

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. 31411-24-25

Child's Name:

N.G.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Heather Hulse, Esq.
30 Cassatt Avenue
Berwin, PA 19312

Local Education Agency:

Carbondale Area School District

Counsel for the LEA:

William McPartland, Esq.
50 Glemaura National Blvd.
Moosic, PA 18507

Hearing Officer:

Brian Jason Ford

Date of Decision:

11/17/2025

Introduction and Procedural History

This due process hearing concerns the educational rights of a child with disabilities (the Student). The matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.*

The Student's parent (the Parent) asked the Student's public school district (the District) to fund an Independent Educational Evaluation (IEE). The District declined and, as required by the IDEA, requested a due process hearing to defend its own evaluation. The Parent then filed a separate due process complaint, alleging that the District violated the Student's right to a Free Appropriate Public Education (FAPE) from the 2021-22 school year through the present. The Parent demands compensatory education to remedy the FAPE violation. The Parent also claims that the District's complaint is untimely and, therefore, is owed an IEE at the District's expense regardless of the appropriateness of the District's evaluation. The Office for Dispute Resolution (ODR) assigned both matters to me, and I consolidated the cases.

In response to the Parent's complaint, the District asserted the IDEA's statute of limitations as an affirmative defense. The Parent filed on May 30, 2025. The District moved to bar all claims and remedies accruing before May 30, 2023. The parties agreed, however, that evidence concerning the Student's education prior to May 30, 2023, could be relevant to FAPE claims within the limitations period, and the Parent withdrew claims accruing during the 2021-22 school year. As a result, both parties agreed that resolving the District's statute of limitations defense before the hearing would not substantively alter the evidence presented during the hearing. The District's motion was, therefore, held in abeyance and evidence relating to the District's affirmative defense was presented during the hearing.

The hearing was continued several times while the parties attempted to negotiate a resolution. When that effort failed, the matter convened over three days. The parties then filed written closing briefs. Upon consideration of the record and both parties' arguments, I find in part for the Parent and in part for the District.

Issues Presented

The following issues were presented for adjudication:

1. Are claims arising prior to May 30, 2023, barred by the IDEA's statute of limitations?

2. Was the District's most recent evaluation of the Student appropriate?
3. Does the timing of the District's response to the Parent's request for an IEE at public expense entitle the Parents to an IEE at public expense regardless of the appropriateness of the District's evaluation?
4. Did the District violate the Student's right to a FAPE?

Findings of Fact

I reviewed the record in its entirety but make findings of fact only as necessary to resolve the issues before me. I find as follows:

The 2021-22 School Year

1. The 2021-22 school was the Student's [redacted] year.
2. During the 2021-22 school year, the Student was absent on 22 days but received "Satisfactory" or "Progressing" marks in all domains. S-1.
3. During the 2021-22 school year, the Student received two "minor" or "staff-managed" behavioral referrals. S-2.

The 2022-23 School Year

4. The 2022-23 school year was the Student's [redacted] Grade year.
5. During the 2022-23 school year, the Student was absent for 25 days. S-1.
6. By the end of the 2022-23 school year, the Student earned an 89 in "ELA Skills" (ELA is English and Language Arts) and a 92 in Math. The Student received "Satisfactory" marks in all other subjects. S-1.
7. During the 2022-23 school year, the Student received five "minor" or "staff-managed" behavioral referrals, and one "major" or "administrator-managed" behavioral referrals. S-2.

The 2023-24 School Year

8. The 2023-24 school year was the Student's [redacted] Grade year.

9. The Student received outpatient therapy from a third party integrated behavioral health organization. See S-3.
10. On April 22, 2024, an employee of the behavioral health organization wrote to the District. The letter states that testing and observations by the behavioral health organization indicate that the Student was exhibiting characteristics of Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorder (ASD), anxiety, and depression. The letter says what tests were conducted (the SNAP IV 2, Gad 7, and CES-DC) but does not provide scores. The letter says that the Student was "struggling at school and at home" and recommended an IDEA evaluation. S-3.
11. On May 17, 2024, the District sent a form to the Parents, seeking their consent to evaluate the Student. The Parents signed the form, providing consent, on May 22, 2024. S-4.
12. The District did not finish the evaluation until the following school year. See *below*; see S-5.
13. During the 2023-24 school year, the Student was absent for 19 days. S-1.
14. By the end of the 2023-24 school year, the Student earned an 86 in ELA Skills and a 83 in Math. The Student received "Satisfactory" marks in all other subjects. S-1.
15. During the 2023-24 school year, the Student received four "minor" or "staff-managed" behavioral referrals. S-2.

The 2024-25 School Year

16. The 2024-25 school year was the Student's [redacted] Grade year.
17. On October 1, 2024, the District completed its evaluation of the Student and issued an Evaluation Report (the ER). S-5.¹
18. The ER included input from the Parent, solicited through a "parent data form." S-5.
19. The ER included input from the Student's 2023-24 classroom teacher. That teacher listed the Student's "solid" reading and math skills as

¹ No claims are presented concerning the ER's timeliness.

strengths, as well as the Student's positive peer relationships and the Student's behavior when not stressed. However, the teacher listed frustration with learning new concepts, focus, easy frustration resulting in crying, and low self-esteem as weaknesses. S-5.

