

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. 29972-24-25

Child's Name:

Y.C.

Date of Birth:

[redacted]

Guardians:

[redacted]

Counsel for Guardians:

Margie Wakelin, Esquire
Rebecca Preuss, Esquire
Education Law Center
1800 JFK Boulevard
Philadelphia, PA 19107

Local Education Agency:

Chichester School District
401 Cherry Tree Road
Alston, PA 19014

Counsel for the LEA:

Linell Lukesh, Esquire
32 Regency Plaza
Glen Mills, PA 19342

Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

04/14/2025

INTRODUCTION AND PROCEDURAL HISTORY

The student, Y.C.Q. (Student),¹ is a [redacted] student residing within the boundaries of the Chichester School District (District). Student was evaluated by the District pursuant to the Individuals with Disabilities Education Act (IDEA)² during the 2023-24 school year, but was not identified as eligible for special education at that time. Student currently attends high school in the District.

In early July 2024, the Guardians filed a Due Process Complaint under the IDEA challenging the eligibility determination and asserting claims that the District denied Student a free, appropriate public education. An earlier decision in December 2024 on a District-filed Complaint³ led to an Independent Educational Evaluation of Student at public expense. This matter proceeded to a hearing after that decision was filed after delays resulting from a series of motions and responsive filings as well availability of hearing participants including witnesses.⁴

¹ 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).

² 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).

³ That case, ODR File No. 29928-2425, similarly involved some delays for various reasons, some complicating both matters. The record of that proceeding was incorporated in its entirety by agreement of counsel and this hearing officer.

⁴ 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 HO Exhibits (HO-) followed by the exhibit number. Citation to duplicative exhibits may not be exhaustive; however, exhibits that are duplicative and/or referenced in the prior decision may be cited here for necessary context. It is noteworthy that the District asked for reconsideration of a ruling on the testimony of certain proffered witnesses; to the extent that was not formally done (N.T. 610-11), reconsideration is hereby denied. Finally, S-24 and S-25 were never provided and their admission, to the extent offered, is hereby denied, although their contents appear to be part of other exhibits.

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

ISSUES

1. Whether the District's determination that Student was and is not eligible for special education under the IDEA and disabled pursuant to Section 504 was erroneous and violated its child find obligation;
2. Whether the District denied Student a free, appropriate public education at any time over the 2023-24 and 2024-25 school years on procedural and/or substantive grounds;
3. If the District has denied Student a free, appropriate public education in any respect, should Student be awarded compensatory education; and
4. If the District's eligibility determination is erroneous, should it be ordered to convene a team meeting develop an Individualized Education Program appropriate for Student?

FINDINGS OF FACT - PART A⁵

1. Student is [redacted], is a resident of the District, and is currently in a [redacted] home. (Stipulation, N.T. 26-27; P-12; S-2.)
2. Student was born [redacted]. (P-4; S-1.)
3. The Guardians were appointed as educational decision-makers for Student in August 2022 following Student's move into Pennsylvania. One of the Guardians is [redacted]teacher in a different Pennsylvania school district, speaks Student's preferred language, and has experience with students for whom English is not the native language. (N.T. 225-30; P-1; S-8; S-26.)
4. The Guardians do not have access to Student's records that are not education-related, including medical records and any documents from the Department of Human Services. They are not able to obtain those even with a release. (N.T. 155-56; S-14.)
5. The Guardian who speaks Student's preferred language has met with Student at least once every other month in person throughout the appointment as educational decision-maker. They also speak by telephone and communicate via text messaging every other week, particularly about education-related needs. The other Guardian, a supervisor, attends most court hearings involving Student as an advocate at least every ninety days, and interacts with Student through an interpreter. (N.T. 124-26, 128-31, 136-37, 230-33, 239-40, 252-53.)

⁵ The Findings designated as Part A were made in ODR File No. 29928-24-25 and are incorporated herein essentially verbatim, including citation to that record; additional minor clarification and citations are also provided where applicable. The parties have maintained the identification of most exhibits across both records, although more were introduced and admitted in this case.

6. During the time that the Guardians have been involved with Student, Student has shared motivation to do well at school but difficulty doing so. (N.T. 269-75.)
7. Student has been receiving therapy since approximately the same time that the Guardians were appointed due to prior [redacted] and symptoms of anxiety, depression, and post-traumatic stress. (N.T. 273; P-27.)

Early U.S. Educational History

8. Student was evaluated by a different Pennsylvania school district during the 2022-23 school year. At the time, little was known about Student's educational history or previous home life[redacted]. (S-1; P-4.)
9. The report of the evaluation of Student by the other school district (Other Evaluation Report (OER)) in February 2023 noted that Student entered that district in September 2022. At the time, Student resided in a [redacted] home and had the educational decision-makers/advocate (the Guardians) who had noted Student's significant difficulties with schoolwork. (S-1 at 1.)
10. Teacher input into the OER described Student as quiet and hesitant, engaging in very limited communication at school, needing support from teachers and peers, and having very weak English language proficiency. However, Student was motivated to and would willingly work to complete tasks, but frequently did not. (S-1 at 2.)
11. Cognitive assessment for the OER was conducted through an instrument in Student's preferred language, yielding very low and low scores across most subtests. Student scored in the average range on concept formation and in the low average range on visualization. General Intellectual Ability (GAI) was in the very low range (Standard

Score below the 0.1 percentile). On a non-verbal cognitive assessment, Student's score was in the below average range (9th percentile). Student's lack of exposure to similar tasks was noted to be a factor in the scores. (S-1 at 3-5.)

