

*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. 30297-24-25**

**Student Name:**

N.S.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

Heather Hulse, Esq. 610-648-9300  
McAndrews, Mehalick, Connolly,  
Hulse and Ryan P.C.,  
30 Cassatt Avenue, Berwyn, PA 19312

**Local Education Agency:**

Jeremy Pichany  
51 Columbus Drive,  
Archbald, PA 18403-1538

**Counsel for the LEA:**

William McPartland, Esq.  
Marshall, Dennehey, Warner,  
Coleman & Goggin,  
50 Glemaura National Boulevard,  
Moosic, PA 18507

**Hearing Officer:**

Charles W. Jelley Esq.

**Decision Date:**

July 30, 2025

## **Introduction and Background**

The Parent filed the pending Due Process Hearing Complaint alleging multiple violations under the Individuals with Disabilities Education Act (IDEA) and Section 504. The Parties agree the Student is IDEA and Section 504 eligible. The Student graduated and then filed the instant complaint. The Parents seek an award of compensatory education. The District, on the other hand, seeks a declaration that at all times relevant, it complied with the ADA and Section 504. After a careful review of both the intrinsic and extrinsic evidence, I conclude that the Parents met their burden of proof that the District failed to provide a FAPE for each school year at issue. To the extent the Parent's 504 FAPE claims overlap and are inextricably intertwined with the IDEA FAPE claims, the following decision and grant of appropriate relief resolves all FAPE-based claims in the Parent's favor.<sup>1</sup> The Parent did not allege any discrimination claims; therefore, those claims are not addressed.

<sup>1</sup> The following Findings of Fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited or given equal weight. However, in reviewing the record, while the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements not all testimony or exhibits were given proper weight. 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 USC § 1415(h) (4) (A); 34 CFR § 300.513(d)(2); 34 CFR § 104.1- 104.36) and 22 Pa Code § 711. *et. seq.* References to the record throughout this decision will be to the Notes of Testimony (N.T)., School District /LEA Exhibits (S-) followed by the exhibit number, and Parent Exhibits (P-) followed by the exhibit number.

## **Issue**

Did the District offer and provide the Student with a free appropriate public education during the 2022-2023 and the 2023-2024 school years? If yes, what relief, if any, is due?

## **Findings of Fact**

1. The October 26, 2022, IEP listed present levels from progress probes at the 8th grade level, even though the Student was in [redacted] grade. [P-2, p. 8; NT pp. 37–38].
2. The October 11, 2023, December 19, 2023, and March 22, 2024 IEPs reported reading fluency at 87 WCPM (5th percentile) and comprehension at 18 correct answers (20th percentile), based on 8th-grade level probes. [P-5, p. 12; P-2, p. 8].
3. The October 11, 2023, IEP references a "multisensory approach to instruction" that was vague, not implemented by special education, and was not tied to a specific method [P-5, p. 34; NT pp. 74–75].
4. The District's February 28, 2024 RR did not include any new academic achievement testing, despite the last full assessment (WIAT-III) having been conducted in November 2019, over four years earlier. [P-10, pp. 5–7].
5. The February 28, 2024 RR included Keystone Exam results from Winter 2023 in Literature and Biology, where Student scored either Below Basic or Basic. [P-10, pp. 8–9; NT pp. 140–141].
6. The District's February 28, 2024 RR stated that school-based services are only warranted when needed to 'access the general education curriculum,' reflecting a misunderstanding of FAPE. [P-10, p. 13; NT pp. 155–156].
7. The 2024 RR included a retrospective table of the Students' past WIAT-III scores, including several Extremely Low and Very Low scores: Word Reading (67), Listening Comprehension (71), Math Problem Solving (78), Oral Reading Fluency (76), Spelling (72), and Pseudoword Decoding (75). [P-10, p. 5].
8. The 2024 RR acknowledged that the Student's Written Expression had not been formally assessed since 2015; yet, no new assessment was conducted during this reevaluation. [P-10, p. 7; NT pp. 159–161].

9. Progress monitoring data included in the 2024 RR were identical to those in the September 2023 RR and thus did not represent new data. [P-10, pp. 8, 23].
10. The RR determined the Student had ongoing needs in reading fluency, comprehension, math computation, application, and written expression, but continued to limit [the student's] IDEA eligibility to Basic Reading and Oral Fluency. [P-10, pp. 22–25].
11. The WJ-IV results showed global and persistent academic underachievement in reading, math, and written expression, with most scores falling in the Extremely Low or Borderline ranges. [P-8, pp. 40–42].
12. The Student's IEP reading fluency baseline is: 79 WCPM (4th percentile); comprehension: 15 correct answers (12th percentile). [P-2, p. 8].
13. The IEP math computation and application baselines were at the 21st and 14th percentiles, respectively. [P-2, p. 8].
14. The Written expression was based on a 2021 probe (1+ year old), with only 36 total words written and no evaluation of grammar, structure, or spelling. [P-2, p. 8; NT pp. 42–44].
15. The Student's IEP included only one probe per month for progress monitoring, which failed to capture meaningful trends. [NT pp. 90–91].
16. The Student never met a single goal during the 2022–2023 school year; [the student] regressed or plateaued on every academic target. [P-2, pp. 22–27; NT pp. 54–58].
17. The IEP failed to include goals for decoding, encoding, or basic reading skills despite documented need. [P-2; NT pp. 26–27, 35–36].
18. The District's Special Education Teacher admitted that all items listed in the "Specially Designed Instruction" section were accommodations, not SDI. [P-2, p. 29; NT p. 62].
19. The IEP contained no designated specially designed instruction (SDI) or programming in reading, writing, or math. [P-2, pp. 29–30].
20. The student was not offered Extended School Year (ESY) services, despite failing to meet IEP goals and experiencing regression. [P-2, p. 32; NT p. 63].
21. The IEP reports that the Student earned Keystone exam cores from Spring 2023, showing Below Basic in Algebra I and Basic in Biology and Literature. [P-15].
22. The Student's math computation improved slightly to the 27th percentile, but math application declined to the 5th percentile. [P-5, p. 12; P-2, p. 8].
23. The Student's written expression declined, with only 33 total words written (10th percentile), which was three words fewer than the previous year's baseline. [P-5, p. 12; P-2, p. 8].

