

*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. 27670-22-23**

**Child's Name:**

S.M.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parents:**

*Pro se*

**Local Education Agency:**

South Fayette Township School District  
3680 Old Oakdale Road  
McDonald, PA 15057

**Counsel for LEA:**

David J. Mongillo, Esq.  
Tucker Arensberg P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222

**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

May 21, 2024

## **INFORMATION AND PROCEDURAL HISTORY**

The Student<sup>1</sup> is currently [redacted] years of age and was formerly enrolled in the District (District) and received special education programming as a child with Other Health Impairment (OHI) pursuant to the Individuals with Disabilities Education Act (IDEA) and as a protected handicapped student pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA).<sup>2</sup>

The Parents, through counsel, filed a due process complaint against the District, and hearing dates were scheduled.<sup>3</sup> Many months later, the Parents requested a sixty-day conditional dismissal of the complaint on the grounds that a settlement was pending. On June 7, the Hearing Officer granted the Parents' request for additional time to finalize the settlement agreement. On July 7, the Parents' Counsel requested reinstatement of the due process Complaint. That same day, the District on grounds that the Parents "accepted" a settlement agreement. The Hearing Officer denied the District's Motion to Dismiss the Parents' complaint.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A), 34 C.F.R. § 300.513(d)(2), and 15 Pa. Code § 15.8.

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and the applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15)

Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213.

<sup>3</sup> Both of the Student's parents are involved in educational programming. However, one Parent participated in all due process hearings and is the subject of many of the factual circumstances that gave rise to the filing of the due process complaint.

After the Parents decided to proceed *pro se*, the Hearing Officer granted the Parents' requested extensions to review and prepare for this matter and explore the retention of legal counsel. During this time, numerous prehearing motions were filed by the District and Parent, all designated as Hearing Officer exhibits.

Through their attorney-prepared complaint, the Parent alleged the District violated its child find responsibilities under the IDEA and violated the Student's rights under Section 504 and the ADA. In response, the District maintained that its educational program, as implemented, was appropriate for Student based on the information available and that no remedy was due.

For the reasons set forth below, the claims of the Parents are denied.

## **ISSUES**

1. Did the District violate its child find duties under the IDEA and Section 504 for its failure to timely identify the student as a child with a disability.
2. Did the District violate Section 504 by demonstrating deliberate indifference to the student's academic, emotional and medical needs.
3. Did the District violate Title II of the Americans With Disabilities Act by discriminating against the student with deliberate indifference based on disability.
4. If the District violated the student's rights under the IDEA, the ADA and/or Section 504, what, if any, remedy is appropriate.

## **FINDINGS OF FACT**

1. While attending the District's schools, the Student was a scholar, athlete, entrepreneur and caring school community member. (P-3, p. 2-3, P-40, , p. 1-2, S-7; N.T. 229-230, 371-372)

### **2020-2021 School Year**

2. During the 2020-2021 school year, the Student was enrolled in the [redacted] grade and received virtual instruction in the District. (N.T. 363)
3. On January 6, 2021, at 3:15 a.m., the Student emailed a teacher and disclosed profound attacks of anxiety and suicidal thoughts. At 10:17 a.m., the teacher forwarded the email to a Parent. (P-2, p.1, S-1; N.T. 365)
4. After unsuccessfully contacting the Student through messaging, the District called the Parents, who elected to bring the Student to the school to talk. The District high school counselor conducted a risk assessment to assess the Student's ideation and shared the results with the Parents. (S-2, S-3)
5. After the assessment, the District contacted a counseling service and obtained an appointment for the next day, provided the Student and Parents with a number for a crisis program, and emailed teachers to request an extension until January 11 for work due that day. The District confirmed that the Student attended the next day's counseling session. (S-2, S-4, S-5)

6. On January 7, 2021, the school counselor offered to contact the Principal about flexibility with schoolwork submission deadlines for a few weeks. On January 11, the Parent indicated the Student could submit assignments before the extended deadline and that additional flexibility was unneeded, but if that changed, they would advise. (P-1, p. 46, S-5)
  
7. For the remainder of the 2020-2021 school year, the Student sought and received recommendations from school staff for application to various summer enrichment and leadership programs. (P-3, p. 1-10, 12-13, S-6, S-7, S-8, S-9, S-10)
  
8. During the 2020-2021 school year, the Student had zero absences and earned a cumulative grade point average of 4.0134. (S-11; N.T. 661)

## **2021-2022 School Year**

9. During the 2021-2022 school year, the Student was enrolled in primarily advanced placement (AP) classes as an [redacted] grader in the District.<sup>4</sup>

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<sup>4</sup> The Advanced Placement® Program (AP) enables willing and academically prepared students to pursue college-level studies while still in high school. The AP Program develops college-level courses that high schools can choose to offer and corresponding AP Exams that are administered once a year. <https://apcentral.collegeboard.org/about-ap/ap-a-glance#:~:text=The%20Advanced%20Placement%C2%AE%20Program,are%20administered%20once%20a%20year>. (Accessed 5/14/24)

10. On September 28, 2021, the Parent provided the District with a September 27 letter from the Student's treating clinical psychologist with diagnoses of depression, anxiety and eating issues. The letter indicated the Student had a depressed mood, sleep disturbances, fatigue, episodic panic attacks, and engaged in [redacted]. The clinician recommended that the Student receive academic accommodations (extra time for exams, extended due dates for homework and preferential seating) through a 504 service agreement. (P-3, p. 51-69, P-23, p. 5, S-13; N.T. 37)
11. On October 2, 2021, the District received a Safe2say<sup>5</sup> report that indicated the Student was depressed, [redacted]. In response, [redacted]. (S-15)
12. On October 4, 2021, the District developed a safety plan to address the Student's anxiety and panic attacks. (S-14; N.T. 37-40, 668)
13. On October 6, 2021, a Parent consented to an evaluation of the Student for a 504 plan. After learning of a recent medical procedure, the Principal requested plan input and asked school staff to provide the Student with extended time to complete assessments and assignments. (S-16, S-17; N.T. 40-43)
14. On October 20, 2021, the District received a second Safe2say report regarding the Student with allegations of self-harm because

