

*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. 30262-24-25**

**Child's Name:**

N.M.

**Date of Birth:**

[redacted]

**Parents:**

[redacted]

**Counsel for Parents:**

Lisa Postlewait, Esquire  
301 Grant Street  
One Oxford Center, Suite 270  
Pittsburgh, PA 15219

**Local Education Agency:**

Pine-Richland School District  
3199 Bakerstown Road  
Gibsonia, PA 15044

**Counsel for the LEA:**

Patricia R. Andrews, Esquire  
Salvatore Bittner, Esquire  
1500 Ardmore Boulevard, Suite 506  
Pittsburgh, PA 15221

**Hearing Officer:**

Brian Jason Ford

**Date of Decision:**

06/06/2025

## Introduction and Procedural History

This due process hearing concerns the special education rights of a child with disabilities (the Student). The Student's parents (the Parents) requested this hearing by filing a due process complaint (the Complaint) against the Pine-Richland School District (Pine-Richland or District).<sup>1</sup>

The Parents filed the Complaint on September 13, 2024. Therin, the Parents raise allegations dating back to the 2017-18 school year. The Parents allege substantiate violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.*, the Americans with Disabilities Act as Amended (ADA), 42 U.S.C. § 12101 *et seq.*, and Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688.

The Parents claim that the Student qualifies for special education as a child with an Other Health Impairment (OHI) and an Emotional Disturbance (ED). They claim that the Student was subject to bullying, harassment, and assault at Pine-Richland. The Parents claim that Pine-Richland's insufficient response to those problems, along with inadequacies of the special education that Pine-Richland provided for the Student, resulted in a violation of the Student's right to a free appropriate public education (FAPE). The Parents demand compensatory education and various forms of declaratory relief as remedies.

Pine-Richland filed a Response to the Complaint and a Motion to Dismiss. The District argued that the Title IX claims must be dismissed on jurisdictional grounds and pursuant to the doctrines of claim preclusion (*res judicata*) and issue preclusion (collateral estoppel). The District also argued that all claims arising before September 13, 2022, were barred by the IDEA's statute of limitations, which applied to the entirety of the matter. In support of its statute of limitations claim, the District pointed to a prior due process decision resolving a dispute between the Parents and the Center Valley School District (Center Valley). *In re: M.B., Center Valley Sch. Dist.*, ODR 23151-1920-. Hearing Officer Skidmore issued the prior decision on June 30, 2020.

The Parents replied to the District's motion. The Parents agreed with the District's statute of limitations analysis, clarifying that they were not seeking relief accruing before September 13, 2022. The Parents explained that

---

<sup>1</sup> I deviate from my standard practice and name the Pine-Richland School District in the body of this decision because so many educational agencies are involved in this case that some disambiguation is necessary.

allegations of facts occurring before that date were provided for background and context. The Parents opposed dismissal of Title IX claims.

On January 21, 2025, I issued a pre-hearing order granting the District's motion and dismissing the Title IX claims. That order speaks for itself but, for context, I found that I do not have jurisdiction to hear Title IX claims. I noted, however, that evidence establishing claims that fall within my jurisdiction may also establish Title IX claims. Such evidence is admissible if relevant to the surviving IDEA and 504 issues, but I have no authority to determine if that evidence also proves a Title IX violation.

On January 28, 2025, the hearing convened with the plan for both parties to present opening statements and then evidence. At the conclusion of opening statements, and despite a relatively large amount of pre-hearing correspondence, I was hard pressed to find a single material fact in dispute. This concern prompted inquiry, and the parties were also unable to identify what material facts were in dispute. I urged the parties to consider stipulations in lieu of presenting evidence during a hearing to establish facts that are not in dispute. The parties agreed that stipulations were the best way forward.

The parties spent months formulating stipulations. During that time, the parties responded to my frequent request for status updates, filed several scheduling motions, and participated in a status conference with me. The parties also informed me that some facts could not be stipulated and that both parties wanted an opportunity to testify. I granted every scheduling motion and explained that the parties would have an opportunity to testify. This work took longer than expected, but the result was productive. On April 21, 2025, the parties filed 89 stipulations of fact (many with multiple sub-parts). Documents were also entered into evidence by stipulation; the District entered 36 documents, and the Parents entered 51 documents. Those documents and the stipulations establish a comprehensive record.

On April 25, 2025, the hearing reconvened and the parties called witnesses to testify. That testimony helped contextualize some of the stipulated record and gave the parties an opportunity to express their feelings to a neutral adjudicator. The probative value of that testimony is limited under the standards that I am obligated to apply, but in no way harmed or prolonged the proceedings (relative to the time spent crafting stipulations).

On May 23, 2025, the parties filed closing statements. Having considered the record in its entirety and both parties' arguments, I find that the District violated the Student's procedural IDEA rights for a portion of the time in question but otherwise find for the District.

## **Issues**

Two issues were presented for adjudication:

1. Did the District violate the Student's right to a FAPE in violation of the IDEA, starting on September 13, 2022? If so, the Parents demand compensatory education and declaratory relief as remedies.
2. Did the District violate the Student's right to a FAPE in violation of Section 504, starting on September 13, 2022? If so, the Parents demand compensatory education and declaratory relief as remedies.

## **Stipulations**

Before the parties filed stipulations, I explained that I would adopt their stipulations as my own findings. I find nothing in the record that contradicts the parties' stipulations. In accordance with the parties' preferences, I include the stipulations in the body of this decision (as opposed to incorporating them by reference). The parties divided their stipulations with headings and sub-headings. Those were helpful, and so I have maintained them. The stipulations also reference the documents that the parties entered into evidence, and I have confirmed that those references are correct.

For ease of reference, the stipulations are made part of the record of this matter as exhibit H-1. I have edited the stipulations, mostly by redaction, as necessary to protect the Student's privacy and the privacy of other children (the original stipulations reference other children by initials or a single letter). I have maintained the numbering of the parties' stipulations though number 50. After number 50, the original stipulations restart at 49, but I have maintained continuous numbering from 50 onward. I have also altered the original formatting for readability and flow.

