

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. 31925-25-26

Child's Name:

M.G.

Date of Birth:

[redacted]

Parent(s):

[redacted]

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

06/02/2026

Introduction

This special education due process hearing concerns the educational rights of M.G. ("student"), a student for whom the Chester County Intermediate Unit ("IU") provided early childhood education services.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 autism and speech and language ("S&L") impairments.

In September 2025, the student's parents filed the complaint which led to these proceedings, a complaint amended by parents in October 2025. An intricate procedural history between the parties had unfolded prior to the filing of that complaint.

In the spring of 2022, the student's family and the IU began to work together for the provision of early intervention services for the student when the student was approaching age [redacted].³ In the 2022-2023 school year, the parties worked with each other regarding the education of the student, which included various arrangements involving IU services and private services. Ultimately, in September 2023, the student's individualized

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").

³ See Hearing Officer decision at ODR file number 29406-23-24-AF (Hearing Officer Exhibit ["HO-1"]). As of the date of the instant decision, the decision at HO-1 is on appeal, pending before the federal District Court for the Eastern District of Pennsylvania. The procedural history that follows is based on material from the decision at HO-1. As set forth below, the substance of the decision at HO-1 does not impact the instant matter.

education program ("IEP") team met to draft an initial IEP that would be implemented by the IU. The student briefly attended IU programming under the terms of the September 2023 IEP. In October 2023, the student's family withdrew the student from IU programming and undertook a unilateral private placement.

In March 2024, the student's parents filed a special education due process complaint, at ODR file number 29406-23-24-, seeking an assortment of remedies related to the student's education over the 2022-2023 and 2023-2024 school years, including a tuition reimbursement claim for the unilateral private placement in 2023-2024 school year. In October 2024, a special education due process decision was issued by the hearing officer presiding over that matter. The result of that decision revolved around the development and content of the September 2023 IEP. Finding that the September 2023 IEP was appropriate, as developed given the information that the IEP team had at that time, parents' tuition reimbursement claim for the 2023-2024 school year was denied.

The parents continued the unilateral private placement for the 2024-2025 school year. Through the instant complaint, parents seek tuition reimbursement for the 2024-2025 school year, based on the alleged inappropriateness of IEPs developed in February 2024 and March 2025.⁴

⁴ Where parents' claim for tuition reimbursement might fail, parents seek in the alternative an award of compensatory education. Parents also seek an order for an independent education evaluation.

The District counters that at all times it has met its obligations to the student under IDEA and parents are not entitled to tuition reimbursement.

For reasons set forth below, I find in favor of the parents in part and the IU in part.

Issues

Are parents entitled to tuition reimbursement,
or compensatory education,
as remedy for the 2024-2025 school year?

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.

1. From a young age, the student has been long-identified as a student with autism and significant language delays (both expressive and receptive). The student is a largely non-verbal communicator. (Parents Exhibit ["P"]-2, P-4; Notes of Testimony ["NT"] at 62-201).⁵

⁵ The pagination listed in the table of contents for each volume of the NT for each volume is not always accurate. Any reader of the record will find that citation to page numbers by the hearing officer in the findings of fact is accurate.

2. The student has exhibited multi-faceted needs across physical, cognitive, social-emotional, communication, and adaptive domains. (P-2, P-4, P-27, P-46, P-48; Intermediate Unit Exhibit ["IU"]-2, IU-14).⁶
3. In the spring of 2022, the student's family and the IU began to coordinate regarding the provision of early intervention services. (P-5; NT at 62-201).

2023-2024 School Year

4. By July 2023, the family was investigating potential private placements and the private placement for which the family seeks tuition reimbursement had accepted the student for enrollment. (IU-1; NT at 62-201).
5. As part of the intake/enrollment process at the private placement, each potential student is invited to a 4-day evaluation process where the private placement can assess whether or not it feels the placement is appropriate for the student. (NT at 377-541).
6. In mid-July 2023, the private placement engaged in the intake evaluation process, whereafter the student was accepted for admission

⁶ Certain party-exhibits are duplicated in this record. Here, for example, an IU re-evaluation report issued in January 2025 is in the record as P-27 and IU-10. Where this is the case, only one of the duplicate exhibits is specially cited.

to the private placement, conditioned upon the family retaining a 1:1 personal care aide. In late July 2023, the private placement issued a placement evaluation report, based on records review, parent input, observation and assessment data. (IU-2; NT at 377-541).

