

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. 31092-24-25

Child's Name:

L.M.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Brian Jason Ford

Date of Decision:

11/28/2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The matter arises under Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* The Student's parents (the Parents) allege that the Student's public school district (the District) violated the Student's rights under the IDEA and Section 504 in several ways.

The Parents allege that the District violated the Student's Child Find rights under the IDEA during the 2022-23 school year. Discussed below, Child Find concerns the District's obligation to identify children with disabilities who need special education. The Parents seek compensatory education as a remedy for the alleged Child Find violation.

The District identified the Student as eligible for special education and offered an Individualized Education Program (IEP) in June 2023. The Parents allege that IEP was not reasonably calculated to provide the Student a free appropriate public education (FAPE) at the time it was offered and, therefore, was substantively inappropriate. The District educated the Student pursuant to the IEP from the start of the 2023-24 school year through mid-December 2023. The Parents allege that the Student was entitled to, but did not receive, a FAPE during this time. The Parents seek compensatory education for this alleged FAPE violation.

In early December 2023, the Parents withdrew the Student from the District and placed the Student in a specialized private school for children with learning disabilities (the Private School). The Student attended the Private School from December 2023 onward. The Parents demand tuition reimbursement for the portion of the 2023-24 school year that the Student attended the Private School, and for all of the 2024-25 school year.

The Parents also had the Student privately evaluated while attending the Private School. Discussed below, the explicit purpose of that evaluation was to generate evidence to support the Parent's claim for tuition reimbursement. The Parents demand reimbursement for that evaluation (a "Diagnostic Testing Report" and an "Updated Placement Assessment Report," P-8 and P-31 respectively) under the IDEA's provisions for Independent Educational Evaluations (IEEs) at public expense. Alternatively, the Parents claim that they are owed the same reimbursement under Section 504.

As set forth below, I find in part for the Parents and in part for the District.

Issues Presented

The parties parse and frame the issues somewhat differently, but there is no substantive dispute about what issues are presented for adjudication. Those issues are:

1. Did the District violate its Child Find obligation to the Student during the 2022-23 school year?
2. Did the District violate the Student's right to a FAPE between the issuance of the June 2023 IEP and the Student's enrollment in the Private School?
 - a. Was the June 2023 IEP appropriate at the time it was offered?
 - b. Did the Student receive a FAPE while attending the District from the start of the 2023-24 school year until the Student enrolled in the Private School?
3. Are the Parents entitled to tuition reimbursement?
4. Are the Parents entitled to reimbursement for the private evaluations they obtained while the Student attended the Private School?

Findings of Fact

The sprawling record of this case was not efficiently presented. One of many factors contributing to that problem was the Private School's noncompliance with targeted production orders. That noncompliance necessitated additional and broader mid-hearing production orders, resulting in a large volume of documents that should have been produced to, and parsed by, the parties in advance of the hearing.

While I reviewed the record in its entirety, I make findings of fact only as necessary to resolve the issues before me. I find as follows:

Background

1. The 2021-22 school year was the Student's [redacted] year. *Passim*.¹

¹ *Passim* is used liberally throughout this decision to indicate instances where the same facts, often completely undisputed, were repeated again and again, often by several witnesses, in scores of locations throughout the record. This speaks to inefficiency and the parties' failure to reach stipulations.

2. The Parents enrolled the Student in the District prior to the start of the 2021-22 school year to begin [redacted] at the start of the school year. *Passim*.
3. As part of the enrollment process, a [redacted] readiness interview triggered referral to a District-run skills reinforcement summer program. NT 30.
4. On July 9, 2021, the Parents sent an email to the summer program instructor, who was a District employee. The Parents said that they did not know if the Student was, "just a bit anxious around structured learning or if it is difficult for [Student]." P-30. The District did not respond to that email. P-32.
5. August 31, 2021, was the second day of the 2021-22 school year. After school on that day, the Student reported to the Parents that the Student was "bad" at school and cried under the desk because the Teacher asked the Student to count to 100. The Student reported that the Student would not come out from under the desk until either the Teacher threatened to call the Principal.² The Parents documented these behaviors in an email to the Teacher the same day. P-30.
6. In the same email, the Parents reported that the Student had a history of aggressive behaviors when confronted with structured academic tasks, particularly related to writing, and that the family had started a form of family therapy concerning similar behavioral issues. P-30.
7. In the same email, the Parents restated the same question they presented to the summer program teacher. They were unsure if the Student's behaviors were related to academic concerns or anxiety. P-30.
8. The District did not respond to the Parents' email of August 31, 2021. P-30.
9. On September 8, 2021, the Parents sent an email to the Principal to express concerns about the Teacher and the Student. Regarding the Teacher, the Parents asked that the Student be moved to a more experienced teacher. Regarding the Student, the Parents reiterated the

² There is no preponderant evidence in the record that the Student's report of what happened on the first day of school is accurate. The email of August 31, 2021, conflicts with an email of September 8, 2021, regarding the Principal's involvement on August 31, 2021. C/f P-3 at 2, 3. However, there is preponderant evidence that the Student reported these events to the Parents, and the Parents reported these events to the District. P-3.

concerns that they expressed in the prior two emails. The Parents also wrote (P-30 at 18):

[Student's] preschool director recommended we get [a Montgomery County Intermediate Unit early intervention] evaluation which was done in July. The evaluation was within normal limits with [Student's] cognition, emotional, motor skills and psychological testing. This was great news but it didn't help shed light on [Student's] struggles with pre-writing or [Student's] failure to thrive in a structured learning environment.

10. The Principal observed the Student in class after receiving the September 8, 2021, email. There is no dispute that, following the observation, the District transferred the Student to a different classroom and District personnel referred the Student to the District's Child Study Team (CST). The Parents were CST members and met with the CST several times during the 2021-22 school year. There is no dispute that the CST discussed the Student's behavioral response to academic tasks.³
11. At some point during the 2021-22 school year, the CST process ended for the Student. *Passim*; see e.g. P-30 at 8.
12. On March 30, 2022, the Parents sent an email to the Student's teacher. The Parents had questions about summer programs that were available to the Student and private summer tutoring (the Parents were interested in hiring the teacher as a summer tutor). The Parents also asked if it was possible to restart the CST process at the start of the 2022-23 school year if necessary. P-30 at 8.
13. In the March 30, 2022, email, the Parents wrote about the same concern they had since the summer of 2021 and asked about testing. They wrote (P-30 at 8):

Also is there any sort of testing that can be done at this point to determine if [Student's] academic delays are due to an underlying learning issue or are

³ CST documentation exists, was marked as evidence, and is referenced by the parties in their closing briefs. That document, S-3, was never made part of the record of this case. There is a reference in the transcript to S-3 at NT 137, but that reference is in error. A different document was moved into evidence at that time.

more emotional or developmental? If yes, who should I reach out to?

14. In response to the Parents' March 30, 2022, email, the Teacher wrote that CST was typically initiated for children with academic, social, or behavioral needs but, at that point, the Student was academically successful (scoring 90% to 100% on independent academic tasks). The Teacher did not comment about the Student's emotional or developmental needs. The Teacher said that she would refer the Parents' questions about testing to the District's reading support teacher and the District's school psychologist. P-30 at 6-7.
15. There is no preponderance of evidence establishing or refuting the Teacher's referral of the Parents' questions about testing to other District personnel. Regardless, in the absence of evidence to the contrary, I find that the District offered no further response to the Parents' questions about testing at that time. *Passim*.
16. The Parents hired a District teacher to tutor the Student in the summer of 2022. During that time, the Student exhibited work/school avoidant behaviors, refused to start or complete academic tasks, and displayed symptoms of anxiety. *See, e.g.* NT 46.
17. The Teacher was not working with the Student in her capacity as a District employee in the summer of 2022. *Passim*.

The 2022-23 School Year

18. On September 11, 2022, the Parents sent a written request for a special education evaluation to the District. The Parents used a widely-available, standardized, Pennsylvania form called a "Permission to Evaluate (PTE) – Evaluation Request Form" (Request Form) P-34.
19. On the Request Form, the Parents wrote that they were concerned about a "large discrepancy between [Student's] strong vocabulary, auditory learning, math and science proclivity and [Student's] difficulty with/resistance to reading and writing." P-34.
20. In response to the Request form, the District neither issued a form seeking the Parents' consent to initiate the evaluation process⁴ nor issued documents denying the request. *Passim*.

⁴ An addition consent form is needed despite the Request Form so that the Parents can approve particular evaluations or categories of evaluations prior to testing.