24. The District used the AIMSweb probes to monitor learning. The probes were administered without scoring word sequence, spelling, grammar, or paragraph structure, thus failing to assess actual writing skills. [P-5; P-7; S-3; NT pp. 41–42].
25. The District probes failed to progress monitor decoding or encoding in these IEPs. [P-5; P-7; S-3; NT pp. 35–36].
26. The Student's Present levels of performance were repeated from the previous IEPs and not individualized. [P-5, pp. 15–18; P-7, pp. 15–18; NT pp. 43–44].
27. The IEPs stated that the Student required improvement in reading fluency, comprehension, math computation, math application, and written expression. [P-5, p. 20; P-7, p. 20; S-3, p. 27].
28. Despite persistent non-achievement, the teacher removed the Math Computation goal, justifying the change by citing that administering one probe of 16 points (3 points above baseline) was sufficient to remove it. [P-5, p. 12; P-2, p. 8; NT pp. 66–67].
29. The Math Application goal was reduced from a target of 12 to 11 points; however, the Student never met this goal over the two-year period. [P-2, p. 24; P-5, p. 28; P-7, p. 28; S-3, p. 36].
30. The Math application progress probes in 2023–2024 ranged from 3 to 9 points, with a baseline of 3. All scores remained in the below-average range. [P-5, p. 28; S-3, p. 36].
31. The Reading Fluency goal increased from 87 to 142 WCPM but was never met; the best performance was 113 WCPM. [P-5, p. 29; S-3, p. 37].
32. All fluency probes across both years remained in the below-average range and never surpassed the 9th percentile. [P-2, p. 25; P-5, p. 29; S-3, p. 37].
33. The Reading Comprehension goal was to improve from 18 to 26 correct responses. The student never met this goal in the 2023–2024 academic year; [the student's] scores ranged from 7 to 22. [P-5, p. 30; S-3, p. 38].
34. Nearly all reading comprehension scores fell in the Below-Average range or below the 16th percentile. [P-5, p. 30; S-3, p. 38].
35. The Student's Written Expression goal was reduced from 36 → 55 words to 33 → 54 words. The student never met this goal during the two school years in question. [P-2, p. 27; P-5, p. 31; S-3, p. 39].
36. In 2023–2024, the Student's total words written ranged from 24 to 46 per probe, all of which were below the 20th percentile. [P-5, p. 31; S-3, p. 39].
37. The District again denied ESY despite repeated failure to meet goals and continued regression. [P-5, p. 36; P-7, p. 36; NT pp. 68–69, 75].

38. All IEPs failed to include a goal for basic reading skills—specifically, letter-word identification, decoding, and phonemic awareness—despite the student's eligibility for SLD in that area. [P-5; P-7; S-3; NT pp. 26–27, 108].
39. The IEPs did not include SDIs in reading across any of the 2023–2024 IEPs. [P-5, pp. 32–34; P-7, pp. 32–34; S-3, pp. 42–46].
40. There was no SDI in math across the 2023–2024 IEPs. [P-5, pp. 32–34; P-7, pp. 32–34; S-3, pp. 42–46].
41. There was no SDI in written expression across the 2023–2024 IEPs. [P-5, pp. 32–34; P-7, pp. 32–34; S-3, pp. 42–46].
42. The Student's Special Education Teacher testified he provided no research-based instruction to the Student in reading, math, or writing. [NT pp. 77–78].
43. The Student testified that the interaction with special education teachers was limited to test support, not instruction. [NT p. 429].
44. The District's 2024 speech reevaluation input relied heavily on the Comprehensive Assessment of Spoken Language (CASL), which assessed oral language only and excluded comprehensive assessments of how language impacts reading or writing. [P-10, p. 13; NT pp. 241–243].
45. The District's Speech/Language Therapist admitted that she did not assess phonological processing or decoding and failed to use the CELF-5, which would have assessed grammar, comprehension, and paragraph understanding. [NT pp. 248–250].
46. The parties agreed that the District would wait for the Parent's private testing from the children's hospital before taking any action. The Student on the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5) results showed scores in the Extremely Low and Borderline ranges: Following Directions = SS 1 (<1st percentile), Recalling Sentences = SS 4 (2nd percentile), Core Language Index = SS 75 (5th percentile). [P-6, p. 20].
47. The private report diagnosed the Student with Mixed Receptive-Expressive Language Disorder, significantly affecting academic skills, language comprehension, and expression. [P-6, p. 7].
48. The private evaluation stated that the Student's language disorder was directly contributing to [the student's] reading and spelling deficits. [P-6, p. 8].
49. The private report recommended speech-language therapy tailored to the Student's mixed expressive-receptive deficits, with a focus on comprehension, syntax, phonology, and spelling. [P-6, p. 12].
50. The District's Speech Therapist did not implement CELF-5, TOWL, or TOLD-4—tools that would have given critical insight into the Student's language-based literacy challenges. [NT pp. 250–253].

51. The District's Speech/Language Therapist admitted that school-based SLP services should include vocabulary, decoding, comprehension, writing, and spelling—areas where the Student demonstrated severe need. [NT pp. 250; 431; 435–436].
52. The WJ-IV Oral Language results showed the Student was in the Extremely Low range in Sentence Repetition (SS = 60) and Borderline in Oral Expression (SS = 71). [P-8, p. 39].
53. The District's 2024 OT reevaluation failed to include any standardized handwriting assessments, repeating the same deficits as in 2020. [P-10, pp. 16–23; NT pp. 270–271].
54. The private report recommended OT services to address the Student's fine motor needs, including handwriting. [P-6, pp. 10–12].
55. Student testified that teachers struggled to read [the student's] handwriting in the [redacted] grades, and [the student's] writing was frequently described as sloppy. [NT p. 436].
56. The Student's Mother confirmed that the Student's handwriting was hard to read and that teachers consistently remarked on the illegibility. [NT p. 450].
57. The Student testified that the teacher did not provide direct instruction in reading, writing, or math from special education teachers. [NT p. 431].
58. The Student described persistent difficulty sounding out words, reading fluently, and comprehending what [the student] read. [NT pp. 435–436].
59. The Student's Mother testified that [the student] struggled extensively with reading comprehension, often requiring homework to be read aloud and needing significant help to understand content. [NT p. 450].
60. The Student testified that they needed to use the phone to spell simple words, and often needed to rework assignments due to spelling errors. [NT p. 432].
61. The Student stated that the teacher did not provide direct instruction in paragraph writing, had no model of how to write essays, and produced short, underdeveloped writing samples. [NT pp. 432–433].
62. The Student's Mother testified that the Student's written work lacked format, structure, and grammar, and that [the student] had likely never been taught how to write paragraphs or essays. [NT pp. 451–452].
63. The Student self-described their math skills as 'okay', provided that they use a calculator. However, when asked, the Student could not compute 60% of 100 in real time. [NT pp. 432–433].
64. The Student's Mother testified that the Student needed frequent support in math and still struggled to apply basic skills. [NT p. 453].