7. On an assessment in the July 2023 private placement intake evaluation, the student met multiple criteria, in the eyes of the evaluator from the private placement, for childhood apraxia speech ("C.A.S."). (IU-2).
8. C.A.S. is a speech and language condition where articulation needs interfere with a child's ability to articulate expressive speech. (NT at 205-284, 288-318, 323-363, 628-748).
9. The July 2023 private placement intake evaluation was never shared with educators at the IU nor with the family's private evaluators who testified on this record (the private S&L evaluator and the private autism expert). (IU-2; NT at 288-318, 323-363, 546-614, 628-748, 766-889).
10. In September 2023, the student's IEP team met to design an IEP for implementation at the IU. (HO-1; P-10).⁷

⁷ The September 2023 IEP is in the record at P-10 and IU-3. The appropriateness of the September 2023 IEP was subject to evidentiary fact-finding in the decision at ODR file number 29406-23-24-AF. (HO-1). As set forth above and more fully below,

11. In September 2023, and earlier as part of partial IU-delivered services in the spring of 2023, the IU collected VB-MAPP data. The student had demonstrated various levels of skill acquisition across the VB-MAPP. Across the two administrations, the student demonstrated relative strength in the listening, visual-perceptive/matching-to-sample, play, and imitation domains. The student demonstrated relative weakness in the tacting and vocalization domains. Overall, as of September 2023, the student was scored as a level-one learner on the VB-MAPP, with demonstrated skills across domains equivalent to 0-18 months. (IU-5; NT at 546-614).
12. In October 2023, shortly after beginning IU-delivered services, the student's family undertook a unilateral private placement at the placement which had accepted the student in July 2023. (HO-1; P-10; NT at 62-201).
13. For the majority of the 2023-2024 school year, the student attended the private placement. (NT at 62-201, 377-541).
14. In December 2023, the private placement developed an IEP document. (P-15).

those findings play no substantive role in the instant complaint and hearing process. (HO-1).

15. The December 2023 private placement IEP indicated, in its special considerations, that the student had communication needs but did not exhibit behaviors that impeded the learning of the student or the learning of others. (P-15).
16. The December 2023 private placement IEP outlined the private placement's use of an instructional approach that focuses on literacy skills (phonemes, decoding, word and sentence combining, and synthesis of literacy skills for reading and writing). (P-15).
17. The December 2023 private placement IEP indicated that the student could articulate three phonemes and identify the phonemes 33% of the time when all three were presented in a field of three. (P-15).
18. The December 2023 private placement IEP contained measures of articulation skill given the private placement's view that the student exhibited C.A.S.. (P-15).
19. The December 2023 private placement IEP identified significant student needs in expressive and receptive language, including dysregulation during language instruction/activities due to inattention, difficulty processing and synthesizing information, motor speech and motor planning for verbal communication, support for social-emotional

learning, fine and gross motor skills deficits, visual-perceptive deficits, and sensory needs (including an intensive sensory diet). (P-15).

20. The December 2023 private placement IEP indicated that the student “cannot function independently within the classroom” and required one-on-one support/supervision in the classroom and throughout the school, including support for “personal needs”. (P-15).

21. The December 2023 private placement IEP also identified needs for the development of certain academic and pre-academic skills. (P-15).

22. The December 2023 private placement IEP did not contain IEP goals in the body of the IEP. The student’s goals were included in pages appended to the IEP. (P-15).

23. The December 2023 private placement IEP contained four S&L goals, four academic/pre-academic goals, one adaptive goal (within the context of the instructional method employed by the private placement), and thirteen goals labeled as occupational therapy (“OT”) goals. The range of the labeled as OT goals included not only OT activities but gross motor activities more accurately labeled as physical therapy goals, social-skills/personal space/emotional awareness more accurately labeled as social-emotional goals, and non-verbal communication goals more accurately labeled as S&L/communication

goals (including use of the student's augmentative/alternative communication ["AAC"] device). (P-15).

24. The December 2023 private placement IEP included three hours per week for OT services and 10.5 hours per week for articulation and language instruction. (P-15).

25. The student attended the private placement five days per week for 6.5 hours per day. (NT at 377-541).

26. In January 2024, the student's private S&L therapist issued an evaluation report. (P-48; NT at 628-748).

27. In the January 2024 private S&L evaluation, the evaluator's report included records review, parent input, observation, and formal assessment data. (P-48).

28. The January 2024 private S&L evaluation diagnosed the student with a severe expressive language disorder "with deficits in all areas of language", a receptive language delay, C.A.S., and severe oral (nonverbal) apraxia, including "difficulties in imitating single and sequenced oral motor movements". (P-48).

29. The evaluator provided recommendations for programming in the January 2024 private S&L evaluation for "severe and pervasive communication disorder", including "intensive speech therapy" for

motor speech needs and overall speech intelligibility.

Recommendations were also made specifically in light of the evaluator's formal diagnosis of C.A.S.. (P-48).

30. The evaluator's recommendations for programming included 90-150 minutes per week for motor speech needs and 60 minutes per week with a focus on the student's AAC device. (P-48).

31. In February 2024, after receiving the January 2024 private S&L evaluation, the IU convened an IEP meeting to discuss the evaluation report and its recommendations. (IU-6; NT at 288-318).⁸

32. The IU S&L therapist with the student on her caseload attempted to discuss the report with the private S&L evaluator but the private evaluator did not respond. (NT at 288-318).

33. The February 2024 IEP revisions recognized the need for programming and goals addressing motor speech. (IU-6).

34. The February 2024 IEP indicated that the student did not exhibit behavior that impeded the learning of the student or others. (IU-6).

35. The February 2024 IEP continued six goals from the September 2023 IEP, including a manding goal, a receptive language goal

⁸ The February 2024 IEP document is in the record as P-17 and IU-6.

(following 1-step directions), an imitation goal, an expressive language goal (use of the AAC device, vocalization, gesture), a matching goal, and a gross motor goal (jumping). (IU-6).

36. The February 2024 IEP included an increase in S&L services to focus on motor speech. (IU-6; NT at 62-201, 205-284, 288-318, 546-614).

37. The private S&L therapist testified to her formal diagnosis of C.A.S.. An IU administrator with experience in S&L and the IU S&L therapist who maintained the student on her caseload both testified that the deep focus on C.A.S.—an articulation disorder which interferes with the mechanical/motor formation of spoken expression—by the private therapist and the private placement are misplaced. They testified that development of motor speech is important, and both supported the inclusion of motor speech services through the February 2024 IEP revisions; but both testified that for a student who is largely non-verbal and uses other modalities of expressive language, C.A.S. is difficult, perhaps even impossible, to concretely diagnose at this stage and given the student’s presentation. At the least, both testified credibly that articulation should be one of a number of S&L focuses and that the programming at the private placement was overly focused on working on articulation from a C.A.S. perspective. The

views and testimony of the IU witnesses are credited, and awarded heavier weight, than the testimony of the private S&L therapist. (NT at 205-284, 288-318, 628-748).

38. In April 2024, the parents and the private placement communicated about a significant change in the student's behavior. The student was "eloping and aggressively grabbing people". The private placement recommended behavior support, to be provided by the parents, based on a functional behavior assessment ("FBA"), also to be provided by the parents. (IU-8; NT at 62-201, 377-541).
39. In May 2024, the parents' autism expert issued a report. (P-46).
40. In the May 2024 private autism evaluation, the evaluator's report included records review, parent input, and observation. (P-48).
41. The autism evaluator's background and expertise arises out of psychology, autism, and behavior and, consequently, student needs. The May 2024 evaluation report, however, largely offers opinions regarding the IEPs she reviewed. These matters, related to the design of programming, the provision of special education and specially-designed instruction, and teaching, lie outside the witness's background and experience, and certainly outside her areas of qualified expertise. In that way, the views and testimony of the S&L therapists (both the IU therapists and the private S&L therapist), the

IU special education teacher, and the IU special education teacher/behaviorist, are credited, and awarded heavier weight, as to the matters largely discussed in the May 2024 private autism evaluation, than the testimony of the private autism expert. (NT at 288-318, 323-363, 546-614, 628-748, 766-889, 894-960).

42. Especially concerning in this regard is the witness's diminution of the VB-MAPP results, voiced in the May 2024 evaluation report and in testimony, an instrument almost universally recognized as incredibly valuable for assessing the skills and domains of learners, and allowing educators to structure targeted instruction, for students with a learning profile and mosaic of needs similar to the student's. (P-46; IU-5, IU-15; NT at 766-889).