### ***[Students]'s [redacted] Year (2017-2018 School Year)***

*The November 2017 Prior Written Notice for Initial Evaluation, February 2018 Evaluation Report, and March 2018 IEP*

1. A Prior Written Notice for Initial Evaluation and Request for Consent Form was issued on November 29, 2017. P-1, p. 1.
2. [Parent] consented to the evaluation on November 29, 2017. *Id.* at 3.

3. Pine-Richland School District issued an Evaluation Report on February 15, 2018. P-2 at p. 1.
4. The Evaluation Report ultimately found that [Student] qualified for special education services under the primary disability category of Other Health Impairment. *Id.* at 16.
5. Pine-Richland School District issued an Individualized Education Program on March 8, 2018. P-3, at p. 1.
6. The IEP noted that [Student] qualified for special education services under the primary disability category of Other Health Impairment because of [Student's] diagnosis of ADHD. *Id.* at 6.

***[Student]'s [redacted] Grade Year (2019-2020 School Year)***

*The November 2019 Prior Written Notice for a Reevaluation, January 2020 Functional Behavioral Assessment, and January 2020 Reevaluation Report*

7. On November 6, 2019, Pine-Richland School District issued a Prior Written Notice for a Reevaluation and Request for Consent Form to conduct a Functional Behavioral Assessment. P-4.
8. On January 1, 2020, Pine-Richland School District issued a Functional Behavioral Assessment. P-6 at p. 1.
9. Also on January 6, 2020, Pine-Richland School District issued a Reevaluation Report. P-5, at p. 1.
10. The Reevaluation report concluded that the student had a Primary Disability Category of Emotional Disturbance and a Secondary disability category of Other Health Impaired. SD-6; p. 19.

***[Student]'s [redacted] Grade Year (2020-2021 School Year)***

*The September 2020 Pennsylvania Cyber Charter School IEP*

11. [Student] enrolled at the Pennsylvania Cyber Charter School ("PA Cyber") in August 2020. P-7 at p. 7.
12. On September 29, 2020, [PA Cyber] issued an IEP for [Student]'s [redacted] grade year (period between September 29, 2020, and September 28, 2021). *Id.* at 1.

13. The IEP found that [Student] did not qualify for Extended School Year ("ESY") services. *Id.* at 40.
14. The IEP found that [Student] qualified for itinerant emotional support. *Id.* at 42.

*The December 2020 Pine-Richland IEP Documents*

15. [Student] transferred from PA Cyber back to Pine-Richland on December 1, 2020.
16. On December 12, 2020, Pine-Richland issued an Invitation to Participate in the IEP Team Meeting. P-9 at p. 1.
17. On December 23, 2020, Pine-Richland issued an IEP for [Student]'s [redacted] grade year (period between December 24, 2020, and December 22, 2021). P-10 at p. 1.
18. The IEP continued to note that [Student] qualified for special education services under the primary disability category of Emotional Disturbance and the secondary disability category of Other Health Impairment, the latter because of ADHD. *Id.* at 19.
19. Under this IEP, [Student] received itinerant emotional support. *Id.* at 32.
20. Also on December 23, 2020, Pine-Richland issued a Notice of Recommended Educational Placement/Prior Written Notice ("NOREP/PWN"). P-11 at p. 1.
21. The NOREP/PWN rejected 100% in-person instruction and hybrid instruction because "the parents requested that [Student] be placed in a 100% virtual setting." *Id.* at 2.
22. Also on December 23, 2020, Pine-Richland issued a PBSP. P-12 at p. 1.

***[Student]'s [redacted]Grade Year (2021-2022 School Year)***

*The September 2021 Pine-Richland IEP*

23. [Student] returned for in-person instruction during the 2021-2022 school year for [redacted] grade.

24. On September 21, 2021, Pine-Richland issued an IEP for [Student]'s [redacted] grade year.<sup>2</sup> P-14, at p. 1.

*The November and December 2021 Pine-Richland IEP Documents*

25. On November 16, 2021, Pine-Richland issued an Invitation to Participate in the IEP Team Meeting. P-15 at p. 1.
26. On December 15, 2021, Pine-Richland issued an IEP for [Student]'s [redacted] grade year (period between December 16, 2021, and December 14, 2022). P-16 at p. 1.
27. Under this IEP, [Student] received itinerant learning support. *Id.* at 24.
28. Also on December 15, 2021, Pine-Richland issued a NOREP/PWN. P-17 at p. 1.
29. Also on December 15, 2021, Pine-Richland issued a PBSP. P-18, at p. 1.

*The February and March 2022 Pine-Richland IEP Documents*

30. On February 26, 2022, Pine-Richland issued a revised IEP. P-20, at p. 1.
31. On February 28, 2022, Pine-Richland issued a NOREP/PWN. P-21 at p. 1. The NOREP recommended that [Student] qualify for ESY. *Id.*
32. On March 22, 2022, Pine-Richland issued a revised IEP to add individual psychological services for up to 480 minutes per year. P-22 at p. 1.
33. [Student] had 9 excused and 6 unlawful absences during the 2021-2022 school year. P-13.

***[Students]'s [redacted]Grade Year (2022-2023 School Year)***

*The November 2022 Pine-Richland IEP Documents*

34. On November 2, 2022, Pine-Richland issued an Invitation to Participate in the IEP Team Meeting. P-23, at p. 1.

---

<sup>2</sup> [The parties stipulate that, due] to a typographical error, the IEP lists [redacted] grade on its first page.

35. On November 14, 2022, Pine-Richland issued a Reevaluation Report. P-24, at p. 1.
36. On November 15, 2022, Pine-Richland issued an IEP for [Student]’s [redacted] grade year (period between November 16, 2022, and November 14, 2023). P-25, at p. 1.
37. The IEP concluded that [Student] did not qualify for ESY. *Id.* at 24.
38. The IEP continued to provide itinerant learning support. *Id.* at 26.
39. Also on November 15, 2022, Pine-Richland issued a PBSP. P-26, at p. 1.

