

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 Due Process Hearing Officer Final Decision and Order

Closed Hearing

ODR File Number

23244-1920

Child's Name

L.D.

Date of Birth

[redacted]

Parent

[redacted]

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Hearing Officer

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Date of Decision

07/31/2020

Introduction

This special education due process hearing concerns the educational rights of L.D. ("student"), a student who resides in the Philadelphia School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")² as a student who requires special education to address the student's needs related to an intellectual disability, visual impairment, and speech and language ("S&L") impairment.

The student's parent claims that the District failed to provide appropriate programming over the past three school years, thereby denying the student a free appropriate public education ("FAPE"). Analogously, the parent asserts a denial-of-FAPE claim under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").³ Furthermore, the parent claims that the District acted with deliberate indifference toward the student's needs and, therefore, makes a claim for disability discrimination under Section 504. Parent seeks, among other remedies, a hearing-officer-ordered placement at a private school, in addition to various independent evaluations.

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

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

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

The District counters that at all times it met its obligations to the student under IDEIA and Section 504, and that the proposed program/placement are appropriate. Faced with the parent's request for independent evaluations, the District denies that request and seeks, through this process, to defend the appropriateness of its most recent re-evaluation. Accordingly, the District argues that the parent is not entitled to any remedy.

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

Issues

1. Did the District provide the student FAPE in the 2017-2018⁴, 2018-2019 and/or 2019-2020⁵ school years?

⁴ Parent seeks compensatory education based on alleged acts and omissions beginning with the 2017-2018 school year. The complaint was filed in January 2020, such that claims based on alleged acts or omissions for the period after January 2018 through March 2020 are clearly at issue (see footnote 5). On its face, however, the complaint implicated potential claims limitation under 34 C.F.R. §§300.507(a)(2), 300.511(3)). *See also, G.L. v. Ligonier Valley School Authority*, 801 F.3d 602 (3d Cir. 2015). Specifically, the period from approximately August – December 2019 might potentially be limited as the basis of a claim to the extent parent knew, or should have known, ("KOSHK") of the alleged acts and omissions over those months, acts and omissions which form the basis of the complaint. Rather than engaging in a prehearing KOSHK process to determine the scope of the relevant denial-of-FAPE evidence, the hearing officer developed a denial-of-FAPE evidentiary record for the entirety of the 2017-2018 school year and instructed the parties to submit KOSHK arguments as part of a "backloaded" KOSHK process. KOSHK findings will be made below. (Hearing Officer Exhibit ["HO"]-1).

⁵ On March 13, 2020, Pennsylvania schools closed as the result of the COVID-19 pandemic. The closure impacted the remainder of the 2019-2020 school year. On June 13th, as this process was nearing its conclusion, parent filed a complaint asserting claims related to various aspects of programming for the student during the COVID-19 closure. Parent filed a

2. If so, is the student entitled to remedy?
3. Did the District discriminate against the student on the basis of disability, acting with deliberate indifference in the education of the student?

Findings of Fact

All evidence in the record, both exhibits and testimony, were considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits and all aspects of each witness's testimony are not explicitly referenced below.

Schooling Prior to 2017-2018

1. In the spring of 2016 school year, the student and District began a transition process for the student to exit early intervention and begin school-age services as a [redacted] grade student at the District in the 2016-2017 school year. (Parent's Exhibit ["P"]-9; School District Exhibits ["S"]-2, S-3; Notes of Testimony ["NT"] at 102-296, 840-1002).
2. In May 2016, the student's individualized education program ("IEP") for early intervention was revised as part of the annual revision process. (P-2).

motion seeking consolidation of the instant matter with the new complaint. The undersigned hearing officer declined to assert jurisdiction over the new complaint, which was assigned to another hearing officer and proceeds independently of the instant matter. Therefore, the claim for the 2019-2020 school year in these proceedings will not develop fact-finding beyond mid-March 2020. (HO-7, HO-8).