43. In July 2024, the private placement reported progress on nine of the student's twenty-two goals. For each goal, the progress was reported for short-term objectives and not for the overall goal. (IU-9).

44. For most of the short-term objectives, the progress reporting showed that the student made some progress (a '3' on the private placement's 1 to 5 scale of goal achievement: 1 – not applicable, 2 – no progress made, 3 – some progress made, 4 – significant progress made, 5 – objective met), with some objectives being assessed at achievement level 4 and 5). (IU-9).

45. The progress reporting showed that the student could now accurately vocalize six sounds, up from three sounds, in the December 2023 private placement IEP. (P-15, IU-9).

2024-2025 School Year

46. In mid-August 2024, as the 2024-2025 school year approached, the parents communicated with the IU that they did not feel the student's September 2023 IEP, as revised in February 2024, was appropriate. They indicated that they intended to enroll the student once again in the private placement, and that they would seek tuition reimbursement for this placement. (P-20; NT at 62-201, 205-284, 546-614).

47. At this point, two significant administrative errors occurred at the IU regarding the parents' communications regarding the 2024-2025 school year. One, the IU special education administrator was using an inaccurate email address. Thus, over August, September, and October 2024, the IU received no response to its emails to the family, regarding a request to re-evaluate the student; but the family had no idea that the IU was communicating with them. Two, the IU administrator who was communicating with the family mistook the February 2024 IEP revisions as the annual date of the student's IEP

cycle; the annual anniversary date for the student's IEP, however, was in September, based on the September 2023 IEP. Thus, there was an apparent lack of urgency regarding the seeming lack of response from the family. (P-10, P-20; IU-6; NT at 62-201, 205-284, 546-614).

48. In mid-September 2024, not having heard from the IU regarding their communication regarding programming for the 2024-2025 school year, the family enrolled the student in the private placement for the 2024-2025 school year. (P-21).

49. On November 1, 2024, the IU had recognized its communication error and began to initiate communication with the parents regarding a re-evaluation process. (P-20 at pages 16-17; NT at 62-201, 205-284).

50. On November 5, 2024, the IU received permission from the parents to proceed with its re-evaluation of the student. (P-23, P-24).

51. In December 2024, as part of the IU re-evaluation, an IU S&L therapist issued a S&L report. (P-25).

52. In the December 2024 IU S&L evaluation, the evaluator's report included parent input, observation, and assessment. (P-25; NT at 323-363).

53. The December 2024 IU S&L evaluation indicated that the student continued to exhibit significant expressive, and overall intensive

expressive and receptive, language delays. The evaluator was able to note progress, however, in certain areas, namely in responding to gestural prompts, following simple directions, engaging in certain vocal imitations, moving toward conventional communication with meaningful simple gestures or concrete symbols, emerging although intermittent social interaction with family, and multiple sound samples in vocalizations. The student did not, however, spontaneously vocalize, utilize the AAC device, or demonstrate or imitate motor-planning/vocalization with accuracy or consistency. (P-25; NT at 323-363).

54. In December 2024, the private placement issued a S&L report ("RR"). (P-26).

55. The results of the December 2024 private placement RR largely mirror the results of the December 2024 IU S&L evaluation. (P-25, P-26).

56. In December 2024, the private placement revised its IEP for the student. (P-28).

57. The December 2024 private placement IEP contained eleven goals, two in letter recognition, one in receptive comprehension (answering WH questions), one in number matching, one in 1:1 correspondence, one in comparison (more/less, larger/smaller), one in

phonemic mastery, one for identifying days of the week, one for providing weather reporting to classmates, one for weather-appropriate clothing selection, and one for answering classmates WH questions based on their journal entries). (P-28).

58. The December 2023 private placement IEP included three hours per week for OT services and 10.5 hours per week for articulation and language instruction. (P-28).

59. The student attended the private placement five days per week for 6.5 hours per day. (NT at 377-541).

60. In January 2025, the IU issued its RR. (P-27).⁹

61. For the re-evaluation process, the IU attempted to observe the student at the private placement, but the family would not provide consent for the observation. The IU reached out to educators at the private placement; the student's lead teacher responded to the overture, but related services providers at the private placement did not respond. (P-27).

62. The S&L content from the December 2024 IU S&L evaluation was contained in the January 2025 RR. (P-25, P-27).

⁹ The January 2025 RR also appears in the record at IU-10.

