language therapy sessions were also to be supervised by either the special education director or the building principal. (NT 206 – 211)

16. After the student expressed an interest in receiving mental health services and a mental health referral was discussed at the October 6, 2020 IEP team meeting, the student's mother agreed to the mental health

referral after some discussion with the team. The student's mother placed a note on the Notice of Recommended Educational Placement issued after this meeting asking that the mental health provider contact her. A representative of the mental health provider came to speak with the student's mother after the November 13, 2020 in-person IEP team meeting. The representative of the mental health provider was not invited to and did not attend the IEP team meeting. The student's mother asked the school district to cancel the mental health referral. The special education director explained to the parent that the request to cancel the referral had to come from the parent. The student's mother informed the special education director that she did not know how to do that. The special education director then wrote out a note cancelling the mental health referral, read the note to the mother and the mother signed it. (NT 173 – 183, 249 – 254; S - 4)

17. In response to the COVID-19 pandemic, the school district provided a hybrid education for the 2020 – 2021 school year. The school district offered to provide the student with additional days of in-person instruction because the student demonstrated better work completion in an in-person instructional setting. The parent rejected the offer for additional days of in-person instruction for the student. The student accessed remote instructional platform during this period of time. (NT 119, 194 – 199)

18. The school district closed its schools to in-person instruction from approximately December 10, 2020 to approximately January 19, 2021. The student did not return to in-person instruction after that time. (NT 198)

19. On March 12, 2021, the school district issued a Notice of Recommended Educational Placement indicating that no determination could be made for the student with regard to COVID compensatory services until the student returned to in-person instruction. (S-9, S-10; NT 185 – 186, 238 – 239, 288 – 289)

20. The school district did not hold any IEP team meetings without the parent present. (NT 164 – 165, 228 – 229)

21. The student's mother actively participated in IEP team meetings for the student and the student's education. (record evidence as a whole)

22. The student made progress toward the student's IEP goals. (S-5; NT 284 – 290)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own independent legal research, I make the following conclusions of law:

1. The U.S. Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized education program (hereafter sometimes referred to as "IEP") is reasonably calculated to enable the child to make appropriate progress in light of the child's circumstances. Endrew F. by Joseph F. v. Douglas County School District RE-1, 580 U.S. ____, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F. 3d 248, 72 IDELR 261 (3d Cir. 2018).

2. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*.

3. The appropriateness of an IEP in terms of whether it has provided a FAPE must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; it requires an education program that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F. 3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F. 3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F. 3d 235, 52 IDELR 211 (3d Cir. 2009).

4. IDEA requires that a parent of a student with a disability be afforded meaningful participation in the IEP process and in the education of the student. 34 C.F.R. § 300.501(b) and (c); DS v. Bayonne Bd. of Educ., supra; Fuhrmann ex rel. Fuhrmann v. East Hanover Bd. of Educ., 933 F. 2d 1031, 1990 IDELR 1065 (3d Cir. 1993). See Deal v. Hamilton Bd. of Educ., 392 F. 3d 840, 42 IDELR 109 (6th Cir. 2004); J.D. v. Kanawha County Bd. of Educ., 48 IDELR 159 (S.D. WV. 2007).

5. 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).

6. Although a parent or student may not receive individual relief as a result of a harmless procedural violation, a hearing officer may correct failure of a local education agency to comply with the procedural requirements of IDEA even if the procedural violation was harmless. IDEA § 615(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3).

7. The parent actively and meaningfully participated in the IEP team meetings for the student and in the student's education.

8. The IEPs developed by the school district for the student were reasonably calculated to provide meaningful educational benefit in view of the student's unique circumstances.

9. The mental health referral by the school district was not a violation of IDEA and a representative of the mental health provider was not improperly invited to an IEP team meeting for the student.

DISCUSSION

1. Whether the parent has proven that the school district denied a free appropriate public education to the student by denying the parent meaningful participation in the student's education?

The parent contends that the school district denied her meaningful participation in the student's education. Although the parent failed to file a post-hearing brief setting forth the parent's argument, at least some of the allegations of the parent can be ascertained from the complaint and the questions that the parent propounded to various witnesses. The parent's main allegation concerning this issue is that she believed that she was not invited to certain IEP team meetings for the student. The record evidence, however, reveals that the parent is mistaken; the school district did not convene any IEP team meeting for the student to which the parent was not invited. The documentary evidence and testimony revealed that the parent actively participated at the October 6, 2020 IEP team meeting and at the November 13, 2020 in-person IEP team meeting.

