

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

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

CLOSED HEARING

ODR No. 31771-25-26

Child's Name:

C.M.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

04/30/2026

INTRODUCTION AND PROCEDURAL HISTORY

The student, C.M. (Student),¹ is an [redacted] elementary school-aged student residing with the Parents and formerly enrolled in Mars Area School District (District or local education agency (LEA)). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² and accordingly has a disability and entitled to the protections under Section 504 of the Rehabilitation Act of 1973.³

After briefly attending school in the District pursuant to a program of half general education and half special education, Student did not return and began attending a private school. In late August, 2025, the Parents filed a Due Process Complaint under the IDEA and Section 504. In that Complaint, the Parents asserted various claims related to the District's educational programming for Student including a denial of a free, appropriate public education (FAPE) at the start of the 2025-26 school year on several grounds, in addition to discrimination and retaliation under Section 504. Multiple hearing sessions convened in the

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).

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 codified 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).

late winter 2026 for presentation of evidence,⁴ and this matter is ripe for final decision.

Following review of the record and for all of the reasons set forth below, the claims of the Parent must be granted in part and denied in part.

ISSUES

1. Whether the evaluation conducted by the District in the summer of 2025 complied with the applicable standards;
2. Whether the District's special education program for Student for the 2025-26 school year, as offered and briefly implemented, was appropriate in all respects;
3. If the District's 2025-26 program for Student was deficient in any respect, whether Student should be awarded compensatory education; and

⁴ References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. The term "Parents" is used in the plural where it appears that one was acting on behalf of both. Citations to duplicative exhibits and testimony generally are not exhaustive.

4. Whether the District discriminated and/or retaliated against the Parents on the basis of Student's disability?⁵

FINDINGS OF FACT

1. Student is an [redacted] elementary school-aged student residing in the District and identified as eligible for special education under the IDEA based on Autism and a Speech/Language Impairment. (N.T. 52; S-6.)
2. Student exhibits sensory needs requiring opportunities for physical activity for self-regulation. Student uses some verbal speech but has an augmentative alternative communication device (AAC) that Student reportedly did not use at home or in preschool during the relevant time period. (N.T. 170-71, 270, 470-72.)
3. Student has had Applied Behavior Analysis (ABA) services through an outside provider for approximately three years, as well as speech/language and occupational therapy. (N.T. 273, 275.)

Early Educational History

4. Student received services through the county birth to three program as well as in preschool. Those services included

⁵ A claim for reimbursement for tuition for Student's current placement was withdrawn. (N.T. 28.)

occupational, physical, and speech/language therapy in addition to weekly individualized instruction by a special education teacher. Student did not have a formal behavior plan in the preschool setting, but a type of token economy system was used. Student also had access to an area for calming as needed. (N.T. 55, 267-68, 270, 1076-79, 1084-86, 1092, 1100-01; P-17; S-1; S-6; S-8 at 4.)

5. An Early Intervention Evaluation Report (ER) in [redacted] noted no qualifying delay in the areas of cognitive and social/emotional development. Other domains (communication, physical, and adaptive) were qualifying. (P-1; S-8.)
6. Student attended a preschool program since early [redacted] through entry into the District for the fall of [redacted]. (N.T. 53, 55-56.)
7. In [redacted], the Parents attended a meeting with the District as well as preschool staff to discuss Student's transition to school-age services. The Parents also attended other meetings available to parents to ask questions about the process, but had none. In late February, they also provided notice to the local Intermediate Unit (IU) of their

intention to register Student for school in the District. (N.T. 53-57, 277-79, 332-33, 873-76, 919-22, 1195-96; S-23.)

8. A speech/language evaluation in June 2025 by a private provider included an interview with one of the Parents, clinical observation, and a language sample. The Parents had particular concern with receptive and expressive language skills. Both were determined to be areas of deficit as were play and pragmatic language skills. Individual speech/language therapy was recommended once or twice per week. (S-52.)
9. As of January 2025, Student was provided with direct instruction; and with occupational and speech/language therapy services once per week each for thirty minutes. (P-41 at 40.)

General District Information

10. The District utilizes a positive behavior support system across its schools with reinforcement for appropriate behaviors as part of its Tier 1 system of multi-tiered support. More intensive levels are also available for students who need more behavioral support. (N.T. 204-05, 235.)
11. Autistic support classrooms at the District are supported by the Pennsylvania Training and Technical Assistance Network (PaTTAN). Consultants visit the program monthly, review

data and conduct observations, and provide curriculum recommendations. (N.T. 359-62, 509-10.)

