

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. 30563-24-25

Child's Name:

D.R.

Date of Birth:

[redacted]

Parent/Guardian:

[redacted]

Counsel for Parent/Guardian:

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

04/15/2025

INTRODUCTION AND PROCEDURAL HISTORY

The student, D.R. (Student),¹ is a [redacted] teenaged student residing with the Guardian and enrolled in the Belmont Charter School, the local education agency (LEA). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² under the categories of Intellectual Disability, Autism, and Other Health Impairment. Accordingly, Student also has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ For the past several school years, Student has attended a private school (Private School). However, at the time of the due process hearing, Student was provided Instruction in the Home after serving a disciplinary suspension.

In late fall 2024, the Guardian filed a Due Process Complaint under the IDEA, Section 504, and the Americans with Disabilities Act (ADA),⁴ contending that the LEA has denied Student a free, appropriate public education with respect to programming and placement. As remedies, the Guardian seeks relief including compensatory education and specific directives to the LEA. For its part, the LEA denied the Guardians' contentions and the relief demanded, asserting that Student requires a medical residential placement that it is not equipped to provide. The matter

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 29 U.S.C. § 794. The federal regulations implementing Section 504 are codified in 34 C.F.R. §§ 104.1 – 104.61; the applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15).

⁴ 42 U.S.C. §§ 12101 – 12213.

proceeded to an efficient hearing with the presentation of witnesses and documentary evidence.⁵

Following review of the record and for all of the reasons set forth below, the claims of the Guardians will be sustained and must be granted.

ISSUES

1. Whether the LEA has denied Student a free, appropriate public education particularly in the area of addressing behavior since the fall of 2022 through the present;
2. If the LEA has denied Student a free, appropriate public education, should Student be awarded compensatory education; and
3. Should the LEA be issued specific directives regarding Student's programming and placement?

FINDINGS OF FACT

1. Student is and has been enrolled at the LEA since the start of the 2021-22 school year, and began attending Private School in the summer of 2022. Student is eligible for special education as a child

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent/Guardian Exhibits (P-) followed by the exhibit number, LEA Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibits (HO-) followed by the exhibit number. A majority of the parties' exhibits are duplicative, and citation thereto is not exhaustive as a result; similarly, testimony about the content of documents is superfluous and generally noted cited. Importantly, given the protections afforded to student confidentiality, the very sensitive and potentially personally-identifiable details in this case are omitted in the decision to the extent possible.

with Autism, Intellectual Disability, and a Speech/Language Impairment. (N.T. 70; P-35; S-35.)

2. The Guardian was granted custody of Student shortly after Student's birth through the present time. The Guardian is employed full-time in two different capacities, working seven days each week, and must leave home before Student is transported to school. (N.T. 560-61, 563, 569-71, 575-76.)
3. Student was provided with private counseling services through remote sessions for a period of time. Those ended when it appeared to the Guardian to not be benefitting Student. (N.T. 300-01, 417-19, 576-78, 595-96.)

Private School

4. Student attended a private school (Private School) at the start of the 2021-22 school year. A reevaluation report (RR) in the fall of 2021 confirmed Student's eligibility for special education in the categories of Intellectual Disability, Autism, and Other Health Impairment (due to Attention Deficit Hyperactivity Disorder). Student's cognitive functioning was reported at the time to be in the moderately impaired range, and academic achievement was well below expectations in the areas of reading and mathematics. (P-33.)
5. Private School provides trauma-informed care for its students, and has approximately seventy students in its high school. Counseling is provided to all students. (N.T. 166, 637-38.)
6. When students arrive at Private School on a bus, in a cab, or in a van, they are greeted by staff and escorted into the building in the front of the school. Students return home after school from the same location for the arranged transportation. Private School staff supervise both arrival and departure. (N.T. 72-73, 172-74, 210-11.)

7. Private School has a school-wide behavior support plan (SWBSP). Each student has a point sheet each day that tracks behavior, particularly safe behavior, being responsible, and being respectful. Students earn points that can be used for activities and other rewards. (N.T. 234-35, 241, 250-51, 271-75, 350-51, 358-61, 639-42, 657-58, 709-12, 717-18.)
8. Student received counseling at Private School, and other staff including clinicians were also involved throughout the school day. (N.T. 646-47, 686-87, 718-19)
9. Student participated in the SWBSP and earned rewards such as school activities. (N.T. 263, 349, 368-69 for 2023-24 SY)
10. Private School utilizes a computer program for tracking disciplinary and other incidents by students throughout the school year. Those may also involve behaviors that are different than typical for a student, or impact the school or classroom environment. (N.T. 176, 352-54, 644, 719-21; P-8; S-8.)
11. Disciplinary incidents in the Private School computer program identify offenses as major or minor. The program automatically populates with the major label, requiring the user to use the dropdown menu to change a behavior to minor. Differentiating between major and minor behaviors is subjective. (N.T. 267-68, 270-71, 355-56, 644-45, 720-21.)
12. Private School has several climate managers, two counselors, and three clinicians at the high school. (N.T. 178-79, 181, 638-39.)
13. The LEA and/or Private School never conducted a Functional Behavior Assessment of Student. (N.T. 75, 239.)
14. Student was in one particular program at Private School that serves students with complex needs who are provided with a modified

academic curriculum. There is a vocational component to this program with work and community experience opportunities and development of skills for post-secondary transition. This program is located on one level of the Private School high school. The students do not typically interact with younger students but the cafeteria is in the elementary school. (N.T. 114-16, 168-71, 208-09, 213-16, 281-82, 704-09; P-39 at 4.)

15. High school students were escorted to the elementary school for lunch and socialization or physical activities by Private School staff; Student also had the PCA. Students are to be separated from those of other age groups. (N.T. 285-89, 333-34, 394.)
16. Student had 76 total incident referrals during the 2022-23 school year (54 major) and 64 total referrals during the 2023-24 school year (42 major). The number of discipline incidents reported for Student during the relevant time period are not unusual for students at Private School. (N.T. 694, 720-22; P-8; S-8.)
17. Student was monitored at Private School, and escorted around the building so that Student was never left on Student's own. Multiple staff persons were in the hallways during class changes. (N.T. 263, 283-85., 690-91.)
18. Student's transportation was arranged through the LEA. The LEA made the arrangements through the local school district for transportation because it was responsible to do so through contracts with transportation companies. The school district also makes arrangements for aides on transportation if needed. (N.T. 50, 57-59, 78-79, 604-05.)
19. The Guardian communicated with Private School staff regularly. (N.T. 592-94, 596-97, 643, 661-65.)

2021-22 School Year

20. A reevaluation report (RR) in October 2021 confirmed Student's eligibility for special education based on Intellectual Disability, Autism, and Other Health Impairment. Recommendations were to address reading and mathematics weaknesses as well as provision of specially designed instruction and program modifications. (P-33.)
21. Student's Individualized Education Program (IEP) in the fall of 2021 indicated that Student did not engage in behaviors that impeded Student's learning or that of others. This IEP addressed reading comprehension of instructional level text; written expression through writing sentences; mathematics problem solving focused on foundational mathematics skills; task initiation and completion; and speech/language and occupational therapy skills. Post-secondary transition planning related to post-secondary education, competitive employment, and independent living. Student's program was one of full-time autistic, learning, and life skills support at Private School. (P-27.)
22. Student had an Individual Student Safety Plan also developed in October 2021 to address exhibition of a particular type of behavior (see P-32 at 1 (Description of Specific Unsafe Behaviors)) particularly when unsupervised. Behavior supports in that Plan provided for a crisis response; adult supervision; instruction on coping strategies; morning check-ins; and prompting with breaks. (P-32.)

2022-23 School Year

23. Student began engaging in a particular type of concerning problem behavior in elementary or middle school. This behavior occurred at Private School in the fall of 2022 on the playground with other students; and the Guardian was notified of one community-based

incident in the spring of 2023. (N.T. 393-95, 566, 585, 651-52, 659, 685, 733; P-10 at 10; P-18 at 1.)

