

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 21868-18-19

Child's Name: P. M. **Date of Birth:** [redacted]

Parent:

[redacted]

Counsel for Parent

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School:

Phoenixville Area School District
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Hearing Officer: Michael J. McElligott

Date of Decision: 07/24/2019

INTRODUCTION

Student (“student”)¹ is an elementary-school age student who attends the District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”)² as a student with an emotional disturbance and specific learning disabilities.

The student’s mother claims that the student was denied a free appropriate public education (“FAPE”) for a period beginning in the spring of the student’s kindergarten year, specifically in March 2017, through the 2018-2019 school year. Additionally, the mother claims that the last-proposed individualized education program (“IEP”) is not reasonably calculated to provide FAPE for the upcoming 2019-2020 school year. Analogously, she asserts these claims and request for remedy under the Rehabilitation Act of 1973, particularly Section 504 of that statute (“Section 504”).³

The District counters that at all times it met its obligations to the student under IDEIA and Section 504, both in terms of programming as implemented and in terms of the proposed programming for the upcoming 2019-2020 school

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

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

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

year. Accordingly, the District argues that the parent is not entitled to any remedy.

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

ISSUES

Did the District fail to provide FAPE to the student in the 2016-2017, 2017-2018, and/or 2018-2019 school years?

If the answer to this question is in any way in the negative, is the student entitled to compensatory education?

Is the District's proposed programming for the 2019-2020 school year appropriate?

STIPULATIONS OF THE PARTIES

- A. The parent and Student are residents of the School District.
- B. The District is a recipient of federal funding.
- C. Student's date of birth is [redacted]
- D. Student is eligible for special education as a child with a disability under IDEIA and Chapter 14.
- E. At all times relevant to this matter, the parent received invitations to IEP team meetings.
- F. At all times relevant to this matter, the parent was in receipt of procedural safeguards notices.
- G. At all times relevant to this matter, the parent was provided opportunities to provide input in IEP team meetings.

FINDINGS OF FACT

1. Prior to enrolling in the District, the student received early intervention services for social/emotional needs, including goal-driven instruction for

attending to activities/adult-requests, peer interaction, emotional/behavioral regulation, and fine motor skills. (School District Exhibit ["S"]-1, S-2).

2. In the spring of 2016, the District undertook a transition process for the student to transition to kindergarten in the District in the upcoming 2016-2017 school year.
3. In April 2016, the District issued an evaluation report ("ER") for the student. The District sought to exit the student from special education prior to enrollment. The parent disagreed with this recommendation. (S-9, S-10).
4. In June and July 2016, the student underwent a private evaluation. (S-16).
5. The July 2016 private evaluation recommended that the District reconsider its eligibility determination. The private evaluation yielded a diagnosis of anxiety disorder. The private evaluation recommended close monitoring of the student's academic performance for potential needs in reading, writing, and mathematics; behavioral support in school; and an identification of the student under IDEIA as a student who required special education and related services as a student with an emotional disturbance. (S-16).

Kindergarten/2016-2017 School Year

6. In September 2016, the District received the private evaluation, and in October 2016, the District issued a re-evaluation report ("RR"). (S-17).
7. The October 2016 RR recommended that the student be found eligible for special education as a student with an emotional disturbance. (S-17).
8. Over the period October 2016 – March 2017, the student received special education and related services through an IEP. The student's initial October 2016 IEP was revised in December 2016 and in February 2017. (Joint Exhibit ["J"]-83; S-18, S-20, S-25, S-28).⁴

⁴ The parent's denial-of-FAPE claim was for the period March 2017 forward. Evidence was presented as to the student's early intervention services and kindergarten services in the 2016-2017 school year by way of background and context. This applies only to the student's IEPs; the evaluation/re-evaluation reports are always probative (i.e., not merely contextual), regardless of when those are produced. The denial-of-FAPE evidentiary record, as to programming, begins with the March 2017 IEP. (See also Notes of Testimony ["NT"] at 22-154, 202-340).

