

*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.29362-23-24**

**Child's Name:**

S.H.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

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**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

July 29, 2024

## **INFORMATION AND PROCEDURAL HISTORY**

The Student<sup>1</sup> recently completed the [redacted] grade in the District. The Student is eligible for special education through the Individuals with Disabilities Education Act (IDEA) under the educational classifications of other health impairment (OHI), specific learning disability (SLD) (oral expression, basic reading, reading fluency, reading comprehension) and speech and language impairment.<sup>2</sup> In their complaint, the Parents contend that since the 2020-2021 school year, the Student was denied a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA) and corresponding regulations.<sup>3</sup> The Parent seeks compensatory education and funding for an array of independent evaluations. The District contends that some of the Parents' claims are outside the statute of limitations, no FAPE denial occurred, and relief is not due.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14)

<sup>3</sup> 29 U.S.C. § 794. The federal regulations implementing Section 504 are set forth in 34 C.F.R. §§ 104.1 – 104.61. 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15). Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213.

Following a due process hearing at which the parties presented evidence in support of their respective positions and review of the record in its entirety, the claims of the Parents are granted in part and denied in part.

## **ISSUES**

1) Did the District deny the Student a FAPE from the 2020-2021 school year through the 2023-2024 school year?

2) When did the Parents know or when should they have known of the District's alleged failure to meet the Student's needs?<sup>4</sup>

3) Was the District's April 2021 reevaluation of the Student appropriate?<sup>5</sup>

4) Was the District's December 2022 reevaluation of the Student appropriate?

5) If the District denied the Student a FAPE, what remedy is appropriate?

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<sup>4</sup> Because the Parents March 11, 2024, due process Complaint contained claims outside of the statute of limitations, knew or should have known (KOSHK) fact finding occurred.

<sup>5</sup> Added by agreement of counsel on 5/2/24 hearing record.

## **FINDINGS OF FACT**

1. The Student is currently [redacted] years old, enrolled in the [redacted] grade in a District [redacted] school and eligible for special education as a child with OHI, SLD and speech-language disabilities. Medical providers have diagnosed the Student with PTSD, ADHD, anxiety disorder, and depression. (J-22)
2. In June 2017, the Parents [redacted]. The Student has a [redacted]. Before [redacted], the Student witnessed numerous traumatic events [redacted] and identified with failure to thrive. The Student received exposure to [redacted] languages until [redacted]. (J-18, p.1; N.T. 70, 79-80)
3. [redacted]. (N.T. 78-79)
4. In July 2017, the Student received an adjustment disorder diagnosis. (J-3, p. 10)
5. A May 2018 psychoeducational evaluation determined the Student was eligible for special education as a child with an emotional disturbance (J-15, p. 9)
6. The Student transferred to the District in September of the 2019-2020 school year. From March 2020 to June 2020, the Student received virtual instruction during the COVID-19 pandemic. (J-15, p.9)

## **2020-2021 School Year [redacted] Grade**

7. During the 2020-2021 school year, the Student was enrolled in the [redacted] grade in the District and received virtual instruction because of the COVID-19 pandemic. (J-4, J-7)
  
8. In November 2, 2020, the IEP team met to develop educational programming. The IEP indicated the Student had limited [redacted] proficiency. During the meeting, the Parent expressed concerns about the Student's language, gross motor skills, and classroom friendships. (J-3, p.17)
  
9. The District agreed to conduct a speech screening, contact the PE teacher for concerns and address the issue of friendships during social skills instruction. (J-3, p. 17)
  
10. The November 2020 IEP offered goals to address self-advocacy, emotion identification, writing, reading sight words, decoding, fluency, and comprehension. (J-3, p. 22-28)
  
11. SDI included visuals to support emotion identification and coping strategies, preteaching, a visual schedule, clear expectations, thirty minutes of daily social skills instruction, sixty minutes of daily small group reading (decoding, sight words, fluency, and comprehension) instruction, thirty minutes of daily small group writing (grammar, encoding) instruction, grade level math probes. (J-3, p. 29-30)
  
12. The team determined the Student was ineligible for ESY. (J-3, p. 31)

13. The Parent signed the November 3, 2020, NOREP that recommended supplemental learning support but did not indicate agreement or disagreement with the programming. (J-4)

### **Speech Screening**

14. On November 11, 2020, a District speech-language pathologist (SLP) conducted a speech-language screening of the Student. (J-5)
15. The SLP used a word list of speech sounds to assess articulation skills. One articulation error was regarded as culturally appropriate. On the five subtests of the CELF-5 screener to assess receptive/expressive language, the Student received a score of eleven, indicative of average skills. The SLP chose the CELF-5 because it offered a broad picture of communication skills and was age-appropriate. (J-5, J-15, p. 14-17; N.T. 630-631)
16. The SLP completed a self-screening checklist to assess the Student's pragmatic language. No concerns were noted. (N.T. 632)
17. The screening concluded the Student's articulation skills and receptive/expressive language skills were within functional limits. The SLP suggested classroom strategies but additional speech/language assessment was not warranted at that time. (J-5; N.T. 145-148)
18. On March 5, 2021, the Parents consented to a reevaluation of the Student. (J-6)
19. On March 19, 2021, the District communicated its RR testing determinations to the Parent that Student's listening comprehension

and oral expression scores were low, but some delays were second language-related. The Parent replies indicated a belief that the Student had a disability with language in general, beyond the second language challenges. (P-17, p. 1)

### **April 2021 RR**

20. On April 13, 2021, the District issued its reevaluation (RR) of the Student. The RR included aptitude and achievement assessments, measures of social-emotional functioning, ELL achievement testing, OT assessment, parental and educator input, and Student observation. (J-7)
  