20. The teacher provided insightful narrative input as well. The teacher wrote that the Student "would thrive more in a smaller classroom environment" and needed "more adult support in Math class" to address the Student's distractibility (as opposed to an academic weakness). The teacher also wrote that "so many of [Student's] in class assignments, including tests, were not completed" because of the Student's distractibility and frequent off-task behavior. S-5.
21. The teacher also wrote that the timed reading assessments such as the DIBELS "don't work" for the Student because the Student cannot focus on the task. As a result, and despite report card grades, timed reading assessments indicate that the Student was below grade level in reading. S-5.
22. I find that the teacher's comments about the Student's reading ability in the ER relate to the Student's inability to show mastery on timed reading assessments, and do not relate to the Student's actual reading ability in the classroom or as measured by untimed assessments. See S-5.
23. The ER included a classroom observation by the District's Certified School Psychologist (the CSP), who was also the ER's primary author. The CSP observed the Student being off-task, highly distractable, and sensory-seeking while not completing classroom assignments. The School Psychologist also observed that the Student was amenable to prompting and redirection, which was needed. S-5.
24. The ER included a section titled "FBA assessment/Consultation" written by a behavioral specialist.² The author of this section did not observe the Student in a classroom "due to time constraints" but did see the Student walking in hallways and noted the Student's need for redirection. The behavioral specialist also consulted with teachers and wrote a "FAST assessment" to help hypnotize the function of the Student's behaviors. The teachers noted that the Student could be disruptive in class, did not use coping skills, and had difficulty remaining seated let alone on task. S-5.

² This section is split in the ER. It starts at the bottom of S-5 page 4 and continues through the top of S-5 page 5. This repeats and then continues at S-5 pages 50-51.

25. Nothing in the ER describes or explains what the FAST assessment is, how it was used, who contributed data for its completion, or how the behavior specialist was able to generate data or use the FAST assessment after only a brief observation of the Student in a hallway. S-5.
26. The behavior specialist recommended seating in proximity to the teacher, small group instruction in social skills and coping skills, breaks, and positive behavior reinforcement. S-5.
27. The ER included summaries of the Student's report cards, attendance, and behavior reports. S-5.
28. The ER included a Speech and Language evaluation. The Speech and Language evaluation included an administration of the Receptive One-Word Picture Vocabulary Test, Fourth Edition (ROWPVT-4), which calls for the Student to touch a picture in an array of pictures that corresponds to a given word, and the Expressive One-Word Picture Vocabulary Test, Fourth Edition (EOWPVT-4), which calls for the Student to label pictures. The Student scored in the Above Average range on both. The Speech and Language evaluation also included an administration of the Goldman-Fristoe Test of Articulation, Third Edition (GFTA-3), which is a broad test of English articulation. The Student scored in the average range on that test, too. The Speech and Language evaluator concluded that the Student had no school-based speech or language needs requiring intervention.
29. The ER included an Occupational Therapy evaluation. The Occupational Therapy evaluation included an assessment of the Student's fine and gross motor skills, handwriting ability, and an administration of the Sensory Profile 2 School Companion (SP2). The SP2 is a rating scale completed by the Student's classroom teacher for the 2023-24 school year. Every score on the SP2 placed the Student in the "More than Others" or "Much More than Others" ranges regarding the Student's sensory needs. Most scores were in the "Much More than Others" range. The evaluation also reported that the Student was "almost always" fidgeting to the point of being disruptive, "frequently" misses verbal cues and seems to "tune out" the teacher, and "almost always" struggles to organize class materials. The Occupational Therapist recommended adaptive paper and a spacing tool to help with handwriting and consultative occupational therapy to assess sensory needs. S-5

30. The ER included a psychoeducational evaluation completed by the CSP. The psychoeducational evaluation included several assessments: The Wechsler Intelligence Scale for Children, 5th edition (WISC-V); the Wechsler Individual Achievement Test, 4th edition (WIAT-IV); the Behavior Assessment Scale for Children, 3rd edition (BASC-3); the Behavior Rating Inventory of Executive Functioning, 2nd edition (BRIEF-2); the Conners Rating Scale, 4th edition; the Gilliam Autism Rating Scales, 3rd Edition (GARS-3); and an observation by the CSP of the Student during testing. S-5.
31. The WISC-V is a standardized, normative intelligence test. As measured by the WISC-V, the Student's full-scale IQ was found to be in the Average range (almost exactly so), and the Student's General Ability Index (which does not take items like processing speed into account) was found to be in the High Average range. S-5.
32. The WIAT-IV is a standardized, normative test of academic achievement that can be compared to the WISC-V. As assessed by the WIAT-IV, the Student's overall reading ability was found to be in the Average range with some variability in reading composite and sub-test scores ranging in the Low Average, Average, and Very High ranges. The CSP concluded that the Student's scores indicated that the Student's reading skills were within or above the range expected in comparison to peers. S-5.
33. As assessed by the WIAT-IV, the Student's Mathematics composite score was found to be in the Low Average range. That was a function of two sub-test: Problem Solving, in which the Student scored in the Very Low range and Numerical Operations, in which the Student scored in the Low Average range. The CSP concluded that the Student's scores indicated that the Student's math skills were lower than range expected in comparison to peers. S-5.
34. As assessed by the WIAT-IV, the Student's Written Expression composite score was found to be in the Low Average range. This composite score was depressed by the Student's performance on a spelling sub-test, which was in the Low Average range. All other writing sub-tests were in the Average range. The CSP concluded that the Student's scores indicated that the Student's writing skills were within expected ranges in comparison to peers. S-5.
35. The WISC-V and the WIAT-IV can be compared for a discrepancy analysis. The CSP completed that analysis and concluded that there was a global discrepancy between the scores anticipated based on the

Students IQ and the Student's actual academic achievement. That discrepancy was small, but statically relevant. The CSP concluded, however, that the discrepancy was most likely attributable to the Student's inability to focus than a Specific Learning Disability (SLD). The CSP also noted that the sort of redirection that was often used in the classroom was not permitted during the testing, and that the Student had missed several instructional days. S-5.

