

*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. 28366-23-24**

**Child's Name:**

G.C.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Hearing Officer:**

Charles W. Jelley Esq.

**Decision Date:**

June 7, 2024

## **Background**

The Parent filed the pending Due Process Hearing Complaint alleging multiple violations under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> The Parent now seeks tuition reimbursement for the 2022-2023 and the 2023-2024 school years. The District, on the other hand, seeks a declaratory ruling that its offer of a free appropriate public education (FAPE) in each individual education program (IEP) was procedurally and substantively appropriate. After reviewing the intrinsic and extrinsic evidence and applying the "snapshot" rule, I now find that the Parent has not met her burden of proof that the District failed to offer the student a FAPE. For all the reasons that follow, I now find in favor of the District and against the Parent.<sup>2</sup>

## **ISSUES PRESENTED**

1. Did the District offer Student FAPE for the 2022-2023 school year? If not, is the Student otherwise entitled to tuition reimbursement?
2. Did the District offer Student FAPE for the 2023-2024 school year? If not, is the Student otherwise entitled to tuition reimbursement?

<sup>1</sup> 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 details appearing on the cover page of this decision, will be redacted prior to its 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 USC § 1415(h)(4)(A); 34 CFR § 300.513(d)(2); 34 CFR § 104.1- 104.36). The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14) and 22 PA Code Chapter 15. References to the record throughout this decision will be to the Notes of Testimony (N.T.), School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number. References to duplicative exhibits are not necessarily to all.

<sup>2</sup> The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements. *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993) (an IEP must be judged as to its appropriateness at the time that it is written, not with respect to subsequently obtained information about the student).

## **FINDINGS OF FACT**

### **THE STUDENT'S HISTORY OF PLACEMENTS AND HOSPITALIZATION**

1. The Student and the Parent reside within the Haverford Area School District ("District"). (NT *passim*). [redacted], throughout the Student's elementary school years, the Student has dealt with multiple traumas. (NT 184-185). Throughout elementary school, the custodial Parent obtained private therapy for the Student. (NT 166, 185-186). Essentially, the Student could not process what was going on at home and, at times, in the school. (NT p.186)
2. The Parties otherwise agree that the Student is a person with the following IDEA disabilities: 1. a Specific Learning Disability and 2. Emotional Disturbance. (P-67, p.37), The Parties also agree that the Student has been diagnosed, by private providers, with an Adjustment Disorder with Anxiety and Dyslexia. (P-5, p. 5, P-25, p.28).
3. The District is a local educational agency ("LEA ") within the meaning of 20 USC § 1401(15), 34 CFR § 300.28, 22 Pa. Code 14.102(a) (2)(vii). The District is also the recipient of federal funds within the meaning of the IDEA, 20 USC § 1401 and Section 504, 29 USC § 794(b)(2)(B).
4. The Student has an average intellectual ability. (P-39, p. 19; NT p.452). Academically, however, the Student has consistently scored below average in reading, writing, and math assessments. (P-39, p.19; NT p 453).
5. When the Student entered [redacted] in the 2016-2017 school year, the District provided the Student with a 504 Service Agreement. The Agreement included accommodations and Occupational Therapy services to address fine and visual motor needs. (P-2; NT p.174).
6. After completing additional testing, the District provided supplemental special education support and services to the Student during the 2018-2019 and 2019-2020 school years. The Student's [redacted] school IEPs included, among other things, small group special education instruction in language arts and math,

occupational therapy (OT), and psychological services/counseling. (S-3, pp.29, pp.31-33; P-15, pp.35, 37-39; S-15, pp.2-3).

7. On January 24, 2020, Parent submitted a bullying complaint regarding two alleged incidents that occurred that same month. After investigating the claims and reviewing the security video, the bullying allegations were determined to be unfounded. The Student's therapist reports that the Student "makes up elaborate scenarios," "exaggerates," and engages in "attention-seeking behavior." (P-5, pp. 3-8, 13, 15, 19; S-6; N.T. p.190).
8. Due to the COVID outbreak in March 2020, the Student finished the remainder of the [redacted] grade year (2019-2020) virtually. (P-15, pp. 7-14).
9. For the 2020-2021 - [redacted] grade school year - the District offered a hybrid model of instruction. The Parent requested, and the District agreed that the Student could attend school virtually. (NT pp.192-93; NT pp.557-560).
10. At the beginning of the [redacted] grade school year, the Student engaged in attention-seeker behavior, including sending [redacted] over the computer. (P-5, pp. 15, 19; NT p.155; NT pp.254-55; NT pp.557-58; NT pp.579-81)
11. In early October 2020, the Student's mental health anxiety and depression symptoms worsened. From October 21, 2020, through November 3, 2020, the Student was admitted to a partial hospitalization program (PHP). At the PHP, the Student continued to make claims about being punched in the face by peers. The claims were later determined to be unfounded. (P-5, pp.22-25; P-11; P-20, p.4; S-15, pp. 4, 22; P-25, p.4).
12. Upon discharge from the PHP, the District developed a transition plan for Student's re-entry into school and initiated a reevaluation. (P-15; NT p.564).
13. On or about January 8, 2021, the District completed a reevaluation report ("2021 RR"). The 2021 reevaluation concluded that the Student was eligible for special education supports and services under the classifications Specific Learning Disability (SLD) in reading, writing, and math. The reevaluation also found that the Student was a person with an Emotional Disturbance (ED). The reevaluation identified needs in the areas of reading, writing, math, emotional regulation,

coping skills, executive functioning and work completion skills, and visual motor skills. (P-14; P-19, pp.2, pp.43-44).

