



Student alleges that the School District's updated IEP failed to provide FAPE arising from various deficiencies, specifically: (1) the expected level of achievement falls below a mastery level; (2) failure to offer scientific, research-based programming in all areas of academic need; (3) failure to have accurate and sufficiently descriptive present levels of performance; and (4) failure to provide sufficient support in related services such as physical therapy, occupational therapy and speech and language therapy. Student seeks private tuition reimbursement for the 2020-2021 school year. This opinion addresses whether the School District's revised IEP would have provided a free and appropriate education for Student for the 2020-2021 academic year.

**Facts as Determined in Evidentiary Hearing:**

REDACTED STUDENT the REDACTED of REDACTED (hereinafter collectively referred to as "Parent"), was born on REDACTED and is currently REDACTED years old. REDACTED (hereinafter referred to as "Student") attended REDACTED SCHOOL 1 in the REDACTED SCHOOL DISTRICT (the "District") through Delaware's school choice program beginning with the 2012-2013 (REDACTED) school year until February 2020 (REDACTED ) of the 2019 – 2020 school years.

In February of 2020, Parent elected to remove Student from the School District. At which time, Student attended REDACTED PRIVATE SCHOOL for the conclusion of the REDACTED school year. At REDACTED Private School, Student utilized Read&Write for Google to assist REDACTED in REDACTED learning environment. Additionally,

REDACTED PRIVATE SCHOOL required the Student to sit at the front of the classroom to aid with REDACTED visual and audio impairments. During the 2020 academic school year, REDACTED Private School administered the WMRT III Reading inventory<sup>1</sup>, Student demonstrated basic skills were at or below the 1<sup>st</sup> grade level<sup>2</sup>. Additionally, REDACTED PRIVATE SCHOOL assessed Student utilizing I-Ready Reading Test, which Student performed at grade level 1 for comprehension/literature, grade level K for phonics/high frequency words, vocabulary and informational text<sup>3</sup>.

Aside from utilizing standardized testing measures, REDACTED PRIVATE SCHOOL provided course comments in Student's report cards. REDACTED progress reports indicated that "REDACTED needs continued practice with high frequency words<sup>4</sup>." As far as reading comprehension, the progress report cited that "[Student's] most frequent missed skill was identifying the author's purpose of the story and recognizing the narrative point of view<sup>5</sup>." Additionally, REDACTED PRIVATE SCHOOL provided the District with a narrative of Student's academic performance<sup>6</sup>.

The narrative of Student's academic progress revealed that Student performed at or below grade level 1 on the WMRT III Reading Inventory and I-Ready Reading Test<sup>7</sup>. The

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<sup>1</sup> J28, J29, J30

<sup>2</sup> J1-008,

<sup>3</sup> J1-008

<sup>4</sup> J22-237

<sup>5</sup> J22-238

<sup>6</sup> J23

<sup>7</sup> J23-249

notes further indicated that Student “is able to accurately code and read words which follow the VC pattern, derivatives with suffix ed, ful, ness, less, s, and ing<sup>8</sup>.” In the skill of writing, REDACTED PRIVATE SCHOOL emphasized that “Student had and continues to have difficulty with handwriting and fine motor skills<sup>9</sup>.” Finally, the narrative provided that Student “tested at grade level 1<sup>10</sup> for numbers and operation and algebra and algebraic thinking, and grade level K for measurement and data, and geometry<sup>11</sup>.”

On June 24, 2020, Parents emailed the District stating that they were “considering returning [Student] to the District for the upcoming school year<sup>12</sup>” and “requesting an updated evaluation and IEP from the District.” As a result of this email, the District offered Student/Parent the opportunity for an updated evaluation, which required an in-person meeting or evaluation. However, the Student/Parent rejected the opportunity for an updated in-person evaluation, citing concerns arising from the Covid-19 pandemic and the Student’s health conditions. Due to the Covid-19 pandemic and Parent’s unwillingness to update the evaluation in-person, the District failed to perform an updated evaluation; however, the District relied upon academic records from REDACTED PRIVATE SCHOOL, Nemours Health assessments and other data available to the District<sup>13</sup>. Despite

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<sup>8</sup> J23-249

<sup>9</sup> JP23-250

<sup>10</sup> I-Ready Math Test in February 2020

<sup>11</sup> JP23-250

<sup>12</sup> The upcoming school year would be the Student’s REDACTED academic year.

