

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.*

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

### **Closed Hearing**

**ODR No. 30221-24-25**

**Child's Name:**

H.T.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

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**Hearing Officer:**

Michael J. McElligott, Esquire

**Date of Decision:**

04/29/2025

## Introduction

This special education due process hearing concerns the educational programming for [redacted] ("student"), a student who resides in the Pine-Richland School District ("District").<sup>1</sup> The parties disagree over the special education programming for the student under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")<sup>2</sup>. The parents claim that the student was denied a free appropriate public education ("FAPE") as the result of certain aspects of the student's academic and emotional support needs, as well as the District's handling of an incident and aftermath of a classmate's [redacted] interaction with the student. Additionally, parents assert denial-of-FAPE and disability-discrimination claims under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").<sup>3</sup>

The District counters that the student's education programming has been appropriately designed and implemented at all times. The District also asserts that its handling of the incident and its aftermath was appropriate.

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

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<sup>1</sup> The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

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

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

## **Issues**

Did the District program appropriately for the student's academic and emotional-support needs?

Did the District handle appropriately the incident, and its aftermath, involving the student's classmate?

Did the District treat the student with deliberate indifference as a result of the student's disability?

## **Findings of Fact**

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

### Programming Prior to [redacted] Grade

1. In April 2021, in the spring of the student's [redacted] grade year, a Section 504 plan was devised to address the student's anxiety in the school environment, including school avoidance, self-confidence, anxiety/frustration/emotional upset, which impacted the student's academic performance and at times feeling overwhelmed by academic tasks. (Parents Exhibit ["P"] – 4).<sup>4</sup>

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<sup>4</sup> Across the record, the parties often produced identical exhibits. At times, the parents' copy of the exhibit will be cited, at times the District's copy of the exhibit will be cited. Both parties' exhibits, however, are included in the record for the

2. The basis of the Section 504 plan was a diagnosis of adjustment disorder with mixed emotions by the student's private counselor. (P-4).
3. The Section 504 plan included regular education interventions to address the student's anxiety in the educational environment. (P-4).
4. In June 2021, the District completed a comprehensive evaluation and issued an evaluation report ("ER"). (S-7).
5. Parents' input in the June 2021 ER included concerns over the student's anxiety regarding school, including physical symptoms, emotional dis-regulation, and over-reaction to minor events or inconvenience. (S-7).
6. The June 2021 ER included cognitive testing, yielding a full-scale IQ of 102 and a general ability index, accounting for executive functioning/processing speed, of 108. (S-7).
7. The June 2021 ER included achievement testing. The student exhibited statistically significant discrepancies between ability and achievement in oral reading and math facts fluency. (S-7).

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proceeding. More substantively, the Section 504 plan included concern about school attendance, but over the student's [redacted] years, the student's attendance does not present a pattern of problematic attendance. (P-51).

8. The June 2021 ER included behavior rating scales. The student's mother rated the student at clinically-significant levels in the anxiety, depression, and somatization sub-scales, resulting in a clinically-significant level on the internalizing problems index. The student's mother also rated the student at a clinically-significant level on the adaptability sub-scale. (S-7).
9. The student's teacher also completed the behavior rating scales. The student's teacher did not rate the student at any clinically-significant level but did rate the student at the at-risk level on the study skills sub-scale. (S-7).
10. The student completed a self-report on the behavior rating scales. On the student's self-report, the student rated most sub-scales, and resulting index scales, at the at-risk or clinically-significant levels. The student's ratings were at the at-risk level in the following subscales: attitude to school, social stress, sense of inadequacy, hyperactivity, relations with parents, and interpersonal relations. The ratings were at the at-risk level in the school problems, internalizing problems, and inattention/hyperactivity indices. The student's ratings were at the clinically-significant level in the anxiety, depression, and self-reliance sub-scales; and at the clinically-significant level in the emotional symptoms index. (S-7).

