

This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code §16.63 regarding closed hearings.

Pennsylvania Special Education Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 27174-22-23

Child's Name:

B.P.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

April 27, 2023

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently [redacted] years of age and enrolled in the [redacted] grade in a District middle school. The Student is entitled to protections under the Individuals with a Disabilities in Education Act (IDEA),² Section 504 of the Rehabilitation Act of 1973 (Section 504)³, and the Americans with Disabilities Act (ADA)⁴ as a child with Autism Spectrum Disorder (Autism). [redacted]

The Parents filed this due process Complaint against the District, challenging the programs implemented and proposed for Student under the IDEA and Section 504 of the Rehabilitation Act of 1973. Specifically, the Parents contended that the District's programming during the 2020-2021, 2021-2022 and 2022-2023 school years were not appropriate. As remedies, they sought compensatory education. The District disputed all of the Parents' assertions and denied that any relief was warranted.

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with 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). 20 U.S.C. §§ 1400-1482.

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

³ 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ 42 U.S.C. §§ 12101-12213. Although I believe I do not have subject matter jurisdiction of the ADA claims, in the event that I do all findings and legal conclusions under Section 504 resolve all ADA claims.

Following a review of the record and for all of the reasons set forth below, the claims of the Parents cannot be sustained and are denied.

ISSUES⁵

- 1) Did the District violate its child find obligation from August 2020 onward to the Student by failing to evaluate in all areas of suspected disability?
- 2) Since August 14, 2020, did the District deny Student a FAPE by:
 - a) failing to provide and implement specially designed instruction and related services;
 - b) failing to evaluate Student appropriately and comprehensively;
 - c) failing to ensure that appropriate ESY services were offered and implemented?
- 3) Did the District discriminate against the Student in violation of Section 504 of the Rehabilitation Act?
- 4) If the District violated the Student's rights, what if any remedy is appropriate?

FINDING OF FACTS

Early Education

⁵ Before the hearing, the parties agreed that the issues for resolution were as stated above. (N.T. 10-11)

1. At three, the Student was diagnosed with Autism and received early intervention services, including speech and language therapy, occupational therapy, and special education services. The Student transitioned to a District kindergarten, was identified as a child eligible for special education services and began receiving emotional support. (S-75, S-2, p.2; N.T. 424, 456)
2. Throughout early elementary school, the Student received programming to address sensory regulation, pragmatic and expressive language skills, focus and attention, emotional regulation, social skills, completing classroom assignments, remaining in the general education setting, [redacted]. (S-2, p.15; S-3, p.15; S-5, p.16-17; S-11, p.18; S-18)
3. [Redacted] during the 2016-2017 school year, the Student received math and social skills instruction within the emotional support classroom and ended the school day in the emotional support room. The Student received regular education for all other subjects with paraprofessional support during regular education. (S-2)
4. In May 2017, the District reevaluated the Student. The District conducted a functional behavior assessment (FBA) for inclusion in the RR because of exhibited challenging behaviors. (S-2)
5. The FBA identified the function of the Student's behavior as escape from a task or demand or to gain adult attention. The FBA included information from the school's social worker that several risk assessments were previously conducted because of Student's behaviors ([redacted]). (S-2)
6. The IEP developed in June 2017 included a PBSP that identified the Student's behaviors of concern as remaining in assigned areas and verbal/physical aggression. (S-3)

7. As a [redacted] during the 2017-2018 school year, the Student had "meltdowns" that involved physical aggression and restraint. (S-11, p. 12, S-43, p. 2)
8. Because of the behavioral challenges, the Parents consulted with a psychologist and psychiatrist, and the Student started treatment that included medication and psychotherapy. (S-43, p. 3)
9. The Student's June 2018 PBSP indicated the Student's behaviors of concern: work refusal, saying no, destroying work, elongated breaks, refusal to return from break and elopement. Antecedents to the behavior included nonpreferred ELA tasks: reading, writing, listening, tasks perceived to require concentration, large group activities, staff demands, and inability to finish an activity. (S-11)

[redacted]-2018-2019

10. In May 2019, the District administered a comprehensive reevaluation of the Student. The RR included parent input, a review of former aptitude and achievement tests, classroom-based assessments, teacher input, progress monitoring, a classroom observation, and an updated speech and language evaluation. (S-18).
11. Teacher input included in the RR indicated Student was a pleasure to work with and an active participant in classroom discussions. The Student worked at an advanced level in math and approached it with enthusiasm. In science and social studies, the Student reportedly enjoyed sharing ideas in class, was motivated by hands-on activities, and worked well in small groups. (S-18, p.3-4)

12. After an updated receptive/expressive language evaluation, the RR indicated the Student no longer needed speech and language therapy. (S-18)
13. The RR concluded the Student had needs related to schoolwork completion and remaining in general education setting. Other areas that required accommodation included attention, focus, emotional regulation, and social skills. (S-18)
14. The May 2019 RR suggested programming recommendations that included: access to the emotional support classroom; instruction in coping skills; check-ins to gauge social, emotional, and behavioral functioning; opportunities for social skills instruction and increased social interactions with peers; [redacted]; well-planned seating; scheduled, timed breaks, including sensory breaks; paraprofessional support within the regular education classroom; praise and encouragement for demonstrating expected behaviors and to increase motivation to complete less preferred tasks; pairing nonpreferred tasks with preferred tasks; use of consistent language across settings; use of fidget items; a daily visual schedule; and modifications to the amount of writing. (S-18, p.10)
15. In May 2019, the IEP team met to design programming slated for implementation through May 2020, Student's [redacted] year. (S-21)
16. The May 2019 IEP indicated the Student exhibited behaviors that impeded learning. The PBSP in the IEP indicated work refusal (saying no, destroying work by tearing or scribbling) and missed class time (elongated breaks, refusal to return from breaks, elopement) as behaviors of concern. (S-21, p. 12)
17. Antecedents to the Student's behavior included nonpreferred ELA tasks: reading, writing, tasks perceived to require concentration, large

group activities, staff demands, and inability to finish an activity. If Student is consistently exhibited behaviors of concern, the District would track with a tally sheet one week per month. Once data was collected, the plan could be modified if needed. (S-21, p. 15)