12. On an instrument of adaptive behavior completed by a teacher and Student's then-current caregiver for the OER, the teacher indicated low-range scores for communication and daily living skills, with adequate socialization skills but a low-range composite score. The caregiver had concern only with communication skills. (S-1 at 8-9.)
13. On an assessment of Academic Achievement for the OER, also in Student's preferred language, Student earned scores generally in the low to very low range, but in the average range on word attack (decoding) skills. Overall, Student's academic skills were deficient. (S-1 at 5-6.)
14. An OER measure of Student's cognitive-academic language proficiency revealed very weak skills. (S-1 at 6.)
15. Assessment of social/emotional functioning (Behavior Assessment System for Children - Third Edition (BASC-3)) was conducted for the OER through rating scales completed by a teacher. The results reflected clinically significant concerns with somatization, learning problems, and functional communication; at-risk concerns were noted for atypicality, withdrawal, social skills, leadership skills, and study skills. These results suggested that depression and anxiety may have been impacting Student's difficulties with learning. (S-1 at 7-8.)
16. The OER reached the conclusion that Student was not eligible for special education for several reasons: lack of education and instruction; lack of English language proficiency; and not meeting criteria for any of the IDEA categories. (S-1 at 9-10.)

17. The Guardians did not agree with the findings and conclusion in the OER because Student was experiencing significant difficulties at school. (N.T. 190-91, 242-43.)

Entry into District 2023-24 School Year

18. Student moved into the District in the spring of 2023 through a [redacted] placement. The [redacted] parent speaks Student's preferred language and Student feels comfortable and secure in that setting. Enrollment information was quite limited and did not include any previous education or school information. (N.T. 160, 188, 235-36, 240; S-6 at 6-14; S-9; S-10.)
19. The District convened in a meeting in the fall of 2023 after the Guardians reported concerned with Student's difficulties at school as they had done in the prior school district. (N.T. 189, 278.)
20. After the September 2023 meeting, the Guardians through counsel requested an evaluation of Student by the District. (N.T. 146, 190; P-8.)
21. The Guardians also asked the District for information about accommodations provided to Student in the fall of 2023. Teachers reported the main accommodations: preferential seating; test and assignment accommodations; translation when needed; and individual support with the teacher and check-ins. (P-9.)
22. The District provided a Permission to Evaluate form to the Guardians in November 2023, and the Guardians consented. (P-11; P-14 at 16-17.)

District Evaluation Report

23. The District school psychologist who conducted its evaluation⁶ has completed approximately 200 bilingual special education evaluations,⁷ roughly half of all evaluations he has completed. He is employed by another Pennsylvania school district. The Evaluation Report (ER) was issued in January 2024. (N.T. 31-32, 34-35; P-12; S-2; S-3.)
24. Input obtained by the [redacted] parents for the ER noted two [redacted] siblings in the home; the use of Student's preferred language in the home with exposure to English; and the lack of information about Student's early history and education. Student reportedly was a caring individual who got along with others but had few friends; unidentified attention problems were also noted. (S-2 at 2.)
25. After the District school psychologist was assigned to conduct the evaluation, he spoke with one of the Guardians who expressed concern with the prior evaluation and Student's then-current difficulties at school. He also communicated with that Guardian through text messaging. (N.T. 45-46, 244, 289; S-11; S-12.)
26. The ER summarized information from the OER including limited English proficiency, assessment scores, and the basis for determining non-eligibility for special education. (S-2 at 10-11.)
27. Input from teachers for the ER included Student's positive motivation, determination, effort, responsibility, and respect; limited English

* The Guardians also asked that the District evaluate Student;

⁶ This individual was contracted by the local Intermediate Unit (N.T. 75-76), but shall be referred to as the District school psychologist for stylistic and accessibility reasons. The District had denied a new evaluation in June 2023. (N.T. 431-33; P-7.)

⁷ Most if not all of those bilingual evaluations were speakers of Student's preferred foreign language. (N.T. 81-82.)

language proficiency; lack of foundation for basic academic skills; deficient mathematics skills (all operations); unknown content-area academic skills because of language limitations; and unknown preferred language comprehension skills. Recommendations included a tutor, preferential seating, test and assignment modifications, translation as needed, and individual check-ins and support. Two of five teachers believed that Student required specially designed instruction, two did not, and one was uncertain. (S-2 at 2-9.)

28. The District school psychologist observed Student in a mathematics class. During that class period, Student worked on the assignments and appeared to not be distracted by a smart-phone or peer conversations. (S-2 at 9.)
29. The District school psychologist spoke with Student and confirmed the preferred language that Student confirmed was most familiar, with [redacted]. (N.T. 36-37, 41-42, 85-86.)
30. Prior to the assessments, the District school psychologist had a conversation/interview with Student to establish rapport. That discussion also gave him the opportunity to gauge whether Student understood the preferred foreign language before testing for English proficiency. Student described [redacted]. Notably, Student reported that trauma experienced in the past impacted Student's "ability to focus" (S-2 at 12) while describing Student's [redacted] home as a positive experience. The assessments for the ER were administered through a combination of English and Student's preferred language based on that conversation/interview. (N.T. 43-45, 55-57, 86, 140; S-2 at 12-13.)
31. At some point during the day that Student was assessed for the evaluation, Student mentioned to the District school psychologist that

Student was undergoing therapy and that it was “very helpful” (S-2 at 13). The District school psychologist then reached out to one of the Guardians to learn whether Student had a mental health diagnosis, and the Guardian who responded reported that Student did not but was undergoing therapy for trauma earlier in Student’s life that [redacted]. (N.T. 47-48, 75, 248-49, 253-57: S-2 at 13; S-11.)