12. District staff are trained in ABA by PaTTAN and the local IU, and utilizes that training with its students. All staff are also trained by the District behavior analyst. (N.T. 562-65, 571-52.)
13. District staff engage in ongoing consultation about students throughout the school day. (N.T. *passim*.)

Preparation for Entry Into District Evaluation

14. The District completed a Reevaluation Report (RR) of Student prior to the entry into its schools with consent of the Parents. That RR was completed in July [redacted]. (P-3; P-10; S-6; S-12.)
15. The District RR incorporated input from the Parents that reflected Student's skills below expectations in the areas of social and adaptive functioning as well as functional communication and pre-academic skills. Essentially, they reported needs across domains and concern with Student's educational programming. (S-6 at 2-3.)
16. Student's educational history was also summarized in the District RR along with outside services. Of those,

speech/language and creative arts services were noted as well as ABA instruction. (S-6 at 2-7.)

17. The preschool teacher and related service provider input into the District [redacted] RR reflected emerging skills across areas, with some behavior concerns: impulsivity and unsafe actions such as climbing on furniture particularly during transitions and unstructured activity. A teacher checklist for school-age services yielded variable skills. Student's cooperative play skills, and limited ability to resolve conflicts and managing frustration, were identified specifically. Recommendations that benefitted Student included visual schedules, consistent routines, clear step-by-step directions, structured breaks, manipulatives during instruction, and positive reinforcement. (S-6 at 9-14.)
18. A District teacher observation of Student for the District [redacted] RR was also summarized, but with a fire drill reported as an interruption. Student exhibited noncompliance upon a return to the classroom. (N.T. 364-69; S-6 at 7-8.)
19. The District school psychologist administered assessments of Student's cognitive ability and academic achievement for its RR. One of the Parents took Student to the District for administration of assessments for its initial RR and also accompanied Student into the room for portions of the

testing, but standardization was not compromised. (N.T. 57-59, 188-91, 220-21, 455.)

20. Cognitive assessment for the District [redacted] RR (Wechsler Nonverbal Scale of Ability) revealed an average-range score (SS 92). In the area of academic achievement, Student's Bracken Basic Concept Scale – Fourth Edition scores were rather variable, with colors and letters relative strengths and in line with age expectations, whereas early mathematical skills and social awareness were areas of need. Another measure supported those scores, and writing was noted as another area of weakness. (S-6 at 16-19.)
21. On the Behavior Assessment System for Children – Third Edition (BASC-3) rating scales for the District RR, the Parents identified areas of concern (social skills, activities of daily living). At least one of two teachers reported at-risk concern with aggression, withdrawal, social skills, functional communication, and functional impairment. No clinically significant areas were reflected. (S-6 at 19-22.)
22. Autism Spectrum Rating Scales completed by the Parent and main teacher yielded significant concern by both, with the teacher rating Student in the very elevated range. A developmental profile completed by the Parents suggested delayed or below average skills across domains. In addition,

adaptive behavior was similarly rated as a deficit with parent ratings lower than that of the teacher. (S-6 at 23-27.)

23. Speech/language assessment for the District [redacted] RR identified weaknesses with receptive and expressive language, but articulation could not be formally assessed. Informally, articulation skills were determined to be developmentally appropriate, as were fluency, vocal quality, and resonance. (S-6 at 27-29.)
24. In the area of occupational therapy, Student's test scores on instruments of visual-motor integration visual perception, and motor coordination were below expectations. Fine motor skills were assessed as another area of weakness. As before, one of the Parents accompanied Student for this testing. (N.T. 597-606; S-6 at 29-30.)
25. The District school psychologist did not ask outside providers including from the early intervention setting to complete rating scales for its RR because they are not normed for such individuals. (N.T. 233-34.)
26. The District school psychologist noted some sensory needs for Student consistent with records and input from the Parents and teachers. She recommended observations with a sensory profile by an occupational therapist after Student

became acclimated to the school environment. (N.T. 258-59, 261-63, 626-28, 644-45.)