65. The Student stated that in culinary class, they struggled to read recipes or convert measurements such as cups to quarts. [NT pp. 433–434].
66. The Student reported difficulty expressing verbally and understanding spoken language instructions in class. [NT p. 435].
67. Both the Student and the Mother described years-long difficulty in generalizing skills across settings, consistent with underlying language and executive functioning deficits. [NT pp. 435–436, 450–453].
68. The Student testified that all tests were read aloud and that teachers allowed the Student to retake tests until answers were correct. [NT pp. 430–431].
69. The student stated that English Language Arts readings were read aloud, and they never read class texts independently. [NT p. 433].
70. The Student testified that the special education staff at the high school did not teach reading skills directly. [NT p. 431].
71. The Student's reading goal progress data from two consecutive school years show little to no growth beyond the 9th percentile. [P-2, p. 25; P-5, p. 29; S-3, p. 37].
72. The Student's IEP goal performance in writing never exceeded the 20th percentile across two years. [P-2, p. 27; P-5, p. 31; S-3, p. 39].
73. The IEPs failed to integrate any of the recommendations from private testing regarding reading, writing, or language. [P-6; P-8; P-5; S-3].
74. The only reading intervention proposed by the District was 'access to Read 180 at home,' not school-based implementation. [P-5, p. 34; NT pp. 74–75, 217–218].
75. The student's special education teacher testified that he had no involvement in the provision or instruction of Read 180. [NT p. 74].
76. The staff were not able to describe how they provided 'multisensory instruction. [P-5, p. 34; NT p. 75].
77. The IEPs offered no SDI in reading, writing, or math, despite documented failure to make progress on all goals. [P-2; P-5; P-7; S-3].
78. The IEPs note that the Student's Keystone scores in Algebra, Biology, and Literature fell in the "Below Basic" and "Basic" ranges in Spring 2023. [P-15].
79. The Student was in [redacted] grade, working on 8th-grade goals. The Student never mastered the goal statement for two full school years. [P-2; P-5; P-7; S-3].
80. The Summary of Performance issued by the District did not include postsecondary planning. [S-5].



81. The District did not assess executive functioning or functional independence skills prior to graduation. [P-10; NT p. 164].
82. The record is clear that while at the high school, the Student had an identified executive functioning weakness. The record also clearly indicates that the IEPs did not include direct instruction in organization and problem-solving. [P-8; NT p. 330].
83. The Student testified that, prior to and after graduation, the Student could not generalize math, reading, or writing skills to real-life tasks, such as interpreting recipes. The Student's Mother helps the Student fill out the online job application. [NT pp. 433-434].
84. The Student's Mother testified that the Student continues to need support for everyday tasks requiring reading and language comprehension. [NT pp. 450-453].
85. The IEP transition section lacked direct life skills or transition services appropriate for a student with below-basic performance in core academic areas. [P-5; S-3].
86. The record indicates that the Student was exited from speech-language services in 2020 despite low CASL scores, without a comprehensive reassessment. [P-1, pp. 9-10; NT pp. 239-241].
87. The District's 2024 reevaluation failed to reassess the language domains identified by the private report, including sentence construction, language memory, and expressive communication. [P-10; P-6].
88. The Student's IEPs did not include specially designed instruction in phonemic awareness, spelling, or decoding, core deficits repeatedly identified by the private CHOP evaluation and the IEE. [P-6; P-8].
89. The Notice Student exited/graduated with significant deficiencies in reading, writing, math, language, and functional independence. [P-8; NT pp. 358, 431-436].
90. In June 2024, the Student functioned academically and linguistically far below grade-level expectations, and had not received the intensive supports recommended by every outside evaluator since 2020. [P-1; P-6; P-8; NT pp. 305-346].
91. The District received a copy of the District-funded Independent Educational Evaluation (IEE) after the Student had graduated. [P-8]. The IEE and the evaluation data were not reviewed by a team of individuals knowledgeable about the Student, as required by 34 C.F.R. § 300.306. Therefore, District personnel did not have access to its findings during the period relevant to this matter. Accordingly, the results are afforded limited weight under the "snapshot rule," which requires assessments of IEP appropriateness to be based on the information available at the time decisions were made. Although the IEE offers different recommendations and testing results are somewhat different, the data set is generally consistent with the findings found in

prior evaluations during the eligibility and programming period at issue here. [Compare P-1, P-4, P-7, P-8, and P-10].

### **Credibility and Persuasiveness of the Witnesses' Testimony**

In a due process hearing, it is the hearing officer's responsibility to assess the credibility of the witnesses, weigh the evidence, and determine the persuasiveness of the testimony presented. *J.P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. 2008); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. Ct. 2014).

All witnesses testified in a candid and forthright manner. The District's staff provided thoughtful and coherent responses to all questions, even when the answers did not favor the District, regarding the Parent's participation in the IEP development process, evaluation procedures, IDEA eligibility determinations, graduation, the SOP and the formulation of goals addressing the Student's reading, math, writing, and executive functioning needs, as well as the delivery of specially designed instruction (SDI).

The testimony of the District's school psychologist was somewhat incomplete, inconsistent and, at points was not cogent or complete. Her rationale for omitting standardized assessments and instead relying primarily on grades and curriculum-based probes, absent instruction, to inform IDEA eligibility determinations was particularly troubling. Moreover, her explanation of how the evaluation from the Children's Hospital of Philadelphia (CHOP) was reviewed initially appeared to reflect a lack of objectivity. Accordingly, I afford only moderate weight to her testimony concerning the Student's progress and related issues.

The teacher's testimony was straightforward; he believed he was right when he administered probes rather than providing the needed instruction, and he testified candidly that neither he nor the other staff members ever provided personalized instruction to the Student.

The teaching and the administrative staff corroborated the Mother's testimony about all events in dispute.

While much was made of the June 2024 independent education evaluation received after graduation, I gave the document and the witness's testimony little to no weight. While, the June 2024 IEE corroborated previous testing data, needs, and circumstances found in

the District's RRs, all data was collected outside the relevant snap shot period. The Student's deficits, needs, weaknesses, and circumstances were apparent to all members of the team. Furthermore, I did not rely on the IEE in crafting the compensatory education relief; instead, I relied on the IEP statements that required content modification – specifically, specially designed instruction - throughout the school day. I relied on the statements in the IEP that specially designed instruction was to occur throughout the day.

## **CONCLUSIONS OF LAW**

1. **Legal Framework for FAPE under IDEA:** Under the Individuals with Disabilities Education Act (IDEA), a Free Appropriate Public Education (FAPE) must be provided to all eligible students with disabilities, as defined in 20 U.S.C. § 1401(9) and 34 C.F.R. § 300.17. The Supreme Court has clarified that FAPE requires an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). This standard builds on *Bd. of Educ. v. Rowley*, 458 U.S. 176, 188–89 (1982), which requires schools to provide access to individualized educational instruction designed to meet a student's unique needs.
2. **Denial of FAPE through Substantively Inadequate IEPs:** The IEPs developed during the 2022–2023 and 2023–2024 school years failed to meet the Endrew F. standard. The District reused vague, static goals, particularly in reading comprehension, written expression, math, and executive functioning, and did not update or individualize specially designed instruction (SDI), nor did it provide data-based interventions. This failure to revise programming in response to the Student's lack of academic growth resulted in the IEPs that were not "reasonably calculated" to confer meaningful progress, thereby violating 34 C.F.R. § 300.320(a) and denying the Student a FAPE.
3. **Failure to Provide Legally Compliant Specially Designed Instruction:** The SDIs embedded in the IEPs were generic, unsupported by data, and not responsive to the Student's individual needs. Use of Read 180, at home without instruction, as a general education program, in lieu of individualized reading instruction for a student with documented SLD, constituted a failure to provide instruction "specially designed" as required

under 34 C.F.R. § 300.39(a)(1). This undermined the Student's ability to make progress and violates both *Rowley* and *Endrew F.*