<sup>13</sup> JP1

the Covid-19 pandemic and utilization of an on-line education option, the District failed to provide alternatives for performing evaluations remotely in circumstances similar to Student/Parent's objection to an in-person evaluation.

While Parent rejected an in-person evaluation, Parent enrolled Student at REDACTED DISTRICT SCHOOL 2 for the 2020-2021 school year demonstrating their intent to utilize the District for Student's education. Additionally, Parent also signed an enrollment contract on July 27, 2020 to re-enroll Student for the 2020-2021 school year in REDACTED PRIVATE SCHOOL.

Student's primary disability classification is Other Health Impairment. Student's secondary classifications are Visual Impairment and Hearing Impairment. The most recent audiological examination<sup>14</sup> revealed that Student has a documented stable unilateral mild hearing loss in the left ear and normal hearing in the right ear<sup>15</sup>. Information from the most recent occupational therapy session<sup>16</sup> showed that the Student scored in the very poor range Beery VMI and Motor Coordination, and Visual perception tests; however, subjective notes emphasized that the Student made great progress and improvement in the area of occupational therapy.<sup>17</sup>

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<sup>14</sup> Dated February 17, 2020

<sup>15</sup> J1-006

<sup>16</sup> Conducted on June 2, 2020

<sup>17</sup> J1-006

Nemours Health also screened Student in the areas of speech and language.<sup>18</sup> The report indicated that Student “continues to present with a language delay, specifically with decreased phonological awareness skills and impaired reading skills<sup>19</sup>.” Additionally, the speech and language assessment revealed that “Student demonstrated growth in REDACTED blending of words and memory for digits”; however, “[r]apid digit/letter naming continues to be difficult<sup>20</sup>.” The Nemours Health report clearly specified that “[b]ased on clinical judgment additional testing was needed in the area of receptive and expressive language<sup>21</sup>.”

Parent also advanced concerns regarding Student’s anxiety and dyslexia; however, the record fails to provide substantiating documentation regarding these two (2) health issues.

Parent and District conducted an IEP meeting on August 5, 2020. Prior to conducting this IEP meeting, District obtained information from REDACTED PRIVATE SCHOOL (hereinafter “REDACTED PRIVATE SCHOOL”). During the August 5<sup>th</sup> IEP meeting, Parent raised concerns regarding various goals, benchmarks, and supports that the District intended to rely upon to assist in Student’s development in making meaningful progress. Most importantly, Parent objected to a reclassification of Student into the C setting citing concerns regarding the Student’s transition to a new environment or school.

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<sup>18</sup> J1-007

<sup>19</sup> J1-007

<sup>20</sup> J1-007

<sup>21</sup> J1-007

In the District’s prior written notice dated August 5, 2020, it is clear that Parent preferred to leave Student in a B setting at this time as Student is already transitioning into a new school and that the setting should be addressed at a future IEP meeting<sup>22</sup>.

While the Parent raised legitimate concerns during IEP meeting, the District advanced a comprehensive IEP designed to assist the Student in making meaningful progress. The IEP addresses Reading goals, specifically phonics and decoding blending sounds, indicating that “[Student] requires small group instruction in foundational reading skills. . . grade level assessments must be read aloud to REDACTED [and] redirection to task and reteaching.<sup>23</sup>” This area further advised that Student “requires a multi-sensory, systematic phonics-based approach to reading with frequent reteaching and repetitions.<sup>24</sup>” Likewise, the District detailed various elements of Student’s achievements, evaluations, and modifications and support in mathematics.<sup>25</sup> Student’s IEP strongly advocates for “repeated practice, re-teaching, and adult support in a 1:1” setting in areas of both math problem solving and math calculations<sup>26</sup>. A more thorough summary of the IEP follows.

