

*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. 29878-23-24**

**Child's Name:**

E.W.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Hearing Officer:**

Charles W. Jelley Esq.

**Decision Date:**

March 7, 2025

## **Background**

The Parent filed the pending Due Process Hearing Complaint alleging multiple violations under the Individuals with Disabilities Education Act (IDEA), Section 504, and the Americans with Disabilities Act. First, they allege a denial of a free appropriate public education (FAPE) under the IDEA and Section 504 regulations. Second, they alleged violations of the IDEA and Section 504 least restrictive environment (LRE) requirements. Third, they contend that the alleged violations also violate the anti-discrimination provisions found in Section 504 and the Americans with Disabilities Act (ADA). In contrast, the District seeks a declaratory ruling asserting that it consistently provided the Student with a free appropriate public education (FAPE) in the LRE under either statute. Finally, the District seeks a declaration that at all times relevant, it complied with the ADA and Section 504.

First, after a careful review of both the intrinsic and extrinsic evidence, I conclude that the District provided a FAPE in the LRE for each school year at issue. To the extent the Parent's 504 FAPE and LRE claims are inextricably intertwined with the IDEA FAPE claims, the following decision resolves all FAPE-based claims. Therefore, the overlapping Section 504 FAPE/LRE claims are also denied. A standalone Section 504 FAPE analysis reaches the same conclusions of law.

Second, the Section 504 statutory text, history, and tradition appear to vest jurisdiction and enforcement of Section 504 discrimination claims elsewhere; therefore, the claim is dismissed without comment and without prejudice.<sup>1</sup>

Third, I find that nothing in the text of the ADA or its implementing

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<sup>1</sup> Section 504 of the Rehabilitation Act follows the remedies available under Title VI of the Civil Rights Act of 1964, as established by 42 U.S.C. § 2000d-7(a)(2). This means: Enforcement via Federal Agencies like the Department of Justice or the United States Department of Education's Office for Civil Rights (OCR) or in direct original actions in federal court which provide rights not found in administrative hearing like discovery.

regulations provides this officer with jurisdiction to resolve ADA discrimination disputes. Accordingly, the ADA claims, like the Section 504 claims, are also dismissed without prejudice. Finally, all non-IDEA claims and affirmative defenses are dismissed without prejudice.<sup>2</sup>

### **Statement of the Issues**

- 1) Whether the District's proposed individual education program (IEP) in May 2024 and as updated in November 2024, failed to offer the Student a FAPE in the least restrictive environment under both the IDEA and Section 504;
- 2) Whether the District's IEPs, as implemented, failed to provide the Student a FAPE in the least restrictive environment during the 2022-2023 and 2023-2024 school year, under both the IDEA and Section 504, and
- 3) Did the District illegally discriminate against the Student under Section 504 by excluding the Student from participation in some regular education classes? (N.T. 35-37).

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<sup>2</sup> The following Findings of Fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited or given equal weight. However, in reviewing the record, while the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements not all testimony or exhibits were given equal weight. In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, and the names of the witnesses will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 USC § 1415(h)(4)(A); 34 CFR § 300.513(d)(2); 34 CFR § 104.1- 104.36). References to the record throughout this decision will be to the Notes of Testimony (N.T). School District Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number.

## **Findings of Fact**

**1. Student Background:** The Student is an [redacted] year-old resident of the Wilson School District and attends the middle school. (S-4 p.1; P-16 p.1)

**2. Disability Classification:** The Student qualifies for special education as a student with an Intellectual Disability and a Speech and Language Impairment. (S-4 p.1).

**3. Medical Diagnoses:** The Student has [redacted] and attention-deficit hyperactivity disorder (ADHD). The Student takes medication for ADHD symptoms and sleep regulation. (S-14 p.1).

**4. Custody and Educational Decision-Making:** The Student's parents share legal custody, but the Mother has sole decision-making authority regarding education. (S-18 p.11).

**5. Early School Placement:** The Student attended elementary school from [redacted].

**6. [redacted] Placement (2018–2019):** The Student received itinerant Life Skills Support, speech, and occupational therapy. At the Mother's request, in elementary school, the Student spent 97% of the day in general education with no pull-out special education support. (S-14 p.2; S-4 p.2).

**7. October 2018 Reevaluation Results:** The District's reevaluation included standardized testing. The Stanford-Binet V yielded a full-scale IQ of 48, and the Vineland-3 indicated deficits in adaptive behavior. Achievement testing (WJ-IV) showed significantly below-average scores across all areas. Pre-academic testing was incomplete, as the Student could not correctly answer any items. (S-4 p.3).

**8. 2018 Reevaluation Report (RR) Recommendations:** The reevaluation report confirmed eligibility for special education and recommended an IEP

targeting pre-academic skills, expressive/receptive language, articulation, adaptive behavior, social skills, and behavior. (S-4 p.3).

**9. Functional Behavior Assessment (FBA) and Positive Behavior**

**Support Plan (PBSP) (February 2020):** A Functional Behavior Assessment (FBA) was completed, and a positive behavior support plan (PBSP) was added to the Student's IEP. (S-19 pp.4-11).

**10. COVID-19 Virtual Year (2020–2021):** Due to the pandemic, the Student attended school virtually for the entire 2020–2021 school year. (N.T. 616).