11. The June 2021 ER included anxiety scales completed by the student. The student's scores were in the normal range for defensiveness, in the moderately problematic range for physiological anxiety and worry, and in the extremely problematic range for social anxiety. The total anxiety scale was in the moderately problematic range. (S-7).
12. The June 2021 ER included a depression inventory completed by the student. All sub-scale and indices were in the normal range. (S-7).
13. The June 2021 ER concluded that the student was eligible as a student with a health impairment related to anxiety and self-regulation in the educational environment. (S-7).
14. The June 2021 ER recommended supports social-emotional functioning. The ER did not contain any recommendations for academic supports. (S-7).
15. In May 2022, in the spring of the student's [redacted] grade year, the student's individualized education program ("IEP") team met to revise the student's IEP. (S-12).
16. In the May 2022 IEP, the student's present levels of educational performance indicated that the student had mastered the

social/emotional goal in the prior IEP. The goal was revised with higher baseline and goal-level content. (S-12).

17. The May 2022 IEP continued to identify student needs for social-emotional and self-regulation supports. (S-12).

18. The May 2022 IEP contained one goal in self-regulation for the use of coping strategies, and regular counseling and social skills programming. (S-12).

19. The May 2022 IEP indicated that the student would spend 95% of the school day in the regular educational environment. (S-12).

#### 2022-2023 / [redacted] Grade

20. The May 2022 IEP was in place for the student's programming at the outset of the student's [redacted] grade year. (S-12).

21. In the fall of 2022, the student had an interaction with a classmate that [redacted]. (S-27; Notes of Testimony ["NT"] at 58-131).<sup>5</sup>

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<sup>5</sup> As will be seen in the fact-finding that follows, reference to the classmate will be made multiple times. Therefore, use of the term "classmate" will refer exclusively to this individual. Where other children in the school are referred to, the terms 'school-fellow(s)' or 'friend(s)' will be used.

22. The [incident] in the fall of 2022 was documented by a District employee but was not reported to District administration or the student's parents. (S-27; NT at 58-131, 500-557).

23. In December 2022, as a result of an increase in the student's anxiety in the educational environment, the District requested permission to re-evaluate the student. In early January 2023, the District received parents' permission to re-evaluate the student. (P-15; NT at 563-657).<sup>6</sup>

24. In late February 2023, the classmate [redacted] during a counseling lesson which involved students in a less-structured academic setting. A teacher generally observed the interaction (seeming horseplay) but not the exact nature of the [incident]. Upon questioning the student, teachers ascertained the nature of the [incident] and reported it through a District reporting system. The next day, District administrators responded to the situation, including informing parents of the incident. (P-53 at pages 22-25, 27, 29; S-27; NT at 58-131, 500-557).

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<sup>6</sup> The parents' complaint indicates that they requested the re-evaluation. The permission form indicates that the District proposed the re-evaluation, with the indication for a parental request is left blank. The explicit indication on the permission form is utilized for this finding of fact. (Parents' Complaint at paragraph 18 on numbered page 4 of parents' complaint; P-15).

25. In the days after the incident, through early March 2023, the District undertook an investigation into the incident. (S-27; NT at 58-131, 145-155).
26. The investigation included interviews with the student and school-fellows. The student indicated that there had been other instances of [redacted] by the student. Other parents related that the classmate had reportedly [redacted] their children, other school-fellows of the student and classmate. (S-27).
27. The student and classmate had been friends, or part of the same social group, in school. (S-27; NT at 167-213, 726-751).
28. The elementary building where the student and classmate attended involves a complex educational and physical structure where students are assigned to instructional groups with nicknames of biomes for flora/fauna (e.g., grassland, aquatic, forest, desert). Each biome has a certain pod, or physical area, in the school; the biomes are separated into different grade levels but are clustered such that children in the 'grassland' biome are in the same pod, or physical area, throughout [redacted] grades. (S-51; NT at 500-557).
29. Accordingly, there are four separate classes at each grade level, each with a biome nickname (e.g., grassland/4<sup>th</sup> grade, aquatic/4<sup>th</sup>, forest/4<sup>th</sup>, desert/4<sup>th</sup>). These 'biome' groups are in the same pod, or

physical area, with other grades in the 'biome' (e.g., grassland/4<sup>th</sup> is in the same pod as grassland/5<sup>th</sup> and grassland/6<sup>th</sup>). Two pods (grassland and aquatic) are on the first floor of the building; two pods are on the second floor of the building. (S-51).