63. The January 2025 IU RR was comprehensive, assessing the student in multiple domains and developmental areas. The RR identified the student as a student with autism and an other health impairment. (P-27).
64. In February 2025, the student's IEP team at the IU, including the parents, crafted an IEP for the student. (IU-11).¹⁰
65. The family inquired about utilizing the VB-MAPP to gauge the student's skill levels; the IU informed the family that the VB-MAPP would be administered upon the student's return to the IU. The family also inquired about incorporating content from the student's program at the private placement into the IEP; the IU welcomed that as an option but the family never provided that content or material. (IU-11).
66. The special considerations in the February 2025 IEP indicated that the student did not exhibit behaviors that impeded the student's learning or the learning of others. Neither the family nor the private placement had communicated to the IU the student's elopement and aggression from April 2024. (IU-8; NT at 205-284, 546-614, 894-960).
67. The February 2025 IEP contained six goals, including an imitation goal, a receptive language goal (following 1-step directions),

¹⁰ The February 2025 IEP also appears in the record at P-34.

an expressive language goal (use of the AAC device, vocalization, gesture), a vocalization goal, a goal for learning-readiness (not eloping from the instructional area and appropriate use of materials), and an occupational therapy goal (following 3-step routine). (IU-11).

68. The February 2025 IEP indicated that the student would receive approximately 17 hours of instruction, services and support over the IU's 7-day cycle. (IU-11).

69. Following the February 2025 IEP meeting, the IU was provided with records from the private placement and, toward the end of February 2025, was granted consent to observe the student at the private placement. (P-36).¹¹

70. In March 2025, the February 2025 IEP was revised. (P-36).

71. Given updated information and ongoing IEP team discussions, the February 2025 IEP was revised by adding a social-skills goal (initiating contact with peers). (P-36).

72. The March 2025 IEP revision continued to indicate that the student would receive approximately 17 hours of instruction, services and support over the IU's 7-day cycle. (P-36).

¹¹ The revised March 2025 IEP is also in the record as IU-12.

73. In April 2025, after the spring IEP meetings at the IU, the student once again engaged in behaviors that were problematic. (NT at 62-201, 377-541).
74. The special education teacher/behaviorist from the IU testified credibly that 17 hours of instruction, services and support over a 7-day cycle is appropriate because of the intensity of the instruction, especially the intensity of the VB-MAPP instruction contemplated for the student. (NT at 894-960).
75. The witness also testified credibly that the student did not exhibit instructional readiness, task persistence, or expressive/receptive language skills that made academic instruction, or even pre-academic instruction, appropriate. (NT at 894-960).
76. In March 2025, the parents completed an intent-to-register form with their school district of residence for the student to transition to kindergarten at the school district. (P-38).
77. In June 2025, anticipating that the student would begin to attend school in the 2025-2026 school year, the school district completed a RR. (IU-14).
78. In June 2025, the student's IEP team at the school district issued an IEP. (IU-15).

79. In November 2025, the student's VB-MAPP scores were updated by the school district which the student was then attending. (IU-15 at pages 14-24).
80. In November 2025, approximately two years after the IU's last gauging of the student's VB-MAPP scores in September 2023, the student was still scored as a level-one learner on the VB-MAPP, demonstrating skills across domains equivalent to 0-18 months. (IU-5, IU-15 at pages 14-24).
81. The student's scores on the VB-MAPP increased in five domains. In the manding domain, the student scored 3/15 in September 2023 and 4/15 in November 2025. In the listening domain, the student scored 5/15 in September 2023 and 7/15 in November 2025. In the visual-perceptive/matching-to-sound domain, the student scored 5/15 in September 2023 and 8/15 in November 2025. In the independent play domain, the student scored 4/15 in September 2023 and 5/15 in November 2025. In the social play domain, the student scored 2/15 in September 2023 and 6/15 in November 2025. (IU-5, IU-15 at pages 14-24).
82. The student's scores on the VB-MAPP decreased in two domains. In the echoic domain, the student scored 3.5/15 in September 2023 and 2/15 in November 2025. In the spontaneous vocal response

domain, the student scored 1.5/15 in September 2023 and 0/15 in November 2025. (IU-5, IU-15 at pages 14-24).

