

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. 30168-24-25

Child's Name:

E.M.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

10/15/2024

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends school in the Philadelphia School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with an emotional disturbance, health impairments (attention deficit hyperactivity disorder ["ADHD"] and anxiety), and a specific learning disability in mathematics.

The student's parents filed the complaint which led to these proceedings. The parents claim that the District's programming, as of the student's enrollment in the District for the 2024-2025 school year, is inappropriate.

The District counters that its programming, proposed on the cusp of the 2024-2025 school year, is appropriate, calculated to yield meaningful education benefit to the student.

For reasons set forth below, I find in favor of the parents in part and the District in part. The order below will provide directives to the student's individualized education program ("IEP") team for revisions to the student's IEP, although that programming will remain largely unchanged.

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

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

Issues

Is the IEP developed for the 2024-2025 school year appropriate?

If not, what needs to be remedied in the IEP, or what considerations does the IEP need to undertake, for revisions to the IEP?

Findings of Fact

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

Charter School

1. In April 2019, when the student attended a charter school in [redacted] grade, the student was diagnosed with ADHD and a specific learning disability in mathematics. (Parents' Exhibit ["P"]-34).
2. The student exhibited behaviors which interfered with the student's learning and that of others, including "significant problems with hyperactive and inattentive behavior, argumentative and rule-breaking behavior, and unusual social behaviors. (The student's teacher) explained that (the student) can be unkind, and at times, inappropriate with...peers. Furthermore, (the teacher) also reported

significant learning problems, distractibility, and reduced motivation towards learning.” (P-34 at page 10).

3. The evaluator noted that the student “has been previously diagnosed with numerous anxiety disorders and is in active treatment with multiple providers. For the current evaluation (the student) reported many areas of ongoing concern related to worry, reduced self-esteem, a reduced sense of control over...environment...and a negative attitude towards school and teachers”. (P-34 at page 11).
4. By June 2022, in [redacted] grade, the student had an IEP at the charter school, with needs identified with frustration, anxiety, and assignment completion. The June 2022 IEP included three goals, two involving coping skills and one for assignment completion. (P-32 at pages 10, 18-20).
5. In April 2023, the student underwent an evaluation at a local children’s hospital to rule out potential autism spectrum disorder. The evaluation did not diagnose the student with autism. (P-31).
6. In May 2023, the charter school re-evaluated the student. (P-30; School District Exhibit [“S”]-20)³.
7. The May 2023 re-evaluation report (“RR”) identified student needs in off-task behavior in academic classes, behavioral dysregulation, verbal

³ Each party prepared an exhibit for the document. Specific citations, however, are to only one of those documents.

and sometimes physical aggression towards peers, task refusal/defiance towards adults, anxiety (including testing anxiety), and sensory sensitivities. (P-30 at page 39).

8. The May 2023 RR identified the student with an emotional disturbance, health impairments related to ADHD and anxiety, and a specific learning disability in mathematics. (P-30 at pages 41-42).
9. In June 2023, the student's IEP team developed an IEP for the student. (P-29).
10. The June 2023 IEP contained eight goals, two in organization, one in reading comprehension, and five in math computation. The IEP included the results of a functional behavior assessment of the student. (P-29 at pages 22-33).

Private Placement

11. In the 2023-2024 school year, the student's [redacted] grade year, the student attended a private placement with the support of the charter school. (Notes of Testimony ["NT"] at 55-169).
12. Over the course of the school year, the student received supports in reading, mathematics, and written expression. (P-16, P-25, P-26, P-27).

13. The student received occupational therapy supports, although the supports were largely for organization, self-regulation, self-advocacy, and task-initiation. (P-16, P-25, P-26, P-27).⁴
14. The student made progress in a structured, specialized reading curriculum. The student's progress in mathematics and oral reading fluency were stagnant. (P-16, P-25, P-26, P-27; S-14, S-16).
15. In March 2024, the student underwent an OT evaluation at a local children's hospital. The OT evaluation recommended a long-term treatment goal for the student to identify self-regulation strategies. (P-23).
16. At the end of the 2023-2024 school year, the private placement indicated that it felt the student should not return. The charter school which the student had previously attended only provided education to students through [redacted] grade. Therefore, the student's family would need to secure a new placement for the student for the 2024-2025 school year, the student's [redacted] grade year. (NT at 55-169).