4. **Improper Reevaluation and Exit from IDEA Eligibility:** The District's June 2024 reevaluation violated 34 C.F.R. § 300.304(b)–(c) by relying solely on classroom data and teacher input, and grades without conducting current standardized cognitive or achievement testing. This failure to use a variety of assessment tools rendered the reevaluation incomplete and legally insufficient. Exiting the Student from eligibility under the SLD classification based on this reevaluation constituted a substantive violation of 34 C.F.R. §§ 300.305(a)(1)–(2). It deprived the Student of continued special education services without valid justification.
5. **Failure to Consider Independent Educational Evaluation (IEE):** The District further violated 34 C.F.R. § 300.502(c) by failing to consider the outside February 2024 private evaluation. The psychologist's admission that she merely "glanced at" the report and did not incorporate its findings into team decisions demonstrates a failure to comply with IDEA procedures.
6. **Failure to Provide Appropriate Transition Services:** Transition planning in the Student's IEPs did not comply with 34 C.F.R. §§ 300.43 and 300.320(b). The IEPs lacked measurable postsecondary goals, age-appropriate transition assessments, interagency collaboration, particularly involving the Vo-Tech school, and functional skills instruction. The absence of data tracking or service coordination interfered with the Parent's participation.
7. **Inappropriate Reliance on Grades to Demonstrate Progress:** The District improperly relied on classroom grades to justify both the IEPs and the Student's exit from IDEA eligibility. However, under *Endrew F.* and *Downington*, passing grades are not dispositive evidence of FAPE where the broader record reflects minimal to no individualized progress, in conjunction with a lack of data-based instruction and inadequate goal mastery tracking, which interfered with the Parent's participation and denied the Student a FAPE.
8. **Procedural Violation: Failure to Provide Timely Prior Written Notice (PWN):** The District failed to issue a NOREP prior to graduation, as required by 34 C.F.R. § 300.503(a) and 22 Pa. Code § 14.133, which in turn caused a fundamental parental participation error. The post-graduation issuance of the NOREP deprived the Parent of the opportunity to contest the

decision or request continued services, constituting a procedural violation that impeded the Parent's right to participate under *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260 (3d Cir. 2012) and *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389 (3d Cir. 1996).

9. **Failure to Provide a Summary of Performance (SOP):** The District failed to provide a legally required Summary of Performance at graduation, in violation of 34 C.F.R. § 300.305(e)(3). The SOP is essential to support students' postsecondary access to services and accommodations. Its omission compounded the harm from the inadequate transition planning and invalid graduation process.
10. **Cumulative Effect of Procedural and Substantive Violations:** Pursuant to 34 C.F.R. § 300.513(a)(2), a procedural violation constitutes a denial of FAPE where it (1) impedes the Parent's opportunity to participate in educational decision-making; (2) significantly impedes the child's right to FAPE; or (3) causes a deprivation of educational benefit. Here, the District's combined procedural and substantive failures meet all three criteria.
11. **Conclusion of Law:** Based on the totality of evidence and legal standards cited above, the District denied the Student a Free Appropriate Public Education under the IDEA and its implementing regulations. The procedural violations—including the untimely NOREP, the absence of a Summary of Performance, and the inadequate reevaluation—coupled with substantively deficient IEPs and transition planning, warrant a finding in favor of the Parent. The Student is entitled to appropriate equitable relief, including compensatory education and transition support services.

## **Analysis and Application of Conclusions of Law**

### **The Procedural and Substantive IEP Violations**

The District's academic IEP goals were procedurally and substantively inadequate. The Supreme Court in *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017), decided that a school district meets its substantive obligation under the IDEA only when it offers an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 999. The Supreme Court emphasized that this standard requires a fact-specific, individualized analysis and demands more than de minimis or trivial advancement. For students with significant needs, the IEP must be "appropriately ambitious," offering the opportunity for meaningful

educational benefit. *Id.* at 1000–01. This holding is built on *Board of Education v. Rowley*, 458 U.S. 176 (1982), which affirmed that FAPE must be tailored through the IEP process to the student's unique needs, rather than offering a generic or one-size-fits-all education.

The record reflects that the District failed to meet this substantive standard. Specifically, the IEPs provided for the Student during the 2022–2023 and 2023–2024 school years did not offer a program reasonably calculated to confer a meaningful educational benefit, as required under *Endrew F.* (P-7; S-1). The IEP goals were often repeated from year to year without responsive revisions to reflect necessary data, the circumstances, or the Student's lack of progress. For example, reading comprehension and written expression goals remained static, despite persistent difficulties noted in monitoring reports and teacher input (S-6, pp. 2–5). The District continued to label progress as "minimal" or "progressing," yet failed to provide objective data showing whether the Student approached mastery of any goal.

Furthermore, the IEPs lacked responsive direct services. Despite clear documentation that the Student continued to struggle significantly with reading, writing, math, and executive functioning, the IEPs offered little to no direct services, no meaningful changes to the specially designed instruction, and lacked data-driven supplemental services (S-6; S-3). Despite the lack of objective progress, the IEP services remained unchanged in duration and intensity, even after years of minimal progress. These omissions indicate a failure to adjust programming based on the Student's documented lack of growth, as required under *Endrew F.*

The record further shows that the District failed to implement individualized and outcome-oriented transition services. Although transition goals were nominally included in the IEPs (S-1, p. 12), progress monitoring documents (S-6) show no meaningful data tracking progress toward those goals. There is no evidence of assessments, coordinated interagency planning, or skills-based transition instruction. This failure violates the *Endrew F.* holding, which requires that services be aligned with the Student's needs, circumstances, and responsive to their evolving profile.

### **The Specially Designed Instruction Was Inadequate**

The District's provision of specially designed instruction (SDI) failed both procedurally and substantively to meet the individualized needs of the Student as required under the IDEA. According to 34 C.F.R. § 300.39(a)(1), SDIs must be "adapted, as appropriate, to the needs of the eligible child... to address the unique needs of the child that result

from the child's disability." Instead of developing a program responsive to the Student's well-documented language-based learning disability, executive functioning impairments, and written expression deficits, the District recycled generic supports, such as "graphic organizers," "check-ins," and "extra time," across multiple IEPs. These accommodations/SDIs lacked specificity, failed to designate a responsible staff member, and were not grounded in any data-based instructional framework. Critically, the IEPs did not contain appropriate SDIs tailored to the Student's individualized profile. These violations, and other fails short of the *Board of Education v. Rowley*, 458 U.S. 176 (1982), and *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017) FAPE instructions.

