

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. 31719-25-26

Child's Name:

K.H.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

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Local Education Agency:

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

05/21/26

INTRODUCTION AND PROCEDURAL HISTORY

The student, K.H. (Student),¹ is a [redacted]-elementary school-aged student residing with the Parents and enrolled in Chartiers Valley School District (District or local education agency (LEA)). Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² based on the Autism category, and accordingly has a disability and entitled to the protections under Section 504 of the Rehabilitation Act of 1973.³

In late August, 2025, the Parents filed a Due Process Complaint under the IDEA and Section 504, challenging the educational programming offered and provided to the Student by the District. More specifically, the Parents contended that the District's program denied Student a free, appropriate public education on both procedural and substantive grounds since Student's enrollment in late 2022 through a change in placement in the spring of 2025, as well as Section 504 claims of discrimination and retaliation. The matter proceeded to multiple hearing sessions.⁴

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2). Findings related to Student's behaviors are similarly more general than specific.

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300.818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

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

⁴ References to the record throughout the findings and discussion in this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, and School District Exhibits (S-) followed by the exhibit number. The District's objection to P-53 is sustained. Citations to duplicative exhibits and testimony generally are not exhaustive, particularly where witnesses did nothing more than confirm the content of a document. The term Parents is used in the plural where it appears one was acting on behalf of both.

Following review of the record and for all of the reasons set forth below, the claims of the Parent must be granted in part and denied in part.

ISSUES

1. Whether the District complied with its legal obligations to Student in delaying a functional behavioral assessment;
2. Whether the District denied Student a free, appropriate public education both procedurally and substantively since Student's enrollment;
3. Whether any of the Parents' claims must be dismissed as time-barred;
4. Whether the District engaged in retaliation and/or discrimination under Section 504;
and
5. If the District did deny Student a free, appropriate public education in any respect, whether Student should be awarded compensatory education and/or should the educational team be ordered to comply with specific directives?

FINDINGS OF FACT

1. Student is [redacted] elementary-school aged and resides with the Parents within the District, attending one of its schools. Student has been identified as eligible for special education under the Autism, Other

Health Impairment, and Emotional Disturbance categories. (N.T. 61-62; S-1; S-5; S-31.)

2. Student was diagnosed with autism at the age of two after exhibiting delays in speech and some atypical behaviors, and with Attention Deficit Hyperactivity Disorder (ADHD) during an early school grade. Student was provided early intervention services on the recommendation of Student's pediatrician for both occupational and speech/language therapy; Student also had wraparound services. (N.T. 65-73.)
3. Student learns new skills quickly, but also experiences difficulty with social interactions and cues, engages in elopement, and is challenged by reading. (N.T. 76-77; S-1 at 2.)
4. Student's outside therapy continued as Student entered school-age programming and has included school-based services through the present. (N.T. 83-84; P-14; P-17; P-37.)

Early Educational History

5. Student was evaluated for special education by a different school district early in Student's educational career, with an Evaluation Report (ER) issued in early December 2021. (P-1; S-1.)
6. Parent input into the ER indicated Student's ability to learn new skills quickly, but concerns with sight reading, fine motor skills, following directions, and behavioral regulation. (S-1 at 2.)
7. Input from teachers for the ER reflected concern with regular education curriculum skill progress, both academically and behaviorally. (S-1 at 2-4.)
8. Cognitive assessment for the ER yielded average-range scores with areas of relative strength and weakness. A School Readiness

Composite obtained for the ER was also within the average range compared to same-age peers. (S-1 at 4-7.)

9. On ratings scales for Autism for the ER, the Parents endorsed many of the known characteristics of autism. The Behavior Assessment System for Children – Second Edition (BASC-2) also completed by the Parents identified clinically significant concerns with hyperactivity, aggression, atypicality, and activities of daily living; and at-risk concerns with anxiety, depression, attention problems, and adaptability. (S-1 at 8-13.)
10. Occupational therapy evaluation issued for the ER identified related needs for fine motor skills, a functional grasp, cutting skills, and identification of the dominant hand. Therapy was recommended. (S-1 at 3-4.)
11. The ER identified Student as eligible for special education based on Autism. (S-1.)

General District Findings

12. The District has a policy that, when a parent asks to speak with the principal of Student's then-current school building without an appointment, staff instructs the parent to make an appointment. N.T. 745-46, 773, 796, 965-69.)
13. The District implemented Student's various IEPs throughout the school day. (N.T. *passim*.)
14. The Parents and District staff communicated on a regular basis throughout Student's enrollment through the present. (N.T. *passim*; P-56; P-57' S-38.)
15. The District has a QBS-trained team in the building that Student attended during the relevant time period, and were available for

Student as needed for crisis response. This team works to deescalate students who are escalated in a safe manner and environment. (N.T. 940-42, 949-50, 952-56, 986-90.)