21. Instead of seeking consent to evaluate or rejecting the Parents' request for an evaluation, the District reinstated the CST process for the Student. S-7.
22. The CST process restarted on October 4, 2022. During this time, the District developed reading goals for the Student to be addressed through the District's regular education Response to Intervention (RTI) program. The Student started at Tier 2 of the RTI program. The District measured the Student's progress in the RTI program using reading probes in a program called DIBBLES. The Student's progress on those reading probes varied from the Student's progress as measured by District-wide DIBBLES benchmark testing. *See, e.g. S-7, S-40.*
23. On November 7, 2022, the District's Certified School Psychologist (CSP) observed the Student in class and found the Student to be withdrawn and not engaged in the instruction. This was consistent with the Parents' observations of the Student in school at times that the Parents volunteered in the Student's classroom. *See, e.g. S-7.*
24. The Student started receiving homework during the 2022-23 school year, resulting in behavioral difficulties at home. In response, the Parents sought therapy again for the student, resulting in a diagnosis of Generalized Anxiety Disorder. *See, e.g. P-33.*⁵
25. By January 2023, the Student had not achieved the CST goals and moved into Tier 3 of the District's RTI program. At the same time, through the CST process, the Student's teacher reported that the Student's behaviors had improved. The Student was showing a positive attitude, reduced frustration, and no incidents of hiding under the desk or other outbursts. The Teacher described this behavioral change as a recent development. *Passim; see, e.g. S-7.*
26. The District contracts with a third-party provider for in-school counseling services. The District sought the Parents' consent for the Student to receive services from that provider. The Parents provided consent on March 15, 2023. S-10.

⁵ Some testimony indicates that the Student received an Anxiety diagnosis well before this point in time, but this is the first indication of the diagnosis in the record of this case. *See, e.g. NT 60-62.*

27. On March 15, 2023, the District sought the Parents' consent to evaluate the Student for special education eligibility by issuing a document titled "Prior Written Notice for Initial Evaluation and Request for Consent Form." Colloquially, this is called a Permission to Evaluate form or PTE. The District did not issue the March 2023 PTE in response to the Parents' September 2022 Request form. Rather, the District wrote on the PTE that the referral for an evaluation came from the CST team and the Parents. The District also wrote that the referral was due to "overall academic concerns" and that the Parents were concerned about the Student's reading progress. S-11.
28. On March 19, 2023, the Parents approved the PTE. S-11.
29. On March 29, 2023, the District offered a Section 504 Service Agreement (the 504 Plan). Documentation accompanying the 504 Plan indicates that the 504 Plan was derived as the result of an evaluation team meeting. P-33. There is no evidence that any such meeting occurred or that the District conducted any sort of evaluation prior to offering the 504 Plan. I find that no such meetings occurred.
30. The District determined that the Student qualified for a 504 Plan because the Student had a disability (perhaps Generalized Anxiety Disorder – the documentation is not clear about that) and required accommodations to fully access school activities. P-33.
31. Under the 504 Plan, the Student would receive extra time to complete assignments, check-ins with the Teacher when the Student appeared confused or frustrated, opportunities to take breaks, and warnings about schedule changes. P-33.
32. The accommodations provided in the 504 Plan were not different from informal accommodations in place for the Student before March 29, 2023. *Passim; e.g. c/f S-7, P-33.*
33. On April 16, 2023, the Parents approved the 504 Plan. P-33.
34. On May 20, 2023, the District completed its evaluation and issued an Evaluation Report (ER). S-16.
35. The ER included narrative, informal information from the Parents about the Student's functioning at home. S-16.
36. The ER included observations by the CSP. The CSP observed the Student in class and during testing. During the observation, the

Student spent 14 minutes in the bathroom, which is consistent with the Parents' concerns about the Student using the bathroom to avoid instruction. The Student also (successfully) tried to incorporate humor into class participation when called on by the Teacher. The Student required the Teacher's help for a reading assignment but was responsive to that help. The CSP observed appropriate behaviors during testing. S-16.

37. The ER included recommendations by teachers. Regarding academics, the Student's teacher stated that the Student was not meeting grade-level standards for basic reading skills, reading fluency skills, reading comprehension skills, written expression skills, and math problem solving. S-16.
38. Regarding attention and focus, the Teacher stated that the Student pays little attention to detail, has a short attention span, has difficulty organizing tasks, loses things, fidgets and squirms, and has difficulty waiting for the Student's turn. S-16.
39. Regarding social skills, the Teacher stated that the Student has difficulty interpreting social cues, is easily frustrated, has sudden changes in mood, and is inconsistent in performance. The Teacher also stated that the Student has good, sustained relationships with peers and teachers, and is generally happy, upbeat, and positive. S-16.
40. In a narrative, the Teacher wrote: "In the classroom, when [Student] is feeling overwhelmed or frustrated with a task, [Student's] frustration leads to a break down with behaviors such as crying and putting [Student's] head down. Strategies Implemented: using restorative practices to talk through the situation and taking a short break when needed." S-16 at 4.
41. The Teacher also listed strategies that were already in place at the time of the evaluation (the original is a bulleted list): "Strategies that have been utilized and implemented in the classroom: Talked to parents and student; Talked to guidance counselor; Used strategies from CST; Made change in seating and group; 1:1 help was provided; 1:1 directions provided; Oral vs. written tests [indicating that tests were read to the Student]; Tier 3 Reading Support; Small group instruction; Foundations [a phonics program]" S-16 at 4.
42. The ER included a review of the Student's CST history, DIBBLES work, performance in District-wide benchmarks and assessments, and the

performance on standardized classroom assessments. Data across different reading assessments was highly variable. S-16.

43. The ER included an administration of the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V). The WISC-V is a standardized, normative test of cognitive functioning. According to the WISC-V, the Student's Full Scale IQ was found to be in the High Average range. Composite scores contributing to the FSIQ score ranged from the Extremely High range (Verbal Comprehension) to the Low Average range (Fluid Reasoning). Fluid Reasoning and Processing Speed were significantly lower than other scores while Verbal Comprehension was significantly higher. S-16.
44. The ER included an administration of portions of the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4). The WIAT-4 is a standardized, normative test of academic achievement. The WIAT-4 can be compared to the WISC-V to determine if a child's academic achievement is commensurate with expectations based on IQ. S-16.
45. Regarding reading, according to the WAIT-4, the Student's Listening Comprehension skills were found to be in the Very High range while the Student's Reading Comprehension skills were found to be in the Extremely Low range. Except for Phonemic Proficiency (the Student's ability to manipulate sounds within words) which was in the Average range, all other reading sub-tests were in the Low Average to Very Low range. S-16.
46. Regarding writing, according to the WIAT-4, all the Student's skills were found to be in the Low Average range except for Spelling, which was found to be in the Very Low range. S-16.
47. Regarding math, according to the WIAT-4, the Student's skills all fell into the Average or Low Average ranges. S-16.
48. The ER included an administration of the Behavior Assessment System for Children, Third Edition (BASC-3). The BASC-3 is a standardized, normative rating system in which raters are asked to assess a broad range of behaviors using a Likert scale. In this case, the BASC-3 was completed by the Teacher and the Student's mother. There was some variation between the Teacher's ratings and the Mother's ratings, but the ratings were more similar than different. Both ratings resulted in the same range for Externalizing Problems (Average), Internalizing Problems (Clinically Significant), and the Behavior Symptoms Index (At-Risk). Both placed the Student's Adaptive Skills in the At-Risk

range. The Teacher's rating for School Problems (a domain not assessed in the parent rating scale) placed the Student in the At-Risk range. S-16.

49. The ER included an administration of the Brown Executive Functioning/Attention Scale. As with the BASC-3, this was a rating scale completed by the Teacher and the Mother, but unlike the BASC-3, this rating focuses on attention and executive functioning. Again, the Teacher's ratings and the Mother's ratings were more alike than different, although the Teacher's ratings indicated a higher level of need than the Mother's ratings. The Mother's ratings on sub-tests ranged from Typical to Somewhat Atypical resulting in a Total Composite in the Typical range. The Teacher's ratings were mostly in the Moderately Atypical range resulting in a Total Composite in the Moderately Atypical range. However, the Teacher's ratings related to the Student's ability to manage frustration were found to be in the Markedly Atypical range while the Mother rated the Student as Somewhat Atypical in the same domain. S-16.
50. The ER included an analysis of all the input and evaluative data. Based on that analysis, through the ER, the District concluded that the Student was a child with a disability in need of special education. The Student's primary disability was listed as Specific Learning Disability (SLD), resulting from the significant discrepancy between the Student's cognitive profile and reading skills. The Student's secondary disability was listed as Other Health Impairment (OHI) resulting from the Student's anxiety and the results of the behavioral and executive functioning assessments. S-16.
51. The ER included several recommendations for the IEP team to consider. Those recommendations encouraged work to build on the Student's verbal skills (a considerable strength), remediate the Student's academic skills (particularly reading and writing), and address the Student's social and emotional needs. S-16.
52. On June 2, 2023, the District convened the Student's IEP team and proposed an IEP. The IEP was not intended to start immediately, but rather at the start of the 2023-24 school year on August 28, 2023. The IEP was intended to run through May 31, 2024. S-17.
53. The IEP used much of the ER to establish the Student's present education levels. S-17.
54. The IEP included four goals; all were academic in nature. S-17.