18. The May 2019 IEP provided goals to address schoolwork completion, remaining in assigned classroom and [redacted]. The accompanying SDI adopted programming suggestions made in the RR to address classroom strategies/positive supports, social skills acquisition, attention and focus, completion of classwork, emotional regulation/sensory needs, and math enrichment. (S-21, p. 25-39)

[redacted]-2019-2020

19. During the 2019-2020 school year, the Student was enrolled in the [redacted] in the District. (S-27)
20. During [redacted], the ELA teacher noted that Student could follow classroom schedule and routines, benefitted from some encouragement to join group activities, and sometimes needed reminders to show expected behavior. Paraprofessional support was beneficial, and the Student participated with the group and shared ideas while reading. The Student advocated, asked for help or a break when needed, participated and worked well with a partner; however, group work was difficult. (S-27, p.6, 12, 13)
21. No aggressive behaviors by the Student (kicking, hitting, punching, property destruction) were reported during the [redacted].(S-27, p.16; S-43, p.3; N.T. 458-459)

22. In March 2020, according to directives from the Commonwealth of Pennsylvania, closed its schools for in-person learning and moved all students, including Student, to online programming. (S-27)

May 2020 IEP

23. In May 2020, the IEP team met to discuss educational programming for the Student. The May IEP was slated for implementation during Student's transition to middle school until May 2021. The Parents participated in the IEP meeting. (S-27)
24. The May 2020 IEP indicated the Student exhibited behaviors that impeded learning. The embedded PBSP indicated work refusal (saying no, destroying work by tearing or scribbling) and missed class time (elongated breaks, refusal to return from breaks, elopement) as behaviors of concern. (S-27, p. 14)
25. The behaviors of concern were noted as most likely to occur during nonpreferred ELA reading and writing tasks, when Student was presented with a task perceived to take concentration and effort, during participation in large group activities, when staff gave a demand, and if unable to finish an activity. (S-27, p. 13-14)
26. The needs identified in the IEP for middle school programming included completing classroom assignments, remaining in general education setting, attention and focus, emotional regulation, and[redacted]. (S-27, p.19)
27. The Parents provided input that included the Student needed more time in class with peers and meaningful interactions and friendships. Their concerns included ELA as a nonpreferred subject and struggled with writing. (S-27, p. 18)

28. The May 2020 IEP contained two goals. The goal first addressed expected the Student to complete 90% of schoolwork each marking period. The second goal expected the Student to stay in the assigned classroom for 95% of the school day. Both goals contained baseline data. (S-27, p. 27-29).
29. To address emotional support needs, the Student was provided access to the emotional support classroom for scheduled/forced breaks as a calm-down zone, processing incidents and reward time at the end of the day. (S-27, p. 35)
30. The May 5, 2020, IEP included SDI classroom strategies and positive supports that included: positive praise and encouragement, reminders of expected behaviors, consistent language, eye contact, preferential seating, rewards and incentives, fidgets, a visual schedule, verbal and visual cues, repetition of instructions, notes/slides. (S-27, p. 32)
31. The May IEP offered SDI for social skills acquisition that included: social skills instruction, praise and encouragement for appropriate social interactions, and processing negative social incidents with ES staff. (S-27, p. 33)
32. The SDI offered in the May 2020 IEP that addressed attention and focus included structured classrooms, breaks inside and outside the classroom, verbal and non-verbal cues, attention checks, rewards, and modeling. (S-27, p. 34)
33. The May IEP included SDI for assignment completion that included reassurance, chunking, and rewards. (S-27, p. 35)
34. The May 2020 IEP offered SDI for emotional support, regulation and sensory needs, including access to the emotional support classroom, incorporation of Zones of Regulation terminology, noise level

monitoring, rhythmic movement, deep pressure touch, and redirection for inappropriate sensory-seeking behaviors, warnings before transitions. (S-27, p.14-18, 32-36)

35. [redacted]. (S-27, p. 36)
36. The May 2020 IEP offered daily paraprofessional support to the Student throughout the school day, including all academic areas, recess/lunch, and specials. (S-27, p. 33)
37. Related services listed in the May IEP included group social skills instruction once a week for 48 minutes a session. (S-27, p.37)
38. The team determined that Student did not qualify for ESY because data determined a successful start to the [redacted] and a solid transition from winter break. (S-27, p. 38)
40. Through the May IEP, the District proposed the Student receive itinerant emotional support with [redacted]. (S-27, p. 40)

2020-2021 School Year – [redacted]

