

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. 29694-23-24

Child's Name:

R.W.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

01/20/2025

Introduction

This special education due process hearing concerns the educational program and placement of [redacted] ("student"), a student who resides in the South Allegheny School District ("District").¹ The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student who requires special education. Parent claims that the District failed to identify the student in a timely way for eligibility under IDEA, failed to provide appropriate programming, failed in its duty to re-evaluate the student and, failed to provide a free appropriate public education ("FAPE") under IDEA.

Specifically, in each regard, the student's parent claims that: (1) the District failed to timely identify the student as eligible under IDEA, prior to that identification in May 2022; (2) the student's programming/placement were inappropriate as of March 2022, when parent asserts her claims accrued; (3) the District failed in its October 2023 re-evaluation of the student by not considering updated diagnoses; and (4) the student was denied a free appropriate public education ("FAPE") in not making meaningful progress through the District's programming/placements.

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 ("Chapter 14").

As a result, parent seeks compensatory education for the period of the 2020-2021 school year, as of March 2021³, and the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years.

The parent also brings a discrimination claim under the Rehabilitation Act of 1973, particularly Section 504 of that statute ("Section 504").⁴ Particularly, the parent asserts that various acts and omissions on the part of the District amounted to the District acting with deliberate indifference toward the student on the basis of the student's disability, and parent seeks a declaratory finding in that regard.

The District counters that, at all times, it met its child-find duties to identify the student's needs, and that the programming/placements were appropriate for the entirety of the period of parent's claims. Therefore, the District argues, the student is not entitled to compensatory education.

³ The parties entered into a tolling agreement as of March 2023, preserving parents' claims as of that date. The District challenged the timeliness of parent's claim for remedy for any point prior to March 2021, a point two years prior to the tolling agreement between the parties. An evidentiary session was held at the outset of the hearing to determine whether parent knew or should have known ("KOSHK") of the alleged acts/omissions which form the basis of her complaint as to the period prior to March 2021. A KOSHK ruling was issued, finding that prior to March 2021 knew of the alleged acts/omissions in that form the basis of her complaint. Therefore, the relevant denial-of-FAPE evidentiary record commenced as of March 2021.

⁴ It is this hearing officer's preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. See also 22 PA Code §§15.1-15.11 ("Chapter 15").

For the reasons set forth below, I find in favor of parent as to certain periods of her claim and in favor of the District as to other periods of parent's claim.

Issues

1. Did the District fail to identify the student as eligible for special education in a timely way?
2. Once identified as eligible for special education, did the District provide appropriate programming/placements for the student?
3. Did the District fail to appropriately re-evaluate the student in its October 2023 re-evaluation?
4. Is the student entitled to compensatory education for the following periods:
 - the 2020-2021 school year as of March 2021,
 - the 2021-2022 school year,
 - the 2022-2023 school year,
 - the 2023-2024 school year, and
 - the 2024-2025 school year?
5. Did the District act with deliberate indifference toward the student on the basis of the student's disability?

Witness Credibility

All witnesses testified credibly and a degree of weight was accorded to each witness's testimony. The testimony of the student's mother and the two witnesses from placements outside the District (one in September-October 2022 and the other since fall 2023) was found to be highly credible and was accorded more weight. The testimony of the District's school psychologist was found to be less credible and was accorded less weight.

Findings of Fact

All evidence in the record, both exhibits and testimony, was considered. Specific evidentiary artifacts in findings of fact, however, are cited only as necessary to resolve the issue(s) presented. Consequently, all exhibits are not explicitly referenced below.

2019-2020 / [redacted]

1. The student has attended District schools since [redacted] the 2019-2020 school year. (See KOSHK Ruling – November 2024).
2. Although not part of the evidence for the denial-of-FAPE record, in the [redacted] year, the student's attendance and school behavior (speaking out of turn and wandering around the classroom) were concerns. (See KOSHK Ruling – November 2024).
3. In the spring of 2020, as a result of attendance and academic concerns, the student's [redacted] teacher recommended that the

student be retained for a second [redacted] year, a recommendation which was adopted. (See KOSHK Ruling – November 2024; School District Exhibit [“S”]-3).