3. The student received adapted curriculum in the early intervention program, as well as a variety of related services including S&L therapy, occupational therapy ("OT"), physical therapy ("PT"), and accommodations for visual impairment. (P-2).
4. The May 2016 early intervention IEP included goals in expressive language, OT, PT, visual orientation to page, keyboarding, labeling/matching, object-discrimination within environments, and following directions. (P-2).
5. The May 2016 early intervention IEP provided vision support, two PT sessions per month, weekly OT sessions, and weekly S&L sessions. (P-2).
6. In July 2016, the District issued a re-evaluation report ("RR") for the student's transition to the District. (P-12).
7. The input of the early intervention teachers in the July 2016 RR noted that they felt the student would likely need more support in a school-age program, including potentially a 1:1 aide. They indicated that, at times, the student required assistance with transitions, work refusal, attention to task, and task-persistence, which often interfere with learning. Even given this input, however, the May 2016 early intervention IEP did not indicate that the student exhibited behaviors that impeded the student's learning or that of others and did not include a positive behavior support plan ("PBSP"). (P-2, P-12).
8. The July 2016 RR recommended that the student's OT and PT services be discontinued. The RR recommended that academic support, vision support, and S&L services continue to be provided. The RR recommended that educators working with the student need "to implement the behavior plan listed below", but no behavior plan was part of the July 2016 RR. (P-12 generally, and quoted at page 8).

9. In September 2016, the District developed a school-age IEP for the student for implementation at the District. (P-3; NT at 840-1002).
10. The September 2016 IEP indicated that the student exhibited behaviors that impeded the student's learning and that of others. As part of the IEP process, a functional behavior assessment ("FBA") was performed and, based on this FBA, a PBSP was developed (S-13, P-46).
11. The September 2016 IEP included goals in behavior, OT, meal time, number identification, oral letter identification, social skills, and matching. The September 2016 IEP did not include goals or services in S&L. (P-3).
12. In December 2016, the student's IEP was revised to include a S&L goal (articulation) and services in S&L. (P-4; S-20).
13. The December 2016 IEP provided for 500 minutes per IEP term of individualized vision support, and 300 minutes per IEP term of S&L services. The December 2016 IEP re-set the annual revision date to December each year for the student's IEP, so the "IEP term" in the December 2016 IEP ran through December 2017. (P-4; S-20, S-21).
14. The PBSP developed as part of the September 2016 IEP process was not referenced or made part of the December 2016 IEP. (P-4; S-20).

2017-2018 School Year

15. The December 2016 IEP was in place and guided the student's programming at the outset of the 2017-2018 school year. (P-4; S-20; NT at 840-1002).
16. The beginning of the 2017-2018 school year was generally non-problematic, although the student was sleeping quite regularly on the bus and during school. This pattern of sleeping during transportation

and in school was the result of disrupted sleep patterns by the student at night. It is a pattern that waxed and waned at various times across the entirety of the record. (NT at 102-296, 840-1002, 1130-1284, 1721-1753).

17. In December 2017, the District sought to convene the IEP team for the annual revision of the December 2016 IEP. (S-26; NT at 102-296, 840-1002, 1530-1656).
18. The scheduling of the December 2017 IEP meeting took some time and, once convened, was interrupted due to a fire drill. The noise of the fire bell agitated the student, who dropped to the floor. Over concern about the student's head hitting the floor, the meeting was postponed so the parent could be informed and the student attended to. The IEP team was finally able to meet in February 2018. (P-5; S-27, S-28, S-29; NT at 102-296, 840-1002).⁶
19. The February 2018 IEP continued to include a S&L goal for articulation, a number-identification goal, verbal identification of letters, and social skills. The IEP included new goals in task-persistence, and personal hygiene. (P-5; S-29).
20. The February 2018 IEP included programming for extended school year ("ESY") in the summer of 2018. (P-5; S-29, S-30).

⁶ Parent voiced concern that the student exhibited sensory needs, with the student's reaction to the fire bell—a consistent pattern of being quite agitated when it sounds—being a sign of sensory needs. The student's IEP contains provision for addressing preparations for school fire drills so the student is not overly agitated, but the record is consistent, and the testimony of a District OT evaluator is persuasive, that the student does not require services for sensory needs. (See P-5 at page 7; NT at 1289-1388).

21. The February 2018 IEP continued to provide for individualized vision support on the basis of an "IEP term". The February 2018 IEP re-set the annual revision date to February each year for the student's IEP, so the "IEP term" in the February 2018 IEP ran through February 2019. (P-5; S-29).
22. The February 2018 IEP revised the student's S&L services from "per IEP term" to 45 minutes per month. (P-5; S-29).
23. The February 2018 IEP provided for 100 minutes per IEP term of staff training in behavior support and included a PBSP, although the PBSP was not based on a FBA as a FBA had not been performed. (P-5; S-29, S-31; NT at 840-1002).
24. In February 2018, the District requested permission to re-evaluate the student for the student's required biennial evaluation. (S-32).
25. In May 2018, the District issued its RR. (P-14; S-36).
26. The May 2018 RR contained assessment data from the July 2016 RR and anecdotal input from the student's teacher and S&L therapist. (P-14).
27. The May 2018 RR contained updated assessments of academic and functional performance. (P-14).
28. The May 2018 RR contained OT and PT assessments. (P-14).
29. The May 2018 RR contained OT and PT recommendations from those evaluators, including areas for potential goal-based instruction, but did not contain any recommendations from the school psychologist. (P-14).
30. In May 2018, the student's IEP team met to revise the student's IEP in light of the May 2018 RR. (P-6; S-38).

31. The May 2018 IEP continued goals in personal hygiene, number identification, verbal letter identification, and social skills, and revised the goal in following directions. The May 2018 IEP contained included a new goal in answering "WH" questions. (P-6).
32. The May 2018 IEP included 300 minutes per IEP term of PT and 150 minutes per IEP term of OT. The May 2018 IEP re-set the annual revision date to May each year for the student's IEP, so the "IEP term" in the May 2018 IEP ran through May 2019. (P-6; S-41).
33. The May 2018 IEP did not include any PT or OT goals. (P-6).
34. In May 2018, the District undertook a FBA as part of the re-evaluation process, but no PBSP was ever produced as a result of the FBA. (P-6, P--3; S-38; NT at 1014-1123).

2018-2019 School Year

35. The May 2018 IEP was in place and guided the student's programming at the outset of the 2018-2019 school year. (P-6; NT at 1014-1123).
36. In May 2019, the student's IEP team met for the annual revision of the student's IEP. (P-7, P-40, P-41; S-43).
37. The May 2019 IEP revised the goal in social skills. The May 2019 IEP contained included new goals in seeking assistance, PT (use of stairs), task-persistence, behavior (hallway and line behavior), reading (sight words), addition (with manipulatives). (P-7).
38. The May 2019 IEP raised the level of S&L services to 60 minutes per month, reduced the student's PT services to 150 minutes per IEP term, and maintained the 150 minutes per IEP term of OT. (P-7).

2019-2020 School Year

39. The May 2019 IEP was in place and guided the student's programming at the outset of the 2019-2020 school year. (P-7; S-45; NT at 1014-1123).
40. In November 2019, the parent requested multiple independent evaluations at public expense. (P-23).
41. In January 2020, the District denied the parents' request for the independent evaluations and requested permission to re-evaluate the student. Parent declined to provide permission. (P-50, P-61; S-49).⁷
42. In January 2020, parent filed the complaint that led to these proceedings. (HO-1).
43. As part of the requested remedy in this matter, parent seeks a hearing-officer-ordered private placement. Evidence was developed by parent as to the appropriateness of this placement. (HO-1; P-53, P-62, P-63; NT at 1489-1524).
44. In February 2020, the parent obtained an independent S&L evaluation at private expense. (P-33, P-45).
45. In March 2020, the parent obtained an independent observational report prepared by school psychologist. (P-51, P-52).

⁷ Parent asserted that the District's actions in denying the request for the independent evaluations did not comply with the statutory requirements at 34 C.F.R. §300.502. Upon consideration of the parties' arguments in that regard, the hearing found that the District's denial of parent's request for independent evaluations was not a prejudicial procedural violation and that the District would bear the burden of persuasion as to the appropriateness of the evaluation process and report represented in the May 2018 RR at P-14. (HO-4, HO-5, HO-6).

Progress Monitoring

46. Evidence related to the progress monitoring was intricate. At times and in certain areas, the student made progress on IEP goals. At times and in certain areas, the student failed to make progress on IEP goals. Counsel for each party competently probed the progress monitoring for the progress, or lack of progress, which supported their clients' positions. (P-10, P-15, P-47, P-55, P-59; S-54; *see generally*, present levels of academic and functional performance in the student's IEPs at P-4/S-20, P-5/S-29, P-6, P-7).
47. Granular data in the form of related-services provider logs were also included in the record. (P-26, P-27, P-28, P-54, P-60; S-55).
48. The parties agreed, among other stipulations, to the following material stipulations:
 - Related-services attendance records do not exist for S&L therapy in June 2018, May – June 2019; for OT in April – June 2019; and for PT in October 2019.
 - The District explicitly notes in the parties' stipulation that the absence of the related-services attendance records as listed above does not mean that the student did not receive the respective related services over the months indicated.
 - S&L therapy attendance records do not exist for ESY S&L services in summer 2018 and summer 2019. (HO-9).

Discussion

As a preliminary matter and determination, nothing on this record supports a conclusion that the parent knew, or should have known, of the acts and omissions which form the basis of her complaint, such that the

relevant and probative denial-of-FAPE evidence should not be considered for the period over August – December 2017. Therefore, the entirety of the 2017-2018 school year has been considered, both in terms of the denial-of-FAPE evidence and potential remedy.

IDEIA/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 or, as implemented, yielded meaningful educational benefit. (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 education progress. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S., 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Here, the record is preponderant that the District's programming, as designed, was not reasonably calculated to yield meaningful education benefit or, as implemented, did not provide meaningful education benefit. In both of these regards, however, it must be noted that the denial-of-FAPE was not wholesale or deeply problematic. In multiple areas, the student made marked progress, and this decision must recognize that.

This is where the parsing of the progress monitoring on this record weighs back and forth between supporting the position of each party in terms of supporting, or not supporting, each party's position in terms of what a particular aspect of progress monitoring would show.⁸ So while there is a finding that the District denied the student FAPE, and remedy will follow, the District cannot be faulted for grossly or deeply mis-serving this student.

Having said that, the District denied the student FAPE. First and most significantly, the District failed to consistently program for the student's long-recognized behavioral needs. On this record, the student has never engaged in deeply problematic or acting-out behaviors. But the lack of focus, task-refusal, and occasional defiance exhibited by the student has been part of the student's educational needs since early intervention. But the District has failed to consistently understand and/or program for those needs. Initially, in the September 2016 IEP, the District undertook a FBA and developed a PBSP. But only three months later, that PBSP had been dropped from the student's programming. Not until the February 2018 IEP—nearly eighteen months later—did a PBSP re-merge as part of the student's programming, but this was not based on an updated FBA. Shortly thereafter, in May 2018, a new FBA was undertaken. But no PBSP followed. In effect, then, the District had a comprehensive, data-based behavioral response plan in effect for only three months (September – December 2016). Thereafter,

⁸ A complicating factor is that certain elements of progress monitoring, as documented, suffered from technology issues in the progress reporting software employed by the District. In those instances, District witnesses were able to explain those inconsistencies. Still, it renders difficult exact comparisons of progress over time. And, anecdotal testimony of District witnesses to progress aside, those "holes" in the data make impossible to gain a firm grasp on the student's progress, or lack of progress. (See, e.g., NT at 840-1002, 1130-1284).

there was no plan included as part of the student's programming, or a behavior plan which had no assessment-data as its foundation, or assessment-data that did not lead to a behavior plan. This amounts to a denial-of-FAPE.

There were behavior interventions, and some of them were successful, especially as employed by the student's special education teacher in the 2018-2019 and 2019-2020 school years. But these were ad hoc and teacher-specific. And this is especially problematic because, for any success that the teacher had with the student over those school years, the student will have a new special education teacher in the upcoming 2020-2021 school year. Thus, there is no consistent, data-driven, structured approach to addressing the behaviors which have historically impeded the student's learning.

Second, the District's S&L programming, while adequate at times, does not go far enough in addressing the student's needs, both in terms of articulation and pragmatics. The parent's independent S&L evaluator's report and testimony were both credible and persuasive that the student requires much more intensive S&L services than have been provided, and are being provided, by the District. Much like the student's behavior needs, the student's S&L needs in articulation and both expressive/receptive pragmatics have long been recognized and programmed-for. But the District has denied the student FAPE by not programming providing S&L services that are intensive enough for the student's needs. In this regard, the private evaluator's recommendations will form the basis of revisions to the student's IEP, as well as a more explicit instructional schedule for the delivery of direct services.

Third, the student requires more regular PT for gross motor skills on the stairs-negotiation goal. The student also requires an OT goal for pencil grasp and writing/tracing. In this regard, and because both require repetition for skill-building, the “per IEP term” frequency of the delivery of direct services must be revised.

Fourth, the District’s May 2018 RR is appropriate. Therefore, the District has met its burden of persuasion on the appropriateness of its re-evaluation process and report, and there will be no remedy for any independent psychoeducational evaluation. But, in the opinion of this hearing officer, the student’s potential OT and PT needs should be understood more comprehensively. Therefore, under the authority granted to a hearing officer to order evaluations, a process will be structured for the selection of independent evaluators in these areas. Additionally, given the student’s IEP goal in negotiating hallways and spaces with crowds, and in light of the probative testimony of the witness from the parent’s preferred private placement (NT at 1489-1524), an orientation and mobility (“O&M”) evaluation will also be ordered under the same authority and utilizing the same structure for the selection of an evaluator. As set forth below, the District will be provided with material participation in the selection of the independent evaluators.

Accordingly, the District has denied the student FAPE in certain aspects of the student’s programming. Compensatory education will be awarded as set forth below. Under the authority granted to a hearing officer, certain independent evaluations will also be ordered.

Section 504/Denial-of-FAPE

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §15.1).⁹ The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504 and Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (*See generally P.P. v. West Chester Area School District*, 585 F.3d 727 (3d Cir. 2009)).

Therefore, the foregoing analysis is adopted here— the District denied the student FAPE for the reasons set forth above. Compensatory education will be awarded as set forth below.

Section 504/Discrimination

The provisions of Section 504 also bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program or otherwise discriminated against on the basis of disability, has been subject to disability discrimination in violation of Section 504 protections. (34 C.F.R. §104.4; *S.H. v. Lower Merion School District*, 729 F. 3d 248 (3d Cir. 2013)). A student who claims discrimination in violation of the obligations of Section

⁹ Pennsylvania's Chapter 14, at 22 PA Code §14.101, utilizes the term "student with a disability" for a student who qualifies under IDEIA/Chapter 14. Chapter 15, at 22 PA Code §15.2, utilizes the term "protected handicapped student" for a student who qualifies under Section 504/Chapter 15. For clarity and consistency in the decision, the term "student with a disability" will be used in the discussion of both statutory/regulatory frameworks.

504 must show deliberate indifference on the part of the school district in its purported acts/omissions. (S.H., id.).

Here, the District did not act with deliberate indifference toward the student. Even with the denial of FAPE as outlined above, the record is clear that the District has always sought to understand and to program effectively for the student. Additionally, the testimony of District witnesses clearly establishes that educators at the District worked with the student diligently and in good faith. Indeed, the educators (and especially the special education teacher in the student's 2018-2019 and 2019-2020 school years) deeply care for the student's well-being.

Accordingly, the District has not acted with deliberate indifference toward the student.

Compensatory Education

Where a school district has denied FAPE to a student under the terms of IDEIA, compensatory education is an 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)).

In this case, given the denial-of-FAPE outlined above, compensatory education is owed to the student. The nature of the denials of FAPE (deficits in behavior, and S&L/OT/PT services) do not easily lead themselves to exact quantification of a compensatory education remedy. Too, in each of these areas, while there is a denial of FAPE for the reasons set forth above, none of these areas (as indicated) form the basis of a gross or deep denial of FAPE.

Therefore, it is the considered opinion of this hearing officer that 250 hours of compensatory education is an equitable remedy for the denial of FAPE on this record over the 2017-2018, 2018-2019, and 2019-2020 (through mid-March 2020) school years.

As for the nature of the compensatory education award, the parent may decide in her sole discretion how the hours should be spent so long as those hours take the form of appropriate developmental, remedial, or enriching instruction or services that further the goals of the student's current or future IEPs, or identified educational needs. These hours must be in addition to any then-current IEP and may not be used to supplant an IEP. These hours may be employed after school, on weekends and/or during the summer months, at a time and place convenient for, and through providers who are convenient to, the student and the family. Nothing in this paragraph, however, should be read to limit the parties' ability to agree mutually and otherwise as to any use of the compensatory education hours.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Philadelphia School District has denied the student a free appropriate public education. The student is awarded 250 hours of compensatory education.

Given the impact that parent's private speech and language ("S&L") report will have on the student's programming going forward (see below), the District shall reimburse the parent for the cost of the private S&L report, as testified to by the evaluator at the May 29th hearing session, as well as the fee assessed for that testimony.

Since the student will begin to work with a new special education teacher in the 2020-2021 school year, after having worked with the same special education teacher over the prior two school years, within 14 days of the date of this order, the student's individualized education program ("IEP") team shall convene to consider transition planning for the student's engagement with a new special education teacher. Discussion of the transition planning shall include ways in which the student and the new

special education teacher can meet and acclimate to one another teacher early on in the school year or, should it be the view of the IEP team and to the extent it can be arranged, even in the days before the school year commences. Discussion of the transition planning shall also include ways in which the special education teacher from the 2018-2019/2019-2020 school years can confer/liaise early on in the school year or, should it be the view of the IEP team and to the extent it can be arranged, even in the days before the school year commences.

Within 14 days of the date of this order, the student's IEP team shall meet to devise an occupational therapy ("OT") goal related to pencil grasp, based on the data in the May 2018 re-evaluation report, pencil-grasp input as it may be gleaned from the student's special education teacher from the 2018-2019/2019-2020 school years, and any other OT educator within the District who has knowledge and/or experience with the student's OT needs related to pencil-grasp. The student's IEP shall be revised to provide direct OT services/instruction in support of this goal for 15 minutes per week.

Within 14 days of the date of this order, or as soon as practicable given the schedule of the parent's private S&L evaluator, the student's IEP team—including the S&L evaluator—shall meet to devise S&L goals in line with the private S&L evaluation and/or the input of the S&L evaluator at the IEP meeting. In accord with the private S&L evaluation, the student's IEP shall be revised to provide a minimum of 2 hours per week of S&L services/instruction, the precise frequency of which shall be determined by the IEP team. The parent's S&L evaluator may participate by telephone if that provides for a more expeditious convening of the IEP team. The District shall bear any cost, rate, or fee for the parent's S&L evaluator's preparation for, and participation in, the IEP meeting.

The student's IEP shall be revised to provide direct physical therapy ("PT") services/instruction in support of stairs-negotiation goal for 15 minutes per week.

Within 20 school days of the first day of the 2020-2021 school year, the District shall perform a functional behavior assessment and propose, for consideration by the student's IEP team at an IEP team meeting, a positive behavior support plan as part of the student's IEP.

Finally, for the reasons set forth above, under the authority granted to a hearing officer by 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), the District shall fund independent OT, PT, and orientation-and-mobility ("O&M") evaluations, each under the terms that follow.

On or before August 14th, the District shall provide, via email communication through its counsel to parent's counsel, the names and complete curricula vitae/resumes, of at least three (but no maximum number) independent evaluators experienced in conducting evaluations for educational programming in each of the following areas: OT, PT, and O&M ("independent evaluators"), each of whom will make themselves available to conduct these independent evaluations.

On or before August 21st, the student's parent, to the extent she wishes, may select the independent evaluators in each of these areas ("selected independent evaluators"), indicating her selections via email communication through her counsel to District counsel. As the parent considers which independent evaluators she might choose to conduct the independent evaluations, there shall be no contact by the parent or her counsel with the potential evaluators.

When the parent has indicated to the District the selected independent evaluators, the cost of the independent evaluations shall be at the selected independent evaluators' rate or fee and shall be borne by the District at

public expense. As those arrangements are made, the selected independent evaluators shall be made to understand that it is hoped, but not required or ordered, that the independent evaluation reports can be issued as soon as practicable, but no later than October 23rd, sixty calendar days beyond August 21st, the last day for the selection of evaluators by the parent.

The selected independent evaluators shall also be made to understand, but not required or ordered, that the findings and recommendations, if any, in the independent evaluation reports shall be made with a view toward the student's special education services. The record review, input, observations, assessments, testing, consultation, scope, details, findings, recommendations, and any other content in the independent evaluation reports, shall be determined solely by the selected independent evaluators.

If by August 21st, the student's parent does not wish to select any one, any pair, or all, of the independent evaluator(s) identified by the District, or she has not indicated, by email through counsel, her selection(s), the District may consider this lack of choice and/or communication by the parent to place in the hands of the District the selection of the independent evaluator(s) from the list it provided to the parent. The same timelines for the suggested completion and issuance of the independent evaluation report(s) apply where the District has selected the independent evaluator(s).

After the selected independent evaluators have issued their independent evaluation reports, the student's IEP shall meet to consider the findings of each independent evaluation report ("independent evaluation IEP meeting"). At the independent evaluation IEP meeting, the District shall invite and include the independent evaluator as a participant in the independent evaluation IEP meeting, making scheduling accommodations for the participation of the evaluator, in person or by telephone, as necessary. The District shall bear any cost or rate for the participation of the independent evaluator at the independent evaluation IEP meeting. To the

extent that two, or three, separate independent evaluation IEP meetings are needed as a result of scheduling needs of the independent evaluators, the IEP shall meet twice, or three times, as necessary to consider each independent evaluation report, and this paragraph applies to each of those separate independent evaluation IEP meetings.

The terms of this order regarding the involvement of the independent evaluators shall cease after their attendance at the independent evaluation IEP meeting(s), although nothing in the order should be read to limit or interfere with the continued involvement of the independent evaluator(s), as both parties may mutually agree, or as one party may make singular arrangements therefor.

Finally, nothing in this order should be read to interfere with or limit the ability of the parties to agree otherwise, so long as such agreement is in writing and specifically references this order.

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

07/31/2020