9. In March 2017, the student's IEP was revised again. (S-31, S-33).⁵
10. The March 2017 IEP reflected that in September 2016 the student was performing at benchmark levels in first-sound fluency, and letter-naming fluency. No needs were identified in writing, mathematics, or listening comprehension, and the IEP noted there were no academic concerns at the outset of kindergarten. (S-31).
11. The March 2017 IEP included an indication that the student's behavior impeded the student's learning or that of others. The IEP included the results of a functional behavior assessment ("FBA") from early intervention and positive behavior supports based on the FBA. (S-31).
12. The needs related to the student's disability were identified as developing age-appropriate social skills, understanding how anxiety affects the student and the student's responses, and learning/applying calming strategies. (S-31).
13. The March 2017 IEP contained three goals, one in appropriate classroom behavior, one in identifying anxiety states, and one in social skills. (S-31).
14. The March 2017 IEP included specially designed instruction, program modifications, and related services to address the student's needs in the educational environment. (S-31).
15. Revisions in the March 2017 IEP indicated that the student would begin arrival and morning routine in a special education classroom, and would receive literacy instruction in that classroom to start the day. This increased the student's educational-placement calculation/characterization from itinerant special education to supplemental special education. (S-31).
16. Parent approved the March 2017 IEP. (S-33).
17. The student's behaviors intensified in February/March 2017. At the March 2017 IEP team meeting, the parent requested an updated FBA. (S-31 at page 1, S-94; NT at 22-154, 202-340).

⁵ The provisions of the March 2017 IEP in these findings of fact include the content of the previous 2016-2017 IEPs to that point. The revisions of the IEP in March 2017 were the schedule-change and educational-placement calculation/characterization in finding of fact 15 below.

18. In May 2017 the student's IEP team met to consider the updated FBA. In June 2017 the student's IEP was revised to include the results of the FBA and an updated positive behavior support plan. (J-88, J-89; S-37, S-40; NT at 22-154, 420-520).
19. The May 2017 IEP recommended that in the following school year, in 1st grade, the student receive academic instruction in reading and mathematics in the special education classroom. (S-31).
20. Parent approved the June 2018 IEP. (S-39).
21. The student made progress on all IEP goals over the course of the kindergarten year, and on the student's report card, the student was meeting or exceeding grade level expectations in English/language arts and mathematics. (J-88; S-20, S-31, S-37, S-83).

1st Grade/2017-2018 School Year

22. The June 2017 IEP was in effect at the outset of the student's 1st grade year. (S-31).
23. In October 2017, the student's IEP team met for its annual meeting to revise the student's IEP. (S-45).
24. Present levels of academic performance were updated in the October 2017 IEP. (S-45).
25. The student generally performed at grade level in reading, but scored 0/5 on long-vowel sounds and 10/15 on short vowels and consonant blends on a phonics survey. The student was below benchmark in nonsense word fluency (scoring 12 with benchmark-expectancy 27). The student was at the frustration level for total-passage oral reading. (S-45).
26. The student performed at grade level in listening comprehension, writing, and mathematics. (S-45).
27. Present levels of functional performance were updated in the October 2017 IEP, and the IEP recognized the need for continuing behavior goals and programming. (S-45).
28. The October 2017 IEP continued to identify student needs in social skills, anxiety management, and behavior. Additionally, the IEP added needs in nonsense word fluency ("correct letter sounds"). (S-45).

29. The October 2017 IEP contained four goals, one in anxiety recognition and management, one in social skills, one in behavior, and one in nonsense word fluency. (S-45).
30. The October 2017 IEP included specially designed instruction, program modifications, and related services to address the student's needs in the educational environment. (J-96; S-45).
31. The October 2017 IEP provided that the student would receive 30 minutes of instruction in the special education classroom in each of English/language arts, reading, writing, and mathematics, for a total of two hours of academic instruction (in addition to social skills and anxiety-management instruction). (S-45).
32. The student's educational placement placed the student in the regular education environment for approximately 54% of the school day. (S-45).
33. The student's parent approved the October 2017 IEP. (S-46).
34. At the October 2017 IEP meeting, the parent requested a physical therapy ("PT") evaluation over concerns for the student's gross motor skills and provided permission for the District to conduct a PT evaluation. (S-49; NT at 22-154, 735-763).
35. In January 2018, as a result of the PT evaluation, the student's IEP was revised to include two PT goals (postural strength and skipping). The student's educational placement in the regular education environment was increased to approximately 61% of the school day. (S-50).
36. The student exhibited behaviors over the period September 2017 – January 2018 which were in line with the student's previous behavior profile, and were addressed through the programming in place. In February 2017, the student's behavior intensified. (NT at 22-197).
37. In February 2018, the student's IEP team met twice, once to discuss extended school year programming (S-54) and once to discuss the student's intensifying behaviors (S-57). (S-54, S-55, S-57).
38. The student voiced potential self-harm but, in testimony, neither the student's mother nor the special education teacher (to whom those words were voiced) did not recall with any specificity or intensity what those words were. (S-57; NT at 22-154, 531-660).

