

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

26592-21-22

Child's Name

S.C.

Date of Birth

[redacted]

Parents

[redacted]

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Hearing Officer

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Date of Decision

12/13/2022

Introduction

This special education due process hearing concerns the educational program and placement of S.C. ("student"), a student who resides in the Tredyffrin-Easttown School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student who requires special education. Parents claim that the District failed to provide the student with programming designed to provide a free appropriate public education ("FAPE") under IDEIA. Parents also bring a denial-of-FAPE claim under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³

The student's parents claim that the District failed to provide appropriate programming in June 2020, at the end of the 2019-2020 school year. Additionally, parents claim that the District failed to propose appropriate programming for the student for the 2020-2021 and 2021-2022 school years, including the summers of 2020 and 2021. As a result, parents

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ It is this hearing officer's preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See *also* 22 PA Code §§15.1-15.11 ("Chapter 15").

undertook a unilateral private placement of the student and seek tuition reimbursement (including certain related services).

The District counters that it provided appropriate programming in June 2020 and proposed appropriate programming over the subsequent periods of parents' claims. Therefore, the District argues, parents are not entitled to remedy.

For the reasons set forth below, I find in favor of the District.

Issue

Are parents entitled to compensatory education for June 2020?

Are parents entitled to tuition reimbursement for the student's private placement in the 2020-2021 and/or 2021-2022 school year(s), including programming in the summers of 2020 and 2021?

Stipulations⁴

- A. The student is [an early high school aged] student who lives in the District.

⁴ The parties' stipulations are edited for stylistic consistency. Certain stipulations appear in the findings of fact below, as evidence was developed by the parties in those regards, the stipulations notwithstanding. Should there be any discrepancy between the stipulations and the findings of fact, the findings of fact will govern.

- B. The student's date of birth is [redacted].
- C. The student, at all times relevant hereto, was eligible for special education services pursuant to the IDEIA, 20 U.S.C. § 1400 et. seq., and pursuant to Section 504, 29 U.S.C. § 794, due to specific learning disabilities in reading.
- D. At all times relevant hereto, the District received federal funding.
- E. During the 2019-2020 school year, the student attended [redacted] grade at [redacted] the District.
- F. Due to the outbreak of COVID-19 in the spring of 2020, the District was forced to go to remote instruction during the 2019-2020 school year.
- G. The student attended a private placement for the [redacted] grade for the 2020-2021 school year.
- H. The student attended the same private placement for the [redacted] grade for the 2021-2022 school year.
- I. The District re-evaluated the student in the fall of 2019.
- J. The District re-evaluated the student in the spring of 2021.

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as

necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

Relevant Prior Educational History

1. In May 2015, in the spring of the student's [redacted] grade year, the student was identified as a student with a specific learning disability in basic reading. In September 2016, in the fall of the student's [redacted] grade year, the student's individualized education program ("IEP") was revised to include goals and instruction in mathematics. (Parents Exhibit ["P"]-17 at page 1).
2. In the student's school years prior to parents' claims (prior to June 2020), on an annual curriculum-based assessment, the student made overall progress in both reading and mathematics. (P-113, P-114, P-115, P-116, P-117).
3. In November 2018, in the fall of the student's [redacted] grade year, the student was assessed with a reading inventory. The student was at a 4th grade instructional level in word recognition and at an "initial" 4th grade instructional level in reading comprehension. (P-61).
4. In November 2018, the student's auditory processing skills were evaluated. The results of the auditory processing evaluation were not indicative of an auditory processing disorder. (P-15; Notes of Testimony ["NT"] at 400-442).

