

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. 32718-25-26

Child's Name:

B.G.

Date of Birth:

[redacted]

Parents:

[redacted]

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

April 24, 2026

INFORMATION AND PROCEDURAL HISTORY

The Student¹ is currently [redacted] years of age and enrolled in a District elementary school. The Parents filed a due process complaint under Section 504 of the Rehabilitation Act of 1973, alleging that the District denied the Student, a child with an [food] allergy, a free appropriate public education (FAPE) and that the proposed February 26, 2026, 504 plan was legally insufficient.² In response, the District contends that its actions and proposed plan are appropriate and no FAPE denial occurred.

After considering all the evidence, the Parents' claims are denied.

ISSUES

1. Has the Student received FAPE during the relevant time period?
2. Is the February 25, 2026, draft 504 Plan appropriate as written?
3. If the Student was denied FAPE, what remedy, if any, is appropriate?

FINDINGS OF FACT

1. The Student is currently [redacted] years old and enrolled in a District [redacted]. The Student has a physician-documented [food] allergy

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), 34 C.F.R. § 300.513(d)(2), and 15 Pa. Code § 15.8.

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

that can result in severe, life-threatening reactions, including anaphylaxis. The allergy includes risk from ingestion and contact exposure and can affect the respiratory, skin, gastrointestinal, and cardiovascular systems. (J-3, J-5; N.T. 32)

2. In 2021, on the Student's [redacted] birthday, the Student experienced a severe allergic reaction. A second severe reaction occurred in 2024 during a medically supervised [food] challenge. (J-3)
3. Before kindergarten, the Student attended preschool where accommodations included handwashing, cleaning surfaces, ingredient transparency, and provision of safe alternative foods. (N.T. 33)
4. On May 30, 2025, the Parents contacted the District, advised of the Student's food allergy, and requested a Section 504 plan. The District's school nurse advised that individual health plans (IHPs) were created based on a student's allergy action plan, advised that staff would be notified, and described the wiping-down procedures for the lunchroom and classroom tables. The nurse provided the Parents with information to request modified school lunches. (P-14, pp. 2-4; S-11, pp. 1-7; N.T. 33, 39, 149-50)
5. Before [redacted] started, the Parents advised the teacher of the Student's [food] allergy and requested precautions such as handwashing, ingredient transparency, and avoidance of unapproved foods. The teacher indicated that food exposure would be limited to

specific school events and that seating adjustments could be made during lunch. (P-25, pp. 2-3; S-11, pp. 18-20; N.T. 107)

6. Before [redacted], the Parents provided the Student's allergy action plan to the District. The school nurse communicated the Student's allergy information and emergency protocols to staff, including teachers and cafeteria personnel. The preprinted allergy action plan described mild and severe allergy reactions and the proper administration of treatment medications. (J-2; S-11, pp. 19-20; N.T. 108, 150)

2025-2026 School Year – [redacted]

7. During the 2025-2026 school year, the Student was enrolled in a District [redacted]. The classroom implemented precautions, including handwashing and seating adjustments, to reduce the Student's risk of exposure. The Parents provided a supply of safe snacks for Student use. (N.T. 32, 106-108)
8. On September 8, after the Parents requested information about a Section 504 plan. The District advised that a plan would be created if a child's disability or diagnosis prevented access to education and that if issues were noted beyond the Student's allergy, a follow-up could occur. (S-11, p. 16)
9. In early October, the Student mistakenly received a pretzel at a PTO event that had not been verified as safe. Although the Student did not have an allergic reaction, the Parents again contacted the District with

concerns about the Student's [food] allergy and District safety protocols. (P-16, pp. 4, 13-14; N.T. 48-51)

