

*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. 31592-25-26**

**Child's Name:**  
G.C.

**Date of Birth:**  
[redacted]

**Parent/Guardian:**  
[redacted]

**Counsel for Parent:**  
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Plymouth Meeting, PA 19462

**Local Education Agency:**  
Haverford Township School District  
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**Hearing Officer:**  
Cathy A. Skidmore, Esquire

**Date of Decision:**  
10/26/2025

## **INTRODUCTION AND PROCEDURAL HISTORY**

The student, G.C. (Student),<sup>1</sup> is a [redacted] teenaged student residing with the Parent and currently enrolled in the Haverford Township School District (District). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> with several disabilities including Specific Learning Disability and Emotional Disturbance. Accordingly, Student also has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.<sup>3</sup> By the conclusion of the due process hearing, Student was provided homebound instruction through the District.

In June 2024, a different hearing officer issued a final decision involving the same parties addressing very similar issues.<sup>4</sup> Then, during the summer of 2025, the Parent filed a Due Process Complaint under the IDEA and Section 504, contending that the District denied Student a free, appropriate public education with respect to programming and placement for the 2024-25 and 2025-26 school years. As remedies, the Parent seeks relief including placement in a specific private school and compensatory education. In response, the District denied the Parent's contentions and the relief demanded, asserting that Student its programming was appropriate at all

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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> *G.C. v. Haverford Township School District*, ODR File No. 28366-2324 (Jolley, June 7, 2024) (ruling in favor of the District on all claims).

relevant times and that Student does not need the specified private school placement. The matter proceeded to an efficient hearing with the presentation of witnesses and documentary evidence,<sup>5</sup> offering substantial evidence toward an understanding of Student's disability-related needs and the District's approaches to addressing them.

Following review of the record and for all of the reasons set forth below, the claims of the Parent cannot be sustained and accordingly must be denied.

## **ISSUES**

1. Whether the District deprived Student of a free, appropriate public education in its proposal of programming for the 2024-25 and 2025-26 school years. and its implementation of programming at the start of the 2025-26 school year, including the summer of 2025;
2. If the District did deny Student a free, appropriate public education during any portion of the relevant time period, whether tuition reimbursement for the private school, prospective placement at the private school, and/or compensatory education; and

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<sup>5</sup> References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. The record at ODR File No. 28366-23-24 was incorporated by stipulation (N.T. 85-86) and together the record is rather voluminous by necessity. Citations to duplicative evidence is not necessarily exhaustive.

3. Whether the Parent should be reimbursed for an Independent Educational Evaluation she recently obtained of Student?

## **FINDINGS OF FACT**

1. Student is [redacted] teenaged and resides within the District's boundaries, currently enrolled in its high school where pendency was ordered. Student is eligible for special education under the classifications of specific learning disability and emotional disturbance. (P-2; S-1; HO-1.)<sup>6</sup>

### **General Findings**

2. Student is hard-working, kind, respectful, with positive rapport with teachers and peers. Student actively participates in and engages with the class, and demonstrates self-advocacy skills. (N.T. *passim*; S-2 at 22-26.)
3. Student has a complex profile with a visual impairment, and medical episodes because of a neurological condition that are manifested as brief loss of consciousness (hereafter episodes or episodic condition). Student has undergone treatment for this condition, with episodes sometimes multiple times in one day and sometimes less frequent approximately monthly. The episodes can be triggered by stress and, when first diagnosed, with quite frequent over a period of weeks. (N.T. 97, 100-01, 103-07, 128-29, 928, 935, 979-80; P-3; P-4; P-6.)
4. Student has had several traumatic experiences in the past. (N.T. 97, 140-41; S-1 at 2-4; S-2 at 6.)

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<sup>6</sup> HO-1 is the amended pendency order, the original pendency order, and the parties' related filings from August and September 2025. HO-2 is the order denying the District's Motion to Compel on September 16, 2025. HO-1 and HO-2 are hereby admitted to the extent they have not been.