5. In December 2018, the District re-evaluated the student. The results of the November 2018 reading inventory assessment and auditory processing evaluation were included in the re-evaluation report ("RR"). (P-15, P-17, P-61; NT at 179-261).
6. The December 2018 RR contained a comprehensive suite of assessments, including cognitive testing, achievement testing, specialized reading assessment, executive functioning/memory/attention assessments, and behavior assessments. (P-17).
7. The December 2018 RR contained a speech and language ("S&L") evaluation. The student was determined not to have any need for S&L support. (P-17; NT at 340-395).
8. The December 2018 RR recommended that the student continue to be identified as a student with a specific learning disability in basic reading. The evaluator also recommended supports for the student in spelling, mathematics, and executive functioning skills. (P-17 at pages 36-41; NT at 179-261).
9. In May 2019, the student underwent a private auditory processing evaluation. The evaluator found the student to require support for auditory processing and recommended S&L services. (P-18).

2019-2020 School Year / [redacted] Grade

November 2019 RR

10. In November 2019, the student was re-evaluated. The student's progress on IEP goals at that time were updated, along with updated observations. (P-20; School District ["S"]-8; NT at 179-261).
11. The November 2019 RR included an updated S&L evaluation. The student was determined not to have any need for S&L support. (P-20; S-8; NT at 340-395).

December 2019 IEP

12. In December 2019, the student's IEP team met to revise the student's IEP. (S-9).
13. In December 2019, the student's IEP indicated that the student's educational needs continued to be in basic reading (word reading, decoding), spelling, and mathematical problem-solving/calculation skills with multi-step problems. (S-9 at page 17-18; NT at 448-564).
14. The December 2019 IEP contained five goals, in spelling, reading decoding, reading fluency, number sense fluency, and math concepts/applications. (S-9 at pages 22-26).
15. The December 2019 IEP contained specially-designed instruction and accommodations. (S-9 at pages 27-31).

16. The specially-designed instruction/accommodations contained supports in regular education settings, accommodations in reading, direct instruction in reading, support in special education classroom (during school-wide "advisory" periods) which included explicit supplemental instruction in mathematics and spelling, parent communication, and supports for listening comprehension (including audio books, programming, and technology). (S-9 at pages 27-31).
17. The student was determined not to be eligible for extended school year ("ESY") programming during the summer of 2020. (S-9 at page 32).
18. The December 2019 IEP recommended a placement in the regular education setting for approximately 87% of the school day. (S-9 at pages 33-35).
19. In early January 2020, the parents approved the program and placement outlined in the December 2019 IEP. (S-10).
20. The December 2019 IEP was in place from early January 2020 through mid-March 2020, when schools were closed for the statewide school closure as the result of the COVID-19 pandemic. (S-9; NT at 43-171, 448-564).
21. The student received remote instruction for the remainder of the 2019-2020 school year. (NT at 43-171, 448-564).

22. As part of the December 2019 IEP, assistive technology for listening comprehension (both a room-wide speaker system and a personalized earpiece unit for the student) was trialed. (S-9).
23. In May 2020, the student's IEP team decided to cease the trial of the earpiece unit but, upon a return to in-person instruction, to continue the trial of the room-wide speaker system. (S-13, S-14, S-16).
24. Over course of January – June 2022, the student made progress on the reading decoding goal, the number sense goal, and the math concepts/applications goal. (P-31 at pages 5-6, 10-14).
25. Over the course of January – June 2022, the student failed to make progress on the spelling goal (with consistent decline over the period, from scoring at 144 to 120) and the reading fluency goal (with consistent decline on probes at the 7th grade level over the 3rd and 4th marking periods from 152 to 122). (P-31 at pages 1-4, 7-9).
26. Over the course of the 2019-2020 school year, the student's [redacted] grade year, on the annual curriculum-based assessment, the student made overall progress in both reading and mathematics, although the student's achievement in reading comprehension was flat. (P-116, P-117).
27. The student's year-end grades for [redacted] grade, in academic classes, were in the 80s and 90s percent range. (P-30).

28. The student received private tutoring and services in the summer of 2020. (NT at 43-171).

2020-2021 / [redacted] Grade

29. In late August 2020, frustrated with the student's progress at the District and a lack of clarity as to whether students would return to in-person instruction at the District in the 2020-2021 school year, the parents withdrew the student from the District and undertook a unilateral private placement. (P-5, P-124, P-125; S-21, S-23 at pages 18-19; NT at 43-171).