21. On the WISC V, the Student demonstrated average cognitive ability, earning a standard score of 108, in the 70<sup>th</sup> percentile. The Student demonstrated very high fluid reasoning, high average visual-spatial and processing speed, average working memory, and low average verbal comprehension skills. On the WISC-V, the Student demonstrated a 42-point difference between verbal and fluid reasoning (J-7; N.T. 223-224)
  
22. On WIAT 3 testing to assess achievement, the Student demonstrated average math, below-average writing, and low-range reading and oral language achievement skills. The Student's writing achievement was on a third-fourth grade level, and reading on a first-grade level. (J-7, J-15, p.9; N.T. 223-224)
  
23. On the BASC 3, administered in 2020, a teacher noted the Student demonstrated a high level of anxiety. The anxiety was determined to not have a significant adverse effect on academic

progress. The Parent ratings were clinically significant for hyperactivity, anxiety, depression, attention problems, atypicality, and withdrawal. The RR noted the Student's diagnoses of anxiety and PTSD. (J-7, J-8, p.10)

24. On the BRIEF 2 administered in 2020 to assess executive processing, teacher ratings were not significant for executive functioning. The Parent rating was significant for problems with self-monitoring, shifting attention and emotional control. (J-7)
25. The RR concluded that although the Student met the criteria for a specific learning disability (SLD) in listening comprehension on the portion of the test to answer questions about sentences heard to demonstrate understanding, performance was in the average range. The team determined the Student demonstrated delays in academic vocabulary because of ELL status, which was consistent with ESL testing. (J-7, p. 16)
26. The RR acknowledged that although the Student technically met the criteria for an SLD in oral expression, delays in speaking were more significant than would be attributable to ESL status. Although the team acknowledged ineligibility for a language impairment, the Student met the criteria for a SLD in oral expression. (J-7, p. 16-17)
27. The RR concluded that the Student received sufficient years of reading instruction, and delays were not the primary result of limited English proficiency because of language immersion in school and at home. (J-7, p. 14)

28. The April 2021 RR concluded that the Student needed to improve decoding, fluency, comprehension, vocabulary, encoding, grammar, sight word reading, and social skills. (J-7)
29. The April 2021 RR concluded the Student was eligible for special education but changed the primary disability from emotional disturbance to OHI (anxiety, PTSD) and added a secondary disability of SLD with needs in oral expression, listening comprehension, basic reading, fluency, and comprehension. (J-7, J-15, p.9)

### **April 2021 IEP**

30. On April 13, 2021, the IEP team met to develop educational programming. The special consideration section indicated the Student had limited English proficiency. (J-8)
31. The April 2021 IEP offered reading goals for sight words, decoding, fluency, and comprehension. (J-8, p. 23-25)
32. Offered SDI included visuals to support emotion identification and coping strategies, preteaching, review and content enrichment, a visual schedule, clear expectations, fifteen minutes of daily social skills instruction, sixty minutes of daily small group reading (decoding, sight words, fluency, and comprehension) instruction, every other week spelling assessment, fifteen minutes of daily small group writing (grammar, encoding) instruction, at least 100 minutes daily of small group ELA instruction. (J-8, p. 25-26)
33. The team determined the Student was ineligible for ESY. (J-8, p.27)

34. The IEP offered the Student a placement of supplemental learning support with 74% time in the regular classroom. (J-8, p. 28-29)
35. On April 15, 2021, the Parent emailed the District and expressed concern that the Student had a language disability. The District replied that the testing results were reviewed with the speech therapist who screened the Student, and if concerns were still present in the [redacted] grade, the Parent could request an updated speech screening. (P-17, p.10)
36. On April 22, 2021, the Parent expressed concern that the Student was getting overwhelmed, anxious and angry after school because of tests and had difficulty navigating socially. The Parent requested extra time and brain breaks. (J-10)

### **2021-2022 School Year – [redacted] Grade**

37. During the 2021-2022 school year, the Student was enrolled in the [redacted] grade in the District.
38. On September 21, 2021, the Student's IEP was revised to reflect the implementation of virtual instruction. Since instruction was slated for the home, access to a quiet area, behavioral praise, visuals, strategic seating, test instructions read aloud, social skills in the learning support room, and small group instruction in learning support room were removed from the IEP. (J-12)

39. ELA instruction through the virtual academy was to occur on the [redacted] grade level. Updated SDI included tools (video recordings, read-aloud option, print option), case manager check-in with the Parent, administration of monitoring probes. (J-12)
40. In February 2022, the Student transitioned from virtual to in person instruction in the District. (J-22, p.9)
41. After in-person instruction resumed, the Student received small group ELA instruction in the learning support room through a research-based intensive, explicit, systematic intervention for students substantially below grade level expectations for literacy. The chosen program integrated instruction across foundational skills, writing, vocabulary, fluency, grammar, comprehension, and spoken English. (P-15; N.T. 582-585)

### **Goal Progress**

42. From November 2021 to March 2022, the Student made progress toward the sight word goal. Reportedly one more trial above 90% was needed for mastery. (J-8, J-37)
43. From November 2021 to March 2022, the Student progressed toward the reading decoding goal. The Student's achievement based on March probes ranged from 80% to 100% accuracy. The Student needed three consecutive trials of 90% to master the goal. (J-8, J-37)
44. Between November 2021 and March 2022, the Student made limited progress toward the fluency goal. In November, probe data indicated the Student's ability to read 26 wcpm, 33 wcpm and 22

wcpm at a second-grade level. By March, the Student's ability ranged from 40 wcpm to 56 wcpm. (J-8, J-37)

