

*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 .29987-24-25**

**Child's Name:**

G.B.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

**Counsel for Parent:**

Frederick Stanczak, Esq.  
Law Offices  
59 Creek Drive  
Doylestown, PA 18901

**Local Education Agency:**

Souderton Area School District  
760 Lower Road  
Souderton, PA 18964-2311

**Counsel for LEA:**

Jason Fortenberry, Esq.  
Sweet Stevens Katz & Williams  
331 E. Butler Ave.  
New Britain, PA 19001

**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

August 11, 2025

## **INFORMATION AND PROCEDURAL HISTORY**

The Student is a high school-aged resident of the District and recently completed the [redacted] grade.<sup>1</sup> The Student is eligible for special education as a child with other health impairment (OHI) pursuant to the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> and has a disability entitling the Student to protections under Section 504 of the Rehabilitation Act of 1973<sup>3</sup> and the Americans with Disabilities Act (ADA).<sup>4</sup>

In the due process Complaint, the Parent alleged that over multiple school years, the District denied the Student a FAPE by failing to adequately respond to a pattern of peer harassment and bullying, fully implement the IEP, and violated the Parent's right to participate in IEP meetings. The Parent also asserted that the District discriminated against the Student. In addition to compensatory education, the Parent seeks a plan to address the alleged pattern of bullying and harassment experienced by the Student. In response, the District denied the Parent's claims and asserted it has fulfilled its legal obligations to the Student, and no relief is due.

Based on the evidence of record, the claims of the Parents are denied.

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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) and 34 C.F.R. § 300.513(d)(2)

<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).

<sup>3</sup> 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)

<sup>4</sup> 42 U.S.C. §§ 12101-12213.

## **ISSUES<sup>5</sup>**

- 1) Did the District deny the Student a FAPE for failing to provide the Parent with an opportunity to participate in the July 7, 2022, IEP meeting?
- 2) Did the District deny the Student a FAPE during the 2022-2023 and 2023-2024 school years?
- 3) Did the District intentionally discriminate against the Student in violation of Section 504 for its failure to address claims of bullying and harassment?
- 4) If the District denied the Student a FAPE, what remedy is appropriate?

## **FINDINGS OF FACT**

### **2021-2022 School Year- [redacted] Grade**

1. The Student is [redacted] years old and recently completed [redacted] grade in the District. (P-1)

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<sup>5</sup> On the hearing record, counsel agreed to the issues for resolution. (N.T. 10-11)

2. The Student is a [redacted]. Since the incident, the Student has experienced post-traumatic stress disorder (PTSD), severe depression, and anxiety, which have manifested in self-harming behaviors.<sup>6</sup> (P-1)
3. In March 2022, the Student enrolled in a partial hospitalization program and later transitioned to intensive outpatient treatment. (P-1; N.T. 306)
4. On April 4, 2022, the District issued a Permission to Evaluate (PTE) for the Student. (P-2)
5. That same month, the Student began receiving weekly counseling services through a District-contracted mental health provider. The sessions addressed transition from partial hospitalization, self-harm ideation, coping skills, and impulse control. (P-1; N.T. 383)
6. Beginning May 16, 2022, the Student began receiving private trauma-focused therapy. The private therapist supported the Student in processing the alleged [redacted], navigating peer challenges in school, and managing symptoms of depression, anxiety, and PTSD. (N.T. 459, 484, 661–662)
7. After disclosing mental health challenges to a peer, the Student learned that the peer had shared the private information with other students. The disclosure increased the Student’s emotional distress. (N.T. 453–454, 665, 677, 717)
8. On June 7, 2022, the District completed an Evaluation Report (ER) for the Student. The ER incorporated input from the Parent and school staff and included assessments of academic and social-emotional functioning. (P-1; S-2)

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<sup>6</sup> Child Protective Services investigated the allegation and determined it to be unfounded. No criminal charges were filed. (N.T. 466–468, 712)

9. The Parent reported that the Student had been diagnosed with anxiety and depression, took prescribed medication, received intensive outpatient care following discharge from partial hospitalization, and participated in counseling both privately and through the school. The Parent disputed ER statements characterizing the Student as deceptive. (P-1; N.T. 193–195, 1148)
10. The ER identified clinically significant emotional concerns, particularly in the home setting. The evaluation team considered, but ultimately ruled out, eligibility under the classification of emotional disturbance. The team concluded that the Student’s trauma-related emotional difficulties did not demonstrate the duration or consistency required for that eligibility category. (S-2)
11. Based on the Student’s diagnoses of major depressive disorder and generalized anxiety disorder, teacher and parent input, standardized assessments, and school-based concerns, the District determined the Student was eligible for special education under the classification of Other Health Impairment (OHI). (P-1)
12. On June 30, 2022, the District emailed the Parent to schedule an IEP meeting for either July 6 or July 7. On July 2, the Parent responded that they were out of state caring for a sick parent and requested that the meeting occur after July 18. (P-3, p. 2)
13. Despite the Parent’s request, the District convened the IEP team without the Parent. On July 15, 2022, the District emailed the Parent a draft IEP and a Notice of Recommended Educational Placement (NOREP). (P-3, p. 5; N.T. 235–236)
14. On August 1, 2022, the Parent emailed the District inquiring whether an IEP had been developed. On August 10, the Parent requested the draft IEP and NOREP and noted that they had not consented to a meeting without their participation. The special

education supervisor acknowledged that staff had overlooked the Parent's July email and confirmed that the IEP and NOREP would be forwarded. (P-3, pp. 4-5; N.T. 184)