30. Parents made their unilateral placement decision for the 2020-2021 school year based on the December 2019 IEP. (S-9).

31. The private placement is a school that focuses on serving students with learning challenges, especially children with language- and literacy-related disabilities. (NT at 43-171, 448-564, 578-604, 610-725, 797-892).⁵

September 2020 IEP

⁵ As a matter of consistent practice, the private placement does not make itself available to provide evidence in special education due process hearings. Evidence related to the private placement is documentary in nature, as well as testimony from witnesses with a second-hand familiarity with practices at the private placement or first-hand familiarity that is not recent. (See P-32 through P-47; NT at 610-725, 797-892).

32. In September 2020, the District revised the student's IEP. (S-23; NT at 448-564).
33. The student's annual IEP year was revised, such that programming and goal-progress were to be gauged through September 2021. (S-23 at page 1).
34. The September 2020 IEP included updated progress-monitoring data from the period January – June 2020. (S-23 at pages 7-12).
35. The September 2020 IEP continued to identify programming needs in basic reading (word reading and decoding), spelling, and mathematical problem-solving/calculation skills with multi-step problems. (S-23 at page 20).
36. The September 2020 IEP contained five goals, in spelling, reading decoding, reading fluency, number sense fluency, and math concepts/applications. The baselines for the goals were updated from the student's scores in June 2020. (S-23 at pages 24-28; P-31).
37. The specially-designed instruction/accommodations were largely the same, if not identical, to the instruction/accommodations in the December 2019 IEP, including the support in regular education settings, accommodations in reading, direct instruction in reading, support in special education classroom (during the school-wide "advisory" periods) which included explicit supplemental instruction in mathematics and spelling, parent communication, and continued

trialing of the classroom speaker system. Additional accommodations for in-person instruction were made part of the IEP. Additionally, the frequency of the delivery of instruction and accommodations were updated to reflect the change in the building schedule with a move to a new school building for [redacted] grade. (S-23 at pages 29-33).

38. The student was determined not to be eligible for ESY programming during the summer of 2021. (S-23 at page 34).

39. The September 2020 IEP recommended a placement in the regular education setting for approximately 89% of the school day. (S-23 at pages 35-37).

40. In January 2021, the parents, through counsel, contacted the District, indicating that they were considering placements for the 2021-2022 school year and inquiring as to what District programming might look like. (P-10).

April 2021 RR

41. In April 2021, the District issued a RR for the student. (S-28; NT at 267-329).⁶

⁶ The April 2021 RR is also an exhibit of record at P-24. For clarity, only the parents' exhibit at S-28 will be cited. The RR at S-28 includes the results of a reading inventory assessment, administered in March 2021 and included as content in a May 2021 revision of the RR. Parents do not dispute the results of the inventory but the District exhibit, including those results, was the more frequently utilized exhibit in the hearing. (See *also* S-27).

42. As part of the April 2021 re-evaluation process, a District special education teacher met with the student to assess current baseline data on the District's proposed goals from the September 2020 IEP. (S-28 at pages 21-22; NT at 448-564).
43. As part of the April 2021 re-evaluation process, the District administered a benchmark assessment to determine the student's levels within the direct-instruction reading curriculum that the District would employ with the student. (S-28 at page 23; NT at 448-564).
44. The April 2021 RR included an updated reading inventory assessment. The student was at a 5th/6th grade instructional level in word recognition and at a 5th grade instructional level in reading comprehension. (S-28 at pages 23-25; NT at 905-996).
45. The April 2021 RR contained an updated mathematics assessment. (S-28 at pages 25-26).
46. The April 2021 RR contained data and assessments from the private placement, including teacher input. (S-28 at pages 26-31, 33-34).
47. During the 2020-2021 school year, the student received S&L services at the private placement. Input from the S&L therapist was included in the April 2021 RR. (S-28 at pages 30-31).
48. The April 2021 RR included updated comprehensive testing and assessment in various areas: cognitive testing, achievement testing,

specialized reading assessment, and behavior assessments. (S-28 at pages 37-48).