#### *The January 2023 Pine-Richland IEP Documents*

40. On January 26, 2023, Pine-Richland issued a NOREP/PWN. P-29, at p. 1.
41. Under this NOREP/PWN, [Student] did not qualify for ESY. *Id.*
42. The NOREP/PWN continued to recommend itinerant learning support for [Student] *Id.* at 2.
43. [Parent] signed this NOREP on March 1, 2023. *Id.* at 3.
44. Also on January 26, 2023, Pine-Richland issued a revised IEP to include weekly psychological services and discontinued individual counseling services. P-30, at p. 1.

#### *The 2023 Title IX Investigation*

45. On February 27, 2023, a peer, [Peer 1] reported that a peer named [Peer 2] touched [Peer 1’s] private parts while the two [children] were “wrestling on the floor” during a school counseling lesson. P-31, p. 1.
46. On February 28, 2023, another student’s parent, [Other Parent] reached out to the District to report that [Other Parent’s child, Peer 3] had been touched in the private area by [Peer 2] since November 2022. *Id.*
47. On March 1, 2023, the District reported an internal meeting with multiple faculty and staff to clarify the details of the incident. *Id.* at 4.



48. On that same date, [Parent] called the District and alleged that [Peer 2] touched [Student] in the private area in school in the Fall of 2022. [Parent] alleged that in September 2022, a fifth-grade student [Peer 2] touched [Student]'s [redacted]. [Parent] alleged that in response, "[Student] said [Student] grabbed [Peer 2's] finger and twisted it over the table. [Student] told [Parent] what happened when [Student] got home. *Id.*
49. The District initiated a Title IX investigation in February, 2023. A formal Title IX Complaint was filed on May 1, 2023.
50. As a supportive measure [Student] and [Peer 2] were separated during the school day.

*The May and June 2023 Pine-Richland IEP Documents*

51. On May 28, 2023, Pine-Richland issued an Invitation to Participate in the IEP Team Meeting. P-33, at p. 1.
52. On May 26, 2023, Pine-Richland issued a revised IEP. P-36.
53. The IEP indicated that the Present Levels and Related Services (ESY) sections had been revised. *Id.* at 1.
54. The IEP indicated that the team review the following preventative and supportive safety measures:
  - a. Check-in and check-out time with calming time during homeroom and dismissal;
  - b. Scheduled breaks with adult supervision during hallway transitions;
  - c. Use of a quiet room for one-on-one testing in English language arts, math, social studies, and science tests;
  - d. Seating arrangements "so [Student] can sit with friends" during lunch;
  - e. Support from a school counselor during a May 30, 2023, field trip;

- f. "Additional Supportive Measures and Services" including weekly meetings with [a school psychologist], use of the Student Assistance Program, and school-based mental health therapy;
  - g. Use of trusted of adults and safe spaces for [Student] to use throughout the day; and
  - h. Academic support, including provision of ESY and a screening of [Student]'s current reading levels "to obtain an additional data point in this skill area." *Id.* at 3.
55. The IEP noted that [Student] met the Emotional Disturbance and "withdraws from learning process" categories for ESY. *Id.* at 4.
56. The ESY service to be provided was tutoring. *Id.*
57. On June 7, 2023, Pine-Richland issued a NOREP/PWN. P-37, at p. 1.
58. The type of action proposed by the NOREP/PWN was ESY services. *Id.* The document noted that [Student] had qualified for ESY tutoring services. *Id.*
59. [Parent] signed this NOREP on June 7, 2023. *Id.* at p. 4.
60. [Student] had 7 excused and 12 unlawful absences during the 2022-2023 school year. [Student] had missed school from May 1, 2023 to May 3, 2023. [Student] was also absent from school from May 15, 2023 to May 19, 2023. [Student] was marked as an unlawful absence from school from May 24, 2023, to May 26, 2023, and [Student] was absent again on June 2, 2023. P-19.
61. [Student] received ESY services during the summer of 2023.

*The July 2023 Pine-Richland Title IX Written Determination and District Action Document*

62. On July 10, 2023, Pine-Richland issued a Title IX Written Determination and District Action summary. P-38, at p. 1.
63. [Parents] did not file an appeal of the Title IX Determination.

***[Student]'s [redacted] Grade Year (2023-2024 School Year)***

*The October and November 2023 Pine-Richland IEP Documents*

64. [Student] returned to school for [redacted] grade for the 2023-2024 school year.
65. On August 25, 2023, the District issued a NOREP. P-39, at p. 1.
66. The NOREP noted that while the District recommended that [Student] continue to receive Wilson Reading as [Student's] Tier 3 reading intervention, [Parent] had requested that [Student] be waived out of this intervention.<sup>3</sup> *Id.*
67. [Parent] signed this NOREP on August 25, 2023. *Id.* at p. 4.
68. On October 27, 2023, Pine-Richland issued an FBA. P-42, at p. 1.
69. On October 27, 2023, Pine-Richland issued a Reevaluation Report. P-41, at p. 1.<sup>4</sup>
70. On November 13, 2023, the District issued an IEP for [Student]'s [redacted] grade year. P-43.
71. [Student's] progress reporting was not calculated, because [Student]'s parents requested that [Student] be waived out of [Student's] Tier III intervention program. As of 8/25/2023, [Student] stopped the current Tier III Wilson intervention and began participation in an alternative program. *Id.* at 10.<sup>5</sup>
72. [Student] was meeting with the school psychologist and [Student] received school-based mental health therapy weekly. *Id.*

*The January and February 2024 Pine-Richland IEP Documents*

73. On February 21, 2024, Pine-Richland issued a revised IEP. P-46, at p. 1. During an IEP meeting that same day, the IEP team decided that [Student] would benefit from small group Tier 3 math instruction and ESY for Summer 2024. *Id.* Pine Richland also continued to recommend the use of Wilson Reading as [Student]'s Tier 3 reading intervention. *Id.* The Present Levels, Goals, Related Services (ESY), and Placement sections were updated. *Id.* at 2. [While not part of the parties'

---

<sup>3</sup> Wilson or Wilson Reading is a propriety, Orton-Gillingham based, sequential, phonemic, multisensory, structured reading program.