27. The Parents' concerns with the District RR were the recommendations for the frequency of occupational therapy and the use of the term "elopement." With respect to occupational therapy, they suggested that Student needed more sessions per week: on the latter, they understood that Student's related episodes often did not involve leaving the immediate area.⁶ The Parents also had concern that Student's behavioral presentation was not portrayed accurately. They shared their concerns with the District school psychologist via phone. (N.T. 61-66, 205-06, 333-34, 338-39.)
28. The District school psychologist identified Student as having a qualifying disability under the IDEA, Autism, with a secondary eligibility category of speech/language impairment. The RR also identified areas of strength and need for educational programming. (N.T. 192-93; S-6 at 30-31.)

Individualized Education Program

29. The District drafted an Individualized Education Program (IEP) for a meeting in August [redacted]. By the time of

⁶ An independent behavior analyst described elopement clearly and unambiguously for the Parents' reference (S-33 at 2).

that meeting, the Parents had retained an advocate. This IEP did not note any special considerations including behaviors that impede Student's learning or that of others. Results of the District RR were summarized in the document. (P-11; S-2; S-5; S-63; S-66.)

30. Other input from the Parents into the August [redacted] IEP included their wish to maximize Student's time with regular education peers; a need for mathematics and handwriting skills addressed in the special education setting; and their wish for a balance between social/emotional and academic growth. They also suggested that District team members collaborate with Student's private providers. (S-2 at 18-19; S-3.)
31. Strengths listed in Student's August [redacted] IEP noted average-range cognitive ability; acquisition of specific academic, speech, occupational therapy, and emerging cooperative play skills. Identified needs were for academic support; vocabulary; social skills; social/emotional awareness; behavioral regulation; receptive and expressive language; fine motor, visual motor, and visual perceptual skills; bilateral hand coordination; emotional understanding; and coping skills. (S-2 at 20-21.)
32. Annual goals in the August [redacted] IEP targeted social skills (reciprocal play increasing for a 3-minute period from a baseline of 52% in early intervention); transitioning to non-

preferred tasks within 2 minutes with 2 or fewer verbal prompts as a new goal without a baseline; remaining on task for 5 minutes with 2 or fewer verbal prompts as a new goal without a baseline; following 40 verbal directives daily as a new goal without a baseline; in the area of speech/language: following one-step directions with prepositional phrases as a new goal from a baseline of emerging concepts, using word phrases to make a request or comment as a new goal without a baseline, and answering WH questions with minimal cues as a new goal without a baseline; in the area of occupational therapy, demonstrating a functional grasp and paper stabilization from a fist grasp with inconsistent paper stabilization, writing letters of Student's name from a baseline of no letter writing, scissor skills from a baseline of snipping paper; and therapeutic support in identifying/predicting feelings from a choice of 4 from a baseline of 9% accuracy to 80%. (S-2 at 29-40.)

33. Program modifications and items of specially designed instruction (SDI) included access to the resource room when needed; access to the sensory room; visual supports and a visual schedule; ABA programming; clear and concise verbal directions; reteaching skills and concepts; social skills and social stories with modeling; proximity; bus supervision; a first/then strategy; movement breaks; assignment

modifications; and home-school communication through a log. Student's related services were speech/language (individual and small group), occupational therapy (individual); counseling (individual); and a personal care assistant. (S-2 at 41-44.)

34. Student's program in the August [redacted] IEP was one of autistic and speech/language support at a supplemental level, with Student participating in regular education except during autistic support and related services. The Parents approved the accompanying Notice of Recommended Educational Placement (NOREP). (P-12; S-2 at 48-50; S-4.)
35. At the IEP meeting held on August 11, 2025, the Parents shared their overarching concern with Student having adequate time within the general education setting. (N.T. N.T. 65, 68, 71-72, 138, 804; S-2 at 18.)
36. The Parents also asked at the August IEP meeting about whether Student might be retrained at school. In response, District staff asked about behaviors that might prompt a restraint, but they did not share any. The behaviors that Student had reportedly engaged in were not the sort that would lead to restraint. (N.T. 257, 289, 420-21, 887-88, 928-29, 931, 940-41; S-2 at 18.)
37. The District conveyed its intention at the IEP meeting to review the outside services in the classroom two weeks

later, in part because of staff concerns about the number of adults in the classroom, but did not set a date by which those services would end. (N.T. 882-86.)