Indeed, the record evidence reveals that the school district took extraordinary steps to ensure that the parent had the opportunity to meaningfully participate in the student's education. Because the parent expressed difficulty hearing during the latter part of the October 6, 2020 IEP team meeting during which the parent participated over the telephone, the school district convened the November 13, 2020 IEP team meeting in person. At that time, during the corona virus pandemic, the IEP team meeting on November 13, 2020 for this student was the only in-person meeting that the school district conducted.

During the November 13, 2020 IEP team meeting, in order to ensure that the parent understood the discussion, the special education director would walk over to where the parent was seated and point to the parent's copy of the IEP to show the parent where the relevant portions of the IEP were that were being discussed by the participants. It is clear from the evidence in the record that the parent actively participated in the IEP team meetings for the student, as well as the student's education, in general.

Although the parent has not specifically argued the point, there is evidence in the record that the school district took steps to limit the persons employed by the school district with whom the parent could communicate. These steps were taken in response to the parent's abusive manner of communication and harassment of school district staff. After the student's teachers filed a formal complaint with their union concerning harassment by the student's parent, a protocol was put in place that required that all communication by the parent with teachers and other staff be funneled through the district's special education director, and that all parent/teacher conferences and speech therapy sessions were to be supervised by either the special education director or the building principal. The student's parent

was still permitted to communicate with teachers and other staff, although the communication was funneled through the special education director, and the in-person meetings were supervised by the special education director or the principal. Thus, the parent still fully participated in the student's education despite the protocols to ensure that the parent did not harass school district staff. The protocol implemented by the school district was clearly reasonable and appropriate given the abusive manner of the communication that the parent had demonstrated with teachers and other staff.

One issue raised by the parent, however, is very concerning. The parent requested that an interpreter be present during the October 6, 2020 IEP team meeting. The school district's special education director was aware that the parent was hearing impaired. Despite the knowledge that the parent was hearing impaired, the special education director did not reasonably consider the parent's request for an interpreter for the IEP team meeting. The testimony of the special education director indicated that he had dismissed the request out of hand. The failure of the school district to appropriately consider the parent's request for an interpreter constitutes a procedural violation of IDEA. However, the subsequent in-person IEP team meeting convened on November 13, 2020, as well as the other steps outlined above that were taken by the school district to ensure the parent's participation resulted in the parent fully and meaningfully participating in the IEP team process and the student's education. Accordingly, any procedural violation by the school district with regard to the failure to provide an interpreter for the October 6, 2020 IEP team meeting was clearly a harmless procedural violation, and no relief is awarded to the parent or student as a result of the violation.

Although the harmless procedural violation by the school district does not result in the parent being awarded any individual relief, the order for this decision will require appropriate training to ensure that the school district complies with the procedural requirements involving interpreters in the future.

The parent did not testify at the hearing. The student's grandmother did testify at the hearing, but the testimony of the student's grandmother did not relate to any of the issues presented by the complaint. The testimony provided by school district staff at the hearing was credible and persuasive.

It is concluded that the school district did not deny a free and appropriate public education to the student by denying the parent meaningful participation in the student's education or in the IEP team process.

2. Has the parent proven that the student's individualized education plans denied a free and appropriate public education to the student because they were not reasonably calculated to confer educational benefit in view of the student's unique circumstances?

The parent contends that the student's IEPs denied the student a free and appropriate public education. The school district contends that the student's IEPs were appropriate and were reasonably calculated to confer educational benefit in view of the student's unique circumstances.

The parent did not testify at the due process hearing, and the parent did not file a post-hearing brief. None of the questions that the parent

asked of witnesses at the hearing related to the alleged inappropriate nature of the student's IEPs. The parent has failed to prove that the student's IEPs were inappropriate.

Instead, the evidence in the record reveals that the student's IEPs were appropriate and reasonably calculated to confer meaningful educational benefit consistent with the student's unique circumstances. The IEPs specifically addressed the student's issues with completion of homework and provided for speech language therapy designed to meet the student's needs concerning articulation and slowing down the student's rate of speech. The student made progress toward the student's IEP goals.