On August 25, 2020, Parent emailed the District stating that “we do not feel that the programming, services, and placement that the School District is offering for the upcoming year will meet [Student]’s educational needs. We are providing notice that we intend to

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<sup>22</sup> J8-110

<sup>23</sup> J1-013

<sup>24</sup> J1-013

<sup>25</sup> J1-015- J1-018

<sup>26</sup> J1-015 – J1-017

place [Student] at REDACTED PRIVATE SCHOOL for the 2020-2021 school year, and we would ask that the District fund the tuition.” As a result of this email, Parent and the District conducted another IEP meeting on September 2, 2020. As a result of this IEP Meeting, the District prepared a revised IEP for Student dated August 5, 2020 with a revision date of September 2, 2020<sup>27</sup>. This IEP would be valid until November 3, 2020<sup>28</sup>. The IEP addressed that Student “requires adult support and specialized instruction in all identified areas of need in order to access the general education curriculum<sup>29</sup>.” Additionally, Student struggles with focus when learning new materials, requires frequent adult support, redirection and specifically requires accommodations and modifications<sup>30</sup>. Furthermore, the IEP detailed that Student “has normal hearing on the right side, REDACTED may experience challenge[s] with learning to decode new vocabulary, pronounce or repeat unfamiliar words heard. . . this will impact REDACTED auditory comprehension skills for responding or participating in reading activities<sup>31</sup>.” Due to REDACTED hearing impairment, Student “requires specific accommodations and auditory access to successfully progress throughout REDACTED school day<sup>32</sup>.” The IEP addressed that “[Student’s] visual impairment makes it difficult for REDACTED to

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<sup>27</sup> J1-002

<sup>28</sup> J1-003

<sup>29</sup> J1-009

<sup>30</sup> J1-009

<sup>31</sup> J1-009, J1-010

<sup>32</sup> J1-010



visually access educational materials without environmental, postural or print adaptation<sup>33</sup>.”

Due to Student’s disabilities, Student should utilize or have access to a wide variety of strategies and tools to assist with written and fine motor tasks: adapted paper with larger lines, modified cutting tasks, use of a slant board, enlarged worksheets, high contrast color utilization, access to scribe or voice to text to complete extended written assignments, and encouragement regarding proper positioning prior to written tasks<sup>34</sup>. Student would have access to a touch screen keyboarding device for easy access to enlarging text and qualified for print disability or access to digital books<sup>35</sup>. The District also intended to provide access to physical therapy to assist the Student.

Student’s IEP addressed areas of reading: phonics and decoding blending sounds, math problem solving, math calculations, gross motor, fine and visual motor skills related to completion of work, visual access to instruction/material, auditory access, memory strategies, reading fluency, reading comprehension, and sight word recognition. Each area of the IEP identified unique educational needs, accommodations and related services as well as the present level of educational performance. A summary of the IEP follows.

Student’s Reading: Phonics and Blending sound to read words identified that Student is “able to decode words sound by sound but struggles blending sounds together

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<sup>33</sup> J1-010

<sup>34</sup> J1-010, J1-011

<sup>35</sup> J1-011

to read whole words.<sup>36</sup>” The goal identified in the IEP specified that Student will decode words with seventy-five (75%) percent accuracy with less than two (2) prompts.<sup>37</sup> Each identified marking period recommended an ascending goal to meet the goal at the end of the school year. District intended to utilize small group instruction as well as one-on-one services<sup>38</sup> specifying that “Student requires a multi-sensory, systematic phonics based approach to reading with frequent reteaching and repetitions.”<sup>39</sup>

Student’s Math Problem Solving area assessed that Student “chose the correct operation and solved the equation” for fifty (50%) percent of the addition and subtraction word problems.<sup>40</sup> The goal identified in the IEP Student would successfully solve addition and subtraction equations with seventy-five (75%) percent accuracy.<sup>41</sup> Each identified marking period recommended an ascending goal to meet the goal at the end of the school year. District determined that small group instruction and one-on-one instruction would assist Student attain this goal.<sup>42</sup> District’s IEP clearly stated that Student “benefits from word problems being read aloud, the use of manipulatives and tools” as well as extra time and the benefit of breaking up longer assignments into smaller segments.<sup>43</sup>

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<sup>36</sup> J1-014

<sup>37</sup> J1-014

<sup>38</sup> J1-013

<sup>39</sup> J1-013

<sup>40</sup> J1-016

<sup>41</sup> J1-016

<sup>42</sup> J1-015

<sup>43</sup> J1-015

District’s IEP identified that in regards to Math Calculations, Student can solve multi-digit addition and subtraction problems.<sup>44</sup> The goal identified pursuant to the August 5, 2020 IEP required Student “with support, when given a set of multiplication equations within 5, Student will solve [problems] with sixty-five (65%) percent accuracy.”<sup>45</sup> Each identified marking period recommended an ascending goal to meet the goal at the end of the school year. District planned on utilizing small group instruction as well as one-on-one assistance to reach this benchmark.<sup>46</sup> In addition to this type of instruction, District would utilize a series of modifications to aid the development of Student, including “extra time on assignments. . . repeated practice counting by 2s, 5s, and 10s, and adult support when counting objects or using the multiplication chart.”<sup>47</sup>