30. Given the number of students who attend the elementary school, there are multiple classrooms for the 'biome' at each grade level. Thus, grassland/4<sup>th</sup> grade has multiple classroom locations in the pod, with children in grassland 4<sup>th</sup> in different classrooms. (S-51; NT at 500-557).
31. The student and classmate were in the same biome grouping ([redacted]) and the same [redacted] classroom. (NT at 500-557, 726-751).
32. Over the course of March 2023, the District communicated with parents about changes, and potential changes, to the student's programming and the educational environment to insulate the student from the classmate, including switching the classmate to a new biome; this was not possible given certain services the classmate received. (P-53 at pages 32-34, 37, 39, 41, 51, 62-63; NT at 58-131, 500-557).
33. The classmate remained in the [redacted] biome but was transferred to a new classroom setting with the pod, across and down

from the hallway. The student remained in the same classroom setting within the pod. (NT at 58-131, 500-557, 726-751).

34. Switching classroom locations within the pod, other school-day separations, and increased adult supervision were instituted to separate the student from the classmate. There were, instances, however, where the student and classmate were in proximity or where the student saw the classmate in the educational environment. (P-53 at pages 32-34, 37, 39, 41, 51, 62-63; NT at 58-131, 145-155, 382-349, 500-557, 563-657, 726-751).

35. In early March 2023, nearly contemporaneously with the responses and changes given the incident of [redacted], the District issued its re-evaluation report ("RR"). (P-22).

36. The District evaluator was not informed of the [incident] prior to the issuance of the March 2023 RR. There is no indication of the incident in the RR, from anyone providing input including parents. Therefore, it is a finding of fact that the data and input for the RR was gathered prior to the incident and/or was not updated as a result of the incident because the evaluator was not informed of the incident. (P-22; NT at 224-271).

37. The parents' concerns continued to be largely the same, that the student needed to increase emotional self-regulation, which was interfering with learning. (P-22).
38. The March 2023 RR included curriculum-based assessments in reading and mathematics across [multiple grades]. The student's scores were scattered in both academic areas across the grade levels, at times within the benchmark range and at times below benchmark. (P-22).
39. The March 2023 RR included [redacted] grade PSSA testing results. The student was at the 'basic' level in both reading and mathematics. (P-22).
40. The input of teachers in the March 2023 RR indicated that the student did not require an inordinate amount of academic or behavioral support. Resistance to, and task-persistence with, challenging academic work was the most consistent behavior. The student was observed in class in December 2022 by a school counselor and did not exhibit problematic behavior. (P-22; NT at 726-751).
41. The teachers and school counselor did not report or observe any anxiety-related behaviors. (P-22; NT at 726-751).

42. The March 2023 RR included updated cognitive testing, achievement testing (including a specialized mathematics assessment), social/emotional and anxiety ratings, and executive functioning testing. (P-22).
43. Cognitive testing in the March 2023 RR indicated that the student's full-scale IQ was 94 and general ability index was 100. (P-22).
44. Achievement testing in the March 2023 RR indicated statistically significant discrepancies in multiple measures of mathematics achievement, including the math problem-solving, numeric operations, math fluency, and multiplication sub-tests, as well as the mathematics composite. (P-22).
45. On a specialized mathematics assessment in the March 2023 RR, the student's score on the operations composite evidenced a statistically significant discrepancy. The applications composite was in the average range and in line with the student's ability on cognitive testing. (P-22).
46. The March 2023 RR included behavior rating scales. The student's mother rated the student at clinically-significant levels in the anxiety and adaptability sub-scales, as well as a clinically-significant level on the internalizing problems index. The student's mother also

rated the student at an at-risk level on the depression and somatization sub-scales. (P-22).

47. The student's teachers also completed the behavior rating scales. The student's teachers did not rate the student at any clinically-significant level. The teachers rated the student at the at-risk level on multiple sub-scales: depression, attention problems, learning problems, adaptability, social skills, leadership, study skills, and functional communications. At-risk scores in various sub-scales led to at-risk ratings in the school problems and adaptive skills indices. (P-22).