10. On October 7, 2025, the Parents provided the District with a letter from the Student's allergist.³ The letter indicated that the Student must strictly avoid ingestion and physical contact with the allergen and included recommendations for handwashing, wiping down tables and desks before eating, sitting away from other individuals who ingest [food], checking food labels to confirm safety, and alternative snacks if ingredients are uncertain. (J-3, p. 16; J-5, p. 11)
11. On October 12, 2025, the Parents requested a copy of the District-created IHP and that the Student's classroom be designated [redacted]-free to prevent accidental exposure and reduce risk. (P-16, pp.7-9)
12. The District refused the request for an [redacted]-free classroom, citing the supplied medical documentation, that the allergy involved ingestion and contact rather than airborne exposure, and the impact on others, since breakfast meals are not [redacted]-free and might have to be finished in the classroom. The District offered separate classroom and cafeteria seating and offered to participate in a meeting with the Student's allergist to obtain more information. (P-16, pp. 7-9)

³ The Student's allergist did not testify during this hearing.

13. On October 13, 2025, the Parents renewed their request for a Section 504 plan. That same day, the District offered meeting dates to the Parents, assuming the allergist's participation, and provided the Parents with the requested IHP that included signs and symptoms of the Student's allergic reaction, an emergency action plan, classroom, cafeteria, field trip, and substitute teacher protocols, available school nurse medications, and staff training requirements. The Parents indicated that the allergist would not be participating in the meeting and sought alternative dates. (J-1; J-2; P-16, pp. 5-7; S-11, pp. 48-49; N.T. 55-56)
14. Before a fall field trip to a farm, the Parents learned that cider donuts containing [the allergen] would be served and arranged a safe alternative. The Parents indicated they would pick up the Student to avoid a reaction on the bus due to uncertainty about handwashing. The Student attended the field trip, which included exposure to [the allergen]; no allergic reaction occurred. (P-16, p. 1; S-11, p. 24; N.T. 60, 106-107)
15. On October 21, 2025, the Parents provided the District with written recommendations from the allergist that included wiping down desks and tables before the Student eats, handwashing with soap and water before and after snacks and lunch, seating the Student away from [allergen] consumption, and [redacted]-free and [redacted] product-free school-sponsored field trips and classroom events. (J-3, p. 2)

16. On October 27, 2025, the District convened a Section 504 evaluation meeting with Parents and school staff in attendance. The allergist did not participate. The team ultimately concluded that the Student had a disability because of a physical impairment that substantially limited a major life activity. The team concluded that the Student needed reasonable accommodations to receive an equal educational opportunity. In addition to implementing IHP protocols, they offered a plan that included classroom and cafeteria accommodations. (J-3, J-4, J-5; N.T. 61, 63)
17. The Parents did not approve the October plan and requested additional accommodations, including advance notice of food-related activities, ingredient transparency, and broader restrictions on [allergen] exposure. (J-5; P-18, p. 1; N.T. 69)
18. On December 5, 2025, the parties held a second Section 504 team meeting and discussed parentally supplied revisions that included communication protocols and additional accommodations. Disagreement remained regarding the scope of restrictions on [redacted]-related activities. (J-6; J-7, pp. 2-3; N.T. 73-74)
19. The updated December plan and subsequent drafts offered the Student seating at an allergy-restricted table during lunch and in the classroom, an [allergen]-free space during classroom activities, parent invitation to classroom events, notice to classroom parents of the Student's need for [allergen]-free items, only store-bought food labeled [allergen]-free, field trip protocols, staff training, emergency

response, transportation safeguards, testing accommodations, and guidance counselor access. The Parents declined to approve the revised plan. (J-7, J-8, J-9; N.T. 73-74, 100)