24. A new IEP in the fall of 2022 indicated that Student did engage in behaviors that impeded Student's learning or that of others. This IEP addressed reading comprehension of instructional level text; written expression through writing sentences; mathematics problem solving focused on foundational mathematics skills; behavior (remaining in assigned area, engaging in respectful behavior; and speech/language and occupational therapy skills. Post-secondary transition planning related to on-the-job training, competitive employment, and independent living. A full-time aide (Personal Care Assistant (PCA)) and individual counseling were new components of Student's program, which was one of full-time autistic and learning support at Private School. The Guardian approved the accompanying NOREP. (P-24; P-26; S-24; S-26.)
25. After implementation, the PCA accompanied Student over the course of the school day. (N.T. 191, 259, 263, 338-39.)
26. In the spring of 2023, Student engaged in the particular problematic behavior during transport between Private School and the home. After that incident, Student's transportation service was changed to be provided individually. No bus aide was available to permit Student to be transported with other students. (N.T. 386-87, 422-23, 431-32, 731-32.)

2023-24 School Year

27. In the fall of 2023, Student's IEP was revised to provide for individual transportation via a cab vehicle. After that provision was implemented, Student consistently had the same cab driver each day. (N.T. 568-69; P-37; S-37.)

28. Student had speech/language and occupational therapy over the 2023-24 school year. (N.T. 265.)
29. A Behavior Intervention Plan (BIP) was developed for the 2023-24 school year. This plan addressed the particular problem behavior in school and elsewhere during unstructured environments, the community, and in unsupervised circumstances when peers were present (see P-18 and S-18 at 1, Background Information). The plan provided for instruction on and reinforcement of school-appropriate behavior, areas for self-regulation, minimized unstructured time, adult supervision when the behavior was a risk, and instruction/counseling. Consequences and supports were also identified along with a crisis plan and data collection. (P-19; S-19.)
30. A new IEP in the fall of 2023 indicated that Student did engage in behaviors that impeded Student's learning or that of others. This IEP addressed reading comprehension of instructional level text; written expression through writing sentences; mathematics problem solving focused on foundational mathematics skills; behavior (remaining in assigned area, engaging in respectful behavior; and speech/language and occupational therapy skills. Post-secondary transition planning related to on-the-job training, competitive employment, and independent living. The full-time PCA and individual counseling were maintained in Student's program, which was one of full-time autistic and learning support at Private School. (P-38; S-38.)
31. Student was willing to try tasks and sometimes shared interests with others at Private School. Student made very small, incremental progress academically over the 2023-24 school year, benefiting from repetition. (N.T. 259-61, 266-67.)

32. Student exhibited difficulty with the class focusing on the vocational components, often refusing to complete tasks during the 2023-24 school year. (N.T. 282-83.)
33. Student had an adaptive English class during the 2023-24 school year. Student was able to complete tasks at Student's instructional level but at times was off-task and needed to be redirected, with some one-on-one instruction. Student interacted well with peers in that and other classes. (N.T. 298, 320-22, 345-49, 371.)
34. A new RR completed in October 2023 consisted of a review of records with teacher input. This RR determined Student's eligibility for special education based on Intellectual Disability. Of note, the document's recommendations reflected that Student's regular attendance at school was beneficial. (P-23; S-23.)
35. A new IEP was developed for Student in February 2024. This IEP reflected that Student did engage in behavior that impeded Student's learning or that of others. This IEP addressed reading comprehension of instructional level text; written expression through writing sentences; mathematics problem solving focused on foundational mathematics skills; behavior (remaining in assigned area, engaging in respectful language and behaviors); and speech/language and occupational therapy skills. Post-secondary transition planning related to on-the-job training, competitive employment, and independent living. Student's program was one of full-time learning and life skills support at Private School. (P-21; S-21.)

2024-25 School Year

36. For a period of time in September 2024, Student did not have speech/language therapy because the speech therapist left Private School. (N.T. 341-43.)

37. In October 2024, a new BIP was developed. This plan addressed the same particular problem behavior in school and elsewhere during unstructured environments, the community, and in unsupervised circumstances when peers were present (see P-2 and S-2 at 1, Background Information). The plan provided for instruction on and reinforcement of school-appropriate behavior, areas for self-regulation, minimized unstructured time, adult supervision when the behavior was a risk, and instruction/counseling. Consequences and supports were also identified along with a crisis plan and data collection. (S-2; P-2.)