- of stress at home and school. The local police department conducted a welfare check and advised the family of mental health resources. The next day, the guidance counselor met with the Student, who reported no thoughts of self-harm but feelings of stress from schoolwork. (P-16, S-18, S-19; N.T. 43, 671-672)
15. On October 21, 2021, a Parent emailed the Student's current and former guidance counselors and requested the school nurse to check the Student for any [redacted]. That same day, the school nurse and a school counselor met with the Student and detected [redacted]. The school reported this information to the Parent and reinforced that a discussion with the therapist should occur. (S-20; N.T. 675-676)
16. On October 27, 2021, the school nurse notified teachers that the Student was diagnosed with [redacted] and to allow unlimited bathroom privileges. (S-21; N.T. 44)
17. On November 1, 2021, the Parent reported that the [redacted] incidents were discussed with the psychologist/therapist. On November 3, 2021, the Parent consented to releasing information from the Student's psychologist to the District. (P-1, p. 49, S-20, S-22)
18. On November 3, 2021, the Student's treating dietician provided a letter to the District that the Student was diagnosed with [redacted] and requested excusal for tardiness and missed school because of digestive problems and insomnia. (P-9, p. 79, S-24, S-29, p. 8; N.T. 45, 50)

19. On November 3, 2021, the District emailed the Parent to acknowledge the Student not feeling well and suggested obtaining a physician's note explaining tardiness for the Student's file. The District invited the Parent to suggest accommodations related to the [redacted] diagnosis. (P-1, p. 49, P-9, p.1-4, S-23)
20. On November 5, 2021, the Parent provided the District with a letter from the Student's treating pediatric gastroenterologist. The letter requested a 504 plan with suggested accommodations that included easy access to the restroom, a water bottle, and the school nurse; snacks; permission to leave school early for appointments; assistance to make up missed work; extra time to travel from one classroom to another, updated syllabus, classmates' notes, daily written material provided to the Parent, in school tutoring if necessary, makeup tests and assignments, focus on quality not quantity of makeup work, excused absences if due to [redacted] disease, consideration of in-home or hospital tutoring if absence is extensive, and no exclusion from activities. (P-9, p. 11-18, P-23, p. 1-2, S-25, S-26, S-29, p. 8; N.T. 52, 75, 118)<sup>6</sup>
21. On November 7, 2021, the school nurse emailed the Students' teachers to advise them of the [redacted] disease diagnosis and accommodations until the official 504 plan was in place. The accommodations included access to the restroom, a water bottle, snacks, and the nurse, permission to leave school for medical appointments, acknowledgment of tardiness, assistance with

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<sup>6</sup> During the hearing an incomplete version of the letter was introduced by the District.(S-25) Both pages of the letter were admitted into evidence. (P-9, p. 17-18)



- making up schoolwork for an absence of more than one day, and extra travel time between classes. (P-1, p. 45, P-9, p. 36-39, S-27; N.T. 61, 114, 119-120)
22. District high school students have access to after-school tutoring and visual aids through Canvas or Goggle classroom. The Student received class syllabi. (P-19, p. 23-47; N.T. 61, 114, 119-120, 189-190)
23. Although the marking period ended on November 3, the school psychologist advised staff that the Student's incomplete grade would extend until November 16, with no additional extensions. (P-13, p. 33-34, S-28; N.T. 660)
24. As of November 17, 2021, the Student had three excused absences, nine excused tardies, one unexcused tardy and five half-day excused absences. (S-29, p.8).
25. The Student's first quarter grades were Calculus/90, AP Government/80, AP English/81, AP History/93, Personal Finance/99, and AP Biology/75. (S-51)

## **504 Evaluation Report**

26. On November 18, 2021, the 504 team completed the draft evaluation report (ER). The ER included input from the Parents, teachers, a school counselor, the school psychologist, nursing, the treating clinical psychologist, the dietician, the pediatric Gastroenterologist, and the Student. For inclusion in the ER, the

- team collected observational data, reviewed educational records, and conducted assessments of social-emotional functioning. (P-9, p.17-38, S-29, p. 23)
27. Parent input included the Student appearing depressed and anxious and was almost always in “catch up” mode with missed assignments. (S-29)
28. Educator input in the 504 evaluation report noted the Student to have a positive attitude, working well with others, very bright, late with assignments, inconsistent and stressed. When asked whether the Student required accommodations, the AP English teacher indicated none were available, and the best move was to transfer to Honors if stress or workload was too excessive. (S-29, p. 9-12; N.T. 154-156)
29. On the BASC-3 rating scales, four of five teachers expressed no concern. One teacher rated the Student as at risk on the anxiety scale and clinically significant on the somatization scale. (S-29)
30. When consulted for ER input, the Student’s treating psychologist expressed concern that providing the Student with extensive time to complete assignments would be counterproductive and firm. Specific deadlines with accountability were needed to avoid having “too much hanging over [the Student’s head].” The psychologist recommended accommodations that included extensions (an additional day or two) for assignments, extended time for test taking, breaks from the classroom, and the ability to doodle. (S-29, p. 21; N.T. 59-60)

31. The ER concluded the Student's diagnoses of major depressive disorder-single episode-moderate, anxiety disorder-NOS, and concerns related to [redacted] disease substantially impacted the ability to function as it related to academic performance. (P-9, p.17-38, S-29)
32. On November 18, 2021, the District provided the draft 504 evaluation report (ER) to the Parents. (S-29)
33. From November to January, the District and the Parents exchanged emails attempting to schedule a meeting to review the draft evaluation report and finalize a 504 plan for the Student. (S-30, S-31, S-32; N.T. 66-68)
34. On January 27, 2022, the Parents, the Student, District staff, and the Student's treating clinical psychologist met to discuss the 504 ER and proposed service plan. During the meeting, the team discussed changing the AP classes to honors level, the need for firm deadlines for the submission of late schoolwork, the reduction of anxiety, and the need for medical documentation for extensions beyond the 504 plan. (S-30, S-31, S-32; N.T. 66-69, 72)
35. The Student's second quarter grades were Calculus/75, AP Government/80, AP English/65, AP History/74, Personal Finance/99, AP Biology/80. (S-51)
36. On February 1, 2022, the Student's treating dietician reiterated the [redacted] disease diagnosis with symptomology and requested

excuses for tardiness and absences. The school psychologist shared the letter with the attendance secretary, school nurse and Principal.<sup>7</sup> (P-23, p. 6-7, S-33, S-34; N.T. 72-74)