15. On or about August 23, 2022, the IEP team met to review the ER. (N.T. 188)

## **2022-2023 School Year-[redacted] Grade**

16. During the 2022-2023 school year, the Student attended [redacted] grade in the District. (P-5)
17. On August 30, 2022, the District invited the Parent to an IEP meeting scheduled for September 1, 2022. The Parent confirmed their intention to attend, requested procedural safeguards, and expressed concern that the team had previously met without them. (P-4, p. 3)
18. On September 1, 2022, the District convened an appropriately constituted IEP team meeting with the Parent in attendance. The IEP team developed goals addressing emotional regulation and peer interaction. Specially designed instruction (SDI) included access to the emotional support room, check-ins and executive functioning support, outside counseling during the first and last weeks of school, extended time on assignments, and classroom and transportation seating away from peers identified as problematic. (P-6, pp. 24-27; P-22; S-3; N.T. 239-240)
19. The IEP team also included individual counseling for 20 minutes twice a month, from a District contractor. (P-6, pp. 24-27; P-22; S-3)
20. After the meeting, the Parent raised concerns regarding bullying, harassment, and peer proximity on the bus and in classrooms. The District responded to each concern. (P-6, pp. 18-19; S-3; S-4, pp. 1-2; S-7; N.T. 206-207, 242-256)

21. On September 6, 2022, the Parent contacted the District about a disciplinary matter related to a September 1 incident in which a peer [redacted] at the Student, prompting the Student to [redacted] the peer. The District addressed the incident through a restorative communication (RC) session, which staff reported as successful. (P-12, p. 20; P-31, p. 9; N.T. 324–326)
22. In September 2022, the District revised the Student’s IEP in response to the Parent’s requests. Staff updated check-in procedures, reworded SDI, reinforced access to the emotional support room, and adjusted seating arrangements away from identified peers. (P-6, pp. 26–27; P-31; S-4; S-6, pp. 1, 6; N.T. 209, 257, 260–265)
23. On September 30, 2022, the Parent signed the Notice of Recommended Educational Placement (NOREP). The Student’s emotional support teacher and case manager implemented the IEP. (P-6, p. 34; N.T. 42, 47)
24. In October 2022, the Parent reported multiple instances of peer harassment, including whispering, snickering, gagging noises, eye-rolling, [redacted], negative facial expressions, and shoulder shoving. After the [redacted] incident, the District facilitated a restorative conversation where involved students demonstrated civility and maturity. (P-31, pp. 44, 48–49, 68; S-8, pp. 5–6; N.T. 94–96, 350, 353, 1172–1174)
25. On October 13, 2022, the Parent notified the District that a peer roughly shouldered the Student and called the Student a name. The Parent contacted the local police, who determined that the incident did not constitute a crime. (P-31, pp. 48–49)
26. On October 24, 2022, the Student submitted a written statement describing an incident where a former friend made a “dramatic sour

expression” in the cafeteria. The Student also reported snickering and similar expressions. (P-10, pp. 1–2)

27. After investigating the incidents, the District concluded that the reported behavior did not constitute bullying under its policy. (N.T. 97)
28. On November 3, 2022, the IEP team reconvened. The team added baseline data to the emotional regulation goal and removed the peer interaction goal. The team added SDI, including weekly check-ins with the case manager or counselor to support self-advocacy and coping strategies, extended time through the marking period for assessments and assignments, and email response guidelines. (P-23, p. 29; S-9; S-14, pp. 30–31)
29. After the meeting, the Parent contacted the District to report continued harassment. The Parent requested apology letters from peers, mental health reading assignments, full credit for two incomplete assignments, and monthly meetings involving the Student’s private therapists. (P-31, pp. 82–83; S-10; N.T. 148)
30. On November 16, 2022, the Parent submitted IEP revision suggestions. The District incorporated those changes. Although staff had previously completed trauma-informed training, the IEP team added further training requirements. (S-12, p. 30; N.T. 272, 289)
31. In November, the Student and Parent reported additional incidents, including glaring, staring, and rumors about the Student’s mental health. A peer comforted the Student after one such incident before the outside counselor met with the Student. (P-7; P-10, pp. 3–6; S-11, p. 1; N.T. 115, 407, 521, 546)
32. A District police officer reviewed surveillance video from one incident and found no evidence of concerning behavior. (P-10, p. 6; N.T. 546)