49. The April 2021 RR included a S&L evaluation. The evaluator recommended that the student did not qualify for an identification as a student with a S&L impairment or for S&L services. (S-28 at pages 48-57; NT at 340-395).
50. The April 2021 RR included an auditory processing evaluation. The results of the evaluation were that the student did not have an auditory processing deficit. (S-28 at pages 57-61; NT at 400-442).
51. The April 2021 RR recommended that the student continue to be identified as a student with a specific learning disability in reading, with needs in reading comprehension, phonemic proficiency and awareness, rapid automatic naming, and isolated word reading fluency. (S-28 at pages 61-62).
52. The April 2021 RR also identified needs in executive functioning and self-esteem as well as continued support in mathematics. (S-28 at pages 61-63).

April 2021 IEP

53. In April 2021, following the issuance of the April 2021 RR, the District revised the student's IEP. (P-11).⁷

⁷ The April 2021 IEP is also an exhibit of record at S-29. For clarity, only the parents' exhibit at P-11 will be cited.

54. The present levels of academic performance included the significant updates of the student's current academic performance developed through the April 2021 RR process. (P-11 at pages 8-46).
55. Given the student's age, the April 2021 IEP included transition goals. (P-11 at pages 47-48).
56. The April 2021 IEP contained six goals, one each in spelling, decoding, oral reading fluency, reading comprehension, number sense fluency, and math concepts/applications. (P-11 at pages 51-56).
57. The April 2021 IEP included specially-designed instruction and accommodations, largely the same as the instruction and accommodations contained in the September 2020 IEP, although there were significant updates. The direct instruction in reading and mathematics was significantly increased. Additionally, the accommodations and support in regular education and special education settings were revised. (P-11 at pages 56-64).
58. The April 2021 IEP included an accommodation for regular access to a school counselor for the student's transition back to the District. (P-11 at page 62).
59. The April 2021 IEP contained different instruction and accommodation models between the 2020-2021 and 2021-2022 school years, depending on the student's return, as well as a contingency in

case the District did not utilize in-person instruction in the 2021-2022 school year. (P-11 at pages 56-64).⁸

60. The student was found to be eligible for ESY programming in the summer of 2021 with programming and instruction to address all six goal areas in the April 2021 IEP. (P-11 at page 66).

61. In the April 2021 IEP, the student's placement in special education settings was increased, and the amount of time spent in regular education settings was reduced to approximately 66%. (P-11 at pages 67-69).

Private Placement 2020-2021

62. The student attended the private placement for entirety of the 2020-2021 school year. (P-32, P-33, P-34, P-35, P-41; NT at 43-171, 578-604).

63. The student received accommodations for identified needs, including significant support in reading, the student's most significant area of need. (P-32, P-33, P-34, P-35, P-41; NT at 43-171, 578-604, 732-790).

64. The student received S&L services at the private placement. (P-43).

⁸ The District had returned to in-person instruction, on at least a hybrid basis, in the fall of 2020. A lack of in-person instruction in the 2021-2022 school year in the April 2021 IEP was included as a contingency. (NT at 448-564, 732-790).

65. Over the 2020-2021 school year, on national curriculum-based assessments, the student made progress in reading and math at the private placement, although the progress is most accurately characterized as mild. (P-72, P-73, P-110, P-111).
66. Teacher reports from the private placement indicated progress within the school's programming. (P-32, P-33, P-34, P-35).
67. In May 2021, the parents again enrolled the student in the private placement for the 2021-2022 school year. (P-126, P-127; NT at 43-171).
68. Parents made their unilateral placement decision for the 2021-2022 school year based on the April 2021 IEP. (P-11).

Private Placement 2021-2022

69. The student attended the private placement for entirety of the 2021-2022 school year. (P-36, P-37, P-38, P-39, P-40; NT at 43-171, 578-604).
70. The student again received accommodations for identified needs, including continued significant support in reading. (P-36, P-37, P-39, P-40, P-41; NT at 43-171, 578-604, 732-790).
71. Over the 2021-2022 school year, on national curriculum-based assessments, the student made progress in reading at the private placement, but regressed in mathematics. (P-74, P-102).