38. On the day before the start of the school year, the Parents asked for a Functional Behavior Assessment (FBA). The District sought their consent to conduct the FBA within a week, but the Parents declined to provide their permission because it did not provide sufficient information about the process, the behaviors, and the responsible staff. They also did not respond to a request for their input on any behavioral concerns. The Parents later asked for an independent FBA and the District granted that request. (N.T. 285-86, 294-95, 298, 523-26, 539; S-21; S-40; S-41.)
39. Counseling services and supports for Student would be provided weekly for thirty minutes to address emotional regulation through individual sessions. Coping skills were to be part of that counseling. (N.T. 207-08, 215-18.)
40. Social skills services for Student would be provided through a skill streaming approach involving teaching, modeling, and role-playing skills leading to generalization. Reciprocal play skills would be a large component as would social stories.

Social skills instruction was also part of other areas such as making transitions. (N.T. 383-88.)

41. Student's ABA programming would be intensive teaching (Verbal Behavior approach) following assessment after Student began attending for the school year and was acclimated to the environment. The specific assessment was intended to be school-based rather than community-based. (N.T. 393-97, 409-411.)

42.

2025-26 School Year

43. When Student began the 2025-26 school year, Student's ABA services were for forty hours per week to include the school day. (N.T. 301.)
44. Student's autistic support classroom is evidence-based with a focus on visual supports and structure. (N.T. 570-71.)
45. A portion of Student's school day was in the regular education classroom. Student's registered behavior technician accompanied Student to that setting. (N.T. 667-78.)
46. The portion of Student's school day in separate special education programming at the District was in a classroom of nine students, one teacher, and five paraprofessionals.

Programming for autistic support was provided in that setting. (N.T. 356-57.)

47. The District behavior analyst spent time in various autistic support classrooms, including Student's, at the start of the 2025-26 school year. She also observed Student in the regular education classroom. (N.T. 507-16, 543-47, 577-78.)
48. The District behavior analyst meets regularly with staff to talk about students and their behaviors, strategizing with them to make changes in the classrooms as needed. (N.T. 541-43.)
49. The District speech/language therapist, occupational therapist, and behavior analyst did collaborate with Student's private providers. The Parents were apprised of those communications. (N.T. 479-83, 493, 495, 551-55, 608, 621-24.)
50. Related services for students in the classrooms for Student's grade included push-in occupational and speech/language support and services, as well as occupational therapy outside of the classroom. The District behavioral analyst also spent time in the classroom. (N.T. 358-59, 448-49, 460-61m 613-16.)
51. On the first day of school, the teacher gave a tour in the classroom, and observed Student to appear to become

- overwhelmed. After the teacher prompted Student to sit down and keep hands to self, Student did. Student did engage in some problematic behavior at times. (N.T. 675-77, 680.)
52. During recess on the first day of school, Student was among several students using a piece of outdoor play equipment. The teacher gave an instruction to all of the students on how to use that equipment safely. (N.T. 683.)
53. Also on the first day of school, the Parents requested assistive technology. The District responded with a referral to the local IU. The IEP reflected their request for an AAC device referral, and that the District at that time denied their request to remove AAC information from the IEP. (N.T. 944-45; S-54.)
54. On the evening of first day of school, the Parents received a phone call from Student's private behavior analyst, who related events at school that day that were concerning, and would be to anyone, if true. (N.T. 96-; P-14.)
55. The school principal met with the Parents on the morning of August 22, 2025 about the allegations their behavior analyst had told them. (N.T. 813-16, 837-38.)
56. District administrators met with the private behavior analyst on the second day of school also. That meeting did not go

well and the behavior analyst became upset. (N.T. 557-60, 584-85, 587, 828-31, 846-49, 895-97, 900-02, 954-56.)

57. Later during the second day of school, Student's private behavior analyst called the Parents again to report another concerning incident. The Parents decided to pick Student up from school, and Student did not return to the District after that. (N.T. 104-06, 304; P-14.)
58. The school principal investigated the alleged incidents, speaking with the classroom teacher and a number of other staff members as well as reviewing available video. The principle determined that the allegations were unfounded. (N.T. 821-26, 842-45.)
59. The Parents provided absence notes for Student's failure to attend after the second day of school, but no reasons were provided with their late August 2025 submission. Student's pediatrician subsequently recommending homebound instruction⁷ on September 8, 2025, with the Parents

⁷ "A principal or teacher may, upon receipt of satisfactory evidence of mental, physical or other urgent reasons, excuse a student for nonattendance during a temporary period, but the term "urgent reasons" shall be strictly construed and does not permit irregular attendance. A school district shall adopt rules and procedures governing temporary excusals that may be granted by principals and teachers under this section. Temporary excusals may not exceed 3 months." 22 Pa. Code § 11.25.

following up on October 3, 2025, with a similar request.
(N.T. 107, 110, 310-12, 850-52; P-18; P-19; P-24.)