20. In February 2026, the District notified Parents of a classroom activity involving [redacted]. The Parents requested that [redacted] and [redacted] products be excluded from instructional activities due to the risk of airborne exposure during [redacted]. The District proposed accommodations that included removal of the [redacted] from the classroom, prohibiting students from handling [redacted], and requiring handwashing. The parties were unable to reach an agreement on this issue. (J-10; S-11, pp. 193-195; N.T. 79-82, 165-166)
21. In February, the Parents learned the Student did not receive unverified Valentine's Day cookies. Reportedly, the Parents were not notified in advance about the cookie distribution. (N.T. 83)
22. On February 25, 2026, the District offered a revised Section 504 plan to the Parents. The plan incorporated the IHP and offered accommodations addressing classroom and cafeteria seating (allergy-restricted), classroom celebrations (labeled store-bought products and advance notice to parents), parent participation (invitations to events and staff notification to PTO organizers of the allergy), field trips (protocols provided in advance to parents, medication training to chaperones and staff, parental notice of any suspected [allergen])

exposure), and busing (medication on the bus, driver training, and preferred seating). (J-9; N.T. 159-161)

23. The Parents did not approve the offered February 504 plan or any 504 plans. (J-9; N.T. 123, 168)

24. The Student is academically and socially successful and able to access the educational programming. (N.T. 114-115, 120, 122)

25. On March 6, 2026, the Parents filed a due process complaint. (J-12)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. It should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case must rest with the Parent who filed the due process complaint. Application of this principle determines which party prevails; however, only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58. The outcome is much more frequently determined by the preponderance of the evidence.

Special education hearing officers, in the role of fact-finders, are also charged with making credibility determinations about 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 who testified to be generally credible, that is, without intending to deceive. The relatively few inconsistencies in the testimony did not materially impact the resolution of the issues. Some testimony was more probative and relevant to deciding the issues; merely because witness testimony is credible does not mean all such evidence was accorded equal weight, particularly where, as here, memories had to be supplemented by documentary evidence.

Section 504 Principles

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); see also *Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, “an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of” the related subsections of that chapter, §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b). The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit”. *Ridgewood, supra*, 172 F.3d at 247. Significantly, “[t]here are no bright line rules to determine when a school district has provided an

appropriate education required by § 504 and when it has not.” *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002).

Section 504 further prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii). In order to establish a violation of § 504 of the Rehabilitation Act, a plaintiff must prove that (1) he is “disabled” as defined by the Act; (2) he is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *Ridgewood, supra*, 172 F.3d at 253.

The applicable federal regulations implementing Section 504 require that an evaluation shall be conducted “before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.” 34 C.F.R. § 104.35. An initial evaluation under Section 504 must assess all areas of educational need, be drawn from a variety of sources, and be considered by a team of professionals. *Id.* The evaluation is conducted by a local educational agency (LEA) such as a school district.

Pursuant to Chapter 15, a parent must request an evaluation in writing, and within 25 school days of receipt of the parents’ written request for the provision of services, the school district shall evaluate the information submitted by the parent and send a written response to the request. See 22 Pa. Code § 15.6(d). When a parent requests a Section 504 evaluation, the school can request additional medical information. See 22 Pa. Code § 15.6(f).

The Parents' Claims

The Parents contend that the District denied the Student a FAPE from the beginning of the 2025-2026 school year through the present by failing to timely meet its child-find obligation and by failing to provide an appropriate 504 service plan. Based on this hearing record, the Parents have established by a preponderance of the evidence that the District violated its child-find obligation. However, on this hearing record, no FAPE denial was established.

The District received notice from the Parents on multiple occasions of the Student's [redacted] allergy and a request for information about a Section 504 plan. The Parents repeatedly advised the District of the allergy, renewed their requests for 504 consideration, and provided corroborating medical documentation, including the October 7, 2025, allergist letter, well before the District initiated the formal evaluation process. The District's reliance on an internal IHP does not excuse that delay. Although the IHP reflects that the District recognized the allergy and implemented some interim precautions, it did not provide the procedural safeguards, formal evaluation, or enforceable accommodations required under Section 504 and therefore was not a substitute for compliance with the District's child-find obligations. For that reason, the delay in convening the October 27, 2025 Section 504 meeting constituted a child-find violation.

