

*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**

**ODR No. 30702-24-25**

**CLOSED HEARING**

**Child's Name:**

P.T.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parents:**

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**Hearing Officer:**

Cathy A. Skidmore, Esquire

**Date of Decision:**

01/11/2026

## **INTRODUCTION**

The student, P.T. (Student),<sup>1</sup> is a [redacted] teenaged student residing with the Parents within the boundaries of Council Rock School District (District). Student has not been identified by the District as not eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> but did determine that Student has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.<sup>3</sup> At the time of the due process hearing, Student was attending a private school at the Parents' election.

## **PROCEDURAL HISTORY**

In mid-January 2025, the Parents filed a Due Process Complaint against the District under the IDEA, Section 504, and the Americans with Disabilities Act (ADA),<sup>4</sup> contending that the District denied Student a free, appropriate public education from January 2023 through Student's enrollment in a private school (Private School) in January 2025. They then filed an Amended Complaint in June 2025. Specifically, they challenged the District's failure to identify Student as having a disability under the IDEA and Section 504; in conducting appropriately comprehensive evaluations of Student; and failing to provide and offer the special education programming

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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 codified in 34 C.F.R. §§ 104.1 – 104.61; the applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

<sup>4</sup> 42 U.S.C. §§ 12101 – 12213.

and placement to which Student was entitled throughout that timeframe. As remedies, the Parents demanded relief in the form of reimbursement for (a) private school tuition from January 2025 through the end of the 2024-25 school year and the summer of 2025; (b) private tutoring services obtained by the Parents; and (c) several privately-secured evaluations; in the alternative, they sought compensatory education.

The case was assigned to a different hearing officer who, in March 2025, had issued a conditional dismissal order following a report that the parties had reached a resolution of all claims that required school board approval. Two months later, just before his retirement, the original hearing officer reinstated the Complaint as requested and permitted by the terms of the conditional dismissal order, and the case was reassigned to the undersigned.<sup>5</sup> The matter then proceeded to a due process hearing for the presentation of witnesses and documentary evidence that encompassed seven hearing sessions and numerous exhibits.<sup>6</sup>

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

## **ISSUES**

1. Whether the District failed in its child find obligations to identify Student as having a disability under the IDEA;

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<sup>5</sup> The closing order and reinstatement were combined as HO-1, which is hereby admitted.

<sup>6</sup> Other references to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number). Citation to duplicative evidence is not necessarily exhaustive, and the hearing would have been much more efficient if witnesses did not, and were not asked to, read from or describe the content of documents as the undersigned reminded everyone throughout. References to Parents in the plural will be made where it appears that one was acting on behalf of both.

2. Whether the District's evaluations of Student met the standards in the IDEA;
3. Whether the District deprived Student of a free, appropriate public education over the 2022-23, 2023-24, and 2024-25 school years;
4. In the alternative if the District did deny Student a free, appropriate public education, whether the District owes Student compensatory education; and
5. Whether the Parents are entitled to reimbursement for private school tuition, private tutoring services obtained, and privately obtained evaluations?

### **FINDINGS OF FACT**

1. Student is a [redacted] teenaged child residing with the Parents in the District and qualifies as a student with a disability under Section 504, entitled to its protections. The District is also a recipient of federal funding. (N.T. 55-56.)
2. Student is [redacted] despite a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) (inattentive type) as well as difficulty with executive functioning skills. Student is bright with strong reasoning skills, and expressive and receptive vocabulary are a relative strength as well. Student enjoyed participating in [extracurricular activity] when in the District, had many friends, and was respectful of others at school. (N.T. 80-81, 99, 119-20, 507-08, 520, 576-77, 1118, 1120.)

3. Student also experiences anxiety particularly with respect to academics. (N.T. 94.)
4. Student attends Private School at the election of the Parents having disenrolled from the District in January 2025. (N.T. 79-80.)

### **Early Educational History**

5. Student has been enrolled in the District since the 2018-19 school year. (P-23.)
6. When Student was still in the District, Student frequently exhibited difficulty with organizational skills including having the materials to complete homework assignments, and often became frustrated as a result. In addition, Student was challenged by reading, writing, and mathematics. (N.T. 82-86, 90; P-53 at 16, 19-20, 22, 24, 27, 29-31, 36-39, 41-45, 52, 58-65, 57, 70-74; P-54 at 5.)

### **General Relevant District Information**

7. All students in the District experienced challenges after the COVID-19 pandemic and resulting school closures, including performance on assessments. (N.T. 787-90.)
8. The District utilizes a Multi-Tiered System of Support (MTSS) across its schools with universal screening for reading and mathematics support in addition to classroom interventions. All students receive Tier 1 supports with more intensive Tiers 2 and 3 levels. Previous versions of MTSS included Child Study and Instructional Support teams (IST), and Student was one of those in these processes. (N.T. 246-51, 327-28.)
9. Student had reading support during the 2022-23 and 2024-25 school years, receiving both r during the 2023-24 school year. The support is through regular education services with students pulled out from class. Reading support was twice weekly in small groups targeting decoding

and fluency using an explicit, systematic, research-based program. Mathematics support was also twice weekly in small groups focused on computation. (N.T. 329-332, 355-57, 367, 402-05, 491, 857-58, 885-86; P-4; P-25; P-27; P-29; P-30; P-31; P-54 at 2; P-55 at 7-8' S-1; S-2; S-39; S-43; S-58; S-59.)