2020-2021 / Repeated-[redacted]

4. In November 2020, the student’s parent relocated with the student to another state. Family turmoil resulted the student returning to the District in the winter of 2021, in the foster care of the student’s grandmother. (See KOSHK Ruling – November 2024).
5. As of March 2021, the student attended the repeated-[redacted] year at the District. (Parent’s Exhibit [“P”]-41; Notes of Testimony [“NT”] at 263-307, 353-367).
6. In early May 2021, at the request of the student’s grandmother, the District sought permission to evaluate the student. (P-44; S-6, S-6f; NT at 263-307).
7. At first, the student’s grandmother returned the permission-to-evaluate (“PTE”) form without having signed it. (P-44).
8. Throughout May 2021, the District communicated with the student’s grandmother about the missing PTE form; the grandmother indicated that she was looking to perfect the PTE. (P-42, S-8f, S-9, S-9f; NT at 263-307, 730-921).

9. At the end of May 2021, three weeks after the District “closed out” the PTE process and did not follow up any further with the parent or grandparent. (NT at 730-921).

2021-2022 / [redacted]

10. Over the [redacted] year through February 2022, the student engaged in instances of defiance and classroom disruption. (S-13).
11. By March 2022, the District knew that the student had been diagnosed with attention deficit/hyperactivity disorder (“ADHD”). (S-13).
12. In March 2022, the District sought acute crisis intervention for the student given [redacted] drawings, including self-harm, that the student drew in school. (S-13; NT at 263-307, 314-346, 482-511, 730-921).
13. The crisis intervention referral was based on suicidal ideations, head-banging, irritability, sadness, family trauma, and ADHD diagnosis. (S-13).
14. Observed behaviors in the school setting included verbal aggression, poor peer interactions, disruptive conduct, temper tantrums, and impulsiveness (ADHD). (S-13).
15. The student self-reported depression symptomology, including withdrawal, diminished interests, and worthlessness. (S-13).

16. The student's suicidal ideations were characterized as daily occurrences. (S-13).
17. In March 2022, the District issued a PTE form, and the student's grandmother granted permission for the evaluation. (P-45; S-10, S-12f).
18. In April 2022, in the midst of the evaluation process, the District pursued an acute partial hospitalization placement for the student. Ultimately, the student was not admitted to the placement. (S-16).
19. In mid-May 2022, the District issued the initial evaluation report ("ER"). (P-1, S-19).
20. The May 2022 ER included input from the student's teacher, indicating significant academic and emotional/behavioral concerns. (P-1; S-19; NT 482-511).
21. The student's IQ in the May 2022 ER was scored at 70, although the evaluator opined that this was likely an underestimate given the student's effort during testing. (P-1; S-19).
22. The student's achievement testing in the May 2022 ER, the student scored 75 on the total reading composite, 89 on the total mathematics composite, 87 on the written expression. (P-1; S-19).
23. The student's teacher and grandmother completed social/emotional/behavioral rating scales; both raters indicated multiple, clinically-significant ratings. (P-1; S-19).

24. The May 2022 ER detailed multiple behavior incidents over April 2022, including defiance, disrespect to staff, and aggression toward peers. (P-1; S-19).
25. The May 2022 ER identified the student with an emotional disturbance. (P-1; S-19).
26. In May 2022, the student's grandmother ceased to act as foster parent, and the student's mother returned to full parental custody. (NT at 263-307, 314-346).
27. In May 2022, the student engaged in a bus behavior incident and was excluded from school for the remainder of the school year (through late May). (NT at 554-671).
28. The District did not schedule an individualized education program ("IEP") following the issuance of the May 2022 ER on May 11, 2022. (P-1, P-54; S-19; NT at 314-346, 378-477, 730-921).

2022-2023 / [redacted]

29. In late July 2022, the District scheduled an IEP meeting for Monday, August 29, 2022; the first day for students was Thursday, August 25, 2022. (P-3; S-21, S-22).
30. Throughout August 2022, the District made no effort to accelerate the IEP meeting or have programming in place prior to the start of the school year. (P-103).

