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**

**ODR No. 24221-2021-KE**

**CLOSED HEARING**

**Child's Name:**
H.B.

**Date of Birth:**
[redacted]

**Parents:**
[redacted]

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**Hearing Officer:**
Brian Jason Ford, JD, CHO

**Date of Decision:**
02/02/2021

## Introduction

This special education due process hearing concerns the educational rights of a child (the Student).[1] The Student's parents (the Parents) and the Student's public school district (the District) agree that the Student is a child with disabilities and that the District is the Student's local educational agency (LEA) as those terms are defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. The Parents claim that the District has proposed a special education placement for the Student that, if implemented, would violate the Student's right to be educated in the least restrictive environment (LRE).

More specifically, the Student's currently operational IEP provides a supplemental level of Learning Support and Speech and Language Support. Under that IEP, the Student spends 61% of the school day in a general education classroom in the Student's neighborhood elementary school. In September 2020, the District proposed a new IEP that provides a supplemental level of Life Skills Support and Speech and Language Support. Under the proposed IEP, the Student would spend 27% of the school day in a general education classroom. The proposed IEP would also send the Student to a different elementary school. The Parents rejected the proposed IEP and requested this hearing.

The proposed IEP is more restrictive than the current IEP. IDEA regulations and case law establish clear procedural steps that a school must take when moving a student into a more restrictive placement. In this case, a preponderance of evidence proves that the District did not take necessary

[1] Except for the cover page of this decision and order, identifying information is omitted to the extent possible. Citation to the Parents' exhibits are "P-#." The District's exhibits are "S-#." The transcript is "NT at #."

procedural steps before offering the proposed IEP. Consequently, I prohibit the District from implementing the proposed IEP and order it to comply with required procedures.

## Issue

The Parents present a single issue: Would the proposed IEP, if implemented, violate the Student's right to be educated in the LRE?

## Findings of Fact

I carefully considered all evidence and testimony. I make findings of fact, however, only as necessary to resolve the issue presented. Consequently, all evidence and all aspects of each witnesses' testimony is not explicitly referenced below. I find as follows:

1. The 2016-17 school year was the Student's 1st grade year. S-8.

2. The District evaluated the Student prior to 1st grade and determined that the Student qualified for special education as a child with Other Health Impairment (OHI) due to Attention Deficit Hyperactivity Disorder (ADHD) symptoms and a Speech or Language Impairment (SLI). S-8.

3. During 1st grade, the Student received Learning Support in the Student's neighborhood elementary school (the school that the Student would attend as a child without a disability). S-8.

4. District personnel testified that the Student was not academically or behaviorally successful in 1st grade. For purposes of this decision, I accept the District's characterization of the Student's performance.[2] *See, e.g.* NT at 269-270.

5. After considering moving the Student to a Life Skills placement, the Parents and the District agreed that the Student should repeat the 1st grade Learning Support placement in the 2017-18 school year. *See* NT at 130, 270-271.[3]

6. In July 2017, the Parents had the Student evaluated by a third party, resulting in a private evaluation report (the 2017 Private Evaluation). The 2017 Private Evaluation concluded that the Student's full scale IQ score was 58, and that the Student was a child with an Intellectual Disability (ID). S-7.

7. The Parents shared the 2017 Private Evaluation with the District. The District then initiated its own reevaluation, resulting in a reevaluation report dated August 30, 2017 (the 2017 RR). S-8. Through the 2017 RR, the District changed the Student's qualifying disabilities from OHI and SLI to ID and SLI. S-8.

8. After the 2017 RR, the Student repeated 1st grade as planned. The Student received Learning Support in the Student's neighborhood elementary school during the 2017-18 school year. District personnel

[2] Discussed below, the appropriateness of the Student's prior programming is the subject of a separate, pending hearing.
[3] The parties characterize this decision differently. As recounted by the District's personnel, the District proposed a Life Skills placement, the Parents insisted upon repeating 1st grade in Learning Support, and the District acquiesced to the Parents' demand. The Parents suggests that this was more of a collective decision. For purposes of this decision, the distinction makes no difference.

testified that, as in the prior year, the Student was not academically or behaviorally successful. *See* NT at 134-136. For purposes of this decision, I accept the District's characterization of the Student's performance.