36. The BASC-3 is a broad-based assessment of a child's behaviors, based on rating scales completed by teachers and parents. For the ER, the Student's teacher for the 2023-24 school year completed by BASC-3. The District sent BASC-3 ratings to the Parent, but those were not returned. S-5.
37. The ER included a comprehensive summary and analysis of the teacher's BASC-3 ratings. The Student's Behavior Symptoms Index was found to be in the Clinically Significant range. That index score is a function of composite scores: Externalizing Problems (Average), Internalizing Problems (Clinically Significant) and School Problems (Clinically Significant). The teacher's ratings also produced clinically significant or at-risk scores for Attention problems, Anxiety, Depression, Atypicality, Social Development, and Emotional Self-Control. S-5.
38. The CSP evaluated and the teacher's ratings of the Student on the BASC-3 and concluded those ratings were consistent with depression and anxiety disorders, attention disorders, and ASD. S-5.
39. The BRIEF-2 and Conners 4, like the BASC-3, are rating scales completed by teachers and parents. Both the Teacher and the Parent completed the BRIEF-2 and Conners 4 for the ER. The BRIEF-2 is focused on executive functioning, and the Conners is focused on behaviors that correlate with ADHD symptoms. Both the Parent and the teacher completed the BRIEF-2 and Conners 4 for the Student. The CSP reported and analyzed the results. On the BASC-3, both the Parent and teacher's ratings placed the Student in the clinically elevated range, indicated executive functioning deficits and needs. On the Conners, both the Parent and the Teacher's ratings placed the Student in the "Very High" range, indicating a strong correlation with the behaviors of other children the same age as the Student who have ADHD. S-5.
40. The GARS-3 is another rating scale, but this scale specifically targets characteristic behaviors of people with Autism. Both the Teacher and the

Parent completed the GARS-3 for the ER. Their ratings were striking similar, putting the Student in the "Very Likely" range, supporting an ASD classification. S-5.

41. The ER concluded that the Student qualified for special education as a child with a disability in need of specially designed instruction. The Student's primary disability was Autism and the Student's secondary disability was Other Health Impairment (OHI) resulting from ADHD symptoms. S-5.
42. The ER included numerous recommendations to the IEP team. These included chunking of larger assignments, small group, direct instruction in academic areas of low performance, organization assistance, social skills instruction, visual aides to time management, use of an emotional support room for emotional regulation, assignment of a case manager to help with home-school communication, consultative occupational therapy (OT) and implementation of sensory strategies, assignment review to check for mastery, seating proximate to the teacher, and several behavioral supports derived from the FBA. S-5.
43. On October 30, 2024, the Student's IEP team convened. The District presented an IEP. P-2.
44. The IEP included much of the ER as a report of the Student's present education levels. P-2.
45. The IEP included a Math goal for "Number Comparison Fluency." The goal called for the Student to increase "basic number skills" as measured by "aimswebPlus," which is a district-wide curriculum assessment tool. The goal called for progress from a baseline of 4 to a goal of 10 or more (as measured by aimswebPlus) in three consecutive probes at the Student's grade level. P-2.
46. The IEP included a Math goal for "Mental Computation Fluency." The goal called for the Student to increase computation skills as measured by aimswebPlus from a baseline of 0 to a goal of 8 or more (as measured by aimswebPlus) in three consecutive probes at the Student's grade level. P-2.
47. The IEP included a Positive Behavior Support Plan (PBSP) and linked the PBSP to a behavioral goal. The goal called for the Student to use learned skills to decrease behavioral referrals from 8 to two or less

over the IEP term. Those skills included coping strategies, conflict resolution, self-awareness, and choices. P-2.

48. The PBSP in the IEP included several strategies for preventing the Student's negative behaviors including small group social skills instruction, a point system so that the Student could earn rewards for positive behaviors, check-ins/check-outs with emotional support staff, and subtle ways to ensure that the Student was aware of instructions from adults. P-2.
49. The IEP included program modifications and Specially Designed Instruction (SDI). These included the recommended occupational therapy accommodations (lined paper, a spacer tool, tactile fidgets, movement breaks, proximate seating), chunking of larger assignments, daily small group math instruction (related to the domains targeted in the goals), provision of organizational tools, direct social skills instruction once per week, access to the emotional support classroom for regulation if necessary, a point system to reward positive behaviors, and a plan for home-school communications. P-2.
50. The IEP included consultative Occupational Therapy once per month. P-2.
51. As a technical matter, the IEP placed the Student in itinerant Emotional Support, but the Student would spend 99% of the school day in the regular classroom. P-2.
52. The record does not include a Notice of Recommended Educational Placement (NOREP) by which the Parent could approve the IEP. However, there is no dispute that the District implemented the IEP with the Parent's consent. *Passim*.
53. On March 3, 2025, the IEP team reconvened.³ The Parent shared information about her efforts to secure out-of-school behavioral health services for the Student. The team also agreed to use a visual so that the Student could indicate if the Student was requesting access to the Emotional Support classroom to take a break or to do work. S-6. While that change was agreed-to, the Student's IEP did not change in any way except for documenting the meeting. *C/f* P-2, S-6.

³ Some documents suggest that this meeting took place on either March 3, 2025, or April 3, 2025. See S-6 at 2. Other documents clarify that the meeting occurred in March. See S-12.

54. By the end of the third quarter of the 2024-25 school year, the District reported that the Student was making "satisfactory progress" towards the Number Comparison Fluency goal. The Student scored an 8 as measured by aimswebPlus (the target was 10). The teacher reported, however, that the Student avoided this testing, suggesting that the Student's performance was a function of the Student's behavior – at least in part. The teacher reported that the Student's attitude towards the testing had recently improved. See P-9, P-16.
55. By the end of the fourth quarter of the 2024-25 school year, the District reported that the Student had scored a 10 in the Number Comparison Fluency goal as measured by aimswebPlus. The District reported that the Student could demonstrate mastery of that goal by continuing to score at the same level. P-16.
56. By the end of the fourth quarter of the 2024-25 school year, the District reported that the Student was scoring seven and eights on the Mental Computation Fluency goal as measured by aimswebPlus (the target was 8). Again, the teacher noted that the Student avoided the test and the Student's performance was a function of the Student's behavior and emotional state. The teacher reported that testing could only occur when the Student was emotionally regulated, which was not always the case. P-16.
57. By the end of the fourth quarter of the 2024-25 school year, the District reported significant progress, but not mastery, towards the behavioral goal. Both the number and nature of the Student's behavioral writeups decreased in every quarter that the IEP was implemented and in which the Student received direct social skills instruction. Teachers commented that the Student was actively using the skills that District personnel was teaching. In the fourth quarter, the Student had one, minor behavioral writeup for disrespecting a peer. The incident was addressed through a conference and did not result in disciplinary action. P-16.
58. On April 21, 2025, the Parent (via legal counsel) sent a letter to the District requesting an IEE at public expense. P-8. The Parent (via legal counsel) sent the same letter to the District's legal counsel. P-22.
59. The Parent (via legal counsel) sent follow-up correspondence checking the status of the IEE request. See P-22.