48. The student completed a self-report on the behavior rating scales. On the student's self-report, the student rated most sub-scales, and resulting index scales, at the clinically-significant levels. The student's ratings were at the clinically-significant level in the following sub-scales: attitude to school, atypicality, locus of control, social stress, anxiety, depression, sense of inadequacy, attention problems, hyperactivity, interpersonal relations, and self-esteem. and self-reliance sub-scales. The student's ratings were at the clinically-significant level in the following indices: internalizing problems, inattention/hyperactivity, emotional symptoms index, and personal adjustment. The student's ratings were at the at-risk level in the self-

reliance subscale and the at-risk level on the school problems index.  
(P-22).

49. The evaluator indicated that the skew in the student's self-report scales implicated the reliability of the scales and that the results should be viewed with caution. (P-22).
50. The March 2023 RR included anxiety rating scales completed by the student. The generalized anxiety index, total social anxiety, and total physical symptoms scales were all rated as very elevated. (P-22).
51. Executive functioning assessment in the March 2023 RR indicated scattered levels of elevation, with consistent elevated scores by both the student's mother and teacher in the emotional regulation index and constituent sub-scores. (P-22).
52. The March 2023 RR continued to identify the student with a health impairment as the result of needs related to emotional self-regulation. The RR concluded that the student showed relative weakness in mathematics computation but recommended more intensive regular-education support before making a formal identification of a specific learning disability in this area. (P-22).

53. In addition to the recommendations for social/emotional support, the March 2023 RR included recommendations for support in certain aspects of executive functioning and mathematics. (P-22).
54. Throughout March and into April 2023, the parents continued to report increased levels of anxiety in the student. To that point in the school year, the student's teacher had not noted anxiety-related behavior being problematic for the student. Beginning approximately in April 2023, the teacher reported seeing increased levels of anxiety-related behavior and school absence. (P-53 at pages 62-63, 78-80, 86-89, 99-101; NT at 58-131, 145-155, 382-349, 726-751).
55. In early April 2023, the student's IEP team met to revise the student's IEP. (S-20).
56. The April 2023 IEP indicated that regular-education intervention in mathematics would continue. A math goal was included in the IEP to monitor progress of the regular-education interventions. (S-20).
57. The self-regulation goal was removed from the April 2023 IEP because the student had shown goal mastery of the goal in the May 2022 IEP. The IEP team recommended that the student's programming continue to include support for social/emotional needs. (S-20).

58. The April 2023 IEP reduced the amount of social skills and individual counseling support the student was receiving in the May 2022 IEP. (S-12, S-20).
59. The April 2023 IEP indicated that the student would spend 99% of the school day in the regular educational environment. (S-20).
60. The parents approved the notice of recommended educational placement ("NOREP") for the implementation of the April 2023 IEP. (S-21).
61. Beginning in April 2023, the parents began to hold the student out of school. (P-51; S-23; NT at 58-131, 500-557, 563-657, 726-751).
62. In the latter half of April 2023, the District outlined its safety plan for the student, making concrete many of the programming and school-based changes that it had been developing and implementing over the prior weeks. (S-25).
63. The April 2023 safety plan included adult supervision and resources, separating the student and classmate in the use of facilities (restroom, cafeteria, sensory break room, recess areas), staggering schedules to limit interactions during transitions, and consultation with

the student's private counselor. The classmate was transferred to a separate 'biome' group. (S-25).

64. The April 2023 safety plan included the following statement: "It would be impossible to prevent all times that the students could potentially cross paths, particularly through unpredictable or unplanned events or deviations from the plan; however, it is our goal to ensure that we are monitoring this situation and identifying potential issues in advance to make strategic plans .... There absolutely could still be times that (the student and classmate) make eye contact with one another." (S-25).

65. In May 2023, the student's IEP team met. Parents rejected the April 2023 safety plan. The IEP team also discussed homebound instruction for the student, as well as consultation by the District with the student's private counselor. (P-32 at page 9; NT at 563-657).