**11. January 2021 – Attempted Reevaluation:** The District proposed a reevaluation including updated ability, achievement, speech, and fine motor assessments, but in-person testing did not occur due to parental health concerns. (S-4 p.3).

**12. January 2021 – Remote Assessments:** The District completed parent and teacher rating scales, conducted remote observations, and performed a remote assistive technology evaluation. (S-4 p.3).

**13. Return to In-Person Instruction (2021–2022):** The Student returned to in-person learning for [redacted] grade. (S-1).

**14. November 2021 – Proposed Reevaluation:** The District requested parental consent for updated assessments, including academic achievement, intellectual ability, speech, OT, PT, parent/teacher input, and classroom observations. (S-1).

**15. Parental Non-Consent (Late 2021):** The District made three other requests via DocuSign for consent to reevaluate, but no response was received, preventing the reevaluation from proceeding. (S-1 p.1; S-22; N.T. 1009).

**16. February 3, 2022, IEP Meeting:** The Student's annual IEP meeting was held with the Mother and her legal representation. The IEP identified academic, speech, and motor needs and noted behavioral concerns, including a PBSP. (S-2 pp.1-2, 11-12, 32-33).

**17. February 2022 IEP Placement:** The IEP offered supplemental Life Skills Support, including direct instruction for ELA (50 minutes daily) and Math (20 minutes daily), plus related services: speech (60 minutes per cycle), OT (30 minutes per cycle), and PT (30 minutes per cycle). The Student spent approximately 77% of the day in general education. (S-2 pp.39-40).

**18. Independent Educational Evaluation (IEE) Request:** The Parent requested an IEE at public expense, which the District approved. The Parent selected Dr. Stephen Kachmar as the evaluator. (N.T. 293-294).

**19. Biennial Reevaluation Proposed (Fall 2022):** The District requested consent for a biennial reevaluation, including assessments of intellectual ability, academic achievement, behavior, classroom observations, parent/teacher input, and PT, OT, and speech evaluations. (S-3).

**20. Parent Defers to IEE (2022):** The Parent did not consent to the District's reevaluation, stating she preferred to wait for the IEE results. (S-4 p.2; N.T. 622).

**21. October 2022 – Records-Only RR:** Without consent for new testing, the District's October 2022 reevaluation consisted solely of a records review. (S-4).

**22. Fall 2022 IEP Meeting:** An annual IEP meeting was held following the records-only reevaluation. The IEP identified continued needs in literacy, math, OT, PT, speech, and behavior and included a PBSP. (S-5 pp.9-10, 29-30).

**23. Fall 2022 IEP Services:** The IEP maintained the prior level of special education and inclusion, with the Student spending 77% of the day in general education. She continued receiving direct instruction for ELA and Math, along with related services. (S-5 pp.35-36).

**24. IEE in Progress (Oct 2022–Jan 2023):** Dr. Kachmar conducted assessments and observations for the IEE between October 12, 2022, and January 10, 2023. (S-14 p.1).

**25. [redacted]-Grade IEP Meeting (November 13, 2023):** The IEP team met to review progress and recommended a new English language arts (ELA) curriculum and Math intervention due to slow, uneven gains in reading and letter identification. (S-8 pp.5-6).

**26. Classroom Support:** The Student received whole-group instruction in general education with a modified curriculum, supplemental aids, and paraprofessional support. (S-8 p.6; N.T. 75-76, 79, 157-158, 171-175).

**27. Transition Planning Meeting (April 29, 2024):** The IEP team met to plan for middle school and agreed to collect additional data on daily living and social skills. (S-9 pp.5-9, 12; N.T. 299-300).

**28. Transition Data Meeting (May 28, 2024):** The IEP team reconvened to review data on the Student's functional skills, which indicated a need for daily living skills instruction. (N.T. 267-268, 299-300; S-10 pp.6, 41, 43).

**29. May 2024 IEP Proposed Changes:** The Student would receive special education for full ELA and Math blocks instead of partial participation in regular education. Adapted specials, like art and music, were recommended. (S-10 p.43).

**30. Rationale for Increased Special Education:** Changes in participation in regular education aimed to reduce lost instructional time from transitions and improve the overall fidelity of intervention and specially designed instruction. (N.T. 250, 254, 451, 480).

**31. Proposed Middle School Placement:** The District recommended Wilson West Middle School due to the availability of Life Skills Support. (S-10 p.7).

**32. Parent's Due Process Complaint:** The Parent filed a due process complaint opposing the increased participation in the special education classroom. (S-11 p.7).

**33. Delay in IEE Report Completion:** Throughout 2023–2024, the District sought the IEE report from Dr. Kachmar, which was ultimately received on September 18, 2024. (S-14; N.T. 296-297).

**34. Parental Non-Consent:** The Parent did not consent to the September 2024 reevaluation despite multiple follow-ups. (S-27 pp.1, 7, 23, 35, 39).

**35. IEP Review and Transition Planning (April 29, 2024):** The IEP team convened to discuss the Student's transition to middle school. The team reviewed progress monitoring data, identified additional data needed on daily living and social skills, and planned to reconvene after collecting this information. (S-9 pp.5-9, 12; N.T. 299-300).