83. The student's scores on the VB-MAPP remained the same in two domains. In the tacting domain, the student scored 0/15 in September 2023 and 0/15 in November 2025. In the imitation domain, the student scored 4/15 in September 2023 and 4/15 in November 2025. (IU-5, IU-15 at pages 14-24).

Credibility of Witnesses

All witnesses testified credibly. Aside from the credibility determinations outlined in the findings of fact above, one aspect of weighing the credibility of the testimony of the parents' autism expert, and according certain elements of the witness's less weight than IU educators, there were multiple inexplicable elements of her testimony where obvious answers were not given to very forthright, almost foundational, questions.

- For example, the witness testified that, in her experience, IEP teams did not consider draft IEPs; this is almost uniformly not the normalized pattern for IEPs and IEP teams. Indeed, the whole edifice of the IEP meeting is built on consideration of the

draft that the IEP team will finalize (or not, perhaps). But it is, by definition, a draft document.

- The witness would not recognize that a FBA that contained only antecedents, and neglected to include identifying behaviors of concern and consequences for the behaviors, is deficient. And having undertaken a FBA, not creating a positive behavior support plan was acceptable.
- The witness's recall of events was, at times, very precise. At other times, with critical information (e.g., the increase of the student's elopement and aggression in April 2024), the witness could not recall much at all.
- The resistance to agree to the most elementary, foundational questions regarding ABA techniques and the use of the VB-MAPP.

The witness has a certain degree of expertise but, as pointed out above, the witness shared opinions that ranged into the territory of lay opinion because those opinions lay outside her expertise in autism, psychology, and behavior. It is almost as if, as a witness offering an opinion, the witness's tack was to disagree with opposing counsel's premise in the question, even for simple, straightforward, foundational inquiry.

All of this amounts to according little weight to broad swathes of the witness's testimony.

Legal Framework

Denial of FAPE. 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 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. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. 386, 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Procedural Denial-of-FAPE. Where inadequacies are alleged in a local education agency's handling of its procedural obligations, a denial of FAPE must be grounded in a finding that the procedural inadequacies impeded a student's right to FAPE, or "significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of...FAPE",

or caused a deprivation of educational benefit. (34 C.F.R. §300.513(a)(2)(i-iii); 22 PA Code §14.102(a)(2)(xxx)).

Tuition Reimbursement. Long-standing case law and the IDEA 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 IDEA. (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 local education agency'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.

Compensatory Education. Where a local education agency has denied FAPE to a student under the terms of IDEA or Section 504, compensatory education is a potential equitable remedy that is 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)).

The evidentiary scope of claims, which is not a point of contention in this matter, and the nature of compensatory education awards were addressed in G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir. 2015) The G.L. court recognized two methods by which a compensatory education remedy may be calculated.

One method, the more prevalent method to devise compensatory education, is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. In most cases, it is equitable in nature, and the award is a numeric award of hours as remedy.

The second method, a rarer method to devise compensatory education, is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a qualitative determination where the compensatory education remedy is gauged to place the student in the place where he/she would have been absent the denial of FAPE. It, too, is equitable in nature, but the award is based on services or interventions for the student, or some future accomplishment or goal-mastery by the student, rather than being numeric in nature.

Both calculations are a matter of proof. The quantitative/hour-for-hour approach is retrospective, looking back to understand the cumulative denial of FAPE, and is normally a matter of evidence based on IEPs or other documentary evidence that provides insight into the quantitative nature of the proven deprivation. The qualitative/make-whole approach is prospective, looking forward to some point in the future where the proven deprivation has been remedied, and normally requires testimony from someone with expertise to provide evidence as to where the student might have been, or should have been, educationally but for the proven deprivation, often with a sense of what the make-whole services, or future student accomplishment/goal-mastery, might look like from a remedial perspective.

Discussion & Conclusions

Here, to understand the contours of a potential remedy, the chronology of programming must be understood so that appropriateness, or lack of appropriateness, can be gauged effectively.

The parents' claim for remedy is centered on the 2024-2025 school year. The programming in effect as that school year opened, was the September 2023 IEP, revised in February 2024. As pointed out above, the appropriateness of the September 2023 IEP was determined through another special education due process hearing and that determination is on

appeal in federal court. But for the purposes of the instant decision, that decision hinged on the fact that the September 2023 was found to be appropriate on the information that the IU had at the time it developed the IEP.¹² That information changed over the remainder of the 2023-2024 school year.