<sup>4</sup> Through this RR, the District determined that the Student had a Specific Learning Disability in Basic Reading Skills and Reading Fluency. S-26.

<sup>5</sup> Testimony reveals that the alternative program was called Voyager. NT 72, 97.

stipulations, there is no dispute that the Student returned to Wilson Reading at this time. See S-27]

*The May 2024 Pine-Richland IEP Documents*

- 74. On May 23, 2024, Pine-Richland issued a revised IEP. P-48.
- 75. The IEP noted that [Student] continued to be eligible for ESY for Summer 2024.

*The June 2024 Pine-Richland IEP Documents*

- 76. On June 5, 2024, Pine-Richland issued a Progress Report summarizing data collected for [Student]'s participation skills, self-regulation skills, reading fluency, math computation, math problem solving, decoding real words, and decoding nonsense words goals for the third and fourth quarters. P-50, at p. 1.
- 77. Regarding [STUDENT]'s participation goal of completing work on expected tasks with 2 or less prompts on at least 85% of observed opportunities in a month for two consecutive months, the Progress Report provided the following data:
  - a. January 2024 - 88% of observed opportunities
  - b. February 2024 - 85% of observed opportunities
  - c. March 2024 - 91% of observed opportunities
  - d. April 2024 - 85% of observed opportunities
  - e. May 2024 - 96% of observed opportunities. *Id.*
- 78. Regarding [Student]'s self-regulation skills goal of maintaining a quiet voice during instruction with 3 or less verbal disruptions when the expectation is quiet voice in at least 90% of class periods per month for 2 consecutive months, the Progress Report provided the following data:
  - a. January 2024 - 100% of observed class periods
  - b. February 2024 - 100% of observed class periods
  - c. March 2024 - 87% of observed class periods

- d. April 2024 - 92% of observed class periods
  - e. May 2024 - 90% of observed class periods. *Id.* at 2.
79. Regarding [Student]'s reading fluency goal of increasing [Student's] fluency from a median score of 85 wcpm to 99 wcpm over three consecutive attempts, the Progress Report provided the following data for the third quarter:
- a. Probe 1 (February 2024) - 100 wcpm (100% accuracy)
  - b. Probe 2 (February 2024) - 85 wcpm (96% accuracy)
  - c. Probe 3 (March 2024) - 99 wcpm (99% accuracy)
  - d. Probe 4 (March 2024) - 83 wcpm (100% accuracy). *Id.* at 3.
80. For this same goal, the Progress Report noted that earned the following scores on monthly Maze Reading Comprehension progress monitoring probes in the third quarter:
- a. February 2024 – 17
  - b. March 2024 - 24. *Id.*
81. Regarding the same goal, the Progress Report provided the following data for the fourth quarter:
- a. Probe 1 (April 2024) - 97 wcpm (99% accuracy)
  - b. Probe 2 (April 2024) - 104 wcpm (97% accuracy)
  - c. Probe 3 (May 2024) - 106 wcpm (98% accuracy)
  - d. Probe 4 (May 2024) - 110 wcpm (99% accuracy). *Id.* at 4.
82. Regarding the same goal, the Progress Report noted the following monthly Maze Reading Comprehension scores:
- a. April 2024 – 22
  - b. May 2024 - 21. *Id.*

83. The Progress Report further noted that “[Student] also showed Above Typical Progress in [Student’s] Reading Composite Scores according to [Student’s] Acadience Benchmarks,” providing the following data:
- a. Grade 6 Reading Composite Score: 348 (18th percentile)
  - b. Oral Reading Fluency (ORF): 88 (10th percentile); 97% accuracy (19th percentile)
  - c. ORF Retell: 46 (51st percentile)
  - d. Maze Comprehension: 18 (20th percentile). *Id.*
84. Regarding [Student]’s math computation goal of independently calculating and solving arithmetic problems using the four operations and increasing [Student’s] accuracy from 20 points to 55 points on three out of four assessments, the Progress Report provided the following data:
- a. February 2024 – 20
  - b. March 2024 – 18
  - c. April 2024 – 28
  - d. May 2024 - 44. *Id.* at 5.
85. Regarding [Student]’s math problem solving goal of independently solving math word problems and increasing from 0 points to 40 points on three out of four consecutive monthly probes, the Progress Report provided the following data:
- a. February 2024 – 12
  - b. March 2024 – 56
  - c. April 2024 – 55
  - d. May 2024 - 44. *Id.* at 6.
86. Regarding [Student]’s decoding real words goal of accurately decoding real words and increasing from an average of 80% accuracy to 90% accuracy as measured by a post test, the Progress Report broke this goal into what appears to be three subparts. *Id.* at 7-8.

- a. The first subpart was "[Student] will accurately decode a list of 10 real words that contain vowel-consonant-e syllables (VCE), maintaining a score of 90% (9/10)." *Id.* at 7. The Progress Report indicated that [Student] mastered this goal. *Id.*
  - b. The second subpart was "[Student] will accurately decode a list of 10 real words that contain open syllables, increasing from a baseline of 80% (8/10) to 90% (9/10)." *Id.* at 8. The Progress Report indicated that [Student] mastered this goal. *Id.*
  - c. The third subpart was "[Student] will accurately decode a list of 10 real words that contains suffix endings and consonant-l-e syllables, increasing from a baseline of 70% (7/10) to 90% (9/10)." *Id.* The Progress Report indicated that this goal had not been introduced as of updates made to the document on March 22, 2024, and June 5, 2024, and that [Student] would begin working on it during the summer of 2024. *Id.* at 9.
87. Regarding [Student]'s decoding nonsense words goal of accurately decoding nonsense words and increasing from an average of 67% accuracy to 80% accuracy as measured by a post test, the Progress Report broke this goal into what appears to be three subparts. *Id.* at 10.
- a. The first subpart was "[Student] will accurately decode a list of 5 nonsense words that contain vowel-consonant-e syllables (VCE), increasing from a baseline of 60% ( $\frac{3}{5}$ ) to 80% ( $\frac{4}{5}$ )." *Id.* [Student] appears to have mastered this goal.
  - b. The second subpart was "[Student] will accurately decode a list of 5 nonsense words that contain open syllables maintaining a score of 80% ( $\frac{4}{5}$ )." *Id.* at 11. For the updates made to this entry on March 22, 2024, the Progress Report noted that [Student] completed one tribal with 100% accuracy and another with 87% accuracy. *Id.* The June 5, 2024, entry noted that [Student] had mastered this level. *Id.*
  - c. The third subpart was "[Student] will accurately decode a list of 5 nonsense words that contain suffix endings and consonant-l-e syllables, increase from a baseline of 60% ( $\frac{3}{5}$ ) to 80% ( $\frac{4}{5}$ )." *Id.* Both the March 22, 2024, and June 5, 2024, entries noted that this goal had not yet been introduced. *Id.* at 11-12. The latter