Rather than providing research or evidence-based instruction designed to address the Student's core learning needs, the District sent the Read 180 program home for the Parent to implement, without any training. Read 180 is a general education reading program intended for Multi-Tiered System of Supports (MTSS) Tier 2 intervention students. The Tier 2 intervention here was not specially designed instruction. As confirmed by the administrator, the psychologist, and the teacher, "Read 180 is a general education program" that requires "a group rotation model" (NT pp. 47–49). Based on the record as a whole, I now conclude that the Read 180 in-home computer software program was not reasonably calculated to provide a meaningful benefit.

In the present matter, the Student demonstrated well-documented deficits in decoding, working memory, and written expression. Despite these needs, the District failed to provide individualized or small-group instruction tailored to these specific learning needs. Instead, the District primarily relied on the Student's participation in a general education reading lab and the administration of progress-monitoring probes. These measures functioned as substitutes for direct instruction rather than as tools to inform targeted teaching strategies. This approach does not satisfy the substantive standard articulated in *Endrew F.*, which requires that an IEP be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."

Testimony from the instructional staff confirmed that their role was limited to administering AIMS Web fluency probes and that they were not responsible for providing instruction in reading, writing, mathematics, or executive functioning skills (NT pp. 53–54, 56–58).

The IEPs failed to allocate any time for one-on-one or small-group instruction in these core areas. Equally concerning was the District's decision to exit and or reduce the Student time in direct instruction (P-

10). Contrary to the regulations the instructional changes were made without updated cognitive, ability, achievement, rating scales or data-driven academic assessments.

In direct violation of 34 C.F.R. § 300.304(b)(1)–(2), each Reevaluation Report relied solely on the teacher reports and classroom grades without administering updated standardized testing. Without reliable data, the District virtually eliminated the Student's direct instruction addressing the SLD eligibility category. The record is clear that the decision to reduce or eliminate instructional time was not supported by a comprehensive evaluation, even though the staff had access to the independent CHOP report.

Finally, the SDIs, even when combined with the goal statements, offered generic, disconnected support for a Student with demonstrated needs. This lack of individualized instructional planning and personalized delivery of supports materially impaired the Student's ability to benefit from their education. The absence of data-responsive instruction and personalized teaching in reading, writing, and math constitutes a violation of the substantive FAPE requirement. When considered alongside the District's flawed IEP goals and its improper reduction of the Student's SLD instruction, underscores a systemic denial of FAPE.

### **The District's Reevaluation Report Was Inappropriate**

The District's February and June 2024 reevaluation reports failed to comply with the IDEA's mandate for a comprehensive, individualized assessment. Under 34 C.F.R. § 300.304(b)(1)–(2), a reevaluation must "use a variety of assessment tools and strategies" and "not use any single measure or assessment as the sole criterion" for determining whether a child has a disability or what services are appropriate. Contrary to this requirement, the school psychologist testified, "I did not conduct any standardized testing as part of the reevaluation. We relied on teacher input and grades" (NT p. 80). She later admitted, "I did not use norm-referenced academic assessments during this review," explaining, "that's not something we do for every reevaluation unless there's a specific referral" (NT p. 86). These admissions reflect a procedural violation of 34 C.F.R. § 300.304(b)–(c) and a fundamental departure from the individualized data analysis required under *Endrew F.* and *Rowley*.

The team also failed to give appropriate consideration to a comprehensive independent evaluation conducted by the Children's Hospital of Philadelphia. While the Parent submitted the evaluation as



part of her Parental input and the Student's educational record, the psychologist admitted that she only "glanced at it" and "didn't incorporate it into the team report" (NT p. 82). She went on to state, "The CHOP report wasn't necessary because we had enough from classroom data and grades" (NT p. 85). This dismissive approach violates 34 C.F.R. § 300.502(c)(1), which requires school districts to "consider" independent educational evaluations presented by the Parent in "any decision made with respect to the provision of FAPE." The omission of standardized cognitive and academic testing meant that the team lacked a baseline against which to compare prior evaluations. This predetermination prevented an analysis of the Student's learning trajectory, further masking persistent deficits in reading fluency, written expression, and executive functioning. The psychologist's reliance on informal, teacher-generated probe findings as the exclusive basis for reducing the Student's SLD instructional time—without corroborating test scores or vocational input—violated both the letter and spirit of the IDEA's reevaluation procedural safeguards.

Further compounding these errors, the District violated 34 C.F.R. § 300.305(a)(2) by failing to solicit or consider input from the vocational-technical (CTC) program where the Student was enrolled. The psychologist testified that she did not speak to any of the Student's CTC instructors and offered no explanation for the omission (NT pp. 83–84). These failures were not merely procedural; they had serious substantive consequences. Accordingly, the IEPs at issue were inadequate and insufficient, and the Student was denied a Free Appropriate Public Education.

### **The District's Transition Planning Was Legally Deficient and Substantially Inappropriate**

The District failed to satisfy its procedural and substantive obligations under the IDEA by providing transition services that were both underdeveloped and ineffectively implemented. While the IEPs paid lip service to transition planning, they lacked the legally required specificity, coordination, and measurable outcomes demanded by 34 C.F.R. §§ 300.320(b) and 300.43. These omissions are not a minor oversight—it reflects a systemic IEP breakdown that deprived the Student of meaningful preparation for adult life.

Under 34 C.F.R. § 300.43, transition services must be results-oriented and based on the Student's individual needs, strengths, preferences, and interests. Yet the record reveals no evidence of any age-appropriate transition assessments. The IEPs failed to include measurable postsecondary goals or describe coordinated activities that would enable the Student to develop employment, independent living,

or self-advocacy skills. Like the academic IEP goals, there was no instruction in critical functional areas, no documented meaningful job exploration or community-based experiences, and no evidence of collaboration with the Vo-Tech school or the vocational rehabilitation agency, despite the Student's dual enrollment. These omissions reflect a failure to deliver the kind of "carefully reasoned and data-driven" program that *Endrew F.*, *Rowley*, and *Downingtown* require.

As the Third Circuit emphasized in *Downingtown*, grades and graduation alone do not establish FAPE. Courts must assess whether the IEP was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 768 F. App'x at 121 (quoting *Endrew F.*, 580 U.S. at 399). Here, the District's failure to develop, monitor, or adjust transition services based on the Student's unique profile—including known executive functioning and written expression deficits—falls well short of that standard. The District's reliance on the Student's passing grades to justify inaction is legally and factually insufficient. As *Endrew* makes clear, passing grades may be relevant. Still, they are not dispositive, particularly where the broader record shows that the student is not making meaningful functional progress or achieving independence.

The District's failure to monitor or report progress on transition goals, in violation of 34 C.F.R. § 300.320(a)(3), also interfered with the Parent's participation. The quarterly reports (S-6) are entirely silent on this legally required area of programming. This deprived the Parent of the opportunity to evaluate the effectiveness of services or advocate for adjustments, stripping the IEP process of transparency and accountability. The lack of monitoring also foreclosed real-time course corrections, transforming transition services from a living, responsive framework into a hollow, procedural formality.