First, in December 2023, the private placement developed its own IEP. While this IEP was not shared at the time with the IU, it marks a signpost for the development of programming for the student.

Second, in January 2024, the private S&L therapist issued a S&L evaluation. As soon as the evaluation came into the possession of the IU, it arranged an IEP meeting to gauge the content of the evaluation and to see how its results and recommendations might impact programming at the IU.

Third, respectively in May 2024 and July 2024, the parents' autism expert issued a report and the private placement issued progress reporting for the period December 2023-July 2024. Certainly, as this data was developed and shared with the IU, it might have gained more insight into the programming it might offer to the student as the annual IEP revision approached in September 2024.

¹² Here, it is noted that the July 2023 intake evaluation undertaken by the private placement was evidently not before the student's IEP team as it crafted the September 2023 IEP, nor at any point thereafter, until that evaluation surfaced as part of the evidence in the instant matter. See Finding of Fact #9.

At this point, matters took a dramatic turn, not through any intentional or purposeful way, but merely as administrative oversights. Due to an administrative error regarding the parents' email address, the IU felt that the parents were not responding to its overtures for a re-evaluation; the family felt the IU was not responding to its inquiry regarding an IEP and their decision to place the student in the private placement. The emails from the IU never arrived in the parents' inbox, due to the IU's administrative error; the parents, not having heard anything but silence in the face of its inquiries, privately enrolled the student in the 2024-2025 school year.

A second, compounding error, less impactful but providing a backdrop for the IU's approach to the matter, was the IU's misapprehension that the student's IEP was ready for its annual revision where the IU wrongfully assumed that in September 2024, the student was only halfway through the 'IEP year'.

The result of these two errors is that the IU was not in a position to propose programming for the family's consideration until February 2025. This delay of approximately six months significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the student.

In the meantime, however, in December 2024, the private placement had proposed its annual IEP revision. The December 2024 IEP is not

appropriate; it is not reasonably calculated to yield meaningful education benefit to the student. The goals in the December 2024 private placement IEP are largely pre-academic or academic. This is wholly inappropriate for a student working on foundational expressive/receptive language skills, sensory integration skills, self-regulation skills, and occasional behavior needs. Consistently, between September 2023 and November 2025, the student's overall score on the VB-MAPP has the student functioning at level one, 0-18 months. Goals in letter identification, answering WH questions, and identifying the days of the week are wholly inappropriate.

So where does that leave things on this record for the 2024-2025 school year? Under the Burlington-Carter analysis, the District's prejudicial denial-of-FAPE through its procedural violation at step one would cease to be a consideration for remedy as of December 2024 when the private placement implemented an inappropriate IEP. In the view of this hearing officer, that would not be an equitable result given the procedural denial-of-FAPE that unfolded over the fall of 2024. Equally inequitable, however, is an award of tuition reimbursement for the entire 2024-2025 school year where, as of December 2024, the private placement was utilizing an inappropriate IEP.

Fortunately, the record affords a precise way to parse out an equitable tuition reimbursement remedy that navigates the shoals of the IU's

prejudicial procedural denial-of-FAPE as of August 2024 and the proposal of an inappropriate IEP in mid-December 2024. The parents' enrollment contract for the 2024-2025 school year is broken down in monthly installments, beginning on August 1, 2024. (P-21).

Accordingly, the parents will be awarded tuition reimbursement for the months of August, September, October, November, and December 2024, beginning in the month when the parents inquired about the status of the IU's programming for the 2024-2025 school year. Over that span of months, the IU had not, and did not, propose programming for the parents' consideration, with the student's annual IEP having expired in September 2024. By January 2025, however, the private placement had developed, and was implementing, an IEP which was inappropriate, an IEP which was not reasonably calculated to yield meaningful education benefit for the student.

Thus, the parents carried their burden for a tuition reimbursement remedy over August – December 2024, inclusive, but have not carried their burden for the period beginning in January 2025 and thereafter. The order below follows.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the parents are entitled to tuition reimbursement for the months August – December 2024, inclusive, at the private placement. There is not compensatory education remedy.

Because the input and role of the parents' experts was not persuasive in light of the intermediate unit's programming and evidence, reimbursement related to those individuals' participation in this matter is denied.

The intermediate unit has not discriminated against the student or family in any way, nor has it predetermined the program and placement for the student, acting consistently in the light of information and data that came to it through the family or others.

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

06/02/2026