10. Student's supports included observations, implementation of interventions, input from the Parents and teachers with data collection. (S-1; S-2.)
11. In the spring of 2021, after Student was diagnosed with ADHD, the Parents requested a multidisciplinary evaluation of Student that the District denied based on its determination of a lack of need. A Section 504 evaluation was proposed instead, and the Parents agreed. (N.T. 99; P-5; S-3; S-4.)
12. The Section 504 evaluation identified reading and mathematics as areas of weakness as well as off-task behaviors. This evaluation confirmed the ADHD traits at school and recommended various adaptations for Student. (P-6; S-7.)
13. A Section 504 Service Agreement (SA) followed the spring 2021 evaluation in June 2021. Student's SA provided for a number of accommodations as recommended by the evaluation, including small group instruction particularly for reading and mathematics; pre-teaching of reading and mathematics concepts; auditory signals before instruction or directions; preferential seating with limited distractions; extended time on assignments and assessments; prompts and redirection; repetition of directions; and visual presentation of instruction and directions. The Parents approved the 2021 SA. (P-7 at 1-2; S-6.)

14. Student's report card for the 2021-22 school year reflected growth over the school year across subjects. (S-8.)
15. A new SA developed in June 2022 removed the auditory signal, and added the following: chunking of longer reading assignments with checks for understanding; reteaching of mathematics concepts; a head start and preview of long assessments; and advance notice of writing topics to the Parents. The Parents approved the 2022 SA. (P-7 at 3-4; S-9.)
16. Student scored in the Basic range on the English/Language Arts and in the Proficient range on the Mathematics Pennsylvania System of School Assessment (PSSA) in the spring of 2022. (P-22 At 1-3; S-49 at 7-9.)

### **2022-23 School Year**

17. The Parents arranged for Student to have weekly tutoring near the start of the 2022-23 school year that continued until Student enrolled in Private School. The tutoring focused on reading and mathematics weaknesses. (N.T. 127-30; P-53 at 23, 25-26; P-54 at 3, 5, 14.)
18. In October 2022, the Parents again requested a special education evaluation. At that time, they indicated concerns with Student's writing/spelling; frustration with homework; anxiety; and lack of friendships. (P-8; P-28 at 1-4; S-11.)
19. The District conducted an initial evaluation with the consent of the Parents, issuing an Evaluation Report (ER) in January 2023. (P-9; P-10; S-13; S-15.)
20. Parent input into and reported in the January 2023 ER reflected their concerns with writing and spelling as well as friendships and socialization. They reported that Student enjoyed school but was concerned about timeframes. (P-33; S-14; S-15 at 2-4, 7.)

21. A classroom observation during English/language arts class (ELA) by the District school psychologist for the January 2023 ER described Student's engagement, independent work on assignments, and preparedness as the students transitioned between tasks. (S-15 at 4.)
22. Observations by the District school psychologist during testing for the spring 2023 ER reflected Student's positive attitude, engagement, and attention to task with redirection when necessary. The results were considered to be a valid representation of Student's skills and functioning. (S-15 at 5.)
23. Input from the IST reflected Student's motivation and positive work ethic when focused, as well as difficulty with maintaining attention to and completing tasks, staying organized, and working independently. Student's reading, writing, and mathematics skills were somewhat variable. A number of classroom observations of Student's on- and off-task behavior reflected more of the latter than a comparison peer but was variable (Student was on-task between approximately 50-90% of the time compared to a peer's between 90-100%.) IST goals for Student were for improving both focus/attention and reading accuracy. (S-15 at 5-15.)
24. Teacher recommendations for the spring 2023 ER included addressing spelling, phonics, and reading fluency, as well as small group or one on one support. Student's socialization was noted to be positive but not consistent. (S-15 at 12-13.)
25. Assessments administered for the spring 2023 ER included cognitive functioning (Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V)). Student's scores across Indices were in the average range with the exception of fluid reasoning (high average range) and a solidly average Full Scale IQ score of 104. (S-15 at 27-30.)

26. Achievement testing (Wechsler Individual Achievement Test – Fourth Edition (WIAT-4)) for the Spring 2023 ER yielded overall average-range scores with reading, mathematics, and written expression but a below average-range score on the Word reading subtest and an above average-range score on the oral discourse comprehension subtest. (S-15 at 23-26.)
27. A discrepancy analysis between the 2023 cognitive and achievement test results within the spring 2023 ER test yielded no concerns. (S-15 at 26-27.)
28. Speech/language evaluation of Student in the spring of 2023 identified relative strengths and weaknesses, with the latter indicating expressive language skills (sentence formulation and recall verbatim) in the borderline range. Globally, Student did not exhibit a speech/language disability, but Student did receive articulation support that spring. (P-32;S-15 at 31-34; S-20.)
29. Behavior rating scales completed by the Parents and a teacher for the spring 2023 ER revealed clinically significant concerns of one or both with respect to anxiety and withdrawal. At-risk concerns were also noted by one or both for atypicality, study skills, leadership, and functional communication. An additional measure by the same raters was consistent with Student’s ADHD diagnosis, identifying inattention, learning problems, executive functioning, and peer relations. (S-15 at 34-40.) as concerns
30. All of the assessments administered for the spring 2023 ER were valid and reliable instruments, technically sound, and conducted under standardized conditions pursuant to publishers’ instructions. All measures were used for their valid purposes, were nondiscriminatory,

and were administered in Student's native language. (N.T. 839, 852-53.)

31. The spring 2023 ER identified a number of areas of strength: motivation, a positive attitude, self-advocacy skills, academic achievement, and language skills. This ER did not identify Student with a disability under the IDEA, but did conclude that Student was disabled and entitled to a Section 504 SA due to the ADHD manifestations. Recommendations mirrored those in the most recent SA. (S-15.)
32. The Parents had the opportunity to discuss the ER (2023) with the District school psychologist. They and all District team members agreed with the eligibility determination. (N.T. 166; S-15; S-16.)
33. The Parents were provided with and approved the January 2023 Notice of Recommended Educational Placement (NOREP) for continuation of regular education for Student. They also received their procedural safeguards at that time. (N.T. 168; S-18.)
34. A new SA developed in June 2023 added use of fidgets. The Parents signed this SA. (P-7 at 5-6; S-22.)
35. At the end of the 2022-23 school year, Student was dismissed from articulation support having met the goal. (S-27.)
36. Student scored in the Basic range on the Mathematics and in the Proficient range on the English/Language Arts and Science PSSAs in the spring of 2023. (P-22 At 4-6; S-49 at 4-6.)

### **2023-24 School Year**

37. The regular education teacher for the 2023-24 school year provided the Section 504 Plan accommodations, including preteaching and

reteaching in reading and mathematics along with small group instruction. (N.T. 512-22.)

38. The regular education teacher for the 2023 school year communicated with the mathematics tutor about Student, such as when tests were scheduled. (N.T. 537-39.)
39. In March 2024, the Parents asked for a new evaluation because they remained concerned with Student's academic skills and frustration particularly with reading and mathematics. The District denied that request based on Student's spring 2023 ER, report card grades, and then-current supports. (P-11; P-12; P-13; P-55 at 12-14; S-42; S-44.)
40. A new SA developed in June 2024 removed the use of fidgets, and added an extra set of textbooks at home as well as study guides sent home for tests. The Parents also signed this SA. (P-7 at 7-8; S-47.)
41. Student scored in the Basic range on the English/Language Arts and Mathematics PSSAs in the spring of 2024. (P-22 At 7-9; S-49 at 1-3.)
42. In June 2024, the Parents had Student tested for reading skills by a private organization. Student continued working with that organization for tutoring to address its identified deficits for which the Parents incurred expenses. (P-37; P-38; P-39; P-40.)

### **2024-25 School Year**

43. The regular education teacher for the 2024-25 school year provided the Section 504 Plan accommodations, including preteaching and reteaching in reading and mathematics, small group instruction. (N.T. 568-69, 580-89.)

44. During the 2024-25 school year, Student volunteered to be [redacted] at school but left the District before Student could do so. (N.T. 285-86, 301-03.)
45. The Parents first visited Private School in November 2024. Student also visited on another day for a language class. (N.T. 197-98, 1258, 1265-66.)
46. The mathematics and ELA teachers for the 2024-25 school year implemented the SA until Student enrolled at Private School. (N.T. 740-743, 749-56.)
47. The Parents contacted an instructional specialist at a private school in January 2024 to explore Student's learning profile especially with reading and spelling. (N.T. 928.)

### **Independent Educational Evaluation**

48. The Parents obtained an Independent Educational Evaluation (IEE) in the fall of 2024, because the Parents were concerned with the District's evaluations and noted that Student was uncomfortable during its testing. (N.T. 108-09.)
49. The Parents shared the IEE report with the District in late October, sharing their belief that Student needed an Individualized Education Program (IEP). The private psychologist understood them to have concerns about Student struggling with homework and basic academic skills. (N.T. 105-06, 1199; P-2; S-55.)
50. The IEE incorporated background information, previous evaluations, and a review of Student's education records. Teacher input was also summarized, reflecting Student's positive performance in science, demeanor, creativity, but having weaknesses with English/Language Arts, maintaining attention to task, and distractibility. (S-55 at 1-6.)

51. The private psychologist observed Student during an English/language arts class. Student reportedly was engaged at times but inattentive at others, worked with tablemates, and asked a few questions of the teacher and peers. (S-51; S-52; S-55 at 7-8.)
52. The private psychologist conducted a number of assessments over two days for approximately ten hours for the IEE, during which Student worked diligently with some inattentive behavior. The results were considered to be reasonably valid estimates of her functioning. ((N.T. 1203; S-55 at 8-9.)
53. Cognitive assessment for the IEE (WISC-V) yielded variable scores. Student scored in the very high range on the Fluid Reasoning Index; in the high average range on the Visual Spatial Index; in the average range on the Verbal Comprehension Index; in the low average range on the Working Memory Index; and in the very low range on the Processing Speed Index. Student's Full Scale IQ was in the average range, whereas the General Ability Index score was in the high average range and was viewed as a better estimate of Student's aptitude. Subtest scores were also widely variable. (S-55.)
54. On an instrument of memory and learning for the IEE, Student earned scores in the average to very high range with the exception of the Attention/Concentration Index (very low range). (S-55 at 12-13, 28.)
55. IEE assessment of achievement (WIAT-4 and certain subtests of the Woodcock-John Tests of Oral Language – Fourth Edition (WJ-IV)) yielded results that were again variable. Composite scores in Listening Comprehension and Oral Expression were in the average range on the WIAT-4, and WJ-IV scores reflected a very low-range score on the Rapid Picture Naming Subtest with average-range results on the Picture Vocabulary and Understanding Directions subtests. Student's

scores in the area of reading on the two instruments were overall in the low average range with a few exceptions (reading comprehension and oral reading fluency); with written expression, Student similarly exhibited areas of strength and weakness. Student's performance on tests of mathematics skills were generally average, with fluency a relative deficit. (S-55.)

56. Student's executive functioning skills were assessed through rating scales and testing. Many of those results were in the average range, but Student continued to exhibit difficulty with subtests involving attention and inhibitory control. (S-55.)
57. On the Behavior Assessment System for Children – Third Edition (BASC-3), ratings were completed by both Parents, a teacher, and Student. Student's scores were all in the age-appropriate range; the teacher identified atypicality as clinically significant and functional communication as at-risk; and one or both Parents identified a number of areas of clinical significance (anxiety, atypicality, withdrawal, attention problems, leadership, and functional communication) and additional at-risk concern with activities of daily living. (S-55 at 18-19, 31.)
58. Additional assessments of Student's language skills in the private evaluation supported the IEE conclusion of dyslexia. The private psychologist identified a number of areas of strength including memory as well as areas of need, with recommendations to support the identified categories of eligibility for special education: Specific Learning Disability in basic reading, reading fluency, and written expression; and Other Health Impairment based on ADHD. (N.T. 1121; S-55.)

59. Recommendations in the IEE focused on special education eligibility and programming, with suggestions for areas of deficit and an “independent specialized school.” (S-55 at 22-26.)
60. The private neuropsychologist also concluded that Student had double deficit dyslexia, which means that the individual has deficits in more than one area of information processing. (N.T. 1115-16.)
61. In November 2024, the District referred Student to the multidisciplinary team for an evaluation after the Parents provided the IEE, and the Parents provided their consent. (P-14; P-28 at 5-8; S-59; S-60; S-61; S-62.)
62. Later in November 2024, the Parents notified the District of their intention to place Student at Private School with tuition at the expense of the District. They renewed the request in mid-December with a detailed explanation of their ongoing concerns with Student’s reading and mathematics skills without any closing of the gap between Student and peers; Student’s view of self; and the private psychologist’s conclusions and recommendations. (P-56 at 1, 3-4, 6; S-64; S-65.)

### **District Evaluation**

63. The District completed and issued its new ER in January 2025. (ZP-15; S-72.)
64. The January 2025 ER summarized information from Student’s educational records including parental input, benchmark assessments, prior evaluation results, and the private psychologist’s conclusions. (S-72 at 1-4, 7-19.)
65. Two school observations by a District school psychologist in December 2024 similarly noted engagement alternating with distracted behavior in English/language arts and social studies. On- and off-task behavior

data was collected, with Student's attention and engagement consistent with that of peers. (S-72 at 4-5.)

66. Observation of Student before and during testing for the January 2025 ER revealed a flat affect during two sessions but not the others. Student was cooperative and attempted all tasks but results of the cognitive assessment were determined to need caution in interpretation. (S-72 at 5-6.)
67. Classroom teacher input reflected positive contribution, respectful behavior, positive social relationships with peers, and reception to constructive criticism and redirection; concentration was an area of concern. Accommodations noted to be helpful included preview and review of mathematics lessons and vocabulary as well as test and assignment accommodations; recommendations included small group instruction. (S-72 at 6-7.)
68. Cognitive assessment (WJ-IV Cog) for the January 2025 ER reflected low average-range General Intellectual Ability with weaknesses identified in the areas of letter-pattern matching, phonological processing, and story recall as well as visualization. Cognitive Processing Speed and Cognitive Efficiency were also areas of deficit on this measure. (S-72 at 24-27.)
69. Assessment of academic achievement using the WJ-IV for the January 2025 ER yielded Cluster scores in the average range across subject areas with the exception of Reading Fluency (low average range), and oral reading was a weakness. Thus, mathematics and written expression were not concerns at the time of the January 2025 ER including results from a separate measure of mathematics fluency. Analysis of discrepancy between ability and achievement did not reveal statistically significant inconsistencies. (S-72 at 20-24.)

70. A speech/language evaluation for the January 2025 ER included formal assessments in two sessions. Student appeared to use good effort and work to complete all tasks. Student did not exhibit needs with receptive or expressive language with the exception of formulated sentences in the borderline range. All other areas of speech/language including narrative and pragmatic language skills were age-appropriate, and reflected no concerns. (S-72 at 27-33.)
71. Rating scales completed by a teacher and both parents for behavioral presentation for the January 2025 ER yielded clinically significant concerns by one or both of the Parents in the areas of anxiety, withdrawal, and attention problems; additional at-risk concerns were noted with atypicality, leadership, activities of daily living, and functional communication. Executive functioning skills were determined to be weak on the Problem Solving Index of the BASC-3, with at-risk parental concerns for an emotional disturbance (inappropriate behavior/feelings, physical symptoms, and disorders of thought). Both Parents similarly noted very elevated concerns with inattention and lesser concern with anxious thoughts, schoolwork, and ADHD symptoms. S-72 at 33-42.)
72. All of the assessments administered for the January 2025 ER were valid and reliable instruments, technically sound, and conducted under standardized conditions pursuant to publishers' instructions. All measures were used for their valid purposes, were nondiscriminatory, and were administered in Student's native language. (N.T. 871, 884-85.)
73. The January 2025 ER reached a conclusion that Student remained ineligible for special education under the IDEA and issued a NOREP with that determination. The Parents responded with disagreement with both District ERs. (P-16; S-72; S-75; S-85.)