37. On February 2, 2022, the Student's treating Pediatric Gastroenterologist reiterated the need for the Student to receive the previously suggested 504 accommodations for the entirety of the 2021-2022 academic school year. The suggested accommodations were the same as those proposed in November 2021. (P-9, p. 17-18, 50, P-23, p. 3, S-35; N.T. 74)
38. On February 2, 2022, the Student's 504 service agreement was finalized. The disabilities it intended to address included major depressive disorder, anxiety disorder NOS, eating disorder NOS, and [redacted] Disease. (S-36)
39. The 504 plan offered accommodations that included up to two days of extended time on assignments, extended time and a half to take assessments, classroom breaks, restroom use without restrictions, and the ability to doodle to support focus. If the Student required additional time beyond the extension, medical documentation supporting the request had to be provided. (S-36; 165-166)
40. On February 3, 2022, the Parents contacted the District and asked that Pediatric Gastroenterologist's additional accommodations be incorporated in the 504 plan. The Parent requested confirmation

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<sup>7</sup> In March, the District learned of Student's self-harming by [redacted]. The incident occurred around January 28, the day after the 504 meeting. (N.T. 71-73)

that future absences would be covered by the previously submitted letter. The District responded that the team could be convened. The Parent indicated that if the accommodations in the provider's letter had already been addressed, no further action was needed. (P-9, p.47-48, S-37)

41. On February 16, 2022, the District advised the Parent it consulted with the school nurse, the Student's needs were met through the plan, and revisions would occur if needed. Again, the District requested that the Parents sign the plan. (P-9, p. 52, S-37; N.T. 79)
  
42. On March 19, 2022, the guidance counselor completed a suicide risk assessment after the Student admitted to [redacted] two months before and [redacted] were found in the backpack. The Student initially denied possessing the [redacted].<sup>8</sup> The guidance counselor conducted a risk assessment. The Parent arrived at the school and expressed the Student may not want to ride with the Parent to the [redacted], and that safety could be assured in the home. (S-38; N.T. 80, 538-541, 601, 743, 790)
  
43. Based on the results of the risk assessment, the Student was transported from school to a [redacted] for a mental health assessment. The school nurse and the guidance counselor rode in the car. [redacted]. (S-38; N.T. 80, 538-541, 601, 605-608, 817)

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<sup>8</sup> In April 2022, consistent with the District's disciplinary policy, the Student received a Saturday detention for lying to school staff. The Parent requested to attend the detention with the Student. For an unexplained reason, the District did not create the incident report until August 2022. (N.T. 744-747, 793-795)

44. On March 25, 2022, the District advised the Student that a grade of incomplete for the third quarter would be issued to allow time for the submission of outstanding schoolwork. An extension was granted extension until April 8. (P-21, S-39; N.T. 80)
45. On March 28, 2022, a virtual 504 team meeting occurred. The Parents, District staff, and the Student's private therapist attended the meeting. The Student was unable to attend the meeting because of illness. During the meeting, teachers provided input on missing third-quarter assignments. (S-39, S-40, S-41, S-43, S-44; N.T. 84-88, 151, 684-685)
46. Based on the team discussion, the Student's plan was updated to permit extended time from two days to up to one week to submit assignments. The plan was disseminated to the Student's teachers. The service plan had an ending date of March 30, 2023. (S-39, S-40, S-41, S-43, S-44; N.T. 151)
47. Consistent with the discussion and suggestion from the therapist, after the 504 meeting, the guidance counselor provided the Student and Parents with the academic responsibility if a change occurred in Social Studies and English from AP to Honors courses. The Student decided to remain in AP courses. (P-8, p.1-2, p. S-42)
48. On March 31, 2022, the Student received approval for extended time and breaks for the SAT and AP examinations. (S-45)

49. On April 21, 2022, the school Principal through email advised staff that Student's mental health condition was serious, the focus should be on mental health, not to approach about outstanding assignments and grades and to advise the school counselor who would work with the Student. (S-47: N.T. 620-621, 688-689)
50. On April 28, 2022, the Parent contacted the Principal and requested exemption for the Student to take the scheduled AP examinations in order to focus on completing outstanding assignments. The District requested medical documentation and granted the exemption. The Student took the AP English and Biology exams (P-29, p. 1, S-48)
51. On June 9, 2022, the Parent emailed the District screenshots of assignments completed for AP US History (APUSH) and requested an update regarding the Student's GPA. The District replied the APUSH teacher would not accept the submitted assignments because they were turned in one to two months late. The District advised the Student's cumulative weighted GPA was 3.6656. The unweighted GPA was 3.2156. (S-49)
52. The Parents did not sign any of the Section 504 Plans created and offered during the 2021-2022 school year. (S-37; N.T. 79, 181, 910-911, 1166-1167)
53. During the 2021-2022 school year, the Student was absent 44 days and tardy 36 days. The Student's absences and tardies for medical reasons were excused. (S-51, N.T. 198-199)

54. On June 14, 2022, the Student received a privately obtained neuropsychological evaluation. The evaluator conducted a diagnostic interview, and administered cognitive, executive functioning, and behavioral assessments. The evaluator concluded the Student's cognitive abilities fell in the high average range, and insufficient information was present to suggest the presence of an ADHD diagnosis. (P-1, p.1-42, S-61)
55. The neuropsychologist recommended outpatient therapy to address depression, anxiety, trauma history, disordered eating, and medication management. Educational recommendations included consideration of a schedule change to lessen workload because of multiple intense courses (i.e, more than one honors/AP) may be detrimental overall health. The provider stressed "**[i]t is strongly recommend that [Student's] mental health and well-being be considered a priority over enrollment in all advanced coursework.**"<sup>9</sup> (P-1, p.41, S-61)
56. The neuropsychological suggested accommodations that included guidance counselor check-ins, teacher alert if decline in functioning, reduced or modified homework, workload reduction with the goal of capturing key instructional concepts, private feedback, monitoring of workload, full or partial credit for late work at teacher's discretion, organizational support. (P-1, p.41, S-61; N.T. 1172-1173)

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<sup>9</sup> The neuro-psychologist emphasized this statement in bold. (S-61)



57. The neuro-psychological evaluation included input from the Student's psychiatric provider, who expressed concern about the "tremendous amount of academic pressure" which triggered anxiety and depression. (S-61, p. 6)
58. The Parents did not sign any Section 504 plans offered to the Student during the 2021-2022 school year. (S-36, S-44, N.T. 910-911)