In the area of gross motor, the District’s IEP wanted Student to “demonstrate core strength improvement” with performance of eight (8) knee pushups with cues over two (2) sessions<sup>48</sup> as well as maintain balance while descending two (2) consecutive steps. District prescribed utilizing direct group physical therapy to assist in obtaining these objectives.<sup>49</sup> The IEP specified that “Student has not met the benchmark exactly as written, REDACTED is demonstrating upper body strength gains on track to meet annual goal.”<sup>50</sup>

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<sup>44</sup> J1-018

<sup>45</sup> J1-018

<sup>46</sup> J1-017

<sup>47</sup> J1-017

<sup>48</sup> J1-021

<sup>49</sup> J1-019

<sup>50</sup> J1-020

In the area of fine and visual motor skills related to the completion of legible, written work, the District intended to utilize direct occupational therapy services to develop writing skills. The IEP identified a clear and attainable goal whereby the Student would demonstrate improvement in the ability to type or copy two (2) 3-5 word sentences with 80% of letters legible given adapted paper and with 90% appropriate spacing between words. In aiding the Student to obtain these improvements, the District intended to implement numerous aids.<sup>51</sup>

District's IEP also specified that Student requires the following visual supports "consultative services from a teacher of the visually impaired and preferential seating in the class for optimal viewing and hearing."<sup>52</sup> The IEP detailed numerous accommodations including "auditory media with 14 point print, access to electronic print for reading, verbal support when teacher is writing on the board and print copies of visual models and notes, 24 point font for worksheets, and reading stand for optimal visual access to print materials."<sup>53</sup>

In the area of reading fluency, the IEP outlined a goal of Student "will read twenty (20) words accurately in one minute on two (2) of three (3) trials" with a reading passage at her instruction level.<sup>54</sup> This goal was established based on the five (5) most recent

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<sup>51</sup> See J1-0025

<sup>52</sup> J1-029

<sup>53</sup> J1-029

<sup>54</sup> J1-035

DIBELS progress monitoring data, where Student read an average of thirty-seven (37) correct letter sounds per minute.<sup>55</sup> The IEP identified two (2) benchmarks in order to assist Student in reaching this goal. In assisting the Student to reach this goal, District would rely upon one-on-one instruction as “Student requires grade level assessments must be read aloud.”<sup>56</sup> The Student also benefited from visual and verbal prompts as well as re-direction.

The IEP’s reading comprehension goal stated that the Student “will demonstrate comprehension about key details with seventy (70%) accuracy on two (2) of three (3) trials.”<sup>57</sup> The District established this goal based on Student’s I-Ready assessment from REDACTED PRIVATE SCHOOL.<sup>58</sup> The IEP identified two (2) benchmarks in order to assist Student in reaching this goal. In assisting the Student to reach this goal, District would rely upon one-on-one instruction as “Student requires grade level assessments must be read aloud.”<sup>59</sup> The Student also benefited from visual and verbal prompts as well as re-teaching.

In assisting the Student with sight word recognition, the District created a goal that required Student to “recognize 60 words on 2/3 trials”<sup>60</sup> when assessed with the Dolch

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<sup>55</sup> J1-035

<sup>56</sup> J1-037

<sup>57</sup> J1-037

<sup>58</sup> J1-037

<sup>59</sup> J1-037

<sup>60</sup> J1-038

Primer and Pre-Primer sight word lists. The District established this goal based on Student's I-Ready assessment from REDACTED, which illustrated that Student could identify 30 Pre-Primer sight words.<sup>61</sup> The District's IEP indicated that the Student benefitted from one-on-one instruction

Based on the individualized instruction and supports necessary to assist Student in advancing REDACTED educational pursuits towards a mastery level, District determined at the August 5, 2020 IEP meeting that Student would benefit from a "C" Setting. A "C" setting in the District would place REDACTED in a classroom with three (3) other students, one special education teacher as well as a paraprofessional. The August 5, 2020 IEP specifically indicates "due to Student's identified needs in areas of reading decoding, math calculations, math problem solving, gross motor skills, hearing, and fine and visual motor skills, REDACTED requires small group instruction in a special education classroom setting for Reading and Math." Despite this recommendation, Parent objected to this placement citing concerns about the transition to a new school. District understood these concerns and attempted to provide a thorough explanation regarding the placement advancing the Student's best academic interests. While District advocated for the "C" setting, Parents input and the subsequent IEP meeting in September revised this recommendation to a B setting.<sup>62</sup>