32. The District school psychologist also provided a questionnaire and rating scale to Student’s [redacted]parent for the evaluation after a general conversation with her. The [redacted] parent did not report any difficulties with completing those forms to the District school psychologist. (NT. 51-53, 100.)
33. During the evaluation, Student appeared to the District school psychologist to be comfortable with the preferred foreign language and did not express or exhibit difficulty understanding or using that language. Student exhibited strong effort and was attentive and cooperative during the assessments, completing sample activities correctly including on nonverbal tasks. (N.T. 37-38, 63; S-2 at 13.)
34. The District school psychologist did not seek additional information from the Guardians such as written input or rating scales. (N.T. 193-94; S-2.)
35. The District school psychologist was trained in the assessments used and they were administered according to publisher instructions. The instruments are considered to be valid and reliable as well as technically sound. (N.T. 58-60.)
36. Cognitive assessment for the ER was a newer version of the main instrument for the OER. Student’s composite scores were all in the very low to extremely low range, with a GAI score in the first

percentile (extremely low range). However, the scores on this instrument were not likely to accurately reflect Student's aptitude. (S-2 at 13-16, 37.)

37. Adaptive behavior was also assessed for the ER by the [redacted] parents and two teachers. The [redacted] parent indicated average-range adaptive skills whereas the teachers did not have sufficient familiarity with Student's skills in that area. (S-2 at 31-35.)
38. Assessment of academic achievement for the ER included the same instrument as for the OER. Student's scores were in the very low to extremely limited range across most subtests and all clusters. A separate instrument yielded similar scores in the extremely low range across composites. (S-2 at 16-23.)
39. The ER also assessed English vocabulary acquisition, which was reflected to be in the very low range compared to same-age peers. (S-2 at 23-24.)
40. A new administration of the BASC-3 with rating scales by the [redacted] parent, two teachers, and Student were also obtained for the ER. Student's self-report reflected clinically significant concerns with test anxiety, and at-risk concerns with mania and functional impairment. The [redacted] parents and teachers did not identify any clinically significant areas of concern across all raters, but the teachers had some individually. One or both teachers had clinically significant concern with atypicality, withdrawal, and social skills; and at-risk concern with adaptability, functional communication, and leadership. One teacher had additional at-risk concerns in the areas of depression, attention problems, learning problems, and study skills. The [redacted] parent's scores did not identify any non-average range functioning on this instrument. (S-2 at 24-31.)

41. The District school psychologist primarily considered Student's eligibility for special education under the specific learning disability, emotional disturbance, intellectual disability, and other health impairment categories based on Student's known history and profile. (N.T. 57-58.)
42. The District school psychologist did not believe that Student could be eligible under the specific learning disability category because of Student's limited formal education. Student was determined not to be eligible for special education in the ER because the document noted Student's lack of appropriate instruction in reading and mathematics as well as limited English language proficiency. All of these were considered to be determining factors. However, in the specific learning disability determination section, the ER states that Student's academic difficulties are a result of an Intellectual Disability. (N.T. 77-79; S-2 at 35, 38-40, 42-43.)
43. A meeting convened to review the ER after being rescheduled several times. The meeting did not conclude and the Guardians were not given the opportunity to ask questions. Although a second session was planned to continue that meeting, it did not occur. (N.T. 194-95, 295; P-14; P-15 at 1.)
44. The Guardians requested an Independent Educational Evaluation (IEE) in April 2024, through counsel, because they did not agree with the results of the District's ER in light of Student's ongoing difficulties at school. (N.T. 196, 295-96.)
45. In early 2024, the Guardians contacted DHS for a referral for a psychological evaluation. That psychologist became involved in the spring of 2024, and issued an opinion in July 2024 recommending that the impact of Student's emotional functioning be considered in

determining special education eligibility. She did not conduct an evaluation of Student because she was not practicing at the time and also did not believe she had the experience to do so well. (N.T. 201, 345-48, 379-82; P-26.)

46. The Guardians first learned about Student's mental health diagnoses in approximately September 2024 upon receipt of a September 2022 report by a psychologist to whom Student was referred by the local Family Court. (N.T. 250; P-2.)

September 2022 Psychological Evaluation

47. Student was evaluated by the psychologist following the DHS referral to determine current functioning and any need for treatment. Student consented to the evaluation and to the release of the report to the Family Court, DHS, and others. (P-2 at 1.)
48. An interpreter for Student's preferred language was present for the 2022 Psychological Evaluation as noted in the Report (PER). (P-2 at 1.)
49. The psychologist conducting the PER described DHS records detailing Student's [redacted] Because [redacted] , DHS and other agencies became involved. (P-2 at 2-5.)
50. The PER included two mental health diagnoses: Unspecified Trauma and Stressor Related Disorder; and Unspecified Depressive Disorder. (P-2.)
51. The Guardians thereafter consulted with a certified school psychologist who reviewed Student's records and expressed concerns with the

District's ER. At the time the hearing concluded, this psychologist was in the process of conducting an IEE.⁸ (N.T. 446-48; P-28.)

FINDINGS OF FACT - Part B⁹

52. Student has reported experiencing anxiety to the [redacted] mother since the placement began, all due to challenges with schoolwork and, on a few occasions, when exhibiting difficulty while shopping with money. Student has also described poor grades. Student's [redacted] mother finds that Student performs chores willingly and does do well. (N.T. 824-26, 828-30, 832-34, 841-43, 849, 852-53.)
53. Throughout the time in the District, Student has been highly motivated and willing to learn, diligent, determined, hardworking, and focused, both at home and at school. (N.T. *passim*.)