33. On December 1, 2022, the Parent reported a bullying incident on the first day back from Thanksgiving break and requested early pickup for the Student. (P-31, p. 101)
34. On December 7, 2022, the Parent approved the November IEP. That same day, the Parent reported another lunchroom incident. The District reviewed surveillance footage and did not find any misconduct. (S-13, pp. 13–14, 43)
35. On December 22, 2022, the Parent raised concerns about the Student being required to take a test while visibly distressed. The special education teacher responded that the Student’s assignments would be exempt from grading until further notice. (P-31, pp. 117–118; N.T. 61–63)
36. On January 1, 2023, the Parent informed the District that the Student had been admitted to an intensive outpatient program (IOP) for depression and anxiety following reports of suicidal ideation and self-harm. (P-32, p. 1; P-65, p. 1; S-15, p. 4; N.T. 396, 464, 684, 713)
37. The Student attended IOP from [redacted], 2023, and then transitioned to a partial hospitalization program (PHP). The District excused all absences. The hospitalization stemmed from trauma symptoms and distress over police inaction following a second reported [redacted] incident. (S-16; S-36; N.T. 396, 683–684, 710–713, 809–810)
38. After the Student’s discharge, the District offered a reentry meeting. Although the District did not receive formal discharge documentation, staff resumed and increased counseling services as needed. (P-32; S-16, pp. 5–6; N.T. 343–344, 397, 470, 473, 811)
39. In April and May 2023, the Student reported [redacted]. The Student’s trauma therapist testified that this triggered prior

[redacted]trauma. The District addressed boundaries, but the Student declined a peer conference. (P-32, pp. 65, 76; P-41; N.T. 72–74, 415, 485)

40. On May 10, 2023, the IEP team met to revise programming for [redacted] grade. The team developed new goals related to emotional dysregulation (baseline: 80%) and emotion identification (baseline: 43%). The updated SDI included executive functioning supports, contracted counseling (20 minutes, 11 times per year), weekly check-ins, extended time for assignments and assessments, and email response times within five days. The team also incorporated parent feedback and corrected grades. (P-25, p. 13, S-23; N.T. 130–137, 277–280)
41. During the May meeting, the Parent raised concerns about bullying and asked the District to avoid scheduling certain peers in the Student’s classes. (N.T. 585)
42. The Parent subsequently expressed additional concerns regarding IEP goals, SDI implementation, and grade accuracy. The District responded by making further revisions. (P-25, p. 13; P-32, pp. 89–91; S-19, pp. 1, 31; S-22, p. 1; N.T. 136–137, 281)
43. Starting in November 2022, the District held monthly meetings with the Parent, the Student’s trauma therapist, the special education teacher, school principal, general education teacher, contracted mental health counselor, school counselor, and special education supervisor. These meetings focused on progress and ongoing concerns. (S-10; N.T. 107–110, 456–457, 702, 1252–1253)
44. The trauma therapist provided clinical services throughout the school year, attended the November and May IEP meetings, and actively participated in monthly team meetings. The therapist advised

staff on emotional regulation, coping skills, and trauma responses.  
(N.T. 679, 706–707, 727)

45. The trauma therapist believed that the Student experienced bullying throughout the school year, based on a broader definition than the District's. (N.T. 663–664, 667, 697, 723)
46. Despite 43 excused absences and 7 tardies, the Student earned four A's and three B's and participated in [athletics]. The Student missed 20 school days due to mental health placement. (P-34; S-24; N.T. 68–69, 141, 144, 179, 419, 491)
47. The special education teacher implemented the IEP by offering sensory tools, self-advocacy supports, and instruction in executive functioning and emotional regulation. The Student frequently used the emotional support room and viewed it as a safe space. (N.T. 53, 95–96, 159–160, 170, 173–174)
48. The special education teacher adjusted grades for late or redone assignments. (N.T. 75–76)
49. The Student met weekly with the school-based outside counselor to address anxiety, depression, trauma, and peer conflict. (S-23, p. 10; N.T. 399, 408)
50. The counselor observed symptoms consistent with trauma, including heightened emotionality and anxiety, but could not conclude that peer interactions amounted to bullying. (N.T. 392–393, 399, 408, 425, 482, 497)
51. The Student grieved the loss of a former friendship but did not express distress over makeup work. (N.T. 410–411, 420, 479)
52. District staff acknowledged peer conflict and investigated reported incidents, but generally characterized the behaviors (e.g., whispering, stares, snickering) as typical of middle school students. (N.T. 221, 348–349, 549, 723)

53. Although peer conflict exacerbated the Student's PTSD and depression and affected feelings of safety, the Student made progress by the end of the year. The Student reported feeling safe and happy, formed new friendships, and demonstrated stronger self-advocacy. (N.T. 452–453, 682, 718)
54. On June 12, 2023, the Parent approved the revised May IEP. (S-23, pp. 29–32; N.T. 139)
55. On August 6, 2023, the Parent submitted a list of students to avoid scheduling. Before the 2023–2024 school year began, the District adjusted the Student's schedule accordingly. (P-41, pp. 1–2; N.T. 589, 590, 629–632, 735, 758, 793)