9. Before the 2018-19 school year, the District proposed changing the Student's placement. Through a Notice of Recommended Educational Placement (NOREP) dated August 22, 2018, the District proposed Life Skills Support, Speech and Language Support, and Occupational Therapy – all at the supplemental level – at a different elementary school. S-28 (the 2018 NOREP).

10. The Parents approved the 2018 NOREP, and so the Student received a supplemental amount of Life Skills Support at a different elementary school as a 2nd grader during the 2018-19 school year.

11. The District's Life Skills program was staffed by a teacher and two, full-time aides. District personnel testified that the Student was academically and behaviorally successful – relative to the Student's abilities – during the 2018-19 school year. *See, e.g.* NT at 138-139, 330-341, 389. For purposes of this decision, I accept the District's characterization of the Student's performance.

12. In the summer of 2019, the Parents asked the District to place the Student back into Learning Support at the Student's neighborhood elementary school. The District acquiesced to the Parents' request. *See, e.g.* NT at 140, 220-223.[4]

[4] The parties do not agree about why the Parents asked to move the Student back to the Learning Support program at the neighborhood elementary school. The District underscores

13. The Student started the 2019-20 school year in 3rd grade at the Student's neighborhood elementary school, receiving supplemental Learning Support. Both parties agreed that the Student was not successful in that placement and, during the 2019-20 school year agreed to move the Student to 2nd grade Learning Support at the neighborhood elementary school. The Student was moved into a different classroom with a different Learning Support teacher to effectuate this change. NT at 38, 59, 185-186, 225, 280.

14. When the Student attended 2nd grade Learning Support during the 2019-20 school year, the Student was the same age as most 4th grade children who do not have disabilities. *Passim.*

15. While attending 2nd grade Learning Support during the 2019-20 school year, the Learning Support teacher used replacement curricula for reading and math. Under the replacement reading curriculum, the Student was able to maintain the same reading level throughout the 2019-20 school year but was not able to progress past that level. Under the replacement math curriculum – the same curriculum used in the 2018-19 Life Skills program – the Student's progress was inconsistent. *See* NT at 63-65.

16. In June 2020, the Student's IEP team convened. The District recommended placing the Student back into the Life Skills program at the other elementary school. The Parents advised the District that they were planning to obtain private neuropsychological testing for the

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the reluctancy of its acquiescence. For purposes of this decision, these distinctions make no difference.

Student and asked the District to wait until that testing was complete before offering a placement for the 2020-21 school year. NT at 110-111; P-3.

17. On July 27, 2020, the District issued a NOREP on July 27, 2020 offering the Life Skills program at the other elementary school. The Parents rejected that NOREP, stating that the student was scheduled for private neuropsychological testing on August 28, 2020. The Parents again asked the District to wait until the testing was complete before changing the Student's placement. P-4.

18. When rejecting the NOREP, the Parents requested mediation. The parties participated in mediation and agreed to not change the Student placement until the private testing was complete. NT at 113.

19. The private neuropsychological testing was used to generate a new private evaluation report (the 2020 Private Evaluation). The 2020 Private Evaluation confirmed the prior ID and ADHD diagnoses and ruled out Autism Spectrum Disorder. The private evaluator recommended that the Student continue in the District's Learning Support program, but with a one to one (1:1) aide. The private evaluator recommended consideration of a Life Skills program only after the Student transitioned to middle or high school. P-6.

20. The Parents shared the 2020 Private Evaluation with the District. The parties then met at an IEP team meeting on September 24, 2020, to discuss the 2020 Private Evaluation. NT at 116.

21. The District shared its view of the 2020 Private Evaluation with the Parents both during the IEP team meeting and in correspondence. In sum, the District accepted the results of the 2020 Private Evaluation but rejected the private evaluator's placement recommendation. In its view, the results of the 2020 Private Evaluation were consistent with what it already knew about the Student, providing additional support to move the Student into a Life Skills program. The District saw no reason to delay the transition to a Life Skills program to middle or high school. The District noted, correctly, that the 2020 Private Evaluation provides no explanation as to why the delay was recommended.

22. The District did not communicate with the 2020 private evaluator. Although the District was confused by the 2020 private evaluator's placement recommendation, it did not seek clarification or request the Parents' consent to speak with the private evaluator. NT at 171-172.

23. On September 30, 2020, the District issued a NOREP to the Parents proposing Supplemental Life Skills Support at the other elementary school. S-18.

24. The District's proposed placement removes the Student from the neighborhood elementary school and reduces the amount of time that the Student would spend in general education from 61% of the school day to 27% of the school day. *C/f* S-13, P-1.

25. On October 8, 2020, the Parents rejected the NOREP, indicating that they would request a due process hearing. S-18.

26. On October 15, 2020, the Parents filed the due process complaint in this matter.

27. The Parties agree that the District was obligated under the IDEAs pendency rule to maintain the Student's Learning Support placement in the neighborhood elementary school. As a result, the Student started a 3rd grade Learning Support program at the start of the 2020-21 school year at the same age that most students start 5th grade. NT at 282-283.

28. District personnel testified that the Student has not been successful to date in 3rd grade learning support in the 2020-21 school year. NT at 282-285.

## Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). S*ee also, generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community*

*School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

I find no issue with any witnesses' credibility as all witnesses testified honestly and to the best of his or her ability. To the extent any witnesses' testimony conflicts with another's, those witness either recall events differently or have different opinions. To the extent that my findings of fact depend on accepting one witnesses testimony over another's, I have accorded more weight to the witness based on the witnesses' testimony and the other evidence presented.

As noted in the findings above, I accept the District's descriptions of the Student's performance in various placements as true for purposes of this decision. The appropriateness of the Student's current and prior placements is pending before me in another matter.

## Legal Principles

### *The Burden of Proof*

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), *citing*

*Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parents are the party seeking relief and must bear the burden of persuasion.

### ***Free Appropriate Public Education (FAPE)***

The Parents' only claim in this matter is that the proposed IEP would violate the Student's right to be placed in the LRE. Understanding the LRE mandate requires an understanding of the Student's right to a FAPE.

The IDEA requires the states to provide a "free appropriate public education" to all students who qualify for special education services. 20 U.S.C. §1412. LEAs meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child's individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

Third Circuit's standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew F.* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when "the individualized educational program developed

through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." *Id* at 3015.

Before *Endrew*, the Third Circuit interpreted *Rowley* to mean that the "benefits" to the child must be meaningful, and the meaningfulness of the educational benefit must be relative to the child's potential. *See T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the holding in *Endrew F.* is no different.

A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. *See, Lachman v. Illinois State Bd. of Educ*., 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than "trivial" or "*de minimus*" benefit. *See Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). *See also Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. *See, e.g., Lebron v. N. Penn Sch. Dist., 769 F. Supp. 2d 788 (E.D. Pa. 2011).* Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a "merely more than *de minimus*" standard, holding instead that

the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id* at 1000. In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work. *Id*. Education, however, encompasses much more than academics. Grade-to-grade progression is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

### ***Least Restrictive Environment (LRE)***

The IDEA requires LEAs to "ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services." 34 C.F.R. § 300.115(a). That continuum must include "instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions." 34 C.F.R. § 300.115(b)(1); *see also* 34 C.F.R. § 300.99(a)(1)(i). LEAs must place students with disabilities in the least restrictive environment in which each student can receive a FAPE. *See* 34 C.F.R. § 300.114. Generally, restrictiveness is measured by the extent to which a student with a disability is educated with children who do not have disabilities. *See id*.

In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit held that LEAs must determine whether a student can receive a FAPE by adding supplementary aids and services to less restrictive placements. If a student cannot receive a FAPE in a less restrictive placement, the LEA may offer a more restrictive placement. Even then, the LEA must ensure that the student has as much access to non-disabled peers as possible. *Id at* 1215-1218.

More specifically, the court articulated three factors to consider when judging the appropriateness of a restorative placement offer:

"First, the court should look at the steps that the school has taken to try to include the child in a regular classroom." Here, the court or hearing officer should consider what supplementary aids and services were already tried. *Oberti v. Bd. of Educ.,* 995 F.2d 1204, 1216 (3d Cir. 1993).

"A second factor courts should consider in determining whether a child with disabilities can be included in a regular classroom is the comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom. The court will have to rely heavily in this regard on the testimony of educational experts." The court cautioned, however, that the expectation of a child making grater progress in a segregated classroom is not determinative. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216-1217 (3d Cir. 1993).