41. During the 2020-2021 school year, the Student was enrolled in the [redacted] in a District middle school. The IEP developed in May 2020 with the behavioral plan was implemented and provided educational programming. At the beginning of the school year, the Student's case manager advised the regular education teachers of the SDI listed in the IEP that required implementation. (S-27; N.T. 389)
42. Because of the COVID-19 pandemic and related closures, all students received virtual instruction.) During remote instruction, if the Student turned off the camera or logged off of the instruction, the special

education teacher notified the Parent and the assigned paraprofessional. (S-27, S-31; N.T. 337, 342, 381)

43. On November 5, 2020, the District issued a NOREP that proposed the Student receive four days a week of in-person instruction. The Parents approved the recommendation. (S-31; S-43, p. 4; N.T. 340-342)
44. Throughout the school year, the Student received special education programming that included a 1:1 paraprofessional assigned during the school day in the general education setting. The Student reportedly had a good rapport with the one-to-one paraprofessional. (S-33; N.T. 389, 609)
45. During [redacted], the Student received itinerant emotional support and [redacted] with all core classes in regular education. The Student was scheduled for emotional support for one period a day and received social skills instruction once a week for 48 minutes.
46. In language arts, the Student demonstrated appropriate interaction with the paraprofessional and the teacher but did not interact much with peers. Occasionally the Student would look at a classmate's Chromebook if they were viewing something of interest but did not initiate a conversation. (S-34, p. 10)
47. In Math, the Student was polite, receptive, did not refuse to do work, had limited interaction with peers but did participate in classroom conversations. Occasionally, the Student volunteered in class but at times passed. (S-34, p. 10)
48. In social studies, the Student was observed to have a good working relationship with the paraprofessional. The Student responded to the teacher when questioned but did not initiate conversations. The Student opted to work independently and did not interact much with

peers. The teacher observed that the Student needed social interactions and emotional control at times. (S-34, p. 11)

49. In science, the Student was observed to be polite and respectful to all adults in the classroom but rarely interacted with peers, opting to work independently. Student had demonstrated needs that included prompting, managing frustrations, and inattention during group instruction. (S-34, p. 12; N.T. 350)
50. Social skills instruction was offered in a remote format for most of the school year. In social skills, for one period a week, the Student did not interact much and communicated via chat with the teacher. (S-34, p. 12; N.T. 351)
51. Although scheduled for emotional support two times a week, the Student usually attended daily as suggested by the paraprofessional. At times, the Student made self-deprecating comments when frustrated or overwhelmed but made a good transition to middle school overall. (S-34, p. 12; N.T. 352)
52. Student's second quarter progress report indicated, Student completed 96.5% of assignments, up from a baseline of 81.44%. The Student remained in the general ed setting 96% of the time, up from a baseline of 90.43%. (S-33, p. 1, 3; N.T. 346-347)

April 2021 IEP

53. In April 2021, the Parents requested IEP goals to address Student's social skills.
54. On April 27, 2021, the IEP team met to develop educational programming. Four new goals were introduced designed to address

verbal participation, group participation, social skills, and emotional regulation.⁶ (S-34, p. 19-27; N.T. 348)

55. Although the IEP indicated the Student exhibited behaviors that impeded learning, the PBSP was removed so social skills interventions could be emphasized. The IEP noted the Student's behaviors would be addressed through the SDI. The Parents were not sure whether they agreed to the removal of the PBSP but agreed to the implementation of the IEP.(S-34, p. 7; N.T. 376-377, 390-391, 459)
56. The verbal participation goal expected the Student to verbally ask a question, make a relevant comment or respond to a question three times per week in all core classes. (S-34, p. 21)
57. A second goal expected the Student to increase participation in small group activities with fading prompts in four of five trials per quarter. (S-34, p. 22)
58. The social skills goal expected the Student to demonstrate improved social skills by initiating and/or maintaining a conversation with peers and adults through age-appropriate topics in four of five trials per quarter. The case manager decided to defer the introduction of the social skills conversation goal until the following school year. (S-34, p.23; N.T. 355)
59. A fourth goal designed to address emotional regulation expected the Student to express anxiety, frustration or overwhelming feelings more appropriately in four out of five monitored events. (S-34, p. 24)

⁶ The schoolwork completion and remaining in education setting goals were mastered and inadvertently listed in the April 2021 IEP. A June 2021 IEP revision corrected this oversight. (S-37, p.4; N.T. at 395)

60. Student's progress toward the IEP goals was to occur through progress monitoring and observation. (S-34, p. 21-24)
61. The April 2021 IEP offered program modifications and specially designed instruction that addressed general classroom strategies, social skills acquisition, attention and focus, assignment completion, emotional support, sensory needs, and [redacted]. (S-34, p. 28-32)
62. The SDI to address social skills acquisition included: direct and in the moment social skills instruction, praise, encouragement, pre-determined peer groupings, processing with ES staff. (S-34, p. 29)
63. The SDI to address attention and focus included structured classrooms, breaks inside and outside the classroom, verbal and non-verbal cues, attention checks, rewards, and modeling. (S-34, p. 31)
64. The SDI to address classwork completion included reassurance, chunking, and rewards. (S-34, p. 31)
65. The SDI to address emotional support, regulation and sensory needs included access to the emotional support classroom, noise level monitoring, rhythmic movement, deep pressure touch, redirection for inappropriate sensory seeking behaviors, warnings before transitions, redirection, and audiobooks. (S-34, p. 31)
66. The April IEP offered paraprofessional support throughout the school day. (S-34, p. 27)
67. The April IEP included social skills instruction as a related service once a week for 48 minutes. (S-34, p.32).
68. The April 30, 2021, NOREP proposed itinerant emotional support with [redacted]. The Student would participate in regular education for all core classes with emotional support for one period daily. (S-35, S-36)