### **2023-2024 School Year-[redacted] Grade**

56. During the 2023–2024 school year, the Student attended [redacted] grade in the District under an IEP developed in May 2023. (S-19; (N.T. 1151–1152, 664–665)
57. On October 18, 2023, the Parent informed the Student's case manager and guidance counselor of medication changes that were affecting the Student's functioning. (P-41, p. 3)
58. On November 1, 2023, the Parent emailed school staff stating that the Student was struggling due to medication changes and would be absent. That same day, the Parent reported receiving altered social media screenshots that had been sent to the Student. The images depicted blurred student faces and offensive gestures. The Parent identified the students involved and asked that they not be scheduled with the Student. (P-41, pp. 13–15, 19; N.T. 802–803, 963)
59. On November 2, 2023, the Student, Parent, assistant principal, and guidance counselor met to discuss the photo incident. The District conducted an investigation but could not confirm student identities due

to the edited nature of the images. No disciplinary action resulted. This incident was the only report of alleged bullying made by the Parent or Student during the school year. (P-41, pp. 17–18; N.T. 934–938, 946, 951, 959, 963)

60. The Student’s principal, guidance counselor, and special education supervisor manually adjusted the Student’s schedule to avoid placing [the student] with students involved in the reported incident, including one student added after November. (N.T. 589–590, 757–758)
61. By November 2023, staff observed the deterioration of the Student’s mental health and increased absence. Staff associated the change with the end of the sports season and the medication transition. In response, the District added an emotional support class as a soft-landing space and created a plan to assist the Student with declining performance in math. (S-26, p. 6; N.T. 799–800, 804, 849–850, 875–878, 882, 1090)
62. On December 5, 2023, the Parent asked staff to reinforce organizational strategies and math accommodations. The special education teacher responded with actionable suggestions, which staff implemented. (S-27, pp. 1–2)
63. In mid-December 2023, the team convened to address the Student’s academic regression, increased absences, and emotional distress. The team circulated a math intervention plan. (P-36, p. 36; S-27, pp. 4–6; N.T. 886–888)
64. On December 16, 2023, the Parent reported that the Student was engaging in self-harm. The school team acknowledged the seriousness of the situation. (P-15)

65. In January 2024, the trauma therapist and school personnel met to discuss the Student's deteriorating mental health and the need for a higher level of clinical care. (N.T. 802)
66. On February 14, 2024, the Parent notified the District that they had discovered [redacted] written by the Student. District staff supervised the Student until the Parent arrived and provided the family with mental health resources, including hospital contacts and mobile crisis services. (S-36, p. 4; N.T. 974–976)
67. The Student received [redacted] from February 15 through February 21, 2024. (S-28, p. 13; N.T. 863, 929, 1294–1295)
68. On February 22, 2024, following the Student's discharge, the District held a reentry meeting. The facility did not provide discharge documentation or treatment recommendations, so the District continued all existing supports. (S-29, pp. 17–19; N.T. 816, 890–891)
69. The District convened three multidisciplinary team meetings in November, January, and March with the Parent and team members to review the Student's emotional needs, IEP implementation, and classroom accommodations. (N.T. 708, 762, 798)
70. The Student received support from the emotional support teacher, special education teacher, guidance counselor, and the District-contracted mental health counselor. The Student regularly used the emotional support room for self-regulation, particularly in the second half of the year. (P-27; N.T. 930–931, 995)
71. Despite 29 absences and 22 tardies, the Student completed [redacted] grade with a 3.6 GPA, earning seven A's and two Bs. The Student participated in both [athletics], which motivated attendance. (S-35, S-36; N.T. 719, 807, 1302–1303)
72. On March 12, 2024, the Parent alleged IEP violations related to grading practices and the absence of a post-hospitalization IEP

meeting. The District held a review meeting to evaluate IEP implementation. Attendees included the learning support teacher, trauma therapist, general education teachers, and administrators. (P-41, p. 150; S-29, pp. 4–5; N.T. 637, 815, 865, 898, 904, 947–948, 984–985, 1014)

73. On May 2, 2024, the Parent contacted the District again regarding concerns with accommodations, assignment posting, communication, and general education teacher participation in IEP meetings. The District responded to each concern. (P-27, pp. 14–15; N.T. 646–647)
74. On May 4, 2024, the IEP team reconvened to revise the Student’s programming. The new IEP included goals for executive functioning, self-advocacy, and coping strategies. SDI provided access to the emotional support room for breaks and assignments, executive functioning supports (including preferred seating, prompting, check-ins, extended time), teacher email response timelines, and therapeutic counseling through the District’s contractor. The team also agreed that zeros could temporarily be entered for missing assignments, pending completion. (P-27, pp. 20–24)
75. On May 17, 2024, the Parent approved the proposed IEP by signing the NOREP. (P-27, p. 34)
76. During [redacted] grade, the assistant principal taught the Student’s 20-minute advisory class each Monday. The assistant principal did not observe any inappropriate peer interactions involving the Student during that time. (N.T. 956–957)
77. The Student received consistent support from the IEP case manager, guidance counselor, and connections teacher, along with therapeutic services from the District’s contracted counselor. (P-27; N.T. 930–931, 995)