72. Teacher reports from the private placement indicated progress within the school's programming. (P-36, P-37, P-39, P-40, P-46).
73. In May 2022, the parents obtained the results of a reading inventory. The testimony of the District reading specialist was credited over the parents' witness on the results, leading to less weight being accorded to the results on the inventory. (P-62; NT at 797-892, 905-996).
74. On two comprehensive reading assessments, one administered in August 2020 and one in February 2022, the student showed progress in word identification, spelling, sound-symbol knowledge, and the fundamental literacy ability index. (P-55, P-56).

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the District S&L therapist (NT at 340-395), the auditory processing evaluator (400-442), and the District special education teacher (448-564) was judged to be very strong and was accorded heavy weight.

Discussion

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives a free appropriate public education (“FAPE”) (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for significant learning, with appropriately ambitious programming in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Andrew 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)).

Where a school district has denied FAPE to a student under the terms of IDEIA, and by analogy under the terms of Section 504, compensatory education is an equitable remedy that may be available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

Additionally, in considering parents’ claim, long-standing case law and the IDEIA provide for the potential for private school tuition reimbursement if a school district has failed in its obligation to provide FAPE to a child with a disability (Florence County District Four v. Carter, 510 U.S. 7 (1993); School Committee of Burlington v. Department of Education, 471 U.S. 359 (1985);

see also 34 C.F.R. §300.148; 22 PA Code §14.102(a)(2)(xvi)). A substantive examination of the parents' tuition reimbursement claim proceeds under the three-step Burlington-Carter analysis, which has been incorporated into IDEIA. (34 C.F.R. §§300.148(a),(c),(d)(3); 22 PA Code §14.102(a)(2)(xvi)).

In the three-step Burlington-Carter analysis, the first step is an examination of the school district's proposed program, or last-operative program, and whether it was reasonably calculated to yield meaningful education benefit. Step two of the Burlington-Carter analysis involves assessing the appropriateness of the private placement selected by the parents. At step three of the Burlington-Carter analysis, the equities must be balanced between the parties.

Parents' claims will be examined as to (1) the claim for compensatory education for June 2020, (2) the claims for tuition reimbursement for the 2020-2021 and 2021-2022 school years, and (3) the claims for reimbursement for summer 2020 and 2021 programming.

June 2022 Claim. In the spring of 2020, and particularly in the run-up to the end of the school year in June 2020, the District was providing special education programming that was reasonably calculated to provide significant learning to address the student's needs.

The student's programming in the spring of 2020 (strictly, the period from January – June 2020) was governed by the December 2019 IEP. This IEP, in turn, was grounded in the November 2019 RR. The November 2019 RR was comprehensive and assessed the student in multiple areas where a view of the student's needs (or lack of any educational need) could be gleaned from testing and assessment. The RR included a full sense of the student's prior evaluation history, as well as updated observations and input from parents and educators. Additionally, it addressed areas of specific concern of the parents (auditory processing and S&L). In short, the November 2019 RR is a comprehensive and appropriate report that provided the foundation for the December 2019 IEP.

The December 2019 IEP (ultimately approved by parents for implementation in early January 2020) was also reasonably calculated to yield meaningful education benefit for the student, in the form of significant learning in light of the student's unique educational needs. The December 2019 IEP contained appropriate goals in all the student's areas of need. The goals were written for progress moving from the [redacted] grade to the [redacted] grade level and/or with achievement at 80% or higher in all areas. These levels of goal-setting are reasonably calculated to yield significant learning.