66. With the student being held out of school, in May 2023, the District offered homebound instruction to the student. Parents were initially interested but ultimately declined homebound instruction provided by the District, instead choosing to have the student's grandmother educate the student at home. (P-51, P-53 at pages 62-63, 78-80, 86-89, 99-101, 143, 155-156; NT at 58-131, 500-557, 563-657).

67. In May 2023, formal [redacted] complaints were filed regarding [incident]. (S-27).

68. In June 2023, the student's IEP met to revise the student's IEP. The parents rejected homebound instruction for the student. The team agreed that the student should receive tutoring in mathematics over the summer of 2023. The team also confirmed that the student would have access to trusted adults in the school environment, that the student and the classmate would be in separate 'biomes' in the upcoming school year, and that the student would have a walk-through/transition plan for the [redacted] grade year. The IEP team also indicated that a re-evaluation would take place in the fall of the upcoming school year. These changes reflected recommendations made by the student's private counselor. (P-32 at pages 8-9; NT at 58-131, 161-213, 563-657).

69. In July 2023, the District issued a [redacted] investigation determination and decision. The July 2023 [redacted] determination found that the classmate had violated school District policy and determined that the classmate's IEP should be revised. Certain elements of the April 2023 safety plan were implemented regarding separating the classmate from the student and certain other school-fellows. (S-31).

2023-2024 / [redacted] Grade

70. The April 2023 IEP, with certain revisions from May and June 2023, was in place at the outset of the student's [redacted] grade year. (P-32).
71. In September 2023, the student's IEP was revised. (P-32).
72. The September 2023 IEP revisions documented the student's involvement in summer tutoring sessions. The IEP team agreed to update the student's mathematics goal and recommend additional time for interventions in mathematics. The IEP team also documented increased supports in academic classes and confirmed that the student would undergo a re-evaluation. (P-32 at pages 6, 10-11; P-53 at pages 174-175).
73. In December 2023, the District issued its RR. (S-34).
74. The December 2023 RR contained content related to the [incident] and the events of the spring of 2023. (S-34).
75. The December 2023 RR included updated testing and assessments which broadly confirmed the results of the testing and assessments from prior evaluations. The overall results of the social/emotional and executive functioning assessments, though, showed an elevation of ratings and scores. (S-34).

76. The achievement testing in the December 2023 RR continued to show that the student's achievement in mathematics was statistically discrepant from the student's cognitive testing. (S-34).
77. The December 2023 RR continued to identify the student with a health impairment related to the student's anxiety and self-regulation needs. The RR additionally identified health impairment related to attention deficit hyperactivity disorder/inattentive type, as well as a formal identification as a student with a specific learning disability in mathematics. (S-34).
78. In January 2024, the student's IEP team drafted a new IEP. (P-38).
79. The January 2024 IEP included two mathematics goals, one for math computation and one for math problem-solving. (P-38).
80. The January 2024 IEP included the accommodations and supports from the April 2023 and September 2023 revisions, including a continuation of the individual counseling, although the social skills instruction was removed. (P-38).
81. The January 2024 IEP recommended continued tutoring over the summer of 2024 as part of an extended school year services. (P-38).

82. The January 2024 IEP indicated that the student would spend 99% of the school day in the regular educational environment. (P-38).
83. The parents approved the NOREP for the implementation of the January 2024 IEP. (S-38).
84. In February 2024, the student's IEP was revised. The revisions included an intensification of the student's mathematics intervention, the addition of an executive functioning goal (task-initiation/task-completion), and the addition of individual psychological services. (Individual counseling services continued as part of the student's programming.) (S-38 at pages 19, 40 43; S-41; NT at 451-489).
85. In March 2024, the student's IEP was further revised. (S-38 at page 19).
86. In March 2024, the parents reported that the student was having nightmares and dealing with increased anxiety after seeing the classmate in the school environment. (P-53 at page 191).
87. The student's private therapist was interested in potentially engaging in exposure therapy involving the classmate, although she did not feel the student was ready for that, as heightened emotional reaction resulted from seeing the classmate, or knowing about the classmate, or hearing the classmate referred to by others. These

circumstances did not allow for the employment of exposure therapy.  
(NT at 167-213).