## **Additional General Relevant District Information**

74. The Parents did not voice concerns with any of the Section 504 Plans during the meetings to review them. (N.T. 187-89.)
75. Over the 2022-23 through 2024-25 school years, Student exhibited growth over time in reading skills, approaching or meeting benchmarks on assessments including a Qualitative Reading Inventory. (P-17; P-18; P-19; P-20; P-24; S-24; S-25; S-26; S-28; S-29; S-30; S-31; S-32; S-34; S-35; S-48; S-57; S-68; S-76.)
76. Over the 2022-23 through 2024-25 school years, Student exhibited growth over time in mathematics skills, approaching or meeting benchmarks that involved standardized, timed assessments without Student's accommodations. Assessments by the private tutoring service agencies to the contrary are not reliable, containing important errors. (N.T. 536-37, 1333-51; P-21; P-68; P-69; P-70; P-74; S-33; S-37 S-40; S-41; S-56.)
77. The parties engaged in frequent communication over the relevant time period, typically by email as well as functions at school. (P-53; P-54; P-55.)
78. The District has for many years offered an optional summer program for all students who receive reading and mathematics support. (N.T. 311-12.)

## **Private School**

79. Student was accepted at Private School in late November 2024. (P-41; S-155.)
80. Student attends Private School at the election of the Parents having disenrolled from the District in January 2025. (N.T. 79-80, 204, 1252; P-42.)

81. Private School, located in a neighboring state, serves children with language-based learning disabilities from kindergarten through grade twelve. Students receive direct instruction as well as direct executive functioning support. (N.T. 1173, 1253-55, 1278, 1295.)
82. Because a majority of Private School students are dyslexic, the school provides a structured literacy reading approach with several reading programs involved. All students' educational programs are individualized to their needs, but the school does not provide or follow IEPs. (N.T. 1255-57.)
83. At Private School, Student has classes in reading using an Orton-Gillingham-based program; Student also has weekly speech/language therapy. Other classes were language, writing, mathematics, social studies, science, and specials. (N.T. 1265, 1271-77, 1280, 1304; P-43; S-151.)
84. Classes at Private School are small with a four students to one teacher ratio. Student's classes have nine or fewer students. (N.T. 1254, 1271-1277.)
85. Private School has a variety of extra-curricular activities. (N.T. 1255, 1315.)
86. Administrators and others at Private School believe that Student has made progress at Private School. (N.T. 1282-85, 1292-93.)
87. The Parents decided on Private School based on the IEE evaluator's recommendation. (N.T. 132-33.)
88. The Parents believe that Student has done well at Private School, with less anxiety and manifestation of executive functioning difficulties. Student also has ambitions beyond high school. (N.T. 141, 144-45, 148.)

## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

In any legal proceeding, the burden of proof is commonly described as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion in this type of administrative hearing lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The burden of persuasion in this case thus must rest with the Parents who filed the Complaint leading to this administrative proceeding. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, who assume the role of fact-finders, are responsible for making "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses," particularly when discounting certain testimony. *Blount ex rel. Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 WL 22988892 \*10, 2003 LEXIS 21639 \*28 (E.D. Pa. 2003). See also, e.g., *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 WL 47340 \*4, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts despite some gaps in recollection; she did not discern any intention to mislead. Contradictions among witness accounts may be attributed to lapses in memory or differences in perspective. The weight accorded the evidence, however, was not equally placed. The persuasive value of the testimony and documentary evidence must be assessed in light of the record as a whole. See *J.P., supra*, 516 F.3d at 261; *T.E., supra*. In other words, merely because all witnesses appeared to believe that to which they swore under oath does not make all of the testimony reliable or

convincing with respect to the issues presented. The documentary evidence was considered as extremely reliable.

The testimony of the private psychologist report was knowledgeable and well-informed, but unfortunately of limited probative value on the ultimate eligibility and FAPE issues. Her opinion was largely based on her mistaken belief that the IDEA requires local education agencies (LEAs) to “close the gap” between a struggling student and same-age peers (N.T. 1143, 1145, 11146, 1151, 1237) contrary to longstanding legal precepts discussed *infra*. The testimony of two private service providers (beginning at N.T. 634 and 922) was significantly undermined by a misunderstanding of the meaning of grade equivalency and other derived scores<sup>7</sup> as well as errors in their testing; in addition, both lacked any personal knowledge of Student’s educational programming at the District or Private School. Thus, the testimony of both was disregarded as wholly unpersuasive, in addition to having the identical goal of recommending that Student would be best educated at Private School.