39. Difficulties with transitions, especially, led the IEP to include a visual schedule and use of a timer in the February 2018 IEP. (S-57; NT at 531-660).
40. In March 2018, the student's special education teacher began to communicate with the parent utilizing a school/home communication log. (S-99).
41. In June 2018, near the end of the school year, the student made a suicidal threat after the student was not allowed to depart with parent following a class performance. The District had a mental health professional, with whom it contracts, perform a suicide risk-assessment. The professional determined that the context of the statement (wanting to be home) and the student's affect ("silly and content"), led her to conclude that intervention was not needed. The counselor contacted the student's mother and related the incident to the parent. (J-106; S-101; NT at 916-942).
42. Shortly after the June statement and risk-assessment, the student's IEP team met to discuss implementation of the February 2018 IEP in a new District elementary school, the school to which the student would be transitioning in the upcoming 2018-2019 school year. (S-57).
43. The student made progress on all IEP goals over the course of the kindergarten year, and on the student's report card, the student was largely meeting or exceeding grade level expectations in all academic areas except phonics/word recognition and reading fluency, where the student failed to meet grade-level expectations in the 2nd, 3^d, and 4th marking periods. (S-57, S-84).
44. In July 2018, in response to information shared by a community-based art program available free of charge in September for children in need of extra emotional support, the student's special education teacher recommended that the student's family might be interested in the program. (J-95).
45. In August 2018, the student underwent a mental health evaluation, resulting in a report. (J-102).
46. The August 2018 report indicated that the behaviors of concern were the same behaviors present in the educational environment: non-compliance, social skills, and difficulty with emotional regulation. (J-102).

47. The August 2018 report recommended community-based mental health services and continued implementation of the student's IEP. (J-102).
48. The August 2018 report was not shared with the District. (NT at 22-154).

2nd Grade/2018-2019 School Year

49. In early September 2018, the student twice voiced potential self-harm (once by self-punching and once by utilizing a bean bag pillow). The student's special education teacher—the same individual who had taught the student in 1st grade—questioned the student in both instances and did not feel that the threats presented imminent risk of harm. (NT at 531-660).
50. The District had a mental health professional, with whom it contracts, perform a suicide risk-assessment. Testimony at the hearing did not support any finding by that professional that she recommended additional intervention or that she felt the student was in imminent risk of harm. (NT at 669-692).⁶
51. The District shared the incidents with the parent. In mid-September 2018, parent's concern about the statements led the student's mother to seek a partial hospitalization program at a mental health clinic. (S-65; NT at 22-154).
52. In late September 2018, a representative from the mental health clinic shared information and recommendations with the District (through the contracted counselor). (J-98; S-69; NT at 669-692).
53. In early October 2018, the student returned to the District. (J-103; NT at 22-154, 351-420, 531-660).
54. In October 2018, the student's IEP team met. (S-71, S-72).
55. The October 2018 IEP contained updated levels of academic performance. (S-72).

⁶ Documentation of these risk assessments was not produced. The District performed a diligent search to see if it had copies, and a special education administrator testified credibly that any risk assessments from this time were not in the District's possession. (NT at 896-900). Any argument that risk assessments from September 2018 were withheld from the parent by the District is rejected.