55. The first goal called for the Student to increase nonsense word fluency. Nonsense word fluency is a measure of the Student's ability to sound out made-up words and letter sounds within a fixed period to measure the Student's phonics abilities as distinct from the Student's sight word reading abilities. The District reported the Student's scores on three prior probes. On those probes "cls" was Correct Letter Sounds and "ww" was Whole [Nonsense] Words. The Student's baseline scores were 39 cls/9 ww, 39 cls/11 ww, and 46 cls/14 ww. The goal called for the Student to achieve 55 cls / 15 ww in one minute on "2/3 probes." S-17 at 19.
56. The second goal called for the student to increase word reading. This was a measure of the Student's ability to read words correctly, in isolation, through any means, within a fixed period. The goal called for the Student to read 25 words in one minute on "2/3 probes." The baseline established that the Student could read 15 words per minute. It is reasonably inferred that the goal would only count words read correctly. It is also reasonably inferred that the baseline of 15 words per minute was at the first-grade level. The goal as written says neither of those things. S-17 at 20.
57. The third goal called for the Student to score a 6 on the District's writing curriculum checklist. The checklist concerned writing conventions, focus, organization, and style. The Student's baseline was a 4. The goal as written did not require the Student to consistently maintain that score and was not linked to any grade level writing expectations. S-17 at 21.
58. The fourth goal was a math goal, calling for the Student to get "17 digits correct in two minutes in 2/3 probes" when presented with a "mixed addition and subtraction math computation probe." The Student's baseline was reported as 8 digits correct.
59. The IEP listed a very large number of program modifications and specially designed instruction (SDI) that the District would provide to enable the Student to achieve the IEP's goals. I find, however, that many of the modifications and SDI amount to a description of the program that the Student was to receive in the District's Learning Support program. Others, while laudable, are either vague or not different from what was already in place (e.g. "keep expectations high" and "leadership opportunities"). A few represented student-specific changes (e.g. 26 sessions per year of social skills instruction, which is roughly weekly). S-17 at 23-25.

60. The IEP called for 45 minutes of “pull-out” ELA (English and Language Arts) instruction per day. Pull-out indicates that the instruction would happen outside of the general education classroom. The Student was also to receive 30 minutes of “push in” mat support per day. Push in indicates that the instruction would happen in the general education classroom. This was in addition to the roughly weekly social skills sessions. All of this amounted to an itinerant Learning Support placement in which the Student would be educated in the general education classroom for 85% of the school day. S-17 at 28-29.
61. There is no dispute that the Parents approved the IEP before the start of the 2023-24 school year. The exact date on which the Parents approved the IEP is not in the record.
62. In the summer of 2024, the Parents obtained a private Neuropsychological Evaluation for the Student. That evaluation included testing similar to the District’s own testing but using different tests from different publishers. This avoided practice effects and maintained fidelity with the test publishers’ testing interval requirements. See P-5.
63. The private Neuropsychological Evaluation overwhelmingly confirmed the District’s own ER. The Private Evaluator found Specific Learning Disorders in reading, written expression, and mathematics, mirroring the District’s own testing. The Private Evaluator also confirmed the prior Generalized Anxiety Disorder diagnosis. The Private Evaluator also added two new diagnoses: Nonverbal Learning Disorder and Attention Deficit Hyperactivity Disorder (ADHD) – combined type. The Private Evaluator used medical, not educational criteria when diagnosing the Student, resulting in some differences in terminology.⁶ P-5.
64. The private Neuropsychological Evaluation included several recommendations. Many of those were therapeutic or medical in nature, but some of which had educational implications. The educational recommendations were similar to the recommendations in the District’s ER, and services in place through the District’s IEP. Examples include social skills instruction; structured reading, writing

⁶ The most striking of those differences is the Private Evaluator’s use of the term Dyslexia instead of Specific Learning Disability. See P-5 at 14.

and math programs; research-based literacy intervention provided by a reading specialist; and extended time on tests. P-5 at 16-17.⁷

65. The private Neuropsychological Evaluation is not dated, but says that testing occurred on July 20, 27, and August 9, 2023. P-5.

The Start of the 2023-24 School Year through December 2023

66. The Student started the 2023-24 school year with the IEP in place. *Passim*.
67. Early in the 2023-24 school year there were some incidents of the Student becoming upset in school and one incident where the Student was reluctant to enter school. These incidents, as observed by District personnel, were often less intense than what the Student would describe to the Parents at home. The Parents acknowledged that the Student tended to “catastrophize events” just as the District acknowledge that the incidents were legitimate. S-47 at 65, see S-47, *generally*.⁸
68. The Parents gave a copy of the private Neuropsychological Evaluation to the District on September 13, 2023. S-17 at 31.
69. On October 25, 2023, the District reconvened the Student’s IEP team to consider the private Neuropsychological Evaluation. At the meeting, the team also updated the Student’s present education levels, goals, modifications and SDI, and supports for school personnel. See S-17 at 31.
70. The present education levels were updated to include graphs of the Student’s progress towards IEP goals. For the writing goal, the update also included more information about the District’s writing checklist. In the 8 weeks that the IEP had been in place, the Student made progress towards all goals and mastered one of them. S-17 at 36-39. See *also* S-17 at 53-56.

⁷ The private Neuropsychological Evaluation also included a recommendation that a particular private school for children with learning disabilities “is an excellent resource for children with learning disabilities.” This is not the Private School in question in this case and, unlike other recommendations in the private Neuropsychological Evaluation, comes out of context with no connection to the Student’s needs as evaluated by the Private Evaluator. See P-5 at 16.

⁸ S-47 is 142 pages of emails between the parties. This is indicative of the frequency of communication between the parties. Those emails were, for the most part, professional and courteous.

71. The present education levels were also updated to provide additional information about the social skills and academic curricula that were in place under the IEP. S-17 at 40.
72. During the IEP team meeting, the Parents shared concerns with the District, and the District documented those concerns in the present education levels section of the IEP. Broadly, the Parents shared their impression that it is "hard to mainstream" a child with the Student's cognitive profile and asked for a four to one student teacher ratio for special education reading classes. The Parents also requested more detailed information about the District's special education programs and the individual teachers. The Parents also shared that the Student received Orton-Gillingham based reading instruction in the summer of 2023. S-17 at 40.⁹
73. By the October 2023 IEP team meeting, the Student mastered the 1st grade nonsense word fluency goal, scoring over mastery criteria in three consecutive probes. It is not clear if that goal was discontinued. S-17 at 53.
74. The progress report for the writing checklist goal is confusing because the reported progress does not square with the goal itself. The goal calls for the Student to "score a 6 on the district writing continuum checklist" starting from a baseline of 4. The progress report lists the Student's scores on a "K-1 Writing Continuum Checklist" listing separate scores in five domains, as opposed to one score on the checklist itself as indicated by the goal as written. In each domain, the Student was scoring between a 5 and a 7. S-17 at 55.
75. In the math goal, the Student fell from a baseline of 8 to a 6 on the first two probes then jumped to a 21 on the third probe, exceeding the mastery criteria of 17 for the first time (the Student would have to score above 17 consistently to master the goal). S-17 at 56.
76. During the IEP team meeting, a new social skills goal was added to the IEP. The goal called for the Student to demonstrate mastery of instructed social skills through a combination of verbalization and role

⁹ The District points to the Parents' actions and comments at this meeting to argue that the Parents had already decided to place the Student in the Private School by this time. On the whole, I agree. However, as discussed below, under the tuition reimbursement analysis that I must apply, the Parents' predetermination is a factor only if the Parents took action to thwart the District's efforts to offer and provide a FAPE to the Student. Since I make no such finding in this case, I find no facts concerning parental predetermination.

play, measured on a rubric aligned with the social skills curriculum. This goal did not include a baseline, but called for 100% mastery as measured by the rubric. S-17 at 58.

77. SDI and modifications related to reading were revised during the IEP team meeting. The SDI now specified that the Student would receive Orton-Gillingham based instruction ("provision of direct, explicit, systematic instruction [in reading] using a multi-sensory approach to teach phonological awareness, phonics, decoding, encoding, and written expression."). S-17 at 58.
78. New SDI and modifications were added during the IEP team meeting. These included flexible seating options, chunking of directions, paring written instructions with oral instructions when testing reading comprehension, and staff encouragement for the Student to access the school counselor. S-17 at 32.¹⁰
79. Sometime before November 21, 2023, the Parents decided to place the Student in a specialized private school with the intention to seek tuition reimbursement or some other support for the placement from the District. The Parents retained legal counsel.
80. On November 21, 2023, the Parents' attorney wrote to the District's attorney to provide notice of the Parents' intent to place the Student at a specialized private school and seek reimbursement. The Parents did not name the Private School or any other school in their letter. P-29.
81. On December 18, 2023, the Parents placed the Student at the Private School. The District did not reconvene the Student's IEP team or revise the Student's IEP between November 21 and December 18, 2023. See, e.g. NT 82.