On the other hand, the District witnesses and the Parents provided convincing testimony from that party’s perspective, and all were accorded significant but not necessarily determinative weight. The testimony of the testifying Parent in particular was understandably emotional and provided from a loving parent’s view; her concerns with the District’s programming over the years was profound. However, she was convinced that Student must remain in Private School at District expense, which diminished the probative value to a large degree. Student’s teachers, on the other hand, provided very credible and convincing testimony based on their first-hand

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<sup>7</sup> Both the Private psychologist and District Supervisor of Special Services who is also a certified school psychologist provided very knowledgeable testimony on this type of score that was consistent with this hearing officer’s understanding and sources such as Sattler, J. M., *Assessment of Children: Cognitive Applications* (6th ed. 2018), particularly at 107-08.

experience with Student at school that Student did not require more support than was provided through the various SAs (N.T. 377-78, 467, 477, 509-10, 548, 589, 596).

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

### **General IDEA Principles: Substantive FAPE**

The IDEA broadly mandates that each of the states provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. Special education is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. More than two decades ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

Through LEAs, states meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." " *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, "an educational program must be appropriately ambitious in light of [the child's] circumstances... [and] every child should have the chance to meet challenging objectives." *Endrew F. v. Douglas County School District RE-1*,

580 U.S. 386, 402 (2017). This standard is “markedly different” than *de minimis* growth. *Id.* However, not every child should be aiming for grade-level achievement if that is not a reasonable expectation for him or her. *Id.* Rather, an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Id.*

An LEA is not obligated, however, to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012); *see also El Paso Independent School District v. Robert W.*, 898 F. Supp. 442, 449 (W.D. Tex. 1995) (quoting *Rowley*, *supra*, 458 U.S. at 186) (holding that an LEA “is not required to maximize a handicapped child's potential ‘commensurate with the opportunity provided to other children.’”). Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). “The IEP *must aim* to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

## **Evaluation Requirements**

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments,

[and] specific learning disabilities.” 20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.8(a).

Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are appropriately examined.

Conduct of evaluation. In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b).

The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social

and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also involve a review of existing data including that provided by the parents in addition to available assessments and observations. 34 C.F.R. § 300.305(a). In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b).

## **Eligibility**

The IDEA and state and federal regulations obligate LEA to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); see *also* 22 Pa. Code §§ 14.121-14.125. This mandate is commonly referred to as “Child Find.” LEAs are required to fulfill the Child Find obligation within a reasonable period of time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). In other words, an LEA must consider an evaluation for special education services within an appropriate amount of time after notice of behavior or other functioning and performance that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). The LEA need not, however, identify a disability “at the earliest possible moment” or to evaluate “every struggling student.” *Id.* Eligibility is also not determined by a “precise standard.” See, e.g., *West Chester Area School District v. Bruce C.*, 194 F.Supp.2d 417, 420 (E.D. Pa. 2002).

Substantively, the IDEA describes the primary purposes of a special education evaluation as twofold: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); *see also* 34 C.F.R. § 300.8(a).

Upon completion of all appropriate assessments, “[a] group of qualified professionals and the parent of the child determines whether the child is a child with a disability ... and the educational needs of the child[.]” 34 C.F.R. § 300.306(a)(1) (emphasis added). There are nonetheless explicit provisions that exclude a child from eligibility “[i]f the determinant factor” is

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015));

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria[.]

34 C.F.R. § 300.306(b); *see also* 20 U.S.C. § 1414(b). The IDEA provides an express rationale for these exclusions: a state must ensure that it maintains “policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a

particular impairment described in section 1401” (defining among other terms “child with a disability”). 20 U.S.C. 1412(a)(24).

Finally, 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). In such a circumstance, the LEA “must, without unnecessary delay,” file a due process complaint to defend its evaluation, or ensure the provision of an IEE at public expense. 34 C.F.R. § 300.502(b)(2).

### **General IDEA Principles: Least Restrictive Environment**

The IDEA contains a central mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards.

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C.S. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

Along with IEP content, special education placement must be determined by the IEP team. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). The IDEA demands that LEAs have available a “continuum of alternative placements” in order to meet the educational and

related service needs of its IDEA-eligible children. 34 C.F.R. § 300.115(a); 22 Pa. Code § 14.145. That “continuum” of placements in the law describes and enumerates settings beginning with regular education classes with supplementary aids and services, and growing progressively more restrictive moving first toward special classes and then toward special schools, instruction in the home, and instruction in hospitals and similar facilities. 34 C.F.R. § 300.115.

### **General IDEA Principles: Procedural FAPE**

From an IDEA procedural standpoint, the child’s family including his or her parents must have “a significant role in the IEP process.” Schaffer, *supra*, 546 U.S. at 53. This fundamental concept extends to placement decisions for the child. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne*, *supra*, 602 F.3d at 565. The procedural requirements must, however, be viewed within the context of the above substantive standards.

### **General IDEA Principles: Parental Placements**

Parents who believe that an LEA is not providing or offering FAPE to their child may unilaterally place him or her in a private school and thereafter seek reimbursement from the LEA. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). Reimbursement for tuition and related expenses is an available remedy to parents to receive public funding of the costs associated with their child's placement in a private school where it is determined that the program offered or provided by the public school did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *Mary Courtney T.*, *supra*,

575 F.3d at 242. Equitable principles are also relevant in deciding whether reimbursement for tuition is warranted. *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *C.H. v. Cape Henlopen School District*, 606 F.3d 59 (3d Cir. 2010); *Carter, supra*. Those principles include compliance with the ten-day notice provision in the IDEA. 20 U.S.C. § 1412(a)(10)(C)(iii). A private placement need not satisfy all of the procedural and substantive requirements of the IDEA. *Carter, supra*. The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Id.* Taken together, there are three prongs to this inquiry, commonly referred to as the Burlington-Carter test. There is no requirement that a child have prior provision of public special education services for purposes of this remedy. *Forest Grove, supra*, 557 U.S. at 247.