**36. Functional Living Skills Data Collection (May 2024):** Due to the delay in receiving the IEE report, the District collected data on the Student's functional daily living skills using a PaTTAN checklist to assess her adaptive skills. The data indicated a need for explicit instruction in daily living skills. (S-10 pp.6, 41, 43; N.T. 267-268, 299-300)

**37. IEP Team Follow-Up Meeting (May 28, 2024):** The team reconvened to review newly collected data. Based on the findings, the team proposed increasing special education instruction for ELA and Math while maintaining adapted specials. (S-10 p.43)

**38. General Education Time Reduction Proposal:** The revised IEP proposed reducing the Student's general education participation from 77% to 31%, citing the need for increased instructional time in a structured



setting for ELA and Math. (N.T. 305-306).

**39. District's Rationale for Placement Change:** The District explained that the transition to middle school required longer instructional blocks, reducing transitions to increase learning time and ensuring the implementation of intervention programs with fidelity. (N.T. 250, 254, 451, 480).

**40. Proposed Middle School Placement:** The IEP team recommended that the student transfer to the middle school that offered Life Skills Support, which was not available at the neighborhood school. (S-10 p.7)

**41. Parent's Objection to Placement:** The Parent opposed the proposed change, stating that the Student should remain at the neighborhood school with supplemental aids and support in a general education placement. (S-11 p.7).

**42. Ongoing Communication with IEE Evaluator:** Throughout the 2023-2024 school year, District staff, the Parent, and legal representatives attempted to obtain the IEE report from Dr. Kachmar. The report was delayed due to a file corruption issue. (S-18 p.8; N.T. 296-297)

**43. September 2024 – New Reevaluation Request:** After reviewing the IEE results, the District proposed another reevaluation, including cognitive, academic, and behavioral assessments. (S-13).

**44. IEE Report Finally Received (September 18, 2024):** The District received Dr. Kachmar's completed IEE, which included standardized cognitive and academic achievement assessments, adaptive behavior rating scales, and classroom observations. (S-14)

**45. IEE Findings on Intellectual Disability and Speech Impairment:** Dr. Kachmar's evaluation confirmed the Student's classification as a student with an Intellectual Disability and Speech-Language Impairment. (S-14 p.33)

**46. Cognitive and Academic Testing Results:** Standardized testing revealed that the Student scored below 40 in basic reading skills, letter-word identification, written language, and spelling, consistent with an Intellectual Disability. (S-14 p.10)

**47. Adaptive Behavior Deficits Identified:** The Vineland-3 adaptive behavior assessment indicated deficits in communication, functional academics, self-direction, social skills, and independent living skills, supporting the need for structured instruction. (S-14 p.11)

**48. IEE Recommendations for Life Skills Placement:** Dr. Kachmar recommended that the Student continue in the Life Skills Support classroom for core instruction, emphasizing the need for individualized instruction, structured reinforcement strategies, and explicit adaptive skills training. (S-14 pp.33, 35)

**50. District's Regular Education Proposal (November 2024):** After reviewing concerns, the District revised the proposed IEP to increase general education participation from 31% to 42%, including instruction in regular education Social Studies. The District also proposed reducing functional skills instruction to three days per six-day cycle instead of daily. (S-15 pp.39-40; S-23).

**51. Concerns Over Placement Change:** The Parent opposed the reduction in general education time and filed a due process complaint seeking a return to prior inclusion levels. (S-11).

**52. Impact on Peer Interaction:** The reduction in general education time limited the Student's daily opportunities to engage with nondisabled peers. (N.T. 876).

**53. Final Placement Proposal:** The District maintained its position that a structured Life Skills program was the most appropriate placement. (S-15 p.53).

**54. Parent's Expert Criticism:** Dr.[redacted], a university professor, testified that the Student was not meaningfully engaged in general education and missed instructional opportunities in the regular education classroom. (N.T. 802, 710).<sup>3</sup>

**55. Adaptive Physical Education Classification Dispute:** The Parent's expert contended that the District's classification of adaptive physical education as general education inflated inclusion figures. (N.T. 965-967)

**56. Discrepancies in General Education Participation Data:** Evidence suggested inconsistencies in the Student's actual participation in general education despite recorded percentages of time in regular education. (N.T. 710)

**57. Recommendation for Additional Supports:** Dr. [redacted] recommended adding supplementary aids, co-teaching, and targeted professional development instead of increasing time in special education. (N.T. 756)

**58. Phonics-Based Reading Recommendation:** Dr. [redacted]disagreed with the District's instructional approach, advocating for a structured phonics-based program. (N.T. 735)

**59. Teacher Training Concerns:** Dr. [redacted]identified a lack of adequate training for educators in modifying curriculum and implementing inclusive strategies. (N.T. 713)

**60. Disagreement Over Functional Skills Emphasis:** Dr. [redacted] suggested that functional skills instruction should be integrated within general education rather than in a separate setting. (N.T. 722-723)

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<sup>3</sup> The IEE evaluator and the experts names will be removed from the Decision published on the ODR Website. I included the names to distinguish the weight provided to each of the Parent's independent providers.

**61. Inclusive Education Advocacy:** Dr. [redacted] promotes inclusive education and argues that students with disabilities should be educated in general education settings whenever possible. (P-14)

**62. Dr. Rufo's Opinion on Placement:** Dr. [redacted] agreed that the Student requires direct intervention for ELA and Math but argued for greater inclusion in general education with appropriate support. (N.T. 756-764)

**63. General Education Access Concerns:** Dr. [redacted] observed that the Student was physically present in general education classes but was not fully engaged in the grade-level curriculum. (N.T. 791)

**64. Concerns Over Supplementary Aids and Services:** Dr. [redacted] noted that the general education classroom lacked sufficient supplementary aids and services to provide meaningful access to grade-level instruction. (N.T. 801-802)

**65. Missed Instructional Opportunities:** During observations, Dr. [redacted] opined that the Student's instruction was disconnected from classroom learning, such as when the Student was working on unrelated skills instead of participating in a grammar lesson. (N.T. 802)

**66. November 2024 IEP - Inclusion Percentage:** The District proposed a 42% general education and 58% special education placement. The Parent rejected the proposal. (S-15 pp.42, 53)

**67. Concerns Over Supplementary Aids and Services:** She noted that the general education classroom lacked sufficient supplementary aids and services to provide meaningful access to grade-level instruction. (N.T. 801-802)

**68. Missed Instructional Opportunities:** During observations, Dr. [redacted] saw that the Student's instruction was disconnected from classroom learning, such as when she was working on unrelated skills instead of participating in a grammar lesson. (N.T. 802)

**69. Reduction in General Education Time:** Dr. [redacted] disagreed with the reduction from 77% to 31% (later revised to 42%), stating that it was not based on sufficient data. (N.T. 718)

**70. Alternative Support Recommendations:** Instead of increasing time in special education, Dr. [redacted] recommended co-teaching models, modified instruction, and additional training for general education teachers. (N.T. 756)

**71. Behavioral Considerations:** Dr. [redacted] suggested that if the Student struggled in noisy environments, the Student should be taught coping strategies rather than being removed from general education. (N.T. 876)

**72. Criticism of Functional Skills Focus:** Dr. [redacted] argued that functional skills instruction was unnecessary because the Student was already learning these at home. (N.T. 722-723)

**73. Concerns Over Gains in Special Education:** Dr. [redacted] questioned whether the Life Skills Support model was effective, given the Student's limited progress. (N.T. 727-728)

**74. Disagreement with the District's Justification:** Dr. [redacted] challenged the Student's middle school schedule, saying that the Student's needs did not justify a more restrictive placement. (N.T. 98, 142)

**75. Observation of Reading Instruction:** Dr. [redacted] observed that the Student was receiving sight-word reading instruction instead of an explicit phonics-based approach, which she deemed inappropriate. (N.T. 697-699)

**76. Alternative Literacy Instruction:** Dr. [redacted] recommended structured, systematic phonics programs, such as the Sonday System and Heggerty curriculum. (N.T. 735)

**77. Lack of Inclusion Training for Teachers:** Dr. [redacted] commented that she believed that the Student's teachers lacked training in modifying curriculum and using inclusive strategies. (N.T. 713)

**78. Misclassification of Adaptive PE:** Dr. [redacted] argued that the District counted adaptive physical education as general education, inflating the Student's general education percentage. (N.T. 965-967)

**79. Discrepancies in Inclusion Data:** Dr. [redacted] testified that even with the revised 42% participation figure, the Student was frequently absent from general education classes. (N.T. 710)

**80. Final Recommendation:** Dr. [redacted] recommended that the Student remains in general education for at least 77% of the day, with additional supplementary aids and services instead of increased special education placement. (N.T. 756-764)

**81. District's Position on Special Education Time:** The District maintained that the structured special education setting was necessary to deliver interventions effectively, ensuring fidelity in ELA and Math instruction. The proposed IEP balanced academic support with meaningful general education participation. (S-15 p.53)

### **The Hearing Officer's Fact-Finding Role**

#### **Credibility and Persuasiveness of the Witnesses' Testimony**

In a due process hearing, the hearing officer must assess witness credibility, weigh the evidence, and determine the persuasiveness of testimony. *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. 2008); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Comm. 2014). The Mother's testimony, for the most part, was largely unpersuasive. At times, the Mother's singular focus on maintaining the Student in a regular education setting caused her to overlook the IEE

evaluator's results and the expert Dr. [redacted] somewhat balanced placement recommendations. Rather than engaging with the team to understand the full scope of the evaluations, the Mother selectively relied on data that supported her position while dismissing findings that indicated the need for services outside of regular education, undermining the credibility of her stance.

The District's witnesses demonstrated a clear and comprehensive understanding of the Student's strengths, weaknesses, needs, and overall circumstances. Their testimony was well-organized and data-driven, and it provided insight into the basis for their conclusions. Finally, the teachers exhibited an openness to understanding the data, including the IEE examiner's testing, and incorporated that information into their assessments of the Student's needs and circumstances.