noted that the skill would be introduced during the summer of 2024. *Id.* at 12.

88. During the 2023-2024 school year, [Student] missed a total of 14 days. [Student] had an excuse for 9 days, and 5 days were unexcused. [Student] had 17 tardies. P-27 at 2.
89. [Student] earned As and Bs in ELA-Reading 6, ELA-Writing 6, Tier 3 Math 6, and Social Studies 6. [Student] earned Bs and Cs in Science. *Id.* at 1.

### **Testimony and 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.”).

Witnesses who testified in this matter recalled events differently, particularly about when the Parents shared concerns about assault and bullying with District personnel. This conflicting testimony about when the Parents shared information with the District and other points (such as where some forms of instruction was provided in the school building) is equally credible on both sides in the sense that all witnesses testified to their honest recollection of various events.

I do not assign equal weight to all testimony. Testimony that is consistent with contemporaneous documentation and the parties’ stipulations is given more weight than testimony that does not have documentary support. Testimony derived from first-hand observations of the Student in school is given more weight than testimony derived from second and third hand information. As a result, I find the testimony from District witnesses concerning the timing of certain events and the Student’s presentation in school more reliable than conflicting testimony from the Parents.

But all of that is beside the point. Under the standards that I must apply (described below), the exact day that the District received information or came to understand the Parents’ perspective, and the exact location in which



some services were provided, is in no way outcome determinative. More broadly, testimony helped me better understand the stipulated record but did not alter the outcome of this case.

## **Applicable 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. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3d Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

Applied in this case, the Parents are the party with the burden of proof, and their burden is the same for their IDEA and Section 504 claims.

### ***Free Appropriate Public Education – IDEA/Chapter 14 Standard***

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

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

In *Rowley*, the Court found that a LEA satisfies its FAPE obligation to a child with a disability when “the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.” *Id* at 3015.

Third Circuit consistently interpreted *Rowley* to mean that the “benefits” to the child must be meaningful, and the meaningfulness of the educational benefit is relative to the child’s potential. See *T.R. v. Kingwood Township Board of Education*, 205 F.3d 572 (3rd Cir 2000); *Ridgewood Bd. of Education v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); *S.H. v. Newark*, 336 F.3d 260 (3rd Cir. 2003). In substance, the *Endrew* decision is no different.

A school district is not required to maximize a child’s opportunity; it must provide a basic floor of opportunity. See, *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). However, the meaningful benefit standard required LEAs to provide more than “trivial” or “de minimis” benefit. See *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 1179 (3d Cir. 1998), *cert. denied* 488 U.S. 1030 (1989). See also *Carlisle Area School v. Scott P.*, 62 F.3d 520, 533-34 (3d Cir. 1995). It is well-established that an eligible student is not entitled to the best possible program, to the type of program preferred by a parent, or to a guaranteed outcome in terms of a specific level of achievement. See, e.g., *J.L. v. North Penn School District*, 2011 WL 601621 (E.D. Pa. 2011). Thus, what the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by ‘loving parents.’” *Tucker v. Bayshore Union Free School District*, 873 F.2d 563, 567 (2d Cir. 1989).

In *Endrew*, 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*, 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.

Pennsylvania’s IDEA implementing regulations are found at 22 Pa. Code § 14 (Chapter 14).

## ***Free Appropriate Public Education - Section 504/Chapter 15 Standard***

Some students who do not meet the IDEA's definition of a "child with a disability" are protected by Section 504. However, every student who meets the IDEA's definition of a "child with a disability" also protected by Section 504. The latter scenario applies in this case.

Section 504 protects "handicapped persons," a term that is defined at 34 CFR § 104.3(j)(1):

Handicapped persons means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

In this case, the Student is a child with an Emotional Disturbance and OHI. Those disabilities not only satisfy the first prong of the two-part test for special education eligibility under the IDEA, but also bring the Student under the protection of Section 504 by definition.

Pennsylvania regulations implementing Section 504 to protect children with disabilities in school are found at 22 Pa. Code § 15 (Chapter 15). Chapter 15 applies Section 504 in schools to prohibit disability-based discrimination against children who are "protected handicapped students." Chapter 15 defines a "protected handicapped student" as a student who:

1. Is of an age at which public education is offered in that school district; and
2. Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student's school program; and
- 3. Is not IDEA eligible.**

See 22 Pa. Code § 15.2 (bold added).

Section 504 and Chapter 15 prohibit schools from denying protected handicapped students' participation in, or the benefit of, the schools' educational programming. See 34 C.F.R. Part 104.4(a). Unlike the IDEA, which requires schools to provide special education to qualifying students with disabilities, Section 504 and Chapter 15 require schools to provide

accommodations so that students with disabilities can access and benefit from “regular” or general education.

Chapter 15 details what schools must do to provide the accommodations that Section 504 requires. Under Chapter 15, “school district shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student’s abilities.” 22 Pa Code § 15.3.

Chapter 15 requires school to evaluate students to determine what related aids, services, or accommodations are needed. Chapter 15 includes procedural and substantive rules such evaluations. 22 Pa. Code §§ 15.5, 15.6.