78. In Algebra I, the Student received accommodations including preferential seating, study guides, chunking, and extended time. The Algebra teacher and case manager communicated regularly. The teacher did not observe peer conflict involving the Student. (N.T. 1074, 1077, 1080, 1092, 1100, 1107)
79. In English class, the Student remained engaged and completed assignments. Early in the school year, the teacher mistakenly deducted points from an assignment before the grading period ended. The error was corrected, and the IEP was implemented appropriately. (N.T. 1005, 1011, 1031–1035, 1041, 1056)
80. For the 2023–2024 school year, the Student’s final grades ranged from A to B-, with an overall GPA of 3.6. The Student accrued 29 absences and 22 tardies and participated in [athletics][. (S-35, S-36; N.T. 719, 807)
81. Throughout the school year, District staff implemented the IEP with consistency. The Student showed academic growth and resilience despite fluctuations in mental health. Outside providers encouraged the District to enhance trauma-informed practices. (N.T. 836–837, 891–892, 937, 1005–1051)
82. The District maintains an anti-bullying policy prohibiting electronic, verbal, written, or physical acts that are intentional, severe, persistent, or pervasive and that occur in or outside of school. The policy applies when such conduct substantially interferes with a student’s education, creates a threatening environment, or disrupts school operations. (P-37)
83. On July 5, 2024, the Parent filed a due process complaint. (S-1)



## **DISCUSSION AND APPLICATION OF LAW**

### **General Legal Principles**

#### **The Burden of Proof**

The burden of proof consists of two elements: the burden of production and persuasion. In special education due process hearings, 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). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3d Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the Parent is the party seeking relief and bears the burden of proof.

#### **Witness Credibility**

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at \*28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *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); *Rylan M. v. Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

In order to afford this Parent due process, this hearing considered the testimony of more than a dozen witnesses over eight hearing sessions. In making findings in this matter, the undersigned considered the credibility and reliability of all witnesses. The testimony of the Parent was generally credible with respect to her observations of the Student's emotional state and distress. The Parent consistently reported incidents that caused distress and was a vigorous advocate for the Student. While some reports were not substantiated by surveillance or third-party review, there is no evidence that the Parent fabricated or exaggerated concerns.

The testimony of the Student's private trauma therapist was highly credible and persuasive. The therapist offered detailed and consistent insight into the Student's trauma history, emotional needs, and response to peer interactions. Her participation in IEP meetings and familiarity with school dynamics reinforced the reliability of her observations. The therapist's opinion that certain peer behaviors were triggering and that the Student required trauma-informed supports was supported by the Student's clinical history and reaction patterns.

The District staff, including the emotional support teacher, special education teacher, school counselor, and administrators, testified credibly regarding the services offered and the actions taken in response to reported incidents. Their testimony was consistent with documentation in the record, including IEPs, NOREPs, correspondence, and meeting notes. District staff acknowledged the seriousness of the Student's emotional needs and testified to repeated attempts to investigate incidents, provide support, and revise the IEP.

The District's outside counselor, who met with the Student weekly, also provided credible testimony. While the counselor noted heightened emotionality and trauma symptoms, she was unable to confirm that peer interactions rose to the level of bullying. This nuanced distinction did not undermine her credibility but reflected the difficulty of objectively characterizing interpersonal dynamics in a school setting.

Overall, the witnesses were generally credible, and the undersigned finds no indication of willful misrepresentation. Where factual discrepancies exist, they are more likely attributable to perception differences and the limitations of available evidence than to any intent to mislead.

### **General IDEA Principles: Substantive FAPE**

The IDEA requires the states to provide a free appropriate public education to all students who qualify for special education services. 20 U.S.C. §1412. Local education agencies, including school districts, meet the obligation of providing a FAPE to eligible students through development and implementation of IEPs, which must be "reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235, 240 (3d Cir. 2009) (citations omitted). Substantively, the IEP must be responsive to each child's individual educational needs. 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324.

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew* case was the Court's first consideration of the substantive FAPE standard since *Board of Educ. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034 (1982).

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id* at 3015. The Third Circuit consistently interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew* decision is no different.

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.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than “trivial” or “de minimis” benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

### **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. This critical

concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). 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); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010).