60. On May 30, 2025, the District filed a due process complaint to defend its own evaluation and seeking an order that it is not required to fund an IEE.
61. Also on May 30, 2025, the Parents filed a due process complaint alleging a FAPE violation and demanding compensatory education and an IEE.
62. During the 2023-24 school year, the Student was absent for 14 days. S-1.
63. By the end of the 2023-24 school year, the Student earned a 98 in ELA Skills and a 97 in Math. The Student received "Satisfactory" marks in all other subjects. S-1.

The 2025-26 School Year

64. The 2025-26 school year is the Student's [redacted] Grade year.
65. At all times, the Parent and District personnel were in frequent communication with each other. The frequency of these communications increased in the 2025-26 school year. Most communications were by text message, emails, and a messaging system used by the District. The substance of the communications mostly revolved around the Parent trying to get a better picture of the Student's behavioral presentation in school. See P-26, P-28, P-29, P-30, P-31.

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").

I find that all witnesses testified credibly. To the extent that testimony from different witnesses is contradictory, that is a function of genuine differences

in recall or understanding. More importantly, the outcome of this matter in no way depends on the credibility of any witness.

Applicable Laws and Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of 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 its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. Sch. Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd 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, both parties seek relief and must bear the burden of persuasion for the relief that they seek. Simply put, the District must prove that its evaluation was appropriate, and the Parents must prove the FAPE violation. The Parents also must carry their burden of proof as to their claim that they are entitled to an IEE at the District's expense because the District's due process complaint was untimely.

The IDEA's Statute of Limitations

The IDEA's statute of limitations is found at 20 U.S.C. § 1415(f)(3)(C), which states:

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

Pennsylvania has no explicit time limitation of its own, and so the IDEA's statute of limitations controls. See 22 Pa. Code § 14.

The date that the Parents knew or should have known about the alleged action is called the KOSHK date. If parents raise a complaint within two years of the KOSHK date, the statute of limitations imposes no bar on

recovery. *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601 (3d Cir. 2015).

IDEA case law explains how to determine the KOSHK date. See *Zachary J. v. Colonial Sch. Dist.*, No. CV 19-652, 2022 WL 580309, at *9--10 (E.D. Pa. Feb. 24, 2022), *aff'd sub nom. Zachary J. v. Colonial Sch. Dist.*, No. 22-1509, 2024 WL 366180 (3d Cir. Jan. 31, 2024). Courts have concluded that the KOSHK date is not the date when the Parents knew or should have known of the action forming the basis of her complaint. It is not the point in time when the Parent knew what the school was doing. Rather, the IDEA's statute of limitations begins to run when the Parent knew or should know of the school's actions and of the alleged violations. *Id.*, citing *E.G. v. Great Valley Sch. Dist.*, No. 16-5456, 2017 WL 2260707, 2017 U.S. Dist. LEXIS 77920 (E.D. Pa. May 23, 2017). Knowledge of the action and knowledge of the violation "can happen on the same day or be spread over months or years." *E.G. v. Great Valley* at 22.

IDEA case law also explains how to determine when parents knew or should have known of each alleged violation. Courts have applied what has been characterized as the "IDEA's discovery rule" to "focus[] on clear action or inaction by a school district sufficient to alert a reasonable parent that the child would not be appropriately accommodated." *Brady P. v. Cent. York Sch. Dist.*, No. 1:16-CV-2395, 2018 U.S. Dist. LEXIS 43230, at *19-20 (M.D. Pa. Mar. 16, 2018) citing *B.B. by & through Catherine B. v. Del. Coll. Preparatory Acad.*, No. 16-806, 2017 U.S. Dist. LEXIS 70245, 2017 WL 1862478, at *3 (D. Del. May 8, 2017); *Solanco Sch. Dist. v. C.H.B.*, No. 5:15-CV-02659, 2016 U.S. Dist. LEXIS 104559, 2016 WL 4204129, at *7 & n.10 (E.D. Pa. Aug. 9, 2016); *Jana K. ex rel. Tim K. v. Annville-Cleona Sch. Dist.*, 39 F. Supp. 3d 584, 600 (M.D. Pa. 2014).

The "reasonable parent" standard highlights the potential delay between a school's "clear action or inaction" and the parents' understanding that the "child would not be appropriately accommodated." *E.G. v. Great Valley* at *22-23. The inquiry calls for consideration of what conclusions about the child's education a reasonable parent could draw from the information at hand. The standard does not require parents to be educators or legal scholars. The clock does not run from when parents come to understand their legal rights. Instead, the clock runs from when reasonable parents can conclude that their child's needs are unmet.

Free Appropriate Public Education (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 F.* 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. 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 F.* 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).

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably

calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be "appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000. In terms of academic progress, grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child's circumstances.

In sum, the essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer an appropriately ambitious education in light of the Student's circumstances.

Child Find

The IDEA's Child Find provision requires states to ensure that "all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated." 20 U.S.C. 1412(a)(3). This provision places upon school districts the "continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability under the statutes." *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); *see also* 20 U.S.C. § 1412(a)(3).

