

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:

26014-21-22

Child's Name:

M.S.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

June 28, 2022

BACKGROUND

The parent filed a due process complaint alleging that the charter school denied the student a free and appropriate public education for the student's [2019-2020] and [2020-2021] school years. The parent's due process complaint alleges further that the charter school violated IDEA by failing to pay for an independent educational evaluation. The charter school contends that it did not deny FAPE to the student. I find in favor of the parent with regard to denial of FAPE to the student by the charter school from September 23, 2019 through May 5, 2020. I find in favor of the charter school with regard to all other allegations regarding denial of FAPE to the student. I find further that the charter school violated IDEA by failing to pay for the independent educational evaluation, and that it must pay for said independent educational evaluation.

PROCEDURAL HISTORY

This matter required two virtual hearing sessions. The hearing and decisional processes were unduly protracted by the failure of counsel to agree to any stipulations of fact prior to the hearing. Six witnesses testified at the hearing. Parent Exhibits P-1 through P-10, P-13, P-14, P-16 and P-24 were admitted into evidence. Exhibit P-11 was withdrawn by the parent. Exhibits P-12, P-15, and P-17 through P-23 and P-26 were all excluded based upon relevance objections by the charter school, including that many of said exhibits involved issues decided in a previous decision after a due process hearing with the same parties. There is no Exhibit P-25. Charter school Exhibits S-1 through S-7 were admitted into evidence. Charter school Exhibit S-8 was not offered into evidence. Joint Exhibit J-3 was admitted into evidence. Joint Exhibits J-1, J-2 and J-4 were not offered into evidence.

After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

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

ISSUES PRESENTED

The due process complaint, as explained and clarified at the prehearing conference, presents the following issues:

1. Whether the parent has proven that the charter school denied a free and appropriate public education to the student from September 23, 2019 through the end of the 2019 – 2020 school year [redacted]?
2. Whether the parent has proven that the charter school denied a free and appropriate public education to the student during the 2020 – 2021 school year [redacted]?
3. Whether the parent has proven that the charter school must pay for the cost of an independent educational evaluation?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

1. [redacted] (NT 73 – 74)
2. [redacted] (P-1, P-5; S-6)
3. During the 2019 – 2020 and 2020 – 2021 school years, the charter school was the local education agency for the student. (P-4, P-5; NT 44, 149 – 151)
4. Before enrolling at the charter school, the student attended an elementary school of another local education agency. (NT 76 – 77)
5. The previous local education agency evaluated the student during the student's [2016-2017] school year and issued an evaluation report on April 4, 2017. The evaluation concluded that the student was eligible for special education under the category of other health impairment because of the student's diagnosis of disruptive behavior disorder. (P-1; NT 81 – 82)
6. The previous LEA developed an IEP for the student that provided a supplemental level of learning support during the student's [2017-2018]

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

and [2018-2019] school years. The IEP developed by the previous school district had goals in the areas of literacy, math and behavior. (P-7, P-8)

7. The parent completed an enrollment application for the charter school in April 2019. The parent stated on the application that the student had had an IEP at the previous local education agency. Before the student began at the charter school in the 2019 – 2020 school year, the parent had conversations with the charter school’s principal about the student’s needs and the student’s previous IEP. The parent signed a release form to enable the charter school to obtain educational records from the previous local education agency. (P-2; NT 78 – 80, 153-154, 125 – 129)

8. The charter school did not obtain the student’s previous IEP or other educational records from the previous local education agency during the 2019 – 2020 school year. The charter school requested the educational records for the student from the previous local education agency in October of 2020. (NT 177, 254 – 257)

9. The student was in a general education classroom for the majority of the time during the student’s [2019-2020] school year at the charter school. (NT 88)

10. The charter school did not hold an IEP team meeting or develop an IEP for the student until May 5, 2020. (NT 86 – 88, 172 – 173, 177 – 181, 262 – 263, 271 – 273)