5. Student has undergone treatment including therapeutic counseling for mental health diagnoses that was initially family-based and then individual for Student in the spring of 2024. (N.T. 190-92, 197, 242-43, 404-05; 412-13; P-5.)
6. The Parent has attended and participated in all relevant IEP meetings. (N.T. 109-10, 130-32, 156, 173-74.)
7. The District has an experienced school counselor, contracted through a third party, who is a licensed professional counselor. That counselor is assigned to its high school and provides individual mental health services for students as needed. (N.T. 681-82, 685-86, 688-89.)

### **Educational History**

8. Student was reevaluated by the District in December 2023, with a Reevaluation Report (RR) issued at that time.<sup>7</sup> Student was determined to be eligible for special education under the Specific Learning Disability and Emotional Disturbance classifications. Identified strengths included participation, engagement, and an ability to work well in groups; needs to be targeted were in the areas of reading (reading decoding/word identification, reading comprehension, and reading fluency), mathematics (problem solving and calculation), and written expression (encoding and overall skills). (P-2; S-1.)
9. An Individual Education Program (IEP) was developed in early January 2024.<sup>8</sup> Identified strengths and needs mirrored those in the recent RR, with annual goals addressing each area of academic need. Program modifications and items of specially designed instruction was

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<sup>7</sup> The content of the RR is set forth in detail in the hearing officer decision of June 7, 2024 at Findings of Fact (FOF) ¶¶ 79-89 at 16-18, and is hereby incorporated by reference as though fully set forth at length.

<sup>8</sup> The content of the IEP is set forth in detail in the hearing officer decision of June 7, 2024 at FOF ¶¶ 90-98 at 18, and is hereby incorporated by reference as though fully set forth at length as is its conclusion that this IEP was appropriate for Student.

comprised of emotional regulation, executive functioning, fine and visual motor skills; each identified academic need; and test accommodations. Student's program was one of learning and emotional support at a supplemental level, with Student not participating in general education during reading/Language Arts and mathematics instruction, academic support, and counseling provided as a related service. (S-2.)

## **2024-25 School Year**

10. Student's IEP was revised in May 2024 in preparation for a possible return to the District in the fall. This IEP reflected that Student had received two new diagnoses, the episodic condition and vision impairment. The episodes reportedly occurred up to five times per day with durations of five to twenty minutes. The District documented discussions with and input from the Parent as well as its receipt of a parental release of records by various medical providers and the then-current Private School. (N.T. 782 and *see generally* N.T. 771-902; P-7; P-8; S-4; S-5.)
11. A vision therapist who evaluated Student for that condition made recommendations for Student: use of color to highlight important written materials and targets; reduction of visual distractions; additional wait time including for completion of tasks; materials at eye level or at an angle such as on a book stand; reduced complexity in visual materials; lower light levels; limited use of sight distance; and presentation of materials using simple backgrounds. Accessible devices, decreased handwriting in favor of keyboards, electronic or adapted copies of notes on a board, and access to a quiet area were also stated to be beneficial. A different medical professional additionally suggested recording of lectures, use of images to support understanding, and pre-teaching of new material. (P-1; P-7.)

12. Revisions to the IEP in May 2024 provided information about the specific reading instruction (multisensory, phonics-based) and mathematics instruction; and included academic support twice each week as well as a plan for Student transitioning back to the District. Otherwise, the IEP remained essentially identical to the one from January 2024. (S-4.)
13. The Parent did not approve the District's offer of programming for the 2024-25 school year, disagreeing with each NOREP that noted options considered to include regular education and a private school. (P-14.)
14. In late August 2024, Student's psychologist provided information about Student's episodic condition. She noted that the cause is unknown, and that treatment included medication, physical therapy, and cognitive behavior therapy. She further described Student's admission to its facility between April and July 2024. Recommendations of this psychologist were a safety plan to be developed with Student and the family that would include: learned coping skills; time for regrouping after an episode; access to a water bottle; and likelihood of chronic pain without visible signs in addition to Student's potential for lacking openness in admitting to physical pain. (S-6.)
15. A meeting of Student's IEP team convened in August 2024. (N.T. 109-11.)
16. Student attended a private school (Private School) over the 2024-25 school year. (N.T. 124.)
17. An IEP revision meeting convened in early September 2024 to incorporate the newly obtained information about Student's episodes and vision impairment as well as previous trauma. Student's reported therapist informed the District that Student was traumatized

significantly earlier in life and could be triggered by any aggression; could experience stress from school; and lacked adequate coping skills. Accommodations and modifications to Student's program were recommended for the vision needs. (P-9; S-8 at 21-23.)