October 2024 Incidents

38. During the evening of October 9, 2024, the Guardian was notified by the cab driver that she was not available to transport Student the following day. She did not know or share any other information with the Guardian. (N.T. 606-07.)
39. On the morning of October 10, 2024, Student was transported to Private School in a van with two other students instead of the individual cab ride. Private School personnel called the school district's bus company to advise of the need for the individual cab for the ride home. However, the van returned in the afternoon and Private School staff observed Student to get on the van for departure. No one at Private School contacted the Guardian about picking Student up to return home. (N.T. 55-57, 441-42, 756-58, 764.)
40. The LEA and Private School were formally notified on October 11, 2024 that Student had been transported with other students the day before and engaged in the particular problem behavior during that ride. A Private School clinician then contacted the Guardian to explain the incident. (N.T. 56-57, 116, 409-10, 423-24, 436, 607-08, 737-38, 745-46, 754-56; P-17; S-17.)

41. The Private School received a report from a grandparent of another student on October 14, 2024 that Student had made a telephone call to the other student over the weekend. (N.T. 85-86, 610-11, 659-60, 739-40, 758.)
42. The LEA suspended Student for a period of nine days after the October 10, 2024 incident through a Notice of Recommended Educational Placement (NOREP). The Guardian approved the suspension. (N.T. 117-18, 609, 612, 627-29; P-16; S-16.)
43. Student attended Private School through October 15, 2024. Following Student's suspension, the Guardian obtained a leave of absence from one of the employers so that the Guardian could be at home with Student at least one day each week as needed. (N.T. 89, 117, 560-62, 598-600; P-19; S-19.)
44. Student was admitted to Children's Hospital of Philadelphia (CHOP) on October 16, 2024 and discharged on October 24, 2024. The admission diagnosis was socially inappropriate behaviors. (P-14; S-14.)
45. The LEA contacted the Pennsylvania Department of Education (PDE) after the October 10, 2025 incident to seek interagency support for securing a placement for Student. (N.T. 90-92, 95-96.)
46. The LEA did not convene an IEP meeting after the October 10, 2024 incident. (N.T. 93-94, 100, 499, 529.)
47. The LEA proposed Instruction in the Home (IITH) after the October 10, 2024 incident at school. That instruction was provided by a teacher for several hours, along with packets sent home weekly for Student to complete when the Guardian was present. Student did complete some of that work with the help of the Guardian, who learned at some point that Student sometimes hid the work packets. No speech or

occupational therapy was provided during IITH as of the time of the due process hearing. (N.T. 107-08, 129-31, 317-18, 464, 519, 546-47, 562-65, 572-74, 601; P-42.)

48. The LEA did not consider online instruction for Student because Student's use of computers including internet was limited and strictly monitored. (N.T. 128-29, 545.)
49. The Guardian was not able to arrange for another trusted adult to be present with Student for IITH for various reasons. (N.T. 574-75.)
50. The LEA initially proposed eight hours per week of IITH later reduced to four hours per week. The Guardian returned to NOREP disapproving of the recommendation; then signed but without indicating agreement or disagreement; then approved on January 14, 2025. A teacher was prepared to provide the IITH in mid-December and went several times over the next thirty days to provide instruction on the Private School materials sent home. The sessions were based upon the availability of the Guardian or another trusted adult, Student, and the teacher. (N.T. 131-33, 137, 144-46; P-3; P-4; S-3; S-4; P-12; S-12; S-29; S-34.)
51. Two interagency meetings convened with participation of the Guardian. Options for placement were considered including a residential treatment facility (RTF) with an educational component. (N.T. 108. 133-35, 410-11, 474-75, 477-81, 483-85, 530-35, 614-15, 618-20; P-13; S-13.)
52. Student was referred by CHOP to a Children and Youth Intervention Service (CMIS) for a referral to a residential treatment facility along with a psychiatric evaluation. CHOP also attempted unsuccessfully to locate a full-time placement after discharge. After evaluation, CMIS recommended a residential treatment facility to address the particular

problem behavior. (N.T. 110-13, 121-22, 133-34, 424-27, 613; P-14 at 12; S-14 at 12; S-15; S-16.)

53. The program identified by CMIS for Student involved Multisystem Therapy (MST) for youths exhibiting Student's particular problem behavior. MST is "family driven and delivered in youth's natural environment" (P-36 at 1); is "an intensive, community based intervention" (P-36 at 2); involves assessment/evaluation; safety planning; other relevant variables related to the behavior; treatment including skills training; and reunification if appropriate after successful completion. (P-36; S-26.)
54. The LEA did not attempt to secure an educational placement for Student after the October 10, 2024 incident because its personnel did not believe that possibility was part of the recommendation of the hospital. (N.T. 125-26.)
55. The Private School sent referrals to a number of education facilities that also had a residential component. It did not make any referrals to schools with only day programs. (N.T. 47-48.)
56. An evaluation was completed through CMIS in November 2024. (S-39.)
57. In December 2024, the Guardian requested, and the LEA agreed, to an Independent Educational Evaluation (IEE). (P-5; S-5.)

January 2025 Reevaluation

58. A report of a reevaluation (RR) was issued in January 2025. This RR summarized previous assessment results including curriculum-based instruments as well as input from therapists and teachers. (P-39.)

59. Occupational therapy evaluation for the January 2025 RR was conducted in the home. Results indicated a continued need for those related services. (P-39 at 7-11.)
60. Speech/language therapy evaluation for the January 2025 was also conducted in the home. Results similarly indicated continued need for those related services. (P-39 at 11-14.)
61. The January 2025 RR identified Student as remaining eligible for special education as a student with Intellectual Disability, Autism, and Speech/Language Impairment. (P-39.)
62. An IEP meeting convened in early February 2025 attended by the Guardian. (N.T. 300-01, 306-10, 379-81; P-40 at 2.)
63. The February 2025 IEP reflected that Student did engage in behaviors that impeded Student's learning or that of others. Student's BIP for the 2024-25 school year was summarized in the IEP. (P-40 at 6, 17-19; S-40.)
64. Student's post-secondary transition goals in the February 2025 IEP identified on-the-job training and competitive employment as well as independent living. Identified areas of need were in the areas of reading, writing, and mathematics skills; fine motor skills; receptive and expressive language skills; and behavior. (P-40 at 25-28; S-40.)
65. Annual goals in the February 2025 IEP addressed reading comprehension; written expression (complete sentences); mathematics computation; occupational therapy skills; speech/language therapy skills; and behavior (remaining in assigned area; respectful behavior and language). Program modifications and items of specially designed instruction included the BIP. Student's program remained one of full-time autistic, learning, and life skills support at Private School. The IEP was subsequently revised slightly

to indicate Instruction in the Home on the Penndata Reporting page. (P-40; P-41; S-40; S-41/.)

66. The Guardian cooperated with the admissions process for the facilities to which Student was referred through the interagency process. (N.T. 578-84.

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 Guardian filing 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.

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. The documentary evidence specifically was quite probative and persuasive.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. However, in

reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' thorough closing statements.

General IDEA Principles: Substantive FAPE

The IDEA mandates that states provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. "Special education" consists of specially designed instruction. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(a). "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).

More than forty years ago in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed the IDEA's statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act. Through local educational agencies (LEAs), states meet this obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's 'intellectual potential.'" *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). An IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Endrew F. v. Douglas County School District RE-1*, 500 U.S. 386, 399 (2017).

Required elements of an IEP include present levels of academic achievement and functional performance; how the disability impacts the child in regular education; academic and functional goals; method for gauging progress with periodic reporting; the special education, related services, program modifications, and supplementary aids and services to support the student; and the extent of participation in and outside of the general education. 34 C.F.R. § 300.320. With respect to behavioral needs, a positive behavior support plan based on a Functional Behavior Assessment is necessary. 22 Pa. Code § 14.133(b).

An LEA is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012). Indeed, “the IDEA cannot and does not promise ‘any particular [educational] outcome.’” *Endrew F., supra*, 580 U.S. at 398 (quoting *Rowley, supra*, 458 U.S. at 192). A proper assessment of whether a proposed IEP meets the above standards must be based on information “as of the time it was made.” *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993)(same). Nevertheless, evidence subsequent to the development of the IEP may be considered, but “only in assessing the reasonableness of the district's initial decisions regarding a particular IEP or the provision of special education services at all” rather than to engage in “Monday Morning Quarterbacking.” *Susan N. v. Wilson School District*, 70 F.3d 751, 762 (3d Cir. 1995) (citing *Fuhrmann*, 993 F.2d at 1040).

General IDEA Principles: Placement

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

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

Residential placement is one option on the continuum, and is appropriate if “is necessary to provide special education and related services to a child with a disability.” 34 C.F.R. § 30.104. The question of whether a residential placement must be provided at public expense requires an assessment of whether that full-time placement is “necessary for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process.” *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 243-44 (3d Cir. 2009, (quoting *Kruelle v. New Castle County School District*, 642 F.2d 687, 693 (3d Cir. 1981)). In other words, if the medical, social, and emotional components of the residential program are “part and parcel of a specially designed instruction to meet the unique needs of a handicapped child,” the local education agency is responsible for that placement. *Id.* at 244 (quoting *Kruelle* at 694).

[N]ot all services that can be broadly construed as educational are cognizable under IDEA. This is because “ultimately any life support system or medical aid can be construed as related to a child’s ability to learn.” Instead, we declared that we must “assess the link between the supportive service or educational placement and the child’s learning needs.”

Id. (citations omitted). Finally, “[o]nly those residential facilities that provide special education ... under *Kruelle* and IDEA” may be provided at public expense. *Id.*

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 and ADA Principles

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

The obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). The two statutes as well as the ADA do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d

Cir. 2024). The IDEA itself notes that claims under Section 504 and the ADA are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions on ADA and Section 504 claims. *Le Pape, supra*, 103 F.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). “[T]he ADA, by regulation, adds another requirement [beyond the IDEA]: the public entity must ‘give *primary consideration* to the requests of [the] individual[] with disabilities.’” *Id.* (quoting 28 C.F.R. § 35.160(b)(2)) (emphasis in original). “Once he has exhausted those claims in an IDEA hearing, a plaintiff may pursue them as he otherwise would in a district court.” *Le Pape, supra*, 103 F.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 do not need to be separately addressed. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). Thus, to the extent applicable, the IDEA, Section 504, and ADA claims based on the same set of facts may be discussed together.

The Guardians’ Claims

The issues presented in this case are relatively narrow and focused: whether the LEA denied Student FAPE over the 2022-23, 2023-24, and 2024-25 school years, focusing on behavior; if so, should Student be provided with compensatory education; and, should the LEA be directed to take specific actions regarding Student’s program and placement.

The first claim relates to a denial of FAPE particularly with respect to addressing behavioral needs. The LEA has been aware that Student has engaged in the particular problem behavior since at least the fall of 2021 when a safety plan was developed to address it; still, the behavior occurred

in the spring of 2022 at school and even later in the community. No FBA was ever conducted while Student was at Private School, nor was Student provided with a PBSP. Instead, certain provisions in that safety plan that would have been appropriate in a PBSP with ongoing monitoring of its effectiveness was developed and essentially remained in place for the following relevant school years. Student was also subject to a school-wide plan that provided rewards for certain behaviors but applicable to all students.

Meanwhile, Student was subject to numerous incident reports for behavior resulting in some form of discipline or consequences. There was inconsistent description in the testimony about the school-wide reporting system and the how levels of incidents were determined (N.T. 243-49, 644-45, 680-81, 727-28) but, even setting that aside, Student had numerous reports over the 2022-23 and 2023-24 school years. This information strongly suggested that more intensive and individualized behavior support was necessary. Even more crucially, several witnesses described some of those incidents as typical of students of Student's age without appearing to consider whether it truly was an indicator of the particular problem behavior for Student (see, e.g., N.T. 374,).

The incident on October 10, 2024⁶ is both alarming and perplexing. Despite the knowledge of the LEA and Private School staff, one or more of those individuals observed Student to exit transportation that was not consistent with the IEP (a van with other students and no aide) and, even worse, allowed Student to be transported in the same vehicle with other students for the trip home. This incident was a direct result of a failure to

⁶ The LEA's contention in its closing that the Complaint did not include this issue is rejected, since a fair reading of the Complaint in its entirety reflects that it was properly raised.

implement Student's IEP,⁷ and led to a complete denial of FAPE when Student was not able to return to school. The LEA clearly deprived FAPE to Student throughout the time period in question with respect to behavior.

With respect to related services, Student was similarly denied some speech/language therapy, occupational therapy, and counseling during the 2024-25 school year that must be remedied. The evidence is not preponderant, however, about FAPE with respect to overall academic progress.

The third issue similarly relates to an asserted denial of FAPE. The LEA did not convene an IEP team meeting after the October 10, 2024 incident, although it did make referrals to other agencies to engage in a process to identify an appropriate placement. This process, even with the inclusion of the Guardian, is not a proper mechanism under the IDEA to decide a placement for an IDEA-eligible student. Moreover, even despite apparent agreement of both parties and Private School personnel that some clinical and intensive residential treatment outside of the educational realm was necessary for a period of time,⁸ the LEA must make efforts with the Parent to convene an IEP meeting and discuss both program and placement going forward consistent with LRE mandates. That critical planning step must not await the completion of intensive MTS-based programming but, rather, begin immediately.