60. The District speech/language therapist assigned to Student contacted the local IU for an AAC consultation. That consultation did not occur because of Student's very short attendance at the District. (N.T. 473-74.)
61. After taking steps to seek teachers for homebound services, the District ultimately denied the homebound instruction request after determining that the circumstances did not fall within the statutory provisions. A NOREP with that conclusion was provided to the Parents. (S-37; S-39; S-61.)
62. Multiple IEP meetings convened over the fall of 2025 for Student with various revisions made to Student's IEP. (N.T. 111-12, 145, 429-33, 519.)
63. During several meetings in September 2025, the team discussed the special considerations section of the IEP with respect to assistive technology and behaviors impeding learning of Student or others; made revisions to goals and SDI; added information about collaboration between District staff and outside providers; and added a sensory profile

completed by the Parents and other new and pertinent information. (S-55; S-59.)

64. In October 2025, the District denied the request for additional occupational therapy sessions; daily email communication by the case manager; addition of outside providers to Student's IEP as Supports for School Personnel; and daily collaboration with the outside providers. The Parents did not approve the accompanying NOREP. (S-38; S-39.)
65. In November 2025, the IEP team made further revisions and clarifications, with the District declining to remove statements in the document that its staff deemed to be not appropriate. (P-31; S-59.)⁸

Alleged Discrimination and Retaliation

66. Following the Parents' report of the incidents shared with them by the private BCBA and a formal discrimination complaint, the District conducted an investigation that included interviews with Student's regular education teacher, special education teacher, related service providers, the school principal, the District behavior analyst, and its Director of Special Education; the Parents and representatives of the agency for the private BCBA; along with review of available video (without audio) and a brief

⁸ The District's color-coding on the IEPs was much appreciated by the undersigned.

meeting with the private BCBA. The District issued a lengthy report of the reported statements, District staff responses, and accuracy of the reported statements. The district ultimately determined that the alleged incidents that formed the basis of the District investigation did not occur as described and there was no discrimination. (N.T. 425-28, 989-1000, 1022-54; P-21; S-35; S-36; S-51.)

Late Fall 2025

67. The school principal contacted the Parents and also made a referral to a truancy coordinator before absence notes were provided but did not take it further. The Parents did provide a response that same day. (N.T. 849-50; P-35; S-17; S-18; S-19; S-20; S-30; S-31; S-68.)
68. The Parents notified the District of their withdrawal of Student from the District at the end of November 2025. (P-32.)
69. As of the time of the due process hearing, the Parents believed that Student was doing well and thriving at the private school. (N.T. 120-21.)
70. The parties engaged in ongoing communication beginning in July 2025 through late fall 2025. (P-32; P-37; P-39.)
71. The District agreed to an independent FBA. The independent behavior analyst conducted an interview of the Parents and obtained relevant records, but was not able to

engage in any direct observations of Student. After Student began attending Private School, the Parents declined to grant permission for her observations. The independent behavior analyst did make recommendations but suggested that they be interpreted with caution. (N.T. 1126-28, 1133-44, 1150-53, 1158-60; P-40; S-33.)

72. The District did not pursue truancy charges against the Parents. (N.T. 145-46.)

73. The District never restrained Student. (N.T. 139.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In any legal proceeding, the burden of proof is commonly described as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion in this type of administrative hearing 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). The burden of persuasion in this case thus must rest with the Parents who filed the Complaint leading to this administrative proceeding. 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, who assume the role of fact-finders, are responsible for making “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses,” particularly when discounting certain testimony. *Blount ex rel. Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 WL 22988892 *10, 2003 LEXIS 21639 *28 (E.D. Pa. 2003). See also, e.g., *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 WL 47340 *4, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts despite some gaps in recollection; she did not discern any intention to mislead. Contradictions among witness accounts may be attributed to lapses in memory or differences in perspective. The weight accorded the evidence, however, was not equally placed. The persuasive value of the testimony and documentary evidence must be assessed in light of the record as a whole. See *J.P.*, *supra*, 516 F.3d at 261; *T.E.*, *supra*. In other words, merely because all witnesses appeared to believe that to which they swore under oath does not make all of the testimony reliable or convincing with respect to the issues presented. The documentary evidence, by contrast, was considered to be extremely reliable.