January 2022 Individualized Education Program

16. An Individualized Education Program (IEP) developed by the other district after the ER in January 2022 identified strengths in the areas of picture naming and identification and some occupational therapy-related skills, noting that Student is a visual learner. Needs were for letter-sound knowledge, phonemic awareness, and fine motor skills including a functional pencil grasp, establishing hand dominance, tracing/copying skills, as well as scissors and clothing fastener skills. (S-2 at 11.)
17. Academic goals in the January 2022 IEP addressed blending phonemes and social skills including awareness. Occupational therapy goals targeted copying letters, functional grasp, cutting, and letter production. (S-2 at 19-25.)
18. Program modifications and items of specially designed instruction in the January 2022 IEP included occupational therapy supports, chunking of assignments, movement breaks, and alternative seating. Individual occupational therapy was a related service. Student's program was one of learning support at a supplemental level, participating in the regular education class except during reading/language arts in learning support. (S-2 at 26-30.))
19. Student received the identified school-age programming in the other school district pursuant to the IEP. Student's school building there was

much smaller than the buildings in the District. (N.T. 77-79.)⁵

2022-23 School Year

20. Student's IEP was revised by the other district in November 2022. At that time, mathematics instruction in the learning support classroom was added. Student's program remained one of learning support at a supplemental level. (S-3.)
21. Student transitioned to the District in early December 2022. The prior IEP was adopted by the District, with the Parents approving the Notice of Recommended Educational Placement (NOREP). (N.T. 569; P-2; S-3; S-4.)
22. Student's District special education teacher pulled Student for reading and mathematics instruction, and at times pushed into the classroom prior to transitions. Unstructured times were challenging for Student that school year, and the teacher worked with Student one on one. (N.T. 562-64, 573-54.)

January 2023 IEP

23. A new IEP was developed in January 2023. Student's primary eligibility category at that time was Other Health Impairment. (P-4; S-5.)
24. Parent input into the January 2023 IEP noted Student's improvement with writing skills, following directions, and engaging in appropriate behaviors, but with continued needs with fine motor skills and following directions. (S-5 at 14.)
25. Teacher input into the January 2023 IEP reflected Student's progress on academic skills, with positive transition to the learning support classroom; however, Student required prompts and redirection.

⁵ This testimony is incorrectly attributed to counsel for the Parents in the transcript, but is a direct response to a question of the witness by the undersigned.

Phoneme segmentation fluency remained an area of weakness; and the social skills goal had been removed because Student did not appear to be ready to continue working on those skills. (S-5 at 6-7, 11.)

26. Occupational therapy input into the January 2023 IEP reflected Student's progress on attaining those IEP goals. (S-5 at 11-13.)
27. Student's strengths in the January 2023 IEP were for identifying letters, rhyming words, and numbers; rote counting; and crafts, as well as occupational therapy skills with tracing letters and coloring. Needs included segmenting and decoding consonant-vowel-consonant (CVC) words and engagement in social interactions. Occupational therapy needs continued to related to functional pencil grasp, hand dominance, tracing and copying skills, as well as scissors and clothes fastening skills. (S-5 at 14.)
28. Academic goals in the January 2023 IEP addressed segmenting phonemes, decoding CVC words, and social skills (reciprocal play skills). Occupational therapy goals targeted copying letters, cutting, and clothes fastener skills. (S-5 at 23-28.)
29. Program modifications and items of specially designed instruction in the January 2023 IEP included those from the prior IEP and added a weekly social skills group. Individual occupational therapy remained a related service. Student's program was one of learning support at a supplemental level, participating in the regular education class except during reading/language arts and mathematics in learning support. (S-5 at 29-33.)
30. The Parents approved the NOREP accompanying the January 2023 IEP. (S-6.)
31. Student's IEP was revised twice in February 2023. The team determined that Student should have specialized transportation due to

behavior on the school bus; in addition, the team determined that Student was not eligible for extended school year (ESY) services. In March 2023, the team agreed to add a safety harness for Student's transportation. ((N.T. 575-77; P-6; S-7; S-8; S-9.)