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<sup>61</sup> J1-038

<sup>62</sup> J1-043

The revised IEP as a result of the September meeting “determined at this time that it would be in Student’s best interest to place REDACTED in the Setting C classroom for the beginning of the school year.<sup>63</sup>”

**A. Issue Presented:**

Whether District’s IEP would have provided Student with a Free and Appropriate Public Education.

**B. Analysis:**

The IDEA requires states receiving federal education funding to provide a free and appropriate public education (“FAPE”) to children with disabilities.<sup>64</sup> FAPE “consists of educational instruction specially designed to meet the unique needs of the [child with a disability], supported by such services as are necessary to permit the child to benefit from the instruction.”<sup>65</sup> FAPE is defined within Individual with Disabilities Education Act (“IDEA”) as special education and related services that: (a) have been provided at the public expense, under public supervision and direction, and without charge, (b) meet the standards of the State Educational Agency, (c) include an appropriate preschool,

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<sup>63</sup> J1-043

<sup>64</sup> 20 U.S.C. § 1400(d)(1)(A).

<sup>65</sup> *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 268-69 (3d. Cir. 2012).

elementary school, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program required under Section 1414(d).<sup>66</sup> In providing FAPE, LEA's with the assistance of parents and teachers create IEPs, which provide a package of individually tailored special education and support services designed to best meet the needs of the child with a disability.<sup>67</sup> IDEA provides parents with a series of procedural safeguards, which permit the parent to file a Due Process Complaint "with respect to any matter relating to. . . the provision of [FAPE] to such child."<sup>68</sup> In evaluating this Due Process Complaint, the Panel determined three (3) areas required specific analysis: (i) whether the District needed to properly update the evaluation and provide Student with an alternative means of evaluation rather than an in-person evaluation, (ii) whether the District would have provided FAPE to the Student during the 2020-2021 academic year, and (iii) whether REDACTED PRIVATE SCHOOL was an appropriate alternative placement for the Student.

*The district did not need to provide an alternative means for evaluation.*

Much discussion involved in the hearing revolved around whether the District properly evaluated the Student in the creation of the August 5, 2020 IEP. Numerous District employees testified that the Parent withheld the ability for the District to re-

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<sup>66</sup> 20 U.S.C. § 1401(9).

<sup>67</sup> See 20 U.S.C. § 1414 (d)(1)(B).

<sup>68</sup> 20 U.S.C. § 1415(b)(6).



evaluate the Student. Despite this testimony, the Parent did not reject an opportunity for the District to evaluate the Student prior to the creation of the August 5, 2020 IEP. Rather, the Parent requested that the District provide an alternative means to an in-person evaluation, citing concerns around the global pandemic and the Student's health condition. The factual record is clear regarding the District's evaluation. Most importantly, the District sent a Prior Written Notice<sup>69</sup> that clearly specified that the District "recommended "updated academic testing of [Student] pending parental consent and presentation of Student[.]"

The question presented, is whether prior to creating the August 5, 2020 IEP, the District needed to provide an alternative method for evaluating the Student. Parent certainly possessed the right to protect the Student amidst a global pandemic and their request for an alternative evaluation seems reasonable given Student's health conditions. Likewise, an alternative method for evaluation could have provided the District, Parent and IEP team with better data in the creation of the August 5, 2020 IEP. However, the failure to re-evaluate Student prior to the creation of the August 5, 2020 IEP is not a per se procedural violation.

The Panel determined that the District relied upon a valid evaluation to base the August 5, 2020 IEP, which was well within the tri-annual review period. The IDEA is clear, that states that the School District must evaluate students with disabilities at least

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<sup>69</sup> J10

every three (3) years.<sup>70</sup> The Panel decided that the presence of a sufficient and current tri-annual evaluation, that the Student's eligibility for special education services was not at issue. The School District possessed a valid evaluation and the Student did not require a full tri-annual evaluation prior to the creation of the August 5, 2020 IEP.