The related aids, services or accommodations required by Chapter 15 are drafted into a service agreement. Chapter 15 defines a service agreement as a “written agreement executed by a student’s parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student.” 22 Pa. Code § 15.2. Service agreements become operative when parents and schools agree to the written document; oral agreements are prohibited. 22 Pa Code § 15.7(a).

For IDEA-eligible students, the substance of service agreements is incorporated into IEPs. Such students do not receive separate service agreements. See 22 Pa. Code § 15.2. In this way, Chapter 14 (regarding special education services) details what schools must do to satisfy their obligations under the IDEA and Section 504 when a child is protected by both. This is consistent with the applicability of Section 504 protections to every student who qualifies for special education under the IDEA and with Chapter 15’s specific and explicit inapplicability to those children.

## **Discussion**

### ***Section 504/Chapter 15 Claims***

The Parents urge an expansive view of my jurisdiction, not only in terms of Title IX, but also in terms of Section 504. I cannot agree.

The scope of my jurisdiction to hear claims arising under Section 504 is limited to claims that can be brought under Chapter 15. If a child has a disability but does not require special education, I may apply Chapter 15’s

framework to determine if a school violated that child's Section 504 right to a FAPE by failing to provide appropriate regular education accommodations. However, if a child has a disability and requires special education – if a child is protected by the IDEA and Chapter 14 – then Chapter 15 is not applicable by its own terms and my authority to resolve a Section 504 dispute ends.

It is easy to find examples of hearing officers, including me, who have resolved Section 504 claims in IDEA cases by finding that the Section 504 claims are coextensive with the IDEA claims. In such cases, resolution of the IDEA dispute also resolves the Section 504 dispute, and no separate Section 504 analysis is needed. Strictly in terms of pragmatic functionality, holding that a Section 504 dispute is resolved through an IDEA analysis is not different from my holding above. There are, however, a few important caveats to this principle that must be discussed.

First, Section 504 applies to a broad array of cases and claims.<sup>6</sup> Of those, my jurisdiction represents a narrow sub-set, comprised of claims also arising under Chapter 15. It is entirely possible that the same actions and inactions that substantiate an IDEA violation also substantiate a Section 504 violation. If so, parents and children should have an opportunity to present Section 504 claims in a court of competent jurisdiction – and the IDEA explicitly addresses this possibility. See 20 U.S.C. § 1415(l). I hold only that my jurisdiction to hear Section 504 claims is limited to the sub-set of those claims that can be brought under Chapter 15, and that Chapter 15 is inapplicable by its own terms for IDEA-protected children.

Second, Third Circuit case law holds that Section 504 grants different and more specific rights to children than the IDEA in certain situations. See *Le Pape v. Lower Merion Sch. Dist.*, 103 F.4th 966 (3d Cir. 2024); *B.S.M. v. Upper Darby Sch. Dist.*, 103 F.4th 956 (3d Cir. 2024). Those cases stand for the proposition that separate analysis is required for IDEA and Section 504 claims if a student's rights under Section 504 are different from those under the IDEA.<sup>7</sup> This suggests that there may be differences between a Chapter 14 FAPE analysis and a Chapter 15 FAPE analysis, depending on the facts and circumstances. That does not, however, expand my authority to hear Section 504 claims that fall outside the scope of Chapter 15.

---

<sup>6</sup> See, e.g. *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) (illustrating many types of Section 504 claims while resolving the applicability of the IDEA's administrative exhaustion requirement in Section 504 cases).

<sup>7</sup> *La Pape*, *supra*, is an ADA case. Nothing should suggest that I have jurisdiction to hear ADA claims. Rather, *La Pape* demonstrates that a child's total set of special education rights are not always resolved exclusively through an IDEA analysis.

Third, and perhaps most important for this case, Chapter 15's inapplicability does not make the sort of evidence more typically associated with a Section 504 claim irrelevant to a Chapter 14/IDEA analysis. For example, it is well-established that bullying and harassment may result in a substantive denial of a child's right to a FAPE under the IDEA itself, regardless of Section 504 or Chapter 15's applicability.

In sum, I dismiss the Parent's Section 504 claims on jurisdictional grounds. I have jurisdiction to resolve Section 504 claims that arise within the scope of Chapter 15. Chapter 15, by its own terms, does not apply to children who are protected by the IDEA. Consequently, regardless of their merits, I cannot the Parent's claims arising under Section 504.

### ***IDEA/Chapter 14 Claims***

The Parents' IDEA and Chapter 14 claims take three forms. First, the Parents argue that the Student experienced bullying resulting in a substantive denial of FAPE in and of itself. Second, the Parents argue that the Student's IEPs were not reasonably calculated to address the Student's emotional and behavioral needs. Third, the Parents argue that the Student's IEPs were not reasonably calculated to address the Student's academic needs.

#### ***Bullying***

The parties did not reach stipulations concerning bullying, but there was testimony about bullying. That testimony was conflicting in terms of what school personnel observed, and when the Parents reported concerns about bullying to the District. For purposes of analysis, I will assume that the Student was a victim of bullying and that the District was aware of the bullying (either via parent report or direct observation).

Assuming that Student was bullied does not resolve the FAPE question. The Parents must also prove that the bullying resulted in an adverse educational impact. *Shore Regional High School v. Board of Education*, 381 F.3d 194 (3d Cir. 2004). The record of this case does not support such a finding. Rather, the record paints a picture of a Student with complex emotional needs that are a function of multiple factors. Those factors include the Student's primary disability of Emotional Disturbance (a disability that was identified before any allegation of bullying, harassment, or assault), a particularly traumatic in-school incident involving a peer, and bullying. There is insufficient evidence in the record before me to conclusively link the Student's performance in school (academic and non-academic) to bullying.

The Student's pattern of absenteeism is a good example. The Student missed some days of school before the incidents sparking the Title IX investigation. The Student's absences increased after that incident. That increase was concentrated and limited to a period quite some time after the Title IX incident, coinciding with the formal Title IX complaint. But nothing in the record links the Student's absences to any alleged incident of bullying, or any pattern of bullying. While there is evidence that the Student's needs changed after the Title IX incident, there is no evidence linking any incident of bullying or pattern of bullying to the Student's receipt of a FAPE under IDEA standards.

In reaching this conclusion, I have considered and rejected several of the District's defenses. The District points to federal policy letters concerning bullying and harassment in schools. Taken collectively, those policy letters advise that bullying need not be related to a child's disability to have an adverse educational effect, and that schools must take actions and provide remedies when bullying interferes with an IDEA-protected child's right to a FAPE. The District points to these policy letters in conjunction with *T.K. v. New York City Department of Education*, 779 F.Supp.2d 289 (E.D.N.Y. 2011), to argue that the actions it took in response to allegations of bullying shield the District from IDEA liability. The District and I read that case and the federal policy letters differently. If an IDEA-protected child is bullied, and that bullying interferes with the child's right to a FAPE, the child is owed a remedy for the interference and protection from future bullying. *See Shore Regional High School, supra*. A school's actions to stop bullying after it occurred does not shield the school from FAPE claims accruing before it acted. However, this analysis applies only after parents establish that bullying resulted in a FAPE violation. On the record of this case, assuming that the bullying occurred and the District knew about it, I do not find a preponderance of evidence that the bullying resulted in a violation of the Student's right to a FAPE under IDEA standards.

#### *Non-Academic Factors*

I find that the District violated the Student's IDEA procedural rights by failing to include necessary emotional and behavioral programs and resources in the Student's IEP. That violation started on May 26, 2023, and continued until November 13, 2023. This violation was procedural in nature; the District did not add the services it was providing to the Student's IEP. This violation was not substantive in nature because the District provided those services, and those services were appropriate.

Both parties place considerable emphasis on the District's actions and inactions in response to reports about Peer 2. The parties agree about when

the Parents told the District about the incident between Peer 2 and the Student and agree about what information the Parents shared. Those facts are stipulated. The District's plan to keep Peer 2 and the Student separated is described in testimony and illustrated in exhibits showing the layout of the school building. The District's plan to keep them separated may be relevant to a Title IX claim or Section 504 claim. That plan is not relevant to an IDEA analysis. Simply put, the special education and related services that the District offered in its IEPs must be reasonably calculated to provide a FAPE when those IEPs are offered. The question before me is whether the IEPs were appropriate, not whether the totality of the District's actions complied with laws beyond my jurisdiction. The IDEA analysis, therefore, concerns the match between the Student's needs and the special education that the school offered, just as *Endrew* instructs. Other actions that a school may take in conformity with other laws are not relevant to a FAPE analysis.

Above, I discuss my lack of Title IX jurisdiction. Even so, the events triggering the Title IX investigation provide a useful marker in the IDEA analysis. Comparing the Student's needs and IEPs before and after those events is helpful.

From the 2017-18 school year through January 2023, the record reveals no dispute about the Student's emotional and behavioral needs, or what special education and related services the District put in place to address those needs. Shortly after an initial evaluation, the Student began to receive itinerant emotional support services. The Student then transferred to a public cyber charter school, then back to the District for more virtual instruction at a time when schools were just starting to recover from COVID-19 shutdowns. When the Student returned for in-person instruction, both parties agreed to change the Student's placement from itinerant emotional support to itinerant learning support, but still with a PBSP. At times, the District supplemented that program through the IEP process with a small amount of individual counseling and ultimately replaced that with weekly psychological services. These relatively modest services enabled the Student to come to school, participate, and learn.

On February 27 and 28, 2023, the District became aware of an incident between Peer 2 and two other children (not the Student). On March 1, 2023, the Parent reported an incident between Peer 2 and the Student. As a result of these reports, the District started a Title IX investigation and separated the Student and Peer 2 as much as possible. A formal Title IX complaint was not filed until May 1, 2023. Much of the Student's absences during the 2022-23 school year are linked to this date more than any specific occurrence in school.



On May 26, 2023, the District reconvened the Student's IEP team and drafted a document that the parties stipulate is a revised IEP (P-36). That document says that the IEP team "**reviewed and considered** preventative and safety measures to assist [Student's] transition back to school [after a series of absences in May 2023]." P-36 at 1 (emphasis added). Those "preventative and safety measures" are detailed in the stipulations above and were put in place in response to the Title IX incident. Those measures fall into eight domains, including the start of school-based psychological services. But the only change in the Student's IEP in May 2023 was the inclusion of ESY tutoring services to address the Student's withdraw from the learning process. While other services were "reviewed and considered," none were added to the IEP.

This is the point where the District ran afoul of its procedural IDEA obligations to the Student. Regardless of the District's position concerning the Title IX investigation or the lack of appeal thereof, the District demonstrated actual knowledge that the Student's educational needs had changed. The District did not simply separate the Student from Peer 2. The District made significant changes to the Student's program. Among other supports, the District implemented a check-in and check-out time to help the Student remain calm during homeroom and dismissal, adult supervision during breaks and hallway transitions, use of a quiet room, lunchroom seating assignments, school counselor support on field trips, weekly meetings with a school psychologist, and school-based mental health therapy. While the IEP team discussed all of those, and all were in place, none were added to the Student's IEP.

The 2023-24 school year started under the revised IEP at P-36, in which the only change was the addition of ESY services. The District reevaluated the Student in October 2023 and issued an IEP on November 13, 2023. At this point, the District added the services discussed in May 2023 to the Student's IEP. See P-43 at 25. This brought the IEP in line with the services that the Student had been receiving. The District also tracked the Student's progress on IEP goals related to the Student's emotional and behavioral needs (school participation and self-regulation). By the end of the 2023-24 school year, the Student showed a consistent and high level of success in those domains, typically meeting or exceeding mastery criteria.

In sum, the District made immediate and meaningful changes to the Student's program in response to the events triggering the Title IX investigation. Based on the totality of the record, and despite some conflicting testimony from the Parent, I find that those changes were implemented and effective. Those changes resulted in the Student's ability to attend school, regulate behaviors while in school, and make academic

progress. For a time, the District failed to capture those changes in the Student's IEP, resulting in a procedural violation of the Student's right to a FAPE. I find no preponderant evidence in the record that this failure resulted in substantive educational harms and therefore cannot award a remedy beyond declarative relief.<sup>8</sup>

### *Academic Factors*

I find no preponderant evidence that the District violated the Student's right to a FAPE in academic domains.

The District highlights the Student's grade-to-grade progression as proof that the Student's IEPs included appropriate special education and related services to address academic concerns. Under *Endrew, supra*, grade-to-grade progression may indicate appropriateness, but that same case illustrates the need for a student-specific analysis.

More importantly, the question is not whether the Student made academic progress, but whether the Student's IEPs were reasonably calculated to provide a meaningful educational benefit when they were offered. Any child's actual progress may establish whether an IEP worked as intended or needed to be changed (an LEA's FAPE obligation is ongoing). Actual progress prior to the issuance of an IEP may also be a factor in determining the IEP's appropriateness when it was offered.

The parties' stipulations include very little information about the Student's academic needs in the 2022-23 school year, but the stipulated record includes documents that detail the Student's academic struggles. During the 2022-23 school year, the Student received Wilson Reading to address fundamental reading deficiencies. The District would not identify the Student as having an SLD in reading until October 2023. Regardless, the first half of the 2022-23 school year was promising and both parties agreed that the Student gained reading skills during this time. The Student's progress in real-world reading skills slowed over the course of the year, however. The record, however, does not correlate the Student's progress in Wilson with the Student's progress in reading generally. Wilson teaches in a structured system that does not correlate with grade level, and there is very little evidence in the record to establish the Student's progress in Wilson, or whether that progress was appropriate for the Student. The record does establish, however, that the Parents routinely expressed their concerns

---

<sup>8</sup> See 20 U.S.C. § 1415(f)(3)(E)(ii). I am empowered to order corrective action requiring the District to comply with the IDEA's procedural requirements, but the District has already done so by issuing the IEP at P-43. That IEP incorporates what the IEP team only discussed at P-36.

about the Student's ability to read and the difficult time that the Student had in the Wilson program. These concerns took a back seat to the interventions that the District put in place in response to the Title IX incident but were not ignored. The District maintained its position (then and now) that Wilson – although challenging – was and is an appropriate program for the Student.

There is no dispute that both parties recognized that the Student required special education in reading prior to the start of the 2022-23 school year. I find that the program that the District had in place at the start of the 2022-23 school year was reasonably calculated to provide a FAPE when it was offered (technically in February 2022). Then, until December 2022, both parties agreed that the Student was making progress in reading. The Student's progress slowed in December but, given the totality of the record of this case, that does not prove that the Student's academic program was inappropriate. The absence of a SLD qualification does not alter this analysis. Once a child qualifies for special education under any eligibility category, the school is responsible for providing a FAPE across all the Student's needs. As is seen in this case, sometimes that means providing special education to address the reading needs of a child who does not have a specific learning disability. In substance, I find no preponderance of evidence in the record that the Student's right to a FAPE was violated by vis-à-vis the academic special education that the District provided during the 2022-23 school year.

The analysis for the 2023-24 school year is slightly complicated by the Parent's rejection of Wilson Reading between August 25, 2023, and February 21, 2024. Regardless, there is preponderant evidence in the record that the 2023-24 school year was a period of significant academic growth for the Student. In October 2023, the District found that the Student should be designated as a child with an SLD in various reading domains. Reading and math goals were added to the Student's IEP. Progress monitoring detailed in the stipulations demonstrate that interventions worked as intended. It is notable that from the time that the Parents permitted the District to implement its recommended program onward, things "went well" academically for the Student.<sup>9</sup>

### **Summary and Legal Conclusions**

This hearing provides a powerful reminder of the limits of my authority. The Parents and the Student must have an opportunity to pursue their legal claims. The bulk of those claims fall beyond the scope of my jurisdiction. I make no determination as to whether the Parents can pursue a Title IX claim against the District, let alone the merits of any such claim. I make no

---

<sup>9</sup> See Due Process Complaint at 8.

determination as to whether any of the District's actions or inactions violate aspects of Section 504 that fall outside of claims arising Chapter 15. I make no determination about the Parents' Chapter 15 claims either. I would have jurisdiction to hear those claims if the Student was not also protected by the IDEA and Chapter 14. But there is no question that the Student is protected by the IDEA and Chapter 14, and so Chapter 15 does not apply by its own terms. This decision and order cannot be construed as a final decision on the merits for any of the claims I must dismiss on jurisdictional grounds. My intention, however, is for this decision and order to constitute administrative exhaustion for all of those claims.

The portions of this matter that I can resolve arise under the IDEA and Chapter 14. For the period in question, the Parents allege that the District violated the Student's right to a FAPE by failing to provide appropriate special education to address bullying, emotional concerns, and academic concerns. Evidence of bullying is not strong and is hotly contested. But assuming that the Student was bullied, I do not find a preponderance of evidence that the bullying – separate and distinct from other factors – interfered with the Student's right to a FAPE. Regarding the District's obligation to address the Student's emotional needs, I find that the District committed a procedural violation of the IDEA by failing to incorporate the services it was providing into the Student's IEP. That violation started on May 26, 2023, and ended on November 13, 2023, when the District added the supports that were already in place to the Student's IEP. I find no substantive violation of the Student's right to a FAPE vis-à-vis the Student's emotional needs during the time in question under IDEA standards. Similarly, I find no violation of the Student's right to a FAPE in academic domains during the time in question under IDEA standards.

### **ORDER**

Now, June 6, 2025, it is hereby **ORDERED** as follows:

1. From May 26, 2023, until November 12, 2023, the District violated the Student's procedural IDEA rights by failing to incorporate various programs and services detailed in the accompanying decision into the Student's IEP.
2. The procedural violation did not result in a substantive violation of the Student's IDEA right to a FAPE.
3. All other claims that concerning violations of the Student's IDEA right to a FAPE are **DENIED** and **DISMISSED**.

4. This decision and order is intended to constitute administrative exhaustion for all claims that were dismissed on jurisdictional and procedural grounds.

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

/s/ Brian Jason Ford  
HEARING OFFICER