### **2022-2023 School Year**

59. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade and selected AP Economics, AP Statistics, AP English, AP Art Studio and Physics classes. The Parents signed course waivers to permit the Student to enroll in the AP courses. (S-50, N.T. 694-696)
60. On August 16, 2022, a medical provider from the Gastroenterology, Hepatology and Nutrition Department by letter indicated the Student's diagnoses of [redacted] and the need for flexibility to catch up with missed schoolwork. (P-23, p. 9, S-59, 1161)
61. On August 22, 2022, the District disseminated access to the Student's 504 plan to school staff. (S-54, N.T. 1165)
62. On August 23, 2022, a 504 team meeting occurred. In addition to District staff, two advocates, the Parent and the Student participated in the meeting. (S-55, S-56)

63. During the meeting, the team discussed the Student's new diagnosis of [redacted] the June neuro-psychological evaluation, a delayed start time, flexible submission for missed schoolwork, and a trauma therapy recommendation. The Parents, Student and advocate participated in the meeting. The Student indicated feeling sick and stressed about being unable to turn in schoolwork. The Parents expressed understanding of the stress of AP classes but supported the Student's continued enrollment in those courses. (S-53, S-55, S-56, N.T. 903, 905, 907, 1160)
64. The revised August 2022 504 plan offered accommodations that included a delayed start time to 8:10 (after the first period), work reduction to only essential content for non-AP courses, extended time for assessments, and extended time up to one week on assignments. Additional time beyond a week could be provided with an approved medical absence. The Student would be responsible for arranging new due dates with the teachers, breaks as needed, restroom use without restriction, and the ability to doodle to support focus. (P-19, P-9, p. 8-10, S-56)
65. On August 26, 2022, the Parents provided the District with a letter from Student's private psychiatrist recommending a "reduced workload" to accommodate executive functioning impairments stemming from major depressive disorder and generalized anxiety disorder. Other accommodation suggestions included virtual learning when absent, time management counseling, a mental

health check, and a calming place. (P-1, p. 26, S-58, S-60, S-63, p. 1; N.T. 1168-1169)

66. On August 26, 2022, the Parent provided the District with the June privately obtained neuro-psychological evaluation and a letter that advised of diagnoses that included severe depression and stress, anxiety, [redacted] migraines, anemia, executive function disorder (to some extent), and severe [redacted] and backache. The Parent requested the District's assistance in providing a plan for a successful [redacted] year. (P-19, p. 1-2, P-23, p. 12-27, S-58, P-63; N.T. 1169-1171)

67. On August 26, 2022, a disability advocate working with the Parents contacted the District and requested the District's policy on AP classes. In response, the District reiterated the neuro-psychologist's recommendations regarding high-level course work, the offered accommodations, and a link to the College Board's exam day accommodations. (S-63)

68. On August 27, 2022, the Student took the SAT and received a score of 1550. (P-41)

69. On August 29, 2022, through a letter to the Parents, the District revoked the Student's membership in the National Honor Society because the QPA remained below 3.74 for two consecutive grading periods.<sup>10</sup> The Student appealed the determination, but the Council

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<sup>10</sup> The Constitution of NHS, adopted in 2016, indicated a scholastic average of at least 85 percent, B or 3.0 on a 4.0 scale was needed for membership. The District's student-parent handbook for the 2022-2023 school year indicated students must maintain a cumulative grade point average of 3.75 for membership in the NHS. (P-29, p. 11, 179)

voted to terminate membership. (P-29, p. 5, S-106, S-107; N.T. 1079, 1082)

70. On August 30, 2022, the Parent contacted the District and requested that diagnoses in the 504 plan be updated and that all suggested accommodations be incorporated into the 504 plan. The Parent requested the District's policy regarding modification of AP coursework. (P-19, p. 12-3, S-62)

71. On September 15, 2022, the Parent requested the District's policy on reduced workload, a template for a physician excuse, an amendment to the 504 plan that the extension for assignment completion applied to tests and projects, and personal guidance for the Student during ASL period.<sup>11</sup> ( P-19, p.17)

72. On September 15, 2022, after a remote team meeting, the District provided the Parents with an updated 504 plan. The updated plan expanded the list of the Student's diagnoses. It offered a school start time of 8:10 for the first semester, reduced workload (all classes), chunking of assignments, extended time (up to one week) on assignments and assessments, private feedback, extended time to take assessments, including the SAT and AP exams, classroom breaks, restroom use without restrictions, drawing/doodling for focus. (S-65, S-67; N.T. 1179-1180)

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<sup>11</sup> ASL is a structured study hall, graded on a pass/fail basis, during which Student would have time to complete missing work, with assistance from a teacher who would help Student organize missing assignments. (S-52; N.T. 696-697)

## **IDEA Evaluation**

73. On September 15, 2022, the District issued a consent to evaluate the Student for special education programming. The consent indicated an evaluation was needed because of the extensive list of diagnoses provided by the Parent, and data was needed to address any barriers related to the Student's academic performance in the school setting. On September 22, the Parents consented to an evaluation of the Student. (S-68; N.T. 233)
74. On September 26, 2022, the District met with the Student's new private trauma therapist. The therapist recommended changing the AP classes to less rigorous courses, a one-week deadline for the submission of late assignments to avoid the accumulation of schoolwork. The trauma therapist also offered observations about the Parents. (S-98, N.T. 1180-1188)
75. Between September 28 and October 11, the Parents and Student's teachers communicated about the Student's illness, missed assignments, make up dates and changing from Honors level to regular Statistics. The Parents asked about a school start time of 9:11 with the Student missing the first period. (S-69-71)
76. On October 12, 2022, the District contacted the Student's psychiatric provider for input into the Student's pending evaluation. The provider indicated the Parents requested that nothing be sent. (S-73)

77. On October 12, 2022, the Parents and Student provided the District with an amended health information release to prevent the sharing or discussion of any information related to health records and diagnosis without prior consent and presence of the Student and Parents. (P-50, p. 16, S-72; N.T. 1195-1199, 1201-1202)
78. On October 13, 2022, the District emailed the 504 team advising of the Student's change from Honors to regular Statistics, early decision college applications, and the Parent's request for a later morning start time to 9:11 a.m., which would result in missing first period, the ASL/study hall. Through email, the 504 team members expressed concern that the missed study hall would detrimentally affect the Student's preparation, organization and assignment completion time and could result in missing .5 credit. (P-50, p. 1, S-71)
79. In AP Economics, the Student's 504 Plan was implemented, workload was reduced, additional time beyond each marking period was offered to turn in outstanding assignments, and extended time was offered to complete assessments. (N.T. 759-761, 778, 781)
80. On October 18, 2022, the Student was diagnosed with chronic pain. Through a letter, a medical provider requested the Student start the school day at the third period due to medical issues. (S-74)

81. On November 3, 2022, the Student's Pediatric Gastroenterologist recommended updated accommodations that included one one-on-one assistance to help the Student organize, plan and complete missed assignments without penalty, make-up work to show competence through quality not quantity and at least ten days for the completion of make-up work, unpenalized absences due to [redacted]. (S-76)
82. On November 4, 2022, the team updated the Student's 504 service agreement with a school start time 9:10. a.m., reduced workload, chunking of assignments, extended time (up to one week) for assignments and assessments to begin when Student returned to class and private feedback. Previous accommodations remained in place. The revised plan included weekly organizational assistance from the guidance counselor. (S-77)
83. On November 7, 2022, the guidance counselor began meeting with Student weekly to discuss, organize and prioritize Student's upcoming and missing assignments. The counselor communicated with teachers, kept notes of the weekly meetings and e-mailed a summary of upcoming and outstanding assignment to the Student and Parents. (S-77, S-78, p. 34, S-84, S-85, S-86; N.T. 699-703)
84. On November 7, 2022, the District issued an evaluation report (ER). The ER concluded that the Student's diagnoses impacted education and determined special education eligibility under the criteria of other health impairment (OHI). (S-78, p. 34)

85. On November 30, 2022, the IEP team met to discuss educational programming. The draft November IEP offered goals related to work completion, school attendance and self-advocacy. SDI offered included altered school days, reduced workload, extended time, private feedback, breaks, restroom use, doodling, guidance counselor meetings to prioritize schoolwork completion, and positive encouragement. The SDI applied to all classroom environments. Related services included social work services one time a week for twenty minutes. (S-79, p. 48-52, 896)
86. In mid-December 2022, the Parent indicated that personal circumstances delayed a review of the offered IEP but a response would be forthcoming. (P-20, p. 7)
87. On December 13, 2022, the Parent provided a physician note requesting the Student receive extra time (more than the 10 days specified in the IEP) to make up assignments without penalty and a 25-50% reduction in assigned work. (P-20, p. 11-12)
88. On December 15, 2022, after the Parent advised of multi-day medical testing and care, the school counselor advised the Parent that notes were needed to provide a third extension to turn in outstanding assignments for Physics, Statistics, and Art classes. (P-20, p. 8-9)
89. On December 20, 2022, the Parent requested additional time for the Student to complete outstanding schoolwork over the Christmas break. That same day, the District sent the draft November 30 IEP to the Parent. (P-20, p. 14, 17)



90. Although no agreement was in place regarding special education programming, the District worked with the Student to track assignment deadlines, created a google spreadsheet for that use (completed, exempt, pending assignments), documented the weekly meetings that occurred to assist with organization, and worked to reduce or eliminate assignments. (S-83, S-84, S-85, S-86)
91. On January 9, 2022, the Parents through counsel, requested leniency and an extension until January 13 to complete only essential assignments and grading of only completed assignments for the first semester grades. In addition to medical concerns, the Parents expressed concern that applications were pending at many competitive institutions and first semester grades were needed. (S-87)
92. On January 19, 2023, the IEP team met, and the Student's IEP was revised to update the present levels of academic achievement and functional performance and add baseline data to the goals. The team proposed that the Student receive an exemption from Physics and Statistics homework and that an extended time adjustment occur to provide an additional seven days if an absence occurred in the initial seven days of extended time. The total time of the extended time for schoolwork completion could not exceed fourteen days. (S-79, S-81, S-82; N.T. 1271)
93. In January 2023, the Parents agreed to the implementation of special education programming. (S-82; N.T. 897, 1274)

94. On February 23, 2023, the Parents filed a due process complaint. (S-89)
95. On April 18, 2023, the District advised the Parent that all of the Student's quarter three incomplete grades were resolved. (P-27, p. 8)
96. During the 2022-2023 school year, the District exempted scores from the Student's final grade or did not include AP Economics, Physics, Statistics, and AP English Literature assignments. (P-41, p. 44-62; N.T. 755-756, 758-759)
97. During the 2022-2023 school year, the Student earned final grades of 95/AP Art Studio, 86/AP Economics, 84/AP English Lit, 95/Physics, 100/Exit interview, 88/Statistics & Probability.<sup>12</sup> (S-88)
98. The Parents did not sign any of the Section 504 Plans created and offered for the Student during the 2022-2023 school year. (S-56, S-67, S-77, N.T. 910-911)
99. During the 2022-2023 school year, the Student experienced no known mental health crisis or episodes of self-harm. (N.T. 697-698)

## **2023-2024 School Year**

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<sup>12</sup> Despite the Parents repeated request to the District for a final transcript of the Student's grades, it was not produced. Instead, a transcript through quarter two was made a part of the record along with final grades printed from the school's database. (S-88)

100. During the 2023-2024 school year, the Student is an [redacted]  
(N.T. 405)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Principles**

In general, the burden of proof may be viewed as consisting of two elements: 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 Parent who filed for this administrative hearing. Yet, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, who assume the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *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).

Witness testimony included the assistant director of student support, the Health and Physical Education teacher, the school nurse, the school counselor, the AP Economics teacher, the school psychologist, the high school special education department chair, the co-advisor of the National

Honor Society (NHS), a Parent, and the Student. Although the Parents sought subpoenas for the Student’s medical providers, none testified.<sup>13</sup> This Hearing Officer found each of the witnesses to be generally credible as to the facts. Any conflicting testimony between the witnesses can be attributed to poor recall, differing perspectives and the emotional nature of the facts involved. In instances where testimony conflicted with the documentary evidence, the admitted documents were accorded more weight.

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 the witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

## **Section 504 Principles**

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); see also *Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, an “appropriate education” means “the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy” all of the requirements of

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<sup>13</sup> At the time of the hearing the Student was [redacted]. Because of the sensitive nature of the mental health and medical records, the Hearing Officer advised the Parents that in lieu of a subpoena, they needed to obtain the medical records, ostensibly through a release, signed by the Student. Although the Student testified, no testimony was elicited from the clinicians involved with treatment and recommendations to the school teams. (HO-1)

each of the related subsections of that chapter: §§ 104.34, 104.35, and 104.36. See 34 C.F.R. § 104.33(b).

The Third Circuit has interpreted the phrase “free appropriate public education” (FAPE) to require “significant learning” and “meaningful benefit”. *Ridgewood*, supra, 172 F.3d at 247. Significantly, “[t]here are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not.” *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002).

Critically, consideration of whether an educational program for a child with a disability is appropriate “can only be determined as of the time it is offered to the student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993); see also *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same). In addition, a local educational agency (LEA) is not obligated to “provide ‘the optimal level of services,’ or incorporate every program requested by the child's parents.” *Ridley School District Page v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012); *Andrew F.*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 988, 197 L.Ed.2d 335 (2017).

With respect to the ADA, the substantive standards for evaluating claims under that statute and Section 504 are essentially the same. See, e.g., *Ridley School District. v. M.R.*, 680 F.3d 260, 282-283 (3d Cir. 2012); *Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); *Derrick F. v. Red Lion Area School District*, 586 F. Supp. 2d 282 (M.D. Pa. 2008). Thus, the discussion below serves as a final determination of all

Section 504 and ADA claims which will be considered together in this matter, although Section 504 will be the primary reference.

Section 504 further 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 *Ridgewood* Court also explained the elements of a Section 504 violation as proof that: (1) [the claimant] is “disabled” as defined by the Act; (2) [the claimant] is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) [the claimant] was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *Ridgewood*, 172 F.3d at 253.

## **Section 504 Child Find and Evaluation**

Chapter 15 applies Section 504 in schools to prohibit disability-based against children who are "protected handicapped students." See 22 Pa. Code § 15.2. Unlike the IDEA, which requires schools to provide special education to qualifying students with disabilities, Section 504 requires schools to provide accommodations so that students with disabilities can access and benefit from the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student’s abilities. Under Chapter 15, Student’s receive education through a service agreement, “executed by a student’s parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student.” 22 Pa. Code § 15.2. Service agreements

become operative when parents and schools agree to the written document; oral agreements are prohibited. 22 Pa Code § 15.7(a).

Section 504 contains its own child find requirement that is similar, but not identical, to the child find requirement of the IDEA. Section 504 requires districts to annually "undertake to identify and locate every qualified [individual with a disability] residing in [the district's] jurisdiction who is not receiving a public education." Section 504 also requires districts to evaluate students "who, because of handicap, need or are believed to need special education or related services." Although section 504 regulations indeed do not specify a time frame for evaluation and delegate this function to the states, the Pennsylvania Code sets a time frame for twenty-five school days from request. 34 C.F.R. §104.35(b); 34 C.F.R. §104.35; 22 Pa. Code §15.6(d).

Pennsylvania's Chapter 15 regulations similarly obligate the LEA to obtain sufficient information to determine whether a child is a "protected handicapped student" and to involve the parents in that process. 22 Pa. Code §§ 15.5, 15.6. Evaluations are conducted by professionals familiar with handicapping conditions. The evaluation should include information from a variety of sources, including parents, medical personnel, school psychologists, teachers, and anyone who interacts with the student on a regular basis. If a student is determined to be eligible for services, a written service agreement must be developed to meet the needs of the student. If a parent seeks to modify or change the service agreement, the parent should include relevant medical records with the written request. A school district has twenty-five days to respond to the parent after receipt of the written request to modify a service agreement. 22 Pa. Code §15.6 (d)(e)(f).

Section 504 requires that districts "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 CFR 104.33(a); 22 PA Code §15.1 To receive a free and appropriate public education as defined by Section 504, a student must be provided with regular or special education and related aids and services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met. 34 C.F.R. § 104.33(b); *TF by DF and TSF v. Fox Chapel Area School District*, 62 IDELR 74 (W.D. Penna. 2013), affirmed in an unpublished decision at 589 F. App'x 594, 64 IDELR 61 (3d Cir. 2014).

The Third Circuit has interpreted the phrase "free appropriate public education" (FAPE) to require "significant learning" and "meaningful benefit." *Ridgewood, supra*, 172 F.3d at 247. Significantly, "[t]here are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not." *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F. Supp.2d 422, 427 (E.D. Pa. 2002). Considering whether an educational program for a child with a disability is appropriate "can only be determined as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2 1031, 1040 (3d Cir. 1993); see also *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010) (same). In addition, a local educational agency (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); *Andrew F.*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 988, 197 L.Ed.2d 3; *H.D. v. Kennett Consolidated School District*, (E.D. Pa. October 4, 2019)( although the Section 504 plan did not address all sources of the student's anxiety, the



district was not obligated to offer the student the best possible education. Rather, it was merely required to offer appropriate services. Districts are not required to maximize the student's education by acquiescing to each request the parents make) .

## **IDEA CHILD FIND PRINCIPLES**

### **Child Find and Evaluation**

The IDEA and state and federal regulations obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); see also 22 Pa. Code §§ 14.121- 14.125. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The obligation to identify students suspected as having a disability is referred to as “Child Find.” LEAs are required to fulfill their child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). More specifically, LEAs are required to consider an evaluation for special education services within a reasonable time after notice of behavior that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). School districts are not, however, required to identify a disability “at the earliest possible moment” or to evaluate “every struggling student.” *Id.* The IDEA further defines a “child with a disability” as a child who has been evaluated and identified with one of a number of specific classifications and who, “by reason thereof, needs special education and related services.” 20 U.S.C. § 1401; 34 C.F.R. § 300.8(a).

The process of identifying children with disabilities is through an evaluation. Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child's individual needs are examined. 20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b) Additionally, the evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified," and utilize "[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]" 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3).

### **The Parents' Claims**

Here, there is no question that the Student has mental health diagnoses, [redacted] disease and an array of other medical issues that require intervention. In their complaint, the Parents claim the District ignored signs of the Student's disability and need for special education beginning as early as Spring 2021. The Parents further alleged that the 504 plans that were introduced were not appropriate and that the Students' rights were violated under Section 504 and the ADA. Based on the evidence adduced through this hearing due process record, the Parents have failed to meet their burden of proof. The claims of the Parents are denied.

### **2020-2021 School Year**

This Student has always achieved academically at the highest levels, engaged in charitable activities, played [redacted] and was a beloved member of the District's high school community. In January 2021, this [redacted] grader, a brilliant, cherished scholar and athlete, confided dark thoughts of self-harm to a trusted teacher. Thankfully, the District's response

was swift and decisive and outside mental health services were in place for this family within hours. The next day, the District offered flexibility for the submission of schoolwork, which, days later, the Parents indicated was unneeded. From the District's perspective, the Student appeared stable as applications were submitted to various summer enrichment and leadership programs. The Student ended the school year with a grade point average 4.0134 and zero absences. During this time, the Student was educated remotely, in the home; to the District's knowledge, the episode was isolated, and no other behaviors or circumstances were present to constitute a "red flag" requiring a District evaluation. Although the January episode was traumatic, it simply did not raise the level of triggering a need for a Section 504 or IDEA evaluation during the 2020-2021 school year.

## **2021-2022 School Year**

Unfortunately, during the 2021-2022 school year, the Student's mental health struggles were compounded by physical health challenges. Again, the Student chose rigorous and demanding courses. Early in the school year, the Parents provided clinical documentation that Student was in treatment for self-harming and clinically diagnosed with multiple mental and physical health diagnoses. In early October, the District promptly commenced the evaluative process to determine the need for a Section 504 Service Agreement (plan). While that process was underway, the District received medical documentation of diagnoses for [redacted] disease and reports of potential self-harming. The District initiated a safety plan. Consistent with the medical documentation provided by the Parent to date, the District excused the Student's absences and tardies and offered extensions to complete outstanding assignments.

In mid-November the District completed its 504 evaluation. The evaluation was comprehensive and included input from the Parents, the Student, current teachers, a school counselor, nursing, the private treating clinical psychologist, dietician, and pediatric gastroenterologist. The Student's health concerns were noted as well as how they manifested at home and in school. The Student's difficulties with diagnosis management and the effects on school attendance and assignment completion were described from the Parents' and District's perspectives. Overall, the 504 evaluation process considered the compiled input from Parents, Student, educators and clinicians. The resulting 504 evaluation was legally sufficient and met the requirements of 34 CFR §104.35. Through the Section 504 evaluative process, based on the information available, the District fulfilled its child find responsibilities to the Student.

Through no fault of the District, the 504 team meeting to discuss the evaluation and proposed accommodations did not occur until late January 2022. That meeting was properly constituted and included the Parents, the Student, District staff, and the private treating clinical psychologist. Although the Student had every right to remain in AP classes, well-meaning clinicians, perhaps without understanding the District's obligations, discussed the revision of the Student's course load from advanced placement (AP) to honors level. The team also discussed a procedure for submitting late schoolwork if medically necessary. In February 2022, the District offered the finalized 504 plan to the family.

Overall, the resulting 504 plan was reasonably calculated to provide the Student with meaningful educational benefit and did not deny FAPE. The Parents' chief disagreement with this and the subsequent 504 plans offered during the 2021-2022 school year stemmed from their belief the Student should have had greater flexibility to turn in assignments. The Parents also disagreed with the need to submit medical documentation each time an

additional schoolwork extension was needed. The offered accommodations were designed to alleviate the concerns expressed by the family, the District and the Student's medical professionals. None of the Student's clinical providers that offered input in the ER recommended that the Student receive flexible, open-ended assignment completion deadlines at the family's discretion. The suggested 504 accommodations fully emanated from the team meeting and discussions and reconciled disparate suggestions from the medical and mental health providers. Although both providers indicated the need for flexibility in turning in late assignments, the Student's treating psychologist recommended firm and specific deadlines. The clinician's expressed rationale of having "too much hanging" over the Student's head to avoid increased anxiety was responsive and prioritized the mental health needs identified by the team. The 504 plan offered appropriate accommodations to the Student. The Parents did not sign the plan.

By the spring of the 2021-2022 school year, the Student's grades and mental health declined. After the District discovered the Student with [redacted].<sup>14</sup> Despite the Parents' strident protestations, they introduced no preponderant evidence that on that day, [redacted]. Instead, the Student was escorted to a healthcare setting to determine interventional next steps. In light of this Student's known medical and mental health, the District's reaction was prudent.

Within days of the incident, the District appropriately convened a March 28, 504 team meeting and offered the Student an extension to submit

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<sup>14</sup> During the hearing, the Parents intensely questioned school staff involved in this incident, about the size of the detected [redacted], and whether they could have caused harm. In addition to undermining the safety responsibilities of this District, these suggestions were simply not credible as the Parents' Complaint, prepared by legal counsel, unambiguously indicated the [redacted]were [redacted]. (S-89)

all outstanding third-quarter schoolwork. The Parents, District staff, and the Student's private therapist attended the meeting. During the meeting, the Student's mental health functioning, physical issues and current grades were discussed, along with strategies to maintain competitive academic standards. Again, the team members deferred to the private therapist, who suggested a 504 plan revision that would offer a one-week extension for submitting outstanding assignments, applicable to all Student's classes. Like its February predecessor, the March 2022 504 plan was reasonably calculated to provide the Student with meaningful educational benefit and did not deny FAPE. Specifically, this plan offered an additional five days (a total of one week) to submit schoolwork. All other previous accommodations remained in place. Although the Student considered reducing academic responsibility by changing History and English classes from AP to Honors, this did not occur. The District continued to support the Student's motivation and, after parental request, secured an exemption for the Student to bypass two of the scheduled AP year-end exams. The Parents did not sign the 504 plan.

In no way do I minimize the Student's struggles during a challenging school year. However, the measure of the appropriateness of the Student's programming is not whether the symptomology of the underlying disabilities has been reduced or eliminated. Instead, it is whether the offered educational plan was reasonably calculated to enable the child to receive meaningful educational benefit. Based on the evidence of record the February and March 2022 504 plans were legally sufficient. With the service plans in place and the tireless support of family and the private medical teams, the Student ended the year with a GPA of 3.65. Although this was a decline from the previous GPA, and every single suggested accommodation and parental demand was not incorporated into the service plan, the 504

plans were appropriate. In addition to the family-based services and supports to address this Student's physical, emotional and mental well-being, the 504 plans in place during the 2021-2022 school year provided accommodations based on the Student's identified needs and afforded the opportunity to participate in the chosen, rigorous academic environment with limited compromise.

Concerning the child find claim, based on the evidence on this hearing record, the District's actions were appropriate in response to Student's needs throughout the 2021-2022 year. This child was "found" and properly evaluated. The individual Student's needs were determined through evaluation and team discussions and the necessary services were implemented. Although the Student continued to struggle with health, the evidence was not preponderant that the District ignored its child find responsibilities, and an IDEA special education evaluation was warranted.<sup>15</sup> I again determine that the Parents have failed to meet their burden of proof.