The parent did not testify at the due process hearing. The student's grandmother did testify at the hearing, but the testimony of the grandmother did not relate to the issue of the appropriateness of the student's IEPs. To the extent that the staff of the school district testified concerning the appropriateness of the student's IEPs and the progress made by the student under the student's IEPs, such testimony was credible and persuasive.

It is concluded that the parent has not proven that the school district denied a free and appropriate public education to the student and that the student's IEPs were appropriate.

3. Whether the parent has proven that the school district violated IDEA by making a mental health referral for the student?

The parent contends that the school district violated IDEA by making a mental health referral for the student. Based upon questions that the parent

asked of witnesses at the hearing, it appears that the parent also contends that the school district inappropriately invited a representative of the mental health agency to an IEP team meeting for the student. The school district contends that this is not a special education issue and that nothing improper was done with regard to the mental health referral.

The evidence in the record reveals that the student expressed to the school district an interest in receiving mental health services. The school district staff brought the request to the attention of the parent at the October 6, 2020 IEP team meeting and after some discussion, the parent agreed to the mental health referral. A representative of the mental health provider came to speak with the student's mother after the November 13, 2020 in-person IEP team meeting. The representative was not invited to and did not attend the IEP team meeting but appeared after the meeting to speak with the parent. The student's mother asked the special education director to cancel the mental health referral. The special education director explained to the student's mother that the parent had to request that the referral be cancelled. The student's mother told the special education director that she did not know how to do that, and so, the special education director agreed to write out a note cancelling the mental health referral, read it to the student's mother and then the student's mother signed it. It is clear from the evidence in the record that the school district staff did not do anything improper in making the mental health referral. Moreover, the evidence does not support the parent's contention that the mental health referral was a part of the student's IEP or that the representative of the mental health provider was invited to or attended any part of an IEP team meeting for the student.

Although the parent did not file a post-hearing brief or make any argument linking the mental health referral to an IDEA issue, this issue appears to be the result of the parent's misunderstanding. The parent had requested that the school district have the mental health provider contact her. The representative came to meet the parent after the IEP team meeting and not to participate in the meeting. When the parent decided instead to cancel the mental health referral, the special education director of the district helped the parent to complete the necessary paperwork. This issue is the result of a misunderstanding and poor communication.

The parent did not testify at the hearing. The student's grandmother did testify at the hearing but her testimony did not relate to this issue. To the extent that school district staff testified concerning the mental health referral or the mental health representative, such testimony was credible and persuasive.

The parent has not proven that the school district violated IDEA because of a referral to a mental health agency.

NOTE: The parties to this matter clearly have a toxic relationship and extreme difficulty communicating with each other. The parent's complaint appears to be primarily the result of misunderstandings and miscommunications. It appears that both parties have lost sight of the fact that we are talking about the education of a young person. As the United States Supreme Court has noted, the special education process is designed to be collaborative in nature. Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005). The parties should seriously consider taking affirmative steps to repair their relationship. Although the parties have the right to utilize any procedural safeguard provided by IDEA, they are strongly urged to consider

using another mediation session or a facilitated IEP² team meeting to help repair their relationship in the event that they have another disagreement concerning the student's education in the future. A wealth of additional resources related to less adversarial methods of dispute resolution are available on the CADRE website.³

RELIEF

Because the procedural violation by the school district concerning the failure to duly consider the parent's request for an interpreter at an IEP team meeting was a harmless procedural violation, the violation is not actionable, and the parent and student are not entitled to any individual relief therefor. However, the procedural violation is nonetheless concerning, and the Order in this decision will include relief designed to ensure that the procedural violation is not repeated by school district staff in the future.

² [Home - Office for Dispute Resolution \(odr-pa.org\)](http://odr-pa.org)

³ <https://www.cadeworks.org>

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. Within 45 days of the date of this decision, the school district will provide training for all staff that are involved in decisions as to whether to provide interpreters for an IEP team meeting concerning the IDEA requirements concerning interpreters. See, C.F.R. § 300.322(e);

2. All other relief requested by the due process complaint in this matter is hereby denied.

IT IS SO ORDERED.

ENTERED: July 5, 2021

James Gerl

James Gerl, CHO
Hearing Officer