### **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).

Section 504 requires “meaningful access” to federally funded programs such as schools through provision of reasonable accommodations. *Berardelli v. Allied Services Institute of Rehabilitation Medicine*, 900 F.3d 104, 110 (3d Cir. 2018) (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985)). Nonetheless, the obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). The two statutes as well as the ADA do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4<sup>th</sup> 966,

978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 (and the ADA) are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions Section 504 claims. *Le Pape, supra*, 103 F.4<sup>th</sup> at 979. “The statute’s administrative exhaustion requirement applies *only* to suits that ‘see[k] relief ... also available under’ IDEA.” *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 147, 143 S. Ct. 859, 864, 215 L. Ed. 2d 95 (2023).

Where a party raising claims under these statutes based on the same facts does not assert any legal distinction among them as applied to the case, the differences need not be separately addressed in all cases. *B.S.M. v. Upper Darby School District*, 103 F.4<sup>th</sup> 956, 965 (3d Cir. 2024). However, as the Parents contend, and unlike FAPE under the IDEA, FAPE under Section 504 “is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the ‘design’ of a child’s educational program.” *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008). Additionally, 34 C.F.R. § 104.33 “requires a comparison between the treatment of disabled and nondisabled children, rather than simply requiring a certain set level of services for each disabled child. ... [S]chool districts need only design education programs for disabled persons that are intended to meet their educational needs to the *same degree* that the needs of nondisabled students are met, not more.” *Id.* at 936–37 (emphasis added).

The *LePape* case did stress that, “[t]he ADA ‘does not require a public entity to take any action that it can demonstrate would result [1] in a fundamental alteration in the nature of a service, program, or activity or [2] in undue financial and administrative burdens[,]’ though it must still ‘ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.’” *LePape, supra*, 103 F4th

966, 974 n. 2 (citing to 28 C.F.R. § 35.164). Further, and as the Fourth Circuit cogently summarized consistent with other circuit courts,

Congress intended the states to balance the competing interests of economic necessity, on the one hand, and the special needs of a handicapped child, on the other, when making education placement decisions. 20 U.S.C. § 1412(3); *Doe v. Anrig*, 692 F.2d 800, 806 (1st Cir.1982) (in determining appropriate placement of an individual handicapped child, the child's needs must be weighed against the realities of limited public monies); *Pinkerton v. Moyer*, 509 F. Supp. at 112 (“competing interests must be balanced to reach a reasonable accommodation”).

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

### **The Parents’ Claims**

The first issue is whether the District failed to comply with its child find obligations for Student. This claim is significantly aligned with the issue of reimbursement for the IEE.

The District’s ERs in both 2023 and 2025 did utilize multiple assessment tools, strategies, and instruments, rather than any single measure, to gather information about Student. More specifically, each time the District conducted a record review, summarizing that extensive information in the ER; incorporated parental input to ascertain and document their views on Student’s home and school environments, particularly Student’s difficulty with attention and certain academic skills; and reported on input from teachers and observations by its school psychologist. Each evaluation assessed in all areas of suspected disability.

A variety of different measures comprised the assessment portion of each ER. Cognitive functioning, academic achievement, and social/emotional functioning were all assessed, with the latter through rating scales from those knowing Student well. The instruments chosen were technically sound, valid, and reliable for their purposes; were administered in accordance with publisher directions. Neither the 2023 nor 2025 ERs were flawed in any respect. Furthermore, the fact that the private psychologist would likely have conducted more assessments (N.T. 1165) does not lead to a conclusion that the District's ERs were in any way incomplete; certainly any evaluation could include more testing. For all of these reasons, the District fulfilled its child find responsibility. Consequently, the Parents are not entitled to reimbursement for the IEE.

The second issue is whether the District provided appropriate educational services for Student over the relevant time period. The parties' perspectives on Student's global aptitude in this case, which are required considerations under *Andrew F.* and other caselaw, is rather incongruent. The evidence established that Student required more support than many peers, and the District provided it through regular education interventions. As noted, the teachers in the District with first-hand knowledge and understanding of Student's strengths and weaknesses in the classroom shared the opinion that Student did not require more support than was provided. Similar to the adequacy of an evaluation, any student could be offered more support. However, the law does not require LEAs to ensure that a student is receiving the "best" education, or what parents may desire. Once again, this misunderstanding led to much less probative value placed on the private psychologist's opinion on what Student required prior to her even meeting Student.

The record as a whole more than preponderantly establishes that Student exhibited growth in comparison to same-age peers without special

education services in both reading and mathematics. In addition, the argument regarding mathematics eligibility (Parent Closing at 10, *e.g.*) is not supported by the opinion of the private psychologist. The parties also placed significant focus on Student's scores on cognitive assessments, particularly the WISC-V, and whether they were discrepant for purposes of determining a specific learning disability, to the point that the record contains several test manuals that are truly meaningful only to those who are trained to administer and interpret them. It is further difficult to understand how one might accept the Parents' position that, because the District properly elected to use one of the accepted average scoring ranges on the WIAT-4 (see N.T. 799-800), a different result on eligibility might have been obtained (Parent Closing at 21-22). Assuming *arguendo* that the Parents' contentions that one of Student's reading scores on this instrument were beyond one standard deviation (Parent Closing at 6 n. 30) is accurate, eligibility for special education is a two-part test requiring a need for special education by reason of the disability. The only evidence on this eligibility prong is the discounted opinion of the private psychologist based on the legal standards.