The specially-designed instruction and accommodations in the December 2019 IEP are comprehensive and would provide support in all of

the student's areas of need (both goal-driven and otherwise). Most importantly, the student would receive explicit, concrete direct instruction in reading, the student's most significant area of need. Supplemental instruction was also provided in mathematics. As one considers the specially-designed instruction and accommodations, those elements of the student's programming are reasonably calculated to lead to significant learning across the student's instructional day/week in all settings, both regular education and special education. The December 2019 IEP, being reasonably calculated to provide meaningful education benefit in the form of significant learning in light of the student's unique needs, provided FAPE to the student.

Having said that, the findings of fact above (FF 24, 25) which detail that, over the period January – June 2020, the student did not make progress on certain goals must be explained in light of the fact that the District provided FAPE through the December 2019 IEP. First, the data is not strong as to the goals in spelling and reading fluency. But the goals in the December 2019 IEP, as with most IEP goals, are annual goals. The instruction is meant to unfold over a whole school year, in this case ostensibly from January 2020 through January 2021. Therefore, even though the data shows a lack of progress in those two areas, it is not reasonable to expect that by early March 2020—only eight instructional weeks into the implementation of the IEP—the District should have been re-visiting the IEP

goals. This is not to say that an annual goal cannot be adjusted in the midst of programming implementation; indeed, where it is clear that a student is not making progress, or is even regressing, the IEP team should intervene to re-visit the IEP. But such an intervention should come only where there has been a reasonable period to assess progress, or lack thereof. (Ridgewood Board of Education v. N.E., 172 F.3d 238, 250 (3d Cir. 1999)). Continuing to implement the December 2019 IEP without change or revision over the eight instructional weeks from early January – early March 2020, even where data showed that the student may not be making steady progress, is not a denial of FAPE.

The “early March 2020” end-point is the second aspect of why seeming lack of progress over January – June 2020 is not a denial of FAPE. As of March 13, 2020, the COVID-19 pandemic led to the closure of schools throughout the Commonwealth. So even though the period January – June 2020 is the focus of progress monitoring, the disruption of instruction and the transition to remote learning through the remainder of the 2019-2020 school year must be weighed in the balance. After only eight weeks of instruction on annual goals, the entire paradigm of schooling was turned upside down.

This is not to excuse any sense that school districts shed their FAPE obligations after the school closure. But it lends additional, necessary support to a finding that, even where progress monitoring data would

seemingly support a finding that the student was denied FAPE in June 2020, when parents' claim accrued, that cannot be the legal conclusion under the circumstances and the entirety of events over January – June 2020.

Therefore, the District provided special education programming through the December 2019 IEP which was reasonably calculated to provide meaningful education benefit in the form of significant learning in light of the student's unique needs. Accordingly, there will be no award of compensatory education for June 2020.

Tuition Reimbursement. Parents assert a claim for tuition reimbursement for their unilateral private placement in the 2020-2021 and 2021-2022 school years. Each claim will be considered in turn.

The parents based their claim to seek a private placement for the 2020-2021 school year on the December 2019 IEP. As set forth above, that IEP was reasonably calculated to yield meaningful education benefit, at least as the 2020-2021 school year would begin. Perhaps revisions to that IEP would have been necessary, perhaps not. But the December 2019 IEP was certainly an appropriate offer of FAPE and, for all of the challenges in the spring of 2020, it was being diligently delivered to the student. Again, challenges aside, the District stood ready to continue implementing the December 2019 IEP in the 2020-2021 IEP. Parents' decision to place the student in the private placement is understandable—many parents were

struggling with educational decisions at the outset of the 2020-2021 school year in light of continuing pandemic-related concerns and varied return-to-school plans. But did the District stand ready to continue providing FAPE to the student through the December 2019 IEP? The answer to this question is clearly “yes”.

In that regard, with appropriate programming outlined in the December 2019 IEP for implementation in the 2020-2021 school year, the District has met its obligations to the student at step one of the Burlington-Carter analysis. Accordingly, parents’ claim for tuition reimbursement for the 2020-2021 school year cannot be supported.

