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**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 30209-24-25

Child's Name:

W.M.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Brian Jason Ford

Date of Decision:

01/10/2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parents' (the Parents) requested this hearing against the Student's public school district (the District). The Parents' claims arise under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.*

The Student attended school in the District during the 2017-18, 2018-19, and first half of the 2019-20 school years. In December 2019, the District evaluated the Student and found that the Student was a child with a disability. Almost immediately thereafter, the Parents withdrew the Student and placed the Student in a specialized private school (the Private School). The District offered special education for the Student through an Individualized Education Plan (IEP), which the Parents rejected. Ultimately, the parties resolved their dispute with a settlement agreement (the Agreement).

Under the Agreement, the Student attended the Private School, receiving tuition in lieu of a free appropriate public education (FAPE) through the end of the 2021-22 school year. The District evaluated the Student and offered an IEP for the 2022-23 school year. The Parents rejected that IEP, kept the Student at the Private School, and placed the District on notice that they would seek tuition reimbursement. The Student attended the Private School during the 2022-23 school year at the Parents' expense.

Then, the District collected information about the Student generated during the 2022-23 school year and offered in IEP for the 2023-24 school year. Like the year before, the Parents rejected that IEP, kept the Student at the Private School, and placed the District on notice that they would seek tuition reimbursement. The Student attended the Private School during the 2023-24 school year at the Parents' expense.

The Parents demand reimbursement for the Private School's tuition and related expenses incurred during the 2022-23 and 2023-24 school years. Discussed below, I find that the District offered a FAPE to the Student during the school years in question.

Issues

The parties filed stipulations, and that document includes a joint statement of the issues. The parties' statement lists each element of a tuition reimbursement claim as a separate issue to be adjudicated. I decline to

adopt that framing because the elements of a tuition reimbursement claim are taken in sequence, and the test ends if the Parents do not satisfy their burden at any point. *See discussion below.* There is, however, no dispute about what issues are presented:

1. Are the Parents entitled to reimbursement for tuition and related expenses resulting from the Student's placement in the Private School during the 2022-23 school year?
2. Are the Parents entitled to reimbursement for tuition and related expenses resulting from the Student's placement in the Private School during the 2023-24 school year?

Findings of Fact and Stipulations

I reviewed the record in its entirety but make findings only as necessary to resolve the issues before me. Both parties worked to boost efficiency by filing joint exhibits and joint stipulations of fact.

The parties filed an eleven-page document containing 83 stipulated facts. I informed the parties that I would accept joint stipulations as if they were my own findings, and I now do so. I decline, however, to reprint the stipulations in their entirety within this decision. Rather, I cite to the stipulations (as *Stip.*) as needed.

The 2017-18, 2018-19, and 2019-20 School Years

1. The Student enrolled in the District for the 2017-18 school year and attended the District during the 2017-18 school year. *Stip.*
2. The Student attended the District during the 2018-19 school year. *Stip.*
3. The Student attended the District from the start of the 2019-20 school year through January 2, 2020. *Stip.*
4. On December 19, 2019, the District, completed an Evaluation Report of the Student (the 2019 ER), identifying the Student as a child with a Specific Learning Disability (SLD) and Other Health Impairment (OHI). *Stip.*
5. On January 2, 2020, the Parents withdrew the Student from the District and enrolled the Student at the Private School. *Stip.* The

Student attended the Private School for the remainder of the 2019-20 school year. *Passim*.

6. The Private School is a very small, specialized school that focuses on educating children with language-based learning disabilities like dyslexia. *Passim*.
7. On January 13 and 31, 2020, the parties met at IEP team meetings. The District offered IEPs during these meetings. The IEPs were consistent with the 2019 ER. *Stip*.
8. On April 29, 2020, the Parents rejected the District's offers using a Notice of Recommended Educational Placement (NOREP). *Stip*.
9. On May 27, 2020, the parties met again to revise the Student's IEP. The District offered a revised IEP at that time. *Stip*.
10. On June 11, 202, the Parents rejected the revised IEP via a NOREP. *Stip*.

The 2020-21 School Year

11. The Student attended the Private School during the 2020-21 school year. *Stip*.
12. On December 14, 2020, the Parents and the District executed an Educational Services Agreement (the settlement agreement or Agreement). *Stip*.
13. Under the Agreement, in exchange for tuition, the Parents waived all claims against the District through September 1, 2022. *Stip*.

The 2021-22 School Year

14. The Student attended the Private School during the 2021-22 school year. *Stip*.
15. On February 23, 2022, the District sought the Parents' consent to reevaluate the Student to develop a special education program for the 2023-24 school year. The Parents provided consent the next day. *Stip*.
16. On April 22, 2022, the District completed its evaluation and issued a Reevaluation Report (the 2022 RR). *Stip*.