December 2023 Through the End of the 2023-24 School Year

82. From December 18, 2023, through the end of the 2023-24 school year, the Student remained at the Private School. *Passim*.

¹⁰ The District's phrasing of the SDI concerning access to the school counselor is noteworthy and laudable. All students in the District have access to the school counselor, but the District was in no way trying to inflate the Student's IEP by listing something that everyone gets. Instead, the SDI explicitly notes that all students have access to the school counselor and clarifies that the purpose of the SDI was to encourage school personnel to highlight that access for the Student. S-17 at 61.

83. The Private School is a small, specialized private school that primarily serves children with Dyslexia. The Private School holds itself out as a placement specializing in serving children who, like the Student in this case, have above-average intellectual ability but struggle in school because of Dyslexia, ADHD, executive functioning disorders and other learning differences. The Private School's reading program is Orton-Gillingham based. *See generally* P-23.
84. In addition to academic supports, the Private School provides a very small (4:1) average student/teacher ratio and a supportive environment for children that places emphasis on emotional wellbeing and self-advocacy. While educators at the Private school are cognizant of social skills and executive functioning programs and methodologies, the Student did not receive formal, explicit social skills or executive functioning instruction at the Private School. *See generally* P-23, NT *passim*.
85. Upon entering the Private School, the Student took a test to determine the Student's level within the reading program used by the Private School.¹¹ Although the Private School used that assessment and informal observations of the Student in its program to develop a program for the Student, there was no written education plan for the Student at the Private School like an IEP.
86. During the 2023-24 school year, the Private School issued quarterly report cards for the Student. Although lengthy, these report cards are fundamentally subjective in nature. *See* P-21.
87. While the Student attended the Private School, the District sought the Parents' consent to reevaluate the Student. The Parents provided consent and testing took place in July 2024. When the evaluation was complete, the District issued a Reevaluation Report on August 6, 2024 (the RR). S-27.
88. The RR includes a detailed summary of all prior evaluations, the Student's work and progress in the District during the 2023-24 school year prior to entering the Private School, extensive (but mostly subjective) information from the Private School's report cards,

¹¹ The record of this case concerns a very large amount of information about the Private School's reading program and the Student's progress within that program. Some of that evidence was presented by the parties. Some of that evidence was entered by me after the Private School was twice ordered to produce the Student's records. I carefully reviewed all that evidence. There is scant discussion of that evidence in this decision and order because, as discussed below, it is not outcome determinative.

narrative input from the Student's teachers at the Private School, and new administrations of the WIAT-4 and BASC-3. S-27.

89. Comparing WAIT-4 scores from the ER and the RR show some statical differences in the Student's various reading abilities. In some domains, the Student's scores decreased between the ER and the RR. In Pseudoword Decoding, the Student's score fell from the Low Average range to the Very Low range. Other domains, like Oral Reading Fluency and Reading Comprehension improved. Both were in the Extremely Low range in the ER and improved to the Very Low and Low Average ranges, respectively. *C/f S-16 at 11-12, S-27 at 21.*
90. The Student's writing skills, as measured by the WIAT-4, improved between the ER and the RR. The Student's spelling remained in the Very Low range while all other writing domains improved from the Low Average to Average ranges. *C/f S-16 at 13, S-27 at 22.*
91. The Student's math skills, as measured by the WIAT-4, regressed between the ER and the RR. The Student's Math Problem Solving skills remained in the Average range. The Student's Numerical Operations skills fell from the Average to Low Average range. The Student's Math Fluency skills for both addition and subtraction both fell from the Low Average range to the Very Low range. *C/f S-16 at 13, S-27 at 23.*
92. I take judicial notice that on standardized, normative assessments like the WIAT-4, statistically identical scores over time indicate that a child has made as much progress as peers in the same period. As such, if a score indicates weakness or underperformance relative to IQ-based expectations, obtaining the same score at a later date tends to show that the child made progress, but not enough to close the gap.
93. Comparing the BASC-3 scores between the ER and RR shows remarkable improvement. Notably, the District's CSP calculated confidence intervals for both administrations, and those scores (upward of 90% in all domains) were nearly identical. Also, the BASC-3 includes an F score warning that is triggered if the rater may have exaggerated ratings in either direction. Neither the ER nor the RR indicate that F score warnings were triggered. That, in conjunction with the confidence interval, suggest that the administrations were both valid despite being quite different from each other. *C/f S-16 at 14-15, S-27 at 26-27.*
94. At the time of the ER, the Student's teacher at the District gave ratings resulting in an Average score for Externalizing problems. For the RR,

the Student's teacher at the Private School gave statistically identical ratings. Similarities end there. The teacher's ratings for the ER placed the Student in the Clinically Significant range for Internalizing Problems, the At-Risk range for the Behavior Symptom Index, and the At-Risk range for Adaptive Skills. The Private School Teacher's ratings for the RR placed the Student in the Average range across all domains. This represents a statistically valid and significant improvement in the Student's behaviors, emotional regulation, and adaptive skills as observed by teachers in school. C/f S-16 at 14-15, S-27 at 26-27.

95. Between the ER and RR, the Student's mother's ratings on the BASC-3 had also improved. While the Student's mother continued to rate the Student's behavioral symptoms as more significant than the Teacher's ratings would indicate, the Parents ratings reduced to the Average range across all composite scores and the Behavior Symptom Index. For the Mother's ratings, only Adaptive Skills remained in the At-Risk range. C/f S-16 at 14-15, S-27 at 26-27.
96. These improvements notwithstanding, the Student's time at the Private school was not devoid of stress or incident free. The Student continued to experience emotional incidents at the Private School similar in nature to those at the District. The Student continued to report those incidents to the Parents, sparking significant communication between the Parents and the Private School. Those communications, in turn, created some tension between the Parents and Private School personnel. These incidents continued throughout the 2023-24 school year and prompted the Parents to consider placement elsewhere. Ultimately, the Parents and the Private School agreed to some changes in the Student's program – all of which related to home-school communication – which were greatly beneficial to all involved. See S-49.
97. Through the RR, the District concluded that the Student continued to be a child with SLD and OHI in need of special education. The RR included an assessment of all data and recommendations to the IEP team. S-27.

The 2024-25 School Year

98. On September 6, 2024, the District reconvened the Student's IEP team for the purpose of drafting an IEP for the 2024-25 school year. S-28.
99. On September 19, 2024, the District proposed an IEP for the 2024-25 school year. S-29.

100. The record does not reveal exactly when the 2024-25 school year started in the District. I hold by necessity, however, that the 2024-25 school year started before September 19, 2024.
101. There is no dispute that the Parents continued to maintain the Student's placement at the Private School and continued to demand reimbursement for the 2024-25 school year.
102. The Parents engaged a second private evaluator (Private Evaluator 2) sometime prior to, or at the start of, the 2024-25 school year. The Parents retained Private Evaluator 2 for litigation purposes. In an email between the Parents and Private School personnel, the Parents wrote, "[Private Evaluator 2] is helping us with our case with our public school district requesting placement at the [Private School]." S-49 at 31.¹²
103. Private Evaluator 2 requested permission to observe the placement that the Student would have attended, had the Student returned to the District for the 2024-25 school year. The District denied the request. *Passim*.
104. On February 11, 2025, Private Evaluator 2 issued a Diagnostic Testing Report. That report recommended continued placement at the Private School. P-8.
105. On April 2, 2025, the Parents filed a due process complaint imitating these proceedings.¹³
106. Private Evaluator 2 issued an Updated Placement Assessment Report on June 17, 2025. Private Evaluator 2 continued to recommend placement at the Private School. P-31.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate*

¹² The Parents refusal to concede this point during their testimony somewhat diminished their credibility.

¹³ The events resulting in a 240-day duration between the due process complaint and this decision is painstakingly documented and fully compliant with applicable regulations. This duration is also a self-proving argument for stricter control by hearing officers and should inform practices moving forward.

Unit, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (“[Courts] must accept the state agency’s credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

Except as noted, I find no substantive problems with any witness’ credibility. All witnesses were telling the truth as they perceived it. To the extent that witnesses recalled events differently, those discrepancies are attributable to genuine differences in recollection. Except as noted, to the extent that witnesses reached different conclusions from the same facts, those differences reflect each witnesses’ candid assessments.

One witness, Private Evaluator 2, was particularly hostile and evasive during cross examination, leaving the impression that the witness was offended to be in a position in which his conclusions and opinions were challenged in any way. This witness’ demeanor and presentation, as observed by the Hearing Officer, signaled evasiveness and a lack of candor, but there is nothing in the record suggesting that he was lying under oath. To the extent that term “credibility” is synonymous with honesty, I find that the witness believed every word he said. The problem, however, is that the majority of this witness’ testimony, boiled down to its core logic, was *ipse dixit* – assertions without proof. This witness walked as close to the line of saying something akin to ‘this is true because I say so’ that I have ever encountered in a special education hearing. To the extent that the term “credibility” is synonymous with weight, probative value, and statements supported by evidence, I find the witness’ credibility to be *de minimis*.