The parents based their claim to seek a private placement for the 2021-2022 school year on the April 2021 IEP. As with the December 2019 IEP, the April 2021 IEP is based on a comprehensive and appropriate re-evaluation, the April 2021 RR. With the April 2021 RR, the District included an array of content to understand the updated levels of achievement for the student both in terms of the District’s goals and the programming at the private placement. The April 2021 RR provides a strong foundation for understanding the student’s educational profile. Most importantly, the District utilized this process to update the baselines for the goals in the April 2021 IEP.

The April 2021 IEP was reasonably calculated to yield meaningful education benefit for the student, in the form of significant learning in light

of the student's unique educational needs. The April 2021 IEP was revised, especially in terms of understanding the student's needs as those needs changed since being away from the District. The April 2021 IEP contained appropriate goals. The goals were appropriately ambitious and, again, written with updated baselines based on the data gathered through the re-evaluation process.

The specially-designed instruction and accommodations in the April 2021 IEP are comprehensive and, like the December 2019 IEP, would provide support in all of the student's areas of need. A significant change was the expansion of explicit, concrete direct instruction in reading as well as mathematics. Also, the District took care to gauge how the IEP might be implemented both at the end of the 2020-2021 school year and looked ahead to how implementation might change in the 2021-2022 implementation, as well as potential pandemic-related contingencies. This specially-designed instruction and these accommodations are reasonably calculated to lead to significant learning.

The April 2021 IEP, being reasonably calculated to provide meaningful education benefit in the form of significant learning in light of the student's unique needs, was an appropriate offer of FAPE to the student. With appropriate programming outlined in the April 2021 IEP for implementation in the 2021-2022 school year, the District has met its obligations to the student at step one of the Burlington-Carter analysis. Accordingly, parents'

claim for tuition reimbursement for the 2021-2022 school year cannot be supported.

Finally, as to both of these claims for tuition reimbursement, and in light of the testimony of the auditory processing evaluator and the S&L therapist, it must be pointed out that the District's evaluation conclusions in both of these regards is credited. Prior to the student's withdrawal from the District, it appropriately addressed slight auditory processing concerns with the classroom microphone system. And, notwithstanding the fact that the student received S&L services at the private placement, the record strongly supports the conclusions of the District S&L therapist that the student did not require S&L services to receive a FAPE at the District.

Summer Programming. Parents assert a claim for reimbursement for privately-funded programming in the summer of 2020 and 2021. As to the claim for the summer of 2020, the District did not propose ESY programming for the summer of 2020. The record does not support a conclusion that a lack of ESY programming in the December 2019 IEP is inappropriate and therefore a denial of FAPE. Even assuming that one holds that view, namely that the District did not meet its obligations to the student at step one of the Burlington-Carter analysis, at step two of the analysis (the appropriateness of the parents' unilateral programming), parents have not met their burden of proof. There is a paucity of evidence related to the summer of 2020.

As to the claim for the summer of 2021, the April 2021 IEP included ESY programming. By that time, the District's sense of the student's needs had deepened through the April 2021 RR. The ESY programming proposed instruction in each of the April 2021 IEP goals. Based on the information that the District had developed through the RR, and particularly given the information that surfaced out of the private placement, the proposal for ESY programming in the April 2021 IEP is appropriate. Thus, at step one of the Burlington-Carter analysis, the District's proposal of ESY programming for the summer of 2021 is appropriate.

Section 504/Denial-of-FAPE

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §15.1). The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (See *generally* P.P. v. West Chester Area School District, 585 F.3d 727 (3d Cir. 2009)).

As outlined above, the District met its FAPE obligations to the student in June 2020, in addition to the proposals for the provision of FAPE in 2020-2021 and 2021-2022 school years through, respectively, the December 2019

IEP and the April 2021 IEP (including, in the latter instance, the proposal for ESY-2021 programming). Accordingly, those findings and conclusions are adopted here—the District has met its FAPE obligations to the student under Section 504.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Tredyffrin-Easttown School District has met its obligations to the student to provide, or propose, programming to provide a free appropriate public education to the student for the period encompassed by this record. Therefore, it need not provide remedy to the parents.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

12/13/2022