The evaluation of children who are suspected to be learning disabled must take place within a reasonable period of time after the school is on notice of behavior that is likely to reflect a disability. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 250 (3d Cir. 1999). The failure of a school district to timely evaluate a child who it should reasonably suspect of having a learning disability constitutes a violation of the IDEA, and may give rise to a substantive denial of FAPE. 20 U.S.C. § 1400.

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the “hour-for-hour” method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

The hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. See *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). In *Reid*, the court conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. *Reid* is the leading case on this method of calculating compensatory education, and the method has become known as the *Reid* standard or *Reid* method.

The more nuanced *Reid* method was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid* and explaining that compensatory education “should aim to place disabled children in the same position that the child would have occupied but for the school district’s violations of the IDEA.”).

Despite the clearly growing preference for the *Reid* method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount or what type of compensatory education is needed to put the student back into that position. Even cases that express a strong preference for the “same position” method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

“... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district’s deficiencies.”

Jana K. v. Annville Cleona, 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student's school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) are warranted. Such awards are fitting if the LEA's "failure to provide specialized services permeated the student's education and resulted in a progressive and widespread decline in [the Student's] academic and emotional well-being." *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. See also *Tyler W. ex rel. Daniel W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011, at 18-19 (Nov. 12, 2011).

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default. Full-day compensatory education can also be awarded if that standard is met. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to rectify the problem.

Evaluation Criteria

The IDEA establishes requirements for evaluations. Substantively, those are the same for initial evaluations and reevaluations. 20 U.S.C. § 1414.

In substance, evaluations must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” whether the child is a child with a disability and, if so, what must be provided through the child’s IEP in order for the child to receive FAPE. 20 U.S.C. § 1414(b)(2)(A).

Further, the evaluation must “not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child” and must “use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors”. 20 U.S.C. § 1414(b)(2)(B)-(C).

In addition, the District is obligated to ensure that:

assessments and other evaluation materials... (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer; (iii) are used for purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of such assessments.

20 U.S.C. § 1414(b)(3)(A).

Finally, evaluations must assess “all areas of suspected disability”. 20 U.S.C. § 1414(b)(3)(B).

Independent Educational Evaluation at Public Expense

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: “A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency...” 34 C.F.R. § 300.502(b)(1). “If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either – (i) File a due process complaint to request a hearing to show that it’s evaluation is

appropriate; or (ii) Ensure that an independent educational evaluation is provided public expense.” 34 C.F.R. § 300.502(b)(2)(i)-(ii).

“If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” 34 C.F.R. § 300.502(b)(4).

Discussion

The IDEA’s Statute of Limitations Bars Claims Prior to May 30, 2023

The Parents withdrew claims concerning the 2021-22 school year. The District’s statute of limitations defense, therefore, applies to claims accruing from the start of the 2022-23 school year through May 30, 2023 (most of the 2022-23 school year).

On the record before me, I do not find a preponderance of evidence that the Parent did not know, or did not have reason to know, of the actions or violations accruing beyond the limitations period. Avoiding that technically correct but awkward phrasing, I find that the Parents did not establish a KOSHK date such that claims accruing between the start of the 2022-23 school year and May 30, 2023, may be presented. Claims accruing during that period are barred by the IDEA’s statute of limitations.

The Parent argues that the KOSHK date for all claims presented is October 1, 2024 – the day that the Parent received the ER. The Parent argues that, before that point in time, she did not know about the actions or violations raised in the due process complaint. The record of this case suggests the contrary. Throughout the 2023-24 school year, the Parent and the Teacher were in communication about the Student’s needs, both generally and specifically related to the Student’s behaviors. See P-26, NT 250. During this time, the Student was also in treatment with a third party integrated behavioral health organization. Communications from that organization establish that the Parent understood that the Student was “struggling at school and at home” and needed an IDEA evaluation.⁴ That letter was sent

⁴ There is no suggestion in the record that the Parent was excluded from conversations between third party providers and the District or did not have information about the behavioral health agency’s letter to the District.

on April 22, 2024, which is over six months before the Parent's alleged KOSHK date.

Examining the record as a whole, I must conclude that at all times the Parent either knew, or should have known, about the Student's presentation in school as reported by teachers at that time. The record establishes that the Parent was aware of the District's actions and, importantly for the KOSHK analysis, the District's inactions. The Parent was concerned enough to raise these issues with outside behavioral health providers, prompting those providers to contact the District to suggest an evaluation.

There are two exceptions to the IDEA's statute of limitations, codified at 20 U.S.C. § 1415(F)(3)(D). There is some ambiguity as to when a parent must raise those exceptions in response to a school's assertion of the statute of limitations as an affirmative defense. Under the circumstances of this hearing, I find that the Parent has timely raised the "misrepresentation" exception found at 20 U.S.C. § 1415(F)(3)(D)(i). The Parent alleges that the District made a negligent misrepresentation by telling the Parent that an outside evaluation was needed before the District could start its own evaluation. While there contrary evidence in the record both supporting and refuting that contention, I will assume that the District said as much for purposes of analysis. With that assumption in place, I cannot grant the Parent's argument.

First, the exception applies only if the District misrepresented that "it had resolved the problem forming the basis of the complaint." *Id.* The problem forming the basis of the complaint is that the District did not evaluate the Student when an evaluation was necessary and then went on to provide something less than a FAPE. Accepting the Parent's allegation as true, the District's "misrepresentation" only confirmed that the problem was *not* resolved as it made the Parent jump through unnecessary hoops as a prelude to an evaluation. The alleged misrepresentation only establishes that the problem – not evaluating the Student and offering a FAPE – persisted.

Second, even if the misrepresentation concerned resolution of the basis of the complaint, it is still the Parent's burden to establish that the misrepresentation in some way prevented the Parent from requesting a hearing. *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3d Cir. Pa. 2012). There is no evidence in the record of this hearing establishing this mandatory element.