The Parent's expert provided informative, organized, and somewhat persuasive testimony. Her background, training, and experience contributed to this fact-finder's understanding of various techniques to support the Student's participation in regular education. Notably, the expert did not criticize the IEE examiner's test selection, scoring, or overall recommendations. While her partial acceptance of the IEE evaluator's findings created an impression of credibility, her recommendations were often heavily influenced by her personal teaching preferences and a philosophical commitment to certain best practices. This commitment, at times, created an impression that the objective test data was unevenly weighed. Moreover, certain comments often blurred the lines between best practices and her educational teaching philosophy and included intertwined conclusions of law, which, when weighed, undermined the neutrality of her analysis. At other times, her reliance bordered on hindsight, further weakening her objectivity. It appeared that some of her suggestions

resembled "Monday morning quarterbacking" rather than a fair assessment of the District's decision-making at the time.

For these interconnected reasons, the District's witnesses' testimony regarding the reasonableness of the FAPE proposals is afforded greater weight than the Parent's expert. I make no findings about the IEE evaluator as that professional did not testify.

## **Legal Analysis**

### **Findings and Conclusions Regarding the Parent's Allegations**

The Parent's segmented allegations assert that the District committed multiple IDEA and Section 504 violations, including but not limited to:

1. A denial of FAPE, particularly regarding literacy instruction;
2. A failure to provide appropriate behavioral support;
3. The failure to provide necessary supplementary aids and services to enable the Student to access and participate in the general education curriculum;
4. An unjustified removal from general education;
5. An unlawful reliance on administrative convenience in placement decisions;
6. A broad overarching claim that the Student failed to make meaningful progress. and,
7. Finally, contentions that the alleged IDEA and Section 504 violations rise to the level of discrimination under Section 504 or the ADA. I now conclude that the record does not support the IDEA and Section 504 FAPE claims.



### **The District's IEPs Provided a Free Appropriate Public Education**

The *Carlisle Area Sch. Dist. v. Scott P.* (3d Cir. 1995) standard establishes that an IEP's appropriateness must be evaluated at the time it was offered, not in hindsight. *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017) requires that an IEP be reasonably calculated to enable progress appropriate to the child's circumstances, while *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) clarifies that IDEA does not guarantee an optimal education, only a procedurally and substantively appropriate IEP and offer of a FAPE. Courts have consistently emphasized that IEPs must be reasonable, not ideal. *K.D. v. Downingtown Area Sch. Dist.*, 3d Cir. 2018. Applying these foundational legal principles to the present case, the record overwhelmingly supports the District's position that the Student's IEPs, when offered, were legally compliant, procedurally sound, and substantively appropriate.

The procedural challenges raised by the Parent lack merit. The IEPs included measurable goals, progress monitoring, specially designed instruction (SDI), and multiple accommodations tailored to the Student's needs. The IEPs were developed collaboratively, with active input from the Parent, the Parent's attorney, and the Parent selected experts. The refusal to consent to the reevaluation in - Nov. 2021, Sept. 2022, and Sept. 2024- prevented the team from obtaining updated accurate time functional assessment data.

The Parent's attempt to shift a perceived procedural violation around the delay in completing the IEE onto the District is misplaced. Although the Parent selected the independent evaluator (IEE), she offered no evidence that the District delayed or obstructed the IEE evaluation process. If anything, the record preponderates that the District wanted to advance the reevaluation process. Therefore, the suggestion of a substantive violation in completing the reevaluation is rejected.

As the IEPs, when provided, were appropriately designed and reasonably calculated to confer meaningful educational benefit, the evidence demonstrates that the District offered a FAPE. The ongoing testing, progress monitoring, and assessments at all relevant times were otherwise legally sufficient. In light of the Student's ability, achievements, and circumstances, I now find that the student made maddingly slow but steady gains, including behavioral progress, increased academic engagement, and greater participation, with and without support in school activities. While the evidence is clear, the Student is not performing at grade level; neither the IDEA nor Section 504 requires grade-level mastery.

### **The District's Instructional Methods Were Research-Based and Appropriate**

The Parent next argues that the Student's inability to read at grade level constitutes a denial of FAPE. This argument misapplies the FAPE standard. The District used Edmark and Early Literacy Skill Builders (ELSB), both research-based programs designed for students with intellectual disabilities. While the Parent's expert recommended the Sonday System and Heggerty (phonics-based instruction), case law is clear that methodology is within the District's discretion, absent compelling circumstances. For example, in *Alexander G. v. Downingtown Area Sch. Dist.* 78 IDELR ¶ 213 (E.D. Pa. 2021) the court concluded that (a) the substantive standard for FAPE did not require consistent or across-the-board progress; (b) the district's judgment to change to a more restrictive reading program was entitled to judicial deference; (c) the district's obligation included parental collaboration, and FAPE did not require grade level performance; and (d) the lower scores could be reasonably attributed to the summer break rather than necessarily indicating district error. Therefore, relying on *Downingtown*, I now conclude that the Parent's expert's methodology preference does not equate to a denial of a FAPE violation.