45. Between November 2021 and March 2022, the Student made limited progress toward the reading comprehension goal at a 2.5 grade level. November probe data reported the Student's scores as 70%, 80% and 80%. By March, probe data reported the Student's scores as 100%, 100% and 20%. The baseline was 80%. (J-8, J-37)

### **March 2022-IEP Revision**

46. On March 30, 2022, the IEP team will develop the Student's programming. The IEP noted the Student had limited English proficiency. (J-15)
  
47. The March 2022 IEP offered reading goals for sight words, decoding/encoding, fluency, and comprehension. SDI included quiet or headphones, visuals for emotional/coping support, extended time, twice-a-week social skills instruction for thirty minutes, ninety minutes of daily small group ELA instruction, writing support, twice-a-day check-ins, anytime pass and fifteen minutes of individual weekly emotional regulation instruction. The team determined the Student was not eligible for ESY. (J-15)
  
48. The IEP recommended the Student receive supplemental learning support with 75% of the day in the regular classroom. On April 19, 2022, the Parent, through a NOREP, approved the recommendation. (J-15, J-16)

## **May 2022- Speech-Language Screening**

49. In May 2022, after receiving concerns from the Parent regarding the Student's listening comprehension and grammar skills, the District conducted a speech screening. During the screening, the Student was unable to answer inference questions after they were repeated. Conversational speech included inconsistent use of regular past tense endings and difficulty with irregular past tense verbs. (J-21, p. 21)
50. After the speech screening, options for a District speech evaluation were discussed with the Parent. The Parents chose to pursue a private speech evaluation. (J-21, p. 21)

## **August 2022- Private Speech Evaluation**

51. On August 4, 2022, a private SLP conducted a speech-language evaluation of the Student. The evaluation concluded the Student presented with mild articulation disorder and severe receptive and expressive language disorder with a history of [redacted] (J-21)
52. The evaluation recommended individual speech-language therapy at least twice weekly to address comprehension and expression of language. Additional reading support was also recommended. (J-21)

## **2022-2023 School Year- [redacted] Grade**

53. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District. (J-21)
54. In September and October 2022, the team revised the Student's IEP and added supports to address stress, anxiety management and

emotional regulation. The supports included an anytime pass for Student use for processing and de-escalation in a private area, mid-day check-ins, non-verbal cues to signal the need for assistance, and six weeks of additional social skills intervention. (J-15, p. 8, J-22, p. 9)

55. On October 11, 2022, the Parents consented to a reevaluation of the Student. (J-15, p. 8, J-19)

### **December 2022 RR**

56. The December RR contained assessments of the Student's occupational therapy (OT) and speech functioning as well as a review of previous testing conducted. (J-21, p. 20; N.T. 179-180)
57. For the speech and language evaluation, the SLP administered all subtests of the Comprehensive Assessment of Spoken Language – 2<sup>nd</sup> edition (CASL-2) and conducted an informal classroom observation. The CASL-2 was selected because it provided a better assessment of the family's vocabulary, grammar, usage, listening comprehension, and concerns. (J-19, J-21, p. 23; N.T. 165, 186-187, 258)
58. The SLP who completed the testing has 23 years of experience and training with [redacted] students. J-19, J-21, p. 23; N.T. 165, 186-187, 258)
59. The evaluation concluded the Student presented with a receptive and expressive language impairment and qualified for itinerant support to improve those skills. (J-19, J-21)

60. The Student's score on the pragmatic language subtest of the CASL-2 was not suggestive of interventional need. The SLP determined the Student's pragmatic/social language skills were addressed through social skills instruction but recommended small group instruction, visual and verbal cues, guided practice, therapist models and practice to build expressive and receptive skills. (J-19, J-21, p. 23; N.T. 165, 186-187, 258)
61. Although the private evaluation recommended individual speech services, the SLP recommended group sessions to address social language skills with peers. (N.T. 186)
62. For completion of the OT evaluation, the evaluator conducted an observation, a teacher interview, a functional skills assessment, and administration of the wide range assessment of visual motor abilities (WRAVMA) and sensory processing measure-2 (SPM-2). The evaluation concluded the Student demonstrated average fine motor skills above-average visual-motor and visual-spatial skills. The sensory processing questionnaires showed no sensory processing deficits other than a "probable concern" regarding social participation. (J-21, p. 23)
63. The RR concluded the Student had a primary disability of other health impairment (OHI), a secondary disability of specific learning disability (SLD), and now a tertiary disability of Speech or Language impairment. (J-21, p. 27)
64. The RR concluded the Student had needs in reading (decoding, fluency, comprehension, encoding), listening comprehension, grammar/vocabulary, social skills, expressive and receptive language. (J-21)

## **December 2022 IEP**

65. On December 14, 2022, the IEP team met to develop programming. (J-22)
  
66. The December IEP contained reading goals that addressed fluency, decoding/encoding, comprehension, and sight words. The IEP also contained five speech/language goals to address expressive-receptive language (vocabulary, multiple-word meaning, grammar/syntax, inferential questions, and non-literal language). (J-22, J-39; N.T. 172-173)
  
67. The December IEP offered sixty minutes of weekly social skills instruction, ninety minutes of daily small group instruction in ELA (writing, reading fluency, comprehension, decoding), writing support, thirty minutes of small group reading intervention, and check-ins. (J-22, p. 34-36)
  
68. Related services included 240 minutes (six hours) of monthly group speech therapy. (J-22)
  
69. The team recommended the Student receive supplemental autistic and speech-language support with 69% of the day in the regular classroom. (J-22, p. 39-40)
  
70. On December 14, 2022, through a NOREP, the Parent approved implementation of the December IEP offering supplemental autistic and speech language support and ESY. (J-22, p. 39-40; J-23)

71. The SLP provided services twice weekly for thirty minutes in a small group with three other students. Peer conversation occurred, and no problematic interactions were observed. (N.T. 168, 180, 191-192)
72. On March 9, 2023, the team revised the Student's IEP and added twenty minutes of weekly reading fluency intervention. (J-22, p. 36)
73. In April and May 2023, the Parent reported that in the past, a peer walking in the hallway showed the private areas to the Student and was moaning. The Parent also indicated that recently, a peer touched the Student's head in an unwanted manner. The special education director responded to the concern, indicated an investigation had begun, and offered to discuss the issues by phone or in person. (P-17, p. 64-65)
74. Toward the end of [redacted] grade, the Student had a verbal dispute with another student while on a bus for a school field trip. Reportedly, the Student called a peer a name. The peer told the Student to stop when that did not occur; the peer told the Student she was going to kick the Student's private parts. Teachers reported the incident, the assistant principal addressed the situation with the peer, and a meeting occurred with the Parent, who stated the Student would not return to school. After the District agreed to provide an aide for the Student's last day of school, the Student returned. (P-17, p. 67; N.T. 459-64, 559-560)
75. On the last day of school, the Student was confronted by staff who thought the words "kill" "kill" were used. The Student indicated

the words used were “chill,” chill” and became upset after the encounter. (P-17, p. 66)

### **[redacted] Grade Academic Goal Progress-2022-2023**

76. From January to June 2023, the Student progressed toward the expressive vocabulary, grammar/syntax and inferential questions speech goals. (J-39)
77. From January to June 2023, the Student made inconsistent progress toward the multiple-meaning and non-literal speech goals. (J-39)
78. The student surpassed the sight words goal during the 2022-2023 school year. (J-31, p. 12, J-39)
79. During the 2022-2023 school year, the Student made progress toward the reading comprehension goal with mastery of third, fourth and fifth-grade level probes. On sixth-grade probes, the Student received scores of 30%, 70%, 40% and 100%. (J-31, p.11, J-39)
80. During the 2022-2023 school year, the Student did not master the fluency goal. (J-39)
81. The decoding goal expected the Student to progress from a 74% accuracy on vowel-consonant/consonant-vowel (VC/CV) closed and silent-e syllables to decode 2-4 phoneme words with 80% accuracy on two out of three monthly trials. By June 2023, the Student was able to

decode VC/CV with silent-e 40% on trial one and 60% on trial two. (J-31, J-39, p. 3)

82. During the 2022-2023 school year, the STAR assessment indicated the Student's ELA achievement from fall to spring declined from the 2<sup>nd</sup> to the 1<sup>st</sup> percentile.<sup>6</sup> (J-31, p. 14)

83. Although the Student was offered ESY, the Parent declined. The District also offered a summer camp program to the Student. The family declined. (J-31, p. 16, J-39, p. 4; N.T. 565)

84. In July 2023, the Parent filed complaints with the PA Department of Education, Bureau of Special Education and Pennsylvania Human Relations Commission (PHRC).<sup>7</sup> (P-7, J-30)

### **August 2023-CHOP Evaluation**

85. On August 7, 2023, the Student received a follow up private speech-language evaluation. The SLP noted the Student presented with a significant receptive and expressive language impairment mild impairment of articulation skills.<sup>8</sup> (J-25)

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<sup>6</sup> STAR are benchmark tests designed to provide data about students' strengths and needs. A percentile score below 10 is indicative of urgent interventional needs. A percentile ranking of 40 or above is regarded as above benchmark. (J-31, p. 14-15)

<sup>7</sup> BSE issued its complaint investigation report on September 18, 2023. No corrective action was ordered. The findings from the PHRC complaint were not introduced into evidence. (J-30)

<sup>8</sup> On October 10, 2023, the Parents signed a release for the District to speak with the outside speech evaluator. (J-22, p.)

86. On August 10, 2023, the District acknowledged receipt of the Parent's complaint to BSE. (J-26)

87. The Parent did not sign the August 10, 2023, NOREP proposing continued implementation of the December 2022 IEP. (J-27)

### **2023-2024 School Year – [redacted]Grade**

88. During the 2023-2024 school year, the Student is enrolled in the [redacted] grade in the District. (J-31; N.T. 500)

89. During the 2023-2024 school year, the IEP team met in September and November. At the November meeting, the Parent indicated the Student struggled with sadness and exhaustion because of work demands. The District requested and received permission to speak with Student's private therapist. (J-22, p. 8)

90. The District implemented the December 2022 with March 2023 revision. (J-22; N.T. 282-285)

91. On October 4, 2023, the [redacted] grade counselor advised the Parent of meeting with the Student because of verbalizing feelings of depression. (P-17, p. 83; N.T. 248)

92. On October 18, 2023, the Student's social skills teacher reported to the Parent that the Student advised of holding in their feelings. (P-17, p. 88-89; N.T. 251)

93. On November 2, 2023, the Parent reported a peer made a racist gesture to the Student and forced touching of a [redacted]. (P-17, p. 92-94; N.T. 300)

### **December 2023 -IEP**

94. On December 12, 2023, the IEP team met to develop educational programming. (J-31, p. 8)
95. The December 2023 IEP contained educator input that the Student was an active participant but demonstrated barriers, included comprehension, focus and written expression. (J-31, p.17)
96. The December 2023 IEP offered goals to address reading fluency and comprehension. The fluency baseline was set on a third-grade grade, and the comprehension baseline was set on a sixth-grade level. The IEP no longer offered a decoding goal. (J-31, p. 12, 27-28)
97. The December 2023 IEP offered speech goals to address expressive-receptive language, grammar-syntax, inferential questions and nonliteral language . (J-31, p. 29-31)
98. The December 2023 IEP offered SDI that included visuals to identify emotions and coping, sixty minutes of weekly social skills instruction, ninety minutes of small group ELA (writing, fluency, comprehension, decoding) instruction, writing support, three daily check-ins, forty-five minutes of weekly group reading fluency instruction, forty-five minutes of weekly group decoding intervention, twenty minutes of weekly sight word practice, and an anytime pass for self-regulation needs. (J-31, p. 33-34)

99. The December 2023 IEP offered related services of 240 minutes a month of group speech-language services. (J-31, p. 36)
100. The team determined that for the summer of 2024, the Student was eligible for ESY. (J-31, p. 16, 37)
101. The December 2023 IEP recommended that the student receive supplemental learning and speech-language support, with 67% of the day in the regular classroom. (J-31, p. 39-40)
102. On December 20, 2023, the Parent reported a negative peer interaction to the school. (P-17, p. 97)
103. On December 23, 2023, the Parent approved implementation of the recommended programming but noted the IEP did not meet all the Student's needs. (J-33)
104. The Student received special education in the learning support classroom consisting of twelve students, the teacher, and class support para-educator. The research-based literacy intervention remained the same as in previous years. (P-15; N.T. 311-312)
105. Through the IEP, the Student received speech/language services twice a week for thirty minutes. A new SLP was assigned to the Student because of transition to [redacted] grade. (N.T. 168, 195)

106. On December 5, 2023, the Student admitted to feeling “dreadful”, but said it was a joke. When asked about taking break, the reply was “can I jump out a window”. A peer escorted the Student the guidance office. (P-17, p. 97, J-35; N.T. 301-302)

## **2023-2024 Goal Progress- [redacted] Grade**

107. By December of the 2023-2024 school year, the Student’s reading fluency regressed from 59 wcpm to 57 wcpm. (J-31, p. 10)

108. By December of the 2023-2024 school year, the Student made progress toward the reading comprehension goal. (J-31)

109. By December 2023, the Student met the speech expressive vocabulary goal, did not progress toward the multiple meanings goal and grammar syntax goals, and made inconsistent progress toward the inferential questions goal. The non-literal questions goal was newly introduced.

110. During the [redacted] grade, the Student experienced peer conflict. Incidents included ridicule and unwanted touching of the [redacted], placing a rotten item in the Student’s backpack, hitting the Student in the head with papers, and being tripped with others. (P-17, p. 24, 36, 46, 61, 99-100; N.T. 99-105)

111. During the [redacted] grade, the Student experienced racial insensitivity from peers. Incidents included racial slurs and peer gestures of [redacted]. (P-17, p. 101, 123-124, 127-129; N.T. 100-103, 592-598, 600-610)

112. After notification of the incidents, the District communicated with the Parent and, in some instances, imposed consequences upon the offender but ultimately determined the situations did not constitute “bullying”. (P-2, J-30; N.T. 136-137, 624)
113. On March 11, 2024, the Parents filed a due process complaint.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **GENERAL LEGAL PRINCIPLES**

#### **Witness Credibility**

Hearing officers, as factfinders, are charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). Testifying witnesses included the Parent, two Speech-Language Pathologists (SLP), the school psychologist, current teachers, the case manager, the Director of Special Education, the Assistant Principal, Student Services, and the [redacted] school Principal.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties’ closing statements. The hearing officer found that each of the witnesses testified to

the best of their recollection and perspective about the actions taken or not taken by the team in evaluating, instructing, and designing the Student's program. Overall, I find that the witnesses were credible and reliable and their testimony was consistent with the documentary evidence. Any inconsistencies were attributable to lapses in memory instead of an intention to deceive.

## **Burden of Proof**

In *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 Court first noted that the term "burden of proof" is commonly held to encompass both the burden of persuasion (i.e., which party loses if the evidence is closely balanced) and the burden of production (i.e., the party responsible for going forward at different points in the proceeding). In *Schaffer*, only the burden of persuasion was at issue. As the party filing the complaint, the Parent bears the burden of persuasion. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipose." *Schaffer, supra*, 546 U.S. at 58.

## **GENERAL IDEA PRINCIPLES**

The IDEA requires each of the states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court held that the FAPE requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed. LEAs meet the obligation of providing FAPE to eligible students through

development and implementation of an IEP which is "reasonably calculated" to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.' " *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted).

'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning, with appropriately ambitious programming in light of his or her individual needs, not simply de minimis or minimal education progress. *Andrew F. ex rel. Joseph F. v. Douglas County School District*, 580 U.S. , 19 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017)

Individualization is clearly the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012).

Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); see also *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). "The IEP must aim to enable the child to make progress." *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018)(emphasis in original). IEP development, of course, must follow and be based on an evaluation as monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

## **Evaluation Requirements**

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to "determine the educational needs of such child[.]"

20 U.S.C. §1414(a)(1)(C)(i). Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are appropriately examined. 20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child "in all areas related to the suspected disability[.]" 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3).

When parents disagree with an LEA's educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Parents are entitled to an IEE funded by the LEA if its evaluation does not meet IDEA criteria. Here, the Parents obtained private evaluations and thereafter sought reimbursement for those costs. However, the analysis is the same in this context.

## **GENERAL IDEA PRINCIPLES: PROCEDURAL FAPE**

From a procedural standpoint, the family plays "a significant role in the IEP process." *Schaffer, supra*, at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E).; 34 C.F.R. § 300.513(a)(2).

## **GENERAL SECTION 504 AND ADA PRINCIPLES**

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

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

### **The IDEA Statute of Limitations**

The IDEA ensures that parties have the opportunity to “present a complaint [] with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free

appropriate public education to [a] child.” 20 U.S.C. § 1415(b)(6)(A). However, a party “must request an impartial due process hearing on their due process complaint within two years of the date the parent or public agency knew or should have known about the alleged action which forms the basis of the complaint.” 20 U.S.C. § 1415(f)(3)(C); see also 34 C.F.R. § 300.511(e). In this context, the precise language of the IDEA (quoted above at 20 U.S.C. § 1415(f)(3)(C)) references the time period following the “action” on which a due process complaint is based.

“The IDEA statute of limitations is triggered when the parent knew or should have known about the action that forms the basis of the complaint.” *J.L. v. Ambridge Area School District*, 2008 U.S. Dist. LEXIS 54904, \* 28-29, 2008 WL 2798306 (W.D. Pa. July 18, 2008). In examining such a question, the Third Circuit in *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 614 (3d Cir. 2015), instructs that the focus is on the accrual of a cause of action “once the plaintiff did discover or a reasonably diligent plaintiff would have discovered the facts constituting the violation.” 802 F.3d at 614.

## **The Parent’s Claims**

As a [redacted] child, before attending school in the District, the Student spent time in [redacted] and experienced neglect and abuse. Since [redacted], the Parents have attempted to address this Student’s array of documented academic, behavioral and mental health needs that present through reading, speech and social skills challenges.

The first issue to resolve is when the Parent knew or should have known (KOSHK) of the alleged failures of the District to meet this Student’s special educational needs. The Parents contend this did not occur until

August 2022, when they received a privately obtained speech-language evaluation of the Student. As a result, they maintain that adjudication of their claims reaching back to 2020 is appropriate. The District counters that the Parents were armed with all relevant facts throughout the time period of Student's enrollment and that claims before March 2022 are time-barred.<sup>9</sup>

The record does not support a conclusion that the private speech evaluation of August 2022 solely formed the basis of the Parents' knowledge in this case. Since Student's enrollment early in the 2020-2021 school year and after the speech screening, they had concerns that language and speech difficulties existed. The Parent requested assessments of language and expressed continued concern after they occurred. The law does not demand that a parent be able to point to a specific disability category to possess necessary knowledge about the child's needs and exercise requisite parental vigilance. Here, the evidence does not support a conclusion that the Parents lacked knowledge of the District's special education programming for Student such that the scope of their denial of FAPE claims may be expanded beyond the two years immediately preceding their Complaint. Accordingly, the discussion below relates solely to the period of March 2022 through the 2023-2024 school year.

The Parent contends that Student was denied a FAPE for reasons that included the December 2022 evaluation was inadequate, SDI remained unchanged over the years, insufficient programming was delivered to address the Student's speech and social-emotional needs, and despite interventions, reading abilities remained years behind. Multiple school years were encompassed by the original due process complaint; however, the above KOSHK determination has narrowed the scope of the Parents' claims

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<sup>9</sup>The Parent filed the due process complaint on March 11, 2024.

from March 2022 through the 2023-2024 school year. Based on the totality of this hearing record, the Parents have failed to preponderantly establish that the District denied the Student a FAPE concerning most but not all of the claims at issue.

Overall, the Student's IEPs were drafted based on known information about Student's strengths and needs and implemented as approved by the Parent. Student has made gradual progress, which must be gauged within the context of Student's unique challenges. That is not to say that the programming provided was ideal, but the above standards do not contemplate perfection.

### **2021-2022 - [redacted]Grade**

During the 2021-2022 school year, the Student was enrolled in the [redacted] grade in the District and received virtual programming until February 2022. Upon the return to in-person instruction, the team developed an IEP in March 2022, which, like its predecessor, offered measurable goals with baselines derived from collected data. The Parent contends that implemented reading and social skills programming was inadequate and necessary speech services were denied. Overall, the academic goals were responsive to the Student's sight words, decoding, fluency and comprehension needs, which were identified as deficits through an RR from the preceding year.

Through the revised March IEP, the Student received ninety minutes of daily small group ELA instruction in the learning support room through a research-based, intensive, explicit, systematic intervention for students substantially below grade-level literacy expectations. The chosen program

integrated instruction across foundational skills, writing, vocabulary, fluency, grammar, comprehension, and spoken English, all needs identified by the preceding evaluation. Additional specially designed instruction was implemented to address the Student's social-emotional needs through social skills instruction and other supports. Overall, the implemented programming was individualized, responsive to the Student's known needs and calculated to afford the Student with meaningful educational benefit. Moreover, the Student made incremental, albeit not rapid, progress toward the reading sight words, decoding comprehension and fluency goals. This Student had undeniable reading needs, as borne out through the District's evaluation, standardized testing and monitoring data. Although the academic levels were in the second-grade range, this was concerning, but at this point, it was not detrimental, and the implemented programming afforded the Student a FAPE.

The foundation for the speech claim emanates from the District's screening completed in 2020, which determined the Student did not present with deficiencies that required a more comprehensive assessment. Based on this evidence, speech services were not warranted for this Student during the 2021-2022 school year.

### **2022-2023 – [redacted] grade**

At the end of the summer, before the Student started the [redacted] grade, the Parent obtained a private speech evaluation of the Student, which was provided to the District for consideration. After reviewing the report, the District conducted additional speech testing, resulting in a December RR. The Parent claims regarding the Student's [redacted] grade education

contend that this RR was inadequate, social-emotional programming needs were unmet, and overall special education remained inadequate.

Specifically, the Parent contends the District's December 2022 RR was inappropriate because it failed to include updated assessments, and the District-administered speech and OT testing was inadequate. The Parent presented no persuasive evidence to support this argument. The December RR answered the questions it was tasked with answering and confirmed the conclusions reached by the private evaluator. As required under the IDEA, the District thoroughly considered the private evaluation and used this information to focus the assessments it administered, resulting in individual, responsive speech goals designed to address this Student's expressive-receptive language needs. In addition to the appropriate and comprehensive speech assessment, the District also conducted an occupational therapy (OT) evaluation to determine whether fine motor skills and sensory processing issues needed to be addressed. The OT testing determined that the Student had average fine motor skills and above-average visual-motor and visual-spatial skills. The speech evaluation and OT assessments were incorporated into a December 2022 reevaluation report (RR) and included a records review, Parent and teacher input and IEP goal progress. Overall, the December 2022 RR was IDEA compliant as it relied on a variety of assessment tools and strategies to obtain relevant information about the Student and reaffirmed the need for special education services in the categories of other health impairment, specific learning disability and now speech or language impairment as a tertiary disability category.

The updated IEP that emanated from the December RR was also appropriate. The IEP contained reading goals that addressed needs in fluency, decoding/encoding, comprehension, and sight words. Newly added speech/language goals were fully responsive to the Student's expressive-

receptive language (word meaning, grammar/syntax, inferential questions, and non-literal language needs). The Parent alleges that the time between the August private evaluation and the District's offer of December speech IEP goals resulted in a FAPE denial. I disagree. The information gleaned from the private evaluation and the District testing was productive and used to offer individualized and targeted services to address the Student's identified weaknesses. The Parent has presented no preponderant evidence that the three-month interval between the private evaluation and development of programming denied the Student a FAPE.

Next, the Parent asserts that the Student failed to make meaningful educational progress during the 2022-2023 school year as a [redacted] grader. Admittedly, the Student's progress was far from meteoric, but the evidence has established that it occurred. By the end of the school year, the Student surpassed the sight word goal with those skills reportedly at grade level. Although the Student did not master the comprehension and fluency goals, documented progress occurred. Notably, the Student's reading comprehension skills progressed from the third to the fifth-grade level, ending very close to mastery. Similar progress did not occur with the Student's fluency skills; however, additional weekly intervention was introduced to address this need. Interpretation of the Student's progress toward the decoding goal was inexplicably complicated, and the goal was removed from subsequent IEPs. The Parent contends the removal was done without attainment of mastery. However, considering the positive reading progress the Student experienced in other domains, I conclude no FAPE denial occurred. Based on the totality of evidence, the language arts and speech programming were calculated to afford this Student with meaningful benefit. I determine that the Student's social skills programming was flawed,

as the IEP lacked necessary goals in this area. A more detailed analysis follows.

## **2023-2024- [redacted] Grade**

During the 2023-2024 school year, the Student attended the [redacted] grade and continued to receive daily special education programming. However, the Student's reading progress was mixed. By December of the 2023-2024 school year, the Student's reading fluency remained stagnant at a third-grade level, but comprehension progressed to a sixth-grade level. However, when progress with reading fluency continued to lag, in December 2023, the District appropriately increased the intensity of the fluency intervention from twenty to forty-five minutes a week.

The Parent points to the Student's Lexile score to support the argument that insufficient reading progress was made during the 2023-2024 school year. However, a better gauge of progress are the multiple data points collected during the school year through curriculum based probes that truly assessed classroom and academic functioning. That data was not wholly inconsistent with the Parent's assertions. Some of the Student's reading skills are below grade level; however, that is not the sole metric to determine whether a FAPE occurred. Annual goals in IEPs are a projection, not a guarantee, and the appropriateness of an IEP cannot be judged solely by evaluating a child's progress or lack of progress.<sup>10</sup> Instead, "a court should determine the appropriateness of an IEP as of the time it was made and should use evidence acquired subsequently to create an IEP only to

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<sup>10</sup> *Colonial Sch. Dist. v. G.K. by & through A.K.*, No. 17-3377, 2018 WL 2010915 (E.D. Pa. Apr. 30, 2018), *aff'd*, 763 F. App'x 192 (3d Cir. 2019).

evaluate the reasonableness of the school district's decisions at the time they were made.<sup>11</sup>

Despite the inconsistent reading progress, the legal standard is whether the Student's programming was calculated to afford meaningful education benefit, not whether it was designed to deliver a guaranteed result. As in the previous school year, the IEPs in place during the 2023-2024 school year had measurable goals developed from reliable assessment data. The Student's progress was tracked and reported to the Parent, and goals were updated as needed. The stalled and halted fluency progress after years of intervention is troubling. However, the academic educational programming for the years at issue met the requisite legal standard.

Finally, the Parent asserts that the Student was the victim of frequent bullying and harassment unaddressed by the District. Specifically, the Parent contends that the lack of appropriate services impacted academic progress and inadequate social-emotional functioning made the Student a target of bullying. The Parent did not present preponderant evidence to support this claim. Cruelty to others is indefensible. Bullying can be an IDEA issue when a child's victimization hinders the ability to obtain a FAPE. *See, e.g. Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194 (3d Cir. 2004).<sup>12</sup> *Shore* stands for the proposition that a child's "legitimate and real fear" of an educational placement caused by bullying can render that placement inappropriate. That case also provides an example of evidence used to

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<sup>11</sup> *D.S.*, 602 F.3d at 564 (citing *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 762 (3d Cir. 1995)).

<sup>12</sup> Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013), (bullying includes verbal or physical aggression based on sex, natural origin, or disability).

establish a legitimate and genuine fear. Documentation of persistent abuse, psychological diagnoses that are directly attributable to that abuse, and expert testimony directly linking the child's mental state to the provision of FAPE are the hallmarks of such claims.