Collectively, these failures rendered the District's transition services legally noncompliant and educationally meaningless. Transition planning under the IDEA is not a checklist exercise—it is a critical bridge to postsecondary life. The District's omissions severed that bridge. This constitutes a denial of FAPE under both *Rowley* and *Endrew F.*, and affirms the Parent's position that the Student's transition programming was not "reasonably calculated to enable [the Student] to make progress appropriate in light of [the Student's] circumstances."

### **The District's NOREP After Graduation Was Untimely and Legally Deficient**

The District's issuance of the Notice of Recommended Educational Placement (NOREP) marking the Student's graduation (S-2) occurred

only after the conclusion of the school year. This action flagrantly violated the IDEA's procedural safeguards. Under 34 C.F.R. § 300.503(a) and 22 Pa. Code § 14.133, a NOREP must be provided with sufficient advance notice before any significant change in placement, including graduation. This notice must allow the Parent the opportunity to review, object, and participate meaningfully in decisions that carry life-altering consequences for the Student. Instead, the District issued the NOREP after the fact, effectively extinguishing any meaningful opportunity for the Parent to dispute the graduation decision or seek continued services.

This was not a mere procedural oversight—it was a substantive denial of parental and Student rights. Graduation, by law, constitutes a change in educational placement and terminates a student's entitlement to FAPE. The failure to issue a timely prior written notice (PWN), before the “action,” undermines the Parent's ability to request mediation, due process, and invoke stay put. As the Third Circuit has repeatedly made clear, procedural violations that impede parental participation in educational decision-making are not harmless errors; they constitute material breaches of the IDEA's guarantees of due process and informed engagement.

Stated another way, by waiting until the school year had ended and the graduation ceremony had occurred, the District foreclosed the Parent's right to challenge the appropriateness of the decision in real time. This post hoc notification rendered any potential remedies illusory—no IEP meeting could be convened, Extended School Year (ESY) eligibility could be considered, and the exit planning could be revisited. This action failed both the procedural and substantive mandates of the IDEA and deprived the Student of a valid exit process.

### **The Summary of Performance Denied the Student Critical Transitional Support**

Equally troubling, in direct violation of 34 C.F.R. § 300.305(e)(3), is the District's failure to provide a timely Summary of Performance (SOP) at the time of the Student's graduation. This document is not optional; it is a required component of a lawful exit from special education services. The SOP must summarize the Student's academic achievement and functional performance, as well as recommendations to assist in meeting postsecondary goals. Neither the final IEP nor the NOREP fulfilled this legal requirement. The consequences of this failure are significant. Without a Summary of Performance, the Student was left without the documentation needed to secure academic accommodations in higher education, access vocational services, or qualify for postsecondary adult disability support programs. The SOP

serves as a critical bridge between special education and adult life, equipping students with a profile of their needs and a roadmap for continued support. The absence of such a document severed that bridge and left the Student vulnerable during a pivotal transition.

Furthermore, the District's failure to produce an SOP reflects a systemic breakdown in planning and individualized programming. The IDEA mandates that services, including exit procedures, be tailored to the unique needs of the student. Yet here, the District failed to generate even a basic responsive document summarizing the Student's functional capabilities and academic profile. This not only deprived the Parent of critical information needed for future planning and advocacy but also compounded the District's broader failure to meet its transition obligations under 34 C.F.R. § 300.43.

Graduation is a legally recognized change in placement that requires advanced notice and meaningful parental participation. The IDEA's procedural safeguards are designed to ensure informed parental engagement and protect against unilateral district decisions. 34 C.F.R. § 300.503(a) and 22 Pa. Code § 14.133. That also did not happen. Failure to comply with these safeguards materially impaired the Parent's rights and triggers a denial of FAPE finding under the Third Circuit's interpretation in *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389 (3d Cir. 1996), and *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260 (3d Cir. 2012).

### **IDEA Conclusion**

After reviewing the totality of the record, I now conclude that the District denied the Student a FAPE in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and corresponding provisions of Pennsylvania law at 22 Pa. Code Chapter 14. The denial resulted from a pattern of procedural noncompliance and substantive educational failures that, taken together, significantly impeded the Parent's right to participate in educational decision-making, deprived the Student of educational benefit, and contravened the standards set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982), and *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017). The absence of notice, the deficient reevaluation, the untimely NOREP, and the failure to generate a legally sufficient Summary of Performance represent serious procedural errors. The above procedural and substantive violations constitute a denial of FAPE that impeded the Parent's opportunity to participate in the decision-making process and caused a deprivation of educational

benefits. The District's actions, inactions, and errors must be remedied to ensure future compliance and to provide equitable relief to the Student and Parent.

### **The Student Is Entitled to a Make-Whole Compensatory Education Award**

The Student presents with a range of academic, behavioral, and executive functioning needs that are well known to all, yet unaddressed. Academically, the Student requires support to improve and maintain skills in written language (including spelling, sentence composition, and overall written expression), reading (including basic decoding, fluency, word recognition, vocabulary, and comprehension), and mathematics (specifically fluency, calculation, and problem solving). Additionally, the Student demonstrates deficits in oral language processing, particularly in listening comprehension and the ability to understand directions.

From a behavioral and functional standpoint, the Student requires specially designed instruction to enhance independent work habits, such as following verbal directions, completing assignments, developing self-advocacy skills, leadership, and social interaction skills. Based on the Student's testimony, it is also evident that additional support is necessary to strengthen self-reliance, communication, and overall engagement. The Student exhibits apparent deficits in executive functioning, including challenges with self-monitoring, cognitive flexibility, task initiation and completion, working memory, and planning and organizational abilities. To address these unmet needs moving forward, vocational counseling is essential to reinforce the Student's social, academic, and executive functioning skills. Accordingly, I will now formulate an award of compensatory education and prospective relief designed to remedy the full scope of these losses.

Pursuant to *M.C., Ridgewood*, and *G.L.*, a student is entitled to compensatory education beginning at the point the District knew or should have known that FAPE was not being delivered, subject only to the time reasonably necessary for the District to correct its errors.<sup>2</sup> In

<sup>2</sup> IEPs are forward looking—designed to "conform [.] to . . . [a]. standard that looks to the child's present abilities"—compensatory education on the other hand is meant to "make up for prior deficiencies." *Reid*, 401 F.3d at 522-23. IEPs "carries no guarantee of undoing damage done by prior violations" and cannot substitute for the make whole role of compensatory education. See *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 276 (D.D.C.2011) (citing *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

this case, the District either knew or should have known by the first day of the 2022–2023 school year that the Student was not receiving a meaningful educational benefit. No evidence concerning a reasonable rectification was provided; therefore, the Student should receive an equitable hour-for-hour complete make-whole remedy.