The next question is whether that child-find violation resulted in a denial of FAPE. The hearing record does not support that conclusion. The absence of a formal written plan does not, in itself, establish a denial of FAPE. The relevant inquiry is whether the District nevertheless provided sufficient support to afford the Student meaningful access to and equal opportunity to participate in the educational program. Before the October team meeting, the District implemented precautionary measures, including

communication of the Student's allergy to staff, classroom-based practices such as handwashing and seating considerations, and coordination with Parents regarding safe food alternatives.

The Parents have failed to establish that the Student was excluded from instruction, unable to participate in classroom activities, or otherwise denied access to the educational program during that period. The Student was academically and socially successful and able to access the educational programming. While that fact is not dispositive, it is relevant in assessing whether the supports in place were sufficient to preserve meaningful access. The Parents also rely on specific incidents during the school year to support their position. Those concerns are understandable, but the record does not establish that those incidents rose to the level of a denial of FAPE. In early October, the Student was mistakenly given a pretzel at a PTO event that had not been verified as safe; fortunately, the Student did not have an allergic reaction. The Student also attended a fall field trip, without incident, despite the Parents' concern about [redacted]-containing cider donuts and handwashing on the bus. In February 2026, the Parents learned that the Student did not receive an unverified Valentine's Day cookie and that they were reportedly not notified in advance of the planned distribution. These incidents reflect lapses in implementation and communication, but on this record, they do not establish a broader pattern of exclusion from instruction, activities, or services. Although the District should have formalized its response earlier through the Section 504 process, the Parents have not established, by a preponderance of the evidence, that the Student was denied a FAPE.

The analysis now turns to the appropriateness of the February 25, 2026, Section 504 plan. On this record, the February 25, 2026, Section 504 Plan is appropriate as written. The plan incorporated the Student's IHP and

provided allergy-restricted seating in the classroom and cafeteria, advance notice and controls for classroom celebrations, parent notice and participation provisions for school events, field-trip protocols, transportation safeguards, and staff training and emergency-response measures. The plan is individualized to the Student's documented [redacted] allergy and grounded in the medical information supplied by the Parents and included accommodations that reasonably addressed the Student's needs for safe access to the school program.

It is not legally required that the District adopt the Parents' preferred, more restrictive measures so long as the District's plan provides meaningful access and equal opportunity to participate. *Ridley School Dist. v. M.R.*, 680 F.3d 260 (2012); *T.F. v. Fox Chapel Area School Dist.*, 589 Fed.Appx. 594 (2014) (unreported) , Section 504 requires a district to provide regular or special education and related aids and services designed to meet the individual educational needs of a qualified student with a disability, to the same extent as the needs of nondisabled students are met. 34 C.F.R. § 104.33(b)(1).

The Parents sought broader restrictions, including an [allergen]-free classroom and broader exclusion of [allergen]-related activities. However, the record does not establish that such measures were medically required by the information before the District. The documentation described ingestion and contact risks, and the District expressly relied on that distinction when it declined to designate the classroom [allergen]-free. Although the Parents later raised concern regarding airborne exposure in connection with the [redacted] activity, the medical documentation before the District did not clearly require a completely [allergen]-free environment.

The record as a whole supports the appropriateness of the February 25, 2026 plan. The Student was academically and socially successful and

able to access the educational program. In addition, the District had already implemented some of the same practical precautions reflected in the plan, including communication with staff, handwashing, seating adjustments, and emergency planning. For all of these reasons, the Parents did not prove by a preponderance of the evidence that the District denied the Student FAPE or that the February 25, 2026, Section 504 plan was legally insufficient.

For the foregoing reasons, the claims of the Parents are denied.

ORDER

AND NOW, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED as follows:

1. The District did not deny Student a free appropriate public education under Section 504 of the Rehabilitation Act.
2. The District's proposed Section 504 plan dated February 25, 2026, is legally appropriate.
3. The parties are encouraged to continue to collaborate in good faith regarding the implementation of accommodations to ensure the Student's continued safety and access to education.
4. 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. 32718-25-26

April 24, 2026