14. At the same time, the Parent obtained a private evaluation dated January 27, 2021. The private evaluation identified needs and disabilities similar to those found in the District's 2021 reevaluation. (P-25).
15. After giving due weight to both evaluations, the District developed a new annual IEP on February 23, 2021. The February 2021 IEP included supplemental learning support and emotional support. The IEP offered daily direct instruction in reading, writing, and math. The IEP also offered emotional regulation skill training, coping skills, weekly occupational therapy, and individual counseling. (P-27).
16. Responding to the Notice of Recommended Educational Placement (NOREP), the Parent rejected the District's proposed programming and unilaterally placed the Student at a private school. (S-20; P-23, p. 4).
17. The Student attended the [redacted] school in the District from [redacted] through April 2021 of the [redacted] grade year when the Parent unilaterally removed the Student and made the private school placement (P-67, p. 2).
18. On or about December 2021, the parties entered into an Educational Services Agreement under which the Student would attend the private school at District expense through the 2021-2022 school year ([redacted] grade). Under the Agreement, the Parent waived any and all claims arising before December 2021 up to and including August 2022. (NT p.213).

#### **THE STUDENT IS HOSPITALIZED**

19. Beginning in February 2022 through June 2022, due to an increase in anxiety, depression, and suicidal ideation, the Student, for the most part, stopped attending the private school. The Student received behavioral health services in a partial hospitalization program and at inpatient mental health facilities. Reports from the hospitalizations indicate that, among other things, the Student displayed signs of "pervasive anxiety related to [the] safety of family [,]" "visual hallucinations of [redacted][self [,]" and "auditory hallucinations [involving] a

[redacted][who] controls [redacted][redacted]thoughts [.]<sup>3</sup> (P-35; P-36; P-39, pp.20-22).

20. During the summer of 2022, the Student attended a five (5) week language arts program at the private school. The Student's actual progress is unclear, as no actual baseline or grade-level assessment results were provided to the District (S-45).

### **THE DISTRICT'S 2022 REEVALUATION**

21. On March 16, 2022, the District began a reevaluation. The reevaluation report was completed on May 28, 2022. (S-35; NT p. 431, p.437). Between March 2022 and June 2022, the Student was again in and out of three different behavioral health facilities. (S-34; S-38; S-39, p.2, p.22).
22. The 2022 reevaluation included a review of records, including information from the private placement, private assessment results, the Student's report card, an occupational therapy (OT) evaluation, and an indirect functional behavioral assessment (FBA). The evaluator recommended further direct observation in the school environment and assessments to measure cognitive functioning, academic achievement, executive functioning, and social/emotional functioning. Due to the hospitalizations and given the Student's limited availability, the District completed abbreviated cognitive and achievement testing. All results were shared with the Parent. (S-39; NT pp.432-33; NT pp.440-61).
23. The Student earned "Average" IQ scores and, overall, "Below Average" academic achievement scores, with reading and writing composite scores in the "Very Low" range. (S-39, pp.19, pp.22-23; NT pp.453-54). The Student's executive functioning and attention rating scales indicated that the Student exhibited needs in executive functioning and organization. The profile further indicated a variety of need areas, including organization, prioritization of work, initiation of work, sustaining attention and focus, and task completion. (S-39, pp.20, 24; NT

pp.454-56). While the Parent ratings also indicated significant challenges in the areas of emotional regulation, the teacher ratings demonstrated no concerns in the school setting. (S-39, pp.20, 24; NT pp.454-56). Although the Parent rated anxiety, depression, somatization, and withdrawal in the Clinically Significant range, the Student's teacher ratings indicated the opposite. (S-39, pp. 20-21, 25-26; NT pp.456-58).

24. Based on the results of the OT evaluation, OT services were recommended to address needs in the areas of fine manual control, manual dexterity, and visual perceptual skills. (S-39, p.28; NT p.450).
25. The 2022 reevaluation also identified needs in basic reading, sight words, decoding, reading comprehension skills, reading fluency, written expression skills, math problem-solving and calculation, emotional regulation, coping skills, executive functioning, work completion, visual perceptual skills, and fine motor skills. (S-39, p.27).
26. The 2022 reevaluation recommended that the Student receive direct, specialized instruction in basic reading, reading fluency, reading comprehension, written instruction, math problem solving, and math calculation; direct, specialized instruction and individual counseling to develop coping skills. The Report also suggested strategies to improve emotional regulation, specialized instruction to improve executive functioning skills, and implementation of strategies to increase focus and sustained attention. The reevaluation also recommended the repetition of content, the chunking of assignments, classes with a smaller student-teacher ratio, and OT services. (S-39, p.28).
27. On June 22, 2022, the IEP team met with the Parent to review the 2022 reevaluation. During the meeting, the team discussed how the Student could access the emotional support classroom, guidance counselor, and therapeutic Counselor during the school day when anxious or overwhelmed. The team also discussed how the District would provide small group reading, writing, and math instruction in the special education classroom. Finally, the team discussed the Student's participation in the regular education classroom for science, social

studies, and special classes, like music and physical education. (P-40, p.1, p.51; NT p.464).

28. At the meeting, the team, including the Parent, reviewed how executive functioning instruction could be provided in either the emotional support or learning support classroom. The team next discussed how the District would provide small group (less than 10 students) instruction in math that would take place daily in the learning support classroom. Finally, the team discussed small group (less than 10 Students) direct instruction in language arts that would take place two periods per day in the learning support classroom. The team suggested that the Student use the corrective reading program to address reading deficits. (NT p.428; NT p.470; NT p.472; NT p.477; NT p.478; NT p.480). The team also discussed a transition plan to assist in the transition back into the District. (P-40, p.51; NT p.219; NT p.664).
29. The IEP team further offered to provide emotional support instruction five (5) times per week, along with additional push-in math support. At the meeting, the Parent advised the team that she did not want the Student to attend the District's [redacted] school. The Parent stated that she did not want the Student to receive instruction in a special education classroom and that she did not believe that the Student needed school-based emotional support or counseling. (P-40, p.22; NT pp.220-22; pp.464-67). The Parent also felt that the proposed school building was just too big. (NT p.220; NT p.665).
30. On June 23, 2022, the day after the IEP meeting, the assistant principal of the [redacted] school provided the Student and the Parent a tour of the building. (NT pp.666-74).