56. In reading/phonics, the student identified 40 phonemes correctly (50th percentile for fall of 2nd grade is 46). On a phonics survey, the student scored 15/15 on short-vowel consonant-vowel-consonant words. On all other phonics measures, the student missed a significant number of questions: short vowel/consonant blends 11/15, short-vowels/digraphs/-tch trigraphs 11/15, R-controlled vowels 6/15, and long vowels 3/15. Nonsense word fluency probes were scored at 46 sounds correct, 35 sounds correct, and 41 sounds correct (50th percentile for 2nd grade is 56 sounds correct). Whole-word reading probes were scored at 6 WWR, 4 WWR, and 4 WWR (50th percentile for 2nd grade is 22 WWR). (S-72).
57. In reading fluency, the student read 39 correct letter sounds (the beginning 2nd grade benchmark is 74). The student read 4 correct whole words (the beginning of 2nd grade benchmark is 22). The student read 30 words per minute with 85% accuracy (the beginning 2nd grade benchmark is 80 words per minute with 99% accuracy). (S-72).
58. On reading accuracy probes, the student scored 26 words read correctly with 92% accuracy, 38 WRC with 88% accuracy, and 39 WRC with 90% accuracy (the 50th percentile for fall of 2nd grade is 62 WRC). (S-72).
59. In sight-word reading, the student could read 39/52 kindergarten sight words with automaticity, 33/41 1st grade sight words with automaticity, and 28/46 2nd grade sight words with automaticity. (S-72).
60. In reading comprehension, the student was instructional at level G on a curriculum-based measure (in an alphabetical scoring system where A is a lower level of reading than B than C, etc.) where the benchmark level for the beginning of 2nd grade is J. (S-72).
61. Present levels of academic performance indicated that the student met benchmark levels for the beginning of 2nd grade in writing and spelling. (S-72).
62. In mathematics, the student scored 10 points in a missing-number probe (the 50th percentile for spring of 1st grade is 21), 48 points in a number identification probe (the 50th percentile for fall of 2nd grade is 66), 24 points in a quantity-discrimination probe (the 50th percentile for fall of 2nd grade is 36). (S-72).⁷

⁷ It is unclear why spring/1st grade was used for the missing-number probe when fall/2nd grade was used for all other mathematics probes.

63. In each of these probes, in untimed administration, the student scored 29/30, 80/80, and 40/40 respectively. The IEP does not indicate whether untimed results are valid. (S-72).
64. In a math computation probe, the student scored 28 points in a number identification probe (the 50th percentile for fall of 2nd grade is 16). (S-72).
65. In a math concepts/applications probe, the student scored 10 points in a number identification probe (the 50th percentile for fall of 2nd grade is 7). (S-72).
66. Present levels of functional performance for behavior and emotional regulation were updated in the October 2017 IEP. (S-72).
67. The October 2018 IEP included present levels of functional performance in physical therapy. (S-72).
68. The October 2018 IEP recognized the need for continuing behavior goals and programming, as well as continuing needs in social skills and anxiety management. Academically, needs were identified in sight-word automaticity, reading decoding, and reading fluency. (S-72).
69. The October 2018 IEP contained seven goals, one in social skills, one in coping skills and behavioral response, one in sight-word reading, one in nonsense word fluency (at the 1st grade level), one in reading decoding (at the 2nd grade level), and two in physical therapy (postural strength and jump-rope). (S-72).
70. The October 2018 IEP included specially designed instruction, program modifications, and related services to address the student's needs in the educational environment. (S-72).
71. The October 2018 IEP provided that the student would receive 30 minutes of instruction in the special education classroom in each of reading, phonics, and mathematics, and 15 minutes of instruction in writing, and mathematics (in addition to social skills and anxiety-management instruction). (S-72).
72. The student's educational placement placed the student in the regular education environment for approximately 62% of the school day. (S-72).
73. In December 2018, the student's IEP team, including counsel for the parties, met to revise the October 2018 IEP. (S-78).

74. The December 2018 IEP contained updated levels of performance in certain academic, behavioral, and emotional regulation areas. Most revision in the IEP were directed to approaches to the student's behavioral and emotional support needs. (S-78).
75. In February 2019, the student was involved in a playground behavioral incident where the student refused to return from the playground to the school building. (J-104; NT at 22-154).
76. In February 2019, the District requested, and received, permission to re-evaluate the student. (S-98).
77. In early March 2019, the parent filed the special education due process hearing that led to these proceedings. (Hearing Officer Exhibit ["HO"]-1).⁸
78. In May 2019, the District issued the RR. (S-82).
79. In the May 2019 RR, the student's full-scale IQ was 111 and a general ability index (the more accurate measure, in the view of the evaluator) was 121. (S-82).
80. In the May 2019 RR, the student's achievement testing yielded results that, aside from the spelling sub-test, were significantly discrepant from the student's intellectual ability (indeed, 2.0 standard deviations or more, regardless of the intellectual ability score) on every sub-test and composite: phonological processing, nonsense word decoding, letter & word recognition, silent reading fluency, word recognition fluency, letter naming fluency, reading comprehension, writing fluency, written expression, math concepts and applications, math computation, sound-symbol composite, decoding composite, reading composite, written language composite, math composite, and orthographic processing composite. (S-82).
81. In the May 2019 RR, the evaluator did not provide any qualification or caution about the validity of the achievement testing. (S-82).
82. To "gain more insight into...reading skills and achievement", the evaluator assessed the student's reading with a comprehensive reading