Accordingly, to address the above losses, consistent with the *M.C. and Reid* compensatory education models, the Student is awarded hour-for-hour compensatory education at a rate of 4.5 hours per day for each school day that the District was in session during the 2022–2023, and 2023–2024, school years, excluding only days when the Student was absent due to illness.

The record lacks testimony from the staff at the Vocational school. Therefore, rather than relying on an inference, I will not award compensatory education for the time spent at the Vocational school. Furthermore, I now conclude the record lacks preponderant testimony to award time for the claimed extended school year eligibility. Finally, the Parent did not request, and therefore, I will not award compensatory education to address the loss of a chance to invoke "stay put."

This award reflects not only the District's failure to deliver specially designed instruction and transition planning, but also the deprivation of parental participation and procedural safeguards violations under 34 C.F.R. §§ 300.320–300.324.

Prospective relief is also warranted to address the District's ongoing failure to ensure meaningful parental participation. Accordingly, the District is ordered to review and revise its graduation procedures and policies governing the development of Summary of Performance documents. This review must be completed within 60 calendar days of the date of this decision. Following any revisions, the District shall conduct in-service training for all staff involved in the graduation, NOREP, SOP, and diploma process to ensure compliance with IDEA procedural safeguards.

Consistent with *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015), and *Boose v. District of Columbia*, 786 F.3d 1054 (D.C. Cir. 2015), this prospective remedy is necessary to prevent the recurrence of the identified violations and to ensure

systemic correction. However, the award of prospective relief does not conclude the FAPE analysis.

### **Case Law Now Requires a Standalone Section 504 Analysis**

In *Le Pape v. Lower Merion School District*, 103 F.4th 966 (3d Cir. 2024), the Third Circuit clarified that while a denial-of-FAPE communication claim under the ADA may be addressed through administrative proceedings, discrimination claims under the ADA or Section 504 that seek legal relief should proceed through summary judgment and, if necessary, trial.

In *B.S.M. v. Upper Darby School District*, 103 F.4th 956 (3d Cir. 2024), the Third Circuit next emphasized that Section 504 FAPE claims require a separate analysis from IDEA FAPE claims, even when based on similar IDEA facts. These decisions underscore the necessity for hearing officers and courts to conduct independent reviews of Chapter 15/Section 504 regulations in due process cases. Adding this analysis and review ensures that FAPE claims under Section 504 are evaluated separately from IDEA claims. Therefore, applying *Le Pape* and *Upper Darby*, I will assume jurisdiction and complete a separate, standalone analysis of the Student's Chapter 15/Section 504 FAPE claims.

### **Section 504 FAPE Standards**

Section 504 of the Rehabilitation Act and its implementing regulations require public school districts to provide students with disabilities a FAPE. The Section 504 FAPE obligation, however, includes the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of nondisabled individuals are met. 34 C.F.R. § 104.33(b)(1)(i). Unlike the IDEA, which defines FAPE as a specially designed program that confers meaningful educational benefits, the Section 504 regulations employ a comparative benefit standard. Specifically, it requires that services (1) are designed to meet the individual educational needs of disabled students as adequately as those of nondisabled students, 34 C.F.R. § 104.33(b)(1); (2) are based on proper placement decisions aligned with 34 C.F.R. §§ 104.34 and 104.35; and (3) are subject to procedural safeguards, including notice, parental participation, and an impartial hearing rights, per 34 C.F.R. § 104.36. Importantly, when a student is eligible under both the IDEA and Section 504, implementation of an IEP developed in accordance with IDEA procedures is deemed sufficient to meet the FAPE standard under

Section 504. 34 C.F.R. § 104.33(b)(2); *Estate of Lance v. Lewisville Indep. Sch. Dist.*, 62 IDELR 282 (5th Cir. 2014); *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 280 (3d Cir. 2012)

For students eligible only under Section 504, however, the Third Circuit has explained that the applicable legal standard includes a duty to provide reasonable accommodations. In *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 280 (3d Cir. 2012), the court held that the Section 504 accommodations must offer "significant learning" and "meaningful benefit. See also *C.G. v. Commonwealth of Pennsylvania Dep't of Educ.*, 62 IDELR 41 (3d Cir. 2013) (holding that accommodations must be comparable in effect to the services provided to others); *K.K. ex rel. L.K. v. Pittsburgh Pub. Sch.*, 590 F. App'x 148, 154 (3d Cir. 2014) (non-precedential); *T.F. v. Fox Chapel Area Sch. Dist.*, 589 F. App'x 594, 600 (3d Cir. 2014); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010); *T.R. v. Kingwood Twp. Bd. of Educ.*, 205 F.3d 572, 577 (3d Cir. 2000).

While IDEA FAPE represents an affirmative duty to design a personalized education that provides meaningful benefit, some courts have described the Section 504 obligation as a negative prohibition against denying students with disabilities equal access to "equally effective" benefits enjoyed by nondisabled peers. *Id.*

Courts in this Circuit have also rejected the proposition that plaintiffs asserting denial-of-FAPE claims under Section 504 must prove discriminatory intent. In *Centennial Sch. Dist. v. Phil L. ex rel. Matthew L.*, 799 F. Supp. 2d 473, 488–89 n.10 (E.D. Pa. 2011), the court declined to require proof that the denial of services was "solely on the basis of disability." Similarly, in *Neena S. ex rel. Robert S. v. Sch. Dist. of Philadelphia*, No. 07-4998, 2008 WL 5273546 (E.D. Pa. December 19, 2008), the court allowed Section 504 FAPE claims to proceed without proof of discriminatory animus, affirming that denial of FAPE alone may establish a violation.

### **The Student's Section 504 Derivative Claims Were Adjudicated and Resolved Through the IDEA Due Process Hearing Process**

Where a student is IDEA-eligible and Section 504 eligible and receives an IEP that addresses all needs and circumstances developed in accordance with IDEA procedures, Section 504 provides that such IEP implementation may satisfy Section 504's FAPE requirement. 34 C.F.R. § 104.33(b)(2); *Estate of Lance v. Lewisville ISD*, 62 IDELR 282 (5th Cir. 2014); *Scanlon v. SFUSD*, 20 IDELR 1383 (N.D. Cal. 1994). Courts



in the Third Circuit have similarly recognized that although the statutory schemes of the IDEA and Section 504 differ in structure and remedies, compliance with IDEA procedural and substantive requirements can resolve derivative Section 504 FAPE claims. *W.B. v. Matula*, 23 IDELR 411 (3d Cir. 1995), *abrogated in part by A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791 (3d Cir. 2007); *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 280-81 (3d Cir. 2012).

Applying the Section 504 child find, evaluation, and FAPE standards, at 34 C.F.R. §§ 104.31-104.36, I now find that my IDEA analysis above confirms that the Student's IEP as offered was not reasonably calculated to provide a meaningful benefit; therefore, the Student's derivative Section 504 claim is granted. Applying the 504 FAPE requirements, I next conclude that the Parent offered independent evidence of a Section 504 denial of a FAPE.