17. Though the 2022 RR, the District found that the Student continued to be a child with an SLD and OHI. *Stip.*
18. The Parents raise no claims about the procedural or substantive appropriateness of the 2022 RR, which is discussed below. *Passim*, see also *Due Process Complaint*.
19. On May 11, 2022, the parties met at an IEP team meeting, and, on May 17, 2022, the District offered an IEP for the 2022-23 school year (the 2022 IEP). *Stip.*¹
20. The Parents raise no claims about the procedural aspects of the 2022 IEP. *Passim*. The substantive aspects of the 2022 IEP are discussed below.
21. On May 25, 2022, the Parents rejected the District's offer via a NOREP and sent a letter placing the District on notice of their intent to seek tuition reimbursement for the Private School for the 2022-23 school year. *Stip.*
22. On May 27, 2022, the District told the Parents that it would not fund the Student's placement at the Private School during the 2022-23 school year. *Stip.*

The 2022-23 School Year

23. On September 1, 2022, the Agreement expired. *Stip.*
24. The Student attended the Private School at the Parents' expense during the 2022-23 school year. *Stip.*
25. On January 23, 2023, the Parents requested programming from the District for the 2023-24 school year. *Stip.*
26. On March 1, 2023, the parties met at an IEP team meeting, and, on March 23, 2023, the District offered an IEP for the 2023-24 school year (the 2023 IEP). *Stip.*²

¹ The IEP team met on May 11, 2022, and the District issued a NOREP on May 17, 2022. *Stip.*

² The IEP team met on March 1, 2023, and the District issued a NOREP on March 23, 2023. *Stip.*

27. The Parents raise no claims about the procedural aspects of the 2023 IEP. *Passim*. The substantive aspects of the 2023 IEP are discussed below.
28. On March 31, 2023, the Parents rejected the District's offer via a NOREP and sent a letter placing the District on notice of their intent to seek tuition reimbursement for the Private School for the 2023-24 school year. *Stip*.

The 2023-24 School Year

29. The Student attended the Private School during the 2023-24 school year. *Stip*.
30. On January 3, 2024, the District sought the Parents' consent to reevaluate the Student. The Parents provided consent on January 10, 2024. *Stip*.
31. On March 8, 2024, the District completed its reevaluation and issued a reevaluation report (the 2024 RR). *Stip*.
32. Through the 2024 RR, the District found that the Student continued to be a child with an SLD and OHI. *Stip*.
33. On April 2, 2024, the parties met at an IEP team meeting, and, on April 8, 2024, the District offered an IEP for the 2024-25 school year (the 2024 IEP).³ *Stip*.
34. On April 18, 2024, the Parents rejected the District's offer via a NOREP. *Stip*.⁴
35. On September 1, 2024, the Parents filed a Due Process Complaint initiating these proceedings.

³ There is some question as to whether the 2024 IEP controls for assessing the Parents' tuition reimbursement claim from April 8, 2024, through the end of the 2023-24 school year. I find that it does not. The parties understood that the District's proposal was to implement the 2024 IEP at the start of the 2024-25 school year. Both parties understood that the Student would remain at the Private school at least until the end of the 2023-24 school year. The 2023 IEP controls for assessing the Parents' tuition reimbursement claim during the 2023-24 school year. Also, The IEP team met on April 2, 2023, and the District issued a NOREP on April 8, 2024. *Stip*.

⁴ Around the same time, the Parents also placed the District on notice of their intent to seek tuition reimbursement for the 2024-25 school year. No claims concerning the 2024-25 school year are presented in this due process hearing.

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.”). *See 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 that all witnesses testified credibly. To some extent, witnesses reached different conclusions from the same information. Those represent genuine differences of opinion, and do not impact upon each individual witness' credibility. None of those differences are outcome determinative in this case.

Applicable 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 case, the Parents are the party seeking relief and must bear the burden of persuasion.

Free Appropriate Public Education (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.

Local education agencies 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.

This long-standing Third Circuit 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* 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, 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.

Third Circuit consistently interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is 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 *Endrew* decision is no different.

An LEA 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). 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., J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). However, the meaningful benefit standard requires LEAs to provide more than a “trivial” or “de minimis” 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). 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*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” 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, therefore, 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.

Tuition Reimbursement

A three-part test is used to determine whether parents are entitled to reimbursement for special education services. The test flows from *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District v. Carter*, 510 U.S. 7 (1993). This is referred to as the “Burlington-Carter” test.

The first step is to determine whether the program and placement offered by the LEA is appropriate for the child. The second step is to determine whether the program obtained by the parents is appropriate for the child. The third step is to determine whether there are equitable considerations that merit a reduction or elimination of a reimbursement award. *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007). The steps are taken in sequence, and the analysis ends if any step is not satisfied.

Discussion

The 2022-23 School Year

The Parents reimbursement claim for the 2022-23 school year is resolved by examining the sequence of events and the claims that are *not* presented – all of which is not in dispute. On April 22, 2022, the District issued the 2022 RR. The Parents bring no claims whatsoever concerning the 2022 RR. Without any challenge, I must find that the 2022 RR was substantively appropriate. Then, on May 11, 2022, the District used the 2022 RR to draft

the 2022 IEP. The 2022 IEP, therefore, must be appropriate if it squares with the 2022 RR. See *generally*, 20 U.S.C. § 1414. Further, the 2022 IEP was the District's special education offer for the 2022-23 school year. If the 2022 IEP was appropriate the Parents are not entitled to reimbursement for the 2022-23 school year because, if the District offered a FAPE, the Parents cannot move past the first prong of the *Burlington-Carter* test.

Given the foregoing, it is the Parents' burden to prove that the District identified a need in the 2022 RR and then failed to address that need in the 2022 IEP. There is no preponderant evidence of any such discrepancy in the record of this hearing.

While the appropriateness of the 2022 RR is not in dispute, some information about it is helpful for context. The parties describe the 2022 RR in their stipulations, and a copy of the document was entered into evidence. J-31. The 2022 RR included information about the Student's educational history, parental input, input from service providers, information from the Private School, and an observation by the evaluator at the Private School. The Student's conative functioning was found to be in the average to high average range. The Student's academic performance was also found to be in the average to high average range. The Student's orthographic processing skills were strong, the Student was reading at grade level, and there was no indication of dyslexia. However, the 2022 RR found comparative deficits in spelling and written expression, oral reading fluency, executive functioning, and some Occupational Therapy (OT) needs. *Stip.*, J-31.

The 2022 RR drove the 2022 IEP. The 2022 IEP included goals for oral reading fluency, writing, and fine motor control and visual motor integration (consistent with the identified OT needs). At this point, the parties' views of the Student's reading needs were quite divergent. The parties agree that the 2022 RR found that the Student was reading at grade level, and the Parents do not dispute the accuracy of that result. Rather, the Parents highlight the Student's deficits in reading fluency and argue that such deficits tend to impact upon other domains like reading comprehension. There is no evidence that the Student's comparatively low oral reading fluency resulted the sort of wide-ranging educational deficits that the Parents suggest. Regardless, the 2022 RR identified a need in oral reading fluency, and the 2022 IEP targeted that need. Of equal importance, the 2022 IEP included program modifications and Specially Designed Instruction (SDI) that were reasonably calculated to enable the Student to attain the goals, and a plan to transition the Student from the Private School back to the District. J-33.

The first part of the *Burlington-Carter* test requires me to determine if the District offered an appropriate placement. I find that the 2022 IEP was

reasonably calculated to provide a FAPE under the *Endrew* standard when it was offered. The Parents, therefore, are not entitled to tuition reimbursement for the 2022-23 school year.

The 2023-24 School Year

The sequence of events and the claims that are *not* presented also matter for assessing the reimbursement claim for the 2023-24 school year. Just less than one year after the 2022 RR, on March 23, 2023, the District issued the 2023 IEP. The IDEA does not typically require more than one evaluation per year and, as noted, there is no claim that the 2022 RR was deficient.⁵ At the same time, the IDEA does not permit the District to ignore the Student's progress in the Private School during the 2022-23 school year. Rather, in response to the Parent's request for programming in the 2023-24 school year, the District was obligated to consider information about the Student's progress at the Private School, decide if more information or evaluations were needed, and then offer an appropriate IEP. The District followed this path.

The Parents requested a 2023-24 program from the District in late January 2023. In February 2023, the District collected and considered information about the Student's progress in the Private School. While the District did not complete a reevaluation as that term is described at 20 U.S.C. § 1414, it did obtain updated baseline testing relative to the goals in the 2022 IEP (J-46). The District also considered a large amount of information from the Private School, although some of that information was not provided until late February 2023. *Id.* Information from the Private School included narrative teacher input, report cards, multiple objective assessments of the Student's reading abilities, and an OT evaluation conducted by the Private School in January 2023. *Id.* The District also considered the 2022 RR, which was still valid at that time. With this information, the District was able to identify needs in written expression (spelling), executive functioning, and OT (e.g. visual motor integration, sensory regulation, handwriting). *Id.*

There is no preponderant evidence in the record that the Student's needs that the District identified during the 2023 IEP development process were inaccurate or incomplete. As with the 2022 IEP, the 2023 IEP included goals to improve the Student's needs as identified, and modifications and SDI that were reasonably calculated to enable the Student to attain those goals. (J-46). A notable difference between the 2022 IEP and the 2023 IEP is that the 2023 IEP does not include an oral reading fluency goal. The District

⁵ There are, of course, many exceptions to the general rules concerning the frequency of evaluations. None of those exceptions are applicable in this case.

considered that the Student's overall reading ability had remained at grade level, and the Student's reading abilities were consistently found to be in the average range according to the Private School's reading assessments. As with the prior year, there is no evidence in the record of this case that the Student's comparatively low oral reading fluency scores had the sort of broad, overarching impact upon the Student's education that the Parents suggest. Removal of this goal illustrates the District's careful consideration of and responsiveness to a two-year pattern of data, provided mostly by the Private School.⁶

The 2024 RR and the 2024 IEP are irrelevant to the analysis. The *Burlington-Carter* test examines the District's offer at the time that the Parents choose to place the Student at the Private School for the 2023-24 school year. The District's offer at that time was the 2023 IEP. The parties recognized this in their stipulations, although there was some debate about this during the hearing. Regardless of the parties' positions, the law is clear. The District made its offer for the 2023-24 school year in 2023. The District made no other offer before the start of the 2023-24 school year. The Parents had the 2023 IEP – and only the 2023 IEP – to consider when choosing to keep the Student at the Private School. The 2024 IEP, issued in April 2024, can neither thwart nor prove the Parents' tuition reimbursement claim.

While the facts are different, the analysis for the 2023-24 school year is identical to the 2022-23 school year. The first part of the *Burlington-Carter* test requires me to determine if the District offered an appropriate placement. I find that the 2023 IEP was reasonably calculated to provide a FAPE under the *Endrew* standard when it was offered. The Parents, therefore, are not entitled to tuition reimbursement for the 2023-24 school year. The Parents have not substantiated the first part of the test, and so the analysis ends.⁷

⁶ The parties agree that the information provided by the Private School paints an accurate picture of the Student's progress therein. That progress is captured in the stipulations, the documents entered as evidence, and testimony from the Parents, Private School personnel, District observers, and the Parents' private evaluators. Large portions of that information were available to the District when developing the 2023 IEP. It was appropriate for the District to use the information that it received from the Private School in the IEP development process.

⁷ A significant part of the record and the stipulations concerns the appropriateness of the Private School. I reach no conclusions about the appropriateness of the Private School for the Student because the sequence of the *Burlington-Carter* analysis ends at prong one. However, the stipulations and the record paint a clear picture of the Private School and the Student's success in that placement – which extends well beyond academics.

Summary and Legal Conclusions

The *Burlington-Carter* test for tuition reimbursement provides a three-part analysis that is taken in sequence, and that ends if any part is not satisfied. The first step of the analysis is to determine if the District offered a FAPE prior to the Student's placement in the Private School. For both the 2022-23 and 2023-24 school year, I find that the District offered a FAPE.

For the 2022-23 school year, the District evaluated the Student and wrote the 2022 RR. There is no dispute about the 2022 RR, and so I find that the 2022 RR was appropriate. The District then used the 2022 RR to draft the 2022 IEP. The 2022 IEP was reasonably calculated to provide a FAPE when it was offered because it provides goals and SDI in response to the needs identified in the 2022 RR.

For the 2023-24 school year, a few key facts are different, but the analysis is the same. The District did not conduct a new reevaluation. Rather, the District had the 2022 RR and supplemented that document with substantial information from the Parents, service providers, and the Private School. That information was accurate and complete. The District used that information to reach conclusions about the Student's needs and to draft the 2023 IEP. On the record before me, I find that the 2023 IEP was reasonably calculated to provide a FAPE when it was offered because it provides goals and SDI in response to the Student's needs.

Finally, the Parents reference both the IDEA and Section 504 in their due process complaint. It is not clear that Section 504 provides an independent basis for a tuition reimbursement claim – separate and apart from the IDEA. Regardless, as applied in this case, both parties agree that the *Burlington-Carter* test is the correct analysis for the entirety of the claim. I agree.

ORDER

Now, January 10, 2025, it is hereby **ORDERED** that the Parents' demand for reimbursement of tuition and other expenses incurred during the 2022-23 and 2023-24 school years is **DENIED** and **DISMISSED**.

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

/s/ Brian Jason Ford
HEARING OFFICER