88. In April 2024, the student's IEP was revised to reflect a parent request for testing in a quiet environment. (P-44).

89. In May 2024, the student's parents and educators began a planning process for the student's move from [redacted] in the 2024-2025 school year. (P-45).

90. Educators for the [redacted] grade year were identified. Concrete planning included scheduling of the student and the classmate, the ongoing support of a school counselor and school psychologist, the use of teachers and paraprofessionals to support the student in [redacted] school hallway transitions, assigned restrooms, spaces for breaks, and arrival and departure procedures. (P-44; NT at 277-330, 336-377, 662-721).

91. While more successful for the student than the [redacted] grade year, including improved attendance, the [redacted] grade year presented difficulties as a result of anxiety-related needs and the specter of the classmate's potential presence. (P-51).

2024-2025 / [redacted] Grade

92. The student moved to the District middle school for the [redacted] grade year. (NT at 58-131, 662-721).
93. In anticipation of the student and the classmate attending the [redacted], the District designed class assignments, movement between classes, and access to physical spaces to ensure that the student and the classmate did not encounter each other. (S-50; NT at 662-721).
94. Even given these precautions, at the beginning of the school year in August 2024 the student walked past the classmate in a hallway. The student had negative reaction, nightmares, and exhibited school avoidance in the days thereafter. The District responded by coordinating with educators, collaborating with the student's private counselor, and revising certain aspects of the student's programming. (P-46, P-53 at pages 204-207).
95. In September 2024, the student saw the classmate in the hallway, walking ahead. The student reacted negatively and exhibited similar behaviors as with the August 2024 encounter. (P-53 at page 234-237).

96. Throughout September 2024, the student continued to exhibit anxiety-related reactions. (P-53 at pages 209-214, 220-224, 234-237).
97. In September 2024, a pediatrician diagnosed the student with post-traumatic stress disorder. (P-47).
98. Following the diagnosis, an expansive team gathered to consider the student's status and needs, including parents, the student's grandmother, teachers, the school counselor, the school psychologist, central office administrators, building-level administrators, and counsel for the parties. (P-48, P-53 at pages 226-230; S-45).
99. The meeting was prompted, in part, by the indication that the District would be changing the student's plan for movement in the building, specifically not managing the movement of the classmate in the school. (P-53 at page 226-230).
100. Into October 2014, the student continued to exhibit anxiety-related effects, including physical symptoms and school avoidance/absence. At one point, for an educational reason, the classmate's name was broadcast over the school announcement system; hearing the classmate's name brought on anxiety-related reactions. (P-53 at pages 241-245, 248; NT at 167-213, 277-330, 336-377, 563-657, 662-721).

101. The student's private counselor consulted with a District special education administrator regarding the student's continuing decline in the educational environment. (NT at 167-213, 563-657).
102. The parents and District educators all wished for the student to continue education at the District. Parents voiced the indication that they might withdraw the student from the District; as part of this conversation, the District discussed an out-of-District placement among other potential changes to the student's programming that represented the continuum of educational placements. (NT at 58-131, 145-155, 563-657).
103. Ultimately, all involved, including the student's private counselor, felt that an out-of-District placement would not be appropriate for the student. (NT at 58-131, 167-213, 563-657).
104. In late October 2024, the parents withdrew the student from the District and enrolled the student in a charter school. The student misses friends and certain aspects of education at the District, but the student's affect and engagement in learning has improved. (P-53 at pages 250-251; NT at 58-131, 145-155, 167-213).

## **Witness Credibility**

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. No one witness's testimony was accorded materially more weight than any other witness. In that way, the documentary evidence was generally more persuasive in understanding the factual mosaic of the evidence.

## **Legal Framework**

*Denial-of-FAPE.* The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning, with appropriately ambitious programming in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. 386 (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

*Section 504 Discrimination.* The provisions of Section 504 bar a school district from discriminating against a student on the basis of disability. (34

C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program, and was denied the benefits of the program or otherwise discriminated against on the basis of disability, has been subject to disability discrimination in violation of Section 504 protections. (34 C.F.R. §104.4; S.H. v. Lower Merion School District, 729 F. 3d 248 (3d Cir. 2013)). A student who claims discrimination in violation of the obligations of Section 504 must show deliberate indifference on the part of the school district in its purported acts/omissions. (S.H., *id.*).