## **Section 504 Principles**

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

The obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). The two statutes do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions on Section 504 claims. *Le Pape, supra*, 103 F.4th at 979. "The statute's administrative exhaustion requirement applies only to suits that 'see[k] relief ... also available under' IDEA." *Luna Perez v. Sturgis Public Schools*, 598 U.S. 142, 147, 143 S. Ct. 859, 864, 215 L. Ed. 2d 95 (2023). " "Once he has exhausted those claims in an IDEA hearing, a plaintiff may pursue them as he otherwise would in a district court." *Le Pape, supra*, 103 F.4th at 979.

Where a party raising claims under these statutes based on the same facts does not assert any legal distinction among them as applied to the case, the differences may not need to be separately addressed. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). In this case, to the extent applicable, the IDEA and Section 504 claims based on the same set of facts shall be considered and discussed together.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Parent's Claims**

This matter concerns whether the District denied the Student a Free Appropriate Public Education (FAPE) and engaged in unlawful discrimination during the 2022–2023 and 2023–2024 school years. Specifically, the case involves the District's alleged failure to adequately address reports of peer bullying and harassment, to implement the Student's Individualized Education Programs (IEPs) with fidelity, and to allow the Parent to meaningfully participate in IEP meetings.

The Student is a [redacted] grade. These traumatic events prompted swift intervention by the Parent, who provided consistent advocacy that led to the Student receiving inpatient mental health treatment, followed by ongoing specialized outpatient clinical services. In response, the District promptly evaluated the Student. Based on diagnoses of depression and anxiety, along with other contributing factors, the school team—working in collaboration with the Parent—determined that the Student was eligible for special education under the classification of Other Health Impairment (OHI). Following the disclosure of private mental health information to peers, the Student began to feel ostracized and unsupported. The Student subsequently experienced repeated negative peer interactions, which were reported to the District as bullying and harassment.

Cruelty to others is indefensible. However, a determination whether negative peer interactions directed toward a disabled Student rises to the level of a FAPE denial is guided by established legal principles. Bullying is characterized by aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors that include bullying through electronic technology. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013)

Under the IDEA, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. *See also, Dear Colleague Letter: Responding to Bullying of Students with Disabilities*, 64 IDELR 115 (OCR 2014) (stating that the obligation to respond to bullying and ensure the student continues to receive FAPE exists regardless of whether the bullying was based on a disability). Logically, if a student is receiving meaningful educational benefit despite bullying, then the student is receiving FAPE. *See also, e.g., T.B. v. Waynesboro Area Sch. Dist.*, 56 IDELR 67 (M.D. Pa. 2011) In *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194 (3d Cir. 2004), the Third Circuit clarified that persistent peer harassment, when inadequately addressed by the District and when it deprives the student of access to education, may amount to a denial of FAPE.

On the other hand, to establish disability-based harassment under Section 504, the bullying must be based on disability, sufficiently serious to create a hostile environment; with knowledge of school officials who fail to

respond appropriately. Importantly, once a school has notice of possible disability-based harassment, it must take prompt and effective steps to determine what occurred and to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from recurring and interfering with the provision of FAPE. Aside from the obligation to respond to disability-based harassment, districts have a separate duty to ensure that students who are bullied continue to receive FAPE. *Dear Colleague Letter: Responding to Bullying of Students With Disabilities*, 64 IDELR 115 (OCR 2014); and *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013), OCR Complaint No. 03-22-1240 (September 21, 2023).

To prevail on a claim of failure to implement an IEP, a parent must show that the school district failed to implement substantial or material provisions contained in the IEP. *Abigail P by Sarah F v. Old Forge Sch Dist*, 105 F.4th 57, 124 LRP 21769 (3d Cir 2024); *MP by VC v. Parkland School District*, 79 IDELR 126 (E.D. Penna. 2021); see, *Van Duyn v. Baker School District*, 481 F 3d 770, 47 IDELR 182 (9th Cir. 2007)

### **2021-2022 School Year**

The first issue that must be addressed concerns the attempted development of an IEP following completion of the June ER. On July 7, 2022, the IEP convened despite the District having notice of the Parent's unavailability. The meeting involved two District staff members and resulted in the creation of a draft IEP that was later sent to the Parent. District personnel acknowledged that it was not their usual or preferred practice to hold an IEP meeting without the Parent, and the supervising special education administrator testified that parent involvement is essential.



The procedural violation is established and undisputed: the District failed to ensure meaningful parental participation in the July 2022 IEP meeting in contravention of 34 C.F.R. § 300.322(a)–(b). However, not every procedural violation constitutes a denial of FAPE. See 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010). Here, the July 7 IEP was not implemented. District staff and the case manager testified that no services were delivered based on that document, and the record confirms that the IEP process was effectively restarted in late August when a compliant IEP meeting was scheduled. The Parent was provided a draft in advance, fully participated in the September 1, 2022, IEP meeting, submitted multiple rounds of feedback, and requested edits were incorporated. The Parent approved the IEP on September 30, 2022. The Parent had meaningful participation in the development and approval of the operative IEP. Because the July 7 IEP was never implemented and was replaced before the start of the 2022–2023 school year, there was no deprivation of educational benefit attributable to the July 7 meeting.