### **The District's IEPs Provided Adequate Behavioral Supports**

The record as a whole contradicts the Parent's claim that the Student's IEP failed to address or include appropriate behavioral supports. A Functional Behavior Assessment (FBA) was conducted, and a Positive Behavior Support Plan (PBSP) was implemented as early as February 10, 2020. A Board-Certified Behavior Analyst (BCBA) conducted the FBA (S-19, pp. 4-11). Parent and teacher rating scales, remote psychological observations, and an Assistive Technology Evaluation were completed as part of the January 15, 2021 Reevaluation Report (RR) (S-4). The Student's annual IEP meeting (February 3, 2022) identified behaviors interfering with learning and included a PBSP. (S-4, pp. 32-33). The January 15, 2021. The Reevaluation Report (RR) included parent and teacher rating scales, remote psychological observations, and an Assistive Technology Evaluation (S-4). The District sought further behavioral assessments on September 5, 2024, including a new FBA, adaptive behavior assessment, speech and language evaluation, and occupational therapy evaluation (S-13). The record overwhelmingly establishes that the District consistently evaluated [the student's ] behavioral needs and implemented appropriate interventions. The Parent's claim that behavioral supports were inadequate is contradicted by the documented assessments, interventions, and progress monitoring included in the Student's IEPs. Therefore, the record confirms that the Student's behavioral needs were assessed and appropriately addressed. The student's behavioral progress does not have to be considered "ideal" to meet FAPE requirements. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). The failure to provide behavioral support is denied.

### **The Least Restrictive Environment Mandate**

The Parent next alleges that the District failed to follow LRE safeguards by reducing the Student's time in general education from 77% to 31%, then up

to 42%. They argue that this reduction was driven by scheduling convenience rather than the Student's individual needs, and they even go so far as to contend that general education teachers lacked sufficient training in inclusion strategies. However, the record does not support these claims. The LRE mandate requires that students with disabilities are educated in general education to the maximum extent appropriate, with supplementary aids and services provided before considering a more restrictive placement (*Oberti v. Bd. of Educ.*, 19 IDELR 908 (3d Cir. 1993). Under *Hartmann v. Loudoun Cty. Bd. of Educ.*, 4th Cir. 1997, when general education alone is not effective, a more specialized setting is appropriate. Additionally, 34 C.F.R. § 300.114(a)(2) provides that a school may not remove a child from general education unless their educational needs cannot be met satisfactorily with aids and services.

In this Circuit, fact-finders reviewing LRE claims apply the following **Oberti** factors:

1. Whether the District made reasonable efforts to accommodate the child in a general education classroom.
2. Whether the District considered the educational benefits the child would receive in a general education setting with appropriate supplementary aids and services, compared to those available in a specialized setting.
3. Whether the District evaluated both academic and nonacademic benefits, including socialization, communication, self-esteem, language development, and role modeling.
4. Whether the District assessed any potential negative effects, including the impact the child's presence may have on other students in the classroom.

Applying these factors, I now conclude that the proposed placement is appropriate. A group of knowledgeable people reviewed the records, the

behavioral data, the academic data, social skills, and the adaptive behaviors checklist, along with teacher and Parent input. The testing, progress monitoring, behavioral data, and comments from the staff and related service providers suggest a balanced approach to meeting the Student's needs, weaknesses, and surrounding circumstances. The overall record further suggests that the Student requires attention, direction, and support for periods of the day that when compared across environments, should otherwise be provided in the special education classroom. The two outside providers support the overall team decision; therefore, the alleged LRE violation is unproven.

### **The District's Placement Decision Was Based on Educational Need, Not Convenience**

The record confirms that the District's placement decisions were based on the Student's educational needs, not administrative convenience, which was the driving force: the parents' experts, Dr. [redacted] and Dr.[redacted]—agreed that the Student required specialized small-group instruction in Reading and Math. Additionally, general education teachers testified that the Student struggled to participate in whole-group settings and required near-constant 1:1 attention. Courts have consistently found that a student's inability to benefit meaningfully from general education, even with support, at times justifies a more restrictive placement (*Pachl v. Seagren*, 46 IDELR 1 (8th Cir. 2006); *B.E.L. v. Hawaii Dep't of Educ.*, 71 IDELR 162 (9th Cir. 2018, unpublished); *Wishard v. Waynesboro Area Sch. Dist.*, 77 IDELR 65 (M.D. Pa. 2020)). Further, the District actively sought to maximize inclusion while ensuring the Student received effective instruction. Relying upon the overall circumstances, the November 2024 IEP reduced life skills instruction from six days to three per cycle, demonstrating the District's commitment to

balancing inclusion with the educational benefit standards found in *Oberti*, *Rowley*, *Endrew*, and *Downingtown*.

### **Full Inclusion Would Not Provide FAPE Due to the Student's Needs**

The LRE mandate does not require full inclusion at the expense of meaningful educational progress. Courts have recognized that if a student requires excessive teacher attention or disrupts the learning of others, a more specialized setting may be necessary (*Greenwood v. Wissahickon Sch. Dist.*, 50 IDELR 280 (E.D. Pa. 2008), *aff'd*, 54 IDELR 113 (3d Cir. 2010, unpublished); *I.L. v. Knox County Bd. of Educ.*, 70 IDELR 71 (E.D. Tenn. 2017), *aff'd*, 72 IDELR 113 (6th Cir. 2018, unpublished)).