The testimony of the Parents in particular was understandably emotional and provided from a loving parent’s

view; their concerns with the District's programming were obviously firmly held. Their view on the incidents at school at the start of the 2025-26 school year were based solely on uncorroborated hearsay that cannot form the basis of a factual finding,⁹ and certainly lacks the persuasive value necessary to meet their burden. Portions of their testimony were also clearly influenced by their conviction that LEAs are required to provide ideal special education programming, which as discussed *infra* is not the applicable standard. Taken together, these factors diminished the probative value of their testimony to a large degree. In addition, the Parent expert did not observe Student or speak with anyone at the District, and had limited access to records; as such, her opinion was not accorded probative value. Student's teachers and providers generally provided very credible and convincing testimony based on their first-hand experience with Student at school (see, e.g., N.T. 669-72).

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. Nonetheless, 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.

⁹ Although rules of evidence and the Administrative Procedure Code are not strictly applicable this forum, there is no reason to depart from this precept.

General IDEA Principles: Substantive FAPE

The IDEA broadly mandates that each of the states provide a “free appropriate public education” (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. Special education is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. More than two decades ago, 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 the procedural obligations in the Act.

Through LEAs, states meet the obligation of providing FAPE to an eligible student 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). As the U.S. Supreme Court has confirmed, “an educational program must be appropriately ambitious in light of [the child’s] circumstances... [and] every child should have the chance to meet challenging objectives.” *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 402 (2017). This standard is “markedly different” than *de minimis* growth. *Id.* However, not

every child should be aiming for grade-level achievement if that is not a reasonable expectation for him or her. *Id.* Rather, an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Id.*

An LEA is not obligated, however, 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); *see also El Paso Independent School District v. Robert W.*, 898 F. Supp. 442, 449 (W.D. Tex. 1995) (quoting *Rowley, supra*, 458 U.S. at 186) (holding that an LEA “is not required to maximize a handicapped child's potential ‘commensurate with the opportunity provided to other children.’”). Additionally, 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); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). “The IEP *must aim* to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

Evaluation Requirements

Substantively, the IDEA sets forth two purposes of a special education 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 IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.8(a).

Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately 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 involve a review of existing data including that provided by the parents in addition to available 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).

Substantively, the IDEA describes the primary purposes of a special education evaluation as twofold: 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 IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); *see also* 34 C.F.R. § 300.8(a).

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) (emphasis added).

General IDEA Principles: Procedural FAPE

From an IDEA procedural standpoint, the child’s family including his or her parents must have “a significant role in the IEP process.” *Schaffer, supra*, 546 U.S. at 53. This fundamental

concept extends to placement decisions for the child. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). 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); *D.S. v. Bayonne, supra*, 602 F.3d at 565. The procedural requirements must, however, be viewed within the context of the above substantive standards.

General Section 504 Principles

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).

Section 504 requires “meaningful access” to federally funded programs such as schools through provision of reasonable accommodations. *Berardelli v. Allied Services Institute of Rehabilitation Medicine*, 900 F.3d 104, 110 (3d Cir. 2018) (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985)). Nonetheless, the obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). By contrast, intentional discrimination under Section 504

requires a showing of deliberate indifference, which may be met only 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). However, “deliberate choice, rather than negligence or bureaucratic inaction” is necessary to support such a claim. *Id.* at 263.

The two statutes do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions Section 504 claims. *Le Pape, supra*, 103 F.4th at 979. “The statute’s administrative exhaustion requirement applies *only* to suits that ‘see[k] relief ... also available under’ IDEA.” *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 147, 143 S. Ct. 859, 864, 215 L. Ed. 2d 95 (2023).

Where a party raising claims under these statutes based on the same facts does not assert any legal distinction among them as applied to the case, the differences need not be separately addressed in all cases. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). However, as the Parents contend, and unlike FAPE under the IDEA, FAPE under Section 504 “is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met,

and focuses on the 'design' of a child's educational program."

Mark H. v. Lemahieu, 513 F.3d 922, 933 (9th Cir. 2008).

Additionally, 34 C.F.R. § 104.33 "requires a comparison between the treatment of disabled and nondisabled children, rather than simply requiring a certain set level of services for each disabled child. ... [S]chool districts need only design education programs for disabled persons that are intended to meet their educational needs to the *same degree* that the needs of nondisabled students are met, not more." *Id.* at 936–37 (emphasis added).