2023-24 School Year

54. Student had a high school-level Algebra course during the 2023-24 school year. Students were expected to solve one-step and multi-step equations, and graph and complete tables based on equations. Other than a brief refresher at the start of the school year, basic mathematics skills such as addition, subtraction, multiplication, and division were assumed to be mastered, and were not part of the curriculum or taught in that class. (N.T. 149-51, 174.)
55. Student exhibited difficulty in the 2023-24 Algebra class with basic mathematics calculations, which impacted Student's performance in the class. (N.T. 152, 156.)

⁸ This witness was directed not to provide testimony on the ongoing IEE assessment since it had not yet been completed and its recommendations were not yet available for disclosure.

⁹ In addition to certain footnotes in Part A, this set of findings designated as Part B are based on the evidentiary record developed in the present case, ODR File No. 29972-24-25.

56. Student's 2023-24 Algebra class teacher provided accommodations for Student including individualized support, extra time on tests, preferential seating, and reduced expectations for work completed. The teacher also communicated with others in the District about students with limited English language proficiency. (N.T. 157-58, 161-62, 173-74.)
57. Student had an English class during the 2023-24 school year. The class focused on the skills of speaking, listening, reading comprehension, and written expression. Student was challenged by the class because of limited English proficiency even with use of some form of translation such as is available through Microsoft Word. (N.T. 235-37, 244-45.)
58. Student's 2023-24 English class was co-taught, and Student was provided accommodations such as reduced expectations and extra time for assignments. The teacher also consulted with others about students with limited English proficiency. (N.T. 241-42, 249-51, 265-66.)
59. Student had a beginning-level English language development (ELD) class during the 2023-24 school year. That class emphasized the four language domains: writing, speaking, academic language, and social language. The ELD teacher consulted with other staff at the District high school, and sometimes provided support for Student in other classes. He described Student's performance in the class as average compared to peers. (N.T. 286-87, 292-93, 295, 297-303, 310, 327-29.)
60. Student was provided accommodations in the ELD class, including extra time for assignments. (N.T. 329-30.)

61. Student began working with a tutor in the spring of 2024¹⁰ meeting twice weekly. Those sessions have focused on homework completion and basic mathematics skills as well as English language proficiency. The tutor speaks Student's preferred language. Student has told the tutor that earning good grades is very important to Student, and Student wanted to complete any homework before any instruction during tutoring sessions. (N.T. 194-200, 209-12, 215, 224-25, 442-43, 476-78; P-39.)
62. The tutor participated in a meeting about Student with the District and related Student's difficulties with assignments. (N.T. 199-200.)

2024-25 School Year

63. Student continued with the tutor in the 2024-25 school year. However, homework was required of Student less at the request of the Guardians that school year. (N.T. 203, 413, 444-45, 478.)
64. Student remained in a beginning-level English language development class during the 2024-25 school year. However, Student had gained some proficiency since the start of the 2023-24 school year, including with social interactions. (N.T. 293, 325-27, 332-34.)
65. Student had a different Algebra class during the 2024-25 school year. The class was co-taught, with expectations similar to those in the 2023-24 school year Algebra class, and students were expected to understand basic mathematics skills which were not taught. (N.T. 362-63, 365, 369, 371.)
66. Student exhibited difficulty with copying from the board during the 2024-25 Algebra class. The teachers checked in with Student, gave Student extra time, and provided individualized support as needed

¹⁰ Tutoring services were recommended as part of the family court review. (S-27.)

including guided practice and models. Sometimes the teachers provided instructions in other languages for the students, and Student had access to translation when needed for reading. They also communicated with others in the District about students with limited English language proficiency. (N.T. 365, 378, 382, 386-89, 393, 397, 400.)

67. Student has had a foreign language class in Student's preferred language over the 2024-25 school year. Student does well in that class and completes assignments as required, and the teacher believes that Student is proficient in that language with some directions provided in the foreign language as necessary. (N.T. 623-32, 634, 652.)
68. Student has had a study skills class during the 2024-25 school year. In addition, teachers have been available to students for a thirty minute period at the end of the high school day. (N.T. 531, 539, 541.)
69. Student continued to meet and speak with the Guardians over the 2024-25 school year. Student reported still having difficulty in classes and with assignments, lacking basic skills, and was concerned about not making more progress academically. Student also described ongoing anxiety to the Guardians. (N.T. 430-31, 451, 455-459, 461, 491.)
70. The Guardians asked the District to conduct a Section 504 Evaluation in October 2024, and proposed a number of accommodations. That evaluation was conducted by Student's school counselor, completed in early December 2024, and was discussed at a meeting that same month. (N.T. 446-47, 453-56, 543-45, 550-51, 559; P-40; P-41; P-45; S-23.)

71. The Section 504 Evaluation referenced the OER and District's ER and summarized their conclusions; descriptions of a number of other records were also included. Input from teachers, a summary of that from the Guardians, current grades, and results of the IEE were also incorporated, with the Evaluation concluding that the only recommended disability-related support was available to all students and did not therefore need to be part of a Section 504 Plan. (S-23.)
72. Guardian input into the Section 504 reflected concerns with Student's academic performance, anxiety, and depression. The tutoring services were noted, as well as private therapy. (S-23.)
73. The conclusion of the Section 504 evaluation was that the District was not able to determine whether Student had a disability and needed a Section 504 Plan, pending completion of the IEE. (N.T. 548; S-23.)
74. Students at the District high school meet with assigned school counselors with all of its students to address scheduling, course planning, post-secondary counseling, and serving as a case manager for assigned students. Student's school counselor met with Student at times since Student's enrollment, including several meetings over the 2024-25 school year as of the date of the final hearing session. Student requested one such meeting to discuss a concern about an English class but the two have not discussed anxiety. (N.T. 515-20, 526-27, 553-54, 566-65, 596-97.)