On the other hand, disability-based harassment under Section 504 and Title II of the ADA includes acts that deny a qualified person with a disability equal access to the same benefits available to all others. The Parent introduced no persuasive evidence attributing the school based incidents to the Student's disability status, of diagnoses directly attributable to the negative events, or that a denial of equal access occurred. Furthermore, when advised of incidents, the District gathered information, responded to the Parent, offered to meet and, in some instances, delivered consequences to the offender.

Finally, the Parent alleges the Student's social-emotional needs were inadequately addressed. The Parent has preponderantly established a partial FAPE denial on those grounds. Although the Student's mental health, anxiety and emotional regulation needs were acknowledged, and attempts were made to increase the Student's comfort and adaptability to the school setting, the efforts were simply not aggressive enough. The Student's social-emotional needs were ostensibly addressed through specially designed instruction. However, during the years at issue, no social-emotional goals were developed, no data was collected, and progress monitoring did not occur. As a result, the efficacy of the decided-upon interventions could not be adequately monitored and revised when needed. However, programming did occur and provided some benefit. The anti-social peer interactions, particularly the racial slurs, experienced by the Student were undoubtedly disturbing and disruptive. Moreover, the Student's comments indicative of a

struggle with mental health were also concerning. Although coping strategies were offered, IEP goals were also needed.

Unfortunately, the modern educational environment can reflect the same bigotry and negativity pervasive outside the school walls. However, this should not be thrust upon any child. Although, I have determined that the events experienced by the Student were not bullying. The Student's April 2021 RR recognized the need for social skills improvement. Although that programming occurred through specially designed instruction in each subsequent IEP, this Student has demonstrated emotional regulation needs that manifested through disturbing comments and coping weaknesses that need bolstered in preparation for a successful [redacted] school experience. I find that more defined social skills programming implemented through IEP goals, particularly during [redacted] school, was needed. Based on the evidence of this hearing record, the absence of goals in social skills, coping, self-advocacy and/or resiliency denied the Student a FAPE. Compensatory education is the appropriate remedy for this matter. Before social-emotional IEP goals can be developed, a more robust understanding of the Student's cognitive and emotional profile and functioning must be achieved. Therefore, the District will also be ordered to fund a neuropsychological evaluation of the Student. The IEP team will also be ordered to convene to discuss revisions to the Student's IEP. Those revisions should include consideration of school-based mental health and/or individual counseling-related services for the Student and goals responsive to social-emotional needs.

## **Section 504/Discrimination<sup>13</sup>**

In addition to the FAPE provisions of Section 504, its provisions also bar a school district from discriminating against a student on the basis of disability. (34 C.F.R. §104.4). A student with a disability who is otherwise qualified to participate in a school program and was denied the benefits of the program or otherwise discriminated against has been discriminated against in violation of Section 504 protections. (34 C.F.R. §104.4; *S.H. v. Lower Merion School District*, 729 F. 3d 248 (3d Cir. 2013) Intentional discrimination under both Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA) requires a showing of deliberate indifference, which may be met only by establishing "both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge." *S.H.* However, "deliberate choice, rather than negligence or bureaucratic inaction," is necessary to support such a claim. *Id.* at 263. Based on the totality of this hearing record, the Parent has not met the burden of proof that the District intentionally discriminated against the Student.

## **Remedies**

It is well settled that compensatory education is an appropriate remedy when a LEA knows, or should know, that a child's educational program is not appropriate, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Such an award compensates the child for the period of deprivation of special education services, excluding the time reasonably required for the LEA to correct the deficiency. *Id.* In addition to this "hour for hour" approach, some courts have

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<sup>13</sup> As outlined above, the District failed to propose appropriate social skills/coping goals. Those findings and conclusions are adopted here as they relate to the provision of FAPE under the terms of Section 504/Chapter 15.

endorsed an approach that awards the “amount of compensatory education reasonably calculated to bring [a student] to the position that [he or she] would have occupied but for the [LEA’s] failure to provide a FAPE.” *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650- 51 (Pa. Commw. 2006); see also *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)(explaining that compensatory education “should aim to place disabled children in the same position that they would have occupied but for the school district’s violations of the IDEA.”)) Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Because the Student’s IEPs lack goals tracking social skills progress, the Student is awarded fifteen minutes of compensatory education for every week school was in session from March 12, 2022, through the last week of the 2023-2024 school year.<sup>14</sup> The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers the Student’s identified educational and related services needs as determined by a qualified professional. 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. The compensatory services shall be provided by appropriately qualified professionals selected by the Parent. The cost to the District of providing the awarded hours of compensatory services may be limited to the average

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<sup>14</sup> This award is reflective of the fifteen minutes of weekly, individual emotional regulation instruction the Student initially received through the March 2022 IEP. (J-15)

market rate for private providers of those services in the county where the District is located.

Furthermore, an IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable relief. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F. 3d 712 (3d Cir. 2010). Through that authority, the District will be ordered to fund a neuro-psychological evaluation to obtain a more robust understanding of the Student's cognitive and emotional functioning.

## **ORDER**

AND NOW, this 29th day of July 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The Student is owed fifteen minutes of compensatory education for every week the District was in session during the 2022-2023 and 2023-2024 school years.
2. The District is ordered to fund a neuropsychological evaluation of the Student if the Parent chooses. The cost of the neuropsychological evaluation shall not exceed four-thousand five-hundred dollars (\$4,500).
3. The District is ordered to convene the IEP team within ten (10) days of this Order.

- a. The team shall discuss adding school-based mental health or counseling services to the Student's IEP as a related service.
- b. The team shall discuss revising the Student's IEP with goals to address social-emotional needs.

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

/s/ Joy Waters Fleming, Esquire

*Joy Waters Fleming*

HEARING OFFICER  
ODR File No. 29362-23-24

July 29, 2024