Assuming, *arguendo*, that the Section 504 regulation endorsing a finding of an offer of an IDEA FAPE is not dispositive the following standalone Section 504 FAPE analysis favors the Student.

### **The IDEA Evaluation Satisfies the Section 504 Evaluation Requirement**

Section 504 regulations at 34 C.F.R. § 104.35 require districts to conduct evaluations before providing or changing special education or related services. These evaluation procedures align closely with those under the IDEA (20 U.S.C. § 1414) and, in practice, can be completed simultaneously through a unified, multidisciplinary team process. Courts have acknowledged that a procedurally valid and comprehensive IDEA evaluation can satisfy 504's procedural evaluation standards—*Grieco v. N.J. Dep't of Educ.*, 48 IDELR 74 (D.N.J. 2007).

In this case, the record is preponderant that the District failed to follow all applicable Section 504 evaluation, reevaluation procedural requirements. The IDEA multidisciplinary team failed to satisfy the Section 504 requirement that a team of knowledgeable individuals conduct a full and individualized evaluation, review multiple data sources, including a comprehensive review of private assessments. Because Section 504 and IDEA share overlapping evaluation requirements—including the obligation to use nondiscriminatory tools, consider multiple sources of information, and avoid one-size-fits-all

testing—I now find that the District has also failed to satisfy its independent Section 504's procedural FAPE obligations.

### **The IDEA Due Process Decision Resolves the Student's Derivative Section 504 FAPE Claims**

Unlike the plaintiff in *Le Pape v. Lower Merion Sch. Dist.*, 103 F.4th 966 (3d Cir. 2024), who raised a standalone communication-access claim under the ADA, the Parent in this matter brings derivative Section 504 claims based on the same facts and circumstances underlying the IDEA allegations. Specifically, the claims pertain to the District's alleged failures in child find, evaluation procedures, and provision of FAPE, grounded in Section 504's comparative benefit standard. Therefore, based on the applicable case law outlined above, I conclude that the Section 504 allegations presented here offer an alternative legal theory grounded in the same underlying conduct and circumstances. I next conclude that the District failed to provide appropriate and reasonable Section 504 FAPE services. *CTL v. Ashland Sch. Dist.*, 62 IDELR 252 (7th Cir. 2014); *Mark H. v. Lemahieu*, 49 IDELR 91 (9th Cir. 2008). Based on the overall circumstances, I now find that the District's actions, omissions, and errors resulted in a failure to make reasonable accommodations that offered "significant learning" and "meaningful benefit." Therefore, the Parent's Section 504 FAPE claims are granted as stated. All other claims are exhausted.

### **Section 504 Conclusion**

In summary, when a student is dually eligible under the IDEA and Section 504 and is provided with an IEP that is both procedurally and substantively appropriate, that IEP is presumed to satisfy the school district's obligation to provide a Free Appropriate Public Education (FAPE) under Section 504. This presumption holds unless a distinct and credible allegation of discrimination, denial of a FAPE or exclusion gives rise to an independent Section 504 violation.

Pursuant to the FAPE provisions at 34 C.F.R. § 104.33 through § 104.36 and binding precedent, I find that the Student's Section 504 FAPE claims here were fully resolved through the IDEA due process hearing, Findings of Fact and Conclusion of Law. The record as a whole supports a separate finding of a Section 504 FAPE violation. Accordingly, I now find the IDEA award of compensatory education resolves the Section 504 FAPE claims; therefore, no further relief is granted under Section 504. The dispute is resolved in favor of the Parent and the Student. An appropriate Order follows.

## Conclusion

The remedies set forth in this Order are designed to bring the District into full compliance with its obligations under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act. These measures are not only legally necessary but also equitable as they are crafted to return the Student to the educational trajectory they would have followed had the District not committed the procedural and substantive violations documented in this decision.

The combination of relief awarded, comprising retrospective compensatory education and prospective procedural relief, resolves the denial of FAPE under both IDEA and Section 504. These remedies are designed to rectify past harm and ensure effective educational planning moving forward. The scope of the IDEA relief resolves the Student's intertwined Section 504 FAPE claims asserted by the Parent, which overlap factually and legally with the IDEA violations. This Decision and Order provides a comprehensive remedy that ensures the Student's educational rights are fully vindicated and that all equitable FAPE violations are corrected in a timely, meaningful, and forward-looking manner.

## ORDER

**NOW**, this 30th day of April 2025, it is hereby **ORDERED** that the Parent's claims under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act are **GRANTED**. The Parties are directed to collaborate in good faith and to comply with all deadlines and directives set forth herein.

### A. Prospective Compensatory Education Award

1. **Award Period:** The District is directed to fund 4.5 hours of compensatory education for all school days from the first instructional day of the 2022–2023 school year through the end of the 2023–2024 school year, excluding days the Student was absent due to illness.
2. **Calculation Method:** For each school day the school was in session during the awarded period, the Student shall receive 4.5 hours of compensatory education.
3. **Attendance Records:** Within five (5) school days of this Order, the District must provide the Parent with official school calendars and attendance records for the 2022-2023 and 2023-2024 school years. The Parent shall subtract absences due to illness from the total school days. Once the calendars are provided, the

Parent is directed to calculate the compensatory education hours and submit the total to the District. Within 10 days of receiving the calculation, the District should be prepared to fund the Student's compensatory education hours.

4. **Use of Hours:** Compensatory education hours may be used for any developmental, corrective, remedial, or specially designed instruction, including related services and transition services as defined under IDEA or Section 504. The Parent is free to select the provider.
5. **Expiration:** Compensatory education hours may be used until the Student reaches age 27, after which unused hours shall revert back to the District.
6. **Service Provider Discretion and Reimbursement:** The Parent may choose the provider(s). The District is also directed to fund the cost of transportation to and from the compensatory education experience. The District shall reimburse either the Parent, the Student, or any other related service transportation providers at standard rates and transportation costs paid in the District, within 30 days of the invoice. Mileage to and from the compensatory education services shall be reimbursed at the IRS standard mileage rate.
7. **The Prospective review of policies, practices, and procedures.** To remedy the parental participation violations here, the District is directed to review and revise all practices and procedures related to graduation, transition at graduation, and the development of the summary of performance. Once completed, the District should provide in-service training to all personnel on how to prepare the NOREP and SOP for the graduating student. The revised policies should be placed on the District's website to ensure parental participation in the graduation process.
8. **Annual Reporting:** On or before January 15 of each year until the Student turns 27, the District shall provide a written accounting to the Parent and Student of all unused compensatory education hours.
9. **Finality of Order:** The remedies ordered herein are final and binding, subject to any appeal rights provided under applicable federal or state law

July 30, 2025,

**/s/ Charles W. Jelley, Esq.**  
Hearing Officer  
ODR FILE # 30297-24-25