### **THE JUNE 2022 IEP**

31. The June 2022 IEP incorporated the findings from the 2022 reevaluation and adopted the Report's statement of the Student's strengths and needs. (P-40, pp.15-21, pp.23-24; NT p.468).



32. The June 2022 IEP included detailed statements outlining the Parental concerns. (P-40, p.22). The June 2022 IEP also included measurable goals to address the Student's needs in decoding, reading fluency, reading comprehension, writing, math problem solving, emotional regulation/coping skills, written expression, and fine motor and visual perceptual skills with baselines for the beginning of the school year. (P-40, pp.32-40). The June 2022 IEP included regularly scheduled times when the District would provide the Parent with progress reports. *Id.*
33. The June 2022 IEP proposed Supplemental Emotional and Learning Support with small group direct instruction in reading, writing, and math. The IEP offered weekly group OT and individual therapeutic counseling eight (8) times per quarter. (P-40, p.48; NT p.51). Based on the Parent's input, the IEP team reduced time in the Emotional Support classroom to only two (2) times per week. (P-40, p.51; NT p.219).
34. To further support the Student's needs, the June 2022 IEP included assistance with organization and work completion; provision of a "Fast Pass" to the emotional support classroom; access to the school counselor; access to the emotional support classroom to calm down; extended time; chunking; development of a positive rapport; frequent breaks; time out/cool down location; small group testing with questions read aloud; advanced notice of tests; limiting amount of questions on page; graph paper for math problems; skeleton notes; review of writing expectations, use of a calculator, walk through word problems, preview of new vocabulary; additional time when reading independently; check-ins for understanding and task completion; pairing visual with auditory directions, and repetition of information. (P-40, pp. 42-58; NT pp.482-83).
35. The June 2022 IEP also outlined a transition plan to assist the Student's transfer back to the District. The Student's transition plan called for the Student to participate in [redacted] grade orientation, including meeting with teachers and walking through the proposed daily schedule. The June 2022 IEP next proposed to review and make changes to the Student's programming within the first month of the 2022-2023 school year. (P-40, p.48).

36. The June 2022 IEP included group OT for 30 minutes and individual therapeutic counseling for 20-minute sessions eight (8) times per quarter provided by a contracted licensed professional counselor. (P-40, p.48; NT pp.481-82).
37. The June 2022 IEP provided for regular consultation between the case manager, the regular education teachers, the emotional support teachers, and the District's Board Certified Behavioral Therapist (BCBA). (P-40, p.49).
38. On July 26, 2022, the Parent returned the NOREP rejecting the IEP and the proposed placement. (P-40, pp.1-3).
39. On July 27, 2022, the Parent sent the District her 10-day notice that the Student would be attending private placement for the 2022-2023 school. The notice also stated that she would be seeking reimbursement from the District for the Student's placement. (P-41; NT pp.222-23).

#### **THE STUDENT AND THE PRIVATE SCHOOL**

40. On August 2, 2022, the Parent contacted private school staff, stating that she was "entering litigation" with the District and needed "some data." (S-44).
41. On August 31, 2022, Parent signed the private placement enrollment contract for the 2022-2023 school year. Per the contract, the Student was required to engage in outside psychological therapy as private placement does not provide in-school therapy. (S-36, pp.1, 4; NT pp.347-48).
42. At the request of the Parent, on February 28, 2023, a private neuropsychologist reviewed the Student's record and issued a "Consult Report." The Consult Report made recommendations for the Student's educational placement. (P-44). The 2023 Consult Report did not include any new assessments. In preparing the Report, the neuropsychologist reviewed the Student's 2021 private evaluation report, the June 2022 IEP, the District's 2022 reevaluation, and the private school's 2022 summer school progress report. (P-44, p.2).
43. Although the 2023 Consult Report indicated that both a classroom observation of the Student and consultation with the Student's private placement teachers took place on January 4, 2023, on cross-examination, the neuropsychologist admitted that she did not observe the Student. Furthermore, she was unable to confirm

whether there had actually been any consultation with the Student's teachers. (P-44; NT p.62; NT p. 68; NT pp.71-74).

44. The 2023 Consult Report concluded that achievement testing demonstrated a "steady improvement in the area of reading and math relative to peers with appreciable improvement in the area of written expression," no updated data were identified, shared, or included in the Report to support this assertion. (P-44, p.3; S-39, pp.8-9, 19).
45. The 2023 Consult Report represented that the Student "has advanced at least one to two years since [sic] has been enrolled in the school in the area of decoding skills [,"] no data were identified or included to support this finding. When asked on cross-examination, the neuropsychologist admitted that no such data existed in the records. (P-44, p.4; P-25; S-39; P-40; P-42).
46. The neuropsychologist never observed the Student in the district and did not know the proposed schedule of classes or the makeup of the Student's classroom. (P-44, p. 4; NT p.62).
47. The neuropsychologist, after one conversation with the Student's then-treating "therapist," opined that emotional support within the Student's school setting was not necessary. During *voir dire* of the Student's therapist, the District and the Parent learned that the therapist was neither licensed nor certified to provide any type of therapy in Pennsylvania. (P-44, pp.4-5; NT pp. 77-80, pp.808-13).
48. The neuropsychologist did not have working knowledge of whether the private placement curriculum or if they used a research-based reading program. (P-44; NT at 85-86, 91-92).