Independent Educational Evaluation

75. A report of the IEE was provided by the private psychologist in late December 2024. (P-46.)
76. The private evaluator summarized Student's educational and personal background as well as concerns of the Guardians. The [redacted]parent remarked on Student's positive organizational skills,

compliance with directions, motivation, and attention to tasks; she also described Student's difficulty with academic work and significant skill deficits across subject areas. Student's tutor similarly noted Student's academic weaknesses particularly in reading and mathematics. (P-46 at 3.)

77. A number of teachers provided input into the IEE. Student's strengths included motivation, determination, organizational skills, persistence with assignments, task completion, and compliance with directives. Weaknesses across classes focused on academic skill deficits, lack of peer interactions, and lack of proficiency with the English language. Use of translation and individual attention were reported to be beneficial for Student. The private evaluator also conducted an observation of Student at school. (P-46 at 4-9.)
78. Two interpreters using Student's preferred language were present for administration of assessments for the IEE, each on one of the two days of testing. Some assessments did not require use of verbal language while some did. At one point during assessments, Student exhibited signs of nervousness and told the private psychologist that Student was experiencing anxiety as frequently happened when challenged by tasks or feeling overwhelmed. Student did appear to then relax for the remainder of the session. (N.T. 38-41, 53-56, 69-60, 92-94; P-46 at 9-10; P-50; P-51; S-28.)
79. Student's interpreters for the IEE are well-qualified and experienced, meeting with Student at the start of their sessions without concerns about rapport. Neither had experience with or training in psychological evaluations. Neither reported any concerns with their services or any misunderstanding by them, Student, or the private psychologist. One interpreter described the services required during

the session as "all very simple" (N.T. 794 L25 – 795 L 1). (N.T. 780-81, 791-95, 797, 799-800, 805-08, 811-12; S-28.)

80. The private psychologist used two non-language based assessments of cognitive ability, neither of which required language to complete. The private psychologist provided demonstrations rather than verbal instructions during those administrations. (N.T. 38-40, 54-56, 59-60.)
81. On the Comprehensive Test of Nonverbal Intelligence, Second Edition, Student's scores were overall within the poor range, although the Full Scale IQ results was to be interpreted with caution because of the variability between scores on the two composite scales and Student's limited language ability. Results of the other nonverbal intelligence assessment reflected an overall low nonverbal IQ with some variability among subtests. (P-46 at 10-14.)
82. On an IEE measure of Student's memory and learning, Student earned extremely low range scores indicating weak skills with processing and recalling information leading to attention problems. On another instrument, Student exhibited nonverbal memory skills well below age expectations. (P-46 at 14-15.)
83. A measure of adaptive behavior comprised of rating scales completed by three teachers and the [redacted]parent for the IEE reflected generally average skills in the home; whereas some of the teachers viewed Student as weak with some of these skills compared to peers, suggesting some concerns at school particularly with communication, functional academics, and social skills despite some incomplete scales. (P-46 at 36-39.)
84. Student's academic achievement assessed for the IEE yielded results that were in the very low range across Clusters and tests as well as overall in all of the domains (reading, mathematics, and written

language). All scores were below the 0.1 percentile compared to same-age peers. (P-46 at 19-23.)

85. In the areas of social/emotional/behavioral functioning, Student's own rating indicated clinically significant concerns with anxiety, sense of inadequacy, and self-esteem; at-risk concerns were reflected with depression and self-reliance. Other rating scales completed by the [redacted]parent and two teachers were somewhat disparate; the [redacted]parent's scale yielded very elevated concerns with worrying, academic difficulties, language, mathematics, separation fears, and overall; whereas one or both teachers reported very elevated concerns with academic difficulties, language, mathematics, and social problems. DSM-5¹¹ symptoms were also suggested by both the [redacted]parent and teachers. (P-46 at 23-28.)
86. Other instruments examining emotional functioning yielded results indicating that Student experienced symptoms of depression and anxiety at a level higher than peers, but the [redacted]parent did not perceive either of those. Student also rated self-esteem more negatively than peers. On a measure of social skills completed by the [redacted]parent and two teachers, the teachers endorsed concerns with social awareness and relationship skills as well as overall. (P-46.)
87. Rating scales of executive functioning skills completed for the IEE by the [redacted]parent and three teachers yielded rather consistent results at home and at school, with Student exhibiting average to high-average range skills generally. One teacher indicated weaker working memory than peers, however. (P-46 at 16-19.)

¹¹ American Psychiatric Association (2022), Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed., Text Revision. DSM diagnoses are not the same as the explicit disabilities under the IDEA.

88. The private evaluator concluded that Student met IDEA eligibility criteria as a student with Emotional Disturbance related to anxiety, depression, and post-traumatic stress early in life. As is very relevant to the school environment, Student's significant anxiety about classwork was overwhelming in light of Student's many areas of academic skill deficits. He also determined that Student qualified as a student with a specific learning disability in mathematics calculations in light of the very large discrepancy between performance and ability,¹² while noting Student's unknown language proficiency in the preferred language and very weak English language proficiency. (P-46.)
89. The private psychologist concluded that Student experienced internalized Student's difficulties and that they were less apparent at school than at home because of the different environments and Student's ability to express feelings better in the home. The anxiety is significant when presented with academic tasks. (N.T. 76-78, 80-81, 106-12.)
90. Among the recommendations in the IEE, the private psychologist suggested intensive learning support; emotional support; and a significantly modified curriculum and course work. (P-46.)
91. A meeting with at least one of the Guardians convened after the District received the IEE, but its personnel did not agree with its conclusions. There was no follow-up to that meeting with the Guardians, or documentation of such consideration. (N.T. 460, 699-701.)