69. Fourth quarter IEP goal progress reporting indicated the Student made comments or asked questions one to two times a day, which varied by class. The small group participation goal was not implemented because of social distancing restrictions. Implementation of the social skills conversation goal was deferred until the first quarter of the 2021-2022 school year. The team determined the Student made progress toward the expression of anxiety/frustration goal when two out of five monitored events. (S-49, p. 1-4)
70. The emotional support teacher/case manager maintained a log to document the frequency and duration of Student's use of the ES room and feedback offered, did not track behavior across the school day but relied on the anecdotal information from the paraprofessional and nearly daily conversation with her. The case manager used the documented information to prepare the Student's progress reports toward goals. (N.T. 353-354, 387-388)
71. The team determined that Student was ineligible for ESY for summer 2021. (S-36, p. 32)
72. In Spring 2021, prescribed psychiatric medication was discontinued because it made the Student feel ill and behavioral gains were no longer exhibited. Psychotherapy was later discontinued because of limited benefits from engagement in a virtual format. (S-43, p. 3)
73. During the 2020-2021 school year, the Student did not threaten peers or staff, behaviors exhibited during elementary school, and the Parent observed some progress. (N.T. at 445, 454, 457)
74. The Student earned all A's and B's as final grades for the 2020-2021 school year. (S-81)

2021-2022 School Year [redacted]

75. During the 2021-2022 school year, the Student was enrolled in the [redacted] and received itinerant emotional support and related programming through the IEP developed in April 2021 and updated in June 2021. (S-37; N.T. 276-284)
76. In the [redacted], the Student was enrolled in general education for all classes. Through the implemented IEP, the Student received emotional support five times a week, a "fast pass" to the emotional support classroom, weekly social skills classes and individual counseling every other week. Throughout the school day, the Student received support from a paraprofessional. (S-31)
77. Between the beginning of the school year and October 8, 2021, the Student met with the school counselor approximately five times after self-deprecating/self-harm statements were made. After meeting with Student, The counselor determined that the Student did not want to self-harm but made the statements out of frustration. (S-93; N.T. 488-490, 497)
78. On October 8, 2021, the Student emailed the ELA teacher, [redacted]. After the principal notified the police, the Student's book bag was searched, and the Parents were contacted. Before writing the email, the Student's access to a computer game was—whether by intervention of Student's [redacted] teacher, or the District software—abruptly ended by the start of a planned quiz. (S-38, S-40, S-43; N.T. 290)
79. During questioning by the counselor, the Student indicated an intention to harm the teacher and the threat was not made simply out of frustration. The Student acknowledged a plan [redacted]. Before

this incident, the Student had not threatened any peer or staff member directly while attending middle school. (N.T. 397, 457, 461-462, 496-97)

80. After speaking with school staff, the Parent took the Student home. That same day, the Student emailed the school principal and asked to be unsuspended because an apology was made to the teacher. [redacted] (S-38, S-39, S-40; N.T. 288-292, 494-495)
81. On October 8, 2021, the District completed an incident report and notified law enforcement. That same day, the District suspended the Student, out of school, for two days. (S-40, S-41)
82. On October 13, 2021, the District extended the suspension for a minimum of three days, pending a further investigation and the outcome of a risk assessment. The District offered the Student the opportunity to explain the circumstances surrounding the event through an informal hearing. The Student was suspended for a total of seven days. (S-42)
83. An October 18, 2021, risk assessment conducted by a private psychologist concluded that Student's risk of harming others was low. The risk assessment recommended that the Student reenter school to assist with returning to a structured schedule, being around peers, and re-engaging with the paraprofessional and support staff, an IEP modification for speech pragmatics, emotional regulation, and appropriate interventions, individualized psychotherapy/psychiatry to address depression and emotional regulation, speech services to focus on social pragmatic language, small group psychotherapy/social skills group. (S-43)
84. On October 19, 2021, the District held a manifestation determination. In addition to the Parents, the school psychologist, principal,

[redacted] counselor and science teacher, assistant principal and school counselor attended the meeting. The team concluded that the Student's threat to the teacher was a manifestation of the Student's disability or had a direct and substantial relationship to the disability. (S-44)

85. On October 20, 2021, the District referred the Student for a reevaluation. (S-46, S-94)
86. After an October 24, 2021, meeting to review the Student's IEP, SDI was added, including advance notice of change in computer usage and assigning pencil and paper classwork whenever possible. Individual counseling with a therapeutic counselor from a provider was added to the IEP as a related service. (S-46; N.T. 27, 71-72, 105, 399-402, 464-465)
87. The Student's November 2021 first quarter IEP progress report indicated the Student made progress. The data regarding the goal progress came from the daily notes made by Student's paraprofessional. (S-96; N.T. 369-373)
88. On January 6, 2022, a qualified, professional school psychologist completed a reevaluation of the Student. The District issued the RR. (S-51)
89. The January 6, 2022 RR included parent input; teacher input; classroom based assessments; a review of progress on IEP goals; a speech and language assessment; an FBA; and a psychoeducational evaluation that included the Wechsler Abbreviated Scale of Intelligence (WASI), the Wechsler Individual Achievement Test (WIAT), the Sentence Completion Test, the Behavior Assessment System for Children (BASC), Beck Youth Inventories, and the Social Skills

Improvement System – Social Emotional Learning version, (SSIS). (S-51; N.T. 73-74, 112-122)