This credibility determination merits a statement about how I did and did not use Private Evaluator 2’s reports (P-8 and P-31). I agree with the District that the reports are not a neutral analysis by an independent evaluator.¹⁴

¹⁴ One could argue that reports generated by school district are inherently not neutral either. In this case, there is no evidence of ulterior motives in any of the District’s reports. Also, the District did not hold out its reports as if they were generated by an impartial, neutral third party. The Parents did hold out Private Evaluator 2’s reports as impartial and neutral, and their active efforts to minimize contemporaneously drafted evidence to the contrary is not well-taken. The Parents’ credibility is diminished, but only in regard to this specific aspect of

Rather, the Parents retained Private Evaluator 2 for the purpose of creating evidence – documents and testimony – that supports their case. There is nothing in the record to suggest that the testing completed for the report is contrived or otherwise invalid. Separate from the results of tests, there is no reason to trust the analysis contained within the report when viewed in light of the circumstances of its creation and of the testimony. There are many reasons to not trust that analysis, and I give it no weight. This determination is reflected in the findings above.

Applicable Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, both parties seek relief. Parents must bear the burden of persuasion on all claims except for their demand for reimbursement for the private evaluations. The IDEA places the burden on the District to prove that the Parents are not entitled to an IEE at public expense.

Free Appropriate Public Education (FAPE)

The IDEA requires the states to provide a “free appropriate public education” to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be “‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s ‘intellectual potential.’” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child’s individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

the hearing. Much better to be open and honest about what a piece of evidence is and how it came into existence, even if that reality reduces the weight of that evidence.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew F.* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when "the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits." *Id.* at 3015. Third Circuit consistently interpreted *Rowley* to mean that the "benefits" to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child's potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir. 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003).

In substance, the *Endrew F.* decision is no different. A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. See *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than "trivial" or "de minimis" benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by 'loving parents.'" *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a "merely more than de minimis" standard, holding instead that the "IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000. In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

Child Find

The IDEA's Child Find provision requires states to ensure that "all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated." 20 U.S.C. 1412(a)(3). This provision places upon school districts the "continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability under the statutes." *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); see also 20 U.S.C. § 1412(a)(3).

The evaluation of children who are suspected to be learning disabled must take place within a reasonable period of time after the school is on notice of behavior that is likely to reflect a disability. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 250 (3d Cir. 1999). The failure of a school district to timely evaluate a child who it should reasonably suspect of having a learning disability constitutes a violation of the IDEA, and may give rise to a substantive denial of FAPE. 20 U.S.C. § 1400.

Evaluation Criteria

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 20 U.S.C. § 1414.

In substance, evaluations must "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" whether the child is a child with a disability and, if so, what must be provided through the child's IEP in order for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A).

Further, the evaluation must "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 must "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)(B)-(C).

In addition, the District is obligated to ensure that:

assessments and other evaluation materials... (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess "all areas of suspected disability". 20 U.S.C. § 1414(b)(3)(B).

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. § 300.502(b)(1). "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that it's evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

"If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation." 34 C.F.R. § 300.502(b)(4).

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the "hour-for-hour" method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

The hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. See *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). In *Reid*, the court conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. *Reid* is the leading case on this method of calculating compensatory education, and the method has become known as the *Reid* standard or *Reid* method.

The more nuanced *Reid* method was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid* and explaining that compensatory education "should aim to place disabled children in the same position that the child would have occupied but for the school district's violations of the IDEA.").

Despite the clearly growing preference for the *Reid* method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount or what type of compensatory education is needed to put the student back into that position. Even cases that express a strong preference for the "same position" method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

“... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district’s deficiencies.”

Jana K. v. Annville Cleona, 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student’s school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) are warranted. Such awards are fitting if the LEA’s “failure to provide specialized services permeated the student’s education and resulted in a progressive and widespread decline in [the Student’s] academic and emotional well-being.” *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39.¹⁵

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default. Full-day compensatory education can also be awarded if that standard is met. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to rectify the problem.

¹⁵ See also *Tyler W. ex rel. Daniel W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011AS, at 18-19 (Nov. 12, 2011).

Tuition Reimbursement

A three-part test is used to determine whether parents are entitled to reimbursement for special education services. The test flows from *Burlington School Committee v. Department of Education of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District v. Carter*, 510 U.S. 7 (1993). This is referred to as the "Burlington-Carter" test.

The first step is to determine whether the program and placement offered by the LEA is appropriate for the child. The second step is to determine whether the program obtained by the parents is appropriate for the child. The third step is to determine whether there are equitable considerations that merit a reduction or elimination of a reimbursement award. *Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007). The steps are taken in sequence, and the analysis ends if any step is not satisfied.

Section 504/Chapter 15 Standard

Some students who do not meet the IDEA's definition of a "child with a disability" are protected by Section 504. However, every student who meets the IDEA's definition of a "child with a disability" also protected by Section 504. The latter scenario applies in this case.

Section 504 protects "handicapped persons," a term that is defined at 34 CFR § 104.3(j)(1):

Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Pennsylvania regulations implementing Section 504 to protect children with disabilities in school are found at 22 Pa. Code § 15 (Chapter 15). Chapter 15 applies Section 504 in schools to prohibit disability-based discrimination against children who are "protected handicapped students." Chapter 15 defines a "protected handicapped student" as a student who:

1. Is of an age at which public education is offered in that school district; and
2. Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program; and

3. Is not IDEA eligible.

See 22 Pa. Code § 15.2 (bold added).

Section 504 and Chapter 15 prohibit schools from denying protected handicapped students' participation in, or the benefit of, the schools' educational programming. See 34 C.F.R. Part 104.4(a). Unlike the IDEA, which requires schools to provide special education to qualifying students with disabilities, Section 504 and Chapter 15 require schools to provide accommodations so that students with disabilities can access and benefit from "regular" or general education.

Chapter 15 details what schools must do to provide the accommodations that Section 504 requires. Under Chapter 15, "school district shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities." 22 Pa Code § 15.3.

Chapter 15 requires school to evaluate students to determine what related aids, services, or accommodations are needed. Chapter 15 includes procedural and substantive rules such evaluations. 22 Pa. Code §§ 15.5, 15.6.

The related aids, services or accommodations required by Chapter 15 are drafted into a service agreement. Chapter 15 defines a service agreement as a "written agreement executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student." 22 Pa. Code § 15.2. Service agreements become operative when parents and schools agree to the written document; oral agreements are prohibited. 22 Pa Code § 15.7(a).

For IDEA-eligible students, the substance of service agreements is incorporated into IEPs. Such students do not receive separate service agreements. See 22 Pa. Code § 15.2. In this way, Chapter 14 (regarding special education services) details what schools must do to satisfy their obligations under the IDEA and Section 504 when a child is protected by both. This is consistent with the applicability of Section 504 protections to every student who qualifies for special education under the IDEA and with Chapter 15's specific and explicit inapplicability to those children.

Discussion

Child Find Analysis

The District violated its Child Find obligation to the Student from the start of the 2022-23 school year until it identified the Student as a child with a disability in need of special education. That identification occurred with the issuance of the ER on May 20, 2023.

The District had no obligation to propose a special education evaluation at the first sign of trouble. In this case, however, the Student did not arrive at the schoolhouse gate as a stranger to the District at the start of the 2022-23 school year. The Student enrolled in the District for the 2021-22 school year. Upon enrollment, the District recommended a summer [redacted] readiness program. When the 2021-22 school year started, a combination of well-documented parental concerns and the Student's presentation in school as observed by District personnel resulted in the initiation of the CST process for the Student.

Throughout the 2021-22 school year, the Parents communicated their concerns about the Student's educational needs to the District. The record generally shows that the Student was academically successful during the 2021-22 school year, but the Parents' concerns and the Student's observed behaviors in school were not only academic. The Parents were equally worried about the Student's ability to control emotional and behavioral responses to academic demands. The Parents made those concerns known to the District in writing as early as July 9, 2021.

Documentation generated by the District validated the Parents' concerns. The District did not refute any of the Parents' contentions, observed behaviors consistent with the Parents' concerns, move the Student to a different classroom, and started the CST process. Beyond moving the Student to a more experienced teacher's classroom, there is no evidence that the District did anything beyond monitoring to address the Parents' concerns about the Student's social, emotional, and behavioral needs.

By the end of the 2021-22 school year, the Parents' concerns had not changed. In substance, the Parents email of March 30, 2022, was identical to their email of July 9, 2021. The Parents were consistent in their worry that the Student's emotional response to academic tasks was interfering with the Student's learning, or the Student had an underling learning disability, or both.