As the Fourth Circuit cogently summarized consistent with other circuit courts,

Congress intended the states to balance the competing interests of economic necessity, on the one hand, and the special needs of a handicapped child, on the other, when making education placement decisions. 20

U.S.C. § 1412(3); *Doe v. Anrig*, 692 F.2d 800, 806 (1st Cir.1982) (in determining appropriate placement of an individual handicapped child, the child's needs must be weighed against the realities of limited public monies); *Pinkerton v. Moye*, 509 F. Supp. at 112 ("competing interests must be balanced to reach a reasonable accommodation").

Barnett by Barnett v. Fairfax County School Board, 927 F.2d 146, 154 (4th Cir. 1991). Not insignificantly, the *Barnett* Court also rejected the argument made under Section 504. *Id.*

The Parents' Claims

Before turning to the legal issues presented, it is worthy of observation without criticism that this case was fraught with significant misunderstandings and distrust between the parties, particularly from the perspective of the Parents. It is also quite unusual to have such palpable doubts for a child so early in his or her educational career. It is fortunate that the Parents located a private school that they believe is appropriate for Student.

The first claim is whether the District's RR completed in the summer of 2025 complied with legal mandates. Review of the document reveals that the District utilized multiple assessment tools, strategies, and instruments, rather than any single measure, to gather information about Student. More specifically, the RR first summarized available information from the Parents, previous teachers, and outside providers; incorporated parental perspectives on Student's strengths and needs in both home and school environments; and reported on observations available at the time.

Next, the measures that formed the assessment portion of the RR were appropriate. Cognitive functioning, academic achievement, and social/emotional functioning were all evaluated including rating scales related to autism. Finally, the District school psychologist spoke with the Parents to answer their questions.

The Parents contend that the District should have but failed to conduct an FBA. However, the evidence was more than preponderant that Student did not exhibit significant behaviors of concern; at the time of the RR, Student did not have an individual behavior plan at the preschool. Moreover, the testimony of two District witnesses, the school psychologist and behavior analyst, was persuasive that an FBA for the school environment should not precede Student's entry. The same is true of a sensory profile based on the credible District occupational therapist's testimony regarding the reasons for waiting until Student was acclimated to its school environment; as well as the lack of verbal behavior assessment based on the persuasive and similar testimony of the special education teacher.

The Parents also challenge the absence of assistive technology assessment despite the reports that Student did not use a device; nevertheless, when the Parents asked for such evaluation, the District promptly made a referral to the local IU. In sum, the Parents' arguments about the District RR simply cannot be sustained because the evidence supports a conclusion that the RR was not flawed or incomplete.

In a related contention, the Parents argue that the District did not begin the process for Student's transition to school-age programming soon enough. However, unlike in *Brandywine Heights Area School District v. B.M. by & through B.M.*, 248 F. Supp. 3d 618, 626–27 (E.D. Pa. 2017), on which they rely, here

the District completed its evaluation of Student well in advance of the 2025-26 school year and developed an IEP before the first day of school. *Brandywine* is inapposite and there is no merit to this contention.

The District's initial IEP as proposed prior to the start of the school year is the second issue. In drafting this document, the District incorporated its RR and identified Student's various strengths and needs, developing goals supported by SDI to address Student's complex profile. This hearing officer concludes after careful consideration and review that the initial IEP together with the various revisions were reasonably calculated to provide meaningful educational progress in light of Student's unique circumstances based on what was known, as required by the IDEA and caselaw interpretations. Once again, the law does not require LEAs to ensure that a student is receiving an ideal education; indeed, not everything that parents may desire must necessarily be provided. One example from the Parents' expert testimony that led to discounting her opinion is that visual schedules, which had been successful in the past, were inappropriate for Student. That view, as noted *supra*, was simply not based on an adequate understanding of Student and programming that had been successful. In a related contention, they assert that the IEPs themselves lacked sufficient information throughout for them to understand the programming. However, this hearing officer has long held and understood that IEPs need

not spell out like a lesson plan might the minute by minute details that often cannot be determined in advance; moreover, that is a major purpose of IEP meetings: to invite questions by parents and answer them. For reasons already noted above, no behavior plan was indicated as necessary.

The Parents further had the opportunity to be full participants in the IEP process throughout. The evidence is clear and convincing that the District responded to the Parents' express concerns with maximum time in the general education setting; providing instruction in the areas of mathematics and writing in the special education environment; collaboration with the outside providers;¹⁰ and providing a balance throughout the day so that both academic and social-emotional weaknesses were targeted. Although the District did not immediately increase the frequency of occupational therapy in favor of maintaining the level in preschool, there is no reason to doubt that all related service providers and other staff would respond appropriately as they implemented Student's IEP and gauged its effectiveness. The credible testimony by District witnesses throughout the hearing is again more than preponderant that those working with Student would have done so as needed, and that all decisions were individualized for Student. A fair review of the record defeats that Parents' claim about the appropriateness of the IEPs.

¹⁰ This hearing officer shares the concerns of the District and Parents of the importance of avoiding too many adults working with Student at the same time.

It is, of course, quite unfortunate that Student attended less than two full days of school. The Parents' reliance on the uncorroborated hearsay of their private behavior analyst was the principal reason for Student's immediate absence and lack of any educational programming until late November 2025 when Student was withdrawn from the District. What cannot be overlooked is that the District remained Student's LEA, and its obligation to provide appropriate educational programming to Student did not end upon the Parents' refusal to send Student back to school. Granting a reasonable period of time for some other approach to Student's right to a free, appropriate public education, there must be a point that Student be compensated for the lost services which will be addressed *infra*. The related Section 504 claims, to the extent that they relate to FAPE, are subsumed within the above discussion.

The final issues are whether the District engaged in discrimination and/or retaliation against the Parents under Section 504 on the basis of their advocating for Student based on disability. This hearing officer cannot agree with them that the District's actions in this case were in any way violative of Section 504.

The first flaw in this claim is that it is foundationally based on their view on what occurred during the first two days of school that are not, and cannot be, the basis for factual findings. The District's investigation into the events on those two days is

thorough, and fully supports the conclusion that no such retaliation or discrimination has been established in this case. Furthermore, the District's denial of homebound instruction was not, as they contend, a Section 504 violation but, rather, was based on its administrators' conclusion that the basis for the recommendation did not satisfy the statutory requirements for homebound instruction. In any event, homebound instruction is a temporary, regular education service that would not by definition have been adequate to provide Student with the special education programming to which Student was entitled; this is true even if the District reached the wrong conclusion on whether the definition was met. These claims must accordingly be denied.

Remedy

The final issue is whether a remedy is due. Compensatory education may be an appropriate form of relief where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate educational services, while excluding the time reasonably required for an LEA to correct the deficiency. *Id.*

The recommendation of Student's pediatrician on September 8, 2025, was a critical reminder to the District that it was not meeting its IDEA and Section 504 FAPE obligations to Student. A reasonable rectification period of ten school days to recommend available alternatives such as a different school building or classroom (as the Parents suggest in their closing) with provision of special education services was necessary, but did not occur. Student shall be awarded compensatory education of 3 hours per day to equitably account for the missed special education programming for each day from that point to Student's formal withdrawal.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs in the areas of identified disability. The compensatory education may not be used for products or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress should Student return to its rolls. Compensatory services may occur after school hours,

on weekends, and/or during the summer months when convenient for Student and the Parent. The hours of compensatory education may be used at any time from the present until Student turns age twenty (20). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents; and the cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

CONCLUSIONS OF LAW

1. The District 2025 RR was appropriate for Student under the law.
2. The District's IEP of August 11, 2025, together with its various revisions, were appropriate for Student.
3. The District denied Student FAPE from the tenth school day after September 8, 2025 through the date of Student's withdrawal from the District.

4. Student is entitled to compensatory education
5. The District did not otherwise engage in discrimination or retaliation against Student or the Parents under Section 504.

ORDER

AND NOW, this 30th day of April, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's 2025 RR for Student met all requisite legal criteria.
2. The District's IEP as developed, implemented, and revised were appropriate for Student.
3. The District denied Student a free, appropriate public education from the tenth school day after September 8, 2025 through Student's official withdrawal.
4. Student is awarded three hours of compensatory education for each school day that the District was in session from the tenth school day after September 8, 2025 through Student's withdrawal on November 25, 2025. The terms and conditions in the attached decision apply as though set forth herein at length.

5. The District did not engage in any discrimination or retaliation against Student or the Parents under Section 504.
6. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 31771-25-26

Sent to counsel for both parties this date as required by 34 C.F.R.
§ 300.515
by electronic mail message as requested by counsel¹¹ consistent
with 22 Pa. Code § 14.162(n).

¹¹ N.T. 1203-04.