For all of these reasons, the District's statute of limitations defense is granted. The scope of this hearing, therefore, concerns remedies accruing from May 30, 2023, and onward.

Child Find – May 30, 2023, to October 1, 2024

The IDEA's Child Find obligation required the District to evaluate the Student (or at least propose an evaluation) when it had reason to believe that the Student may be a child with a disability in need of special education. The potential liability period starts on May 30, 2023, and the ER was complete on October 1, 2024. Those are the boundaries of any potential Child Find violation. For analysis, that period must be divided further.

From May 30, 2023, through the end of the 2022-23 school year, there is no evidence in the record of this hearing of a child find violation. The only evidence in the record of the Student's academic performance during this time shows that the Student was meeting grade-level expectations. Throughout the entirety of the 2022-23 school year, there were five minor behavioral incidents, all managed by classroom staff. There was one major behavioral incident that required involvement from an administrator, but nothing in the record to suggest that the Student had a disability or required special education interventions. I find no Child Find violation for this period.

The next period begins with the start of the 2023-24 school year and runs through April 21, 2024 (nearly all of the 2023-24 school year). Apart from behavioral writeups that do not paint a complete picture, there is almost no direct, contemporaneously written evidence in the record concerning the Student's behavioral performance during this time. During this school year, the Student's behavioral referrals decreased in comparison to the prior school year (four minor incidents and no major incidents). The Student's attendance was also slightly better (19 absences compared to 25 absences in the prior school year). The Student's academics, as captured in report cards, continued to be on grade level. However, when the Student's teacher from the 2023-24 school year gave information for the ER, a host of problems revealed themselves: high distractibility, easy frustration, frequent crying, frequent off-task behavior, frequent sensory-seeking behavior, an inability to complete assignments in school or at home, and an inability to take timed tests either as a function of academic frustration or low attention. The teacher was candid in her comments: the Student required a higher level of adult support to manage behaviors and succeed academically.

On the whole, the record supports a conclusion that the Student was successful during the 2023-24 school year as a function of the high level of support that the Student received from the classroom teacher that year. That teacher's commendable support undoubtedly explains the Student's reduced behavior writeups and academic progress that year. At the same time, the teacher frequently observed the Student exhibiting behaviors

suggesting disabilities and a high need for adult support. The District's description of the Student in the ER paints a picture of a child who may have a disability and may need special education. Even if the teacher's interventions were sufficient to enable the Student's success, the Child Find obligation applies "regardless of the severity of [the] disability." 20 U.S.C. 1412(a)(3). In short, the District had actual knowledge of the Student's presentation in school, and that presentation triggered the District's Child Find obligation during the 2023-24 school year.

The record does not establish when the District's Child Find obligation was triggered with much precision. The clearest and most complete evidence concerning the Student's presentation in school was reported in the ER, which was drafted at the start of the 2024-25 school year. The teacher's comments in the ER do not link the Student's behaviors to any point in time during the 2023-24 school year. It is not as if the Student was focused and on-task at the start of the 2023-24 school year and then changed at the end. Rather, the ER suggests that the Student's behaviors were relatively consistent throughout the 2023-24 school year. I find, therefore, that the District had information triggering its Child Find obligation all throughout the 2023-24 school year.

Under long-standing precedent, the District did not have an obligation to immediately propose an evaluation when it had reason to believe that the Student was a child with a disability. Instead, under *Ridgewood, supra*, the District had a reasonable period between the time it should have suspected the Student's disability and the time it proposed an evaluation. In this case, the District cannot be faulted for not proposing an evaluation just the Student returned to school at the start of the academic year. Quickly thereafter, the District witnessed all the behaviors described above and while providing a very high level of informal classroom support. The teacher's laudable efforts are also evidence that the District should have proposed an evaluation. I find that the District should have proposed an evaluation no later than October 16, 2023. Roughly a month and a half was enough time to watch this Student's behaviors before proposing an evaluation. I find that the District violated its Child Find obligation to the Student, and the violation started on October 16, 2023, and continued through April 22, 2024.

The next period begins on April 22, 2024, and runs through May 16, 2024. On April 22, 2024, the District received a letter from the third-party provider saying that the Student very likely has multiple qualifying disabilities and should be evaluated for special education eligibility. Assuming all weekdays in this period are also school days, the District held that letter without offering an evaluation for 19 school days. The Child Find obligation continued through this period.

The next period begins on May 17, 2024, and runs through September 30, 2024. On May 17, 2024, the District sought the Parent's consent to evaluate. From that day, though the end of the 2023-24 school year and into the start of the 2024-25 school year, the evaluation was pending. September 30, 2024, was the last school day before the ER was issued. Whether the Child Find violation extends through this period hinges on interpretation of the statutory requirement. The District's Child Find obligation is to ensure that children with disabilities "are identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A). Typically, this is conceptualized as the District's obligation to offer an evaluation when it has reason to believe that a child may need special education. If proposing an evaluation was the full extent of the Child Find obligation, the District satisfied that obligation on May 17, 2024. However, the statute also requires the District to "identify" children with disabilities. Applied in this case, that identification did not happen until the District issued the ER on October 1, 2024. I find that the Child Find violation continued through September 30, 2024, and ended on October 1, 2024.

Having found a Child Find violation from October 16, 2023, through September 30, 2024, I now must consider what remedies are owed. The Child Find violation is, at a minimum, a procedural violation for which declarative relief is owed. The Parent demands compensatory education for this time as well. Compensatory education is an equitable remedy owed only if the Parent proves substantive educational harms resulting from the Child Find violation.