Here, teacher testimony and observational data confirm that the Student's presence in a large-group setting required disproportionate instructional resources, impacting both the Student's learning and that of peers. The Student's difficulty with group participation and reliance on constant adult support further justifies a placement for a limited time during the day in a classroom that includes specialized instruction. Additionally, placement in general education is not required if the necessary curriculum modifications fundamentally alter the general education program beyond recognition (*Lachman v. Illinois State Bd. of Educ.*, 441 IDELR 156 (7th Cir. 1988), *cert. denied*, 111 LRP 7412, 488 U.S. 925 (1988)). The experts suggested modifications and alternative assessments indicate that a general education placement for 77% of the day is inappropriate.

### **The District's Decision-Making Aligns with Precedent and LRE Principles**

The Third Circuit has clarified that while social benefits are a consideration in LRE decisions, they do not override the need for educational progress. Courts have found that students who do not meaningfully interact with peers in general education or derive only superficial benefits should be placed in

more appropriate settings (*Hudson v. Bloomfield Hills Public Schools*, 23 IDELR 613 (E.D. Mich. 1995), *aff'd*, 25 IDELR 607 (6th Cir. 1997), *cert. denied*, 109 LRP 34838, 522 U.S. 822 (1997); *Solorio v. Clovis Unified Sch. Dist.*, 74 IDELR 2 (9th Cir. 2019, *unpublished*). Although the Parent may believe that maintaining 77% of the school day in general education is preferable, the District must ensure that the Student receives FAPE in the LRE. *G.T. v. Campbell County Bd. of Educ.*, 81 IDELR 273 (E.D. Ky. 2022), stands for the proposition that parental preference alone, even when supported by one outsider, is not sufficient to override the documented need, reviewed by a team of knowledgeable professionals, for a more structured setting. Given the overall circumstances, including the Student's learning style, rate of learning, slow educational progress in general education, the need for specialized instruction, the disruptive impact on the learning environment, and the extensive modifications required, maintaining 77% of the school day in regular education is inappropriate.

The District's decision to provide a balanced placement that includes special education services is fully supported by precedent. The LRE decision-making here ensures that the Student receives meaningful educational benefits in compliance with IDEA's LRE requirements. Applying the applicable IDEA LRE requirements as described in *Oberti* and its progeny, I now conclude that the District has met its LRE obligations by considering general education placement and implementing supplementary supports. Now that the IDEA and Section 504 claims are resolved, I will turn to the Parent's standalone Section 504 and ADA discrimination claims.

## **Title II of the ADA and Private Right of Action**

Title II of the Americans with Disabilities Act (ADA) states:

"[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

discrimination by any such entity." 42 U.S.C. § 12132.

School districts qualify as "public entities" under 42 U.S.C. § 12131(1)(A). Unlike Section 504 and IDEA, Title II does not provide an administrative due process hearing for enforcing FAPE rights. Instead, it offers alternative remedies through OCR or federal court. 42 U.S.C. § 12133; 29 U.S.C. § 794a (a)(2). The Title II regulations, unlike the IDEA and Section 504, are administered by the Department of Justice (DOJ) rather than the Department of Education (DOE), and the ADA does not identify a denial of FAPE as a specific ADA violation. 28 C.F.R. § 35.130; 28 C.F.R. pt. 35, app. B, at 193. Furthermore, no statutory text, history, tradition, or regulatory authority confers jurisdiction over Title II claims to administrative hearing officers. Therefore, based on the text as written, these important claims are dismissed due to a lack of administrative subject matter jurisdiction; the Parents must pursue them in other forums.

### **Case Law Now Requires a Standalone Section 504 Analysis**

In *Le Pape v. Lower Merion School District*, 103 F.4th 966 (3d Cir. 2024), the Third Circuit clarified that while a denial-of-FAPE claim under the IDEA can be resolved through an administrative appeal, ADA and Section 504 discrimination claims seeking legal relief should be resolved through summary judgment and, potentially, trial. In *B.S.M. v. Upper Darby School District*, 103 F.4th 956 (3d Cir. 2024), the Third Circuit emphasized that Section 504 claims require a separate analysis from IDEA claims, even when based on similar facts and that fact-finders must independently assess Section 504. These decisions underscore the necessity for hearing officers and courts to conduct independent reviews of Chapter 15/Section 504 regulations in due process disputes, ensuring that claims under Section 504 and the ADA are evaluated separately from IDEA claims. Therefore, applying *Le Pape* and *Upper Darby*, I will complete a standalone analysis.



## Section 504 FAPE

Courts in the Third Circuit have consistently held that if a school district provides FAPE under the IDEA, it also satisfies the FAPE requirement under Section 504 of the Rehabilitation Act, absent additional allegations of discrimination.

Section 504 mandates that "[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination" under any program that receives federal funding. *M.R. v. Ridley Sch. Dist.*, 680 F.3d 260, 280 (3d Cir. 2012) (quoting 29 U.S.C. § 794(a)). Courts have explained that Section 504's negative prohibition against discrimination is similar to the IDEA's affirmative duty, requiring federally funded schools to provide FAPE to all qualified children with disabilities within their jurisdiction. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 244 & n.2 & n.8 (3d Cir. 2012) (quoting *W.B. v. Matula*, 67 F.3d 484, 492–93 (3d Cir. 1995)).