### **THE APRIL 2023 IEP**

49. The District, on March 30, 2023, the Parent and the Student came to the [redacted] school to complete baseline testing for purposes of revising the June 2022 IEP. Based on the testing that was completed, the June 2022 IEP was updated to include baselines for Student's proposed 2023-2024 IEP goals. (S-51, pp.10, pp.30-36; NT pp.485-86).

50. On April 24, 2023, the IEP team met with Parent to discuss a revised schedule and develop a new annual 2023-2024 IEP. The proposed April 2023 IEP included, among other things, measurable baselined goals for decoding, reading fluency, reading comprehension, writing, math problem solving, and written expression with baselines for the Student's emotional regulation/coping skills and OT goals to be established upon Student's return to the District. (S-52, pp.11-13; NT at 487).
51. The April 2023 IEP continued to recommend that the Student should receive daily small group instruction in reading, writing, and math in the special education classroom, small group instruction in the Emotional Support classroom two (2) times per week to provide Student with strategies to generalize coping skills across environments, weekly group OT for 30 minutes, and therapeutic counseling eight (8) times per quarter. (S-52, p.46).
52. The April 2023 IEP incorporated much, if not all, of the specially designed from the Student's June 2022 IEP, including but not limited to assistance with organization and work completion, provision of a "Fast Pass" to the ES classroom, access to the school counselor, access to the ES room to calm down, extended time; chunking, development of a positive rapport; frequent breaks; time out/cool down location, small group testing with questions read aloud, advanced notice of tests, limiting the number of questions on a page, graph paper for math problems, skeleton notes, review of writing expectations, use of a calculator, walk through word problems, preview of new vocabulary, additional time when reading independently, check-ins for understanding and task completion, pairing visual with auditory directions, repetition of information, and a transition plan for Student's return to the District. (S-52, pp.38-43).
53. To support the return to the District, the team also proposed a comprehensive formal functional behavior assessment (FBA). (S-52, p.43).
54. The April 2023 IEP team found the Student eligible for extended school year (ESY) programming. The team proposed goals in decoding, reading comprehension, reading fluency, written expression, and math problem-solving and calculation. (S-52, p.45).

55. On May 1, 2023, the Parent returned the NOREP and rejected the IEP. (P-45).
56. On July 27, 2023, the Parent sent the district another 10-day notice advising the district that she would be placing the student in private placement for the 2023-2024 school year and seeking reimbursement from the district. (P-48; NT pp. 228-29).
57. On August 2, 2023, the District issued a follow-up NOREP rejecting the Parent's demand for funding for the Student's unilateral placement at private placement and invited the Parent to another IEP meeting. (P-50).
58. On August 21, 2023, the Parent met with the District team to further discuss Student's placement for the 2023-2024 school year. At the meeting, the team discussed additional support to help the Student transition back to the District. To help with the Student's class schedule, the school team asked for the names of the Student's friends as well as Students that might cause Student anxiety, but no names were provided. (S-63; NT pp.679-81).
59. Also, at the meeting, the District invited the Parent and the Student to another tour of the building prior to the beginning of the school year. The Parent declined the offer, noting that they had already toured the building the previous year. (NT p. 675).
60. As a result of the meeting, the April 2023 IEP was revised to reflect additional transition support for the Student, including scheduling a time for the Student to meet the school counselor and emotional support teachers prior to the start of the school year. (S-63, pp. 2; NT p.44; NT p.679).
61. The District issued a NOREP on August 25, 2023, that was never returned. (S-64).

**THE STUDENT REENROLLS FOR THE 2023-2024 [redacted]  
GRADE SCHOOL YEAR**

62. On September 7, 2023, two (2) days after the first day of school, Parent reenrolled Student in the District. Upon learning of the return, the Student's school counselor reached out to the Parent to introduce herself and request

additional information to help with the Student's transition. (P-51; NT p.678, pp.682-83, pp.753-55).

63. On Friday, September 8, 2023, the guidance staff shared the Student's IEP with all of the Student's teachers. (NT p.84).
64. The Guidance Counselor, on Monday, September 11, 2023, met with the Student and reviewed the Student's daily schedule. The school counselor made sure the Student was introduced to all support people and then escorted the Student to class. Approximately an hour later, when the Guidance Counselor checked in with the Student, she learned that the Student had called the Parent to discuss plans for the Student's dismissal at the end of the day. (S-65; NT pp.684-86, pp.757-62).
65. During the Student's lunch period, on September 11, 2023, while the Student was sitting and talking with three or four other peers, the vice principal was notified that the Student's grandmother had arrived at the school office to pick up the Student. The Student was unaware that he was getting picked up early. (NT p.686).
66. The Student was escorted to the main office by the vice principal, and upon arriving at the office the vice principal, the Student's grandmother, the Student's Guidance Counselor, and the Parent by telephone discussed the dismissal. At some point during the call, the Mother alerted the staff that another peer in the hallway made the Student nervous. As the conversation went on, the Student later asked to go home. The Student left school with the grandmother. The record is unclear as to how the Mother was aware of the alleged hallway incident. (NT pp.688-93; NT pp.764-66).
67. Following the Student's departure from school, the Guidance Counselor contacted the Student's private "therapist." During the call, the Guidance Counselor asked for input on how to support the student's attendance at school and how she could teach the Student how to use the "Fast Pass" coping strategy. (NT p.768).
68. On September 12, 2023, the Student returned to school. Upon arrival, the Student met with the Guidance Counselor, who rehearsed how to use the "Fast

Pass." At the end of the session, the Counselor set up several check-ins throughout the day. At the end of the day, the staff described the Student as happy and engaged and without overt signs of anxiety or emotional distress. The Student boarded the bus and returned home. (S-73; NT pp.725-26; NT pp.767-70, NT p.776).