90. The January 6, 2022, RR determined that the Student's cognitive functioning was in the high average range for verbal comprehension and the superior range for perceptual reasoning. Based on achievement testing, the Student exhibited solid academic skills and was performing well across subject areas. (S-51, p.17)
91. The (BASC-3,) administered to rate various externalizing, internalizing, and school-related problems was completed by Parent and two teachers. Clinically significant scores occurred in the areas of depression, withdrawal, and social skills. While all three raters produced clinically significant scores for depression and withdrawal, only the Parent produced a clinically significant score in the area of social skills. (S-51, 13-14).
92. On the Beck (BYI-II) self-report, to assess depression, anxiety, anger, and self-concept, the Student's score on the depression scale was mildly elevated, with scores in the average range for anxiety, anger, disruptive behavior, and self-concept. (S-51, p.14-15)
93. On social skills assessment (SSIS) the Student's s social-emotional skills fell in the below-average and well below-average ranges. On the self-report, the Student rated all areas within the average range. The evaluator determined the results may indicate denial or lack of awareness rather than true social-emotional skills because they differed significantly from reports by the Parent and teachers. (S-51)
94. The Clinical Evaluation of Language Fundamentals (CELF-5) Screening test produced results demonstrating adequate articulation, expressive, receptive, and pragmatic language skills. (S-51, p.9).

95. For inclusion in the RR, a BCBA conducted an FBA. During observation of the Student, no physically aggressive or unsafe behaviors occurred. The BCBA recommended a PBSP with strategies to increase confidence in the classroom and peer interaction. The BCBA recommended that the PBSP be faded as goals were met and unexpected emotional reactions decreased. (S-51, p.9-13; N.T. 108, 208-209, 219-222, 243-246)
96. During the reevaluation, the Student was cooperative, completed all tasks presented, did not demonstrate frustration, and communicated appropriately with the school psychologist. (S-51, p.16; N.T. 111-112)
97. The RR concluded that the Student had solid academic skills, but writing was affected by mood, interest and motivation. The RR further concluded that the Student struggled with inflexibility, low frustration tolerance, poor social skills, and emotional dysregulation, which affected overall school experiences. (S-51)
98. The January 6, 2022, RR determined the Student eligible for special education under the classifications Autism and [redacted] (S-51, p.19-20)
99. On February 2, 2022, an IEP meeting occurred. The February IEP offered goals to address coping skills/ emotional regulation, social skills and a PBSP. The February IEP offered program modifications and specially designed instruction (SDI) designed to address positive supports for classroom strategies, social skills, paraprofessional support, attention and focus, assignment completion, emotional support, emotional regulation and sensory needs, [redacted] and flexibility. Social skills instruction and therapeutic counseling were listed as related services. (S-52)

100. The IEP offered goals (with baselines to be established) to measure the Student's ability to utilize a learned coping strategy (such as deep breathing, thought techniques, taking a break) and express and label applicable feelings, verbally ask a question, make a comment, or respond to a question three times a week in all core subject classes; increase participation in small group activities; and initiate and/or maintain a conversation with peers and adults. (S-52, p.27-30)
101. The February 2022 IEP SDI included positive praise, reminders, consistent language, eye contact, preferential seating, rewards, fidgets, a visual schedule, cues for attention and transitions, repetition, copies of notes/slides, advance notice about changes in computer usage, pencil and paper classwork, , social skills instruction, coping skills instruction, encouraging peer interaction, self-advocacy, pre-determined peer groupings, advance notice of group work, processing with ES staff after negative social incidents, paraprofessional support, breaks, chunking, graphic organizers, access to ES classroom for breaks, monitoring sensory input, clear warnings of transitions, redirection of inappropriate sensory seeking behaviors, and audiobooks. (S-52, p.32-37)
102. On February 15, 2022, the Parents requested an informal meeting to revise the proposed IEP. The Parents' suggested revisions included changes to the parental concerns and antecedents, coping skills/emotional regulation goal and collecting baseline data on prompting. (S-53, S-54)
103. Between February 15, 2022, and the end of the school year, multiple meetings and extensive communication occurred with the Parents to

finalize the Student's educational program. (S-57, S-58, S-59, S-60, S-61, S-66, S-67, S-68, S-93)

104. From January 2022 through the end of the school year, the Student met with the school counselor nine times. Two meetings were to discuss self-deprecating comments made by the Student, and none were for aggressive or threatening behavior toward peers or staff. [redacted] (S-91; N.T. 450-453, 501-502, 656-659)
105. On June 6, 2022, the IEP team met to discuss the Student's educational programming. The team determined the Student was not eligible for ESY services for 2022. (S-67, S-68, S-71)
106. On June 8, 2022, the Parents approved the IEP through a NOREP that proposed that the Student receive itinerant emotional support, five times a week with direct social skills instruction, [redacted] (S-69)
107. The Student earned all A's and B's as final grades for the 2021-2022 school year. (S-81)
108. On June 17, 2022, a final IEP was offered to the family with a goal to address coping skills/emotional regulation, and three social skills goals. All goals contained baseline data. For the collection of daily behavioral information, a data sheet was provided for the Student's paraprofessional. (S-62, S-63, S-65, S-71, S-84, S-93)

2022-2023 School Year [redacted]

109. The student is enrolled in the [redacted] during the 2022-2022 school year. The June 2022 IEP is implemented, and the Student receives regular education with an itinerant level of emotional support, social