In interpreting the relationship between IDEA FAPE and Section 504 FAPE, courts have stated that providing FAPE in accordance with Section 504 requires a district to "reasonably accommodate the needs of the handicapped child so as to ensure meaningful participation in educational activities and meaningful access to educational benefits." *D.K.*, 696 F.3d at 244. Because this standard closely parallels the IDEA's requirement that an IEP be reasonably calculated to confer meaningful educational benefit, courts have held that a determination that a district did not deny FAPE under the IDEA is equally dispositive of a student's Section 504 claim. *Id.* at 244 & n.8; *Alexander G. v. Downingtown Area Sch. Dist.*, CIVIL ACTION No. 20-131, 8 (E.D. Pa. Apr. 26, 2021).

The Third Circuit has reinforced this principle in multiple rulings, finding that a failure to prove an IDEA violation necessarily results in a failure to prove a Section 504 violation unless there is independent evidence of disability-

based discrimination or failure to provide reasonable accommodations beyond what the IDEA requires. See *D.K.*, 696 F.3d at 253. This means that if a district provides an IDEA-compliant FAPE, it also meets Section 504's FAPE requirement unless the plaintiff can demonstrate intentional discrimination or failure to accommodate beyond the IDEA's mandates. Accordingly, a school district that meets its obligations under the IDEA by providing FAPE also satisfies Section 504's requirements, barring additional claims of discrimination or failure to reasonably accommodate a student's disability. *Id.*; *Alexander G.*, CIVIL ACTION No. 20-131, at 8. Therefore, I now conclude that the District provided the Student a Section 504 FAPE. To the extent that the recent case law requires a more in-depth analysis, the conclusions of the law supplement the earlier conclusions.

### **Compliance with Substantive Section 504 Standards**

Section 504 mandates that school districts provide students with disabilities a FAPE that is comparable to the educational access provided to nondisabled students. Under 34 C.F.R. § 104.33, this includes providing regular or special education and related aids and services designed to meet the individual needs of students with disabilities. Based on the entire record, I now find that the District fully complied with its substantive obligations by designing and implementing an IEP that provided appropriate services, supports, and accommodations tailored to the student's specific needs.

### **Section 504 FAPE**

The Student IEP was thoughtfully developed and appropriately implemented, ensuring the student's meaningful participation in educational activities. The implementation of the IEP provided reasonable accommodations that granted the Student access to the general education curriculum on equal footing with nondisabled peers, thereby fulfilling its FAPE obligation under Section 504, which requires that schools reasonably accommodate students

with disabilities to ensure their full participation in educational activities. (*Ridley Sch. Dist. v. M.R.*, 58 IDELR 271 (3d Cir. 2012); *H.D. v. Kennett Consol. Sch. Dist.*, 75 IDELR 94 (E.D. Pa. 2019). The District proactively implemented a range of reasonable accommodations, such appropriate accommodations, including specially designed instruction, a PBSP, related services, supplemental aids, and services outlined in the IEP, ensuring the student had meaningful access to educational benefits. The District also ensured equal access to nonacademic and extracurricular activities, such as adapted specials and modifying policies and procedures where necessary, in accordance with *Dear Colleague Letter*, 62 IDELR 185 (OCR 2013). The District maintained ongoing communication with staff and parents to ensure fidelity in implementing the student's accommodations. The District faithfully implemented all elements of the IEP, ensuring the student consistently received the services and accommodations necessary for success. Teachers and staff were adequately trained and informed about the Student's accommodations, needs, and circumstances, ensuring full implementation without delay or disruption.

The Student was placed alongside nondisabled peers to the maximum extent appropriate, in compliance with 34 C.F.R. § 104.34. The District carefully evaluated whether the student could participate in the general education setting with appropriate support, ensuring full compliance with LRE requirements under Section 504. The District conducted a series of comprehensive evaluations to determine the Student's eligibility and individual needs in accordance with 34 C.F.R. § 104.35.

The placement team, composed of qualified professionals, relied on objective data and student-specific assessments when making program and accommodation decisions. The District ensured that all placement and accommodation decisions were based on individualized needs, not administrative convenience, reflecting compliance with federal regulations.

Accordingly, I now find that the evidence overwhelmingly supports the conclusion that the District has fully complied with both the procedural and substantive requirements of Section 504.

### **Section 504 Discrimination**

Section 504 of the Rehabilitation Act follows the remedies available under Title VI of the Civil Rights Act of 1964, as established by 42 U.S.C. § 2000d-7(a)(2). This means Enforcement via Federal Agencies like the Department of Justice of the United States Department or with the United States Department of Education's Office for Civil Rights (OCR) or in direct original actions in federal court, which provide rights not found in administrative hearings like discovery. Accordingly, the Section 504 claims are dismissed without prejudice.

### **FINAL ORDER**

**AND NOW, this 7th day of March 2025,** upon consideration of the entire record and for the reasons set forth in the Conclusions of Law, the Parent's claims are Denied.

1. The Parent's IDEA and Section 504 FAPE claims are Denied.
2. The Parent's Section 504 and ADA discrimination claims are dismissed without prejudice.
3. All other claims and affirmative claims and defenses are exhausted and dismissed without prejudice.

### **SO ORDERED.**

Date 03.07.2025

*s/ Charles W. Jelley, Esq., LL.M.*  
Special Education Hearing Officer  
ODR FILE No. 29878-24-25