69. On September 13, 2023, the Parent notified the District that the Student would not be returning. The Mother believed that the Student was "re-traumatization" after talking with the unlicensed private therapist. (P-53; S-68; NT p.233).
70. On or about September 16, 2023, the Mother provided the District with a note from the Student's pediatrician advising the District that the Student required homebound instruction. (S-67; NT p.235).
71. On October 3, 2023, the Parties participated in an IEP meeting to discuss the physician's suggestion of homebound instruction. The District's online program was presented as an option, along with in-person support at the District administration building, until the Student was able to come back to in-person learning. To confirm the appropriateness of the Students' classes, the group also discussed that the District planned to collect additional diagnostic math and reading data. (P-55; S-74, p.8; S-75; NT pp.698-99).
72. On October 3, 2023, Parent sent the District another 10-day notice advising that the Student was returning to the private placement and that she would be seeking reimbursement for the placement from the District. (P-54; NT p.238).
73. On October 6, 2023, the District issued a Permission to Reevaluate. The Parent consented to the requested reevaluation on October 9, 2023. (S-75; NT p.592; NT p.594).
74. On or about October 8, 2023, the Student began homebound instruction that included English and Language Arts and math along with the related services of OT and counseling. (P-56; S-69; S-70; S-71; NT pp.235-237; NT pp.491-492; NT pp.697-699).

75. On October 10, 2023, the District issued a NOREP reoffering the October 3, 2023, revised IEP and placement at the middle school. The Parent rejected the NOREP and requested a due process hearing. (P-58; S-77).
76. On October 10, 2023, the District issued a NOREP declining funding for placement at private placement. The District also offered to hold another IEP meeting to update the IEP. (P-58; S-78).
77. On or about October 13, 2023, the Parent unilaterally placed Student at private placement. On October 25, 2023, Parent advised the District that Student no longer needed to be homebound. (P-65 p.1). The Parent officially withdrew the Student from the District on November 13, 2023. (P-66).
78. On December 7, 2023, the District issued its reevaluation report (2023 RR). (P-79).

#### **THE DISTRICT'S DECEMBER 2023 REEVALUATION REPORT**

79. The December 2023 reevaluation report included Parental input, a review of the previous evaluations, the private placements, the report cards, and teacher input. The reevaluation also included an assessment of cognitive functioning, an assessment of academic achievement, an assessment of social, emotional, and behavioral functioning, including rating scales completed by four (4) teachers, the Parent, a clinical interview, an assessment of executive functioning, and an OT evaluation. The Student's withdrawal interfered with the proposed Functional Behavioral Assessment. (P-67; S-79; NT pp.597-627).
80. Similar to the results of past evaluations, the cognitive testing demonstrated that visual-spatial and fluid reasoning/nonverbal reasoning skills were areas of weakness. The data also indicated that the Student's verbal reasoning skills and memory skills were areas of strength. (S-79, p.25; NT pp.606-07).
81. A review of the Student's reading comprehension, reading fluency, math skills, and writing skills, including the individual testing data, indicates that the Student was not learning as otherwise anticipated. (S-79, pp.27-29; NT pp.622-24).



82. At the time of the December 2023 reevaluation, the Parent did not raise any social or emotional concerns. The Parent reported that the Student was now able to "self-regulate and accommodate for [redacted] needs under most conditions." (S-79, pp.3, 31-32; NT pp.624-25).
83. Teacher input on the Student's social or emotional skills set was overall unremarkable. One teacher, however, rated the Student with clinically significant scores in the areas of anxiety, atypicality, and functional communication. The same teacher also reported that the Student "seems very anxious often (not overt)." (S-79, pp.29-31; NT pp.624-25).
84. The Student's self-report on the Behavior Assessment System for Children 3rd Edition (BASC-3) fell in the "Average" range. (S-79, pp.32-33; NT pp.624-25).
85. After reviewing the data, the team recommended that the Student no longer needed specially designed instruction related to social, emotional, or behavioral functioning. (S-79, p.33; NT p.626). The team also reviewed the OT evaluation and concluded that the Student did not qualify for school-based OT services. (S-79, pp.35-37).
86. The team next concluded that the Student continued to be eligible for special education services under the Specific Learning Disability category. The team also concluded that the Student's anxiety, depression, and post-traumatic stress disorder impairments qualified the Student as a person with an Emotional Disturbance. The reevaluation team then identified the following academic needs: word reading skills, reading comprehension skills, reading fluency skills, math problem-solving skills, math calculation skills, written expression skills, and encoding skills. (S-79, pp.37-38).
87. Although the December 2023 reevaluation team found that the data did not support a need for executive functioning goals, the team decided that the Student should continue to receive specially designed instruction targeting executive functioning and emotional regulation. (S-79, p.38; NT pp.625-26).
88. The December 2023 reevaluation team made recommendations for individualized programming, including direct, specialized instruction to support word reading,

reading comprehension, and reading fluency skills and accommodations across the school day. The team also recommended specialized instruction to help increase math skills and accommodations to help support applied math skills across curriculum areas. Next, the team recommended direct, specialized instruction in written expression and accommodations to support writing weaknesses across content areas. Finally, the team recommended accommodations to support emotional regulation and executive functioning skills. (S-79, pp.38-39).