Based on the District being procedurally protected arising from the valid tri-annual evaluation, it is not necessary for the Panel to delve into the necessity of whether an alternative evaluation should have occurred. In the event that a timely evaluation was not relied upon, the Panel would have had to address this issue. While it is most likely necessary that a District may need to provide alternatives for in-person evaluations in light of a global pandemic, this issue does not require further consideration from the Panel because the District relied upon a valid evaluation in the creation of the August 5, 2020 IEP.

*The District would have provided FAPE to the Student during the 2020-2021 Academic Year.*

The issue presented to the Panel was whether the August 5, 2020 IEP, as revised in September, would have provided Student with FAPE. This issue requires the Panel to determine whether the District crafted an educational plan with the appropriate supports necessary to provide the Student with the required means to make meaningful progress to their educational goals, as identified in the August 5, 2020 IEP. It is not a question of

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<sup>70</sup> 34 CFR§300.303 (b)(2).

whether the Panel believes that this IEP would craft an ideal education for the Student, but rather whether the August 5, 2020 IEP was reasonable.<sup>71</sup>

In analyzing whether the August 5, 2020 IEP provided FAPE, the Panel must only consider whether the IEP was appropriate at the time the IEP was presented to the Student. In order to provide FAPE, the School District must put together an IEP that “include[s] an assessment of the child’s current educational performance, articulate measurable educational goals and specify the nature of special services the school will provide.”<sup>72</sup> The School District will provide FAPE, if the IEP “consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the student to benefit from instruction.”<sup>73</sup> The School District does not need to maximize the potential of every child but the School District needs to provide educational benefit to ensure that the Student will make meaningful progress.<sup>74</sup>

In evaluating the August 5, 2020 IEP, the Panel needs to address three (3) areas of whether the IEP was reasonable. The August 5, 2020 IEP must (1) rely upon the child’s current educational performance, (2) articulate measurable educational goals and (3) specify the nature of the special services that the school district will provide.

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<sup>71</sup> See *K.D. v. Downingtown Area Sch. Dist.* 904 F.3d 248, 255 (3d Cir. 2018).

<sup>72</sup> *Id.* At 130.0

<sup>73</sup> *M.A. v. Jersey City Bd. Of Ed.*, 592 Fed. App’x 124, at 128-129 (3d Cir. 2014)(quoting *Ridley Sch. Dist. V. M.R.*, 680 F.3d 260, 268-269 (3d. Cir.2012)).

<sup>74</sup> See *D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553 (3d Cir. 2010).

In evaluating the first prong of the reasonableness of the August 5, 2020 IEP, the Panel found that the School District compiled sufficient information regarding the Student's recent academic progress to satisfy this prong of the assessment. While the School District was not perfect in their collection of data, the School District obtained recent academic records from REDACTED PRIVATE SCHOOL, collected recent therapy records from Nemours Health, as well as reviewed previous IEP records regarding the Student. The Panel found that this information created numerous data points and sufficient information to determine the Student's recent and current educational performance and academic progress. Additionally, the IEP Team conducted several meetings with the Parent to collect additional information based on the Parent's observations and concerns about the Student's academic progress. While it was not a perfect collection of data, the information that the School District relied upon was reasonable for the creation of the August 5, 2020 IEP. The Panel believed that the August 5, 2020 IEP relied upon sufficient and current academic data, most notably the recent diagnostic evaluations in reading performed by REDACTED PRIVATE SCHOOL to provide the IEP team with the documentation necessary to create a succinct and reasonable IEP for the Student.

In evaluating whether the August 5, 2020 IEP contained measurable educational goals, it is important to look at the four (4) corners of the IEP and assess whether the goals as written can be measured by a Student's progress towards each goal. In evaluating the August 5, 2020 IEP, the Panel concluded that the School District created unique and

measurable educational goals that would aid the Student into making meaningful academic progress during the upcoming school year.