2023-24 School Year

- 32. The start of Student's 2023-24 school year was challenging for Student after the transition and changes to routines. This type of behavior is not unusual for children of that age. (N.T. 606-08, 1025.)
- 33. An individual behavior chart was created for review with Student at the end of the day in September 2023. (N.T. 610-18; P-56 at 15.),

December 2023 IEP

- 34. A new IEP was developed for Student in December 2023. At that time, the team determined that Student exhibited behaviors that interfered with Student's learning and that of others. Student had seven behavioral incidents in the fall of that year, all during recess. (P-8; S-10.)
- 35. Input from the Parents for the December 2023 IEP reflected Student's hardworking nature, but that Student exhibited difficulty with social skills, maintaining attention to task, reading skills, and respecting authority figures. Student's ADHD diagnosis was also reported with a new medication, along with various outside mental health provider information. (S-10 at 15, 27-28.)
- 36. Teacher input into the December 2023 IEP noted Student's willingness to participate in class, as well as progress with reading, spelling, and mathematics goals. (S-10 at 10-14.)
- 37. Student's strengths in the December 2023 IEP were for reading short sentences and stories, encoding, addition and subtraction skills, fine

motor skill improvement, and play skills. Needs related to segmenting and decoding CVC words, and engagement in social interactions. Occupational therapy needs continued to relate to functional pencil grasp, hand dominance, tracing and copying skills, as well as scissors and clothes fastening skills. (S-10 at 28-29.)

38. Academic goals in the December 2023 IEP addressed segmenting sounds, decoding CVC words, social skills (peer interactions), and behavioral compliance with adult directives. (S-10 at 37-43.)
39. Program modifications and items of specially designed instruction in the December 2023 IEP included those from the prior IEP, adding visual cues for monitoring behavior and choice cards, minimal verbal prompts in favor of gestural prompts, prompting and modeling, check-ins with a substitute teacher, a full time paraprofessional. Counseling was a related service. Student was not eligible for ESY services, and the program remained one of learning support at a supplemental level, participating in the regular education class except during reading/language arts and mathematics in learning support. (S-10 at 44-49.)
40. An Individual Crisis Management Plan was developed in February 2024 to address elopement, physical aggression, and property destruction. This plan identified intervention strategies from pre-crisis signals through recovery with intervention strategies for each stage, and review by all District staff working with Student and the Parents. A designated space for calming was identified for the plan. (N.T. 599-600, 615-17, 790-91; P-10.)
41. Student's IEP was revised several times over the 2023-24 school year. In February 2024, the team determined again that Student did not qualify for ESY. In March 2024, the team updated the Crisis Plan

because of a February restraint wherein Student presented a danger to self during an elopement. An April 2024 revision noted the change to medication; supports during unstructured times; and transportations on special occasions. In May, the team addressed Student's return to school after a suspension and a change to the timing of school-based therapy, the addition of social stories, a new reading goal after mastery of the decoding goal, and another change to the medication schedule. Finally, in June, the team addressed a late May restraint involving behavior that could cause injury to self or others. (N.T. 84-85, 141-42 600-01, 706-08, 756-57; P-15; S-10; S-42; S-43.)

42. Also at the June 2024 meeting, the Parents notified the District of their intention to obtain a private psychoneurological evaluation during the summer. The District similarly sought the Parents' permission to conduct a reevaluation. (N.T. 98-99; S-10 at 8; S-13.)
43. By the end of the 2023-24 school year, Student's behavior was significant and impacting peers. (N.T. 93-94, 622-23, 631-33, 762, 765-66, 833.)

2024-25 School Year

44. Student's IEP was revised again in September 2024 following a behavior incident with a resulting suspension. A second revision was made following an October 2024 behavior incident that similarly resulted in a suspension. (S-14.)
45. Student's Crisis Plan was also revised in September 2024 to provide additional supports and intervention strategies. (P-16.)
46. An October 2024 incident occurred involving injury to peers and adults on the playground during recess. The District notified the Parents that a crisis-prevention agency had been contacted after Student engaged in the significant behavior. After the Parents declined the agency

services, the District sought involuntary emergency examination and treatment pursuant to Section 302 of the Mental Health Procedures Act of 1976. That request was approved by the County. (N.T. 106-109, 733, 736-37, 770-71, 913-16, 993-95; P-20; S-14; S-15; S-16.)

47. After notification of the incident, one of Student's Parents went to the school and met with the building principal before taking Student home. (N.T. 108-13, 734-35.)
48. After Student and the one Parent left the school building, the other Parent arrived and asked to speak with the building principal, who was unavailable. Members of law enforcement were present in the office and instructed the Parent to leave when the Parent would not do so. (N.T. 179-84, 210, 744-45, 772, 962-65, 976-79.)
49. After the warrant was served on the Parents, Student was transported to a local psychiatric facility. Student was discharged without recommendation for follow-up. (N.T. 113-17.)
50. The Parents filed an Educator Misconduct Complaint against the principal of Student's school building within a day of the Section 302 incident. (N.T. 193-94, 768; P-22.)
51. In late October 2024, former counsel for the District sent a letter to the Parents advising of a ban from District property without a prior appointment. (S-17.)
52. A Functional Behavior Assessment (FBA) was completed by the District in late November 2024. The behaviors of concern were aggression toward others and work refusal. Skill deficits identified were participation, social, self-regulation, and play skills. This FBA included few direct observations of Student in structured and unstructured settings. One observation involved the Behavior Observation of Students in Schools where Student was off-task much more than a

peer. The hypothesized functions of the behaviors were determined to be avoiding/postponing non-preferred activities and gaining access to a preferred activity/item. (S-19.)

53. The Parents had concerns with the District FBA and requested that an independent FBA be obtained. The District agreed. (N.T. 123-25, 1004, 1007-08; P-19; P-20; S-22.)
54. Another IEP revision was made in November 2024 to discuss various matters, including revision to the Crisis Plan to include triggering events as well as reading to Student as a distraction. (S-14.)

Private Neuropsychological evaluation

55. The private neuropsychological evaluation summarized relevant history, evaluations, and concerns. (P-32 at 1-7.)
56. Attempted administration of assessments for the private neuropsychological evaluation did not yield valid results, because Student refused to participate in the testing. (N.T. 127; P-32 at 7-8; S-27.)
57. The private neuropsychological evaluation confirmed Student's Autism Spectrum Disorder and ADHD. Recommendations included positive behavior support, along with a number of instructional strategies such as drill and repetition, preparation and pre-teaching, modeling, small group and individual instruction, and meaningful presentation of materials; strategies for ADHD, autism characteristics, and social development were also included. (P-32 at 8-12; S-27.)
58. The Parents provided the private neuropsychological evaluation to the

District. (N.T. 127-28)

59. Student qualified for ESY services in 2025. (N.T. 125-26.)

November 2024 Reevaluation

60. A Reevaluation Report (RR) was issued in November 2024. Parent input into this evaluation indicated that Student had many interests, engaged socially to a degree, and at times was aggressive during play. Students behaviors appeared to be more frequent at school according to the Parents. (S-21.)
61. Outside provider information was incorporated into the November 2024 RR, including Student's treatment plans, individual therapy, and school-based therapy. Targeted behavior for these services was aggression toward others. Results of private evaluations were also summarized. (S-21 at 3- 8.)
62. Student's then-present academic and functional performance were also summarized in the November 2024 RR including progress on IEP goals and behavioral incidents. (S-21 at 8-22.)
63. Teacher input into the November 2024 RR identified various strengths and weaknesses both academically and socially, along with occupational therapy input. Discharge from occupational therapy was recommended. (S-21 at 22-24.)
64. Student's crisis plan was also incorporated into the November 2024 RR. A number of risky behaviors, intervention strategies, and key individuals to support de-escalation were identified. (S-21 at 26-29.)
65. The District school psychologist summarized Student's presentation for assessments for the November 2024 RR. Two testing sessions with Student were scheduled, with Student exhibiting behavior challenges for the first with noncompliance and task refusal. Student's behaviors

improved for the second session. The school psychologist also observed Student for the reevaluation. (N.T. 269-72, 274-75; S-21 at 24-26.)

66. Cognitive assessment for the 2024 RR reported results of the Wechsler Intelligence Scale for Children – Fifth Edition. Student obtained somewhat various scores but both the Full Scale IQ and General Ability Index were in the average range. (S-21 at 31-33.)
67. Assessment of academic achievement for the 2024 RR yielded average-range scores across almost all domains. Some variables were reported in the areas of written expression and listening expression (very low to low average range) but overall average achievement. (S-21 at 33-36.)
68. Social emotional functioning through the third edition of the BASC rating scales were rather disparate between the Parents and the teacher in the 2024 RR. One or both Parents identified clinically-significant concerns with hyperactivity, aggression, conduct problems, attention problems, atypicality, and activities of daily living; and at-risk concerns with depression, withdrawal, adaptability, and leadership. One or both of the teacher ratings, by contrast, identified clinically significant concerns with hyperactivity, aggression, conduct problems, adaptability, and study skills; with at-risk concerns for depression, attention problems, atypicality, withdrawal, leadership, and functional communication. (S-21 at 36-39.)
69. Autism rating scales for the 2024 RR once again indicated a very likely range for both the Parents and teacher. (S-21 at 40-41.)
70. The Conners rating scales by the Parents for the 2024 RR reflected very elevated ratings for most domains, but average-range scores for depressed mood and anxious thoughts. The teacher form was different, with a very elevated score only for emotional dysregulation

and an elevated score for impulsivity. (S-21 at 41-46.)