It is difficult to think of a Child Find violation as anything less than substantively harmful. While I do not conclude that every Child Find violation is substantively harmful *per se*, I cannot find any examples of a Child Find violation that did not result in some type of substantive educational harm. This case is no exception. From October 16, 2023, through September 30, 2024, the Student was entitled to, but did not receive an appropriate evaluation, correct identification and, ultimately, special education. Even if the *ad hoc* supports from school personnel (particularly the teachers) enabled the Student to make academic progress during this time, the Student still exhibited a host of behavioral difficulties that were not systematically or effectively addressed. Noted above, education encompasses much more than academics. The evidence in this case (nearly all of which was collected by the District through the ER), illustrates that the Student's distractibility, hyperactivity, emotional sensitivity, and sensory-seeking behaviors were a function of the Student's disabilities, significantly interfered with the Student's education (both academic and non-academic) and permeated the school day. The fact that none of those behaviors reached a disciplinary level is fortunate, but not mitigating. The Student

cried frequently, often distracted others, and consistently needed adult intervention to perform basic classroom tasks. Under the standards described above, this sort of persistence yields a “full day” compensatory education award. I find that the Student is owed one hour of compensatory education for each instructional hour provided to all children in the Student’s school from October 16, 2023, through September 30, 2024.

The Parent may decide how the compensatory education is used. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student’s identified educational and related service needs. The compensatory education may not be used for services, products, or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student’s IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents.

The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. The cost of providing the awarded hours of compensatory services shall be limited to the average market rate for private providers of those services in the county where the District is located.

The Appropriateness of the ER

At the outset, I find that the delay between the Parent’s request for an IEE at public expense and the District’s due process complaint is not a separate IDEA violation. The Parent requested a District-funded IEE on April 21, 2025. The District requested a hearing 39 days (29 school days) later, on May 30, 2025. The IDEA itself did not set a specific timeline for the District to deny the Parent’s request and file a due process complaint. The IDEA does not say that an IEE at the District’s expense is an available remedy even if the District was too slow to file. This stands in contrast to other IDEA provisions, detailed above, setting forth the circumstances under which IEEs at public expense are, or could be, owed as a remedy.

Moving to the ER itself, I find that the ER satisfied the IDEA’s procedural requirements. Except for the FBA, I find that the ER satisfied the IDEA’s substantive requirements as well. I find that the FBA was not appropriate and find that the District must fund an independent FBA as a remedy.

The ER satisfies of the procedural requirements listed at 20 U.S.C. §§ 1414(b)(2)(A)-(C) and (b)(3)(A). The ER included multiple tools (several tests across many domains) and strategies (tests, observations, review of records). The ER included and used parental input. The tools, strategies, and input were all used to gather functional, developmental, and academic information. That information, in turn, was used to determine that the Student was a child with a disability in need of special education, and to make recommendations to the IEP team. The District did not rely on any single measure to draw conclusions. The instruments were technically sound, administered in accordance with publishers' guidelines by trained personnel, and used for their intended purposes. The tests were used for their intended purposes and there is no allegation or evidence of racial or cultural bias.

The FBA was insufficient. As the name implies, the purpose of a Functional Behavioral Assessment is to assess the function of a child's behaviors. The goal is to craft a hypothesis about why the child behaves in a certain way and then devise strategies to reduce or eliminate unwanted behaviors. The IDEA itself does not establish minimum criteria for an FBA but, in this hearing officer's experience, FBAs almost always include a direct observation of the child, consultation with other educational providers, and some sort of assessment. The FBA in this case includes some part of all of those elements, suggesting that each was needed. Unfortunately, across each of those elements, the FBA was cursory at best.

The FBA did not include an observation of the Student in the classroom. Other parts of the ER, especially the input from classroom teachers across two school years and the CSP's observation, signal that the classroom was a primary location for the Student to exhibit the behaviors of concern. The FBA did not include a classroom observation "due to time constraints." This signals that a complete FBA would have included such an observation. Further, the 60-school-day timeline for the ER stretched the duration of the evaluation over 137 calendar days. Even completely discounting the summer of 2024, the 60-school-day timeline does not excuse this omission.

The FBA also provides no information about what the evaluator learned from other school personnel. Instead, the FBA repeats information provided elsewhere in the report. The FBA includes an observation of the Student in the hallway, but the description of that brief encounter is cursory and not helpful. The FBA includes a FAST assessment, but says nothing about what that assessment is, how information was collected or used, or the instrument's validity under these circumstances. The FBA includes hypotheses about the Student's behavior which, to this hearing officer's eye,

are little more than boilerplate and are almost entirely unsupported by any other aspect of the FBA.

In sum, I find that the District satisfied its burden of proof that the ER was appropriate except for the FBA. The FBA, which was part of the ER, did not satisfy IDEA standards in substance. The Parent, therefore, is owed an independent FBA at the District's expense. To move forward, the District may propose evaluators who satisfy "agency criteria" as that term is used at 34 C.F.R. § 300.502. Regardless of the District's proposal, if any, the Parent may unilaterally select any evaluator who satisfies "agency criteria." The District's funding obligation shall not exceed the average cost of independent FBAs with the District's geographical boundaries, or equivalent private evaluations if there are insufficient independent FBA providers in the District's geographical boundaries to establish an average cost.

The IEP was Appropriate

There is a reasonable argument that any IEP derived from a flawed evaluation is substantively inappropriate *per se*. But, as with Child Find, I decline to reach that conclusion in this case – particularly because the ER was mostly appropriate. Instead, I must examine the record to determine if the IEP was reasonably calculated to provide a FAPE when it was offered. The deficient FBA is a factor in that analysis, but not a conclusive factor in and of itself.

When the IEP was written, the Student's behavioral presentation in school was a primary concern. Going into the IEP development process, the FBA should have been a key assessment of the Student's behaviors. Discussed above, the FBA was deficient. Developing an IEP for a student with behavioral needs before fully assessing the student's behavioral needs is, at a minimum, a procedural violation of the Student's IDEA rights.