¹² This conclusion was based in large part on an assumption that Student had had instruction in early mathematics skills since beginning high school. (N.T. 97-101, 121-23).

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The burden of proof encompasses two discrete components: the burden of production and the burden of persuasion. The burden of persuasion 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). Accordingly, the burden of persuasion in this case must rest with the District because it filed for this administrative hearing. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is in “equipoise.” *Schaffer, supra*, 546 U.S. at 58. The District also accepted the burden of production.

Special education hearing officers, in the role of fact-finders, are also responsible for making credibility determinations of the witnesses who testify before them. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found all of the witnesses who testified to be credible as to the facts as they recalled them; where minor discrepancies may have occurred, those are attributed to differing perspectives or lack of recall, not any intention to mislead. Many of the witnesses, unsurprisingly, lacked specific memory of certain events.¹³ The weight accorded the evidence, however, was not equally placed; the documentary evidence specifically was quite probative and persuasive on the

¹³ An objection to a witness testifying to a test result, for example, was sustained because this witness did not have any experience with the instrument and could recall whether he even attended a meeting when it may have been discussed (N.T. 306-10).

appropriateness of the District's ER, as was the testimony of the District school psychologist and Guardians.

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

General IDEA Principles: Child Find and Eligibility

The IDEA requires all states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. The IDEA applies to a "child with a disability." 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(a). The definition of a "child with a disability" is two-pronged: having one of certain enumerated conditions and, by reason thereof, needing special education and related services. 20 U.S.C. § 1401(3). "Specially designed instruction" is adapting the content, methodology, or delivery of instruction as appropriate to a child with a disability to meet educational needs and to provide for access to the general education curriculum. 34 C.F.R. § 300.39(b)(3). This process of identifying children who may be eligible for special education is generally conducted through an evaluation by the local education agency (LEA).

The IDEA and state and federal regulations further obligate LEAs 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. The process of identifying children who may be eligible for special education is through an evaluation.

This mandate to identify students suspected as having a disability under the IDEA 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). They need not, however, identify a disability “at the earliest possible moment” or to evaluate “every struggling student.” *Id.*

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).

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). Development of an IEP for an eligible child must follow within thirty calendar days thereafter. 34 C.F.R. § 300.323(c).

Eligibility

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). Whether or not an IEE is publicly funded or not, however, the LEA must give it due consideration. 34 C.F.R. § 300.502(c)(1).

General IDEA Principles: Procedural FAPE

The procedural protections in the IDEA provide for, among other things, the family having “a significant role in the IEP process.” *Schaffer, supra*, at 53. Thus, for example, 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). Where a procedural violation is alleged, such if found may constitute a denial of FAPE “only if the procedural inadequacies (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit.” 34 C.F.R. 300.513(a)(2); *see also* 20 U.S.C. § 1415(f)(3)(e)(ii).

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 do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions on Section 504 claims. *Le Pape, supra*, 103 F.4th 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). “ “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.4th at 979.

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 may not need to be separately addressed. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). In this case, to the extent applicable, the IDEA and Section 504 claims based on the same set of facts shall be considered and discussed together.

The Guardians' Claims

The first issue is whether the District failed to timely identify Student as eligible for special education under the IDEA and/or Section 504 in violation of its child find obligations. This issue is a complicated one for many reasons, including the complexity of Student's history and current presentation.

Student enrolled in the District after a prior LEA determined non-eligibility under the IDEA. Following enrollment in the District, the Guardians promptly notified staff of Student's difficulties at school, leading to their requests for an evaluation and completion of the ER by the District in the fall of 2023. Although in the prior proceeding this hearing officer determined that the District's ER did not comply with all of IDEA evaluation requirements, it remains noteworthy that the District also did not possess critical information about Student until after its completion, particularly the 2022 psychological evaluation. The IEE obtained by the Guardians as part of that proceeding was not completed until late December 2024. It was at that point in time that the parties had a very comprehensive picture of Student's academic abilities and functional performance, including educational strengths and needs as they were then presented in the home and school environments. Contrary to the Guardian's assertions, the record does not support a finding of eligibility under either the IDEA or Section 504 until the private evaluator thoroughly assessed, considered, and shared its results in late December 2024.

The private evaluator's IEE comprehensively assessed all areas of Student's suspected disabilities, including academic and social/emotional/behavioral functioning. This evaluator was also able to obtain information that teachers who participated in the District's own ER were not as capable of providing earlier in time. Throughout the 2023-24 and 2024-25 school years through the dates of the hearing sessions in both cases, Student exhibited significant basic academic skill deficits particularly with English language development proficiency and mathematics. However, prior to the completion of the IEE, the District viewed the inadequacy of those skills on a lack of foundational education. Although there was indication of a need to examine emotional presentation, that information had not been gathered by the spring of 2024; necessary further assessment does not automatically mean that a protected disability exists. In addition, Student was not expressing or exhibiting emotional needs at school, but rather internalized them when outside of the home environment. Thus, despite the conclusion regarding the District ER reached in the prior case, this hearing officer cannot conclude that the District failed in its IDEA child find obligations until receipt of the IEE and a reasonable period of time to consider and respond to its conclusions.