⁴ The OT supports at the private placement included written expression. Although cast as OT supports, these supports are largely academic in nature.

District Programming

17. At some point, although on this record it is unclear exactly when, the student's parents enrolled the student in the District. (P-5).
18. In July 2024, the student was accepted into a different private placement. (P-15; S-22).
19. On July 30, 2024, the parent requested that the District support the placement of the student at the new private placement. On August 1, 2024 the District denied the parent's request and issued a notice of recommended educational placement ("NOREP"), recommending itinerant learning support with counseling. (P-13, P-14).
20. An IEP did not accompany the August 1st NOREP. The NOREP indicated "an IEP will be developed within the first 30 days of school based on (the student's) present levels of performance and include appropriate goals." (P-14 at page 1).
21. On August 7, 2024, the District requested permission to perform a functional behavior assessment. (P-12).
22. On August 12, 2024, parents rejected the August 1st NOREP, indicating "Itinerant learning support is not appropriate for (the student who) continues to require a full-time placement. Also, the District has not reevaluated the student or provided me with a draft

IEP so it is unclear what services, goals, SDIs, etc. are being proposed.... This is not an offer of FAPE.” (P-14 at page 2).

23. On August 23, 2024, the District requested permission to perform an OT evaluation. Parents consented to both the functional behavior assessment and the OT evaluation on August 23rd. (P-12; S-2).

24. On August 23, 2024, the District proposed an IEP. (P-6; S-1).⁵

25. The August 23rd IEP contains five goals, one in written expression, one in math problem-solving, one in coping strategies, one in organization, and one in de-escalation strategies. (S-1 at pages 17-21).

26. The August 23rd IEP provides 900 minutes of instruction per week, half in a learning support environment for mathematics and half in an inclusive regular education environment. (S-1 at page 5; NT at 178-307).

27. The August 23rd IEP provides 100 minutes per week of emotional support, provided by school counselors, including group counseling

⁵ Each party prepared an exhibit for the document. Specific citations, however, are to only one of those documents.

and an emotional support curriculum. (S-1 at page 23; NT at 178-307).

28. The August 23rd IEP provides a 1:1 aide who is available to the student but who often stays in the hallway and does not provide direct support because the student has reacted negatively to having the aide nearby. (S-1 at page 23; NT at 178-307).
29. The student often voiced to parents and educators that the student did not want to stand out, or be considered different, from regular education peers. (NT at 55-169, 178-307).
30. On September 13, 2024, the District proposed that the student receive 45 minutes per week of OT services, pending its OT evaluation. Parents did not approve nor disapprove this NOREP recommendation and requested a due process hearing. (P-1; S-3).
31. On September 19, 2024, the District performed curriculum-based testing in reading and mathematics. The student scored at the 1st percentile in mathematics (indicating the need for intensive intervention) and the 18th percentile in reading (indicating the need for intensive intervention although scoring was approaching the strategic-intervention level). (P-35; S-5, S-6).

32. On September 24, 2024, the District issued a functional behavior assessment, identifying lack of attention to task, distractibility and use of a cell phone as behaviors of concern. The student's use of a cell phone is often a distraction from classwork or tasks. (P-36).
33. A positive behavior support plan was developed to include the goal for coping strategies. (P-37).
34. On September 26, 2024, the District issued its OT evaluation, finding that the student did not require direct OT services. Certain OT recommendations were made for consideration by the IEP team. (P-38; S-23).⁶
35. To ensure that the student had resources available for behavioral incidents related to verbal aggression, or outsized agitation, the District developed a safety plan to provide supports for trusted adults to be available in various environments. (S-39).
36. All students at the high school which the student attends utilize the same entrance. Certain students with complex disability profiles, or specific disability-related needs, may use a separate entrance. The student's mother testified that the student should be allowed to use the separate entrance; District witnesses testified credibly that the

⁶ Each party prepared an exhibit for the document.

student declined use of the separate entrance so that the student did not draw attention or enter the building differently from the bulk of the student population. (NT at 26-48, 55-169, 178-307).