In sum, the District evidence is much more preponderant that Student was not IDEA eligible during the relevant time period. The Parents' related argument that the District was providing Student with interventions that are more akin to special education is not true in this District where small group instruction and preteaching of concepts is built into its teachers' presentation of materials through its regular education programming. The Parents have simply failed to meet their burden of persuasion that the District deprived Student of FAPE over the 2022-23, 2023-24, and 2024-25 school years under the IDEA.

The next issue is whether the Parents are entitled to reimbursement for Private School tuition and related expenses or the tutoring services they obtained privately. Having found no denial of FAPE, the tuition

reimbursement claim fails on the first step of the *Burlington-Carter* test, and there is also no basis for compensatory education. However, the Parents presented evidence that a portion of the tutoring that they arranged did lead to a positive impact on Student's academic progress in the District. Specifically, the tutoring provided beginning in the 2022-23 school year through disenrollment undoubtedly contributed to improvement in Student's basic reading skills, along with the Parents' support at home during what they described as lengthy and difficult homework sessions. Equitably, it is appropriate to require the District to reimburse them for those costs as a factor in Student's supported regular education success.

Finally, where a party raising claims under the IDEA, Section 504, and ADA based on the same facts does not assert any legal distinction among them as applied to the case, the differences need not be separately and thoroughly addressed in all cases. *B.S.M. v. Upper Darby School District*, 103 F.4<sup>th</sup> 956, 965 (3d Cir. 2024). However, unlike FAPE under the IDEA, FAPE under Section 504 "is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the 'design' of a child's educational program." *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008). Additionally, 34 C.F.R. § 104.33 "requires a comparison between the treatment of disabled and nondisabled children, rather than simply requiring a certain set level of services for each disabled child. ... [S]chool districts need only design education programs for disabled persons that are intended to meet their educational needs to the *same degree* that the needs of nondisabled students are met, not more." *Id.* at 936-37 (emphasis added).

The *LePape* case did stress that, "[t]he ADA 'does not require a public entity to take any action that it can demonstrate would result [1] in a fundamental alteration in the nature of a service, program, or activity or [2] in undue financial and administrative burdens[,]'" though it must still 'ensure

that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.'" *LePape, supra*, 103 F.4th 966, 974 n. 2 (citing to 28 C.F.R. § 35.164). Further, and as the Fourth Circuit cogently summarized consistent with other circuit courts,

Congress intended the states to balance the competing interests of economic necessity, on the one hand, and the special needs of a handicapped child, on the other, when making education placement decisions. 20 U.S.C. § 1412(3); *Doe v. Anrig*, 692 F.2d 800, 806 (1st Cir.1982) (in determining appropriate placement of an individual handicapped child, the child's needs must be weighed against the realities of limited public monies); *Pinkerton v. Moye*, 509 F. Supp. at 112 ("competing interests must be balanced to reach a reasonable accommodation").

*Barnett by Barnett v. Fairfax County School Board*, 927 F.2d 146, 154 (4th Cir. 1991). Not insignificantly, the *Barnett* Court also rejected the argument made under Section 504. *Id.* This hearing officer does as well in this case since there is no evidence in the record that might suggest any differences in the District's education of nondisabled peers and that of Student, nor any other violation of any of the laws on which the Parents rely.

By way of dicta, this hearing officer offers the following observations. The Parents clearly have genuine concerns with the District's programming throughout, even with all of the support they provided. They have focused on their wholly understandable view that Student's basic reading skills remain below expectations, and as a result appear to believe that Student must therefore require special education. Unfortunately, this perspective essentially overlooks all of the ways in which Student was performing in school at the District based on grade- and age-level expectations, without recognizing that all individuals have relative strengths and weaknesses. They have elected, as all parents may do, to have Student attend a private

school but, in this case, that option will not be ordered to be at public expense.

## **CONCLUSIONS OF LAW**

1. The District did not fail in its child find obligation to identify Student under the IDEA.
2. The District did not deny Student a free, appropriate public education during the relevant time period.
3. The Parents are not entitled to reimbursement for any expenditures other than the private tutoring they obtained.

## **ORDER**

AND NOW, this 11<sup>th</sup> day of January, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not fail to comply with its obligation to identify Student under the IDEA;
2. The District did not deny Student FAPE in its programming proposed and implemented over the 2022-23, 2023-24, and 2024-25 and 2025-26 school years;

3. The Parents are entitled to reimbursement for the tutoring expenses they incurred as reflected in P-40.
4. Nothing in this Order should be read to prevent the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

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Cathy A. Skidmore, Esquire  
HEARING OFFICER  
ODR File No. 30702-24-25

Sent to counsel for both parties this date as required by 34 C.F.R. § 300.515 by electronic mail message as requested by counsel<sup>8</sup> consistent with 22 Pa. Code § 14.162(n), and accompanied by appeal timelines.

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<sup>8</sup> N.T. 1387-89.