18. Additional input from a therapist where Student attended a partial hospitalization program during the summer for approximately six weeks was also incorporated into the September 2024 IEP. Treatment included individual and family therapy as well as acquisition of coping skills to address Student's high level of anxiety. Student did not agree to a recommendation for an intensive outpatient program following discharge. Recommendations of this therapist included small class settings with peers more like Student than not; active engagement; prompts for attention; preferential seating; an identified individual at school for check-ins; and breaks in a quiet environment as needed. Access to activities for involvement at school was also encouraged. (S-8 at 22.)
19. Revisions to the IEP in September 2024 provided for a new emotional regulation goal for applying coping skills. New program modifications/items of specially designed instruction were a daily check-in system with the counselor or emotional support teacher; a new Functional Behavior Assessment upon return to school; and a number of vision supports including reduced visual distractions; highlighted content and high contrast materials; explicit preferential seating; access to notes or content on a board; narration and speech-to-text; audiobooks; and visual breaks. A safety plan was also provided incorporating the recommendations made by Student's psychologist. (S-8.)
20. The Parent requested an informal meeting in September 2024 when the NOREP was issued. (P-11.)

21. Another IEP meeting convened in December 2024 with a new IEP developed. (N.T. 130-31; P-13; S-12.)
22. The December 2024 IEP summarized existing information including the December 2023 RR and the information provided by private medical providers in the summer of 2024. Descriptions of three observations at Private School by the District social worker, guidance counselor, and school psychologist were also set forth. Student's identified strengths and needs remained the same as in the prior 2024 IEPs, and the document otherwise remained the same. (S-12 at 1-11.)
23. The Parent disapproved the NOREP and again asked the District to fund Private School for Student, and the District denied that request. Options considered noted on the NOREP were regular education and a private school. (P-14; P-15; P-16; P-37; S-14.)
24. Student was evaluated by a psychiatrist in April 2025 with resulting diagnoses of major depressive disorder, generalized anxiety disorder, PTSD, and the episodic condition. Student was placed in a private hospitalization program for approximately thirty days to address anxiety and school avoidance with instruction provided through the District. The psychiatrist recommended continuation of medication and therapy, with risk of suicidal ideation reportedly low. Periodic treatment for medication evaluation and therapy was also part of the plan. (P-17; P-18; S-16; S-19; S-43 at 127.)
25. Another IEP meeting convened in April 2025. The District recommended an out-of-district therapeutic placement requiring referrals to alternative schools. The Parent did not approve the accompanying NOREP that noted the home school as an option considered. (P-19; P-21; P-23; S-18.)

26. The Parent executed another release of records for the District in May 2025. (P-20.)
27. Student reportedly experienced success at Private School. (N.T. 124, 127, 159.)

## **2025-26 School Year**

28. The District made referral requests to several out-of-District placements in June 2025. (S-21; S-22; S-23.)
29. A private neuropsychologist conducted a review of records for Student in June 2025 and issued a supplemental report to one prepared in January 2021 and another in February 2023. Her June 2025 recommendation was that Student remain at Private School for many of the same reasons expressed in the January 2021 report. (P-25 in CWJ case) (P-25.)
30. An IEP meeting convened in July 2025 to discuss Private School for Student. The District did not agree to fund that placement and the IEP was not revised. The Parent disapproved the NOREP following that meeting that included Private School and the home school as options considered. (N.T. 167; P-24; P-26; P-28; P-29; S-32 at 5.)
31. The Parent re-enrolled Student in the District in early August 2025. Private School was reportedly unwilling to admit Student for financial reasons. (N.T. 178-79, 239; P-31; S-26; S-27.)
32. Student's private therapist made recommendations in late August 2025 that included a therapeutic setting for school-based programming. (P-41.)
33. One of the out-of-District placements accepted Student in late August 2025. Another IEP meeting convened in late August to discuss Student's placement there, and the District issued a NOREP for that

recommended placement. The Parent disapproved this NOREP. (S-31; S-32; S-34.)

34. The Parent also withdrew Student from the District to attend Private School at the time of the August 2025 IEP meeting. However, Student nonetheless was a student in the District at the start of the 2025-26 school year. (S-35; S-40.)
35. Student's schedule for the 2025-26 school year provided for four blocks of instruction on alternating days for a total of eight courses, as well as a homeroom period. (S-42.)

## **Student's return to the District in September 2025**

36. Student experienced multiple instances of episodes after returning to the District in early September 2025, at home and at school. (N.T. 495-501, 503, 514-15.)
37. The high school counselor met Student in the morning of the first day of the 2025-26 school having reviewed Student's IEP. The counselor introduced herself to Student in the hallway before the first period ended, offering to accompany Student to the next class; Student consented, and the counselor accompanied Student to all other classes as well as lunch outside of the cafeteria and to the bus for transport back home. The Parent later reported that Student had a difficult day, was discouraged with the courseload, and was suffering from a headache. (N.T. 690-91, 696, 699-710; P-48 at 1-4.)
38. Student was provided with a District Chromebook at the start of the school year that did not meet Student's vision needs. The counselor contacted the District's Information Technology department immediately to resolve those concerns. (N.T. 496-97, 703-04, 710, 716, 727; P-48.)

39. On the second day of school, Student experienced an episode at home in the morning, and consequently arrived late and went directly to the nurse's office. The nurse contacted the counselor who went to that office with the school social worker to meet with Student. Student then asked to call the Parent and did so. An individual arrived to pick up Student and reported a second episode in the nurse's office that morning. (N.T. 711-16; P-48 at 3-4.)
40. On the third day of school, Student arrived quite late and went immediately to an available emotional support classroom where students are permitted to go to take a break. The counselor accompanied Student during transitions, and Student remained at school all day, speaking with the counselor about the possibility of online learning. The Parent later reported that Student shared not completing any coursework all day and described Student's need for more engagement. (N.T. 717-26P-48 at 5-6.)
41. The District invited the Parent to a meeting during the fifth day of school. (P-48 at 6.)
42. Student again arrived very late on the fourth day of school after experiencing an episode at home in the morning. Student briefly went to the first period class until it was over and transitioned with the counselor to the emotional support class again. Student elected to transition to the bus without the counselor that day. (N.T. 727-29.)
43. On the fifth day of school, a Monday, Student spoke with the counselor and reported not feeling well. As they transitioned to the nurse's office, Student determined there was a need to sit down and the counselor went to alert the nurse. Student experienced an episode and was unresponsive for approximately thirty minutes, then within two minutes experienced a second episode lasting approximately ten

minutes. Student went to the nurse's office afterward until an individual arrived to pick up Student. (N.T. (N.T. 729-32, 760.)

44. The sixth day of school was Student's last at the high school. Student had a modified schedule that day to attend only first period before transportation home. (N.T. 732-34; P-53.)
45. On September 12, 2025, the eighth school day of the 2025-26 school year, Student's pediatrician recommended homebound instruction pending return to Private School. The District immediately invited the Parent to a meeting to discuss homebound instruction on September 16, 2025. (S-29; P-52; P-53.)
46. Student reported feeling overwhelmed at the District high school to the private therapist, who had spoken with Student. Student also reported that same feeling to the Parent. (N.T. 428-29, 484, 493-94.)
47. The Parent attended back to school night at the District high school and was concerned about Student's visual impairment in that environment; Student's class schedule; and use of some computer programs at school. (N.T. 497, 507-09.)

### **The District's Proposed Placement**

48. The District's proposed placement (Proposed Placement) is a small therapeutic environment for students with learning and emotional disabilities. Proposed Placement provides both academic and therapeutic supports for students in grades seven through twelve. (N.T. 530-32, 526-39, 616.)
49. Proposed Placement accepts referrals only from school districts and is a public school affiliated with the local intermediate unit (IU). There are limitations on referrals for certain students who exhibit aggressive and violent behavior. (N.T. 542-44.)

50. Once a referral is made to Proposed Placement, if the setting determines that consideration of that student is appropriate, a tour is arranged for the student's parents. After consideration of all available information, Proposed Placement decides whether to accept the student. (N.T. 544-45.)
51. Students who are accepted by and admitted to Proposed Placement are provided with implementation of the existing IEP until a new meeting convenes to discuss potential revisions. (N.T. 547.)
52. Proposed Placement has eight certified special education teachers, and its dean of students is also a certified teacher. Teachers are also certified in the subject area of the classes. Other staff include a Board Certified Behavior Analyst, a certified counselor, two social workers, nurse, and six therapists serving the partial hospitalization program. All classes have teaching assistants, and all staff are full-time except the social workers. (N.T. 531-33.)
53. Staff at Proposed Placement are trained in trauma-informed practices and convene meetings at least weekly to address student needs. (N.T. 540-41, 550.)
54. Proposed Placement provides support for executive functioning, and individual counseling is available if necessary. Most students participate in group therapy weekly. (N.T. 538-39.)
55. Class sizes at Proposed Placement average approximately eight students to a class with a teacher and teaching assistant. (N.T. 546.)
56. Proposed Placement implements a school-wide positive behavior support program for all students. (N.T. 591-92.)
57. Proposed Placement provides post-secondary transition services for older students to competitive employment, community or four-year college, and trade school. Other courses address adaptive and related

skills such as public speaking. Activities addressing similar areas of need include opportunities for social skills groups. (N.T. 534-36.)

58. Extracurricular activities are available at Proposed Placement during the school day, such as daily clubs. Other events occur throughout the school year, but no activities are offered after school although most school districts do. (N.T. 541-42, 596-97.)
59. Many students at Proposed Placement leave for other placements within a year's time. Students who may be leaving that setting are provided with supports to expose them to typical public school curricula and requirements such as regular homework, as well as the soft skills necessary to transition to such environments. (N.T. 536-38.)
60. The Parent and Student toured the proposed placement in August 2025. (N.T. 169-70, 548-49, 551-52.)
61. Representatives at Proposed Placement reviewed Student's RR and most recent IEP and are prepared to implement it fully until a revision meeting convenes. Student was accepted there. (N.T. 554-70, 597.)
62. Another IEP meeting convened in late August 2025 attended by a representative of Private Placement where the IEP was discussed thoroughly. (N.T. 173-74, 566-68, 604.)

## **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 Parent 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 *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); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts despite some gaps in recollection. Contradictions among witness accounts may be attributed to lapses in memory or differences in perspective, rather than to an intention to mislead. 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 testimony of the private psychologist who issued a supplemental report was also of limited value, as was determined in the prior hearing officer’s decision and for the same reasons. For example, this witness made recommendations that were virtually identical to the earlier report except that she described emotional needs in 2025. As in the prior case, this witness had

not evaluated Student, observed Student at Private School, or obtained information from that setting (N.T. 651-52). The testimony of the private therapist contained several inaccuracies and similarly lacked little personal knowledge of Student's educational programming while at the same time overlooking her own recommendation for a therapeutic placement. There was very little persuasive value placed on either of these witness' accounts and opinions, as well as that of the private psychiatrist, all of whom had the identical goal of recommending that Student return to Private School.

On the other hand, the District witnesses and the Parent provided convincing testimony from that party's perspective, and both were accorded significant but not necessarily determinative weight. The Parent's testimony in particular was understandably emotional and provided from a loving parent's view and her concern with the size of the District high school was palpable. However, she had one end in mind: Student's to return to Private School at District expense, which diminished its probative value to some degree. It is also unfortunate that the Parent either misunderstood or incorrectly recalled the discussions about Private Placement, particularly since the testimony of its representative was quite thorough and persuasive.

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**

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. FAPE consists of both special education and related services as are necessary for the child. 20 U.S.C. §

1401(9); 34 C.F.R. § 300.17. Over forty years ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that FAPE obligations are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program, and also complying with the procedural obligations in the Act.

The various states, through local educational agencies (LEAs), meet the substantive obligation of providing FAPE 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). An IEP is developed “only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 399 (2017). In terms of substantive content, the IEP must be responsive to the child’s individual academic, functional, and developmental needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. Individualization to the child is unquestionably the central consideration for purposes of the IDEA.

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.’”).

A child’s IEP is not a guarantee but, rather, “must aim to enable the child to make progress.” *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018). The law mandates that a proper assessment

of whether a proposed IEP meets all legal criteria must be grounded on the known information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993). IEP development, of course, must follow and be based on an evaluation, and then be continuously monitored and updated by changes in the interim. 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

### **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. An LEA need not, however, create such a placement in order to provide the opportunity for the LRE as long as it considers the full continuum. *T.R., supra*, 205 F.3d at 579–80.

### **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.

## **Prospective Placements**

This hearing officer has previously determined on more than one occasion that an order for prospective placement requires evidence that supports a conclusion that the LEA is not in a position to make timely and reasonable revisions to its special education program in order to offer and provide FAPE. *See, e.g., A.Z. v. Young Scholars – Kenderton Charter School*, 15202-1415KE (Skidmore, December 24, 2014) (citing *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *see also Florence County School District v. Carter*, 510 U.S. 10 (1993); (together, the *Burlington-Carter* test)). This does not mean that the parents must establish that an LEA cannot “in theory” provide an appropriate program. *Draper v. Atlanta Independent School System*, 518 F.3d 1275, 1285 (11<sup>th</sup> Cir. 2008) (quoting *Ridgewood v. Board of Education*, 172 F.3d 238, 248-49 (3d Cir. 1995)), but the equitable nature of the requested remedy logically demands something more than a denial of FAPE.

The Eleventh Circuit in *Draper* explicitly did not determine that an order of prospective placement must be analyzed only under the *Burlington-Carter* test; rather, the Court explained that, “when a public school fails to provide an adequate education *in a timely manner*[,] a placement in a private school may be appropriate.” *Draper, supra*, 518 F.3d at 1285 (citing *Loren F. ex rel. Fisher v. Atlanta Independent School System*, 349 F.3d 1309, 1312 (11th Cir.2003) (emphasis added). Thus, if the tuition reimbursement analysis is necessary, this additional prong must also be established.

## **General Section 504 Principles**

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

The obligation to provide FAPE 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 Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 – 12213) do intersect but, as the Third Circuit has very 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 on ADA and 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). “[T]he ADA, by regulation, adds another requirement [beyond the IDEA]: the public entity must ‘give *primary consideration* to the requests of [the] individual[ ] with disabilities.’” *Id.* (quoting 28 C.F.R. § 35.160(b)(2)) (emphasis in original). “Once he has exhausted those claims in an IDEA hearing, a plaintiff may pursue them as he otherwise would in a district court.” *Le Pape, supra*, 103 F.4<sup>th</sup> at 979.

## **The Parents’ Claims**

The first issue is whether the Parent has established that the District’s proposed programs for the 2024-25 and 2025-26 school years are not appropriate for Student individually. Applying the applicable law including the critical *Bayonne* and *Fuhrman* component, it is necessary to carefully consider Student’s unique circumstances. At the outset, however, it is crucial to clarify that the proposed program at issue is that which formed the basis of the Complaint, that from May 2025: a full time therapeutic placement which was confirmed in August 2025 as Proposed Placement. Like Private School, Proposed Placement is on the same level of the placement continuum: a separate school pursuant to 34 C.F.R. § 300.115 and, in this particular case, Proposed Placement is not more restrictive.

The District’s proposed 2024-25 school year IEP in early September 2024 provided for measurable annual goals to address each academic need; an annual goal related to emotional regulation; program modifications and items of specially designed instruction targeted emotional regulation, executive functioning, fine and visual motor skills, as well as all academic weaknesses and Student’s need for testing accommodations including daily check-ins. Input from evaluators for the recently diagnosed conditions was part of the IEP, which incorporated virtually all of the recommendations of those private providers with additional program modifications and items of specially designed instruction. Finally, a safety plan for the episodic condition provided the recommendations of that evaluator. The

supplemental level of learning and emotional support proposed, with Student participating outside of general education during English/Language Arts and Mathematics instruction, academic support time, and when counseling was provided, was wholly appropriate for Student in this hearing officer's view. Furthermore, the 2024-25 school year slight revision in December 2024 for consideration of new information was clearly responsive, and the conclusion that additional revisions were unnecessary is amply supported in this record.