## **Discussion**

The record taken in its entirety supports a conclusion that the District met its obligations to the student.

*Denial-of-FAPE/IDEA.* The District met its obligation to provide FAPE to the student. The student has had long-standing need for support related to anxiety-related, social/emotional, and self-regulation needs, even prior to the incidents involving the classmate in [redacted] grade. Clearly, those incidents exacerbated those needs; in fact, it would not be an overstatement that, over time, the student went into an 'educational tailspin' as a result of those incidents.

The standard for the District to meet, however, is whether it programmed for the student to allow the student to benefit from significant learning given the student's unique challenges and needs. The District met this standard by appropriately evaluating the student, proposing appropriate

IEPs, working to propose a safety plan and other concrete measures, collaborating with the parents and the student's private counselor, and revising its approach to programming as circumstances changed over [a period of time].

One might puzzle over this conclusion in light of the fact that the student's feelings about school, the student's affect, and the student's reactions to school and the classmate—including growing impact over time, going from emotional reactions when encountering the classmate, then when merely seeing the classmate, then when merely hearing the classmate's name—might be viewed as a breach of the District's obligations to the student. But that is not the case. Whatever the student's needs were at a particular time/place, and as those needs changed, the District responded at all times with changes, approaches, consultation, and programming that was reasonably calculated to yield meaningful education benefit to the student.

Ultimately, the parents decided to withdraw the student from the District. And, indeed, it might be that the parties were at a juncture where the student could no longer attend a school where the classmate attended.<sup>7</sup> But everything on this record supports the conclusion that the District

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<sup>7</sup> The parties were in the early stages of discussing (even the word "considering" is too strong) a continuum of educational placements. And parents held the view on this record that the classmate could or should be excluded from the educational environment. But given the fact that the classmate was a resident of the District, and on this record had the need for programming and modifications centered on the provision of FAPE, removing the classmate from school environments where the student might encounter the classmate was not a potential route forward for meeting the student's needs.

evaluated the student, programmed for the student, adapted/revised/modified this programming, and worked continually as best it could to allow the student to remain in a safe, effective learning environment. The District has met its FAPE obligations to the student.

*Denial-of-FAPE/Section 504.* Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §§15.1-15.8). The provisions of IDEA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504/Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (See generally P.P. v. West Chester Area School District, 585 F.3d 727 (3d Cir. 2009)). At times, the Section 504/Chapter 15 requirements may require a different analysis. (B.S.M. v. Upper Darby School District, 103 F.4<sup>th</sup> 956 (3d Cir. 2024)). Here, though, the provision of FAPE to the student as an obligation under Section 504/Chapter 15 is clearly analogous to the FAPE obligation under IDEA/Chapter 14. Therefore, the foregoing analysis, and for the reasons identified above, are adopted here—the District’s provision of services to meet the student’s disability-related needs resulting from anxiety, self-regulation, stressors related to the classmate, and a learning disability in mathematics met its Section 504/Chapter 15 FAPE obligations to the student.

*Discrimination/Section 504.* The District did not treat the student with deliberate indifference in the design and implementation of the student's educational programming. The basis of the FAPE analysis above is that the District worked at all times to make sure the student had access to programming that met the student's needs and was reasonably calculated to result in significant learning for the student. Working in this way also leads to a determination that the District did not discriminate against the student on the basis of the student's disability. On the contrary, on this record at all times, the District worked to propose, to implement and to revise in good faith a programming and an educational environment to address the student's needs. The District did not discriminate against the student and, thus, did not fail in its obligations to the student in that regard.

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## ORDER

In accord with the findings of fact and conclusions of law as set forth above, at all times the Pine-Richland School District met its obligations to provide a free appropriate public education to the student. Additionally, the Pine-Richland School District did not discriminate against the student on the basis of the student's disability.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire  
Special Education Hearing Officer

04/29/2025