This is not to say that an FBA is strictly necessary for every child with a disability who has behavioral needs. The IDEA does not say this, and neither do I. However, the District's choice to conduct an FBA as part of the ER establishes that the District concluded that an FBA was needed. Nothing in the record of this hearing suggests that the District proposes and conducts superfluous testing, either as a practice or for the Student in this case. I agree with the District that the ER included necessary evaluations, and so the evaluations in the ER were necessary. One of those evaluations, the FBA, was intended to get information about the Student's behaviors. This was a top priority, but the FBA was cursory at best.

If the IEP was derived exclusively from the FBA, no further analysis would be needed to conclude that the IEP was inappropriate. In this case, however, the ER included significant information about the Student's behavior from multiple sources and assessments that go beyond the FBA. This included multiple forms of input from the Parent and multiple teachers, observations of the Student by the CSP in the classroom and during testing, the BASC-3, the BRIEF-2, the GARS-3, and the Conners 4. Through those methods, the ER included a detailed picture of the Student's behavioral presentation in school as well as recommendations to reduce and properly respond to the Student's behaviors (both related to ADHD and ASD). Those recommendations passed from the ER to the IEP team and were used in IEP development. The resulting IEP included multiple accommodations and special education for the Student's attention, distractibility, and social needs. These included chunking, organization tools, access to the emotional support classroom for regulation, a PBSP, a reward system for positive behaviors, and direct social skills instruction. Also, at the time of the IEP, it appeared that the Student's need for adult support in academic tasks was related to the Student's emotional and behavioral needs, as opposed to any specific learning disability. Through that lens, items like small group math instruction can be seen as an emotional and behavioral accommodation as much as an academic accommodation.

I find that the IEP was reasonably calculated at the time it was offered to provide a meaningful educational benefit to the Student within the least restrictive environment. The District had significant, actionable information about the Student's behavioral and academic needs when the IEP was drafted, despite the lack of an appropriate FBA. The District used that information to craft appropriate goals, modifications, and SDI. As such, the IEP was an offer of FAPE for the Student when it was presented on October 30, 2024.

FAPE Analysis – October 31, 2024, and After

I find no FAPE violation from October 31, 2024, or after. The District offered the IEP during the meeting on October 30, 2024. Above, I find that the IEP was reasonably calculated to provide a FAPE when it was offered. The District's FAPE obligation is ongoing. If any change in the Student or circumstances more broadly warranted a change in the IEP, the District was obligated to act.

There is very little evidence in the record about the period between the IEP team meeting and March 3, 2025. What little there is does not establish that changes were needed. Notes from the March 3, 2025, IEP team meeting also do not signal a need for changes or establish a denial of FAPE. Rather, those

notes signal that the Student was using the services that the IEP provided. The Student was going to the Emotional Support room and had started doing that frequently enough for the team (both District and Parent) to want more information about how the Student was using that space. The meeting was also an opportunity for the Parent to share information with the District about her efforts to engage out-of-school behavioral health support for the Student. The record does not support a finding that IEP changes were requested and ignored, or that the IEP was not functioning as planned.

Evidence of progress does little to prove that an IEP was appropriate when it was offered. Rather, evidence of progress can show whether an IEP was working as intended or if changes were needed. By the end of the 2024-25 school year, the Student had objectively made progress towards all goals and was using the techniques that the District instructed in the social skills program. The Student continued to earn high marks on report cards, indicating grade-level academic performance. Behavioral writeups continued to decrease. Formal IEP accommodations were in place instead of good but *ad hoc* practices from excellent teachers. None of this proves that the District should have changed the IEP in some way, or that the District violated the Student's right to a FAPE. There is a similar lack of evidence from the 2025-26 school year through the date of this hearing.

Summary and Conclusions of Law

I find that the IDEA's two-year statute of limitations bars all claims accruing before May 30, 2023. The Parent did not prove a later KOSHK date. The Parent's reliance on the misrepresentation exception also fails: the district's alleged statement about needing an outside evaluation neither suggested the problem was resolved nor prevented the Parent from seeking a hearing.

I find no Child Find violation for the end of the 2022-23 school year. For most of the 2023-24 school year, however, the record shows persistent behaviors linked to the Student's disability and a high need for adult support. The District had enough information throughout 2023-24 to suspect a disability and should have proposed an evaluation no later than October 16, 2023. This Child Find violation continued until the District issued the ER on October 1, 2024. At that point, the District completed the required "identification" element.

Because the Child Find violation spanned nearly a full school year, and because the student experienced substantive harm (persistent distractibility, emotional dysregulation, sensory needs, and dependence on adult support for routine classroom tasks and academics) the I award compensatory education. The Student is entitled to one hour of compensatory education for

every instructional hour provided by the district from October 16, 2023, through September 30, 2024. All such compensatory education shall be provided in accordance with the requirements and limitations detailed above.

Regarding the ER and the request for an IEE at public expense, I find the ER procedurally and substantively appropriate except for the FBA. The FBA lacked a needed classroom observation, meaningful consultation with staff, adequate assessment detail, and data-based hypotheses. The Parent is entitled to an independent FBA at district expense, subject to agency-criteria and cost limits set forth above.

Finally, despite the faulty FBA, the IEP offered on October 30, 2024, was based on extensive information from other sources in the ER. It appropriately addressed the student's behavioral and academic needs and was reasonably calculated to provide FAPE. There is no evidence that the IEP required revision thereafter or that its implementation resulted in a denial of FAPE. The Student showed progress across goals, demonstrated use of the social skills strategies that the District was teaching, and reduced behavioral writeups. I find no FAPE violation and award no compensatory education from October 1, 2024, onward.

ORDER

Now, November 17, 2025, it is hereby **ORDERED** as follows:

1. The District shall fund an independent functional behavioral assessment for the Student in accordance with the requirements and limitations set forth in the decision above.
2. The District violated the Student's Child Find rights from October 16, 2023 through September 30, 2024. The District shall provide one hour of compensatory education for every instructional hour provided by the District during said period. All such compensatory education shall be provided in accordance with the requirements and limitations set forth in the decision above.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER