

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

Pennsylvania Special Education Hearing Officer
Final Decision and Order

Closed HEARING
ODR File Number: 18927-16-17

Child's Name: B. L. **Date of Birth:** [redacted]

Dates of Hearing:
[redacted]

Parent:
[redacted]

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Date of Decision: 09/21/2018

Introduction and Scope of the Dispute

The Parent filed the instant due process Complaint seeking compensatory education alleging multiple child find violations and an ongoing denial of a free appropriate public education (FAPE) claim for violations of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.¹ First, the Parent contends the District failed to identify the Student, as an IDEA eligible Student, with an emotional disturbance in 1st grade [2012-2013 school year]. The Parent concedes the first alleged child find claim ended on February 17, 2017, when the Parties reached an agreement about the Student's FAPE in 4th grade. Second, they allege the District failed to identify the Student, as a Student with a speech/language/auditory processing disability, from 1st grade [2012-2013 school year] through the present. Third, they contend once the District did identify the Student with an emotional disturbance in 4th grade, the initial evaluation was fundamentally flawed; therefore, they contend that the District failed to offer and provide a FAPE for all of the 4th grade and part of the 5th grade. To remedy the multiyear child find violations and the denial of FAPE claims they now seek a global hour for hour award of compensatory education from 1st grade to the present. The District contends, on the other hand, that at all times relevant the District complied with all substantive and procedural requirements of the IDEA and Section 504.

Background and Procedural History

Prior to the instant action, the Parties participated in a multi-session due process hearing before Hearing Officer Brian Ford on the issue of the appropriateness of the District's 2017 initial Comprehensive Evaluation Report (ER). Although they agree that the Student was IDEA eligible, as a child with an emotional disturbance, they argued then that the evaluation was incomplete, insufficient and otherwise inappropriate. In July 2016, Hearing Officer agreed with the Parent and awarded three (3) different Independent Education Evaluations (IEE). The three (3) independent evaluations were completed and provided to the District in late fall of 2016 and early winter of 2017. The District did not appeal the IEE Decision;

¹ 20 U.S.C. §§1400-1482. The federal regulations implementing the IDEA are set forth in 34 C.F.R. §§300.1 – 300.818. Due to the number of issues, the number of school years and the two different evaluations, the hearing was completed in [multiple] sessions. References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. Due to the number of issues and the number of school years involved, the Parties asked to file written closing statements.

therefore, the findings of fact and conclusions of law about the inadequacies in the initial ER are incorporated by reference herein as though fully set forth at length.

The Scope of the Child Find and Denial of FAPE Claims

Shortly after the filing of the instant Complaint, the District filed a Motion to Limit the Scope of the Claims, wherein they contended that any violations more than two years before the filing of the Complaint were barred by the IDEA's two (2) year statute of limitations. After taking testimony, this hearing officer determined that the earlier child find claims were not otherwise barred. After completing a multi-session hearing, I now find in part for the Parents and the District.²

Issues

1. Was the Student denied a free appropriate public education in the 1st grade, the 2012-2013 school year; and, if so, is the Student entitled to compensatory education?
2. Was the Student denied a free appropriate public education in the 2nd grade, the 2013-2014 school year; and, if so, is the Student entitled to compensatory education?
3. Was the Student denied a free appropriate public education in the 3rd grade, the 2014-2015 school year; and, if so, is the Student entitled to compensatory education?
4. Was the Student denied a free appropriate public education in the 4th grade, the 2015-2016 school year; and, if so, is the Student entitled to compensatory education?
5. Was the Student denied a free appropriate public education in the 5th grade, the 2016-2017 school year; and, if so, is the Student entitled to compensatory education?

² Due to circumstances beyond the control of the Parties and this hearing officer, like multiple illnesses, weather cancellations, a car accident and scheduling problems, this Decision was reached beyond the IDEA timelines with extensions granted at the request of the Parties. The delays were unavoidable. All of the above were documented on the record.

6. Did the District fail to provide the Student with a free appropriate public education from 1st grade through the present, with this denial of FAPE claim limited to speech and language services; and, if so, is the Student entitled to an award of compensatory education?

Findings of Fact

Background and Procedural History

1. At the beginning of the 2012-2013 school year, the Family enrolled the Student in the District as a regular education student (N.T. 57). From 1st to 6th grade the Student received passing grades and advanced from grade to grade (SD#26, NT pp.171-172).³
2. In March 2014, when the Student was in 2nd grade the Student [suffered a death in the extended family] (N.T. 96, NT pp.150-151).
3. In August 2014, prior to the beginning of 3rd grade, [one of the Student's Parents] suddenly died (N.T. 96, NT pp.150-151).
4. At the beginning of 4th grade, the District issued a Permission to Evaluate (PTE) and the Parent consented to the evaluation. The evaluation team concluded the Student was IDEA eligible as a person with an emotional disturbance. The Parent rejected the District's proposed Individualized Education Program (IEP) and Notice of Recommended Educational Placement (NOREP) in an out of District partial hospitalization program (S-18). In February 2016 the Parties agreed to a revised IEP and placement in a therapeutic emotional support class (P-42).
5. On February 17, 2016, the Parties met and agreed to a revised 4th grade IEP. During opening statements, the Parents conceded the fact that the Student's IEP addressing the Student's emotional support needs is appropriate; however, they now contend the District failed to identify the Student's alleged speech/language and auditory processing needs (Complaint).

³ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. The identifying information appearing on the cover page or elsewhere in this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

6. In July 2016, after a multi session due process hearing, Hearing Officer Brain Ford entered an Order finding the District's initial evaluation was incomplete, inadequate and inappropriate (P-38). The Order included findings that the Student receive an independent neuropsychological, auditory processing and speech and language evaluation (P-38).
7. The Parent's current due process Complaint makes multiple child find claims dating back to 1st grade and denial of FAPE claims arising in 4th and 5th grade after the District issued a NOREP and provided the Student with an IEP (P-42). On or about July 9, 2017, this hearing officer entered an Interim Ruling finding that the Parent's multiple 1st, 2nd, and 3rd grade child find claims were timely filed.⁴

First Grade: 2012-2013

8. In August 2012 the Student came to the District at the beginning of the first grade school year. In Kindergarten the Student received a variety of accommodations, including an informal behavioral program, to address behavioral issues including defiance, screaming, and work refusal (P-29; S-7; N.T. 461-463). All of the Student's educational records from Kindergarten were provided to the District. *Id.*
9. Within the first two weeks of school, the Student had a behavioral incident while boarding the bus to leave school. After ten (10) plus minutes when the staff could not manage the incident, the building secretary called the mother, who then came to the school to pick up the Student. After a confrontation with the staff, the mother boarded the bus and took the Student home. As a result of the incident, the District restricted the Student's bus privileges. The bus incident then prompted the Instructional Support Teacher (IST) to begin working with the Student on a regular basis. The classroom teacher also began to use a home / school communication log between the teacher and the Parent (N. T. 338-339).

⁴ In 2011-2012 the Student was in kindergarten in another district. In 2012-2013 the Student was in 1st grade. In 2013-2014 the Student was in 2nd grade. In 2014-2015 the Student was in 3rd grade. In 2015-2016 the Student was in 4th grade. In 2016-2017 the Student was in 5th grade. In 2017-2018 the Student was in 6th grade (SD#26).

10. Although the 1st grade teacher testified that the Student's behavior was not atypical, the contemporaneous daily notes in the communication log tell a different story (P-50).
11. The communication log included the following behavioral incidents on the following dates:
- a. On October 3, 2012, the Student refused to complete a task even after the teacher talked to [the Student] directly and it took the Student five (5) minutes to get back to work (P-50).
 - b. On October 4, 2012, the Student refused to follow directions quite a few times and used the words "pay back" for being mad at people (P-50; N.T. 268).
 - c. On October 5, 2012, the Student refused to stop making sounds when the Student's teacher asked the Student to stop (P-50).
 - d. On November 19, 2012, the Student's teacher noted the Student "almost broke down because [she] was helping [the Student] with a math problem and [the Student] didn't want to be corrected." P-50.
 - e. On December 18, 2012, the Student's teacher indicated the Student became frustrated during a writing task. P-50.
 - f. On December 19, 2012, the Student "had a difficult time with the writing part of our weather test" and "became very frustrated." P-50.
 - g. On February 25, 2013, "The Student was upset because [the Student] made a mistake that couldn't erase" and "layed [sic laid] [redacted] head down and didn't respond. After two times, [the Student] did well." P-50.
 - h. On February 26, 2013, "A.M. The Student did not get [redacted] way in the computer lab. The teachers tried to help the Student, but [the Student] refused and stomped [the Student's] feet." P-50.
 - i. On February 26, 2013, "P.M. The Student had difficulty following directions. [The Student] refused to continue with a Math activity because [the Student] said [the Student] already knew it." P-50.

- j. On March 4, 2013, the Student refused to come to the carpet with the other students for the story and was kicking the desk (P-50).
- k. On March 14, 2013, the Student had a “good afternoon, however, [the Student] got upset at the end of the day when I asked [the Student] to go back to [the] seat and walk to the center [the Student] was going to.” P-50.
- l. On March 26, 2013, the teacher noted there was a “kicking issue at leaving for the bus” the day before. P-50.
- m. On April 2, 2013, “P.M. the Student wouldn’t write with any other pencil but [the Student’s]. I sharpened it but [the Student] put [] head down on the desk.” P-50.
- n. On April 4, 2014, the Student was “kicking things⁵” because [reacted] was upset [the] group had a time-out from recess. P-50.
- o. On April 8, 2013, the Student “did not want to help with measurement, kicked the desk and threw another student’s pencil off the desk. Time off of recess tomorrow.” P-50.
- p. On April 9, 2013, the Student “got mad that [redacted] couldn’t get on a computer and kicked the desk.” P-50.
- q. On April 12, 2013, “A.M. Didn’t want to complete the activity and put [Student’s] head down. [Student] eventually came out of it.” P-50.
- r. On April 16, 2013, “A.M. – Rolled morning paper into a ball – The Student did not want help. [Redacted] eventually picked it up and finished.” P-50.
- s. On April 16, 2013, “P.M. Took 1 too many bookmarkers from the Library and threw it in the garbage when the librarian asked [the Student] to put it back.” P-50.
- t. On April 25, 2013, “A.M. The Student had a rough morning. [Redacted] wouldn’t accept a crayon from us because it wasn’t the right one. [The Student] threw [a] packet on the floor. The Student refused to come to the Reading group because [the

Student] had to finish [the] writing. The Student has a hard time if something does not happen in the right order. [Redacted] lost some recess time and is going to try to turn [] self around in the P.M.”

- u. On April 25, 2013, “P.M – the Student had a problem making a mistake when [] reading and wouldn’t talk to us. Hopefully, tomorrow will be a better day.” P-50.
- v. On May 21, 2013, “two times in the morning the Student was uncooperative with our social studies teacher” and “eventually got [] self together after kicking the desk.” P-50.
- w. On May 24, 2013, “A.M. – Not a good morning for the Student. [Redacted] was very defiant. [Redacted] was written up for [redacted] behavior.” P-50.
- x. On May 24, 2013, “P.M. – Came back to class during gym around 2:00 – The Student kicked a desk because [the Student] didn’t like being told to throw [redacted] marker into the basket because it could hit someone.” P-50.
- y. On May 31, 2013, “P.M. The Student did not want to [redacted] in Art. [Redacted] came in from recess. [redacted] threw it on the floor several times and did not want to do any work in Art.” P-50.
- z. On June 7, 2013, “Morning – The Student wanted another student to give [the Student a] new pencil sharpener. She said, “no.” [Redacted] asked her again. I told The Student [that Student] couldn’t ask someone for their personal things. Consequently, [the Student] threw another student’s folders on the floor. (Lost 5 min of recess.)” P-50.
- aa. On June 7, 2013, “P.M. Refused to take a Math test. [Redacted] took the Student out of class to finish. [Redacted] was not given the privilege of computer time after this.” P-50.
- bb. On June 10, 2013, “P.M. – Refused to do any Math during independent work time. The Student will have some recess time lost tomorrow and no computer today.” P-50.

- cc. On June 12, 2013, “P.M. – Recess – grabbing another student to get the ball. When The Student didn’t get it, [the Student] started screaming.” P-50.
- dd. Additionally, on May 23, 2013, the Student received a recess detention for disrespectful behavior (S-49).
- ee. A review of the incidents reveals that the first nine (9) incidents, through the end of February, consisted of refusal or frustration in the academic setting with no aggressive behaviors. P-50. By early March, the Student had seven (7) incidents of kicking. P-50. By the end of the year the intensity of the incidents also increased (P-50).

12. The IST teacher and the classroom teacher met every 30 days for half an hour to review the communication log after which the IST summarized the log (N.T. 429-430). Neither the IST teacher nor the classroom teacher requested an evaluation. *Id.*

13. Throughout the year the mother received multiple telephone calls from the 1st grade teacher and the Principal describing how the Student’s behavioral problems were increasing (N.T. 475-477). The mother was called to the school on five (5) occasions to pick the Student up after a behavioral incident (N.T. 470). Nonetheless, during the entire first grade school year, no one from the District ever suggested or even mentioned that the Student could be evaluated for special education supports (N.T. 477).

The Beginning of Second Grade

14. Although the guidance counselor does not work during the summer months, prior to the beginning of 2nd grade, the building principal directed her to mail a Request for a Permission to Evaluate to the Parent (N.T. 183-184). The guidance counselor assumed, from the direction to mail the form, the principal and the Parent talked about requesting an IDEA eligibility evaluation (N.T. 183-184). The guidance counselor could not recall how she received the direction or what the basis was to send the Parent the Request for a Permission to Evaluate (N.T. 189-192).

15. The guidance counselor does not make referrals for students to be evaluated for IDEA eligibility (N.T. 182).

16. Prior to beginning 2nd grade, on August 8, 2013, the guidance counselor, at the direction of the building principal, mailed a Request for a Permission to Evaluate to the Parent (N.T. 182-183, SD#47).
17. The guidance counselor did not speak to the Parent before she mailed the Request for a Permission to Evaluate (N.T. 182-183).
18. A Request for a Permission to Evaluate is different from a Permission to Evaluate. A Request to Evaluate is a form given to parents who request an IDEA evaluation; on the other hand, a Permission to Evaluate is a form, given to parents when a district is requesting consent to test a student to determine IDEA eligibility.
<http://www.pattan.net/category/Legal/Forms/Browse/Single/id=54b91720150ba0186e8b45ba>.
19. On September 3, 2013, the guidance counselor called the mother about returning the completed Request for a Permission to Evaluate (N.T. 184). While the guidance counselor remembers the call, the Parent denies that the call ever took place and denies that she ever requested an evaluation (N.T. 184, NT pp.173-176).
20. During the 2nd school year, the Student worked alone, and struggled with homework completion, writing, reading, and completing assignments. The mother would often write to the teacher that “[Redacted] refused to do this” on [redacted] homework (N.T. 503, N.T. 519-521, N.T. 522; P-50; S-15; S-36; S-58). The Student did manage to score Basic on standardized assessments S-32. The Student’s report card for second grade indicated the Student did not meet expectations for working cooperatively with others (S-26, P-8; S-8; S-15; S-36; S-39; S-49; S-58; N.T. 781).
21. During the 2nd grade school year, the District provided the Student with regular education (N.T. 87-88, SD#2, and SD #3).

The 2014-2015 Third Grade Year

22. During 3rd grade, from December 2014 to January 2015 the District provided the Student with regular education Response to Intervention (RTI) supports to address anger management, coping and grieving (N.T. 47, N.T. p.50, NT pp.70-73, SD#2). The RTI data did not indicate that the Student should be evaluated for special education (N.T. 96, N.T. pp.150-151, SD#2). The Student participated in the RTI intervention for less than 60 calendar days. *Id.*

23. During 3rd grade, the Student participated in a building-wide positive support initiative that tracked behavior and social skills (N.T. 89-90, NT pp.100-101).
24. The Student's behavioral incidents increased following the sudden passing of [the immediate family member] (N.T. 161-162, 165).
25. Early in November 2014, after a meltdown, the Student was removed from the classroom by a school district's security officer (N.T. 412,415). During this incident the Student screamed and kicked the wall for an hour and twenty-five (25) minutes (S-48; N.T. 415). Earlier in the same day the Student was removed from the classroom for fifty (50) minutes due to screaming and refusing to do work (S-48; N.T. 446-447). The third grade teacher described the situations as a "particularly severe incident." *Id.* The teacher noted that the involvement with security officer was the type of "incident that kind of set off a red flag that something was going on with this child that [redacted] was having a hard time controlling [impulses and behavior] " (N.T. 560-561).
26. On November 25, 2014, another behavioral incident occurred that forced the teacher to call for the Student Emergency Response Team ("SERT") to intervene. The SERT team is made up of the building level security officer, the assistant principal and the nurse. The team was dispatched to guarantee the Student's safety during a meltdown, in the hallway, when the Student randomly demanded a "doughnut" (S-48; N.T. 440, 442, 444-445).
27. In December 2014, the building level Student Informational Response Survey ("SIRS") team met to develop a general building level positive behavior support plan (N .T. 151). The IST teacher and the 3rd grade teacher commented that the SIRS behavior plan was essentially the same behavior plan used with other students, with the caveat here that the Student was given two strikes rather than one strike before a consequence (P-2; N.T. 571-574, 583). The IST teacher could not recall how the target behaviors were defined or assessed to determine if the generic intervention was working. Nevertheless, the SIRS team on January 29, 2015, determined that the Student met the goal and discontinued the intervention (N.T. 406, N. T. 344-345; S-2).
28. Once a week during 3rd grade a private mental health counselor from a private behavioral health provider came to school to meet with the Student

(N.T. 72, 88, 174; S-2).

29. The private provider recommended a higher level of services otherwise provided by a managed care entity (N.T. 152-153; S-2).
30. Throughout 3rd grade, the Student received check-in/check-out behavioral support intervention from the IST teacher (N.T. 685).
31. The IST teacher acknowledged that no one from the District knew what private mental health provider did with the Student behind the closed conference room door. When asked how the IST teacher coordinated the regular education interventions with private provider he went so far as to say "... we don't have any part of that behavioral counseling" (N.T. 427- 428).
32. The Student's major intervention during 3rd grade was an All-Star calendar, which the staff described as a whole group management strategy (N.T. 422, 573-581).
33. On September 15, 2015, during the Student's 4th-grade year, the District asked and the Parent gave permission for the Student to participate in an anger management group (N.T. 72-73, NT pp.181-182, SD#5).
34. On September 16, 2015, the District sent the Parent a Permission to Evaluate and their IDEA procedural safeguards (SD#6). The Parent consented to the evaluation (SD#6).

The Parent's Private Mental Health Evaluations

35. On September 21, 2015, the Parent's private behavioral health provider faxed the District a July 2, 2015 report (N.T. 73-73, NT pp.181-182, SD#7).
36. While the private agency report did not include a psychological evaluation, it did include the results of the Child and Adolescent and Strengths Assessment (CANS-MH) assessment of the Student's mental health needs and circumstances. The private evaluator concluded that the Student was displaying signs of depression/anxiety and anger management issues (SD#7 pp.10-13).
37. The private evaluator recommended community-based behavioral support, mobile therapy and therapeutic staff support, in the after school daycare program for five hours a week (SD#7 pp.11-12).
38. In November 2015 the Parent provided an updated private mental health evaluation. The September and November evaluations clearly identified

several clearly recognized mental health diagnoses that were severely limiting the Student's major life function of learning. The community based evaluators concluded that the Student presented as a child with an Adjustment Disorder with Mixed Disturbances of Emotions and Conduct, along with two provisional diagnoses of Oppositional Defiant Disorder (ODD) and Intermittent Explosive Disorder. To deal with the mental health disabilities, the community based provider recommended several types of community based behavioral therapies, including behavior specialist consulting supports (BSC), mobile therapy and a one-on-one therapeutic staff support person in the home and daycare. The community based plan also called for the Student to have ample opportunity to interact with same age peers to improve social skills (SD#7).

The 4th Grade Year

39. The Student began the fourth grade year in a new school (N.T. 846).
40. The discipline report for the Student indicates behaviors beginning within days of the start of the 2015-2016 school year (N.T. 86; S-49; P-51).
41. The day before school started, the Student had a behavior incident when the Parent and the Student were touring the new school. The incident report states that it occurred when the Student could not open a locker (N.T. 953-954).
42. The second day of school the Student had a major meltdown, swearing and screaming (N.T. 954).
43. The math teacher described the Student as having the behavior problems in class (N.T. 1005-1006; S-10, p.1).
44. During the first or second week of school, the school team discussed making a referral and talked to the Parent about a need for an evaluation (N.T. 797). The District immediately issued a Prior Written Notice/Permission to Evaluate (PWN/PTE) in September of 2015 (N.T. 168-169; S-6).
45. The evaluation process began September 21, 2015, less than a month from the start of school (N.T. 732, 733; S-8).

46. In September of 2015, after the death of the [immediate family member], the Parent gave permission for the Student to participate in a group as part of the pre-referral process; the Parent chose anger management. (N.T. 72-73; S-5).
47. In September of 2015, the District sought and was provided with permission to evaluate the Student to determine whether or not the Student was eligible for special education services (N.T. 74, 96; S-6).
48. At the same time, the Parent provided to the District a private psychological evaluation obtained by the Parent from Nulton Diagnostic and Treatment Center dated July 2, 2015. (N.T. 75; S-7). The information was provided by the Parent and the daycare (N.T. 681).
49. On September 2, 2015, the District requested permission to continue to provide the check-in/check-out intervention which was then provided by the reading specialist. The Student began to recognize that the Student was mad, although not why (N.T. 972-973, N.T. 797-798; S-3, N.T. 954).
50. The Student participated in an anger management group with Parent's permission beginning in November, which convened once every six day cycle for seven weeks (N.T. 799; S-5).
51. Later in November of 4th grade, after several "melt downs," disciplinary incidents, including phone calls to the home from the State Police about the Student's conduct in school, the District issued a PTE. Ultimately the PTE led to the November 2015 evaluation report that identified the Student as an IDEA eligible child with an emotional disturbance. *Id.* On October 9, 2015, as part of the evaluation, a psychiatric evaluation was completed (S-10).
52. A Functional Behavioral Assessment (FBA) was conducted on or about October 9, 2015 (N.T. 738, 741, 802, 1007-1008; S-11; S-12); and a behavior intervention plan meeting based on the FBA convened October 16, 2015. N.T. 802. The Student engaged in the process (N.T. 804). The plan was updated on October 28, 2015 (N.T. 804-806; 969-970, 1012-1014; S-13, S-1).
53. On November 3, 2015, the District issued the evaluation report (ER) S-15. At the time of the evaluation, the Student was receiving community based behavioral health services in the classroom (N.T. 744, 745-746; S-16, N.T. 748-749; S-16). On January 29, 2016, the District and the Parent participated

in an inter-agency meeting to develop a plan for therapeutic staff support (TSS) services (N.T. 805-806; S-18). The TSS services began February 1, 2016 (N.T. 806, 829). The Student received check-in/check-out (N.T. 712, 957-969; S-4). During the evaluation period, the Student continued to receive RTI/pre-referral services (P-3. N.T. 98).

54. The report card for marking periods one and two indicated that the Student's behaviors prevented the Student from doing better (N.T. 759, 765, 768-771, S-32). The Student received math instruction in the regular education classroom (N.T. 1002). The Student failed the first two quarters before the Student moved to the emotional support classroom (N.T. 1022; S-26). The math teacher opined that the Student's below basic scores could be attributable to behaviors, including test refusal (N.T. 1027-1028; S-32). The District's evaluation report included a psychiatric evaluation dated October 9, 2015, which indicated diagnoses of Disruptive Mood Dysregulation Disorder, Moderate Oppositional Defiant Disorder (ODD) along with Grief and Bereavement issues (N.T. 77; S-10).
55. The District's evaluation issued on and was dated November 3, 2015, and found the Student to be eligible as a student with an emotional disturbance (S-20).
56. The District issued invitations to participate in the IEP team meeting in November and in December of 2015, but the Parent did not respond. The Parent did not approve the original IEP dated December 2, 2015 (N.T. 1034, 1036, 1060-1062; P-4). The Parent initially refused special education services at a private partial hospitalization program recommended by the intermediate unit psychiatrist who did the October 9, 2015 evaluation (N.T. 806-807, 1034-1037; S-20).
57. On February 23, 2016, and February 25, 2016, the District issued invitations to participate in an IEP conference and the Parent indicated that [the Parent] would attend (N.T. 81-82; S-20; S-21).
58. On February 25, 2016, the Parent approved a NOREP which provided for a therapeutic emotional support classroom in an intermediate unit (IU) classroom (N.T. 82, 114, 808, 1034; S-21). The only difference between the December 2015 NOREP and the February 25, 2016 NOREP was the location (N.T. 1038-1039).

59. A therapeutic emotional support class includes a mental health component, as opposed to an emotional support class that does not offer mental health supports (N.T. 1154). The Student's therapeutic emotional support (TES) classroom includes a special education teacher, an associate teacher and a mental health worker for up to fifteen (15) students, who come and go throughout the day. *Id.*
60. In the TES classroom the Student receives individualized support with four (4) to six (6) peers (N.T. 1068, 1142). At times a licensed social worker (LSW) also provided services in the classroom (N.T. 1142, 1235, 1292-1293, 1352).
61. When the Licensed Social Worker (LSW) evaluated the Student, she determined the Student was not eligible for one-on-one services. *Id.*
62. The goals of the Student's IEP targets behaviors that interfere with learning (N.T. 1021-1022, N.T. 1095; S-21). In the third and fourth quarters following placement in the emotional support classroom the Student earned a score of 87% and 88% in math (N.T. 1023-1024; S-26).
63. In April 2016 the Parent requested an independent educational evaluation. The District refused and so, by law, the disagreement proceeded to a hearing.

Fifth Grade: 2016-2017

64. On July 1, 2016, Hearing Officer Brian Ford issued a decision and held that the parent was entitled to an independent neurological evaluation, an independent speech and language evaluation for pragmatics and an auditory processing evaluation (P-38).
65. The District continued to provide the Student with the same IEP and placement (N.T. 1100-110).
66. The classroom mental health worker used a variety of programs to address the behaviors (N.T. 1119-1127); the TES classroom staff pulled resources from a variety of different strategies, programs and curricula (N.T. 1120, 1142-1146).

67. The November 2016 IEP was implemented until February 2017 (N.T. 1116; S-54).
68. Except for dips in October and February, the Student's behavior was above baseline and demonstrating more consistent positive behaviors (N.T. 1132).
69. The Student attended regular classes for content area classes (N.T. 1148). To support the Student in regular education the teacher uses supplemental materials (N.T. 1150).
70. Although offered the opportunity to attend a field trip the Student refused to get on the bus; to ensure the Student could participate the District made arrangements to drive the Student to the activity (N.T. 1150-1151).
71. Except for speech and language supports, the Parties stipulate that the Student's February 2017 IEP addressed the Student's emotional needs/circumstance and was otherwise appropriate (N.T. 225).

The Speech/Language Dispute

72. The Student is able to follow directions, respond appropriately to questions at times and can express fear of the unknown (N.T. 1256-1259).
73. The Student's Intermediate unit (IU) emotional support teacher confirmed that the communication goals were behavioral goals and not speech or communication goals. The Student's emotional support teacher also confirmed that the Student's behaviors were not related to a speech, language or communication disability, circumstance or need (N.T. 1259-1265). The teacher opined that the Student is capable of communicating appropriately and without screaming, yelling, kicking or leaving the area, and can use appropriate language. The teacher also opined that the Student's screaming, yelling, kicking or leaving the area is unrelated to communication deficits (S-60, S-61).
74. The Student's IU emotional support teacher opined that the Student is able to communicate socially and academically and that the etiology of the Student's behaviors is not communication but the Student's emotional struggles (N.T. 1275-1276).

75. The Student's IU emotional support teacher opined that, in her professional opinion, change and fear of the unknown impacts the behavior, how the Student responds to things and the way [the Student] communicates inappropriately (N.T. 1280).
76. The mental health worker testified that, in her professional opinion, the Student's behaviors are a function of self-regulation and are not related to communication needs (N.T. 1308, N.T. 1308-1309, 1319-1320, N.T. 1326-1329).
77. The associate teacher testified that the Student is able to communicate with peers, understands directions and questions that are asked (N.T. 1326-1329).
78. In September 2016 and then in January of 2017, the independent speech and neuropsychological evaluations were provided to the District (P-39, P-40). The Speech IEE was provided in July 2017 (P-56). The independent evaluations indicate the Student has speech and language and auditory processing deficits (S-35; S-36; P-56). None of the evaluators suggested an IDEA speech and language disability. *Id.*
79. The independent neuropsychological evaluator determined that the Student's needs included communication needs related to written language and social skills with regard to communication (S-36). The evaluator's testing ruled out a specific learning disability and autism (S-36).
80. The evaluator who assessed the Student's auditory processing ability has a doctorate in audiology and is a board certified audiologist (S-35).
81. The auditory processing independent evaluator diagnosed the Student with an auditory processing disorder and significant word retrieval deficits (S-35).
82. The auditory processing independent evaluator concluded that the identified auditory processing deficits impacted the Student's language skills, academics and peer relationships (S-35). The auditory processing evaluator recommended speech and language services to address the Student's word retrieval, expressive language, and receptive language deficits (S-35). The auditory processing evaluator recommended the Fast ForWord Literacy program to address the auditory processing deficits (S-35).

83. The independent speech evaluator concluded the Student “has significant speech and language deficits ... compounded by marked difficulties in auditory skills, specifically language perception, memory and comprehension. [Redacted]’s emotional and behavioral challenges further compromise [redacted] ability to participate in and benefit from instruction.” (P-38).
84. The independent speech evaluator recommended: “A comprehensive, intensive and integrated approach to intervention is needed to support [the Student] in developing the skills [redacted] needs to be successful socially and academically.” (P-56).
85. The independent speech evaluator explained how the Student’s speech and language needs are related to the Student’s social and emotional needs (P-56).
86. The private speech evaluator and the auditory processing evaluator concluded the Student’s behaviors are a function of a communication deficit (P-56).
87. In an effort to verify the Student speech and language needs, the District’s speech and language therapist completed three different types of assessments (S-58). The first test she administered was the Test of Auditory Processing Skills – Three, TAPS-3 (S-58). The Student scored in the “Below Average” range on the phonological blending. The phonological blending subtest assesses the Student ability to listen to speech sounds and blend them into a word (S-58; N.T. 924-925). The speech therapist noted that the Student became anxious during the assessment of working memory (S-58; N.T. 868, 927). As a result of the anxiety, the evaluator did not complete the assessment of working memory (N.T. 868, 927-928).
88. The District’s speech and language therapist concluded that her testing could not rule out an auditory processing disorder (N.T. 919).
89. The District’s speech and language therapist is not an audiologist and the results of her assessment and the audiologist can both be correct (N.T. 908-909.)

90. The District's speech and language therapist agreed that the independent evaluator completed assessments of auditory processing skills that she did not assess (N.T. 913).
91. The District's speech and language therapist did not assess how the Student filters background noise (N.T. 879, 914). The District's speech therapist did not know how to administer or interpret the auditory processing assessments (N.T. 919). The speech therapist did not assess the Student's auditory closure and speech perception (N.T. 918-919).
92. The speech therapist and the independent evaluator administered the Test of Problem Solving – Edition 3 (S-58, P-56; N.T. 930, 939). The District's speech therapist was not aware of or consider whether or how her retesting affected the validity of her results (N.T. 930, 939). Nevertheless the scores were not very different. *Id.*
93. The District's speech therapist administered only one of the four scales of the Oral and Written Language Scale (N.T. 940-941).
94. The District's speech therapist did not cogently explain why she omitted the Oral Expression scale, the Written Expression scale and the Reading Comprehension scale when she administered the Test of Problem Solving – Edition 3 (N.T. 941).
95. The District's speech therapist did not assess the Student's expressive language needs, pragmatic or social language skills (N.T. 941-943).
96. The District's speech therapist is not qualified to administer or interpret the audiology assessments (N.T. 888-889, 909, 913).
97. The District's speech therapist used the independent speech and audiology evaluations to develop goals and objectives for the Student's program (N.T. 856-857, 860-863; S-39 S-35, P-56,).
98. The speech therapist chose goals that seemed most beneficial and in need based on the independent evaluations and those more appropriate for speech therapy than instruction (N.T. 862; 864).

99. Speech therapy for the Student began in March 2016 and was comprised of one individual and one group session twice a six day cycle for thirty minutes each session. The Student began actually participating sometime between April and June; speech services then began again in September 2016 and continued until December 2016. The Student progressed from the 3rd to the 75th percentile on the Test of Problem Solving 3 Elementary (TOPS-3) in six months (N.T. 864, 934, 940).
100. The speech therapist uses various materials from speech and language companies and not a research based program; she was not addressing auditory processing, but was addressing verbal reasoning through the Student's use of inferences which ties in with reading comprehension and problem solving. She did not address word retrieval and addressed social communication in the speech room with socially communicating with the group and bases the materials used on her expertise, her educational background and experience (N.T. 947, N.T. 940-945).
101. The Student's swearing and vulgar language is a behavior and is not an indicator of a communication need (N.T. 946-947; P-19).
102. The IEP and the evaluation team concluded that the Student should be exited from speech (N.T. 873).

General Legal Principles

Burden of Proof

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion rests with the Parent who requested this hearing. In IDEA disputes the hearing officer applies a preponderance of proof standard.

Credibility Determinations

Hearing officers, as fact-finders, are charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014).

This hearing officer now finds the District's and the Parent's witnesses were credible, and their testimony was essentially consistent with respect to the actions taken or not taken by the District in evaluating the Student for IDEA eligibility. I will, however, as explained below give less weight to the testimony of certain District witnesses, specifically the classroom teachers, the Instructional Support Teacher (IST), the school psychologist, and the Director of Special Education when at times each witness failed to provide a clear, cogent and convincing explanation of how he/she worked with the Student and/or participated in the development of the IST interventions prior to the production of the evaluation report (ER). I will also give less persuasive weight to the testimony of the staff members who did not implement the IST interventions or interact with the Student on a day-to-day basis. I will also give less weight to the District staff's testimony related to the preparation of the initial ER and the implementation of the 4th and 5th grade IEPs. I give greater weight to the testimony of the 5th and 6th grade staff related to the Student's alleged speech and language deficits. For the following reasons, I now find in part in favor of the Parent and in part for the District.

Applicable Legal Principles

Child Find

School Districts have a "continuing obligation ... to identify and evaluate all students who are reasonably suspected of having a disability under the statut[e]." *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 271 (3d Cir. 2012)(citing *P.P. v. West Chester Area School District*, 585 F.3d 727, 738 (3d Cir. 2009)); *Taylor v. Altoona Area Sch. Dist.*, 737 F. Supp. 2d 474, 484 (W.D. Pa. 2010); 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a), (c). Even if parents do not cooperate fully with a district's efforts to identify a student, districts still have a responsibility to identify students who are in need of IDEA protections. *Taylor*, 737 at 484. The IDEA child find duty does not demand that schools conduct a formal evaluation of every struggling student. A school's failure to identify a disability at the earliest possible moment is not *per se* actionable. *D.K. v. Abington Sch Dist.*, 696 F.3d 233, 249 (3d Cir. 2012). However, once school districts have a reasonable suspicion the student is otherwise IDEA eligible, the district is required to fulfill their child find obligation within a reasonable time. *Id.* Failure to conduct a sufficiently comprehensive evaluation is a procedural and substantive violation of the district's "child find" obligation. Substantive child find violations can cause a denial of a FAPE. *D.K.*, 696 F.3d at 250 (a poorly designed and ineffective evaluation does not satisfy "child find" obligations). Therefore, an evaluation must be sufficiently comprehensive to assess all of the child's suspected disabilities. 20 U.S.C. §1414(b)(3)(B); 34 C.F.R. §300.304(c)(4), (6). Simply stated, the child find trigger or starting point occurs when the school district has a reasonable suspicion that the child may be eligible under the IDEA. Once the child find duty is triggered, the district must initiate a comprehensive evaluation of the child within a reasonable period of time.

Classification of Emotional Disturbance

In order to qualify as a "student with a disability" under the IDEA, a student must meet the definition of one or more of the categories of disabilities. 34 CFR §300.8 (a)(1). Pursuant to the IDEA Part B regulations, 34 CFR §300.8(c)(4)(i) "emotional disturbance" means a condition exhibiting one or more of the following characteristics "over a long period of time and to a marked degree that adversely affects a child's educational performance":

- A. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- C. Inappropriate types of behavior or feelings under normal circumstances.
- D. A general pervasive mood of unhappiness or depression.
- E. A tendency to develop physical symptoms or fears associated with personal or school problems.

A student needs to exhibit only one of the five criteria under the definition of an emotional disturbance to potentially qualify for special education and related services under the ED classification, but the student must exhibit the criteria to "a marked degree" over "a long period of time." 34 CFR §300.8(c)(4)(i). While 34 CFR §300.8(c)(4)(i) states that a student with an emotional disturbance must manifest at least one of the identified characteristics described in subsections (A) through (E) "to a marked degree" for "a long period of time," neither the IDEA statute nor its regulations define how long a qualifying "long period of time" must be.

In *Letter to Anonymous*, 213 IDELR 247 (OSEP 1989) OSEP stated that a generally acceptable definition of "a long period of time" can range from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period. *See also R.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007) (because a child made significant improvements in her classroom behavior once she adjusted to her placement, her inability to maintain peer relationships did not persist for a long period of time.). As for the "to a marked degree" criteria, OSEP has taken the position that it generally refers to the frequency, duration, or intensity of a student's emotionally disturbed behavior in comparison to the behavior of his peers and can be indicative of either degree of acuity or pervasiveness. *Letter to Anonymous*, 213 IDELR 247 (OSEP 1989).

Speech or Language Impairment as a Communication Disorder

The IDEA defines a speech or language impairment as a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance. 34 CFR §300.8 (c)(11). The fact that a child has a speech or language impairment will not in itself make him eligible for IDEA services. To find the student IDEA eligible the team must determine that the student also needs specially designed education and services to access the curriculum. 34 CFR §300.8 (a)(1).

In *Letter to Clarke*, 48 IDELR 77 (OSEP 2007), OSEP noted that whether a child with a speech-language impairment qualifies as a child with a disability under the IDEA will depend on more than academic performance. Noting that districts should use a variety of assessment tools, OSEP observed that a child's eligibility for services due to a speech or language impairment must be determined on a case-by-case basis.

Section 504 Eligibility

Under Section 504, the educational performance of a student with a speech impairment need not be adversely affected to trigger eligibility. However, the impairment must either substantially impair a major life activity (e.g., speaking). Speaking -- the ability to express oneself through oral communication -- is a major life activity. 34 CFR 104.3 (j)(2)(ii). *See also Dear Colleague Letter*, 58 IDELR 79 (OCR 2012) (reminding districts that they must interpret the definition of a "disability" liberally when evaluating a student's Section 504 eligibility).

IDEA Comprehensive Assessment Criteria and Standards

The IDEA sets forth three broad criteria that the local educational agency must meet when evaluating a child's eligibility for services under the IDEA. First evaluators must "use a variety of assessment tools and strategies" to determine "whether the child is a child with a disability." Second, the district "[may] not use any single measure or assessment as the sole criterion" for determining either whether the child is a child with a disability or the educational needs of the child. *Id.* § 1414(b)(2)(B). And third, the district must "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." *Id.* § 1414(b)(2)(C).

The intertwined subparts of the IDEA regulations impose additional criteria that school officials must meet when evaluating a child to determine if the child has a disability. A child's initial evaluation or reevaluation consists of two steps. First, the child's evaluators must "review existing evaluation data on the child," including any evaluations and information provided by the child's parents, current assessments and classroom based observations, and observations by teachers and other service providers. 34 C.F.R. § 300.305(a)(1). Second, based on their review of that existing data, including input from the child's parents, the evaluation team must "identify what additional data, if any, are needed" to assess whether the child has a qualifying disability and, if so, "administer such assessments and other evaluation measures as may be needed." *Id.* § 300.305(a)(2)(c). Under the first step of the analysis, the district is required to "[u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent." *See id.* § 300.304(b). All the assessment methods, protocols and materials used must be "valid and reliable" and "administered by trained and knowledgeable personnel." *Id.* § 300.304(c)(1). In combination, these well-established criteria have the effect of ensuring the evaluation either confirms or rules out the student's potential disabilities, identifies the student's individual circumstances and examines whether the child is in need of specially-designed instruction.

IDEA and Section 504 Eligibility Determination Standards

Upon completion of the administration of assessments and other evaluation measures:

- (1) A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in 34 CFR §300.8 , in accordance with 34 CFR §300.306 (b) and the educational needs of the child; and
- (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

34 CFR §300.306 (a).

A child must not be determined to be a child with a disability:

- (1) If the determinant factor for that determination is:
 - (i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act);

- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under 34 CFR §300.8 (a).

Each public agency, in interpreting evaluation data for the purpose of determining if a student is a person with a disability under 34 CFR §300.8 must:

- (i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- (ii) Ensure that information obtained from all of these sources is documented and carefully considered. 34 CFR §300.306 (c)(1).

A district's failure to consider relevant information about the student's needs or individual circumstances in making an eligibility determination may, at times, result in a denial of FAPE. *Lauren G. v. West Chester Area Sch. Dist.*, 60 IDELR 4 (E.D. Pa. 2012).

Compensatory Education

Compensatory education is appropriate relief designed to compensate a disabled student who has been denied a FAPE.⁶ Compensatory education should place the child in the position they would have been in but for the IDEA violation.⁷

Compensatory education “accrue[s] from the point that the school district knows or should know of the injury to the child.”⁸ The child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” *Id.*

⁶ *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 276 (D.D.C.2011) (citing *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir. 2005)).

⁷ *Boose v. District of Columbia*, 786 F.3d 1054, 2015 U.S. App. LEXIS 8599 (D.C. Cir. 2015). IEPs are forward looking and intended to “conform[] to . . . [a] standard that looks to the child's present abilities”, whereas compensatory education is meant to “make up for prior deficiencies”. *Reid*, 401 F.3d at 522-23. Unlike compensatory education, therefore, an IEP “carries no guarantee of undoing damage done by prior violations, IEPs do not do compensatory education's job.”

⁸ *G.L.* at 618-619 quoting *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996) (citations omitted).

The case law currently provides three different approaches to calculate an award of compensatory education. In *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015) the court endorsed a “complete” make whole remedy favoring qualitative relief for the entire period of the violation. *G.L.*, 802 F.3d at 626. The second approach is called the “hour for hour approach. In the “hour-for-hour” approach the hearing officer award hours as the basis of relief. *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996). In the third approach generally referred to as an “equitable” calculation, the hearing officer upon review of the record as a whole awards appropriate relief. *Id.*

As an overall equitable remedy, compensatory education is intended to provide more than “some benefit” or for that matter “meaningful educational benefit and significant learning.”⁹ Under either approach, the factors included in crafting a stockpile of compensatory education relief hinges on student specific facts and circumstances, including but not limited to, projecting how much progress the student might have shown if he or she had received the required special education services, the student’s age, ability, past achievement, stage of learning, unmet needs, present levels of functioning in all areas of suspected disability, projected current progress on the IEP goals, service hours missed, service hours provided and the student’s current ability and achievement levels.

Therefore, whether the hearing officer applies the “make whole”, “equitable” or “hour for hour” approach, the calculation requires some record based factual evidence about the type, frequency, intensity and amount of services either missed or needed to place the student in the same position he or she would have occupied but for the LEA’s violations of the IDEA.¹⁰ Also after *GL* and *MC*, the parents must establish when the District either “knew or should have known” the child was not receiving FAPE.¹¹

⁹ *Boose v. District of Columbia*, 786 F.3d 1054, 1058 (D.C. Cir. 2015).

¹⁰ *Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011), citing *Reid, supra* (the parent, as the moving party, has the burden of “propos[ing] a well-articulated plan that reflects the student’s current education abilities and needs and is supported by the record.”); *Phillips ex rel. T.P. v. District of Columbia*, 736F.Supp.2d 240, 248 (D.D.C.2010) (citing *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt*, 583 F.Supp.2d 169, 172 (D.D.C.2008) (Facciola, Mag. J.); *Cousins v. District of Columbia*, 880 F.Supp.2d 142, 143 (D.D.C.2012) (the burden of proof is on the parents to produce sufficient evidence demonstrating the type and quantum of compensatory education that makes the child whole).

¹¹ *G.L.* at 618-619 quoting *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996) (citations omitted).

Assuming a finding of a denial of FAPE, the District, on the other hand, following *M.C.* must produce evidence on what they suggest is the length of time, otherwise known as the reasonable rectification period, the offending district should have taken to put the child back on the correct path. *Id.* The reasonable rectification period is a factual determination. *Id.* Therefore, whether the parent follows the *Reid* “make whole” approach, the equitable approach or *MC* “hour for hour” approach, the award must be supported by the factual record as a whole. *Id.* With these principles in mind, I will now turn to the analysis of the instant child find and denial of FAPE dispute.

Overview, Discussion and Analysis of All Claims

The Student’s IDEA Eligibility was Apparent at the end of 1st Grade

Upon filing a due process Complaint, the Parent as the moving party accepted the burden of proof to establish the District failed to timely and comprehensively evaluate the Student in all areas of suspected disability. Here the Parent contends the warning signs of an IDEA disability were readily apparent during 1st grade. The Parent further contends the three (3) year plus [1st, 2nd, 3rd and part of 4th grade] delay here was unreasonable. Taken as a whole, the Parent argues that the District’s failure to locate, identify and evaluate the Student, as a child with an emotional disturbance in 1st grade, is a multi-year denial of a FAPE claim. In support of [the Parent’s] multiple contentions, the Parent asserts the District did not give proper weight to the frequency, duration, or intensity of the Student’s impulsivity, inattentiveness, communication skills and ongoing misconduct in violation of the District’s own code of conduct. The Parent next argues that as a consequence of Hearing Officer Ford’s decision in [Parent’s] favor any individualized services provided prior to or after that evaluation/IEE finding extended the denial of a FAPE into the present. Finally, the Parent argues that even though it can be conceded that the District is now providing a FAPE that addresses the Student’s behavioral needs, the Student’s speech, language and auditory processing needs continue to go unmet. To remedy the alleged violations, the Parent seeks an hour-for-hour award of compensatory education.

The District, on the other hand, contends the Student’s disability did not become apparent until the beginning of 4th grade. To address the Student’s misbehavior, the District argues they provided a series of intensive early intervening services [*aka* RTI interventions] along with other regular education supports to address the Student’s misbehaviors and learning needs. They further contend, to the extent any misbehaviors did occur the behaviors were not indicative of any of the five (5)

identified characteristics of a child with emotional disturbance as described at subsections 34 CFR §300.8(c)(4)(i)(A) through (E).

The District next argues that once the Student's pattern of behavior escalated in fall of 4th grade, the District immediately issued a permission to evaluate, and completed a comprehensive assessment which led to an offer of an appropriate program and placement in the least restrictive setting.¹²

After looking at a variety of factors, like grades, standardized test scores, school behavior, discipline logs, public and private evaluation reports, absenteeism, regular education intervention summaries, phone/communication logs, parental requests, criminal complaints and a review of the three year history of regular education interventions, I now find that after the 30 or so behavioral incidents in 1st grade, [from October 2012 to May 2013], the District should have formulated a reasonable suspicion about the need for an evaluation. This finding is buttressed by the fact that someone told the guidance counselor to send the mother a parent request to evaluate form. I also find the three (3) plus year delay in evaluating the Student, in light of this consistent pattern of misbehavior, across school years, in the school, in the day care on school grounds, on the bus and in the home, was a continuous ongoing IDEA child find violation. Accordingly, as discussed in greater detail below I now find the District should have evaluated the Student in the Spring of 1st grade in 2013; an equitable award of compensatory education on the first "child find" claim is now appropriate.

The District Failed to Evaluate the Student's in 1st, 2nd, 3rd and 4th Grade

Beginning in 1st grade and continuing through 3rd grade the District provided ongoing regular education and RTI/IST interventions/supports. Despite three (3) plus years of regular education interventions like: a home and school communication log; one-on-one check-in/check-out support; group counseling; school district sponsored anger management classes; and in school and after school private mental health supports/interventions, the Student's pattern of behaviors remained persistent, problematic and impeded learning. The multi-year

¹² The Parties are reminded that Hearing Officer Ford found the District's 4th grade evaluation was inappropriate and incomplete. To remedy the inappropriate evaluation the hearing officer ordered a variety of assessments. See, BL ODR FILE #17625-1516 KE (July 16, 2016). Two of the IEE assessments were partially completed in the fall of 2016, with the third completed in January 2017. All of the IEEs were reviewed sometime in February 2017. While the evaluations were pending, the District continued to use the previously found incomplete and inappropriate assessment as the basis to develop the 4th and 5th grade IEPs.

uninterrupted pattern of misbehavior adversely affected the Student's learning, classroom performance, standardized testing, peer and adult relations.

In November 2014 of 3rd grade, after a meltdown, the Student was removed from the classroom by a school district security officer (N.T. 412,415). During this incident, the Student screamed and kicked the wall for an hour and twenty-five (25) minutes (S-48; N.T. 415). Earlier in the same day the Student was removed from the classroom for fifty (50) minutes due to screaming and refusing to do work (S-48; N.T. 446-447). The third grade teacher described the situations as a "particularly severe incident." *Id.* The teacher noted that the involvement with security officer was the type of "incident that kind of set off a red flag that something was going on with this child that [redacted] was having a hard time controlling [impulses and behavior] " (N.T. 560-561).

Later on November 25, 2014, there was another behavioral incident that forced the teacher to call for the SERT" to intervene. As the year marched on, by December 2014, the building level Student Informational Response Survey ("SIRS") team met to develop a general building level positive behavior support plan (N.T. 151). The IST teacher and the 3rd grade teacher commented that the SIRS behavior plan was essentially the same behavior plan used with other students, with the caveat here that the Student was given two strikes rather than one strike, before a consequence (P-2; N.T. 571-574, 583). Curiously, when asked, the IST teacher could not recall how the behaviors were defined or assessed to determine if the generic intervention was working. Nevertheless, the SIRS team on January 29, 2015, determined that the Student met the goal and discontinued the intervention (N.T. 406). On or about the same time from December 2014 through January 2015, the Student participated in six (6) to eight (8) week group counseling sessions, otherwise available to all students, with the guidance counselor. No specific individualized Student focused guidance interventions were implemented and no specific Student data was collected. While all of the above interventions were happening, a counselor from a private behavioral health provider came to school during third grade, once per week, to meet with the Student. The IST teacher acknowledged that no one from the District knew what the private provider did with the Student behind the closed conference room door. The summary of the events as described by the staff during each school year did not provide a cogent, clear, consistent explanation of the why the District did not suspect the Student was a person with an IDEA disability. The fact that at the beginning of 2nd grade someone had a suspicion the Student should have been evaluated and never followed up and completed the evaluation under these facts is not credible. Therefore, I find the District either knew or should have known the Student should have been evaluated by the end of 1st grade.

The Delay in Referring the Student for an Evaluations was Unreasonable

The Federal regulations at 34 CFR § 300.309(c) require that if a child has not made adequate progress after an appropriate period of time and participation in the RTI/IST protocols, a referral for an evaluation must be made. While the regulations do not specify a timeline for beginning and ending RTI process or for that matter define what adequate RTI progress, OSERS in 2007 clarified that RTI is not intended to replace or delay a comprehensive evaluation.¹³ Instead, OSERS instructed Districts to use the RTI process as one of a variety of assessment tools and strategies to identify children with disabilities. *Id.* Therefore, when the interventions do not work, like here, it is not acceptable for a District to wait several months let alone three (3) plus years to seek parental consent for an initial evaluation.

In 1st grade the teacher used a home and school notebook as an intervention; the notebook did not work. Also, during 1st grade, the Student met with the IST teacher to work on behavioral concerns. Clearly, the staff either knew or should have known, by the end of 1st grade the teacher interventions and RTI interventions did not work. In 2nd grade, the Student was defiant, had poor peer relations and had ongoing social issues. While in 2nd grade the RTI teacher used a generic check in/check out program to monitor the Student's conduct, the intervention did not have any long term impact. The Parent and the teacher reported the Student continued to struggle with writing, reading, completing tasks in school and homework. The Student' report card indicated the Student did not meet expectations for working cooperatively with others. S-26. Yet no one suggested an IDEA or Section 504 evaluation.

¹³ *Questions and Answers on Response to Intervention (RTI) and Early Intervening Serves. (EIS)*, 47 IDELR 196 (OSERS 2007). *See also Meridian Sch. Dist. 223*, 56 IDELR 30 (SEA IL 2010) (finding that a district that offered general education interventions to address a student's academic difficulties instead of evaluating him for IDEA eligibility violated child find); *A. W. v. Middletown Area Sch. Dist.*, 65 IDELR ¶ 9 (E.D. Pa. 2015) (approx. 11 months until initiating the evaluation); *Long v. District of Columbia*, 780 F. Supp. 2d 49, 270 Ed.Law Rep. 664 (D.D.C. 2011) (2.6 years until completion of evaluation); *D.A. v. Houston Indep. Sch. Dist.*, 716 F. Supp. 2d 603 (N.D. Tex. 2009), *aff'd on other grounds*, 629 F.3d 450, 264 Ed.Law Rep. 50 (5th Cir. 2010) (2 months until initiating evaluation); *Reg'l Sch. Dist. No. 9 Bd. of Educ. v. Mr. M.*, 53 IDELR ¶ 8 (D. Conn. 2009) (almost 7 months until initiating evaluation); *El Paso Indep. Sch. Dist. v. Richard R. ex rel. R.R.*, 567 F. Supp. 2d 918, 236 Ed.Law Rep. 679 (W.D. Tex. 2008) (13 months until initiating evaluation); *C.C. v. Beaumont Indep. Sch. Dist.*, 65 IDELR ¶ 109 (E.D. Tex. 2015) (3.5 mos. until obtaining consent).

In 3rd grade, even though the Parent provided the district with a private mental health evaluation and the District permitted a private mental health counselor to meet with the Student in school once a week, rather than evaluate the Student, the District used the SERT team, the district magistrate and the State Police to manage the Student's misbehavior. Despite an uptick in the frequency and severity of the misconduct, no one made a referral for an evaluation. The 3rd grade teacher cogently described a November 2014 melt down that raised a flag, commenting that the Student was "out of control" and "did not understand" what was going on, yet no one recommended an evaluation (N.T. 555-556).

By the Spring of 1st grade in 2013, after 30 behavioral incidents, the child find warning lights were alternating between yellow and red. In 3rd grade, the blinking lights turned solid red. By the Fall of 4th grade, bells and whistles began to sound, yet none of the teachers could cogently explain why they delayed giving the Parent a PTE until November 2015 in 4th grade. As a consequence of the delay in evaluating the Student in all areas of suspected disability, the Student was denied a full educational opportunity goal and the parallel opportunity to receive a FAPE for several years. When viewed as a whole, the Student's pattern of behavior, in 1st, 2nd, 3rd and 4th grades solidly matches up with the several characteristics of a Student with an emotional disturbance. On multiple occasions each year the Student exhibited an "inability to build or maintain satisfactory interpersonal relationships with peers and teachers," displayed "inappropriate types of behavior or feelings under normal circumstances" and exhibited a "general mood of unhappiness" 34 CFR 300.8(c)(4)(i). After reviewing the record as a whole, I now find that by April/May 2013 of 1st grade, the District should have formed a reasonable suspicion the Student was IDEA eligible. This finding does not end the analysis, to find a child find violation I must also find the delay in evaluating the Student was unreasonable.

The Delay in Evaluating the Student was Unreasonable

By the beginning of 4th grade, the Parent provided the District with two private mental health evaluations, first in September 2015 and then in November 2015. Both evaluations clearly identified several clearly recognized mental health diagnoses that were severely limiting the Student's major life functioning of learning. The community based evaluators concluded that the Student presented as a child with an Adjustment Disorder with Mixed Disturbances of Emotions and Conduct, along with two provisional diagnoses of Oppositional Defiant Disorder and Intermittent Explosive Disorder. To deal with the mental health disabilities, the community based provider recommended several types of community based

behavioral therapies, including a behavior specialist consulting supports (BSC), mobile therapy and a one-on-one therapeutic staff support person in the home and daycare. The community based plan also called for the Student to have ample opportunity to interact with same age peers to improve social skills. The District was aware of the mental health diagnoses and the community supports. In November of 4th grade, after several “melt downs,” disciplinary incidents, including phone calls to the home from the State Police about the Student’s conduct in school, the District issued a PTE. Ultimately the PTE led to the November 2015 evaluation that identified the Student as IDEA eligible, as a Student with an emotional disturbance.

After the evaluation was completed, the District offered to place the Student in a partial hospitalization program outside of the District. The Parent rejected the placement and pushed for a District based program and placement. Finally, in January 2016, while the Student was in the second half of 4th grade, as the team was continuing to finalize the IEP, the Parent, the community based mental health provider, the guidance counselor, the building principal, the district psychologist, and two teachers reviewed the latest community based treatment plan. After an interagency meeting, the District agreed to allow a therapeutic staff support mental health counselor to work with the Student, in class, on a daily basis to support skills like completing tasks, writing down assignments and managing behavioral outbursts (P#20). In February 2016, close on the heels of the interagency meeting but before the Parent agreed to the first IEP, the Student was issued a criminal citation by the police for using obscene language in school (P#21). When the record is viewed as a whole, I now find for all the reasons to follow waiting until November 2015 when the Student was in 4th grade, to issue the PTE was an unreasonable delay. The facts clearly support a finding that the delay in evaluating the Student was unreasonable.

The Evaluation Report and the Ensuing 4th Grade IEP are Inappropriate

On July 1, 2016, Hearing Officer Ford entered an Order, finding the District’s November 2015 ER was incomplete and inappropriate (P-38). To remedy the evaluation violation Hearing Officer Ford Ordered the District fund a series of assessments, including but not limited to, “an independent Neuropsychological Evaluation, a Speech/Language Evaluation (to assess pragmatic language), and an Auditory Processing Evaluation” to assess how the Student hears, processes, remembers words, phrase and sounds. *Id.* The Order went on to state that “Nothing in this Order prohibits the Parent from obtaining an independent Functional Behavioral Assessment (FBA) or Occupational Therapy (OT) Evaluation at the

Parent's own expense. Should the Parent obtain an independent FBA, the District may implement its own policies regarding classroom observations by third parties, but may not otherwise hinder the FBA." (P#38).

Courts in this circuit have held that a protracted failure to evaluate and to offer an IEP to a student reasonably suspected of having a disability is a denial of a FAPE. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3d Cir. 2012)(a school district commits a procedural/substantive violation of the IDEA when it improperly delays an evaluation). In *Jana K. ex rel. Tim K. v. Annville-Cleona Sch. Dist.*, 2014 WL 4092389 (M.D. Pa. Aug. 18, 2014), the student exhibited signs of an emotional disturbance throughout seventh- and eighth-grade school years, including depression, self-injurious behavior, frequent visits to the guidance counselor and nurse, poor academic performance, and absenteeism. 2014 WL 4092389. The *Jana K.* court found, when like here, a school district offers a student specific services, like RTI interventions, to improve performance but fails to refer the student for a special education evaluation, the district can be found responsible for an ongoing denial of a FAPE. *Id.* In *W.B. v. Matula*, 67 F.3d 484 (3d Cir. 1995) abrogated on other grounds by *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791 (3d Cir. 2007), the Third Circuit held that a delay of six months between notice and referral for an evaluation constituted a violation of the school district's child find duties. Likewise in *O.F. ex rel. N.S. v. Chester Upland School District*, 246 F. Supp. 2d 409, 417-418 (E.D. Pa. 2002), the court found when the district was on notice that the student likely had a disability, waited until the following month to refer the student for an evaluation and then failed to complete a comprehensive evaluation until some 13 months later denied the student a FAPE. Simply stated once a school district is on notice of a likely disability, it must evaluate the student within a "reasonable time." *D.K.*, 696 F.3d at 250 (quoting *Ridley*, 680 F.3d at 271).

It is axiomatic that an IEP premised upon an incomplete and inappropriate evaluation is *per se* inappropriate. See ODR #01481-1011 KE and ODR No. 01589-1011 KE (Hearing Officer Ford December 2010). Therefore, when the initial ER, IEP, IEE Decision and the IEE results are viewed as a whole, I now find by a preponderance of the evidence that the District failed to offer the Student a FAPE for the entire 4th grade school year. The 4th grade denial of FAPE began anew in September of 5th grade and continued forward until February 17, 2017, of 5th grade when the Parties finalized a revised IEP. *See also, A.W. v. Middletown Area Sch. Dist.*, 115 LRP 4105 (M.D. Pa. 01/28/15) (holding that the district denied FAPE to a teenager with an anxiety disorder by taking 13 months to evaluate the student and develop an initial IEP). Accordingly, I now find the District denied the Student a FAPE when they prepared and implemented multiple

IEPs once on notice its evaluation report was otherwise inappropriate, an appropriate Order of compensatory education follows.

The Speech, Language and Communication Dispute

The Parent contends the District failed to identify, locate and evaluate the Student as a person with speech, language, communication disability and needs. The District, on the other hand, contends the Student does not have any speech or language needs. The applicable regulations require that all the assessment methods, protocols and materials used to assess a student's eligibility must be "valid and reliable" and "administered by trained and knowledgeable personnel." 34 C.F.R. § 300.304(c)(1).

In *Letter to Clarke*,⁴⁸ IDELR 77 (OSEP 2007), the Office of Special Education Program (OSEP) noted that whether a child with a speech -language impairment qualifies as a child with a disability under the IDEA will depend on more than academic performance. Noting that districts should use a variety of assessment tools, OSEP commented that a child's eligibility for services due to a speech or language impairment must be determined on a case-by-case basis. OSEP and the case law are clear that if a student can make himself understood and communicate effectively despite a speech impairment, as opposed to a disability, then the student's educational performance is not considered to be adversely affected by the impairment. *See, e.g., Weymouth Pub. Schs.*, 21 IDELR 578 (SEA MA 1994) (noting that a 10-year-old student with a frontal lisp was ineligible under the IDEA because he was capable of communicating effectively); *Downers Grove (IL) Grade Sch. Dist. 58*, 1 ECLPR 271 (OCR 1992) (determining that a 4-year-old with hoarseness and accompanying phonation breaks secondary to a medical diagnosis of bilateral vocal nodules was not eligible based on age-appropriate speech and language skills); and *Van-Far R-1 Sch. Dist.*,¹¹ ECLPR 96 (SEA MO 2014) (concluding that a child was not eligible for IDEA services due to an alleged voice impairment because his voice was within normal limits for his age and only exhibited a slight rasp). In *Lassen View Union Elementary School District*, 55 IDELR 87 (SEA CA 2010), the ALJ noted that whatever speech language difficulties the student continued to have the difficulties were not curtailing performance. To determine if the student was adversely affected the hearing officer relief upon the Student's good grades, ability to participate in classroom discussions, and the ability to communicate appropriately and effectively with peers and adults supported that notion. Moreover, in *Lassen View*, the district's multifaceted speech language assessment showed that the student's articulation and expressive, receptive, and pragmatic language abilities were age-appropriate.

The speech and language claim here centers around a factual finding about the Student's articulation and expressive, receptive, and pragmatic language abilities. After reviewing the record as a whole, the Parents have not produced a preponderance of the evidence that the Student's speech, language, auditory processing disorder and deficits are adversely affecting the Student's speech or language. The IEE testing does not reflect that the Student exhibits an articulation impairment, language impairment, or a voice impairment, that adversely affects a child's educational performance. 34 CFR §300.8 (c)(11).

When viewed as a whole, the Parent's private speech and language testing does not establish a speech and language disability within the plain meaning of the IDEA. To the extent the Parent relies on the auditory processing deficits, auditory processing is not one of the identified IDEA disabilities; therefore, as a matter of law, the Student's deficits/disorder/impairment does not merit protections under the IDEA as a disability. Even assuming *arguendo* the IEE testing makes out a speech impairment, the Parent failed to establish by a preponderance of the evidence that the auditory processing deficits are adversely affecting the Student's education. When the District's evaluation, while not perfect, is coupled with the IEE results, the team clearly had the benefits of a comprehensive evaluation of the Student in all areas of suspected disability. Furthermore, to the extent the auditory processing deficits exist, the current agreed upon IEP goals and specially-designed instruction are addressing the deficits.

To the extent the Parent argues the auditory processing deficits within the meaning of Section 504, the Parent failed to prove that the auditory processing deficits, along with the speech deficits are tantamount to a "physical or mental impairment" that "substantially limits one or more major life activities." 34 CFR 104.3. Therefore, I agree with the District; the Student does not have a speech and language impairment. The Parent's speech/language/auditory processing child find claim is denied.

Compensatory Education is the Appropriate Relief for the Child Find Claim

The Parent did not offer any testimony or exhibits on the scope of the requested relief. Likewise, the District did not offer any testimony on the *M.C.* reasonable rectification period. Consistent with the appropriate relief discussions in *G.L.*, *Reid*, and *M.C.* to cure the gap in the record, rather than award too much or too little appropriate relief, pursuant to 34 C.F.R. §300.508(d), I am directing the

District to fund an independent compensatory education evaluation to determine the magnitude, scope and range of the compensatory education relief.¹⁴ In this particular instance, I find that the District either knew or should have known the Student was IDEA eligible as a person with an emotional disturbance by April/May of 2013.¹⁵ The independent evaluator using either the “hour for hour” or “make whole” approach should calculate the educational loss the Student suffered and the length of time necessary to compensate the Student for the loss. I also find, consistent with the applicable regulations about when an IEP must be in effect, had an IEP been offered, in this particular instance, the reasonable rectification is the same 10-day window the District would have had to offer a Notice of Recommended Educational Placement (NOREP) and IEP. *See*, 22 Pa Code §14.131(a)(6). Therefore, assuming the independent evaluator uses an “hour for hour” approach the evaluator should deduct 10 days of services from the compensatory education calculation. The value of the equitable deduction should not exceed the amount of time the Student would attend one full session of compensatory education as recommended by the independent evaluator or the Parties can simply agree to an equitable award.

To the extent practicable, using the above suggested factors, the evaluator should set out the essential elements of a well-articulated compensatory education plan that takes into account the Student’s needs, strengths, social, emotional and behavioral present levels of educational performance, abilities, individual circumstances and unique needs. At a minimum, the compensatory education plan should include the type of service(s), frequency, intensity, and magnitude of compensatory education service(s) needed to place the Student in the same position the Student would have received but for the denial of a FAPE.

¹⁴ *See, Jackson-Johnson v. D.C.*, 2015 U.S. Dist. LEXIS 53909 *28 (D.D.C. Mar. 30, 2015) (hearing officer can order evaluation to develop the record to make a fact-specific inquiry essential to determine what, if any, compensatory education would be appropriate); *Phillips v. District of Columbia*, 736 F. Supp. 2d 240, 55 IDELR 101 (D.D.C. 2010) (action remanded to hearing officer with instructions to determine what, if any compensatory education would be appropriate to ameliorate the denial of a FAPE); *Henry v. District of Columbia*, 750 F. Supp. 2d 94 (D.D.C. 2010)(same); 34 C.F.R. §300.508(d).

¹⁵ Absent any evidence suggesting quantum of the educational loss or evidence of what the proposed level and intensity of services are needed to provide a prospective FAPE, this hearing officer could not make an equitable award of compensatory education. Therefore, assuming the Parties can jointly agree on the magnitude of compensatory education, the Parties are free to forgo the independent compensatory education evaluation.

The Appropriate Relief for the 4th and 5th Grade FAPE Claim

On February 17, 2018, the Parent conceded and the District agreed that four and one half (4.5) hours a day is an appropriate amount of time to receive special education each school day (P-42 52). Applying an hour-for-hour approach, accepting the February 17, 2018, IEP as the base number of hours the Student missed in 4th and 5th grade I am awarding, one thousand twelve hundred and fifteen hours (1215) of compensatory education.¹⁶

Conclusion

In this instance, after reviewing the existing data and after giving due weight to the testimony of all of the witnesses I now find the District failed to identify the Student as a person with an emotional disability in need of specially-designed instruction. I also find the District failed to provide the Student with a FAPE once the Student was identified in 4th grade through February of 5th grade. An appropriate Order follows. The Parent's speech, communication and language claims are denied.¹⁷

Order

And now, this 21st of September 2018, it is hereby **ORDERED** as follows:

1. I now find the District violated its child find obligation by failing to identify the Student as IDEA eligible as a person with an emotional disturbance in 1st grade. I also find the IDEA violations denied the Student a FAPE under Section 504. Any and all relief granted herein will remedy any and all Section 504 child find or denial of FAPE violations.
2. To remedy the denial of a FAPE, the District is now ordered to fund a compensatory education independent educational evaluation. To the extent practicable, the evaluator selected by the Parent should conduct whatever assessment(s) he/she deems necessary to craft the essential elements of a well-articulated compensatory education plan. The compensatory education plan should address the Student's loss of a chance to receive a FAPE related to the following

¹⁶ 4.5 hours a day x 180 days =810 hours in 4th grade. 4.5 hours a day x 90 days =405 hours in 5th grade. (P-52)

¹⁷ The remedies awarded herein for the IDEA violations are coextensive with remedies otherwise available for any and all violations under Section 504. Accordingly, no further relief was awarded.

needs/circumstances, including but not limited to the Student's emotional, behavioral, social, speech, language and communication development. The independent evaluator using either the "hour for hour" or "make whole" approach should calculate the educational loss the Student suffered and the length of time necessary to compensate the Student for the loss.

3. The Parent has the sole authority to select any and all evaluator(s) needed to craft the compensatory education plan. Once the independent evaluator is selected by the Parent, the Parent has 24 hours to notify the District about the identity of the evaluator. Once notified the District is ordered to pay the full market rate, for any and all costs, for the independent compensatory education evaluation. The evaluation shall take place in either in the Student's county of residence or surrounding counties, in Pennsylvania. The District is ordered to pay for the full market rate cost of the independent compensatory education evaluation. The full market rate costs include but are not limited to, the evaluator's ordinary and reasonable expenses like time expended in conducting a classroom observation(s), conducting assessments, travel costs, report writing expenses and attendance at one meeting to review the plan. All costs should be paid within 30-days of receipt of the invoice.
4. The independent compensatory education evaluation/assessment should be completed within 45 calendar days of the evaluator's first (1st) testing session or observation. Once the well-articulated plan is completed, the evaluator should provide the plan to both Parties at the same time.
5. After receipt of the compensatory education plan, if the Parties continue to disagree about the independent compensatory education plan, the appropriate Party should file a request for a hearing within ten (10) calendar days. Otherwise, if the appropriate Party does not file a request for a hearing, after ten (10) calendar days, consistent with the Paragraph 6 of this Order, the District should immediately pay all invoices for services within 30-days of receipt of the provider invoice. The full market rate cost of the compensatory education services, shall not exceed the prevailing rate in the community where the services are provided, as outlined in the well-articulated compensatory education plan. The compensatory education service(s) may take place in either in the Student's county of residence or surrounding counties, in Pennsylvania. The Parent is free to identify or substitute additional future providers of compensatory education services as the Parent deems necessary to implement this Order.

6. The Parent also has the sole authority to select any and all evaluator(s) and/or provider(s) needed to craft, provide and/or implement the compensatory education plan or deliver the compensatory education described herein.
7. Once the compensatory education evaluation and plan are completed, the Parent has up to 30 calendar days to notify the District about the identity of any provider needed to implement the plan. Once notified about the name of compensatory education provider, the District is ordered to pay the full market rate costs, for the Student to participate in the compensatory education services. The Parent is free to identify or substitute additional future providers of compensatory education services as the Parent deems necessary to implement this Order.
8. As appropriate relief for the 4th and 5th grade denial of FAPE violations the Student is awarded an additional one thousand twelve hundred and fifteen hours (1215) of compensatory education. The Parent is free to select any provider the Parent deems necessary to provide the additional compensatory education services. The Parent has up to 30-calendar days to notify the District who will provide the additional compensatory education hours. Once notified about the name of compensatory education provider, the District is ordered to pay the full market rate costs, for the Student to participate in the compensatory education services. The compensatory education service(s) may take place in either in the Student's county of residence or surrounding counties, in Pennsylvania. The Parent is free to identify or substitute additional future providers of compensatory education services as she deems necessary to implement this Order.
9. Once notified about the name of compensatory education provider, the District is Ordered to pay the full market rate costs, for the Student to participate in the compensatory education services with 30-days of receipt of the invoice or []. The compensatory education service(s) may take place in either the Student's county of residence or surrounding counties, in Pennsylvania. The Parent is free to identify or substitute additional future providers of compensatory education services as she deems necessary to implement this Order.
10. The Parent is free to select the provider of the services. The District is ordered to either pay the provider or reimburse the Parent for already provided compensatory education services for all costs and charges within 30-days of receipt of an invoice or proof of service either from the provider or the Parent at the prevailing rate in the community where the services are provided. The prevailing rate full market rate cost of the compensatory education services shall not exceed the prevailing rate in the community where the services are provided.

11. The Parent's speech, language, communication and auditory processing child find and denial of FAPE claims are denied.
12. All other claims for appropriate relief or any other affirmative defenses are dismissed with prejudice.

Date: September 21, 2018

s/ Charles W. Jelley, Esq. LL.M.
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