

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. 31913-25-26

Child's Name:

C.N.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Daniel Cooper, Esq.
Cooper Law Office
45 E. City Avenue
Bala Cynwyd, PA 19004

Local Education Agency:

Abbington Heights School District
200 E. Grove Street
Clarks Summit, PA 18411

Counsel for the LEA:

William McPartland, Esq.
Marshall Dennehey
P.O. Box 3118
Scranton, PA 18505

Hearing Officer:

James Gerl, CHO

Date of Decision:

February 20, 2026

BACKGROUND

The parent filed a due process complaint alleging that the school district breached its child find duty under both IDEA and Section 504, that the school district discriminated against the student on the basis of a disability in violation of Section 504, that the school district denied a free and appropriate public education to the student by developing substantively inappropriate IEPs, and that the school district denied a free and appropriate public education to the student because of an actionable procedural violation. The school district contends that it did not violate either IDEA or Section 504 in any way. I find in favor of the school district on all issues raised by the due process complaint.

PROCEDURAL HISTORY

In the prehearing phase of this proceeding, the parties failed to comply with a requirement that they submit a status report by November 7, 2025. This failure to timely report status of the case caused unnecessary delay in the scheduling of the hearing and the decisional process for this very old case. The parties also did not agree to any stipulations of fact. The failure to agree to stipulations elongated the hearing process and delayed the decisional process. It should be noted, however, that the parties did stipulate to the admissibility of almost all exhibits in this case which helped move the hearing process along.

The parties agreed that school district Exhibits S-1 through S-40 were joint exhibits and were offered with no objection, with the exception that the following exhibits were withdrawn as duplicative or unnecessary: S-7, S-8, S-10, S-11, S-13, S-26, S-28, S-29, S-33 and S-34. With those exceptions, all other exhibits S-1 through S-40 were admitted into evidence. In addition, school district exhibit S-41 was also admitted into evidence. The hearing

was conducted in one virtual session. Three witnesses testified at the due process hearing.

After the hearing, counsel for each party presented written closing arguments/posthearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

The due process complaint, as explained and clarified at the prehearing conference convened for this matter and confirmed on the record at the outset of the due process hearing, presents the following issues:

1. Whether the parent has proven that the school district violated its child find duties under IDEA and Section 504?

2. Whether the parent has proven that the school district discriminated against the student on the basis of a disability in violation of Section 504?

3. Whether the parent has proven that the school district denied a free and appropriate public education to the student because the student's IEPs were substantively inadequately? and

4. Whether the parent has proven that the school district denied a free and appropriate public education to the student because of a procedural violation involving a delay in the issuance of IEPs?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, I have made the following findings of fact: ¹

1. The student's date of birth is [redacted]. (S-20)
2. The student likes to [redacted]. (NT 99 – 100)
3. The student attended school district schools from first grade through April 5, 2025. (NT 28 – 29)
4. The student was a mutual combatant in a fight [redacted] at school on September 27, 2023. As a result of the fight, the student was suspended from school for five days and referred to the juvenile justice system. (S-32; NT 40 – 41, 79)
5. Prior to the fight on September 27, 2023, the student had received behavioral referrals a number of times for various infractions, mostly involving

¹ (Exhibits shall hereafter be referred to as "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

misuse of the student's cell phone or Chromebook, disrespectful conduct and cutting class. Two of the other incidents involved fighting. (S-32)

6. In October 2023, the student's mother reported that the student was experiencing anxiety and requested a Section 504 evaluation. A 504 evaluation report was issued on November 1, 2023. A Section 504 accommodation plan was also developed on November 1, 2023. The student was identified as having anxiety and a sleep disorder. The plan included five accommodations: seating in close proximity to the teacher, check-ins with the teacher, written directions, shorter in class assignments and the ability to stay after class to clarify assignments and not be marked tardy. (S-2, S-3; NT 143 – 145)

7. Prior to October 2023, when the student's mother requested a Section 504 evaluation, the student did not demonstrate any concerns or issues that would suggest that the student had a disability or needed a 504 plan or IEP. (NT 143 – 144, 105 – 106)

8. On November 17, 2023, the school district issued a Permission to Reevaluate for a special education evaluation of the student. The Permission to Evaluate sought to investigate a possible emotional disturbance and/or other health impairment. The parent returned the form on November 26, 2023 indicating that she did not give consent for the evaluation. (S-4; NT 105 – 106, 48)

9. On November 20, 2023, in response to the PTE, the student's mother sent an e-mail to school district staff denying that the student had significant academic or behavior issues and stating that the student was strong in math and did not need intervention. (S-30)

10. On November 29, 2023, the student had an audiology examination at school district expense. The evaluation report found that the

student's hearing was within normal limits but recommended preferential seating for the student. (S-30, NT 61-63)

11. On November 30, 2023, the special education director wrote to the parent confirming that the parent did not want to move forward with a special education evaluation. (S-6)

12. At the parent's request, an additional Permission to Evaluate form was issued on December 2, 2023. The student's mother initially gave consent for the evaluation on January 5, 2024. Thereafter, the parent called and sent a written statement on January 18, 2024 rescinding the consent to evaluate. (S-9, S-12; NT 108 – 110)

13. In January 2024, the parent requested revisions to the student's 504 plan. (S-30; NT 79)

14. An amended 504 plan was developed for the student on January 26, 2024. The amended 504 plan included nineteen specific accommodations for the student. An amendment to the 504 plan was developed on February 20, 2024. On September 24, 2024, an additional amendment to the 504 plan was developed. This plan contained twenty accommodations, including the previous accommodations, as well as excusing the student from [redacted] period. (S-37, S-38, S-35, S-14, S-19; NT 78 – 80)

15. At a 504 meeting, the parent provided the school district staff with a doctor's note indicating that the student had generalized anxiety and ADHD. The doctor's note made no educational recommendations for the student. (S-19; NT 144 – 145)

16. School district staff implemented the accommodations and provisions of the student's 504 plans. (NT 146 – 149)

17. On April 2, 2024, the school district issued a Permission to Evaluate. (S-39, S-40)

18. In October of 2024, the parent provided report from a private psychologist to school district staff a. The evaluator found that the student has Attention Deficit Hyperactivity Disorder and possible Oppositional Defiance Disorder, a learning disorder and anxiety. The psychologist's report recommended extended time, preferential seating, breaks, organizational tools and modified assignments. (S-14)

19. Additional Permission to Evaluate forms were issued on September 12, 2024 and October 2, 2024. (S-15)

20. The parent granted permission to evaluate the student on October 5, 2024. (S-15)

21. On November 14, 2024, the parent provided a note from another physician to school district staff. The doctor's note indicates that the student was diagnosed with ADHD, ODD, anxiety and sleep disorder. The doctor's note recommends that tardiness should be excused for the student. The note suggests no other school recommendations or accommodations for the student. (S-18)

22. A special education evaluation report was completed by the school district on December 8, 2024. The report found that the student had an emotional disturbance and other health impairment. The report recommended focusing on work avoidance, emotional dysregulation, interventions to bolster math calculation skills, self-monitoring for organization, consultation with a social worker with regarding self-regulation and the accommodations previously in the 504 plan. (S-16)

23. An initial IEP was developed for the student on January 3, 2025. The IEP provides an itinerant level of emotional support, including instruction

in academics and social skills. The student's needs included math, written expression, increasing time in the regular education environment and work completion. Goals were proposed for math, mental computation fluency, behaviors to remain in the general education environment, work completion, preferential seating, note taking, adaptive assessments, self-monitoring checklist, and behavior – specific individualized reward systems. The IEP provided social skills instruction for the student for one class period two times per week. The IEP provided counseling as a related service for 15 minutes per week. The student was assigned to the regular education classroom 84% of the school day. A Notice of Recommended Educational Placement (NOREP) for the IEP placement was issued on January 3, 2025. (S-20, S-21; NT 112 – 115)

24. The school district counselor selects emotional support methods and strategies for each individual student from multiple programs. There is no set curriculum or methodology, and strategies frequently change based upon the unique needs of a particular student. The methodology utilized in emotional support and social skills instruction is not specified in a student's IEP. (NT 113 – 115, 119-120)

25. On January 21, 2025, the school district issued a NOREP for the student to have an occupational therapy evaluation after the mother requested the evaluation. The student's mother refused to consent to the occupational therapy evaluation (S-36; NT 92-94)

26. An amended IEP was developed on February 5, 2025 based upon the parent's request. The parent's request included a walk/movement break, speech-to-text for written assignments and excused absences. Goals and specially designed instruction remained substantially the same except for the transition goal. (S-22)

27. Another revision of the IEP was issued on March 18, 2025. Several schedule options were provided to the parent. The parent requested additional support in academics, including math and reading. The district continued to recommend social skills instruction two times per week for one class period and that the student attend career readiness in the emotional support classroom. The parent declined social skills instruction. The parent also rejected the offer of math goals. At the parent's request, there was no schedule change, no scheduled time in the emotional support classroom and goals were removed concerning written expression, math, and social skills instruction was also removed at the parent's request. (S-24: NT 82-87)

28. A fourth IEP was issued with a corresponding NOREP on April 1, 2025. The parent signed the NOREP approving the student's placement on April 5, 2025. The team agreed that the student could start [student's] day at the third period because of the student's sleep disorder. An aide was provided for Math and English classes. The IEP contained provisions similar to the previous IEPs and continued to reflect the parent's rejection of social skills instruction and emotional support services and other services. (S-41, S-25; NT 88-90, 115 -119)

29. On January 16, 2025, an e-mail was sent to counsel for the parent explaining the various options regarding emotional support programming. The school district agreed to implement Skillstreaming the Adolescent and other social skills instruction programs, as well as some components for self-regulation and social skills improvement system. (S-31; NT 120-121)

30. During the 2023-2024 school year and the first quarter of the 2024-2025 school year, the student maintained a grade point average of [redacted]. (S-27)

31. The student's mother withdrew the student from the school district and enrolled the student in a cyber charter school on approximately

April 5, 2025, during [student's] [redacted]-grade school year. (NT 28, 136 – 137, 149, 28-29)

32. The student needs social skills instruction. (S-16; NT 113-115, 119-120, 92)

33. The student does not receive social skills instruction at the cyber charter school the student now attends. (NT 91)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq, (hereafter sometimes referred to as "IDEA"): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education (hereafter sometimes referred to as "FAPE"). IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child's unique

circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. ___, 137 S. Ct. 988, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

3. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021); AM by AJ and JM v Interboro Sch Dist, 126 LRP 2503 (E.D. Penna. 2026).

4. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v. School District of Philadelphia, 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

5. IDEA does not require a school district to guarantee a particular result or to close the gap between children with disabilities and their non-disabled peers. Abigail P by Sarah F v Old Forge Sch Dist, 82 IDELR 227 (MD Penna. 2023), *aff'd* Abigail P by Sarah F v Old Forge Sch Dist, 124 LRP 21769; JN and JN ex rel. JN v. Southwest School District, 56 IDELR 102 (M.D. Penna. 2015); see, Kline Independent School District v. Hovem, 690 F. 3d 390, 59 IDELR 121 (5th Cir. 2012); HC and JC ex rel. MC v. Katonah – Lewisboro Union Free School District, 59 IDELR 108 (S.D. NY 2012); District of Columbia Public Schools, 111 L.R.P 77405 (SEA D.C. 2011). Progress toward a FAPE is measured according to the unique individual circumstances of the individual

student and not in comparison to other students. See, GD by Jeffrey and Melissa D v. Swampscott Public Schs, 122 LRP 6305 (1st Cir. 2022). The Third Circuit has specifically ruled that IDEA does not require that all (or even most) disabled children advance at a grade-level pace. KD by Dunn v. Downingtown Area School District, 904 F. 3d 248, 72 IDELR 261 (3d Cir. 2018).

6. School districts are required under the IDEA child find requirement to identify and evaluate all students who are reasonably suspected of having a disability. 34 C.F.R. § 300.111; 22 Pa. Code § 14.121; P.P. v. West Chester Area Sch. Dist., 585 F.3d 727, 738 (3d Cir. 2009); Perrin ex rel JP v Warrior Run Sch. Dist., 66 IDELR 225 (MD Penna 2015) adopted at 66 IDELR 254 (MD Penna 2015). But a formal special education evaluation is not required every time that a child posts a poor grade, struggles in school, or misbehaves. Ridley Sch. Dist. v. MR and JR ex rel. ER, 680 F. 3d 260, 58 IDELR 271 (3d Cir. 2012); DK by Steven K. and Lisa K. v. Abington Sch. Dist., 696 F. 3d 233, 59 IDELR 271 (3d Cir. 2012).

7. A parent cannot compel a school district to use a specific educational methodology. A school district is afforded the discretion to select from among various methodologies in implementing a student's IEP. Ridley School District v. MR and JR ex rel. ER, 680 F. 3d 260, 58 IDELR 271 (3d Cir. 2012); AM by AJ and JM v Interboro Sch Dist, 126 LRP 2503 (E.D. Penna. 2026); see EL by Lorsson v. Chapel Hill – Carrboro Board of Education, 773 F. 3d 509, 64 IDELR 192 (4th Cir. 2014); Lessard v. Wilton – Lyndborough Coop School District, 592 F. 3d 267, 53 IDELR 279 (1st Cir. 2010); In re Student With A Disability, 51 IDELR 87 (SEA WV. 2008).

8. Although a school district should base a student's IEP components upon peer-reviewed research to the maximum extent practicable, the school district staff retains flexibility to devise an appropriate program in light of available research. School staff need not select the service with the greatest

body of research, and the law does not provide that a failure to provide services based upon peer reviewed research automatically results in a denial of FAPE. Ridley Sch. Dist. v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012)

9. Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability shall solely by reason of his or her disability be excluded from participation and/or denied the benefits of or be subject to discrimination under any program that receives federal funds. 29 U.S.C. § 794; 34 C.F.R. § 104.33; 22 Pa. Code § 15.1. To establish a violation of Section 504, a parent must prove: 1) that the student is disabled; 2) that the student was otherwise qualified to participate in school activities; 3) that the school district receives federal funds; and 4) that the student was excluded from participation in and denied the benefits of or subject to discrimination at the school. To offer an appropriate education under Section 504, the school district must reasonably accommodate the needs of a handicapped child to ensure meaningful participation in educational activities and meaningful access to educational benefits. To comply with Section 504, a school district must provide education and related aids or services that are designed to meet the individual needs of handicapped students as adequately as the needs of non-handicapped students are met. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); Strepp ex rel MS v Midd West Sch Dist, 65 IDELR 46 (M.D. Penna. 2015). Section 504 requires a separate and different analysis than IDEA to determine whether or not a school district has violated the anti-discrimination statute; 504 defines disability more broadly, but imposes fewer demands upon school districts, including not requiring a written plan. BSM by Gabriel M. v. Upper Darby Sch. Dist., 103 F. 4th 956, 124 LRP 17147 (3d Cir. 2024)

10. The parent has not proven that the school district violated its child find duty under IDEA or Section 504.

11. The parent has not proven that the school district discriminated against the student on the basis of a disability in violation of Section 504.

12. The parent has not proven that the school district denied a free and appropriate public education to the student because the student's IEPs were not reasonably calculated to confer meaningful educational benefit in view of the student's unique individual circumstances.

13. The parent has not proven that the school district denied a free and appropriate public education to the student by committing an actionable procedural violation with regard to the delay in the adoption of an IEP.

DISCUSSION

1. Whether the parent has proven that the school district violated its child find duty to the student in violation of both IDEA and Section 504?

The parent contends that the school district breached its child find obligation to the student under IDEA from September of 2023 through April of 2025 and that the school district breached its child find duty to the student on under Section 504 from September of 2023 through November of 2023. The school district argues that it complied with its child find duty.

The record evidence does not support the parent's contention. It is extremely difficult to follow the logic of the parent's argument. The record evidence reveals that the mother first requested a 504 evaluation of the student only after the student was in a fight on school property in September of 2023 that resulted in a five-day suspension from school and a referral of

the student to the juvenile justice system. Within a month and a half after the request, a 504 plan was developed for the student on November 1, 2023.

Also, the school district created a Permission to Evaluate and sent it to the parent on November 17, 2023. The parent signed the PTE form denying consent for the special education evaluation on November 26, 2023. Since that time, the parent has refused to consent to an evaluation, with the exception of one time when the parent consented and then almost immediately rescinded the consent for the evaluation.

It appears to be the parent's contention in this case that the school district violated IDEA by not developing an IEP even though the parent denied the school district the consent necessary to conduct an IDEA evaluation. The law does not require a school district to develop an IEP for a student where the parent refuses to consent to the evaluation. No legal authority supports the parent's position. The evaluation is a necessary prerequisite for an IEP. The parent cannot have it both ways; she can't refuse permission for the school district to evaluate, and then pursue a child find claim for not developing an IEP. There is clearly no IDEA child find evaluation in this case.

It appears from the parent's brief that the parent is also arguing that a 504 evaluation or special education evaluation should have been offered to the student at an earlier date. The parent does not specify at what point they believe the school district should have had a reasonable suspicion that the student had a disability.

The evidence in the record, however, shows that the school district staff did not have reason to suspect that the student had a disability before the parent's request for a 504 evaluation in mid- September of 2023. It was the credible and persuasive testimony of the school district's counselor and former

special education director that there was no reason to suspect that the student had a disability prior to that time.

The student's disciplinary record does show that the student had a number of disciplinary infractions. Most of the infractions were not related to fist fights and instead concerned the misuse of the student's cell phone during class, cutting class, and disrespectful treatment of others. There were also two prior fights. The record evidence does not, however, show a pattern or serious problem with regard to the student's fighting before the September 2023 incident for which the student was disciplined and referred to the court system. As the Third Circuit has noted, the law does not require an evaluation of a student every time the student receives a poor grade or misbehaves. The record evidence does not reveal that the school district should have had a reasonable suspicion that the student might have a disability prior to the parental request for a 504 evaluation; there clearly was no Section 504 child find violation. The parent's argument is rejected.

The testimony of the former school district special education director and the school district counselor was more credible and persuasive than the testimony of the student's mother with regard to this issue. This determination is made because of the demeanor of the witnesses, as well as the following factors: the mother was extremely evasive and demonstrated bad memory with regard to whether she had requested the 504 evaluation because of the student's serious September 27, 2023 fight on school property that resulted in a five-day suspension and referral to the juvenile justice system. The testimony of the student's mother was also evasive, and she changed her testimony, with regard to whether an independent psychological evaluation was provided to the school district prior to the parent's request for a 504 evaluation after the September 2023 fight.

It is concluded that the parent has not proven any child find violation by the school district.

2. Whether the parent has proven that the school district discriminated against the student on the basis of a disability in violation of Section 504?

The parent contends that the school district violated Section 504 because the programming provided by the student's 504 plan was not appropriate. The school district maintains that the 504 plan was appropriate.

First, it should be noted that although both Section 504 and IDEA use the term "FAPE", Section 504 is a discrimination statute. The Third Circuit has held that a separate legal analysis is required for alleged Section 504 violations. Section 504 does not require that the school district provide a substantively appropriate program to a student. In this sense, Section 504 is unlike IDEA which requires that the educational program provided to a student be appropriate in view of the student's unique individual needs. Instead, Section 504 requires that the student not be discriminated against or denied opportunity on the basis of a disability. As the Third Circuit has stated, to prevail on a Section 504 claim, a parent must establish that a school district has not provided an education that meets the needs of a student with a disability as adequately as its programs meet the needs of students without disabilities.

In this case, there is no evidence in the record concerning how students without disabilities or any student other than the student that is the subject of this complaint are educated by the school district. The parent has not proven that the school district did not meet the needs of this student as adequately as it meets the needs of nondisabled students. In other words,

the parent has not proven that the school district discriminated against the student on the basis of a disability. The parent's argument is rejected.

Even assuming *arguendo* that Section 504 did impose a duty to provide an appropriate program, however, it is clear that the 504 plans developed by the school district in this case were appropriate for the student. The plans provided numerous accommodations to meet the student's demonstrated needs.

To the extent that there are any disputed facts with regard to this issue, the testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the factors outlined in the previous section of this decision.

It is concluded that the parent has not proven that the school district discriminated against the student on the basis of a disability in violation of Section 504.

3. Whether the parent has proven that the school district denied a free and appropriate public education to the student because the IEPs developed by the school district were not reasonably calculated to confer meaningful educational benefit in light of the student's circumstances?

The parent contends that the school district violated IDEA by denying a free and appropriate public education to the student because the IEPs offered by the school district did not appropriately address the student's social and emotional needs. The school district contends that the IEPs offered to the student were substantively appropriate.

The parent has not proven that the IEPs offered by the school district were substantively inadequate. At the hearing, the student's mother testified that she withdrew the student from the school district and enrolled the student in a cyber charter school in April 2025 because the IEPs offered by the school district did not contain a researched-based social/emotional methodology of which the parent approved.

First, it should be noted that a school district is not required to accept a parent's choice of a preferred educational methodology. The case law holds that a school district has broad discretion to pick among the various educational methodologies in order to implement a student's IEP. A parent cannot dictate the choice of methodology or veto a methodology selected by the school district.

Moreover, although IDEA requires that the IEP team use peer-reviewed research-based programs to the extent practicable, the Third Circuit has ruled that school district staff retain flexibility to devise an appropriate program in

order to implement a student's IEP. It is not required by the law that the school staff utilize the program with the most peer-reviewed research or the best peer-reviewed research. Methodology choice remains within the sound discretion of school officials.

Moreover, there is no requirement that the educational methodology to be utilized in implementing the components of an IEP be specified in writing in the IEP document. Because the school staff need to retain flexibility and discretion to utilize appropriate programs and change them, as necessary, without going through the entire IEP process, it is not required that IEPs specify particular educational methodologies.

It is significant to note that the parent does not argue that the IEPs developed by the school district were not reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances. This is the legal standard, and the parent has clearly not met her burden. The parent's argument is rejected.

It is clear from the evidence in the record that the IEPs offered to the student by the school district were reasonably calculated to confer meaningful educational benefit in view of the student's circumstances and, in particular, that they appropriately addressed the student's social and emotional needs. The IEPs in question provided social skills instruction for the student. It is significant to note, once again, that the parent declined and refused the social and emotional programming that was offered by the district. The parent cannot have it both ways. The parent cannot refuse to accept the social and emotional programming offered by the district and then sue the district for not offering social and emotional programming.

Moreover, it should be noted that the IEPs developed by the school district for the student were never implemented because the parent did not sign the NOREP approving the IEP until April of 2025. Immediately thereafter, the parent withdrew the student from the school district and enrolled the student in a charter school. Thus, although actual progress is not required for FAPE, there is no evidence in the record concerning whether the IEPs developed by the school district actually worked for the student or enabled the student to make educational progress because they were never actually implemented.

The testimony of the school district staff was more credible and persuasive than the testimony of the student's parent concerning this issue. This determination is made because of the demeanor of the witnesses and for the additional factors described in the previous sections of this decision.

It is concluded that the parent has not proven that the IEPs were not reasonably calculated to confer meaningful educational benefit in view of the student's unique circumstances.

4. Whether the parent has proven that the school district denied a free and appropriate public education to the student because of an actionable procedural violation involving delay in developing an appropriate IEP for the student?

The parent contends that the school district denied FAPE to the student because of a procedural violation involving delay in the creation of the student's IEP. The school district contends that it has not committed any procedural violations.

Once again, it is difficult to follow the logic of the parent's argument. The school district provided to the parent a Permission to Evaluate form on November 17, 2023. The parent refused consent for the evaluation on November 26, 2023. Another Permission to Evaluate was issued on December 22, 2023. The parent granted permission to evaluate on January 5, 2024, but then rescinded the permission to evaluate on January 18, 2024. The parent finally granted permission to evaluate on October 5, 2024. The school district completed an evaluation report for the student on December 8, 2024. An IEP was developed for the student on January 3, 2025. The discussion in the section of this decision concerning the child find issue is incorporated herein by reference.

Given the facts stated above, it is difficult to understand what delay the parent is describing. The school district could not develop an IEP for the student until the parent consented to a special education evaluation. Once again, the parent cannot have it both ways. The parent cannot deny consent for a special education evaluation and then allege that the school district violated IDEA by delaying the issuance of an IEP. The parent's argument makes no sense, it is not supported by any legal authority, and it is rejected.

It is possible that the parent may be arguing that the IEPs developed before April of 2025 were not valid because, in the parent's opinion, they did not properly address the student's social/emotional needs. As was discussed in a previous section of this decision, however, the IEPs were substantively adequate and clearly addressed the student's social/emotional needs with appropriate programming. Once again, it is relevant to note that the parent rejected social and emotional programming on a number of occasions.

The record evidence does not establish that the school district committed any type of procedural violation. Moreover, even assuming

arguendo that the parent had established an IDEA procedural violation, it is clearly harmless because there is no evidence in the record that alleged delay adversely affected the student's education or significantly impaired the parent's participation rights. The parent's argument is rejected.

The testimony of the school district staff was more credible and persuasive than the testimony of the student's mother with regard to this issue. This determination is made because of the demeanor of the witnesses, as well as the factors outlined in the previous sections of this decision.

It is concluded that the parent has not proven that the school district denied FAPE to the student because of a procedural violation involving delay in the implementation of an IEP.

ORDER

Based upon the foregoing, it is **HEREBY ORDERED** that all relief requested in the due process complaint is hereby denied. The complaint is dismissed.

IT IS SO ORDERED.

ENTERED: February 20, 2026

James Gerl

James Gerl, CHO
Hearing Officer