The private evaluator determined that Student was eligible for special education based on both an Emotional Disturbance and a specific learning disability in mathematics calculation. The first is undoubtedly supported by the record as of the completion of the IEE with the comprehensive information obtained and, strikingly, Student's history along with ongoing anxiety and other emotional presentations especially at home. The District's closing statement focuses on the testimony of Student's teachers who did not report observing behaviors suggesting an emotional disturbance or other disability. As well-intentioned and beneficial as the teacher accommodations were, this narrow viewpoint is not supported in the law. *See, e.g., E.P. v.*

Twin Valley School District, 517 F.Supp.3d (rejecting a contention that the student's compensatory self-regulation strategies mitigated the impact of the disability in the school environment). Moreover, here, as in *Cully v. Cumberland Valley School District*, 758 Fed. App'x 301, 304 (3d Cir. 2018), "the IEE paints a fuller and more accurate picture" of Student's strengths and needs than other educational evaluations including the District ER. The private evaluator's convincing explanation of Student's tendency to internalize anxiety more than adequately overcame the teacher testimony in this respect. The IEE concluded that Student had an Emotional Disturbance requiring specially designed instruction under the IDEA, which is amply supported by that evaluation, the private evaluator's testimony, and the record as a whole.

As for the second qualifying disability, however, the private psychologist conceded that his conclusion on a specific learning disability was premised, and not in small part, on the assumption that Student had been provided with instruction in basic mathematics skills since District enrollment (N.T. 97-101, 121-23), something that District teachers were clearly not providing though the high school curriculum. There is no contention that it should have done so for Student as part of its regular education program when access to grade-level content was expected as it is for all students. Although Student's lack of exposure to basic academic skills is very concerning, and is discussed further below, the record simply does not preponderantly support a conclusion that Student qualifies under this disability category in the IDEA.

The District presented testimony expressing concerns with the private evaluator's use of interpreters, rather than identifying a private evaluator who is bilingual in English and Student's preferred language. However, its testifying school psychologist in this case did not disagree that use of interpreters is acceptable in such circumstances (N.T. 708-089, 712-13,

740-41). The interpreters themselves were qualified and did not express any difficulty with that role during the IEE. This argument cannot justify total disregard of the private evaluator's conclusions, even in light of the recommendations cited by the District in its closing statement at 13-14 by the National Association of School Psychologists.

For all of these reasons, this hearing officer must conclude that the Guardians have established Student's eligibility for special education under the IDEA based on Emotional Disturbance as of completion of the private evaluator's IEE followed by a reasonable opportunity to review and consider its content. His conclusion on a specific learning disability in mathematics calculation, however, has not been established on this record. Nevertheless, Student's manifestation of anxiety as a result of a lack of basic academic skills particularly in the area of mathematics was and is both understandable and predictable. While the District adhered to its mandates to provide grade level content and instruction, it is far from reasonable to expect that Student, who was never taught foundational skills such as basic single-digit addition, would be able to confidently comprehend and solve algebraic equations.¹⁴ The remedy addressed below is intended to also address this foundational academic deficit now provided by private tutoring because of its relationship to the emotional disturbance.

The second issue is whether the District denied Student FAPE during the time period in question, namely the 2023-24 and 2024-25 school years through the present, in failing to provide appropriate programming to address all special education needs. With respect to Student's now-identified Emotional Disturbance, this question must be analyzed in terms of

¹⁴ The common use of calculators in this day and age to perform everyday, basic mathematics operations is not, for the majority of young adults, the result of lack exposure to and instruction on those skills at a relatively young age.

what the District knew and when, as well as how it responded, in light of the IDEA requirements including its timelines.

The IEE was provided to the District and a meeting convened to discuss its results sometime after the start of 2025. Regardless of the District's perspective on potential problems in the IEE, as the LEA, its appropriate staff were obligated to consider it in a meaningful way. The District's rather perfunctory response reveals a lack of serious consideration of the IEE and Student's eligibility, with no follow-up on the Section 504 evaluation that seemingly depended on its results. As noted above, the IEE confirmed Student's Emotional Disturbance as defined by the IDEA and Student clearly exhibited a need for specially designed instruction to address that disability as well as the underlying cause of Student's school-based anxiety, a lack of basic academic skills particularly in the area of mathematics. Although the Guardians contend that the District had this requisite knowledge even in the spring of 2023, the District was not required to do so at the earliest possible opportunity. Moreover, the complexities presented by Student's unknown early history and demonstrated absence of appropriate foundational instruction was a serious impediment to all educational evaluations at least since the 2022-23 school year. This hearing officer concludes that the evidence is more than preponderant that the District had knowledge at the time it reviewed the IEE that Student met eligibility criteria for Emotional Disturbance, and that an IEP was necessary under the law. Allowing a period of reasonable time to develop and begin to implement necessary special education programming to address that identified disability had proper due consideration been made, the failure to identify Student and respond appropriately¹⁵ was clearly evident in this case

¹⁵ Special education, of course, requires more than the host of accommodations provided to Student by the District's teachers.

no later than February 28, 2025.¹⁶ A remedy for this substantive deprivation of FAPE will be addressed *infra*.

The Guardians also contend that the District committed procedural violations in failing to timely conduct the IDEA evaluation in the fall of 2023. As noted, the District did not immediately respond after the June 2023 request, and did not complete the fall evaluation within sixty calendar days. Had it done so, an IEP would need to be completed within thirty days thereafter had the Student been identified as eligible. However, the District did not find Student eligible based on information known to it at the time of the February 2024 ER. The procedural irregularity in this case was at best *de minimis*, and did not deprive Student of FAPE on any substantive basis.

Next, the Guardians challenge the District's failure to timely evaluate Student under Section 504. As has been observed countless times throughout the proceedings of both cases, as well as herein, Student presents with a very complicated and unique profile that is compounded by a perpetual lack of clarity about early education history. Even at the start of the 2024 calendar year, Student's teachers were unable to meaningfully complete adaptive behavior rating scales, and their behavior rating scales were inconsistent among each other as well as compared to the [redacted]parent. On this record, the Guardians have failed to establish a violation of Section 504 child find obligations at the same time that the District examined special education eligibility under the IDEA. The status at the time of completion of the Section 504 evaluation in early December 2024 was essentially unchanged as early that calendar year and does not, therefore, constitute a separate Section 504 violation.