⁷ Although the LEA suggests that the Guardian should have notified it of the cab driver's upcoming single-day absence, there is nothing in this record to even remotely suggest that the Guardian's failure to do so in any way contributed to this lack of IEP implementation.

⁸ To the extent that the LEA relied on the CMIS statement about medical necessity, that recommendation cannot be substituted for an IEP team decision. There was extensive testimony by Private School witnesses that Student will be welcomed back to its educational environment following such treatment, and that most educational referrals similarly conditioned any application on that requirement. Student reportedly was about to or likely soon would be admitted to such treatment (that MTS described as community-based). Therefore, these decisions are for the IEP team to determine based on the circumstances at the time of the IEP meeting.

Remedies

Compensatory Education

Having concluded that the LEA denied Student FAPE, compensatory education may be an appropriate remedy. This relief is available 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. 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 LEA contends that none is appropriate. Some form of compensatory relief is due as a result of the FAPE denial for Student’s behavioral, speech/language therapy, occupational therapy, and counseling needs. Student shall be awarded compensatory education in the amount of

missed speech/language therapy, occupational therapy, and counseling services during the 2024-25 school year. Although the behavioral deprivation is difficult to quantify, it was a need each and every school day and the number of reported incidents over the 2022-23 and 2023-24 school years suggests that one hour for each school day is an equitable estimation of the lack of individualized behavior support through October 15, 2024.

For the period beginning October 25, 2024, the significant procedural and substantive violation amounted to clear FAPE denial. Student is entitled to full days of compensatory education for each day that school was in session⁹ through the date that Student first begins attending a program and placement identified and recommended by the IEP team pursuant to the terms of the attached order. The Guardian has also established that the IITH hours focused on available packets were a poor and ineffective substitute and were not tailored to Student's needs.

The award of compensatory education other than speech/language therapy, occupational therapy, and counseling 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. 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 LEA through Student's IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or

⁹ Each full day comprises 5.5 hours at the high school level. 22 Pa. Code §§ 11.1, 11.3.

during the summer months when convenient for Student and the Guardian. 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 Guardian; and the cost to the LEA 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.

Prospective Relief

Within ten calendar days of the date of this decision and order, the LEA shall convene a meeting of Student's IEP team including the Guardian to discuss and determine any revisions to Student's program and placement, including IEP content. The LEA must also conduct an FBA as soon as practicable to guide team decisions on a new PBSP individualized for Student. The team shall consider options along the entire placement continuum, beginning with a return to a private school and through a residential facility, all of which are dependent upon the recommendations of any specialized MTS-based treatment.

CONCLUSIONS OF LAW

The LEA denied Student FAPE on both substantive and procedural grounds for the relevant time period in question.

Student is entitled to compensatory education to remedy the FAPE denial.

The LEA must convene a meeting of Student's IEP team to consider options for Student's special education program and

placement based upon possibilities recommended by the MTS-based treatment.

ORDER

AND NOW, this 15th day of April, 2025, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The LEA deprived Student of FAPE with respect to addressing behavioral needs during the relevant time period beginning in the 2022-23 school year through the present.
2. Student is entitled to compensatory education as follows.
 - a. Student is awarded the total amount of time of missed speech/language therapy, occupational therapy, and counseling over the 2024-25 school year.
 - b. Student is awarded 5.5 hours of compensatory education for each day that school was in session from October 25, 2024 through the date that Student begins a program and placement identified by the IEP team and consistent with all MTS-based recommendations. The terms and conditions in the attached decision apply as though set forth herein at length.

3. Within ten calendar days of the date of this decision and order, the LEA shall convene a meeting of Student's IEP team to include the Guardian to discuss and commence an FBA as well as options for Student's special education program and placement that must be based upon recommended by the MTS-based treatment.
4. A PBSP must be promptly developed based on the completed FBA.
5. Nothing in this decision and order should be read to preclude the parties from mutually agreeing to alter any of its terms.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
HEARING OFFICER
ODR File No. 30563-24-25

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).