I make no determination as to whether the District should have proposed an evaluation during the 2021-22 school year. That issue is not before me. However, the events of the 2021-22 school year provide necessary background and context for the 2022-23 school year. During the 2021-22 school year, there is evidence that the Student was academically successful, There is also evidence that the Parents consistently shared their concerns about the Student's academic, social, emotional, and behavioral needs throughout the 2021-22 school year. The IDEA does not require parents to say "magic words" to initiate the evaluation process. The Child Find obligation itself illustrates that the District's obligations are based on the Student's needs and are not predicated on the Parents stumbling into some necessary legalistic incantation. In this context, it is impossible to view the Parents' email of March 30, 2022, (P-30 at 8) as anything other than a request to evaluate the Student. It does not matter if the District shared the Parents' concerns at that time. It does matter that the District took none of the actions that the IDEA requires upon receiving an evaluation request.

Upon receiving the Parents' written request to evaluate the Student in March 2022, the District was obligated to either initiate the evaluation process by seeking the Parents' consent to evaluate or tell the Parents that they were declining to evaluate. The District did neither. Instead, District personnel told the Parents that the Student no longer qualified for the CST process due to the Student's progress and took no other action.¹⁶

The Parents' concerns only increased during the summer of 2022 based on the Student's response to tutoring. I make no determination as to whether the District is charged with the knowledge of District personnel working with the Student in a personal capacity that summer. Such analysis is not necessary. By this point, the Parents had already requested an evaluation and explained (consistently and for an entire school year) why they thought an evaluation was necessary. The events of the summer of 2022 only heightened existing concerns.

At the start of the 2022-23 school year, those unchanging concerns prompted the District to restart the CST process. By September 11, 2022, the Parents requested an evaluation through the most formal, written mechanism available to families in Pennsylvania. While the formality and clarity of the request increased, the substance of the request was unchanged. The September 2022 Request Form was essentially a reiteration

¹⁶ The District's actions and inactions at this time could be construed as an affirmative refusal of the Parents' request to evaluate the Student. If so, that refusal failed to satisfy basic IDEA requirements. See *discussion, infra*; see also 34 C.F.R. § 300.503(a).

of the written request in March 2022. In response, the District continued to take none of the actions that the IDEA requires.

If the District agreed to evaluate, the District was obligated to seek the Parents' consent to evaluate. See 34 C.F.R. § 300.300. If the District refused to evaluate, the IDEA affirmatively required the District to provide written notice to the Parents upon declining their evaluation request. 34 C.F.R. § 300.503(a)(2). In Pennsylvania, such notice is effectuated through a Notice of Recommended Educational Placement (NOREP) that is consistent with requirements at 34 C.F.R. § 300.503(b). Instead of taking either of these actions, the District continued the CST and RTI processes. Both CST and RTI are regular education interventions, not special education. Moreover, the District cannot delay evaluations or otherwise escape its Child Find obligations while waiting for regular education interventions to play out. This is particularly well-established for children receiving RTI programs.¹⁷

Once the District had reason to know that a special education evaluation was needed, the District had a reasonable time to act on that knowledge. The District was also permitted to try regular education interventions, provided that those interventions were not used to delay a special education evaluation. See, e.g. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 252 (3d Cir. 2012). Applied in this case, the Student received structured regular education interventions for nearly the entirety of the 2021-22 school year though the CST process. That was repeated for the entirety of the 2022-23 school year, as the Student exhibited increasing needs as evidenced by the Tier 2 and then Tier 3 RTI reading interventions. Those interventions did not enable the Student to achieve modest CST goals. On top of that, the Parents requested a special education evaluation towards the end of the 2021-22 school year and again at the start of the 2022-23 school year. As applied in this case, I find that the District's use of the CST process and RTI reading interventions are not mitigating factors. Under any standard, two school years is too long to take no action in response to an evaluation request.

I find that the March 29, 2023, Section 504 Service Agreement is not relevant to the Child Find analysis. By definition, 504 Plans are provided to children who are not entitled to special education. Such children have disabilities and need accommodations, but do not require special education. See, e.g. 22 Pa. Code § 15.2.

¹⁷ See *OSEP Memorandum: A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)*, January 21, 2011.

I find that the District violated the Student's Child Find rights from the start of the 2022-23 school year through May 20, 2023. At that point, the District issued the ER and the Student was "identified," ending the Child Find violation.

The Child Find violation is a breach of the Student's procedural rights under the IDEA *per se*. See, e.g. *D.K., supra*. In this instance, I find that the Child Find violation also resulted in substantive educational harm to the Student. When the ER was completed (416 days after the Parents initial request), the District found a very large discrepancy between the Student's intellectual abilities and academic achievement, particularly in reading but also in math. The District also found significant problems with the Student's emotional regulation that required intervention. These findings confirmed two academic years of the Parents' worries and the District's less-formal observations. At this point, a very bright child had fallen behind in multiple domains. Compensatory education is an appropriate remedy for this substantive educational harm.

Surprisingly, there is very little in the large record of this hearing to calculate a compensatory education award under either standard described above. There is no evidence in the record to enable a "make whole" compensatory education award. There is scant evidence to support how many hours of special education the Student should have received during the 2022-23 school year, had the Student been identified. I cannot make a number out of whole cloth. With no better evidence, I turn to the IEP. After the District identified the Student, it drafted an IEP and the Parents approved the IEP. Under that IEP, the Student would receive 45 minutes per day of special education ELA instruction, 30 minutes per day of special education math instruction, and roughly 30 minutes per week of social skills instruction. This comes to 405 minutes per week of special education, which is 81 minutes per day. With no better evidence in the record, I award the Student 81 minutes of compensatory education for each day that the District was in session from the start of the 2022-23 school year through May 30, 2023. Permissible uses of that compensatory education are discussed below.

FAPE Analysis

The IDEA requires that a child's IEP team meet within 30 days of an eligibility determination to draft an IEP. See 34 C.F.R. § 300.323(c)(1). From that point, "as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(1).

The District found that the Student was eligible on May 30, 2023. Three days later, the District convened the IEP team on June 2, 2023. At that meeting, or very soon thereafter, the District proposed an IEP that would not start until the 2023-24 school year. The record does not reveal how many school days there were in the District between June 2, 2023, and the last day of the 2022-23 school year, if any. Regardless, I find that it was appropriate for the District to propose an IEP that would not start until the 2023-24 school year under these circumstances. Significantly changing the Student's program for just a few days, if any, at the very end of the 2023-24 school year was very likely contraindicated, given the Student's emotionality and the totality of the circumstances. I find no FAPE violation from May 30, 2023, through the end of the 2023-24 school year.

For the period from the start of the 2023-24 school year through December 17, 2023, the Parents argue that the IEP was not reasonably calculated to provide a FAPE to the Student. I agree. In doing so, however, I reject a substantial portion of the Parents' argument. The bulk of the Parents argument, and the bulk of the testimony at the hearing, concerned the type and amount of special education that the District provided under the IEP. The Parents argue that the IEP did not provide the right kind of special education, or enough of it. I do not find preponderant evidence in the record to support those claims. Rather, the ER (which is not challenged) identified academic and emotional/behavioral needs and the IEP provided academic and emotional/behavioral interventions. The District's team of professionals is owed considerable deference regarding selection of methodologies.

I agree with the Parents that the IEP fell short of the *Endrew* standard by failing to provide appropriately ambitious goals relative to the Student's needs and abilities. The Student is intelligent, with a High Average FSIQ and Extremely High verbal comprehension abilities. One would expect the Student to soar academically, but the Student's ability to read was significantly impaired, and that impairment touches on academic domains beyond reading itself. It was imperative, therefore, that the District craft an IEP that aimed to close the gap between the Student's reading abilities and the reading abilities of same age peers.

This does not mean that the District was obligated to fully remediate the Student over the course of a single IEP. Discussed above, the District had no obligation to offer an optimal or "best" program. The District's obligation was to offer an appropriate program. To be appropriate, the IEP must "appropriately ambitious in light of [the child's] circumstances." *Endrew F.*, 137 S. Ct. 988, 1000 (2017). The Student has a cognitive profile suggesting that the Student is capable of significant learning. The goals in the IEP fell

short of that standard because they did not even require the Student to master first grade skills by the end of second grade.

All the academic skills targeted by the IEP's goals were set to a first-grade level. The expectation set by the District through the IEP was that the Student would reach something just over 60% of end-of-first-grade academic expectations by the end of the IEP term. Even ignoring the vagueness in some of the goals about how consistently the Student would have to demonstrate mastery, the goals in the IEP would have done little more than maintain the gap between the Student and peers. For the Student in this case, setting a target for the Student to be as far behind peers at the end of the IEP term as where the Student started is not appropriately ambitious, and falls short of the *Andrew* standard for this reason.

The Student's actual progress under the IEP cannot be used to prove or disprove the IEP's appropriateness at the time it was offered. Such "Monday morning quarterbacking" is impermissible under the standard set forth above. While not used for the analysis above, I must note that the Student's commendable progress between the start of the 2023-24 school year and December 2023 also speaks to the low expectations embedded in the goals themselves.