New mental health information obtained in the spring of 2025 noted three mental health diagnoses and a period of partial hospitalization. In accordance with the psychiatrist's recommendation as well as that of Student's private therapist, the District proposed an out-of-District therapeutic placement yet to be determined because of the timing of Student's diagnoses. At the time, Student remained at Private School, and the Parent did not approve the NOREP. She has unfortunately failed to establish by a preponderance of the evidence that the IEPs during the 2024-25 and 2025-26 school years failed to meet Student's unique needs based on the information known at the time of each of those proposals, and that claim therefore fails.

The Parent expressed deep concern with the size of the District high school despite the provisions for small classes with small student-to-teacher ratios, and cited Student's reaction of concern and perhaps alarm to presence in that environment. It is noteworthy to recall that the onset of the episodic condition in the fall of 2024 and the school avoidance in the spring of 2025 occurred while Student was attending Private School. Moreover, following return to the District, the entity was not required to construct such a setting for Student but, rather, to provide an appropriate program within its available offerings. This the District unquestionably did with the spring and summer 2025 proposed programs.

Just prior to the start of the 2025-25 school year, with Student's return to the District imminent and unexpected through no fault of either party, the District quickly convened an IEP meeting to discuss Student's transition to the age-appropriate District building and schedule. The first days of that school were, unfortunately, not successful for Student despite the many provisions in the existing IEP to address Student's known needs. Student only attended six days of school and, within two calendar days of that final day, Student's pediatrician recommended homebound instruction. The District offered a meeting to discuss that recommendation only seven calendar days after Student's last day in the District. There was simply no reasonable opportunity for the District to arrange for any educational services and this hearing officer concludes that it acted as promptly as possible to avoid Student missing required special education services at the start of the current school year.

Moreover, for the 2025-26 school year, the District promptly issued requests to alternative placements for Student consistent with the psychiatric diagnoses and private therapist recommendation. In August 2025, Student's therapist made an explicit recommendation for a therapeutic setting for Student's education. The Proposed Placement is an environment for both academic and therapeutic programming with a full staff of teachers and other professionals with training appropriate for addressing Student's unique circumstances, small class sizes, post-secondary transition planning, and available extracurricular activities that Student could also access at the District.

The Parent advanced a number of arguments in her thorough closing. She contends that there are a number of procedural violations, with the first sounding more in line with the third prong of the *Burlington-Carter* test. These have been already adequately addressed through the various factual findings and analysis above. This hearing officer has also reviewed the

various case law cited by both parties in their closings and find that the Parent's cases are inapposite and not controlling.

In sum, Student was not deprived of a free, appropriate public education based on the considerations in cases such as *Endrew, Rowley*, and *Furmann*. Although the undersigned did thoroughly consider some remedy for the diminished services at the start of the 2025-26 school year, caselaw does not support ignoring a period of reasonable rectification. More specifically, compensatory education may be an appropriate form of relief where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate educational services, while excluding the time reasonably required for a school district to correct the deficiency. *Id.* There is simply no portion of the 2025-26 school year that would lead to such a remedy.

The final issue is whether the Parent should be reimbursed for the private neuropsychologist's supplemental report. As noted above, that professional's testimony was entitled to only limited weight for the reasons set forth above; the report itself is no more probative. Had it been comprehensive or based on critical information, equitable principles may have supported consideration of this remedy, but it was not.

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 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 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.* This hearing officer does as well in this case.

Finally, as the District observed in its closing, the IEP team will be required under the IDEA to reconvene and discuss potential revisions to Student's IEP, including placement options if necessary, before any transition occurs. This hearing officer strongly encourages the parties to do so expeditiously, with Student currently only receiving limited homebound instruction at present. She does decline to order a meeting to convene when the District is already obligated to do so and is well aware of that requirement.

## **CONCLUSIONS OF LAW**

The District did not deny Student FAPE in its programming proposed and implemented over the 2024-25 and 2025-26 school years; and

The Parent is not entitled to reimbursement for an IEE.

## **ORDER**

AND NOW, this 26<sup>th</sup> day of October, 2025, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District did not deny Student FAPE in its programming proposed and implemented over the 2024-25 and 2025-26 school years, and the Parent's claims are DENIED AND DISMISSED in their entirety.
2. The District is not ordered to take any action.
3. 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. 31592-2526

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>9</sup> consistent with 22 Pa. Code § 14.162(n), and accompanied by appeal timelines.

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<sup>9</sup> N.T. 1011.