31. The student's IEP team met on August 29, 2022. (S-23; NT at 378-477, 730-921).
32. The August 2022 IEP was written for implementation at the District, calling for supplemental learning support and indicating that the student did not have behavior that impeded the student's learning or the learning of others. (S-23).
33. In August 2022, the student's IEP team issued the IEP for implementation in an out-of-District placement. (P-7; S-23, S-25, S-26).
34. On September 6, 2022, the student began to attend the out-of-District placement. (P-7; S-23, S-28; NT at 517-548).
35. The out-of-District placement implemented the August 2022 IEP. (P-7; NT at 517-548).
36. In September 2022, the student was involved in an incident with a peer which involved purposeful contact with the student's head. The student left the placement with the mother and a mobile therapist from a community agency who provided services to the student. (P-16; NT at 378-477).
37. On September 28, 2022, the student was restrained at the out-of-District placement as a result of the student's behavior. (S-37; NT at 517-548).

38. On September 30, 2022, the student was playing football with fellow students and sustained contact to the head; the student blacked out and was transported by ambulance to a hospital. (P-12; NT at 378-477, 517-548).
39. The student's IEP was revised to include content related to the September 30th incident. (S-35, S-42).
40. On October 7, 2022, the out-of-District placement developed a crisis-management plan regarding the student's behavior, including protection of the student's head (from both contact and head-banging). (P-12).
41. On October 14, 2022, the parent received recommendations from the student's pediatrician regarding protection of the student's head. (P-13).
42. On October 18, 2022, the out-of-District placement revised the crisis-management plan on the basis of the medical recommendations. (P-15).
43. On October 19, 2022, the student sustained contact to the head from a behavior incident involving behavior of another student. (P-16).
44. Frustrated with the repeated contact to the student's head, the parent did not return the student to the out-of-District placement throughout most of October 2022. (S-46; NT at 378-477).

45. Throughout November 2022, the student did not attend the out-of-District placement and did not receive educational services from the District. (S-46; S-58).
46. In November 2022, the District was exploring other out-of-District placements as well as homebound instruction. (P-62).
47. The District withdrew the student from the out-of-District placement on December 6, 2022. The student was enrolled in the District's online instructional environment while it explored "next steps". (S-58; NT at 730-921).
48. In December 2022, the District requested permission to evaluate the student for speech and language ("S&L") services and because parent requested updated intellectual ability and achievement testing. (S-60; S-86).
49. At some point, the student was qualified for homebound instruction through February 3, 2023. The student received instruction online and in person, although the nature of the homebound instruction is inexact on this record. (P-48; S-67, S-68, S-75 at page 6; NT at 554-671, 730-921).
50. Eventually, the student received a combination of online learning and in-person instruction by coming into a District elementary school. Specifically, the student received in-person tutoring on Tuesday and Thursday mornings, math and social studies instruction online on

Monday, Wednesday, and Friday, and five hours per week of online tutoring. (S-75 at page 6; S-86; NT at 554-671).

51. It is unclear whether the student received emotional support services or, if so, when and what type. (NT at 554-671, 730-921).

52. In January 2023, the District's indications in internal communications were that the online/in-person hybrid was a temporary arrangement in its planning until "(the student) is in a building full-time". (S-67, S-68).

53. The District administrator responsible for overseeing the District's online academy testified credibly that the online/in-person hybrid was ineffective in meeting the student's educational needs. (NT at 554-671).

54. In February 2023, the student's IEP was revised to reflect the online/in-person tutoring hybrid programming. (S-75).

55. In mid-March 2023, the parent obtained a private psychological evaluation report. (P-22).

56. The March 2023 private evaluation diagnosed the student with autism, ADHD, depression, and anxiety. (P-22).

57. The March 2023 private evaluation contained a number of general recommendations, along with specific recommendations for home, for school, and for behavioral health needs. (P-22).

58. The parent provided the report to the District school psychologist and the District administrator overseeing the online/in-person hybrid schooling. (NT at 378-477, 554-671).
59. In March 2023, the District issued a re-evaluation report ("RR") that included updated parental input (P-23; S-86).
60. The District had the private evaluation approximately ten days prior to the issuance of the March 2023 RR. (P-22; S-86).
61. The District school psychologist did not include any content from the private evaluation in the March 2023 RR. (P-22; S-86).
62. Curriculum-based, mid-year assessment of the student's performance in reading for 2022-2023 school year showed the student was 'well below benchmark' in all areas (letter sounds, decoding, word reading, reading accuracy, reading fluency, and basic comprehension), including the reading composite score. (S-86 at pages 6-7).
63. The student's teacher provided input for the March 2023 RR, based on her work with the student in-person on Tuesday and Thursday mornings. The teacher's input regarding the student's social/emotional/behavioral performance was as follows: "work refusal, putting...head down, leaving class, refusing to go to class, making noises/talking out, refusing to follow directions, and making comments such as 'you should not trust me with scissors', 'could I hurt myself with that', and 'is it sharp'. (The student) isolates [redacted]

from...peers and will interact with adults when they are a part of an activity.” (S-86 at page 9).