⁸ The proceedings commenced with a hearing session on April 9, 2019. The student's educational programming for the upcoming 2019-2020 school year was at issue and through the May 2019 RR and IEP processes, those documents became the basis for the 2019-2020 programming and were made part of the evidence in the midst of the hearing.

assessment. The student's testing yielded results that, aside from the positioning-sounds sub-test, were significantly discrepant from the student's intellectual ability (indeed, 2.0 standard deviations or more, regardless of the intellectual ability score) on every sub-test and index: phonemic awareness, nonsense word decoding, isolated word reading fluency, oral reading fluency, rapid automatic naming, verbal fluency, visual perception, irregular word reading fluency, orthographical processing, semantic concepts, word recall, morphological processing, silent reading fluency comprehension, phonological index, fluency index, comprehension index, and total index. (S-82).

83. In the May 2019 RR, the evaluator did not provide any qualification or caution about the validity of the comprehensive reading assessment. (S-82).
84. The evaluator concluded that the student "struggles with basic reading, reading comprehension, written expression, and mathematics, including core reading skills below both age and grade expectations, "evidence of global reading delays". (S-82).
85. The May 2019 RR included progress results from the student's IEP without any indication by the evaluator to explain seeming instructional progress yet deeply, consistently discrepant academic achievement scores on standardized testing. (S-82).
86. The May 2019 RR identified the student as a student with an emotional disturbance and specific learning disabilities in reading and written expression. (S-82).
87. In May 2019, the student's IEP team met to revise the student's IEP in light of the May 2019 RR. (J-105).
88. The student's present levels of academic performance were updated in the May 2019 IEP from reading assessments administered in April and May 2019. (J-105).
89. In reading, the student made progress on the reading assessments from the scores reported in the October 2018 IEP but was still below grade-level expectations. (J-105).
90. The May 2019 IEP makes note of the student's deeply discrepant achievement scores in the May 2019 RR and attempts to reconcile the scores in the IEP assessments and the achievement scores. (J-105).

91. The May 2019 IEP contains six goals, one in reading fluency, one in decoding/encoding text, one in computational fluency, one in writing, one in behavior, and one in social skills/anxiety management. (J-105).
92. The May 2019 IEP provides for 45 minutes of instruction in decoding/encoding, 15 minutes in reading fluency, 15 minutes in math computation/operations fluency, and 30 minutes in writing. The IEP provides for 30 minutes for mathematics review (but not direct instruction) in mathematics. (J-105).
93. The student will spend 56% of the school day in the regular education environment. (J-105).
94. In terms of the student's behavior, the student exhibited far less physical aggression in 2nd grade than in 1st grade, although other behaviors (negative self-reflection, anxiety, difficulty with transitions) continued. (NT at 531-660).

DISCUSSION AND CONCLUSIONS OF LAW

FAPE

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis* or minimal education progress. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137

S. Ct. 988, 197 L. Ed. 2d 335, (2017); K.D. v. Downingtown Area School District, F.3d (3d Cir. at No. 17-3605, September 18, 2018)).

The evidence in this record is complicated to work through. Certain elements of that evidence however, can be addressed in a straightforward way. Parent requests that the District provide a more restrictive environment—“highly structured, peaceful...with a low-student to teacher ratio and limited transitions”, either in the District or in an out-of-District placement. It is clear that the student does not require a more restrictive placement. The student has complex behavioral and academic needs, but those needs can be met by the District in a placement that largely reflects the District’s placement to this point.