89. The December 2023 reevaluation was shared with the Parent on January 5, 2024. (P-69; NT p.627).

### **THE JANUARY 2024 IEP**

90. The January 2024 IEP incorporated the December 2023 reevaluation findings and the statement of the Student's strengths and needs. (P-69, pp.10-16; NT pp.22-30; S-79, p.38).

91. The January 2024 IEP included detailed parental input. (P-69, pp.27-29).

92. The January 2024 IEP included measurable goals to address the Student's needs in decoding, reading fluency, reading comprehension, encoding, math problem solving, written expression, and math calculation. (P-69, pp.38-44).

93. The January 2024 IEP offered Supplemental Emotional and Learning Support with small group direct instruction in reading, writing, and math; academic support two (2) times per week; and individual therapeutic counseling eight (8) times per quarter. (P-69, pp.56-58).

94. Like the previous IEPs, the January 2024 IEP included numerous and detailed forms of targeted, specially designed instruction. (P-69, pp.45-52).

95. The January 2024 IEP included individual therapeutic counseling for 20-minute sessions eight (8) times per quarter as a related service. (P-69, p.53).

96. The January 2024 IEP provided for regular consultation between the case manager, regular education teachers, and emotional support teachers. (P-69, p.54).

97. The January 2024 IEP team found the Student eligible for extended school year (ESY) services to address goals in the areas of decoding, reading comprehension, reading fluency, written expression, and math problem-solving and calculation. (P-69, p.55).
98. The Parent rejected the District's January 2024 IEP. (P-69; NT pp.242-44).

## **CONCLUSIONS OF LAW AND APPLICABLE LEGAL STANDARDS**

### **THE MOVING PARTY SHOULDERS THE BURDEN OF PROOF**

The burden of proof in an IDEA dispute comprises two considerations: the burden of going forward and the burden of persuasion. The burden of persuasion determines which of the two contending parties must bear the risk of failing to convince the finder of fact. In *Schaffer v. Weast*, 546 US 49 (2005), the Court held that the burden of persuasion is on the party that requests relief; in this case, the Parent. 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.<sup>4</sup>

### **CREDIBILITY AND PERSUASIVENESS OF THE WITNESSES' TESTIMONY**

During a due process hearing, the hearing officer is charged with judging witnesses' credibility, weighing evidence, and assessing the witnesses' overall persuasiveness.<sup>5</sup> I found the Mother's testimony clear, emotional, direct, and organized. I found the District's teachers and the administrators' testimony cogent, persuasive, and organized.

The Parent called several district and non-District witnesses. As a general observation, the Parent's non-district witnesses were not familiar with the contents

<sup>4</sup> At all times, this hearing officer applied the preponderance of evidence standard when reviewing all claims. 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. See, *Comm. v. Williams*, 532 Pa. 265, 284-286 (1992).

<sup>5</sup> *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003); *A.S. v. Office for Dispute Resolution*, 88 A.3d 256, 266 (Pa. Commw. 2014) (it is within the province of the hearing officer to make credibility determinations and weigh the evidence in order to make the required findings of fact); 22 Pa Code §14.162 (requiring findings of fact).

of the offered IEPs, the District's curriculum or the schedule of related services like counseling. This overall lack of general knowledge and awareness undercut the persuasiveness of some segments of their testimony and opinions. While the private school administrator's testimony was helpful in explaining the ins and outs of the Student's school day, his testimony did not contradict or undercut the appropriateness of the IEP goals or the related services in any of the District's IEPs. Finally, he did not testify that the Student would not make meaningful progress in the middle school in small classes.

As a general matter, the neuropsychologist's testimony was somewhat choppy and cryptic. The last time the witness observed the Student in class was in 2021. (NT p.69). The neuropsychologist did not observe any of the District's classes or interview the teachers. Although the 2023 Consult report stated that the witness observed the Student in January 2023, on cross-examination, the witness acknowledged that the Report was wrong. Therefore, I will give her testimony limited weight.

The neuropsychologist also testified that she relied on a single call in January 2023 with the Student's then-therapist about how the Student was functioning in school. The Student's private therapist's testimony was cut short during *voir dire* when it came out that he was not a licensed therapist and was not working under the supervision of a licensed therapist as required in Pennsylvania. Therefore, I will give her testimony reduced weight to the extent that she relied on the out-of-hearing discussion with an unlicensed provider in formulating her opinion about the surrounding circumstances.

While the District's witnesses spent little to no time with the Student, each witness understood the Student's profile and, when asked, refused to speculate about topics beyond their understanding of the Student's academic record. Therefore, I will give their testimony greater weight, understanding that their comments are prospective and somewhat disjointed due to the lack of consistent one-on-one contact with the Student.

## THE IDEA SUBSTANTIVE FAPE STANDARD

In the *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 US 176 (1982), the Supreme Court held that districts violate the IDEA's FAPE mandate when they fail to follow the Act's procedural and substantive requirements. *Rowley* requires that IEPs must be reasonably calculated to enable the child to make meaningful progress. IEPs are crafted annually by a team that includes a representative of the local educational agency (LEA), the child's regular and special education teacher(s), the parents, and, in appropriate cases, the child. 20 U.S.C. § 1414(a)(5). Later, in *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (US 2017), the Supreme Court, applying *Rowley*, held that each "educational [IEP] program must be appropriately ambitious in light of [the child's] circumstances... [and] every child should have the chance to meet challenging objectives." *Id.*, 137 S. Ct. at 1000. The *Endrew* court's explanation of *Rowley* did not change the Third Circuit's long standard application of *Rowley's* procedural or substantive requirements.<sup>6</sup> Consistent with *Rowley* and *Endrew*, the phrase "free appropriate public education" now requires "significant learning" and "meaningful benefit." *Id.*

A procedural violation, on the other hand, occurs when a district fails to abide by the IDEA's or state-specific procedural standards and safeguards. Procedural violations cause a denial of a FAPE when any of the following situations occur: 1. The violation results in the loss of an educational opportunity, 2. The violation infringes on the parents' opportunity to participate in the IEP formulation, or 3. When the violation causes a deprivation of educational benefits.<sup>7</sup> Therefore, not all procedural violations amount to a denial of a FAPE. *Id.*

<sup>6</sup> *Dunn v. Downingtown Area Sch. Dist.* 904 F.3d 248 (3d Cir. 2018) applying *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017); *Ridgewood Board of Education v. NE*, 172 F.3d 238, 247 (3d Cir. 1999).