64. The March 2023 IEP indicated that “(the student) was referred for a speech and language screening upon arrival to (the District elementary school) in the 2022-2023 school year. Articulation of speech sounds was an obvious area of concern, which warranted further evaluation of (the student’s) speech sounds.”. The student had largely attended District schools, however, since [redacted], in the 2019-2020 school year. (S-86 at page 9).
65. The student scored in the 3rd percentile on an articulation assessment of speech sounds at the word level. The S&L evaluator recommended a weekly 30-minute session for S&L support. (S-86 at page 9).
66. Updated cognitive testing in the March 2023 RR yielded a full-scale IQ of 94. (S-86).
67. Updated achievement testing in the March 2023 RR indicated statistically discrepant scores in the letter/word recognition and reading comprehension subtests, as well as the reading composite, the math concepts/applications subtest, and the listening comprehension subtest. (S-86 at pages 14-15).
68. The student continued to show significant needs through social/emotional/behavioral assessments. (S-86).

69. The March 2023 RR continued to identify the student with an emotional disturbance. The student was newly identified as a student with a specific learning disability in basic reading. (S-86).
70. A day before the issuance of the March 2023 RR, a District team of educators undertook an initial line of inquiry about the student's problematic behaviors, even though the student had been exhibiting problematic behaviors in the District for multiple school years and was not, at that time, in a District-based special education placement. (S-82).
71. Following the March 2023 RR, in April 2023, the District revised the student's IEP. (S-93).
72. In the April 2023 IEP, the student continued to receive an online/in-person hybrid program, although the student moved from Tuesday and Thursday mornings to Tuesday and Thursday afternoons. The April 2023 IEP continued to contain information about the student's homebound instruction for the January and February 2023 period. (S-93 at page 6).
73. In April 2023, the District made a referral to an out-of-District placement but the student remained in the District. (S-64).
74. In early May 2023, the District made a referral to an out-of-District placement, which accepted the student. (S-98; NT at 378-477, 554-671, 730-921).

75. The District formally offered recommended the out-of-District placement through a NOREP, which parent approved in mid-May 2023. (S-106).
76. The placement at the out-of-District placement would have been full-time emotional support, but the District NOREP indicated that the placement would be itinerant emotional support. The District school psychologist explained that the recommendation was not for the level of placement the student would actually receive, but the level of placement that the District could offer, even though that level was (a) insufficient—the very reason for seeking the out-of-District placement – and (b) not the District’s formal placement recommendation. (S-100; NT at 730-921).
77. In May 2023, the District developed a crisis response plan while the student remained in the online/in-person hybrid setting. (S-102).
78. In May 2023, the District revised the student’s IEP to include occupational therapy supports. (S-103).
79. The out-of-District placement would not begin until the 2023-2024 school year, so the student finished the 2022-2023 school year in the online/in-person hybrid setting at the District. (NT at 378-477, 554-671).

2023-2024 / [redacted]

80. Over May, June, and July of 2023, the District reached out to the out-of-District placement identified in May 2023. The placement was not responsive until July 20, 2023, when it indicated it would no longer accept the student into the placement. (S-105; NT at 378-477, 554-671, 730-921).
81. The parties worked on a placement, finally securing a different out-of-District placement for the outset of the 2023-2024 school year. (NT at 684-725).
82. In October 2023, a functional behavior assessment ("FBA") was conducted at the out-of-District placement. (S-113, S-120).
83. In late October 2023, the District issued a RR, incorporating the results of the FBA. (S-120).
84. The October 2023 RR did not incorporate any content from the March 2023 private evaluation. The out-of-District placement had no knowledge of the private evaluation, the autism or other diagnoses, and the recommendations in the private evaluation. (S-120; NT at 684-725).
85. In November 2023, the out-of-District placement developed an IEP for the student. The November 2023 IEP indicated that the student would be in full-time emotional support at the placement and would

not participate in any general education environment with non-disabled peers. (S-130).

86. In November 2023, the District issued a NOREP indicating, correctly, that it was recommending full-time emotional support at the out-of-District placement. (S-176).

87. The student completed the 2023-2024 school year at the out-of-District placement.

2024-2025 / [redacted]

88. These proceedings commenced with opening statements on September 6, 2025. Part of parent's complaint included claims related to the absence of consideration of the March 2023 private evaluation and inappropriate identification of the student's needs. (Hearing Officer Exhibit – 1; NT at 1-49).

89. This identification claim was bifurcated by the undersigned hearing officer so that it could be expeditiously handled in light of the student's ongoing programming. Parent ultimately withdrew the identification claim as a result of a resolution of the claim between the parties.

90. In October 2024, the District sought permission to re-evaluate the student. (P-107).

91. In November 2024, the out-of-District placement issued the student's annual IEP, which included information related to the March 2023 private evaluation. (P-104).

Legal Framework

Denial-of-FAPE. The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.162). To assure that an eligible child receives FAPE (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). '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. (Endrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Child-Find & Evaluation. A determination of eligibility under IDEA, and identifying a student's individual need for special education, is the initial step in the provision of services under IDEA. A local education agency's duty to locate, evaluate, and identify students who might require special education

is commonly referred to as an agency's "child find" obligation. (34 C.F.R. §300.111; 22 PA Code §14.121). In meeting its child-find obligation, once a school district receives parental consent, it initiates an evaluation process to see whether or not the student qualifies for special education. (34 C.F.R. §§300.300-300.311; 22 PA Code §14.123). If the student qualifies for special education through the evaluation process, the student receives an IEP to meet the goal-driven, individualized services required as a result of the student's needs related to the student's disabilities.

In an evaluation or re-evaluation, a school district must consider all relevant information to understand a student's needs for special education programming. (34 C.F.R. §§300.300-300.311; 22 PA Code §14.123). Where a parent has a private educational evaluation or report, a school district must consider the report in any decision made with respect to the provision of FAPE. (34 C.F.R. §300.502(c)(1); 22 PA Code §14.101(a)(2)(xxix)).

Section 504 Discrimination. The provisions of Section 504 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 on the basis of disability, has been subject to disability discrimination 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)). A student who claims discrimination in violation of the

obligations of Section 504 must show deliberate indifference on the part of the school district in its purported acts/omissions. (S.H., *id.*).

Remedy – Compensatory Education. Where a school district has denied FAPE to a student under the terms of IDEA, compensatory education is an equitable remedy that is available to a student. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)).

The evidentiary scope of claims, which is not a point of contention in this matter, and the nature of compensatory education awards were addressed in G.L. v. Ligonier Valley School Authority, 801 F.3d 602 (3d Cir. 2015) The G.L. court recognized two methods by which a compensatory education remedy may be calculated.

One method, the more prevalent method to devise compensatory education, is the quantitative/hour-for-hour calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated based on a quantitative calculation given the period of deprivation. In most cases, it is equitable in nature, but the award is a numeric award of hours as remedy. The second method, a rarer method to devise compensatory education, is the qualitative/make-whole calculation, where, having proven a denial of FAPE, the compensatory education remedy is calculated on a qualitative determination for the compensatory education to place the student in the place where he/she would have been absent the denial of

FAPE. It, too, is equitable in nature, but the award is based on services or interventions for the student, or some future accomplishment or goal-mastery by the student, rather than being numeric in nature.

Both calculations are a matter of proof. The quantitative/hour-for-hour approach is retrospective, looking back to understand the cumulative denial of FAPE, and is normally a matter of evidence based on IEPs or other documentary evidence that provides insight into the quantitative nature of the proven deprivation. The qualitative/make-whole approach is prospective, looking forward to some point in the future where the proven deprivation has been remedied, and normally requires testimony from someone with expertise to provide evidence as to where the student might have been, or should have been, educationally but for the proven deprivation, often with a sense of what the make-whole services, or future student accomplishment/goal-mastery, might look like from a remedial perspective. In this case, parents seek quantitative compensatory education, requesting a specific, numeric amount of compensatory education hours. (NT at 41-42).

Discussion

Denial of FAPE. Based on this record, the District denied the student FAPE in a number of ways. Taken chronologically, first, the District failed in its child-find obligation to identify the student's longstanding needs for social/emotional/behavioral support. While not part of the denial-of-FAPE

evidentiary record and not as the basis for remedy, the student exhibited problematic behaviors in the District from the first [redacted] year (2019-2020) onward. In May 2021, within the denial-of-FAPE window, the District requested permission to evaluate the student. The student's grandmother, who had requested the evaluation, returned the PTE although it was not signed. Still, this evinced a clear indication that the family felt the student had potential needs in the educational environment and sought to undertake the paperwork necessary for the District to undertake the evaluation. Yet in four short weeks, after relying on the delivery of the paperwork through the student's backpack and a handful of email exchanges, the District 'shut down' the evaluation process because it lacked consent to proceed. Certainly, it could not proceed; but just as certainly, it needed to do more to persevere in trying to obtain the grandmother's consent. This is the foundation, and an explicit finding, that the District denied the student FAPE regarding evaluating and identifying the student.

Second, and regrettably, the student went an entire school year, from May 2021 through May 2022, without any services. Had the District persisted, quite reasonably, to make sure it had not overlooked something in the student's needs, it might have identified the student earlier as eligible for special education; it might have even identified the need for more support in the general education environment through a Section 504 plan.

But the student continued to endure significant unmet social, emotional, and behavioral needs through most of the 2021-2022 school year.

Third, the failure of the District to persist in securing parent's consent, and to allow the student to languish without any supports at all, bore bitter fruit in the spring of 2022 when, over March through May 2022, the student's emotional state disintegrated, with—as documented by the District itself— suicidal ideation, head-banging, aggression, disruption, depression, and withdrawal all manifest in the student. Ultimately, the District resorted to community-based crisis intervention.

The fourth element of denial-of-FAPE was the lack of any activity whatsoever to propose programming, or secure a specialized therapeutic placement, over the period from May 11, 2022 through August 29, 2022. Three and a half months passed from the time the District identified the student's evident needs to the start of the 2022-2023 school year. Yet that school year started without any IEP in place; indeed, an IEP meeting had not yet been held.

When the IEP and placement questions were finally addressed by the student's IEP team, the result revealed just how bungled the District's handling of this student's needs had been. In March 2022, the District ostensibly saw no need whatsoever for any programming for the student—a Section 504 plan, an IEP, or otherwise. By August 2022, a six-month period that included only three months of schooling, the District was recommending

full-time emotional support in a specialized therapeutic setting. These findings are not Monday morning quarterbacking; this findings are grounded in a school district entirely breaching its child-find duties.

Fifth, the August 2022 IEP is inappropriate. It is drafted for implementation at the District, something that was not contemplated at all. Incredibly, it indicates that the student does not exhibit behavior that impedes the student's learning or that of others. The August 2022 IEP does not propose to provide meaningful education benefit to the student in light of the student's unique needs.

Sixth, in the fall of 2022, the student returned to the District after the multiple incidents of head injury (outside of the student's head-banging behavior). One can understand the parent's concern in this regard, and, contrary to the parent's allegations in the complaint, the District did not neglect or fail to address the need for planning and support in this regard. Quite the opposite—from a programming perspective, the out-of-District placement responded timely and appropriately to each of the incidents. But as of November 2022, the District knew the student was no longer attending the out-of-District placement; as of December 6, 2022, it had enrolled the student in its online learning platform. At that point, the District's programming and placement decisions wholly denied the student FAPE. For six months (December 2022 – May 2023), through the very end of the 2022-2023 school year, the student participated in a deeply inappropriate

hybrid program/placement of online learning and minimal tutoring/instruction at a District school. While the IEPs over this period reference the student's emotional support, the structure and deliver of the student's special education under this model is a wholesale denial of FAPE.