The Student's actual progress became a factor starting on October 25, 2023, when the IEP team reconvened and revised the IEP. Programmatically, the revised IEP did more to spell out what services the Student would receive but, again, that is not the bases upon which I find that the IEP was inappropriate. Rather, at this point, the District had data establishing that one goal was mastered and that the Student would reach other goals. No adjustments were made and the same low expectations were continued.

In addition to academic concerns, the District's ER revealed considerable social, emotional, and behavioral needs. Beyond duration of social skills instruction, the initial IEP said nothing of substance about how the District planned to address those needs, and there was no goal in any of those domains. Even if the academic goals were appropriate, the IEP would not be reasonably calculated to provide a FAPE on this basis alone. The October 2023 revisions cured this with the addition of a social skills goal, but the overarching lack of ambition remained.

The District violated the Student's right to a FAPE both procedurally and substantively by failing to offer an IEP that was reasonably calculated to provide a meaningful educational benefit under the *Andrew* standard. Procedurally, the Student was entitled to but did not receive an appropriate IEP. Substantively, the absence of an appropriate IEP resulted in educational

harms for the Student. These harms, however, are even more difficult to quantify than the harms related to the Child Find violation. See *above*. There is nothing in the record for a “make whole” analysis. I find no preponderance of evidence that the literal amount of time that the Student received special education (regardless of the substance of the program) would be different with different goals. There is also evidence that the Student made actual progress towards goals, even if those goals were not ambitious.

At the same time, compensatory education is, fundamentally, an equitable remedy. Parsing the minute-by-minute minutia of a school day to calculate an exact amount of time that the Student received something less than a FAPE misses the forest for the trees. In this case, the District provided a sufficient type and quantity of special education for the Student to make progress towards inappropriately low goals. The Student derived some benefit from this instruction, but the District’s program lacked the ambition that the Student required. The Student was entitled to, but did not receive, a program designed to close the gap between the Student and peers. I find it equitable, therefore, to award one hour of compensatory education for each day that the District was in session from the start of the 2023-24 school year through December 17, 2023. Permissible uses of that compensatory education are discussed below.

Compensatory Education – Uses and Restrictions

The Parents may decide how the compensatory education is used. 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.

The compensatory education may not be used for services, 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.

Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents.

The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. The cost of providing the awarded hours of compensatory services

shall be limited to the average market rate for private providers of those services in the county where the District is located.

Tuition Reimbursement Analysis

The Parents are entitled to tuition reimbursement for the period from December 18, 2023, through the end of the 2023-24 school year if they prove all three prongs of the *Burlington-Carter* analysis described above.

The Parents have proven that the District did not offer an appropriate IEP prior to placing the Student in the private school. In the FAPE analysis above, I hold that the IEP (both as originally offered and as revised in October 2023) were inappropriate. The Parents have, therefore, satisfied the first prong of the *Burlington-Carter* test.

I find preponderant evidence that the Private School was appropriate at the time of the parental placement. To reach this conclusion, I review the record to determine what information about the private school was available at the time of the placement. As with the District's IEP, the Student's actual progress in the Private School is not a factor in the analysis.

At the time of the placement, all evidence is that the Private School specializes in educating children with the Student's cognitive profile and needs. The Private School held itself out as a specialized placement for intelligent children with learning differences like Dyslexia and ADHD. Despite the absence of a particular social skills program, the Private School also held itself out as an environment where social and emotional abilities are developed and fostered. In short, all information available at the time of the placement indicates that the Private School was nearly a one-to-one match for the Student's needs as identified by the District.

The District argues that the Private School does not satisfy the IDEA's mandate for placement in the least restrictive environment (LRE), that the Private School's teachers are less qualified than the District's teachers, that the total number of minutes of reading and writing instruction at the private school are less than what the District offered, and that the private school had no social skills curriculum. For the sake of argument, accepting all of that as true does not change the outcome. The Private School's "appropriateness" under the *Burlington-Carter* test does not have the same meaning as "appropriateness" for an IEP under the *Endrew* standard. LRE provides the clearest example. All private schools – and especially specialized private schools for children with learning disabilities – are less restrictive than public placement *per se*. Were that determinative, tuition reimbursement would not exist as a remedy in IDEA cases. The analysis is

not resolved by comparing the District's IEP to the Private School's program. The question at the second prong of the *Burlington-Carter* test is whether the Private School was reasonably calculated to provide the Student with educational benefit. *Carter, supra*. In December 2023, I find that it was.

The Parents satisfied the first two prongs of the *Burlington-Carter* test, and so we move on to examine equitable considerations. There is no preponderant evidence in the record to establish that the Parents did anything to thwart the District's efforts to offer a FAPE before placing the Student in the Private School. The Parents shared extensive information about the Student at every turn, provided private evaluations as they were completed, attended meetings, gave input, and completed evaluations whenever they were asked to do so. The Parents, via counsel, also gave the District requisite notice of their intent to place the Student and seek reimbursement. I find no action on the Parents part that results in an equitable reduction or elimination of a tuition reimbursement award.

The District points to the timing of the placement itself as a basis for equitable reduction or elimination of tuition reimbursement. The District's argument is best captured in the opening paragraph of its closing brief:

Three and a half months. That's how long Parents gave the [District] to implement Student's IEP before deciding, despite evidence of Student's progress on [] IEP goals, that the District was unable to meet Student's needs as a [redacted] grader and unilaterally enrolled him at the [Private School], a private school for students with learning differences.

I understand the District's perspective – it is not without merit. If time started at the beginning of the 2023-24 school year, the District's argument might be availing.¹⁸ I do not find that argument persuasive under the totality of circumstances in this case. The Parents alerted the District to the Student's needs upon enrollment, consistently communicated those needs at every turn, gave the District two full school years to try regular education interventions despite growing concerns, and sat on hold for over 400 calendar days with a written evaluation request pending. The Parents gave the District every opportunity to come to the table with a FAPE. When the District finally evaluated the Student, it found a highly intelligent child with significant needs. Then, the District offered a decidedly unambitious special education program that was not reasonably calculated to provide a FAPE. Noting in the IDEA requires the Student to spend time in an inappropriate

¹⁸ *But see Forest Grove School District v. T.A.*, 557 U.S. 230 (2000), referenced below.

program before the Parents can seek tuition reimbursement. See *Forest Grove School District v. T. A.*, 557 U.S. 230 (2009).

For all of the reasons stated above, the Parents are awarded tuition reimbursement for the Student's placement at the Private School from December 18, 2023, through the end of the 2023-24 school year.

A separate, but ultimately simpler analysis is required for the tuition reimbursement claim in the 2024-25 school year. The IDEA includes clear requirements as to when IEPs must be in place.

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

20 U.S.C. § 1414(d)(2)(A); see also 34 C.F.R. § 300.323(a).

The District offered an IEP for the 2024-25 school year after that school year was under way. By September 19, 2024, the Parents had already committed to the Private School for the 2024-25 school year with the intention of seeking tuition reimbursement. The District knew that. In fact, the District highlights the Parents efforts to generate evidence for their tuition reimbursement claim through Private Evaluator 2 (evidence that is, in the end, not part of my analysis). At the time that the Parents had to financially commit to the Private School, they were choosing between the Private School's program and the absence of an offer from the District. The District's IEP, as revised in October 2023, expired by its own terms on May 31, 2024.

The Parents have satisfied the first prong of the *Burlington-Carter* test for the 2024-25 school year because the District had identified the Student as needing special education but had not offered an IEP when the Parents chose to maintain the Student's placement at the private school.¹⁹

With the first prong of the *Burlington-Carter* test satisfied, I turn to the Private School's appropriateness. The District maintains all of the same arguments that it did for the initial placement, and my analysis of those

¹⁹ There is an argument that the revised IEP of October 2023 would have been implemented – despite its expiration date – between the start of the 2024-25 school year and September 19, 2024. Assuming that would have happened does not change the outcome. The October 2023 IEP was not appropriate for all the reasons stated above in the analysis concerning tuition reimbursement from December 2023 through the end of the 2023-24 school year.

arguments is the same. At this point, however, evidence of the Student's actual progress at the Private School can be a factor. The Parents knew how the Student was fairing at the private school when they decided to maintain that placement, and so that evidence can be considered.

Looking strictly at academic progress as measured by the District's standardized, normative assessments, the results are varied. In some reading domains, the Student's scores improved, indicating a closing gap between the Student and same age peers. This was particularly notable in Oral Reading Fluency and Reading Comprehension (two key metrics of a child's overall ability to derive meaning from text). Surprisingly, in domains that tend to be associated with Orton-Gillingham based programs, the Student's scores were lower. Pseudoword decoding is a good example. By most metrics, the Student's math skills regressed.