<sup>7</sup> 34 CFR § 300.513; *CH v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66 (3d Cir. 2010).

## THE ELEMENTS OF A COMPREHENSIVE ASSESSMENT

The IDEA sets forth three broad criteria that the local educational agency must meet when evaluating a child's eligibility for services under the IDEA. First, the child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments, classroom-based observations, and additional observations by teachers and other service providers.<sup>8</sup> Second, based on their review of that existing data, the evaluation team must "identify what additional data, *i.e.*, testing, ratings, rankings or assessments, if any, are needed to determine if the child has a qualifying disability in a timely fashion."<sup>9</sup>

Evaluators must "use a variety of assessment tools and strategies" to determine whether the student is a person with a disability. Districts may "not use any single measure or assessment as the sole criterion" for determining whether the child is a person with a disability or if the student needs specially designed instruction.<sup>10</sup> Districts must "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors."<sup>11</sup>

A comprehensive evaluation must ensure the child is "assessed in all areas of suspected disability." At the same time, it does not have to identify and diagnose every possible disability.<sup>12</sup> Finally, the evaluation must be "sufficiently comprehensive to identify all the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified."<sup>13</sup>

<sup>8</sup> 34 CFR § 300.305(a)(1).

<sup>9</sup> 34 CFR § 300.305(a)(2)(c).

<sup>10</sup> 20 USC § 1414(b)(2)(B).

<sup>11</sup> 20 USC § 1414(b)(2)(C).

<sup>12</sup> *D.K.*, 696 F.3d at 250 (3d Cir. 2012).

<sup>13</sup> 34 CFR § 300.304(c)(6).

## **APPROPRIATE RELIEF INCLUDES TUITION REIMBURSEMENT**

Courts and hearing officers apply a three-part test to determine whether parents, after refusing the district's IEP, are entitled to tuition reimbursement for their unilateral placement in a private school.<sup>14</sup> Under the *Burlington-Carter* test, the party seeking reimbursement relief must show: (1) The public school did not offer a FAPE; (2) Placement in a private school was proper; and (3) The equities weigh in favor of reimbursement. If parents fail to establish the test's first prong, *i.e.*, a denial of a FAPE, the analysis ends.<sup>15</sup> With these fixed principles in mind, I will now analyze the claims and affirmative defense defenses found in the testimony, and the non-testimonial extrinsic evidence.

## **CONCLUSIONS OF LAW AND ANALYSIS**

### **THE DISTRICT'S EVALUATIONS WERE APPROPRIATE**

The Parents failed to muster preponderant evidence that the Student's multiple reevaluations were either procedural or substantively flawed. First, the record is preponderant that each reevaluation included a variety of assessments. Second, each reevaluation report included mandatory Parental input and Teacher input. Third, the record is clear that the District's staff gave due weight to the Parents' private reports, including the neuropsychologist's testing and the consultation report, third-party records, and the private school records. Fourth, all completed assessments were norm-referenced, otherwise valid, and widely accepted to determine all areas of suspected IDEA disabilities. Fifth, the completed assessments were administered following the test makers' instructions. Sixth, the team worked with the Parent to gather outside information from the inpatient and outpatient hospitalizations to better understand the Student. Seventh, the record

<sup>14</sup> *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985), *Florence County Sch. Dist. Four v. Carter*, 20 IDELR 532 (U.S. 1993)

<sup>15</sup> *Benjamin A. through Michael v. Unionville-Chadds Ford Sch. Dist.*, No. 16-2545, 2017 U.S. Dist. LEXIS 128552, 2017 WL 3482089, at \*15 (E.D. Pa. Aug. 14, 2017) (*Burlington-Carter* analysis stops once hearing officer concludes the district offered a FAPE), See also, *N.M. v. Central Bucks Sch. Dist.*, 992 F. Supp. 2d 452, 472 (E.D. Pa. 2014)(same).

is preponderant that the District provided the Parents with timely notice and procedural safeguards when applicable. The Parent's neuropsychologist did not challenge or disagree with any of the District's assessments, data interpretations, or results. Accordingly, applying a preponderance of evidence standard, I now conclude that the Parents failed to establish that the District's IDEA reevaluation failed to assess the Student in all areas of suspected disability.

### **THE IEPs WERE OTHERWISE APPROPRIATE**

Building on the most recent reevaluation data available at the time, I now conclude that the IEPs in June 2022, April 2023, and September 2023 offered a FAPE. The IEPs included descriptive present levels along with supplemental learning support and emotional support, with daily direct instruction in reading, writing, math, and emotional regulation -coping skills. The IEPs included OT and specially designed instruction targeting basic reading skills, reading fluency, reading comprehension, written instruction, math problem solving, and math calculation, along with individual counseling to develop coping skills and improve emotional regulation. Next, the IEPs offered direct, specialized instruction to improve executive functioning skills and strategies to increase focus and sustained attention. The IEPs included specially designed instruction along with interventions targeting memory practice skills, repetition of content, and chunking of assignments.