"A third factor the court should consider in determining whether a child with disabilities can be educated satisfactorily in a regular classroom is the possible negative effect the child's inclusion may have on the education of

the other children in the regular classroom." The court explained that a child's disruptive behavior may have such a negative impact upon the learning of others that removal is warranted. Moreover, the court reasoned that disruptive behaviors also impact upon the child's own learning. Even so, the court again cautioned that this factor is directly related to the provision of supplementary aids and services. In essence, the court instructs that hearing officers must consider what the LEA did or did not do to curb the child's behavior in less restrictive environments. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1217 (3d Cir. 1993).

There is no tension between the FAPE and LRE mandates. There may be a multitude of potentially appropriate placements for any student. The IDEA requires LEAs to place students in the least restrictive of all potentially appropriate placements. There is no requirement for an LEA to place a student into an inappropriate placement simply because it is less restrictive. However, LEAs must consider whether a less restrictive but inappropriate placement can be rendered appropriate through the provision of supplementary aids and services.

## Discussion and Conclusions of Law

The District's proposed placement is more restrictive than the Student's current placement. The comparative restrictiveness of the proposal has nothing to do with the shift from Learning Support to Life Skills because the type of support that the Student receives is not relevant to any measure of restrictiveness. Life Skills is no more restrictive than any other special education placement because restrictiveness is measured by the extent to which the Student is included, not the type of service that the Student receives. In this case, the District's proposal is more restrictive because it

reduces the amount of time that the Student will spend in general education settings and moves the Student out of the Student's neighborhood elementary school.

A preponderance of evidence in the record establishes that the District did not determine whether supplementary aides and services could be added to the Learning Support program at the Student's neighborhood elementary school to enable the Student's success there before proposing a more restrictive placement. This inaction runs afoul of the standard established nearly 30 years ago in *Oberti*. The District must determine whether supplementary aides and services could enable the Student to receive a FAPE in the current placement before proposing anything more restrictive.

In making this determination, I reach no conclusion about whether any of the Student's placements through the Student's current placement were reasonably calculated to provide a FAPE at the time they were offered. That issue is pending before me at ODR 24455-2021-KE. The Parents attempted to amend their complaint to include that issue. The District objected to the amendment and objected to consolidation when the Parents raised that issue in a separate complaint. Similarly, I reach no conclusion as to whether the Student could obtain a meaningful educational benefit in the District's proposed Life Skills program. In fact, for analysis, I will assume that the Student could receive a FAPE under the District's proposal. [5]

[5] After the District's effort to keep questions of the appropriateness of prior placements out of this hearing, the District asks me to resolve this matter based on the Students successes and failures in prior placements. Discussion about this disconnect are captured in the transcript, as are the Parents' objections to evidence concerning the Student's prior placements. Ultimately, the parties' evidence dispute is moot. For this case only, I accept the District's statements as to the Student's performance in prior placements. By doing so, I am able to assume that 1) the Student could receive a FAPE in the District's proposed placement and 2) the Student cannot receive a FAPE in the pendent placement (which includes the current level of supplementary aides and services). The question in this case, therefore, is limited to the District's fulfillment of the *Oberti* process.

As explained above, any student could receive a FAPE in a multitude of placements (at least in theory). The District's obligation is to offer the least restrictive of those placements. Finding the least restrictive placement necessarily requires serious consideration of supplementary aides and services that can enable the Student to make meaningful progress in inclusive settings.

In *Oberti*, the court noted the importance of examining the success or failure of supplementary aides and services that were previously tried. In this case, according to the District, the Student was successful using the Life Skills curriculum in a setting with one teacher and two aides. Then, a very similar curriculum was used in the Learning Support classroom without aides and, according to the District, the Student did not make progress. Without resolving questions about whether the Student's past placements were appropriate I accept the District's testimony as to the Students actual progress in these placements. As such, the District had actual knowledge that the Student was successful in a similar curriculum with additional supplementary aides and services. Despite this knowledge, no preponderant evidence establishes that the District considered increasing the aides and services provided to the Student in Learning Support before proposing Life Skills. This runs afoul of the process contemplated in *Oberti*.