Under the *Burlington-Carter* standard, the Student's academic progress in the Private School does not yield a conclusion that the Private School was inappropriate. Linear growth across all academic skills is not the hallmark of appropriateness, and test scores that correlate with the Student's ability to derive meaning from text substantially improved. Further, the record does not establish that the Private School's academic programs are aligned to what the WAIT-4 examines. Of even greater importance, a myopic perseveration on discrete academic skills overlooks the Student's education as a whole. The IDEA requires consideration of the Student's education, not just the Student's academics. All evidence in the record supports a finding that placement at the Private School resulted in substantial improvements to the Student's emotional, social, and behavioral needs. The BASC-3 in the RR confirms this through statistically valid, norm-referenced testing. The way in which the Private School fostered the Student's growth and development in these domains, by itself, establishes the Private School's appropriateness at the second prong of the *Burlington-Carter* test.

The Parents took no action to hinder the District's ability to provide a FAPE before the start of the 2024-25 school year. I agree with the District that the Parents were set on maintaining the Student's placement and seeking reimbursement. I agree with the District that the Parents were actively developing evidence in support of that goal. The Parents mindset, however, is not a factor at any prong of the *Burlington-Carter* test. The question turns on whether the Parents gave the District adequate notice of their intent, and whether they thwarted the District's efforts to make a FAPE available to the Student. There is no preponderance of evidence to support a reduction or elimination of tuition reimbursement for the 2024-25 school year on equitable grounds.

For all of the reasons stated above, the Parents are awarded tuition reimbursement for the Student's placement at the Private School for the 2024-25 school year.

Evaluation Reimbursement Analysis

The Parents are not entitled to reimbursement for Private Evaluator 2's evaluations. The IDEA establishes clear rules for IEEs at public expense. Those rules include a critical threshold condition at 34 C.F.R. § 300.502(b)(1):

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

The District has established by preponderant evidence that this threshold condition is not met. The District's evaluation prior to Private Evaluator 2's evaluation is the RR. There is no preponderance of evidence in the record that the Parents disagreed with the RR at the time it was written or at any time since. In fact, the Parents rely on the accuracy of the RR to support their tuition reimbursement claim. With that condition unmet, the Parents cannot be entitled to an IEE at public expense and the analysis ends.

Careful parsing of the Parents' closing brief suggests that the Parents have abandoned this claim in favor of a reimbursement analysis under Section 504. The Parents do not present an IDEA argument for the evaluation reimbursement of their summation. Rather, they demand "Cost and fees engendered in pursuit of [Student's] disability rights under Section 504 of the Rehabilitation Act." I must reject this argument on jurisdictional grounds. If I assume that all costs associated with Private Evaluator 2 were incurred in connection with the Parent's pursuit of their Section 504 claims, and if I further assume that such costs are reimbursable under Section 504, I still must dismiss this demand. As a Pennsylvania Special Education Due Process Hearing Officer, I have no authority to award this type of relief.

Section 504 Analysis

The scope of my jurisdiction to hear claims arising under Section 504 is limited to claims that can be brought under Chapter 15. If a child has a disability but does not require special education, I may apply Chapter 15's framework to determine if a school violated that child's Section 504 right to a FAPE by failing to provide appropriate regular education accommodations.

However, if a child has a disability and requires special education – if a child is protected by the IDEA and Chapter 14 – then Chapter 15 is not applicable by its own terms and my authority to resolve a Section 504 dispute ends.

It is easy to find examples of hearing officers, including me, who have resolved Section 504 claims in IDEA cases by finding that the Section 504 claims are coextensive with the IDEA claims. If a school fails to provide necessary accommodations to a child who is protected by the IDEA, the school has violated the child’s IDEA rights even if the accommodations would also be available under Section 504. In such cases, resolution of the IDEA dispute also resolves the Section 504 dispute, and no separate Section 504 analysis is needed. There are, however, a few important caveats to this principle that must be discussed.

First, Section 504 applies to a broad array of cases and claims.²⁰ Of those, my jurisdiction represents a narrow sub-set, comprised of claims also arising under Chapter 15. It is entirely possible that the same actions and inactions that substantiate an IDEA violation also substantiate a Section 504 violation. If so, parents and children should have an opportunity to present Section 504 claims in a court of competent jurisdiction – and the IDEA explicitly addresses this possibility. See 20 U.S.C. § 1415(l). I hold only that my jurisdiction to hear Section 504 claims is limited to the sub-set of those claims that can be brought under Chapter 15, and that Chapter 15 is inapplicable by its own terms for IDEA-protected children. This is not intended to limit the Parents’ rights in other forums.

Second, Third Circuit case law holds that Section 504 grants different and more specific rights to children than the IDEA in certain situations. See *Le Pape v. Lower Merion Sch. Dist.*, 103 F.4th 966 (3d Cir. 2024); *B.S.M. v. Upper Darby Sch. Dist.*, 103 F.4th 956 (3d Cir. 2024). Those cases stand for the proposition that separate analysis is required for IDEA and Section 504 claims if a student’s rights under Section 504 are different from those under the IDEA.²¹ This suggests that there may be differences between a Chapter 14 FAPE analysis and a Chapter 15 FAPE analysis, depending on the facts and circumstances. That does not, however, expand my authority to hear Section 504 claims that fall outside the scope of Chapter 15.

²⁰ See, e.g. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) (illustrating many types of Section 504 claims while resolving the applicability of the IDEA’s administrative exhaustion requirement in Section 504 cases).

²¹ *La Pape*, *supra*, is an ADA case. Nothing should suggest that I have jurisdiction to hear ADA claims. Rather, *La Pape* demonstrates that a child’s total set of special education rights are not always resolved exclusively through an IDEA analysis.

Third, Chapter 15's inapplicability does not make the sort of evidence more typically associated with a Section 504 claim irrelevant to an IDEA analysis. As applied to this case, the record includes comprehensive documentation of the Students' educational needs and the District's response to those needs. This jurisdictional analysis did not result in the exclusion of evidence at this hearing.

In sum, I dismiss the Parent's Section 504 claims on jurisdictional grounds. I have jurisdiction to resolve Section 504 claims that arise within the scope of Chapter 15. Chapter 15, by its own terms, does not apply to children who are protected by the IDEA. Consequently, regardless of their merits, I cannot the Parent's claims arising under Section 504.

In making this determination, I note that the Student received services pursuant to a Section 504 Plan from March 29, 2023, through the end of the 2022-23 school year. This period overlaps with the IDEA Child Find violation for which the Student has received compensatory education. I hold that the compensatory education awarded to remedy the Child Find violation is a complete remedy to redress educational harms that the Student incurred during that time.

Summary

The District violated its Child Find obligations under the IDEA from the start of the 2022-23 school year until May 20, 2023. The District failed to initiate or decline an evaluation despite repeated parental requests and indicators of need. Discussed above, this procedural violation resulted in substantive educational harm. The Student is entitled to 81 minutes of compensatory education for each school day from the start of the 2022-23 school year through May 30, 2023.

From the start of the 2023-24 school year through December 17, 2023, the District failed to offer an IEP reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances, as required by *Andrew F., supra*. The IEP lacked appropriately ambitious goals and failed to address the Student's social-emotional needs. The Student is awarded one hour of compensatory education for each school day.

From December 18, 2023, through the end of the 2023-24 school year, and for the 2024-25 school year, the Parents are awarded tuition reimbursement for the Student's placement at the Private School. Although the facts for those periods are different, the underlying analysis is the same. The Parents satisfied all three prongs of the *Burlington-Carter* test.

The Parents' demand for reimbursement for Private Evaluator 2's evaluations is denied. To whatever extent the Parents' demand for reimbursement arises under the IDEA's provision for IEEs at public expense, threshold conditions are not met. To whatever extent the Parents' demand for reimbursement arises under Section 504, I do not have authority to provide that remedy.

The Parents' remaining Section 504 claims are dismissed for lack of jurisdiction. My Section 504 jurisdiction is limited to claims arising under Chapter 15. The Student's IDEA eligibility terminated the Student's Chapter 15 eligibility. In substance, the claims are coextensive.

ORDER

Now, November 28, 2025, it is hereby **ORDERED** as follows:

1. To remedy the Child Find violation discussed above, the Student is awarded 81 minutes per school day from the start of the 2022-23 school year through May 30, 2023.
2. To remedy the FAPE violation discussed above, the Student is awarded one hour of compensatory education per school day from the start of the 2023-24 school year through December 17, 2023.
3. All compensatory education awarded herein is subject to the terms and limitations as set forth above.
4. The Parents have satisfied their burden for their tuition reimbursement claim, discussed above. The District shall reimburse the Parents for the cost of tuition at the Private School from December 18, 2023 through the end of the 2022-23 school year, and for the 2023-24 school year.
5. The Parents' evaluation reimbursement claims are **DENIED** and **DISMISSED**.
6. The Parents' Section 504 claims are **DISMISSED** on jurisdictional grounds, as discussed above.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER