

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. 29032-23-24

Child's Name:

K.F.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

September 26, 2024

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently [redacted] years of age, and recently completed the [redacted] grade in the District. The Student is currently identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² based on Other Health Impairment (OHI) and Specific Learning Disability (SLD), entitling the Student to protections under Section 504 of the Rehabilitation Act of 1973.³

The Parent filed a due process complaint with claims that the District violated its child find obligations, offered inappropriate special education services, and performed inadequate evaluations, denying the Student a FAPE from the 2018-2019 school year onward.

In addition to an answer denying that relief was due, the District also submitted two prehearing motions. One motion sought to limit some of the Parent's claims on grounds that they were barred by the statute of limitations. The second motion sought dismissal of claims not raised in the Parent's Complaint.⁴ In response, the Parent indicated the District intended to withdraw the motion to dismiss their occupational therapy claims and a

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

⁴ (HO-1)

stipulation would occur that they were properly raised.⁵ That stipulation was not provided, and during opening statements, the District again asserted that the Parent's claims regarding OT services were not properly raised. The complaint submitted by the Parent contained no mention of OT, nor did it reference any related services. No stipulation was received that otherwise disposed of this issue. The District's motion to dismiss claims related to occupational therapy is granted. ⁶ Concerning the District's motion to limit other claims as time-barred, a discussion and disposition of that issue follows.

After review of the record and for all of the reasons set forth below, the claims of the Parent are granted in part and denied in part.

ISSUES⁷

- 1) Did the District deny the Student a FAPE from the 2018-2019 school year through the 2023-2024 school year?
- 2) When did the Parent know, or should they have known of the District's alleged failure to meet the Student's needs?
- 3) Did the District specifically misrepresent that it resolved the problem forming the basis of the Parent's complaint?
- 4) Were the District evaluations of the Student appropriate?
- 5) If the District denied the Student a FAPE, what remedy is appropriate?

⁵ (HO-2)

⁶ (N.T. 22)

⁷ (N.T 7-8)

FINDINGS OF FACTS

1. In kindergarten, the Student began receiving Title I reading remediation services to address phonics, fluency, vocabulary, and comprehension needs. (N.T. 41, 45)
2. Since elementary school, the Student received accommodations through a Section 504 service agreement to address needs associated with attention-deficit disorder (ADHD). (P-3, p. 2)

2018-2019 School Year

3. During the 2018-2019 school year, the Student was enrolled in the [redacted] grade in the District.
4. At the end of [redacted] grade, after the Parent expressed concerns about the Student's reading abilities, the District's school psychologist completed an evaluation. (P-3; N.T. 34, 40, 43, 401)

2019 Evaluation Report

5. For inclusion in the ER, the District conducted a records review, collected Parent, Student and educator input, and administered aptitude (Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition (WJ-IV COG) and achievement testing, (Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV ACH), Woodcock-Johnson Tests of Oral Language, fourth edition (WJ-IV OL) assessments of social-emotional functioning (Adaptive Behavior Assessment System, Third Edition (ABAS-3), Behavior Assessment System for Children, Third Edition (BASC-3) Conners Comprehensive Behavior Rating Scales (CBRS) Conners Third Edition (Conners 3) Behavior Rating Inventory

of Executive Functioning, Second Edition (BRIEF-2), Scales for Assessing Emotional Disturbance, Second Edition (SAED-2)) and autism screenings (Asperger Syndrome Diagnostic Scale (ASDS), Gilliam Autism Rating Scale – Third Edition (GARS – 3)). (P-3)

6. After administering fourteen core tests of the WJ-IV COG, the evaluator concluded that the Student had achieved a General Intelligence Ability (GIA) standard score of 96, which indicates average overall intellectual aptitude. (P-3, p. 17; N.T. 56)

7. The evaluator also noted some scatter among the Student's scores. The evaluator also examined verbal and non-verbal reasoning abilities outside of processing abilities and concluded that the Student's overall aptitude more aptly qualified as a high average (Gc-Gf) standard score of 114. (P-3, p. 17; N.T. 56)

8. The ER concluded that the Student's overall academic achievement based on WJ-IV ACH indices of reading, mathematics, written language, and content knowledge was low average to average compared to same-age peers. (P-3, p. 23)

9. In broad reading (letter word identification-23rd percentile), (sentence fluency-26th percentile), (passage comprehension-26th percentile), the Student's achievement was average (standard score- 90, 25th percentile). (P-3, p. 19)

10. In broad written language (spelling-15th percentile), (sentence fluency-26th percentile), (writing sample -80th percentile), the Student's achievement was average (standard score-95, 36th percentile). (P-3, p. 19)
11. In basic reading (letter-word identification (23rd percentile), and word attack (11th percentile), the Student's achievement was low average (standard score 86, 17th percentile). (P-3, p. 20)
12. In written expression (writing sample-56th percentile) and writing fluency (26th percentile), the Student's achievement was average (standard score-102, 56th percentile). (P-3, p. 21)
13. On listening comprehension tests, the Student's achievement was average (standard score-102). The Student's performance in expressive language reflected low average development (standard score-88). (P-3, p. 23)
14. Teacher rating scales to assess the Student's social-emotional functioning concluded that the Student tended to act impulsively, showed a tendency to be restless, and exhibited language-based academic difficulties. (P-3, p. 11)
15. The Student received an occupational therapy (OT) evaluation for inclusion in the ER. (P-3, p. 16)

16. Based on a predicted-difference method (ability-achievement discrepancy), the evaluator concluded no discernible weaknesses existed in the Student's reading, written language, or oral language areas or in basic psychological processes governing problem-solving abilities to support the determination of a specific learning disability. (P-3)

17. The ER concluded that the Student's established history of attentional deficit disorder made identification as a child with a disability under the Other Health Impairment (OHI) appropriate. The ER recommended the Student receive access to specially designed instruction in the classroom, with bi-weekly monitoring to determine baselines, instructional needs, progress, and needed revisions to programming. (P-3, p. 23)

18. On May 17, 2019, the IEP team met to develop programming for the Student. The IEP offered reading (comprehension, fluency), writing, math (computation, fluency) and OT goals. SDI included progress monitoring through CBAs, modified assignments (limited multiple choices, extra time, verbal options, differentiated spelling list), check-ins, small group ELA instruction, and repetition. The IEP offered accommodations for the Student's [redacted] allergy. The IEP offered itinerant learning support. (P-4)

2019-2020 School Year- [redacted] Grade

19. During the 2019-2020 school year the Student was enrolled in the [redacted] grade in the District and received supplemental learning support in reading. (P-7, P-8, p. 10)

20. In the Fall of 2019, the Parent had concerns that Student may have an Autism diagnosis. The Parent retained a private evaluator who conducted assessments to determine the Student's academic, executive, and social/emotional needs. (P-7; N.T. 403)
21. In January 2020, the Parent provided the District with a private psychological evaluation of the Student. After administration of the WISC-V, the evaluator determined the Student's FSIQ to be 106. On the WIAT-III, the Student's achievement indicated performance of below average in total reading (10th percentile), basic reading (7th percentile), written expression (21st percentile), and average reading comprehension and fluency (21st percentile). (P-7)
22. The evaluator concluded the Student had diagnoses of ADHD (combined) and a specific learning disorder with impairment in reading and written expression.⁸ (P-7; N.T. 262, 403)
23. The Parent believed the diagnosis code used to denote the determined learning disorders meant the Student had "Dyslexia,." The Parent conveyed this information to the District. (P-7; N.T. 419)
24. On February 11, 2020, the Student's IEP team met to develop programming. The evaluating school psychologist was not present at the meeting. At the meeting, after raising concerns that Student was diagnosed with Dyslexia", the Parent claimed the District advised that they do not do anything specifically for Dyslexia, as it is part of the

⁸ The private evaluation report did not contain the term "Dyslexia". (P-7; N.T. 64)

overall Reading program. (P-8; N.T. 71-72, 404, 422, 424-425, 427, 433)

2020-2021 School Year –[redacted] Grade

25. During the 2020-2021 school year, the Student was enrolled in the [redacted] grade and received virtual programming. (P-16, p. 10)

26. The District monitored the Student's reading (comprehension, fluency), math and written expression using AIMSweb probes. (P-14, p. 8)

27. The Student received grade-level vocabulary and reading comprehension instruction in the learning support classroom. (P-14, p. 14-15)

28. The learning support teacher noted the Student exhibited a consistent work effort, read at a below-grade-level pace, demonstrated good phonics skills, had difficulty formulating thoughts, and was easily frustrated and impulsive. (P-14, p. 15)

29. The Student's general education teachers noted that the Student needed reminders to initiate a task and struggled with writing. (P-14, p. 15)

30. In October 2020, the Parent requested an FBA because of concerns about Student's reading skills despite good grades. (P-11; N.T. 405-406, 423, 428, 430)

31. In January 2021, the Parent opted for the Student to receive virtual instruction. (P-14, p. 14)
32. On February 9, 2021, the IEP team met to develop programming. The February IEP offered reading (fluency, comprehension), writing and OT goals. (P-14)
33. The fluency goal expected the Student to improve from a baseline of 82 on a fourth-grade level to 130 wcpm on a sixth-grade level. In September 2021, the Student's baseline was 56 using fourth-grade probes. (P-14, p. 9, 30)
34. The comprehension goal expected the Student to improve from a baseline of 13 correct responses on a fifth-grade level to 27 on a sixth-grade level. The previous goal expected 22 correct responses at a fourth-grade level. (P-14, p. 10, 32)
35. The writing goal expected the Student to improve from a baseline of 18 correct writing sequences on a fifth-grade level to 36 correct sequences at a sixth-grade level. The Student's baseline in September 2021 was 7 correct sequences on fifth-grade conventions. (P-14, p. 10-11, 33)
36. SDI offered through the February 2021 IEP included modified testing (word bank, extra time, frequent breaks), graphic organizers for writing and reading comprehension, notes and study guides, and

organizational help (reminders, cues, color coding). Related services included occupational therapy. (P-14, p. 38-41)

37. After the 2020-2021 school year, the Student earned grades of English-87, Reading-86, Math-91, Social Studies-87, and Science-95. (P-18, p. 8)

2021-2022 School Year- [redacted] grade

38. During the 2021-2022 school year, the Student was enrolled in the [redacted] grade in the District. (P-16)
39. During the [redacted] grade, the Student received reading instruction within the learning support classroom through a corrective program. (N.T. 312)
40. In a January 2022 benchmark assessment, the Student achieved a reading fluency score on a fifth-grade level of 105 (14th percentile).⁹ In reading comprehension monitored through (silent reading fluency), the Student scored on a sixth-grade level of 111 (20th percentile). On quarter one writing probes, the Student averaged 21 correct writing sequences (CWS) with 59% accuracy. (P-16, p. 15; N.T. 315)

February 2022 IEP

41. On February 3, 2022, the IEP team met to develop programming. The Student's present levels were from AIMSweb

⁹ Quarter 1 baseline data reported in the February 2022 IEP referenced the Student's oral fluency performance on a sixth grade level. During testimony, the Director of Special Education, suggested this was a mistake. (N.T. 315)

probes. Academic needs noted in the IEP included reading fluency, comprehension and written expression. (P-16, p. 15)

42. The February IEP offered reading (fluency, comprehension), writing, OT and math goals.¹⁰ (P-16, p. 9, 20)

43. The oral reading fluency goal, set at fifth-grade level, expected the Student's score to improve from a baseline of 105 to 125 points (25th percentile). (P-16, p. 27)

44. The Student's comprehension goal, set at a sixth-grade level, expected improvement from a baseline of 111 to 135 points (37th percentile). (P-16, p. 28)

45. The February 2022 IEP expected the Student's writing to progress from a baseline of 34 to 53 correct writing sequences (cws) (53rd percentile) on a sixth-grade level. (P-16, p. 29)

46. The February 2022 IEP offered SDI that included modified tests and quizzes, copies of notes, preferential seating, extended time, chunking, and organizational help. Related services included one monthly, thirty-minute group OT session. (P-16, p. 32-24)

47. The February 2022 IEP proposed that the Student participate in all general education classes except reading and English instruction. Reading and English instruction was scheduled to occur in the learning

¹⁰The Parent did not challenge the math programming offered by the District. (P-34)

support classroom during the Student's two study hall periods in a six-day cycle. (P-16, p. 39)

48. The Student received reading instruction through a multi-sensory, corrective program focused on phonics, decoding, and comprehension. (N.T. 246-247, 311, 365-366, 377-378)

49. The February 2022 IEP proposed that the Student receive supplemental learning support in the regular classroom for 70% of the school day. (P-16, p. 40-41)

May 2022 RR

50. On May 5, 2022, the District completed a reevaluation (RR) of the Student. The RR incorporated the aptitude and achievement test results from the District's ER of 2019, referenced the privately obtained evaluation from 2019, progress monitoring data, Parent and teacher input, and OT assessment conclusions.¹¹ (P-18; N.T. 34, 73, 76)

51. Teacher input noted the Student exhibited poor reading and comprehension skills, good peer interactions, self-confidence, inability to coherently write, good listening skills, slow work rate, easily distracted, off-task behaviors, good work habits, short attention span and weak organizational skills. Teacher recommendations included study guides, adapted tests, preferential seating, and extended time. (P-18)

¹¹ The District monitored the Student's fluency and comprehension progress bi-weekly using the AIMSweb+ system, a web based tool that measures progress using grade-level curriculum based probes. (P-18, p. 9)

52. The Student's third quarter grades reported in the RR were LS English-87, Math-84, LS Reading-92, Science-79, Social Studies-83. (P-18, p. 8)
53. The RR reported that from January to April 2022, the Student's progress toward oral reading fluency, comprehension and writing goals was inconsistent. (P-16, p. 13, P-17, P-18, p. 9-10; N.T. 81, 83)
54. The OT recommended discharge from direct occupational therapy services and SDI for consideration by the IEP team. (P-18)
55. The RR determined that the Student need to improve reading fluency, reading comprehension and written expression skills. (P-18, p. 19)
56. The May 2022 RR concluded that the Student was eligible for special education as a child with OHI and recommended supplemental learning support programming. Recommended SDI included preferential seating, study guides/completed notes, support with tests/quizzes, and accommodations in mathematics, science, social studies and electives. (P-17, p. 19-20, P-18)

May 2022 IEP

57. On May 5, 2022, the IEP team developed educational programming for the Student. The offered IEP and SDI were unchanged from the February IEP. (P-17)

58. On May 6, 2022, through a NOREP, the District offered the Student supplemental learning support. (P-19)

59. After the 2021-2022 school year, the Student earned final grades of 93 -English, 83-Math, 93-Reading, 81-Science, and 83-Social Studies. (P-39, p. 11)

2022-2023 School Year- [redacted] Grade

60. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District. (P-22)

61. During the [redacted] grade, the Student received reading instruction in the learning support classroom during two study hall periods during the six-day cycle. (P-22)

62. On [redacted] -grade AIMSweb Spring benchmark testing, the Student received the following scores: vocabulary-10th percentile, reading comprehension -58th percentile, silent reading fluency- 4th percentile, oral reading fluency-97 words per minute (685 lexile), writing-10th percentile. (P-22, p. 9-10)

May 2023 IEP

63. On May 5, 2023, the IEP team met to develop educational programming. The present levels included the spring benchmark testing. (P-22)

64. Educator concerns noted the Student had poor reading and comprehension skills, frequent off-task behaviors, failed to complete assignments, poor organizational skills, untimely assignments, frustration, poor study habits, and a short attention span. (P-22, p. 7-8)
65. The May 2023 IEP offered goals to address reading fluency, reading comprehension (monitored through silent reading fluency), and written expression. (P-22)
66. The May 2023 fluency goal remained at a sixth-grade level, and the Student was expected to improve from a baseline score of 114 (12th percentile) to 148 points (40th percentile). (P-22, p.11; N.T. 320-323)
67. At a seventh-grade level, the comprehension goal expected the Student to improve from a baseline of 91 (4th percentile) to 184 points (60th percentile). (P-22, p. 26; N.T. 320-323).
68. The written expression goal expected the Student to improve from a baseline of 31 to 67 correct writing sequences (cws) (78th percentile) on a seventh-grade level. (P-22, p. 11; N.T. 320-323)
69. Offered SDI include modified tests, copies of notes, preferential seating, extended time, organizational help, and graphic organizers. The May IEP offered itinerant learning support. (P-22, p. 23-25)

70. On May 3, 2023, through a NOREP, a Parent approved the recommendation that the Student receive itinerant learning support. (P-23)

71. At the end of the 2022-2023 school year, the Student earned final grades of 79-English, 80-Math, 95-Reading, 86-Science, and 77-Social Studies. (P-39, p. 11)

2023-2024 School Year

72. During the 2023-2024 school year, the Student was enrolled in the [redacted] grade in the District and received special education programming through an IEP developed in May 2023. (P-22)

73. Through the implemented IEP, the Student participated in all general education classes except for Reading instruction, which occurred during two study hall periods. (P-22)

74. Between September and November of 2023, the Student's reading fluency, at a sixth-grade level, fluctuated from 110 wpm (13th percentile to 104 wpm (11th percentile). (P-39, p. 13)

75. Between September and November of 2023, the Student's reading comprehension (silent reading fluency) at a seventh-grade level fluctuated from the 16th to the 14th percentile. (P-39, p. 14)

76. Between September and November of 2023, the Student's written expression fluctuated from the 32nd to the 23rd percentile at a seventh grade level. (P-39, p. 14)
77. The Student's first quarter grades were English-95, Math-88, Reading-92, Science-89, and Social Studies-95. (P-40, p. 11)

November 2023 IEE

78. On November 16, 2023, the Parent obtained an independent school-based neuropsychological evaluation (IEE) from a certified school psychologist at public expense. (P-24, P-27, P-30)
79. The evaluator conducted a records review and an observation of the Student, and administered assessments of aptitude, achievement, and social-emotional and motor skill functioning. (P-30)
80. The Student's general intellectual ability (GIA) standard score was determined to be 76 (borderline). The Student's Gf-Gc composite score was 98 (average). The evaluator indicated the scores could not be interpreted meaningfully because of variability in performance. (P-30, p. 21)
81. In basic reading, the Student received a standard score of 74 (borderline), 92 in comprehension (average), and in fluency 82 (low average). The Student's reading score was 80 (low average), and broad reading was 77 (borderline). (P-30, p. 38)

82. On a measure to assess the ability to pronounce words accurately and fluently, the Student received standard score of 82 (low average) for sight word efficiency and 67 (extremely low) for phonemic efficiency. (P-30, p. 14)
83. In writing, the Student received a standard score of 74 (borderline) for written expression, 65 (extremely low) for written language and 65 (extremely low) for broad written language. (P-30, p. 14)
84. The IEE concluded that the Student met the criteria for the educational classification of (OHI) for characteristics of (ADHD), and a specific learning disability (SLD) in the areas of basic reading skills, reading fluency, and written expression. The IEE also determined that the Student demonstrated many of the characteristics associated with mixed Dyslexia, which is a combination of phonological and orthographic deficits. (P-30, p. 44)
85. The IEE recommendations included providing the Student with access to counseling to assist with executive functioning weaknesses, direct instruction through a systematic, explicit, sequential, and cumulative multi-sensory language reading program, intervention for written language weaknesses and strategies to assist with, self-monitoring, task completion, working memory, and planning/organizing. (P-30, p. 45-48)
86. On [redacted] grade winter benchmark testing the Student, received a vocabulary score in the 32nd percentile, reading

comprehension in the 25th percentile, silent fluency in the 40th percentile, oral fluency in the 4th percentile, and writing in the 13th percentile. (P-39, p. 16)

87. On January 8, 2024, the Parent filed a due process complaint. (P-34)

March 2024 RR

88. On March 4, 2024, the District issued an RR regarding the Student. The RR included a records review, teacher and Parent input, classroom observations, and academic assessment updates. The April RR referenced the completion of the November IEE, an independent speech evaluation and the private evaluation from 2019. (P-36)
89. Parent input included the Student's difficulty with reading (cannot decode or read at grade level), writing and spelling. Educator observations noted the Student had poor reading and comprehension skills, attended to tasks, had good communication and listening skills, poor organizational skills, and was easily frustrated. (P-36, p. 18-19)
90. The RR noted the Student's Winter benchmark performance was at the eighth-grade level for Reading, Math, and Writing. Overall reading was estimated to be at the 25th percentile (below average). Vocabulary and silent reading fluency scores were average, reading comprehension was below average, and oral reading fluency was below average. The Student's writing score fell into the average below average range. (P-36, p. 22)

91. The RR concluded that the Student was eligible for special education as a child with (OHI)(ADHD) along with a secondary identification of specific learning disability (SLD) with needs in basic reading skills, fluency, and written expression. (P-36, p. 21)

92. The RR concluded that the Student needed specially designed instruction in reading, math, English, science, and social studies and all areas where grade-level material is presented and assessed. Academic needs noted were in Reading (fluency, silent fluency) and writing. (P-36, p. 20-21)

93. The RR recommended that the student receive math, English, social studies, and science instruction in the regular education classroom and reading in the learning support classroom. (P-36, p. 21-22)

April 2024 IEP

94. On April 3, 2024, the IEP team met to develop educational programming for the Student. (P-40)

95. The Student's second quarter grades were English-86, Math-90, Reading-90, Science-85 and Social Studies-82.

96. Educator input noted the Student attended to tasks, exhibited good listening and reasoning skills, was inconsistent with turning in assignments on time, could work independently, and was self-confident. One teacher noted the Student had poor organizational

skills, was unprepared for class and was unable to write coherently (at times). (P-40, p. 13)

97. The April 2024 offered IEP goals to address reading fluency, comprehension, and written expression. Offered SDI included extended time, alternative testing location, organizational help, preferential seating, graphic organizers, and check-ins. The IEP indicated the Student would participate in general education for all classes except reading. Reading instruction would occur in the learning support classroom during two study hall periods during the six-day cycle. (P-40)

98. On April 4, 2024, through a NOREP, the Parent approved the IEP but noted that the IEE recommendations needed to be added. (P-42)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Burden of Proof

The burden of proof consists 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 Parents who filed the Complaint that led to this administrative hearing. Nevertheless, application of this principle determines which party prevails

only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58

Credibility Determinations

Special education hearing officers, in the role of fact-finders, are responsible for making credibility determinations of the witnesses who testify. 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 each of the witnesses to be generally credible as to the facts. Any conflicting testimony between the witnesses can be attributed to poor recall and differing perspectives. The weight accorded the evidence, however, was not equally placed.

The Parent, the District school psychologist, a District OT, and the Director of Pupil Services testified at this due process hearing. With the exception of the KOSHK matter, the resolution of this case depended heavily on the documentary evidence. Because the Parent's outside evaluators did not testify, ODR directives that govern the introduction of a report, when the author does not testify were relied upon. More specific credibility determinations are made throughout this decision. The findings of fact were made as pertinent to resolving 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' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to assist a child to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed. The Third Circuit has interpreted the phrase free appropriate public education (FAPE) to require "significant learning" and "meaningful benefit" under the IDEA. *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).

The various states, through local educational agencies (LEAs), meet the 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). As the U.S. Supreme Court has confirmed, 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, 400, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017)

Individualization is, thus, a focal point for purposes of IDEA programming. Nevertheless, 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). Rather, the law demands services that are reasonable and appropriate in

light of a child's unique circumstances, and not necessarily those that his or her "loving parents" might desire. *Andrew F., supra*; see also *Tucker v. Bay Shore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989). 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)

The IEP is not, however, required "to provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District*, 680 F.3d at 268-269, quoting *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 557 (3d Cir. 2010). The "parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student." *W.H. v. Schuylkill Valley School Dist.*, 954 F. Supp. 2d 315, 324 (E.D. Pa. 2013). Moreover, "[t]he measure and adequacy of an IEP can only be determined as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993); see also *D.S.*, 602 F.3d at 564-65. A school district is not required to maximize a child's opportunity; it must provide a basic floor of opportunity. See *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir. 1988), cert. denied, 488 U.S. 925 (1988). While an IEP must be developed in consideration of a student's potential and with an eye to long-term goals, evaluations of the adequacy of an IEP can only be determined "as of the time it was offered to the student, and not at some later date." *Fuhrmann*, 993 F.2d at 1040

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have "a significant role in the IEP process." *Schaffer, supra*, at 53. Consistent with

these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). Procedural deficiencies may warrant a remedy if they resulted in such “significant impediment” to parental participation, or in a substantive denial of FAPE. 20 U.S.C. § 1415(f)(3)(E).

General IDEA Principles: Least Restrictive Environment

The IDEA contains a fundamental mandate that eligible students are to be educated in the “least restrictive environment” (LRE) that also satisfies meaningful educational benefit standards. Such determinations are based on what is appropriate for the individual child. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.S. § 1412(a)(5)(A); *see also T.R. v. Kingwood Township Board of Education*, 205 F.3d 572, 578 (3d Cir. 2000); *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204, 1215 (3d Cir. 1993).

General IDEA Principles: Evaluation

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. The IDEA sets forth two purposes of a special education 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). 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 appropriately examined. 20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b). The evaluation must assess the child “in all areas related to the suspected disability[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(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).

When parents disagree with an LEA’s educational evaluation, they may request an IEE at public expense. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b). Parents are entitled to an IEE funded by the LEA if its evaluation does not meet IDEA criteria.

General Section 504 Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii). The obligation to provide FAPE is substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). Thus, here, the coextensive Section 504 claims that

challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA shall be addressed together.

IDEA Statute of Limitations

The IDEA expressly provides that a party “must request an impartial due process hearing on their due process complaint within two years of the date the parent or public agency knew or should have known about the alleged action which forms the basis of the complaint.” 20 U.S.C. § 1415(f)(3)(c); see also 34 C.F.R. § 300.511(e).⁶ In other words, “[t]he IDEA statute of limitations is triggered when the [filing party] knew or should have known about the action that forms the basis of the complaint.” *J.L. v. Ambridge Area School District*, 2008 U.S. Dist. LEXIS 54904, *28-29, 2008 WL 2798306, *10 (W.D. Pa. July 18, 2008). The IDEA also expressly provides for two specific exceptions to the two-year limitation period, permitting claims beyond that timeframe to a parent who was prevented from requesting the hearing as a result of:

- (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- (ii) the local education agency’s withholding of information from the parent that was required under this subchapter to be provided to the parent.

20 U.S.C. § 1415(f)(3)(D); see also 34 C.F.R. § 300.511(f).

Hearing officers must “make determinations, on a case by case basis, of factors affecting whether the parent ‘knew or should have known’ about the action that is the basis of the complaint.” *J.L. v. Ambridge Area School District*, 622 F.Supp.2d 257, 266 (W.D. Pa. 2008) (quoting 71 Fed. Reg. § 46540-01 at 46706 (August 14, 2006)). This is a “highly factual inquiry.” *Id.*

The Third Circuit reaffirmed the importance of the knew or should have known date in *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 606 n. 4 (3d Cir. 2015). Generally speaking, the fact-finder must determine whether the actions or inaction by an LEA “are sufficient to alert a reasonable parent that the child would not be appropriately accommodated.” *Brady P. v. Central York School District*, 2018 U.S. Dist. LEXIS 43230 at *19, 2018 WL 1367325 at *7 (M.D. Pa. 2018).

The Third Circuit also cogently explained in *G.L.* that there is obvious tension between the obligation to timely pursue a claim against an LEA as a diligent plaintiff and the need for participation in the parent/LEA collaboration process that is inherent in the IDEA:

On the one hand, although a child's right to special education under the IDEA does not turn on parental vigilance, *M.C. [v. Central Regional School District]*, 81 F.3d [389,] 397 [3d Cir. 1996], parental vigilance is vital to the preservation and enforcement of that right. . . . Parents are often in a position to be forceful advocates for their children and through their vigilance and perseverance to help fulfill the IDEA's promise of a free appropriate public education. That “cooperative process . . . between parents and schools” that results from a parent's action, after all, is at the very “core of the statute” itself. *Schaffer*, 546 U.S. at 53. *G.L.*, 802 F.3d at 625. Where a due process complaint is not timely filed with respect to all claims, “all but the most recent two years before the filing of the complaint will be time-barred.” *Id.* at 620.

The Parent’s Claims

In the Complaint, the Parent alleged the District violated its child find obligations and failed to timely and sufficiently evaluate the Student, denied the Student a FAPE from the beginning of the 2018-2019 school year

onward, and developed inadequate special education programming. Because the Parent's claims are outside of the two-year statute of limitations, a determination must be made when the Parent knew or should have known (KOSHK) about the actions that framed the basis of the Complaint.

The Parent asserted that they did not know, or have reason to know, of the District's alleged denial of FAPE until receipt of the District's May 5, 2022, RR. The Parent also contends that an exception to the statute of limitations applies because the District misrepresented that it had resolved the Student's reading difficulties. The District counters that the Parent was armed with all relevant facts and that claims before January 8, 2022, are time-barred.¹²

The record does not support a conclusion that the May 2022 RR solely formed the basis of assessing the Parent's knowledge in this case. Since kindergarten, the Parent was aware of the Student's reading difficulties. By third grade, the Parent's concerns culminated in a request for a District evaluation to assess reading. The initial District evaluation completed in April 2019 determined the Student's eligibility for special education based on OHI (ADHD). An IEP meeting followed, with Parent participation, and goals were offered to address the Student's reading, math and writing needs. The Parent had continued concerns, and the following school year, in January 2020, the Parent obtained a private evaluation, which resulted in a "diagnosis" of the Student with an SLD in reading and written expression.¹³ Months later, in October 2020, the Parent requested a functional behavioral assessment (FBA) of the Student because of educational concerns. Based

¹² The complaint was filed on January 8, 2024.

¹³ The private evaluator was a Psy.D not a school psychologist. The report did not include the word "dyslexia", but throughout testimony, the Parent insisted the evaluator used that term during the explanation of the Student's diagnoses. The private evaluator did not testify.

upon presented testimony, the Parent had the requisite facts to bring this claim well before January 8, 2024.

The Parent failed to establish that the District specifically misrepresented that Dyslexia was not something the District could address. At a February 2020 IEP meeting, the Parent contended that the District misrepresented that it resolved the Student's reading needs, purportedly through a comment that it (District) did not provide specific programming to address Dyslexia. The Parent's testimony about this comment was slightly inconsistent. At first, the Parent claimed, the District remarked it did not do anything specifically for Dyslexia. Through additional questioning, the claim was made that the District commented that Dyslexia was part of the overall reading program. That comment, if made, was unprofessional and inaccurate. However, the evidence does not support a determination that the conversation with the Parent suggested the Student did not have reading needs or that the District had remedied the educational needs. As such, the Parent's claims for disposition are from January 8, 2022, forward; before that, they were untimely. Based on the additional evidence presented, I conclude that the District did not misrepresent to the Parent that it resolved the problem that formed the basis of the Parent's Complaint. Concerning the asserted FAPE denial, the above KOSHK determination has limited consideration of the appropriateness of the Student's special education programming from January 2022 onward.

Since kindergarten, this Student has received Title I reading remediation services. At the end of third grade, the District issued the initial evaluation report that concluded the Student was eligible for special education based on only OHI (ADHD). Although the Student was not identified with a specific learning disability (SLD) because of some lower scores related to reading and writing, the ER recommended access to

specially designed instruction and bi-weekly progress monitoring of literacy skills.

The gravamen of the Parent's contentions during this time frame stem from the District's 2019 evaluation and a subsequently obtained 2020 private evaluation. In the former, the District used an ability-achievement discrepancy analysis and relied on the Student's GIA instead of the alternately calculated GC-GF achievement score to determine that Student did not have a specific learning disability. Although no SLD was determined, the District offered special education programming through annual IEPs.¹⁴ The 2020 private evaluation discussed above concluded that the Student did have a SLD and led the Parent to believe a Dyslexia diagnosis was present. These actions frame the foundation from which the Parent insisted that decoding goals and a compatibly focused brand name reading program should have been incorporated into the Student's reading programming, and since they were absent, a FAPE denial occurred. I disagree.

The Parent's claim that the District's 2019 evaluation was improper is barred by the statute of limitations. Additionally, this claim fails because the Parent introduced no preponderant evidence that the District's 2019 evaluative process was improper. The school psychologist credibly explained the method used to determine the conclusions reached and properly refuted the insistence to recharacterize his testimony. I reach a similar conclusion regarding the 2020 private evaluation. The District indeed referenced it, but whether it should have triggered additional or different actions by the District is beyond the scope of the previously determined claim period.

From January 8, 2022, until the end of 2023-2024 school year, IEPs were in place, developed in February 2021, February 2022, May 2022, May

¹⁴ Although the Student received special education for math needs, no claims regarding this programming was raised in the Parent's due process Complaint. (P-34)

2023 and April 2024. Although each IEP was developed to ostensibly address the Student's needs in reading, writing and executive functioning, the literacy programming was notably the same, with goals in reading fluency, comprehension, and writing. The Parent contends that the IEPs in place were deficient because they failed to offer decoding and executive function goals, a specific reading program to address Dyslexia was not offered, and the Student did not make meaningful educational progress.

During [redacted] grade, of the 2021-2022 school year, this Student spent the majority of the day in regular education with reading instruction provided in the learning support classroom. The February 2021 IEP was operable for only one month until new programming was introduced. In February 2022, the IEP team proposed programming that consisted of the same goals as the preceding IEP, focused on reading fluency, comprehension and writing needs. This programming was based on the literacy needs identified by the District's 2019 ER and the routinely collected data indicative of grade level standing in reading comprehension and writing. The Student's oral fluency remained slightly below grade level. Through the February 2022 IEP, the Student received instruction through a multi-sensory program that provided decoding and comprehension intervention. The goals were appropriately ambitious and measurable and contained baseline data. However, the SDI in the IEP lacked details that outlined how much (minutes, hours) specially designed instruction the Student would receive, how the reading intervention would be implemented (group-individual), and the programming the planned intervention would deliver. Although the implemented reading program was described during testimony and referenced in the IEP, the lack of specificity bears mentioning; however, it did not interfere with the Parent's ability to make educational decisions or the Student's receipt of FAPE.

The relevant teachers' concerns noted that the Student exhibited poor reading and comprehension skills, an inability to write coherently, a short attention span, and weak organizational skills. The implemented reading program focused on phonics, decoding, and comprehension and, based on the evidence presented, was offered to address the Student needs, known at that time, and calculated to afford this Student meaningful educational benefit. The same conclusion cannot be reached concerning other aspects of the Student's programming.

The Student's struggles with attention, focus and organizational skills were well documented. Significantly, the Student's eligibility for special education rested on qualification because of OHI-ADHD; however, IEP goals nor sufficient SDI were offered to address this need. The Parents have established by a preponderance of evidence that this flaw denied the Student a FAPE. Although the Student made some progress, the evident distractibility, short attention span, and inadequate organizational skills, noted by classroom teachers interfered with the ability to access the curriculum and receive entitled educational benefits. The Student needed direct instruction and individualized strategies to address executive functioning needs.

A few months later, in May 2022, the District issued its triennial RR. The Parent contends the RR was deficient because it failed to adequately assess the Student's academic achievement and executive functioning needs. I partially agree. Although progress toward IEP goals, Parent and teacher input, and OT assessment conclusions were incorporated, a critical data source was lacking. Consistent teacher concerns noted the Student had poor organizational, reading, comprehension and writing skills, a short attention span, and exhibited frequent off-task behavior. Based on the record evidence, I conclude that the District's process to determine the Student's literacy needs was sufficient. The data incorporated into the RR was recent

and consistent with the previous evaluative conclusions, educator input and the Student's grades. At that point, except for oral reading fluency, the Student was functioning on grade level, and the recommended goals reflected that information.

The May 2022 RR was not without flaws. It concluded the Student remained eligible for special education as a child with OHI. Although educator comments expressed concern for the Student's classroom distractibility, disorganization and inattentiveness, hallmarks of ADHD the District did not include any assessments of executive functioning, standardized rating scales from the Parent or teachers, nor a classroom observation. Unfortunately, this inadequacy affected the development of the Student's subsequent IEP. As such, the District's May 2022 RR was legally insufficient as it failed to comprehensively identify all of the child's special education needs and utilize assessment tools and strategies that provided relevant information to determine the executive functioning needs of the Student.¹⁵

Concurrently, with the completion of the May 2022 RR, the IEP team met and revised the Student's IEP. The May 2022 IEP was developed roughly three months after the February programming and was largely unchanged. The chief revision to the May IEP incorporated the RR recommendation to discharge the Student from direct OT services. The Parent's concerns regarding the May 2022 IEP in place for the end of [redacted] and the majority of [redacted] grade during the 2022-2023 school year mirrored the issues previously discussed (inadequate programming, no reading decoding or executive function goals). Once again, the team missed the opportunity to address the Student's documented executive functioning needs. Although this Student was eligible for special education, based on an OHI (ADHD),

¹⁵ 34 C.F.R. §§ 304(c)(6) and (c)(7); *see also* 20 U.S.C. § 1414(b)(3).

and classroom teachers continued to express concerns, no goals or skills-based programming were offered.

For a month or so of [redacted] grade and most of the [redacted] grade, Through the IEP developed in May 2022, the Student received supplemental learning support with reading and English instruction during two study hall periods, with the remainder in general education. Overall, the implemented literacy interventions were successful, with the Student achieved year-end grades for the 2022-2023 school year, which ranged from 77 to 95. For the reasons previously determined, the programming regarding literacy needs was appropriate.

The Student entered the [redacted] grade with an IEP developed in May of the preceding school year. The May 2023 IEP implemented the majority of the 2023-2024 school year reflected the same flaw as its predecessors. Educator input confirmed the conclusion reached by the District's ER, that this Student had executive functioning needs that manifested during the school day through struggles with attention, focus, and organization. Despite this input and the Student's correlative identification as a child with OHI (ADHD) and District data, again, no responsive, individualized programming was developed or offered to the Student. The offered SDI was generic (notes, preferential seating, extended time) and devoid of direct instruction or any individualized programming to address the Student's defined executive functioning needs.

The Student's reading needs were met through the May 2023 IEP. The baseline data used to develop IEP goals for reading comprehension and writing were again at grade level indicative of progress made the preceding school year. However, despite years of interventions, the Student's oral reading fluency remained at sixth-grade level, although this Student was now in the eighth grade. Despite this weakness, the Student was functioning

quite strongly within the regular education academic environment, as borne out by earned first quarter grades of "A" and "B"s. Except for programming devoted to executive function needs, the May 2023 IEP was appropriate.

Early in the 2023-2024 school year, the District agreed to fund a private evaluation of the Student. The completed IEE confirmed some of the District's conclusions regarding the Student's needs but also identified a SLD (basic reading skills, reading fluency, and written expression). The evaluation also determined the Student demonstrated many of the characteristics associated with mixed Dyslexia and recommended numerous special education interventions.

In consideration of the completed IEE, in March 2024, the District completed a reevaluation of the Student which the Parent contends failed to incorporate the IEE and failed to identify all of the Student's educational needs. The evidence does not support this contention. The RR included a records review, teacher and Parent input, a classroom observation, and academic updates. It summarized the November IEE and referenced previous evaluations. The RR reached the same conclusion as the IEE that the Student was eligible for special education as a child with (OHI)(ADHD) along with a secondary identification of specific learning disability (SLD) with needs in basic reading skills, fluency and written expression. Overall, the District's March RR was legally sufficient and compliant with the IDEA.

The Parent contended that the programming offered in April, following the RR was inadequate because it failed to acknowledge Student's Dyslexia and provide a specific reading program that offered systematic, explicit, sequential, and cumulative multi-sensory language instruction. Although the IEE concluded the Student could benefit from a specific methodology it qualified the recommendation that the reading program should emphasize balanced literacy (phonological awareness, decoding (phonics), fluency, and

vocabulary). The evidence established that the District's implemented programming already incorporated many of these strategies. The totality of evidence has established that the reading interventions provided by the District were calculated to afford this Student with benefit and in fact, did. Although progress was at times, inconsistent. Progress was made. More importantly, the Student's day-to-day academic functioning within the classroom indicated the ability to access the curriculum. Moreover, parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in educating a student. See *Rowley*, 458 U.S. at 199. Some deference is to be accorded to the IEP developed by the team, and Parents cannot insist upon a specific methodology or program for the education of their child. *A.B. ex rel. D.B. Lawson*, 354 F.3d 315, 325 (4th Cir. 2004); *T.L. v. Lower Merion School District*, 2016 WL 34053; *Kathryn F. v. West Chester Area School District*, 2013 WL 6667773.

Other recommendations to address the needs identified by the IEE were already incorporated into SDI or not representative of an educational need based on the Student's level of success and functioning within the District curriculum. When the April IEP was offered, the Student was performing quite strongly within the eighth-grade regular education curriculum; benchmark testing indicated grade-level competence, and disorganization, distractibility, and inattentiveness had improved. Most of the educator input reflected these achievements; certainly, the grades attained solidified this conclusion. The Parent has failed to establish by a preponderance of evidence that the April 2024 IEP failed to offer the Student a FAPE.

Compensatory Education

For the FAPE denials identified, compensatory education for the Student is the appropriate remedy. It is well settled that compensatory

education is an appropriate remedy when a LEA knows, or should know, that a child's educational program is not appropriate, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Such an award compensates the child for the period of deprivation of special education services, excluding the time reasonably required for the LEA to correct the deficiency. *Id.* In addition to this "hour for hour" approach, some courts have endorsed an approach that awards the "amount of compensatory education reasonably calculated to bring [a student] to the position that [he or she] would have occupied but for the [LEA's] failure to provide a FAPE." *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650- 51 (Pa. Commw. 2006); *see also Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(*quoting Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)(explaining that compensatory education "should aim to place disabled children in the same position that they would have occupied but for the school district's violations of the IDEA.")) Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Because the District failed to provide sufficient programming to address the Student's executive functioning needs, the Student is awarded fifteen minutes a week of compensatory education for every week school was in session from January 8, 2022, the date the Complaint was filed, to April 3, 2024, when appropriate programming was offered. The compensatory education may be any appropriate developmental, remedial, or enriching educational service, product, or device that furthers the Student's identified educational and related services needs as determined by a qualified professional. The compensatory education may not be used for services, products, or devices 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 the District should

appropriately provide through Student's IEPs to assure meaningful educational progress. The compensatory services shall be provided by appropriately qualified professionals selected by the Parent. The cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

Accordingly, except for the FAPE denial discussed above, the District met its obligations under the IDEA and Section 504 to provide FAPE to this Student.

ORDER

AND NOW, this 26th day of September 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The Student is owed fifteen minutes of compensatory education for every week the District was in session from January 8, 2022, to April 3, 2024.

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

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 29032-23-24

September 26, 2024