¹⁶ The unfortunate delays that occurred in this and the prior case did not, to this hearing officer's understanding, significantly contribute to the timing of the IEE completion.

In summary, having found a denial of FAPE on substantive grounds under the IDEA, the same analysis is equally applicable under Section 504 on the identical basis and for those very reasons. In addition, the case of *E.P., supra*, 517 F.Supp.3d 347, lends further support to the Section 504 claim of a substantive FAPE denial for failure to identify Student's emotional disturbance as a disability and then program in an appropriately responsive way. The remedy section below is intended to address the substantive FAPE claim under both the IDEA and Section 504 together since they are very closely intertwined in addressing Student's disability-related educational needs.

Remedies

Development of an IEP

Having concluded that Student is eligible for special education as a student with Emotional Disturbance, and that by reason thereof, Student is in need of specially designed instruction, the District shall be ordered to convene a meeting of appropriate members of an IEP team to develop such a program for Student. The team members must consider the manifestations of that disability in the school environment and provide specially designed instruction and related services responsive to those identified needs. Student's IEP shall include, at a minimum, counseling as a related service, direct instruction on coping, self-advocacy, and other self-regulation skills, and basic foundational mathematics instruction that, at present, is a major contributing factor into Student's school-related anxiety. The team shall also consider whether additional services for further development of English language proficiency is appropriate as well.

Compensatory Education

It is well settled that compensatory education may be an appropriate remedy 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.* The Third Circuit has also endorsed an alternate approach, sometimes described as a “make whole” remedy, where the award of compensatory education is crafted “to restore the child to the educational path he or she would have traveled” absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville-Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

There is little if any evidence in this record of a make-whole remedy that would enable Student to have the missed services restored; even the private evaluator who conducted the IEE suggested only the amount of time Student would need in special education going forward¹⁷ based on the disabilities he identified. Although compensatory education is equitable in nature, it must have some foundation and rationale.

The Guardians suggest that full days of compensatory education is warranted, whereas the District contends that none is appropriate. Having found a denial of FAPE, however, some form of compensatory relief is due. Student’s dedication, motivation, and determination reflects the efforts and hard work Student has consistently applied to school assignments including homework, and the high importance of good grades to Student militates

¹⁷ N.T. 87-89 (describing the special education services Student now requires).

against full days of compensatory education. The question, therefore, becomes what amount is equitable and appropriate. The private evaluator's suggestion that Student should be provided with approximately twenty hours per week of special education and related services included both academic and social/emotional/behavioral needs, with the former based in part on a specific learning disability encompassing more of the school day than the latter. Based on Student's eligibility determination in this decision and order, this hearing officer estimates that five hours per week, or one hour per days, of compensatory education is equitably appropriate to remedy the deprivation of FAPE beginning March 3, 2025. The directives to the IEP team provides an additional mechanism for Student to learn foundational mathematics skills that are clearly extremely necessary for Student and beyond the high school general education curriculum.

The award of compensatory education is subject to the following conditions and limitations. Student's Guardians may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs in the areas of identified disability, including acquisition of foundational mathematics skills that contribute to the disability. The compensatory education may not be used for products or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student, the Guardians, and the [redacted] parent. The hours of compensatory education may be used at any time from the present until

Student turns age twenty one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Guardians; and the cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

Finally, by way of dicta, it is this hearing officer's sincere hope and optimistic expectation that the parties will be able to set aside their differences and strive toward complete collaboration on Student's program moving forward, recognizing that all involved have Student's interests as their main focus and goal. The complexity of this and the companion case as well as Student's history and education experience to date has made for a complicated scenario that the undersigned is confident can be appropriately addressed now and into the future by the parties for this [redacted]student.

CONCLUSIONS OF LAW

Student is eligible for special education as a child with Emotional Disturbance and the District deprived Student of FAPE on substantive grounds under the IDEA and Section 504 in failing to so identify Student;

The District did not deprive Student of FAPE on procedural grounds under the IDEA and Section 504;

The District is required to convene a meeting of relevant team members including the Guardians to develop an IEP for Student; and

The District must provide compensatory education to Student to remedy the denial.

ORDER

AND NOW, this 14th day of April, 2025, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District denied Student FAPE on substantive grounds as of February 28, 2025.
2. The District did not deny Student an appropriate education on procedural grounds over the time period at issue.
3. Student is awarded compensatory education in the amount of one hour for each that school was in session in the District beginning on March 3, 2025 until such time as an IEP is developed and approved for immediate implementation. The terms and conditions in the attached decision apply as though set forth herein at length.
4. The District is directed to convene a meeting of an IEP team for purposes of recognizing Student's emotional disturbance disability and developing a program to address all of Students needs. The team members must consider the manifestations of that disability in the school environment and provide specially designed instruction and related services responsive to those identified needs. The IEP shall include, at a minimum, the following: counseling as a related service; direct instruction on coping, self-advocacy, and other self-regulation skills; and basic foundational mathematics instruction as part of its response to

Student's anxiety relating to schoolwork. The team shall also consider whether additional services for further development of English language proficiency is appropriate as well. As part of the program decisions, the team shall determine whether extended services such as extended day or extended school year programming may be provided in meeting all of these needs.

5. 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. Jurisdiction is RELINQUISHED.

/s/ Cathy A. Skidmore
Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 29972-24-25

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 consistent with 22 Pa. Code § 14.162(n).