During the hearing, District personnel testified as to their belief that adding an aide to the Student's pendent placement will not make the Student more successful in that placement. I have no reason to doubt that those witnesses believe what they said. My inquiry, however, concerns the question of whether the District considered the full range of supplementary aides and services as it developed its proposed placement. This goes beyond the

Parents specific requests for a 1:1 aide and cannot be limited to the aides and services typically provided in the Learning Support program at the Student's neighborhood school. The record as a whole shows that the IEP team was choosing between two predefined options as opposed to crafting services around the Student's needs – and only then deciding the least restrictive environment in which those individualized services can be implemented.

In making this determination, I note that the IDEA does not require the District to make all services available in all locations. In fact, schools are permitted to move Students out of their neighborhood schools so that they can attend programs that are necessary for the provision of FAPE. *See, e.g. Lebron v. N. Penn Sch. Dist.,* 769 F. Supp. 2d 788 (E.D. Pa. 2011). The District is under no obligation to recreate its Life Skills program within in the Student's neighborhood elementary school. The record of this case, however, establishes that the District is able to bring curricular components of the Life Skills program into the Student's neighborhood school. The District must now consider whether additional supplementary aides and services should be added there as well.

In making this determination, I also note that LEAs have broad authority to make school building selection determinations. *See P.V. v. Sch. Dist.,* No. 2:11-cv-04027, 2013 U.S. Dist. LEXIS 21913 (E.D. Pa. Feb. 19, 2013). It is possible that the Student's IEP team will conclude that the model of specially designed instruction, program modifications, and supplementary aides and services that the Student requires to be educated in the LRE matches programs that exist outside of the Student's neighborhood school. If so, the District's considerable building selection authority in conjunction with its

option to not make ever service available in every building may result in placement outside of the Student's neighborhood school.

In making this determination, I also note that there are important differences between Learning Support and Life Skills. Learning Support is defined as services for students with disabilities who require services primarily in the areas of reading, writing, mathematics, or speaking or listening skills related to *academic performance*. *See* 22 Pa Code § 14.131(a)(1)(v). Life Skills Support is defined as services for students with disabilities who require services primarily in the areas of academic, functional or vocational skills necessary for *independent living*. *See* 22 Pa Code § 14.131(a)(1)(v). Adding supplementary aides and services to a Learning Support program will not convert that program into a Life Skills program. Similarly bringing academic curricula used in Life Skills into a Learning Support program (as was done in this case) does not change Learning Support into Life Skills. Should the IEP team determine that the Student requires Life Skills in order to receive a FAPE, nothing herein prohibits the District from offering Life Skills. My holding is limited to my determination that the District failed to consider whether the Student's current program can be enhanced though supplementary aides and services so that the Student could receive a FAPE without moving to a more restrictive placement.

Finally, decisions about whether supplementary aides and services can be used to make the Student's current placement appropriate and, if so, what aides and services are necessary, must be evidence-based. I agree with the District that the Student's most recent evaluation, the 2020 Private Evaluation, is conclusory and confusing in regard to its placement recommendation. At the same time, the 2020 Private Evaluation is the most

current assessment of the Student's needs. Therefore, the District must reach out to the 2020 Private Evaluator to seek clarity if possible. I cannot require the Parents to provide consent for that communication, but recommendations within the 2020 Private Evaluation will not warrant serious consideration if the Parents withhold consent.

## Summary

The District proposed moving the Student to a more restrictive environment without considering whether supplementary aides and services could enable the Student to remain in a less restrictive environment. That, under Third Circuit case law, is a procedural violation of the Student's right to be educated in the LRE. I order the District to comply with IDEA procedures moving forward.

## ORDER

Now, February 2, 2021, it is hereby **ORDERED** as follows:

1. Within 10 days of this order, the District shall seek the Parents' consent to communicate directly with the author of the 2020 Private Evaluation.

2. The Parents shall reply to the District's request for consent within 10 days of receipt, either granting or withholding consent.

3. If the Parents provide consent, the District shall promptly reach out to the author of the 2020 Private Evaluation to obtain information as indicated in the accompanying decision.

4. Within 10 days of either the Parents withholding of consent or the District's receipt of information from the author of the 2020 Private Evaluation, the District shall invite the Parents to an IEP team meeting to develop an IEP for the Student in accordance with the accompanying decision and all other IDEA mandates.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED.**

/s/ Brian Jason Ford
HEARING OFFICER