In this case, the procedural violation was cured before any services were delivered under the IEP. The operative IEP for the school year reflected Parent input, and the delay in its implementation was due to the Parent’s approval date. Accordingly, there was no denial of FAPE on this basis.

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

The next issue concerns the reporting of bullying and harassment during [redacted] grade and the District’s response. Unfortunately, this Student experienced a series of negative peer interactions that could only be characterized as bullying and harassment. Despite this determination, the law does not permit resolution of the Parent’s claims in their favor unless specific requirements are satisfied. Based on evidence of this hearing record,

the Parent has not established by a preponderance of evidence that the District denied the Student a FAPE.

The Student entered the 2022–2023 school year as an [redacted] grader with identified disabilities that included (OHI) due to major depressive disorder, generalized anxiety disorder, and PTSD stemming from trauma. By late September, an IEP was formalized, and special education programming was implemented with an array of supports designed to address the Student’s emotional regulation and social challenges. Throughout the fall and winter, the Student and Parent reported a series of negative peer interactions that included whispering, gagging noises, snickering, sour facial expressions, the [redacted], and an incident of shoulder shoving.

The District’s response to the allegations ensured the Student received FAPE. It investigated the allegations, held a restorative conversation, collaborated with the Student’s trauma therapist during monthly team meetings, implemented her suggestions and participated in the November revision of the Student’s IEP. Although the District ultimately concluded the reported behaviors did not constitute bullying under its policy, the evidence has established that its implemented preventive and restorative interventions through adjustments to programming, in response to the Parent’s and Student’s concerns were appropriate.

Unfortunately, in January 2023, the Student entered an intensive outpatient program (IOP) and then a partial hospitalization program (PHP) for symptoms related to depression, anxiety, and suicidal ideation. The District excused all treatment-related absences and offered to hold a reentry meeting upon the Student’s discharge. Although formal discharge documentation was not provided, the District resumed and increased counseling supports once the Student returned to school. Although the

hearing record was extensive, again the Parent failed to establish a connection between this needed treatment and the events experienced during the school day.

In April and May 2023, the Student reported [redacted]. The District responded, addressed boundaries with both parties but the Student declined a peer conference. In May 2023, the IEP was revised again to include new goals and specially designed instruction (SDI), incorporating Parent input. The Parent later approved the revised IEP.

The IEP in effect during the 2022–2023 school year addressed the Student’s needs related to depression, anxiety, and social interaction. It offered appropriate goals and SDI, which were implemented with fidelity. Importantly, in response to the Parent’s concerns, the District took proactive steps to prevent recurrence of negative interactions, including separating the Student from specific peers identified as problematic. Restorative conversations were facilitated, and the IEP was revised in both November 2022 and May 2023, incorporating input from the Student’s therapist, the Parent, and the school team. Monthly team meetings involving the case manager, trauma therapist, Parent, and principal were held to monitor the Student’s progress and adjust supports as needed.

Although peer conflict and social discomfort were present, there is insufficient evidence that those unfortunate interactions denied the Student access to educational services or that the Student was targeted based on disability status. Rather, the record demonstrates that the Student continued to access the curriculum, benefit from services, and made educational and functional progress.

The Student concluded the academic year with high academic performance and earned multiple A’s and B’s, participation in sports, and

reported improved emotional well-being. Sadly, although this Student experienced considerable trauma related emotional distress and some peer-related incidents consistent with bullying, the evidence does not support a finding that the District's actions denied the Student a FAPE. On the contrary, this detailed evidentiary record indicated the District investigated incidents, implemented responsive strategies, and collaborated with the Parent and outside providers. The District provided a responsive and evolving program that addressed the Student's emotional and educational needs through appropriate support, reasonable responses, and consistent engagement with both the Parent and outside providers. Based on the totality of the evidence, including credible testimony, documented implementation of the IEP, and observable student progress, I conclude that the District did not deny the Student a free appropriate public education during the 2022–2023 school year under the IDEA or Section 504.

### **2023-2024 School Year**

The Student entered the [redacted] grade with the IEP in place developed the preceding May and continued to experience mental health struggles similar to the previous school year. The claims for this school year appear to emanate primarily from a November 2023 incident involving altered social media images and allegations that the District failed to meet the Student's needs. Based on the evidence of this record, the Parent has failed to establish by a preponderance of evidence that the District denied the Student a FAPE during the 2023-2024 school year with respect to the claims made.

In early November, the Parent contacted school staff about the receipt of altered social media screenshots that depicted blurred student faces and

offensive gestures. Following a meeting, the District conducted an investigation but could not confirm the identities of the students involved due to the edited nature of the images. Although no discipline resulted, the District manually adjusted the Student's schedule to ensure separation from peers named by the Parent. No other credible incidents of peer conflict or harassment were reported to the District for the remainder of the school year. Furthermore, staff, including the assistant principal and teachers, testified that they observed no inappropriate interactions involving the Student.