11. During the [redacted] school year, 2019 – 2020, the student’s teacher at the charter school observed that the student had academic needs in the area of handwriting, vocabulary, reading and math. The charter school did not assess the student’s level of academic need in those areas. During the [school year], the student would occasionally fall asleep during class. (NT 173, 183 – 184, 186, 190 – 191)

12. The student's attendance at the charter school during the 2019 – 2020 school year was very good. (NT 186 – 187; J-3)

13. The student was due for a triennial reevaluation on April 4, 2020. The charter school did not conduct a reevaluation of the student while the student attended the charter school. (NT 81, 188 – 190, 266 – 271; P-1)

14. On May 5, 2020, the charter school developed an IEP for the student. The IEP noted that the student had needs in the areas of reading, writing and math. The IEP included two goals – one for vocabulary and reading comprehension, and one for math. The IEP provided that the student would receive itinerant learning support consisting of small group instruction in reading and math outside of the regular education classroom for 180 minutes per week. The student was given extended time on assignments and oral/visual directions. Weekly consultations by the special education teacher with the regular education teacher are provided. The IEP states that the student is eligible for extended school year services. The student was placed in the general education classroom approximately 88% of the school day. (P-5; NT 276 – 278, 88)

15. The charter school did not complete or issue progress reports concerning the student's progress during the 2019 – 2020 school year. (NT 195)

16. The charter school provided virtual instruction for all students from March of 2020 through the end of the 2021 school year because of the COVID-19 pandemic. (NT 91, 217 – 218, 315)

17. The student had difficulty with virtual instruction during the 2020 – 2021 school year because of numerous computer issues, particularly between October 2020 and January 2021. (NT 91 – 92, 463 – 465)

18. The student was absent 81 days of the 178 days in the 2020 – 2021 school year. The charter school principal marked a number of these absences as excused because the student was having computer problems. (J-3; NT 447 – 448, 453, 463 – 471; J-3)

19. To help the student participate in the virtual learning environment, the charter school sent school staff and administrators to the home of the student and parent on a number of occasions, provided work packets for the student to complete, had Zoom meetings with the student and the parent and sent an e-mail to the parent with a list of assignments for the student. During the home visits, the student’s mother mentioned to the charter school staff that the student was experiencing some mental health issues. (NT 332, 415 – 416, 426, 481 - 482)

20. Because the student was having computer problems during virtual learning, charter school staff brought additional computers to the student’s home on three or four occasions between November 2020 and January 2021. (NT 463 – 466)

21. The student’s mother requested an IEP team meeting. The charter school issued an invitation dated December 9, 2020 for an IEP team meeting scheduled to be held on January 14, 2021. The notice of the IEP team meeting was included in a work packet for the student that was presented to the student’s mother during one or two of the home visits. The charter school’s special education teacher had a conversation with the student’s mother about the IEP team meeting invitation. The student’s mother did not return the form or otherwise respond to the IEP team meeting invitation. (P-6; NT 242 – 247, 287-288, 302 – 308, 475)

22. During the student’s [2020-2021] school year, the parent, through her previous attorney, requested that the charter school fund an independent educational evaluation of the student. The charter school,

through its attorney, agreed to fund the independent educational evaluation on February 11, 2021. The charter school later refused to pay for the independent educational evaluation of the student. (P-10, P-9; NT 96 – 99, 282 – 284)

23. An independent neuropsychologist conducted the independent educational evaluation of the student from April to June of 2021. The charter school received the report of the independent educational evaluation in late summer 2021. A key recommendation of the evaluator was that the student had significant mental health issues and must receive treatment outside of school to address the student’s depression. The evaluator also concluded that the student should receive additional supports in school to address academic needs, focusing in particular upon the student’s eligibility category of disability. The evaluator believed that the student should have been classified as having a non-verbal learning disability. The report of the evaluator notes the student’s issues with attendance and commends the efforts of both the charter school and the parent to improve the student’s engagement during virtual instruction. The evaluator met with charter school staff to discuss the findings before the report of the evaluation was issued. (P-8; NT 97 – 99, 151, 281 - 282, 289 – 290, 428)

24. The charter school offered extended school year services to the student after the [2020-2021] school year, but the parent declined. Instead, the student went to a summer camp. (NT 316 – 317, 333)

25. An IEP team meeting for the student was scheduled for September 14, 2021, but the meeting was not convened. (NT 32 – 33, 291)

26. The due process complaint was filed on September 23, 2021. Some of the issues raised in said complaint were withdrawn and refiled pursuant to the terms of a Stipulation Regarding Dismissal of Claims Without Prejudice to Refile and Tolling Agreement. (P-13, P-16)

CONCLUSIONS OF LAW

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

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

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

3. The IEP is the centerpiece of IDEA, and it is the central mechanism through which the local education agency provides FAPE to a child with a disability. T.R. v SD of Philadelphia, 4 F.4th 279, 79 IDELR 33

(3d. Cir 2021); Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012). A local education agency must have an IEP in place for a child with a disability at the beginning of the school year. IDEA § 614(d)(2)(A); 34 C.F.R. § 300.323(a).

4. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

5. The appropriateness of an IEP in terms of whether it has provided a FAPE must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

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

7. Charter schools that are local education agencies are responsible for compliance with IDEA and its implementing regulations. Children with disabilities receiving their education in such charter schools are entitled to the same substantive and procedural protections as their counterparts in other public schools. 34 C.F.R. § 300.209; Frequently Asked Questions About the Rights of Students with Disabilities in Public Charter Schools Under

the Individuals With Disabilities Education Act, 69 IDELR 78 (OSERS 2016). See, Weber, Mark C., "Special Education from the (Damp) Ground Up: Children With Disabilities in a Charter School – Dependent Educational System," 11 Loyola J. of Pub Interest Law 217, 246 and n. 137 (Spring 2010)

8. Once a child is determined to be eligible, the category of disability is not relevant. Services are not categorical under IDEA; IDEA does not concern itself with labels, rather the IEP of a child with a disability must be tailored to the unique needs of the particular child. 34 C.F.R. § 300.106(a)(3)(i); Heather S. v. State of Wisconsin, 125 F. 3d 1045, 26 IDELR 870 (7th Cir. 1997); Osage R-1 Sch. Dist. v. Sims ex rel. BS, 841 F. 3d 996, 56 IDELR 282 (8th Cir. 2011). The child's identified needs, and not the disability category, determine the services that must be provided to the child. Sch. Dist. of Philadelphia Post, et al., 262 F. Supp. 3d 178, 70 IDELR 96 (E.D. Penna. 2017). See, Maine Sch. Administrative Dist. No. 56 v. Mrs. W. ex rel. KS, 47 IDELR 219 (D. Maine 2007); see also, Analysis of Comments to Proposed Federal Regulations, 71 Fed. Reg. 156 at 46586, 46588 (OSEP August 14, 2006); In re Student With a Disability, 52 IDELR 239 (SEA W.Va. 2009). Individualization and the child's unique needs are key concepts underlying IDEA. Andrew F by Joseph F v. Douglass County School District RE-1, supra; T.R. v Sch. Dist. of Philadelphia, supra.

9. Although a local education agency must address the educational needs of a child with a disability, it is not required to address the medical or psychiatric needs of a student. Mary Courtney T. v. Sch. Dist. of Philadelphia, 575 F. 3d 235, 52 IDELR 211 (3d Cir. 2009). See, Forrest Grove Sch. Dist. v. TA, 638 F. 3d 1234, 56 IDELR 185 (9th Cir. 2011); EK by AG v. Warwick Sch. Dist., 62 IDELR 289 (E.D. Penna. 2014).

10. A parent of a child with a disability has a right to an individualized educational evaluation. If a parent requests an independent educational evaluation at public expense, a public agency must, without unnecessary delay, either (i) file a due process complaint to request a hearing; or (ii) ensure that an independent educational evaluation is provided at public expense. 34 C.F.R. § 300.502(b)(1) and (2); Gwendolynne S. by Judy S. and Geoff S. v. Westchester Area Sch. Dist., 78 IDELR 125 (E.D. Penna 2021). If a parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. § 300.502(c).

11. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (at n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F. 3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch. Dist., 606 F. 3d 59, 54 IDELR 212 (3d Cir 2010); Sch. Dist. of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area Sch. Dist., 71 IDELR 87 (E.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F. 3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Ed., Albuquerque Public Schools, 530 F. 3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009).

12. Compensatory education is a remedy that is often awarded to parents when a local education agency violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that

addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley Sch. Dist. Authority, 802 F. 3d 601, 66 IDELR 91 (3d Cir. 2015); see Reid ex rel. Reid, *supra*. In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the student caused by a denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or “cookie cutter” method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The “cookie cutter” or quantitative method has been approved by the courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K. v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014).

13. The parent has proven that the charter school denied a free and appropriate public education to the student from September 23, 2019 to May 5, 2020.

14. The parent has not proven that the charter school denied a free and appropriate public education from May 5, 2020 through the end of the 2020 – 2021 school year.

15. The parent has proven that the charter school must pay for the cost of an independent educational evaluation of the student.

DISCUSSION

I. Merits

1. Whether the parent has proven that the charter school denied a FAPE to the student during the [redacted] school year, 2019 - 2020?

The parent contends that the charter school denied FAPE to the student because it did not have an IEP in place until May of 2020. The charter school concedes that it did not develop an IEP for the student until May 5, 2020 but contends that the period between September 2019 and May 2020 was an "observation period."

The parent has clearly proven that the charter school denied a FAPE to the student from September 23, 2019 through May 5, 2020. The record evidence reveals that the student began attending the charter school for the student's [2019-2020] school year. At the time of the student's enrollment, the parent told the charter school staff that the student had had an IEP in the previous school district. The parent's credible testimony in this regard is buttressed by the fact that the parent completed a student enrollment form at the request of the charter school that clearly states that the student had had an IEP in the previous school district.

The charter school concedes that no IEP was developed for the student. The charter school's director of special education admitted during testimony at the hearing that the failure of the charter school to develop and implement an IEP for the student was not in compliance with the basic requirements of IDEA.

The failure of the charter school to develop and implement an IEP is particularly significant given that the student's [2019-2020 school year] teacher at the charter school testified that the student had clear needs in the areas of handwriting, vocabulary and reading. The teacher also testified that

the student had issues with regard to falling asleep during class. Thus, the unique individual circumstances of the student were that the student had educational needs that required services. The failure to provide the student with an IEP, therefore, resulted in educational harm and the loss of educational benefit.

In its post-hearing brief, the charter school refers to the period from September 2019 through May 2020 as an “an observation period.” IDEA does not contemplate any such observation period for a student with disabilities, let alone eight months, nearly an entire school year, without special education services. Rather, the law requires that an IEP must be in place at the beginning of the school year. An eight month delay in meeting the basic and critical requirement of developing an IEP is not an observation period. It is clear from the record that the charter school completely ignored its legal duty in this regard until May 5, 2020.

The charter school also argues that the failure to develop and implement an IEP was a procedural violation. The charter school’s argument in this regard is absurd and reflects a deep misunderstanding of the special education laws. The Supreme Court and the Third Circuit have made it very clear that the central vehicle for providing a FAPE to a student with a disability is the individualized educational program. The development of an IEP is at the heart of the substantive requirements of the law. The failure of the charter school to develop and implement an IEP in this case is a clearcut substantive violation of IDEA.

In its posthearing brief, the charter school cites C.H. v. Cape Henlopen Sch Dist, 606 F.3d 59, 54 IDELR 212 (3d Cir. 2010). That case, however, is clearly distinguishable. In CH, the parents objected that an IEP was not in place on the very first day of school. In the instant case, on the other hand,

it was not a matter of a few school days without an IEP. Instead, there was no IEP in place for almost an entire school year. The charter school's argument that its failure to have an IEP in place for eight months was a procedural violation is rejected.

Even assuming, *arguendo*, that the failure of the charter school to provide an IEP for the student could be construed to be a procedural violation, however, it is clear in this case that the procedural violation would be an actionable procedural violation. Given the testimony of the student's [2019-2020 school year] teacher at the charter school that the student had clear academic needs, the failure of the charter school to develop and implement an IEP adversely impacted the student's education, the violation adversely affected the student's education. The failure to convene an IEP team meeting during the same period of time also substantially inhibited the parent's ability to meaningfully participate in the education of the student. In addition, the cumulative effect of the failure to have an IEP team meeting and the failure to develop an IEP, plus the fact that the charter school failed to timely assess the student's needs when the student was due for a reevaluation in April of 2020, caused the student to suffer educational harm. The charter school's argument that its actions in this regard were harmless is rejected.

To the extent that the testimony of the witnesses was discrepant, the testimony of the parent was more persuasive and credible than the testimony of the charter school witnesses with regard to this issue. This credibility determination is based upon the demeanor of the witnesses, as well as the following factors: the documentary evidence clearly supported the parent's testimony that the parent informed the charter school of the IEP in the previous school district. In addition, the testimony of the charter school special education director was very evasive concerning the issue of

whether an IEP was in place for the student and why an IEP was not in place.

It is concluded that the charter school denied FAPE to the student from September 23, 2019 through May 5, 2020. The allegations of denial of a FAPE after the May 5, 2020 IEP is addressed in the next section.

2. Whether the parent has proven that the charter school denied FAPE to the student during the [redacted] school year, 2020 – 2021?

The parent contends that the charter school denied a free and appropriate public education to the student during the student's [2020-2021] school year because the IEP developed by the charter school was not appropriate. The charter school contends that it did provide a FAPE to the student.

The parent has not established that the charter school denied a FAPE to the student during the [2020-2021] school year or at any time after May 5, 2020. The charter school classes during the student's [2020-2021] school year were provided via a virtual platform because of the COVID pandemic. The parent contends that the student, who had good attendance during [2019-2020 school year], missed nearly half of the days during the [2020-2021] school year. The evidence in the record, however, indicates that the student was having significant computer issues during virtual learning. The evidence in the record reveals further that the charter school staff made significant and reasonable efforts to attempt to fix the problem. The charter school staff, on numerous occasions, made visits to the student's home. On three or four occasions, the charter school staff provided new computers to a student to attempt to correct the problem. In addition, there were numerous

contacts with the student and the parent to help fix the problem. Indeed, the parent's own independent evaluator concluded that both the parent and the charter school made significant efforts to support the student and to improve the student's engagement during virtual instruction. It is concluded that the charter school made appropriate and significant efforts to correct the student's attendance/computer issues during [2020-2021 school year].

Moreover, neither party put any evidence into the record concerning COVID compensatory services. If the student suffered regression during [the 2020-2021 school year] because of reasons related to the virtual platform or the pandemic, the charter school may be responsible for providing compensatory services for such regression through the procedures adopted by the Pennsylvania Department of Education. Any such compensatory COVID services, however, are beyond the scope of this proceeding.

The only evidence in the record that suggests that the student's IEP was not appropriate is the report of the independent educational evaluation. It is significant, however, that the key finding of the evaluator was that the student suffers from depression and that the student clearly needed to be treated for mental health issues outside of school. To the extent that the student has medical or mental health issues, as opposed to educational needs, any such needs are not the responsibility of the local education agency.

The report of the independent educational evaluation also concludes that the student would benefit from additional supports at school. This conclusion, however, is based upon an improper reliance upon the category of disability. The category of disability is irrelevant once a student is found to be eligible for special education. The evaluator's report, however, spends a disproportionate amount of time analyzing what the student's category of

eligibility should be. Moreover, the report indicates that the evaluator based recommendations upon the student's profile as a student with a non-verbal learning disability, as opposed to the student's own unique individual circumstances. The recommendations are, therefore, not consistent with the individualization that is required by IDEA. Rather than stereotypical conclusions based upon various groups of children with disabilities, IDEA focuses upon the unique circumstances of the individual child with a disability. The evaluator's conclusions regarding the appropriateness of the student's IEP are, therefore, given little weight.

In her posthearing brief, the parent also argues that the IEP is inappropriate because it contains no writing goal. Parent provides no authority for the contention that every need of a child with a disability must be addressed in an IEP. Indeed, an IEP need only be reasonable not ideal. Moreover, even assuming *arguendo* that the absence of any specific goal might be a procedural violation, it is clear from the record that the violation is harmless. There is no evidence in the record that the absence of such a goal resulted in a lack of meaningful educational benefit.

In addition, even assuming *arguendo* that the parent had established a denial of FAPE during the [2020-2021] school year, the parent's failure to cooperate in the process would make any remedy inappropriate because of the applicable equitable factors. For example, as the charter school points out in its post-hearing brief, the charter school attempted to convene an IEP team meeting, but the parent did not cooperate with the request. The parent requested an IEP team meeting. An invitation was issued in December 2020 for a proposed January 14, 2021 IEP team meeting. The parent never responded to or returned the IEP team meeting invitation. The parent presented no contrary evidence at the hearing. Accordingly, it is

clear that the charter school staff attempted to convene an IEP team meeting to discuss parent concerns near the beginning of the second half of the [2020-2021] school year. The parent, however, did not respond. In this regard, the parent's actions were unreasonable and not justifiable.

Also, the record evidence reveals that the charter school offered extended school year services for the student after the [2020-2021] school year. The parent declined extended school year services because the student had plans to attend camp instead. It is clear from the record that the parent did not take advantage of the opportunity to have the student attend extended school year after the [2020-2021] school year. The parent did not cooperate with the opportunity for the student to receive educational benefit during the summer after the [2020-2021] school year. The parent cannot claim a violation for failing to provide ESY services to the student when the charter offered to provide those very services, but the parent refused them.

The testimony of the charter school staff was more persuasive and credible than the testimony of the student's parent concerning this issue. This credibility determination is made because of the demeanor of the witnesses, as well as the consistency of the testimony of the charter school witnesses with each other, and with the documentary evidence in the record.

3. Whether the parent has proven that the charter school must pay the parent for the cost of an independent educational evaluation?

The parent contends that the charter school agreed to fund an independent educational evaluation and subsequently has refused to do so. The report of the independent educational evaluation was admitted into

evidence as Exhibit P-8. The charter school does not address this issue in its post-hearing brief, and, accordingly, has waived the issue. Thus, the parent has proven that the charter school is required to pay for the independent educational evaluation.

Even assuming, *arguendo*, however, that the charter school has not waived the issue, the record evidence is abundantly clear that the parent requested an independent educational evaluation and the charter school neither requested a due process hearing to contest the request nor paid for the independent educational evaluation. The federal regulations require that a local education agency must either file a due process complaint or else pay for the independent educational evaluation. Here the charter school did neither. The evidence in this case clearly establishes that the parent's former attorney requested an independent educational evaluation at the charter school's expense and that the attorney for the charter school agreed to the independent educational evaluation. The charter school's special education director testified that the charter school did in fact refuse to pay for the independent educational evaluation but stated that she was not involved in the decision not to pay for the independent educational evaluation because it was a "CEO question." The record evidence contains no evidence from the charter school concerning why it refused to pay for the independent educational evaluation after first having agreed to pay for it. The charter school's failure to either file a due process complaint or else to pay for the independent educational evaluation is extremely unreasonable and constitutes a violation of IDEA. The charter school had a legal obligation to pay for the evaluation. The seriousness of this violation is compounded by the fact that the charter school had also failed to timely reevaluate the student. The failure of the charter school to even try to provide any argument or evidence concerning this issue underscores the indefensible

nature of this violation. A local education agency is not free to simply disregard the special education laws as the charter school has done here. This is a flagrant violation of the protections provided to the parent and the student under IDEA.