To address the Parent's concerns about class sizes, the June 2022 IEP team offered classes with smaller Student-teacher ratios. (S-39, p. 28). During the meeting, the team again discussed how the Student could reach out to the emotional support teacher, the guidance counselor, and the therapeutic, in-house Counselor during the school day when either anxious or overwhelmed.

Understanding the Parent's desire for small classes, the team further discussed how the District could improve the offer of small group reading, writing, and math instruction in the special education classroom. The team then discussed and offered small group sizes of less than 10 students in daily math class in the



learning support classroom. The team next proposed small groups - less than 10 students – for instruction in language arts, which would also take place two periods per day in the learning support classroom, using a corrective reading program. This series of interactions indicates that the District, at all times relevant, received and weighed the Parent's input.

To address the Student's emotional needs, the IEP team discussed and then offered to provide emotional support instruction five (5) times per week along with additional push-in math support. Finally, the team discussed a transition plan to assist in the move back into the District. After listening to the Parent and openly discussing alternatives, each IEP team created a program of instruction that met the Student's individual needs. Accordingly, I now find that each of the 2022-2023 IEPs, when offered, was appropriate.

While I understand the Parents' perspective about push-on and pull-out instruction, I also understand that the District is not required to provide the best program. Furthermore, I disagree with the assertion that the proposed time in the learning support or emotional support class with counseling as needed for this Student, when offered, was either overly restrictive or inappropriate. (P-40, p.22; NT p.220-22; NT pp.464-67).

### **THE 2023-2024 IEP WAS APPROPRIATE**

I next conclude that the 2023-2024 IEP was also appropriate. Each time the Parent asked for funding, the District provided procedural safeguards, and the Parent consented to additional reevaluations. Each reevaluation in 2023 and 2024 used a variety of assessments, and each reevaluation incorporated Parental input and information from outsider private providers. These events led me to conclude that the District was open to discussions about a variety of programming and placement options. These reoccurring events also bolster my observation that the team, including the Parent, was struggling together to find the right combination of support, accommodations, and instruction at the correct location.

The 2023-2024 IEP included regularly scheduled times to assess and report progress. The January 2024 IEP included a detailed statement of Parental input. The January 2024 IEP included measurable goals to address the Student's needs in decoding, reading fluency, reading comprehension, encoding, math problem solving, written expression, and math calculation. (P-69, pp.38-44).

The goals statements were measurable and stated in easy-to-read objective terms. The January 2024 IEP offered Supplemental Emotional and Learning Support with small group direct instruction in reading, writing, and math; academic support two (2) times per week; and individual therapeutic counseling eight (8) times per quarter. (P-69, pp.56-58). The January 2024 IEP next included multiple forms of specially designed instruction grouped by goal and topic areas, like small group direct instruction, instruction on organization skills, the provision of a "Fast Pass" to the emotional support classroom, access to the school counselor as needed, access to the emotional support teacher to reflect and calm down. The specially designed instruction included academic supports like scaffolding to help with the organization of school materials, extended time, and frequent breaks (FOF 100; P-69, pp.45-52). The January 2024 IEP also included individual therapeutic counseling for 20-minute sessions eight (8) times per quarter as a related service. (P-69, p.53). The District's commitment of IEP resources aligns with the Student's strengths, needs, and surrounding circumstances.

Concerned about the Student's rate of learning, the January 2024 IEP team concluded that the Student was otherwise eligible for extended school year services (ESY). The summer IEP offered targeted goals in the areas of decoding, reading comprehension, reading fluency, written expression, and math problem-solving and calculation. Although the IEP was appropriate when offered, the Parent rejected the offer.

## **THE STUDENT'S UNEXPECTED YET ACCOMMODATED RETURN**

Although the school started for all others, the Parent asked, and the District quickly agreed to accommodate the Student's return to the District. The guidance counselor took the lead and disseminated the IEP to the staff. The staff implemented the IEP, albeit for a short time, with fidelity. The record is preponderant that the guidance counselor and the teaching staff endeavored to help the Student understand the school schedule, make friends, and fit in. When the Parent complained about a negative peer interaction, the Guidance Counselor reached out to the Student's private therapist for additional ideas on how to accommodate the Student. After the call, when the Student returned for one day, by all accounts, the day went well. When the Parent disagreed and asked for homebound instruction, the District responded in a reasonable timeframe. Even though events were occurring at a fast pace, homebound instruction was set up, and the Parent was fully informed of her procedural due process rights. Dissatisfied with the District's efforts, the Parent dis-enrolled the Student, provided proper notice, and returned to the private placement. After studying the exhibits, reviewing the transcripts, factoring in the Parties' arguments, and applying *Rowley*, *Endrew*, and the "snap shoot" rule, I now find that the 2023-2024 January IEP, when offered, was reasonably calculated to provide a FAPE.

Relying on the above conclusions of law finding that at all times relevant, the District offered a FAPE in 2022-2023 and 2023-2024, I need not move forward with the two remaining *Burlington-Carter* prongs. Accordingly, I now find in favor of the District and against the Parent.

### **ORDER**

**And now, on** this 7<sup>th</sup> day of June 2024, I find as follows:

1. At all times relevant, the District procedurally and substantively complied with the IDEA evaluation, child find, and FAPE standards.

2. The Parent did not meet her burden of proof.
3. Therefore, the Parent's tuition reimbursement claims are **Denied** as stated.
4. All other claims and affirmative defenses not otherwise raised or stated here are denied, and the same are exhausted.

Date June 7, 2024

/s/Charles W. Jelley, Esq. LL.M  
Special Education Hearing Officer  
**ODR FILE # 28366-23-24**