As will be seen below in the calculation of compensatory education remedy for this denial of FAPE, the entire period cannot be the basis of an award of compensatory education. Starting at some point in November 2022, when the District knew it needed to work on a new placement, through December 2022 and January 2023, the District must be given a reasonable amount of time over these months to secure a new out-of-District placement. But in those two-plus months, by the end of January 2023, the District should have been in a position to place the student appropriately. Over those months, though, except for one or two instances that spring, it did nothing. For a student with significant social, emotional, and behavioral needs, requiring a full-time emotional support placement with a therapeutic component, the District entirely denied the student FAPE over the period February – May 2023.

Seventh and finally, in March 2023, as the District undertook a re-evaluation process, the parent forthrightly shared a March 2023 private evaluation which was nearly contemporaneous with the District's evaluation process and issuance of its March 2023 RR. The March 2023 private evaluation contained significant content from the perspective of assessment,

diagnoses, conclusions, and recommendations. The report was provided in time for consideration as part of the March 2023 RR (as the credible testimony of the District administrator of the online programming testified). But the District school psychologist did not make it part of the RR. In fact, for over eighteen months, until November 2024, neither educators in the District nor in the out-of-District placement which the student attended/attends in the 2023-2024 and 2024-2025 school years, knew of the existence of the report. This failure to consider the results of the private evaluation is a denial of FAPE.

All of these instances of denial of FAPE require a compensatory education remedy, which will be explained below.

Having found these multiple instances of the District denial of FAPE, however, it must be pointed out where it did not fail in its FAPE obligations. In the initial out-of-District placement, over September-October 2022, the District had placed the student appropriately and was working with the out-of-District placement to develop appropriate programming. And, as indicated above, everyone involved in the head-injury situations was working appropriately to remedy, and program for, the student's consequent needs. Likewise, the student's program and placement in the out-of-District placement which the student attended in the 2023-2024 school year, and which the student currently attends in the 2024-2025 school year, is

appropriate. For this programming, these placements, and those periods of time, FAPE has been provided, and there will be no remedy.

Section 504 Discrimination. While the District's acts and omissions in the instances set forth above amount to denial of FAPE, none of those instances were the result of deliberate indifference. The District can, and herein has, been rightly faulted for denying the student FAPE. But it has not acted with deliberate indifference toward the student on the basis of the student's disability.

Compensatory Education. As set forth above, parent has carried her burden that the District denied the student FAPE. Many of these instances of denial of FAPE are not easily figured in terms of a quantifiable compensatory education remedy. Namely, all of these issues must be remedied by an equitable amount of compensatory education: the child-find issue and consequent lack-of-services issue over May 2021 through May 2022, the student's dysregulation and emotional disintegration over March through May 2022, the lack of any IEP meeting or development of programming over May through August 2022, the inappropriate August 2022 IEP developed for implementation at the District, and the District's failure to account for or to consider the results of the March 2023 private evaluation.

In turn, each will be the basis of an award of compensatory education as follows:

- a) 200 hours of compensatory education will be awarded for the child-find failure and the failure to have programming in place over the period May 2021 through May 2022;
- b) 60 hours of compensatory education will be awarded for the period March through May 2022 when the student spiraled into dysregulation;
- c) 30 hours of compensatory education will be awarded for the approximately 15 weeks from May through August 2022 when the District took no action to convene an IEP meeting or propose programming for the outset of the upcoming school year;
- d) 30 hours of compensatory education will awarded for the inappropriate proposal of programming in August 2022; and
- e) 25 hours of compensatory education will be awarded for the District's failure to consider the results of the March 2023 private evaluation.

The wholesale lack of appropriate programming for the student over the period February through May 2023 is more easily quantifiable. In Pennsylvania, a student in the elementary grades K-6 is entitled to 900 hours of instruction in a given school year, approximately 5 hours per day in a 180-day school year (or 100 hours per month in a 9-month school year). (22 PA Code §11.3(a)). Using this as a starting point, the student here was denied any appropriate special education over the four months of February

(when the District should have had appropriate programming in place) through May 2023. Accordingly, the student will be awarded 400 hours of compensatory education for this four-month deprivation of FAPE.

Thus, utilizing a quantitative/hour-for-hour perspective and as a matter of these equitable considerations, the student will be awarded 745 hours of compensatory education.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the South Allegheny School District ("District") denied the student a

free appropriate public education for various deficiencies in special education programming.

For this reason, the student is entitled to 745 hours of compensatory education.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

01/20/2025