Additionally, the focus of much of the complaint, and the testimony, centered on the student’s behavior and emotional-support needs. Those needs are multi-layered and complex, yet the District continually met those needs with appropriate programming that addressed those needs. Here, it must be pointed out that the instances of voicing self-harm in the school environment cannot be taken lightly, and those instances were not taken lightly by the District. But in each case, the student’s special education teacher and other educators showed genuine concern and responded appropriately. Mental health professionals were consulted and risk assessments consistently showed that the student was not in imminent harm or showed the need for intervention. Even mental health professionals outside of the District did not characterize those instances as needing intervention—the mental health

evaluator in August 2018 referred to the student's "passive suicidal ideation" and "catastrophizing" events, and upon discharge from the mental health clinic in October 2018, there was no mention or recommendation regarding potential self-harm. Again, this is not related to minimize what the student voiced. But the record weighs heavily in favor of a finding that those instances did not present a significant risk of self-harm.

Much more complicated is the academic mosaic presented in this record. If one considered only the IEPs, one could easily conclude that the student had mild needs in reading instruction and that the student was progressing through the curriculum somewhat seamlessly. If one considered only the May 2019 RR, one could easily conclude that the student had significant, global needs in every aspect of reading, with the student's standardized achievement painting a dire picture across the board (not only in reading but in mathematics and writing as well). The evidence (IEP assessments versus standardized assessments) stands in stark difference.

Upon careful consideration of the record, the student is entitled to compensatory education. This finding is based on the fact that the District knew, or should have known by the end of 1st grade (the spring of 2018) that a comprehensive evaluation in reading was required. By the end of kindergarten, the District was recommending in the June 2017 IEP that the student receive specialized instruction in reading. Over the course of 1st grade, the student failed to meet regular education expectations in reading—indeed, one can see from quarter to quarter over the 2nd, 3rd, and 4th marking period that the

student lagged, almost exclusively in every area, only in phonics/word recognition and reading fluency (S-84).

The present levels of academic performance, through extensive data across multiple components of reading, in the first IEP of 2nd grade (the October 2018 IEP) confirmed that the student had significant needs in multiple aspects of reading. It is a denial of FAPE that not until nearly seven months later, after special education due process proceedings had been commenced, was a comprehensive reading evaluation undertaken.

This decision should not be read to support a conclusion that the IEP progress data is manufactured or manipulated. Ultimately, the District argues that the student has made progress, and this is true. But over time, the IEPs paint a picture of the student's needs in reading slipping further away from the District, with the District attempting to "catch up" to the student with a clear indication by the end of 1st grade that the student's reading needed to be comprehensively evaluated with intensive programming—that which is proposed in the May 2019 IEP—put in place. Accordingly, compensatory education will be awarded.

Compensatory Education

Where a school district has denied FAPE to a student under the terms of IDEIA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

In this case, the District failed in its obligation to evaluate the student's needs in reading when, clearly by the end of 1st grade, the student required such an evaluation. Compensatory education is an equitable remedy and, here, it is difficult to provide a concrete calculation of compensatory education. Too, the District has diligently attempted to address the student's needs in reading and has had a degree of success—this is an equitable consideration that weights in the District's favor.

Therefore, it is the considered opinion of this hearing officer that the student should be awarded 100 hours of compensatory education.

As for the nature of the compensatory education award, the parent may decide in her sole discretion how the hours should be spent so long as those hours take the form of appropriate developmental, remedial, or enriching instruction or services that further the goals of the student's current or future IEPs, or identified educational needs. These hours must be in addition to any then-current IEP and may not be used to supplant an IEP. These hours may be employed after school, on weekends and/or during the summer months, at a time and place convenient for, and through providers who are convenient to, the student and the family. Nothing in this paragraph, however, should be read to limit the parties' ability to agree mutually and otherwise as to any use of the compensatory education hours.

Section 504/Chapter 15

Section 504 and Chapter 15 also require that children with disabilities in Pennsylvania schools be provided with FAPE. (34 C.F.R. §104.33; 22 PA Code §§15.1-15.8). The provisions of IDEIA/Chapter 14 and related case law, in regards to providing FAPE, are more voluminous than those under Section 504/Chapter 15, but the standards to judge the provision of FAPE are broadly analogous; in fact, the standards may even, in most cases, be considered to be identical for claims of denial-of-FAPE. (*See generally P.P. v. West Chester Area School District*, 585 F.3d 727 (3d Cir. 2009)). Therefore, the foregoing analysis is adopted here— the student was denied a FAPE and is entitled to compensatory education.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the District has denied the student a free appropriate public education. The student is awarded 100 hours of compensatory education.

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

With the issuance of this final decision and order, the undersigned hearing officer releases jurisdiction.

Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

July 24, 2019