- skills, individual counseling and paraprofessional support. (S-71; N.T. 546)
110. The Student receives emotional support one period a day, with direct instruction in social skills, emotional expression, and frustration tolerance and counseling from a licensed therapist. (S-71; N.T. 483-485, 610-614, 721-723)
 111. The paraprofessional collects data on the Student's goals and behavior, provides that information to the emotional support teacher, and the information is emailed to the Parents. If the Student makes self-deprecating comments that require debriefing, the Student reports to the counselor. For more concerning comments, the emotional support teacher and counselor contact the Parents. (S-93, S-94; N.T. 542-545, 550-556)
 112. During the first quarter of the 2022-2023 school year, the Student made progress toward most IEP goals. (S-90, p.7; S-93)
 113. The Student has made some social gains during the 2022-2023 school year. Within the emotional support classroom, the Student independently interacts with peers, joined the gaming club, and sits with peers at lunch. (N.T. 465, 569-572, 665, 677-778, 680, 683, 688-690)
 114. On October 21, 2022, the Parents filed a due process Complaint. (S-76)
 115. Despite the special education interventions in place during the current school year, the Student has struggled emotionally and behaviorally. (N.T. 454-455, 579-586, 622-628, 727-732)

DISCUSSION

General Legal Principles

In general, the burden of proof may be viewed as consisting of two elements: the burden of production and the burden of persuasion. 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 in this case must rest with the Parents who filed for this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, in the role of fact-finders, are also 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); see also *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 found each of the witnesses who testified to be generally credible as to the facts. In the few instances that there were contradictions, those are attributed to lapses in memory or recall, or to differing perspectives, rather than an intention to mislead; and in any event, credibility was not determinative on any issue.

The weight accorded the evidence, however, was not equally placed. The documentary evidence was persuasive, particularly where memories were not definitive, except as otherwise noted. The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the

testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

Substantive FAPE

The IDEA requires states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with procedural obligations in the Act.

States, through local educational agencies (LEAs), meet the obligation of providing FAPE to eligible students through development and implementation of an IEP, which is "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009) (citations omitted). The U.S. Supreme Court has confirmed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 400 (2017). Individualization is, thus, the central consideration for purposes of the IDEA. And while an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents," *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012), the law demands services are reasonable and appropriate in light of a child's unique circumstances. See *Endrew F.* at 400-401; *Ridley* at 269. See also *Tucker v.*

Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 (2d Cir. 1989). A proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010).

Child Find and Evaluation

The IDEA and state and federal regulations further obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); see also 22 Pa. Code §§ 14.121-14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law and to "determine the educational needs of such child[.]." 20 U.S.C. §1414(a)(1)(C)(i). The obligation to identify students suspected as having a disability is commonly referred to as "child find." LEAs are required to fulfill the child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). More specifically, LEAs are required to consider evaluation for special education services within a reasonable time after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). School districts are not, however, required to identify a disability "at the earliest possible moment" or to evaluate "every struggling student." *Id.* The IDEA further defines a "child with a disability" as a child who has been evaluated and identified with one of a number of specific classifications and who, "by reason thereof, needs special education and related services." 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a). "Special education" means specially designed instruction which is designed to meet the child's individual learning needs. 34 C.F.R. § 300.39(a). More specifically, "specially designed instruction means adapting, as appropriate to the needs of an eligible child [], the content, methodology or delivery of instruction."

34 C.F.R. § 300.39(b)(3). The process of identifying children with disabilities is through evaluation.

Evaluation Requirements

Certain procedural requirements are outlined in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall— (A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining— (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities; (B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 20 U.S.C. § 1414(b)(2); *see also* 34 C.F.R. §§ 300.303(a), 304(b).

The evaluation must assess the child "in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]" 34 C.F.R. § 304(c)(4); *see also* 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and

strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also include a review of existing data, including that provided by the parents, in addition to classroom-based, local, and state assessments and observations. 34 C.F.R. § 300.305(a).

In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). Upon completion of all appropriate assessments, "[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]" 34 C.F.R. § 300.306(a)(1).

Least Restrictive Environment

The IDEA contains a crucial mandate that eligible students are to be educated in the "least restrictive environment" (LRE) that also satisfies meaningful educational benefit standards. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.S. § 1412(a)(5)(A); see *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

Procedural FAPE

From a procedural standpoint, the family plays a meaningful role in special education. Schaffer, *supra*, 546 U.S. at 53. Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they resulted in "significant impediment" to parental participation, or in a substantive denial of FAPE. 20 U.S.C. § 1415(f)(3)(E).

Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she "has a physical or mental impairment which substantially limits one or more major life activities," or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). "Major life activities" include learning. 34 C.F.R. § 104.3(j)(2)(ii).

The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995.) Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. *See, e.g., Ridley School District v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012). Courts have long recognized the similarity between claims made under those two statutes, particularly when considered with claims under the IDEA. *See, e.g., Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). The coextensive Section 504 claims that challenge the obligation to

provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

The Parents' Claims

This Student, although eligible for special education as child with Autism, [redacted]. Historically, no academic concerns were present, although the Student was assisted by a school day paraprofessional because of aggressive behaviors present in early elementary school and the need for support. The first issue raised by the Parents was that the District violated its child find obligation by failing to identify and evaluate Student in all areas of suspected disability.⁷ The hearing evidence was clear that since transitioning from early intervention to the District's kindergarten and through the present time, this Student is identified as a child with Autism and has received special education programming consistent with identified needs. Furthermore, the District conducted evaluations of the Student in 2017, 2019 and most recently in 2022. Each evaluation confirmed the Student as a child with a disability and determined the necessary educational needs. The 2019 RR was used to develop the Student's May 2020 IEP in place during the 2020-2021 school year, a time frame the Parents contend the District denied Student a FAPE. The 2022 RR was conducted after a disturbing disciplinary incident. The appropriateness of each evaluation in relation to the identified issues will be discussed below. The Parents have not met their burden of proof that a child find violation occurred.