## **2022-2023**

Before the start of [redacted]year, the Parents obtained an independent neuropsychological evaluation of the Student. The evaluator produced a thorough and detailed report but ultimately concluded that insufficient information existed to suggest the presence of an ADHD diagnosis. Notably, this evaluator underscored the need for the Student's mental health functioning to supercede building a resume based on

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<sup>15</sup> This Student's 504 plan was in place less than a school year. If a student had a 504 plan for a significant period of time with appropriate accommodations without improving in the areas targeted by the plan, the 504 team may need to consider whether the student should be referred for an IDEA evaluation. See, *Hempfield School District*, 75 IDELR 174\_(SEA PA 2019)

completing high-level academic courses. In addition to the neuropsychological evaluation, the parents supplied the District with medical documentation requesting flexibility for the Student to submit late schoolwork.

In August at the first 504 team meeting for the school year, the Student and Parents considered but ultimately refused the District's offers to change the scheduled AP classes to the Honors level, and they also rejected the suggestion for online classes. Instead, the Student started [redacted] year with an array of advanced placement classes with accommodations through the updated 504 plan. The August 504 plan was appropriate and reasonably calculated to enable the Student to receive meaningful educational benefit. This plan incorporated many of the previous accommodations but also offered a delayed start time of 8:00 for the first semester, work reduction to only essential content for non AP courses, extra time to complete assessments, and extended time of up to one week to turn in assignments. Additional time beyond a week could be provided with an approved medical absence. The Parents did not sign the plan. Overall, this plan was responsive to the Student's identified needs.

In mid-September, the District convened the 504 team after receiving a letter from the Student's treating psychiatrist and the private neuropsychological evaluation. This medical input more precisely identified the need for the Student to obtain a reduction in academic workload to access key instructional concepts. The team response was appropriate and swift. The September 504 plan offered maximum flexibility and integrated the medical providers' recommendations with the Student's desire to remain in primarily high-expectation advanced placement courses. Overall, the revised recommended accommodations, including a later school starting



time and a reduced workload for all classes, were calculated to enable the Student to receive meaningful educational benefit. The Parents did not sign the September 2022 504 plan.

On the same day of the September 504 meeting, the District properly requested permission to evaluate the Student to determine a need for special education programming. Based on the evidence of record, before September 2022, this District had no reason to think that this Student needed a special education evaluation. At this point, although a continually revised 504 accommodation plan was in place, the Student now had a panoply of medical diagnoses with corroborating input that educational functioning was severely at risk. Notably, the neuropsychological evaluation and psychiatric input provided to the District early in the 2022-2023 school year were the appropriate tipping point for this District to suspect the Student may need a special education evaluation. The new provider input with concerns about executive functioning issues, the requests for dramatic adjustments to the school day schedule and aggressive reductions in the Student academic responsibilities was appropriately interpreted as the red flag that an IDEA evaluation was necessary.

While the evaluative process was underway, the 504 plan's appropriate, supportive and interventional accommodations were implemented for this Student. However, in November 2022, after the Parent provided additional medical documentation, the 504 plan was again revised. The updated plan provided the Student with weekly, one-on-one guidance counselor sessions to organize and assist with prioritizing schoolwork. The plan also provided a school start time of 9:10. Based on the information provided to the District, this 504 plan was appropriate and responsive to the Student's known needs.

Although the Parents exhibited mixed cooperation with the evaluative process, the District completed the ER at the end of November 2022. The Student was determined eligible and in need of special education based on other health impairment (OHI) with educational programming proposed through a November IEP. Although the ER and subsequently offered educational programming were not disputed through the due process complaint, the evidence is preponderant, the conducted ER was comprehensive and legally compliant with the mandates of the IDEA.

Based on the above facts, the District acted in a timely manner to evaluate Student for special education services under IDEA. No child find violation occurred.

## **Discrimination**

Finally, the Parents contend that the District violated Section 504 and Title II of the Americans With Disabilities Act by demonstrating deliberate indifference to the student's academic, emotional and medical needs. Intentional discrimination under both Section 504 of the Rehabilitation Act ("Section 504") and Title II of the Americans with Disabilities Act ("ADA") requires a showing of deliberate indifference, which may be met only by establishing "both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge." *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). However, "deliberate choice, rather than negligence or bureaucratic inaction," is necessary to support such a claim. *Id.* at 263.

In support of this allegation, the Parents contend the District refused to provide needed accommodations and modifications to the Student's curriculum, permitted an environment of discrimination and over-penalized

the Student. Based on the totality of this hearing record, the Parents have not met their burden of proof.

Although this Student has experienced tremendous academic success and is now a [redacted], throughout the numerous hearing sessions, it was apparent that a great deal of tension and disagreement about the perception of events that led to this complaint continues to exist. Although this District is imperfect, it acted diligently and in good faith to provide appropriate accommodations and modifications to Student's educational program.

During [redacted] school, this Student's health situation was precarious, and the clinicians and educators often advocated for the dropping of advanced classes. However, that decision rested with the Student and Parents. I am troubled by an educator's comment in the 504 evaluation that accommodations were unavailable for advanced placement classes. In the context in which it was communicated, that statement demonstrated not only a lack of sensitivity to this Student's medical and mental health struggle but also a misunderstanding of prevailing law. Section 504 and Title II require that qualified students with disabilities be provided the same opportunities to compete for and benefit from accelerated programs and classes as are given to students without disabilities. 34 CFR 104.4(b)(1)(ii) and 28 CFR 35.130(b)(1)(ii). *See also, Access by Students with Disabilities to Accelerated Programs*, the Office for Civil Rights (OCR), December 26, 2007.

Although the family cited this and another AP teachers' actions as examples of discrimination, the evidence was not preponderant that they or any other teachers intentionally or deliberately violated the Student's rights. This Student's health needs are complex, and each time new information became available, the District promptly convened a meeting to review the update and revise the plan. I find it noteworthy that throughout the two

school years at issue, the Parents never agreed to a single 504 plan yet insisted on full compliance from the District for every accommodation demand they made. Those demands were largely heeded and implemented to benefit this Student. There is no evidence of intentional discrimination or deliberate indifference to this Student's needs.

Although this Student endured intense physical and emotional distress, the evidence has established the District offered appropriate educational programming. The 504 plans in place were appropriate and delivered FAPE, no child find violation occurred, and the District did not discriminate against the Student based upon disability. Accordingly, no relief is due.

## **ORDER**

AND NOW, this 21<sup>st</sup> day of May 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The claims of the Parents are denied. Accordingly, no relief is due.
2. It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED.

*Joy Waters Fleming, Esq.*

Joy Waters Fleming, Esq.  
Special Education Hearing Officer

May 21, 2024