It is concluded that the charter school must immediately pay for the independent educational evaluation. The balance due to the evaluator is set forth on the final page of Exhibit P-8.

II. Relief

In this case, the parent has proven a denial of FAPE from September 23, 2019 through May 5, 2020. Consistent with the terms of the parties' tolling agreement, the parent's complaint seeks compensatory education beginning on September 23, 2019. May 5, 2020 is the date upon which the charter school finally began implementing an IEP for the student. Thus, the period of denial of FAPE is from September 23, 2019 through May 5, 2020.

The appropriate compensatory education remedy is one full day of compensatory education for each school day during the period of denial of FAPE. Although the qualitative compensatory education calculation method is more fair and more directly addresses the harm caused by a denial of FAPE, there is no evidence in the record by either party concerning the harm done to the student, which would enable the appropriate qualitative calculation of compensatory education. Accordingly, the hearing officer must utilize the widely discredited quantitative compensatory education method based upon an individualized determination of the student's unique

circumstances and individual needs. In this case, given the student's unique individual needs, as indicated in particular by the testimony of the student's [redacted] teacher and the complete absence of any effort by the charter school staff to develop and IEP for the student prior to May 5, 2020, it is clear that one full day of compensatory education per day of denial of FAPE should adequately compensate the student for the denial of FAPE.

Although it is stated in the parent's post-hearing brief as a separate substantive issue, the parent also seeks as relief an order that the charter school convene an IEP team meeting in particular to consider the parent's request for a private school placement at the charter school's expense. There is no basis for this relief that is justified by the evidence in the record. The local education agency has a duty to convene an IEP team meeting under IDEA. The charter school also has a duty to have the IEP team discuss the report of the independent educational evaluation. In this case, however, the parent is arguing that the charter school will not comply with the law requiring it to convene an IEP team meeting. The parent's brief states that the charter school will not do so unless ordered to do so by the hearing officer. The hearing officer cannot assume that the charter school will defy the law and refuse to comply with its legal duty in the future. If, as the parent predicts, the charter school does violate IDEA or Pennsylvania state law in the future, the parent may then pursue any and all appropriate procedural safeguards, including the due process hearing procedures, at that time. It is premature and inappropriate to order an IEP team meeting based solely upon assumed future noncompliance with the law. It is concluded that the compensatory education award provided by this order is appropriate and adequate to remedy the charter school's denial of FAPE during the student's [2019-2020] school year.

The other important component of the remedy in this case involves an order requiring the charter school to pay for the independent educational evaluation of the student. Such payment is now long overdue.

Because all relief under IDEA is equitable relief and should be flexible, and because special education under IDEA requires a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter the relief awarded herein so long as both parties and their lawyers agree to do so in writing.

ORDER

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

1. The charter school is ordered to provide one full day of compensatory education to the student for each school day during the period of denial of FAPE, as described above. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parent may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device for the student's educational and related services needs;

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory education services shall be provided by appropriately qualified professionals selected by the parent. The cost to the charter school of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the charter school is located; and

2. The charter school is ordered to pay, within 30 days of the date of decision, for the independent educational evaluation of the student by the neuropsychologist between April 21, 2021 and June 3, 2021, the report of which was admitted into evidence in this case.

3. The parties may adjust or amend the terms of this order by mutual written agreement signed by all parties and counsel of record; and

4. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: June 28, 2022

James Gerl

James Gerl, CHO
Hearing Officer