2020-2021 School Year [redacted]

⁷ In their Complaint, the Parents also claim the District failed to conduct an appropriate and comprehensive evaluation of the Student. This claim will be addressed regarding the reevaluation conducted in 2022.

Next, the Parents contend the District denied Student a FAPE during the 2020-2021 school year through its failure to adequately address the Student's social, emotional and behavioral needs. The Parents have not met their burden of proof regarding these allegations. The Student transitioned to the District's middle school as a remote learner with an IEP in place, developed the preceding May 2020 amid the COVID-19 pandemic. Although the Student started [redacted] as a virtual learner, difficulties with that instructional mode resulted in adjustment by the IEP team. In November 2020, the Student returned to in-person instruction. The Parents contend the Student's [redacted] programming was deficient because it lacked goals related to the Student's behavioral emotional, social and self-regulation needs, and instead over-relied on the assigned paraprofessional, no data collection occurred, the PBSP was eliminated, and new IEP goals were not implemented or were deficient.

The May 2020 IEP relied on information regarding the Student's needs gleaned from the year spent in [redacted] and a reevaluation conducted in 2019. That reevaluation was comprehensive, appropriate and adequately identified the Student programming needs. In addition to goals, SDI and related services responsive to the Student's identified needs, the May 2020 IEP contained an embedded behavioral plan. That PBSP, introduced years earlier, was designed to address Student's work refusal and missed class time that resulted from elongated breaks or a refusal to return to the classroom. The implemented IEP provided two goals designed to address concerns related to schoolwork completion and remaining in the assigned classroom. Despite the Parents' contention, the Student's behavioral needs (attention and focus, emotional regulation and social skills) were adequately addressed through a detailed offering of specially designed instruction implemented through the May 2021 IEP.

The programming the Student received was successful and responsive to the Student's behavioral, emotional, social and self-regulation needs. Academically, the Student continued to do well. Although the Student did not appear to have a defined friend group, the Student's limited social interaction with peers was never characterized as inappropriate or meriting correction. With school staff, the Student was universally regarded as intelligent, polite and respectful.

Although scheduled for emotional support two times a week, the Student usually attended daily as suggested by the paraprofessional. The emotional support teacher maintained a log to document the frequency and duration of Student's use of the ES room and feedback offered, reviewed the anecdotal information from the paraprofessional, and nearly every day had a conversation with her about the Student. At times, the Student still made self-deprecating comments when frustrated or overwhelmed, but overall made a good transition to middle school.

In April 2021, an IEP meeting occurred that included the Parents. The PBSP was discontinued, and four new goals were introduced because, based on data collected, the team determined the Student met the goals delineated in the May 2020 IEP (assignment completion and remaining in the classroom). The Parents appear to simultaneously contend that a PBSP continued to be warranted to address the Student's behavioral needs and other interventions (paraprofessional) were improperly utilized. Some disagreement appears to exist regarding the elimination of the PBSP. The District, through testimony, contended the Parents agreed to this revision because they thought Student's programming should focus on social skills. The testifying Parent appeared uncertain as to the circumstances that precipitated the removal of the PBSP but agreed social skills needed more of an emphasis in Student's programming but did remember agreeing to the implementation of the April 2021 IEP.

Overall, the April 2021 IEP and its implementation for the remainder of the 2020-2021 school year was appropriate. The four new goals, designed to address verbal participation, group participation, social skills, and emotional regulation, reflected a recognition of Student's successful transition to a middle school environment but the need to develop improved social skills. Although the Student still made some self-deprecating comments, the assigned paraprofessional was not a barrier to growth. Her input and collaboration with the documented emotional support resources supported this Student's known emotional, social and behavioral needs. The introduced goals were not without issues. The goal of encouraging group work could not be introduced because of existing social distancing guidelines. Inexplicably, the District did not immediately introduce the social skills goal to the Student, deferring it until the following school year. During this time, the Student was not left without social skills support as the numerous SDI dedicated to social skills acquisition continued to be implemented. The main criticism leveled by the Parents is that the District did not collect data on Student's behavioral progress. Although the information was not collected, parsed and analyzed in a specific format, the District did collect data sufficient for the team to determine that both IEP goals introduced in May 2020 were met. Although the case manager did not collect data on each SDI, the paraprofessional maintained daily notes that were provided to the District and the Parents. That information further indicated the Student made some progress toward the two goals introduced through the April 2021 IEP. Furthermore, during the 2020-2021 school year, the Student engaged in no behavioral incidents involving property destruction or verbal or physical aggression toward peers or staff, concerns that necessitated the PBSP in elementary school.

The Parents have failed to meet their burden of proof that the District denied Student a FAPE. Overall, the programming in place through the May

2020 and April 2021 IEPs in place during the 2020-2021 school year were calculated to afford the Student with meaningful educational progress, which in fact resulted.