The Parent has also failed to establish that the District failed to implement significant parts of the Student's IEP related to grading, lack of a post-hospitalization IEP meeting, and accommodation delivery. The record demonstrates that throughout the year, the District implemented IEP supports with fidelity, including access to extended time, chunked assignments, and to the emotional support room. Teachers collaborated with the case manager, responded to the Parent's input, and corrected errors (grading mistake in English). The Student regularly accessed emotional support services and self-regulated appropriately. Moreover, the District convened responsive meetings, reviewed concerns, and ultimately revised the Student's IEP, as needed.

Although the Parent's concerns were sincere and the Student's mental health warranted close monitoring, the District responded reasonably and took measures to address safety. The evidence does not support a finding that the District's actions or alleged inactions denied the Student a FAPE as contemplated in *Shore Regional*. Moreover, despite the well-documented mental health challenges, including inpatient treatment, multiple absences, and trauma-related needs, the Student engaged meaningfully in instruction, participated in extracurriculars, and made academic progress earning final

grades of mostly A's and B's. These outcomes weigh heavily against a finding of FAPE denial.

Although the Parent and clinical providers advocated for deeper trauma-informed training and more comprehensive responses to emotional distress, these suggestions, while potentially beneficial, do not render the District's existing programming inappropriate under the IDEA. The District continuously monitored the Student's needs and updated supports when necessary. Furthermore, the District appropriately investigated and addressed the reported peer harassment incident and implemented the Student's IEP in a manner that enabled meaningful educational progress. Based on the totality of the evidence, including credible testimony, documented implementation of the IEP, and observable student progress, I conclude that the District did not deny the Student a free appropriate public education during the 2023–2024 school year under the IDEA or Section 504. Undoubtedly, this Student will require a great deal of emotional support in order to transition successfully through high school. Although no FAPE denial was established, I will Order the team to convene to develop strategies to promote ongoing supports for emotional regulation, anxiety, and trauma-related needs.

### **Section 504 Deliberate Indifference**

In addition to claims under the IDEA, the Parent asserts that the District intentionally discriminated against the in violation of § 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). To prevail on a claim of intentional discrimination under Section 504, the Third Circuit requires proof that the student:

1. Has a disability,
2. Is otherwise qualified to participate in the school program,

3. Was denied the benefits of the program or discriminated against, and
4. That such denial or discrimination occurred because of the disability.

*See S.H. v. Lower Merion Sch. Dist.*, 729 F.3d 248, 260–61 (3d Cir. 2013).

To establish intentional discrimination, a plaintiff must show more than negligence or a failure to provide a FAPE; rather, there must be evidence of deliberate indifference, which requires that the District had actual knowledge of the risk of harm to the student, and it failed to act despite that knowledge. *See S.H.*, 729 F.3d at 263. Deliberate indifference is “a high standard” and is not met by showing a disagreement with educational decisions, delays in implementing services, or negligence. *S.H.*, 729 F.3d at 263.

There is no dispute that the Student had a qualifying disability (PTSD, anxiety, and depression) and was otherwise eligible for and participating in the District’s educational programs, was evaluated under IDEA, found eligible under the classification of OHI, and received an IEP with related services during the relevant time period. To demonstrate intentional discrimination under *S.H.*, the Parent must show that the District’s actions—or inactions—were taken *because* of the Student’s disability, or that the District was deliberately indifferent. Here, the evidence reflects that the District did not entirely fail to act. It implemented counseling services, modified schedules, hosted restorative conferences, and met regularly with the Parent. These steps were arguably weigh against a finding of deliberate indifference under the high standard of *S.H.* There is no evidence that District staff were motivated by animus, discriminatory intent, or a desire to marginalize the Student due to disability. The record lacks evidence of deliberate indifference.





## **ORDER**

**AND NOW**, this 11th day of August 2025, after careful consideration of the record and applicable law, it is hereby ORDERED as follows:

1. The District did not deny the Student a free, appropriate public education (FAPE) under the IDEA or Section 504 during the 2021–2022, 2022–2023, or 2023–2024 school years.
2. Within twenty (20) school days of this Order, the District shall convene the IEP team, with Parent participation, to address the Student’s transition to [redacted] grade. The team shall consider:
  - a. Ongoing supports for emotional regulation, anxiety, and trauma-related needs.
  - b. Proactive peer relationship and safety strategies.
  - c. Academic access during any treatment-related absences.
  - d. Coordination with outside mental health providers.
  - e. Review of trauma-informed practices and any additional staff development needs.

It is FURTHER ORDERED that any claims not specifically addressed herein are denied and dismissed.

/s/ Joy Waters Fleming, Esquire

*Joy Waters Fleming*

HEARING OFFICER

ODR File No. 29987-24-25

August 11, 2025