In the area of reading goals, the Panel determined that the School District and IEP team created three new reading goals to address the Parent's main academic concern of the Student. These reading goals were written so that they could measure the Student's progress towards each goal and would aid the IEP in future IEP meetings. As an example of the narrowly tailored measurable goals, the IEP specified that Student will decode words with seventy-five (75%) percent accuracy with less than two (2) prompts.<sup>75</sup> Each identified marking period recommended an ascending goal to meet the goal at the end of the school year. The Panel concluded that this goal, along with the other goals contained in the August 5, 2020 IEP, was a measurable goal and well suited for the Student based on the information available to the IEP team. Student failed to persuade the fact finder in demonstrating that the goals outlined in the August 5, 2020 IEP would not result in meaningful academic progress. While there may be a concern regarding the number of identifiable goals in certain areas, the School District provided a plausible explanation regarding the length and time of the validness of the August 5, 2020 IEP. Finally, each goal clearly specified what the student needed to do in order to be making meaningful progress towards their academic pursuits and the goal was measurable given the subject matter.

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<sup>75</sup> J1-014

As another example, of the thoroughness and reasonableness of the August 5, 2020 IEP team's goal, the IEP's reading comprehension goal stated that the Student "will demonstrate comprehension about key details with seventy (70%) accuracy on two (2) of three (3) trials."<sup>76</sup> The District established this goal based on Student's I-Ready assessment from SFS.<sup>77</sup> The IEP identified two (2) benchmarks in order to assist Student in reaching this goal. The Panel determined that this was a meaningful and reasonable goal, which the School District could appropriately measure to determine whether the Student was making meaningful academic progress. These goals for reading illustrate the thoroughness of the August 5, 2020 IEP and there are similar goals found throughout the August 5, 2020 IEP that contain measurable goals for the Student to make meaningful academic progress. Similar goals were also contained in the IEP for area of mathematics as well as other areas of focus.

The Panel believed that the August 5, 2020 IEP provided the School District with a wide variety of special services, accommodations and educational supports that would aid the Student in making meaningful education progress that would assist the Student towards their academic pursuits. It is not necessary to provide a full evaluation of these additional services, as the August 5, 2020 IEP detailed numerous supports for the Student. Additionally, the Panel believed that the additional support and accommodations the

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<sup>76</sup> J1-037

<sup>77</sup> J1-037

School District identified would meet or surpass the support services necessary to make meaningful academic progress. Notably, the School District's comprehensive services far exceeded the supports or accommodations available to the Student at REDACTED PRIVATE SCHOOL. While this was not a determining factor in the Panel's decision, the Panel considered the School District's measures in connection with the services available at REDACTED PRIVATE SCHOOL as a method for determining the reasonableness of the services and accommodations. Based on the information available to the IEP team, the Panel believed that the instruction identified for the student, including small group and 1:1 instruction would enable the Student to make meaningful educational progress. The Panel concluded that the August 5, 2020 went above and beyond providing numerous support services for the Student to accommodate her vision and hearing needs.

Based on the factual findings, the Panel determined that the August 5, 2020 IEP would enable the District to provide Student with direct specialized instruction as well as additional supports and accommodations that would have permitted the Student to make meaningful academic progress. Additionally, the Panel determined that the August 5, 2020 IEP properly determined that the Student's LRE of a C Setting would best suit the Student's academic needs.

*An analysis of REDACTED PRIVATE SCHOOL is not required.*

The education Student received at REDACTED PRIVATE SCHOOL improved the Student's performance based on the information provided from the Student's primary instructor as well as comments from the headmaster. REDACTED PRIVATE SCHOOL is a fine academic institution that Parent may continue to choose as an educational placement for Student. Based on the factual findings and application of the applicable law in determining District would have provided FAPE to Student, a further evaluation of whether REDACTED PRIVATE SCHOOL is an appropriate placement is not warranted.

### **Decision**

For the reasons stated above, District would have provided FAPE to the Student.

SO ORDERED this 15<sup>th</sup> day of September, 2021.

/s/ Charles T. Armbruster, III  
Charles T. Armbruster, III, Esquire  
Panel Chairperson

/s/ Kristin Pidgeon  
Kristin Pidgeon  
Layperson Panelist

/s/ Diane Latocha  
Diane Latocha  
Educator Panelist



Date: September 15, 2021

cc: Alexander T. Corbin, Esq.

Michael P. Stafford, Esq.

Diane Latocha, Educator Panelist

Kristin Pidgeon, Layperson Panelist

Mary Ann Mieczkowski, Director, Exceptional Children Resources,  
Delaware Department of Education

Maria N. Locuniak, Ph.D., NCSP, Education Associate, Procedural  
Safeguards and Monitoring, Delaware Department of Education

Carla Jarosz, Esq., Deputy Attorney General

Melanie George Smith, Esq., Dispute Resolution Coordinator/Contractor