2021-2022 School Year [redacted]

The Student's transition to [redacted] was problematic. Although the Student continued to receive itinerant emotional support, with implementation of the last agreed upon IEP. In October 2021, the Student made a [threat]. The manifestation determination concluded the behavior resulted from Student's disability. An IEP meeting, crisis assessment, RR, FBA, PBSP and updated IEP correctly followed. The Parents contend that during the 2021-2022 school year denied Student a FAPE because behavioral programming was insufficient, data collection was absent, and the January 2022 RR was flawed. The record evidence does not substantiate these claims.

First, the April 2021 IEP in place during the transition to [redacted] has already been determined to be appropriate. Based on the information available when it was developed, the Student had met previous IEP goals, no longer required a PBSP and appeared ready to tackle the social skills demands frequently present in a middle school environment.

After the October disciplinary incident, the District took immediate steps, including conducting a reevaluation that included an FBA. Although the Parents alleged the evaluation was inappropriate, no persuasive evidence was presented to support that contention. On the contrary, the testimony from the school psychologist that administered the January 2022 reevaluation was credible and clear. The resulting RR and supportive detail outlined the various evaluative measures utilized, and conclusions reached. Those conclusions are fully outlined in the findings of fact and need not be

repeated. The District assessed the Student in all areas related to the suspected disability, and the evaluation was sufficiently comprehensive to identify the child's special education and related services needs. The RR was thorough, appropriate and fully compliant with the IDEA.

After the RR, the Student's IEP was revised to include SDI that included goals to address coping skills, emotional regulation and social skills and individual therapeutic counseling. The recommended PBSP incorporated a variety of strategies that included fading the plan over time. With the RR as the foundation, throughout the spring of 2022, the Parents and other members of the IEP team worked to develop educational programming designed to target Student's updated social skills, and emotional and behavioral regulation needs. The team also introduced an updated data sheet for the collection of behavioral information for use by Student's paraprofessional. The IEP was finalized in June 2022.

After the October 2021 incident, the Student's behaviors improved, and overall, the Student made continued academic progress and behavioral improvements during the school year. The special education programming was appropriate. The Parents have failed to meet their burden of proof that the District denied Student a FAPE during the 2021-2022 school year.

ESY

Next, the Parents contend that the District failed to ensure that appropriate ESY services were offered to the Student during the summers of 2021 and 2022 after the IEP team determined that the Student was ineligible for ESY. The Parents have presented no persuasive information that the conclusion reached was inappropriate. No denial of FAPE occurred on this basis.

2022-2023 School Year [redacted]

The Student entered the [redacted] during the 2022-2023 school year with the June 2022 IEP in place. The Parent contended that although the programming improved, the District's implementation of the IEP and related SDI was uneven. The Parents allege the Student continued to escape demands for participation in nonpreferred classes with over-reliance on the paraprofessional. The Parents further contend that Student's behaviors have not remained consistent, with episodes of threats and physical aggression occurring this school year.

The June 2022 IEP and educational programming in place for implementation during the 2022-2023 school year is appropriate.⁸ Based on the evidence of record, the Student received itinerant emotional support one period a day, dedicated social skills instruction, and therapeutic counseling with a licensed therapist. All core classes occurred through regular education. Consistent with the programming expectations and the family's concerns, the Student's paraprofessional plays a vital role in providing support to Student. She collects data on goals and daily behavior provides it to the emotional support teacher, who emails that information to Parents. Additionally, if the Student makes self-deprecating comments that require debriefing, that information is assessed, and the Parents notified if warranted.

Since the school year started, the Student has made behavioral and social gains. During the first quarter of the 2022-2023 school year, the Student made progress toward most IEP goals and has increased socialization efforts. However, based on the evidence before me, I cannot conclude that the District denied Student a FAPE during the 2022-2023 time frame at issue.

⁸The Parents filed this due process Complaint on October 21, 2022. (S-76)

Section 504- Discrimination

The Parents also contended that the District discriminated against the Student by neglecting the Student's social, emotional, and behavioral development resulting in reputational harm. In support of this contention, the Parents indicated that although the District knew Student was getting good grades while not hurting or threatening others, it permitted the Student to progress from grade to grade without making gains in areas of greatest need. Additionally, the Parents allege "invidious discrimination" by the teacher that received the threat and the foreseeable trauma to the Student if subjected to juvenile delinquency proceedings.

Intentional discrimination under Section 504 requires a showing of deliberate indifference, which may be met by establishing both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge." *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). "[D]eliberate choice, rather than negligence or bureaucratic inaction" is necessary to support such a claim. *Id.* at 263. After a review of the hearing record, and a determination that no FAPE denial occurred, I conclude that the Parents have failed to meet their burden of proof regarding this claim.

After the due process complaint was filed, the Student has unfortunately demonstrated episodes of aggression and behavioral instability despite the panoply of interventions and supports in place. This Student has undergone numerous school-based and private evaluations, risk assessments and, at one point, psychiatric involvement that resulted in outpatient psychotherapy and medication management. However, after a thorough review of the evidence in this matter, I conclude the programming offered and provided to the Student during the school years at issue met the

substantive and procedural requirements of the IDEA. Additionally, there has been no persuasive evidence presented to support Parents' claims of deliberate discrimination. No remedy is owed the Parents.

ORDER

AND NOW, this 27th day of April 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not violate its Child Find obligation to Student or deny Student FAPE under the IDEA and Section 504.

a. The District did not deny Student a FAPE during the 2020-2021 or 2021-2022 school years.

b. The District did not deny Student a FAPE during the 2022-2023 school year through October 21, 2022.

c. The District did not discriminate against the Student.

d. No remedy is owed to the Parents.

2. It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 27174-22-23