Credibility of Witnesses

All witnesses testified credibly. No witness's testimony was accorded materially more or less weight than the testimony of any other witness.

Legal Framework

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17), the child's special education programming must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

The IEP is the means through which special education students receive the individualized specially-designed instruction and related services, and other individualized supports, to allow them to make educational progress. In pertinent part for the instant matter, under IDEA, the IEP must include the following:

- a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum;
- a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability;
- a description of how the student's progress toward meeting the annual goals will be measured, and when periodic reports on the progress the student is making toward meeting the annual goals will be provided;
- a statement of the special education and related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student and a statement of the program modifications or supports for school personnel that will

be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students with disabilities and nondisabled students in educational activities;

- an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class; and
- the projected date for the beginning of the services and modifications in the IEP, and the anticipated frequency, location, and duration of those services and modifications.

(34 C.F.R. §§300.320(a)(1)-(5), (7); 300.320(b)).

Under the IDEA, a student's IEP team must also make explicit certain considerations, which are made part of the IEP, including:

- the strengths of the student, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student; and
- in the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(34 C.F.R. §§300.324(a)(1), (2)(i)).

Additionally, in pertinent part for the instant matter, under Pennsylvania special education regulations, the IEP must also include the following:

- a description of the type or types of support as defined in this paragraph that the student will receive (e.g., autism support, emotional support, learning support, etc);
- the location where the student attends school and whether this is the school the student would attend if the student did not have an IEP; and
- for students who are 14 years of age or older, a transition plan that includes appropriate measurable postsecondary goals related to training, education, employment and, when appropriate, independent living skills.

(22 PA Code §§14.131(a)(1),(4),(5); see *also* 22 PA Code §14.133, which provides further details regarding behavior support of Pennsylvania students in accord with 34 C.F.R. §§300.324(a)(2)(i), cited above).

Discussion & Conclusions

Here, the August 23rd IEP contains all of the requisite aspects of an IEP required under IDEA and Chapter 14. The more precise inquiry is the appropriateness of the goals and nature/amount of services for the student.

The student's deepest area of need is the behavior support and areas of executive functioning (attention, organization, task approach/completion), including self-regulation when behaviors overwhelm the student's learning. The goals and supports in the IEP, including the positive behavior support plan, are appropriate to address these needs. The counseling and emotional support curriculum are appropriate as well, although the student requires more than 100 minutes per week (20 minutes per day) of direct support in these areas. The order below will require the student's IEP to be revised to provide 150 minutes per week of support/instruction to address the student's emotional support needs. Furthermore, at the time of the hearing the exact schedule and implementation was still being determined. To the extent that this programming has not yet been concretely structured, the order below will implement a deadline for that programming to be in place.

The academic goals for written expression and mathematics problem-solving are appropriate. But the student also requires a goal in mathematics computation. The most recent re-evaluation—the comprehensive charter school RR in May 2023—shows that the student has significant deficits in both math problem-solving and math computation. The District's own curriculum-based assessment shows that the student, at the 1st percentile, continues to have significant needs across the board in mathematics. Therefore, the IEP team will be directed to develop a math computation goal for the student.

Finally, other aspects of the student’s programming which were the basis of evidence at the hearing—the handling of the student’s arrival at the school building, the role and use of the 1:1 aide, lack of direct OT services—are appropriate.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the August 23, 2024 IEP is largely appropriate. The following aspects of the IEP must be revised:

- The student’s direct instruction and services for emotional support shall be increased from 100 minutes per week to 150 minutes per week.
- To the extent that the direct instruction and services for emotional support has not yet been concretely structured, this programming must be made concrete and be in place no later than October 29, 2024.
- On or before October 29, 2024, the student’s IEP team shall draft a goal, including the determination of a baseline, in mathematics computation.

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

10/15/2024