71. Rating scales for emotional disturbance were again disparate in the 2024 RR. The Parents' ratings were indicative of an emotional disturbance, whereas the teacher's were not. (S-21 at 46-47.)
72. The 2024 RR identified Student as eligible for special education on the bases of Autism and Emotional Disturbance. Strengths identified including decoding grade level materials; independent mathematics skills; appropriate written expression skills; and a number of positive behavioral skills. Needs specified were written expression weaknesses due to behaviors and physical aggression. (S-21 at 49-50.)
73. A number of recommendations for Student's IEP team were set forth in the 2024 RR consistent with the identified needs in the areas of academics, behavior including coping skills, self-monitoring, and home-school communication. (S-21 at 58-60.)
74. The District made revisions to the 2024 RR upon the Parents' requests. (N.T. 277-79.)
75. The Parents provided the District with the school-based therapy plan after the RR was complete. N.T. 281-82.)

December 2024 IEP

76. A new IEP was developed in December 2024 following the recent RR. (S-23.)
77. Student's strengths in the December 2024 IEP were for decoding, encoding, written expression; needs related to physician aggression and work refusal. (S-23 at 35-36.)
78. Academic goals in the December 2024 IEP addressed reduced aggression toward others; increasing work compliance; use of coping skills; and social skills (peer interactions). A Positive Behavior Support

Plan (PBSP) identified antecedent strategies, replacement behaviors, and consequences for both problematic and replacement behaviors. (S-23 at 47-54.)

79. Program modifications and items of specially designed instruction in the December 2024 IEP included those from the prior IEP. Additions particularly with the PBSP were for: first/then statements, positive reinforcement, coping skills, self-monitoring; a buddy system at lunch; task/assignment accommodations; emotional support and individual instruction; study guides; notice for changes to routine; gaining Student's attention, repetition and rephrasing of directions. Counseling was a related service. Student was eligible for ESY services, and the program was then one of emotional support at an itinerant level, participating in the regular education class except during emotional support, counseling, and therapy. (S-23 at 56-63.)
80. The Parents' approved the NOREP accompanying the December 2024 IEP but with reservations. (S-24; S-28.)

Private FBA

81. The private BSC observed Student for the independent FBA that was completed with a report in February 2025. The problem behaviors were identified after interviews with staff and the Parents; review of records; and observations of Student at school. (N.T. 225-28, 236-38, 240-41, 494-95, 513-17.)
82. The independent FBA evaluator identified the hypothesized functions of Student's problem behaviors as refusal, perseveration, property destruction, and aggression as multiply maintained including escape/delay of non-preferred tasks; and immediate access to tangible items and activities. (P-33; S-29.)
83. Recommendations in the private FBA included predictable structure and

consistency; active participation; check-ins; fewer distractions; chunking of assignments; reinforcement of social attempts; varied reinforcement; therapeutic interventions; access to breaks and calming strategies; environmental supports; and crisis management. He also recommended a communication tool and revisions to behavior supports. (N.T. 538-39; P-33; S-29.)

84. The District revised its recent RR in February 2025 following receipt of the independent FBA to include its assessment, hypotheses, and recommendations. (S-31.)
85. Student was eligible for ESY in 2025, and the Parents approved that NOREP. (S-32; S-33; S-35.).
86. Student's IEP was revised again in May 2025 to update goals that Student had mastered. (S-36.)
87. Later in the 2024-25 school year, Student began to exhibit a dislike for going to the learning support classroom and refused to go there, so the special education teacher would push in to provide the services. (N.T. 681-82, 857-66.)
88. Student began emotional support toward the end of the 2024-25 school year. (638-40.)

2025-26 School Year

89. Student's IEP was revised again in August 2025 to prepare for Student's transition to a different school building. (S-37.)
90. The Parents have no claims regarding the 2025-26 school year.

(Parents' closing at 10, 18.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

In any legal proceeding, the burden of proof is commonly described as consisting of two elements: the burden of production and the burden of persuasion. The burden of persuasion in this type of administrative hearing 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 burden of persuasion in this case thus must rest with the Parents who filed the Complaint leading to this administrative proceeding. Nevertheless, application of this principle determines which party prevails only in those rare cases where the evidence is evenly balanced or in "equipoise." *Schaffer, supra*, 546 U.S. at 58.

Special education hearing officers, who assume the role of fact-finders, are responsible for making "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses," particularly when discounting certain testimony. *Blount ex rel. Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 WL 22988892 *10, 2003 LEXIS 21639 *28 (E.D. Pa. 2003). See also, e.g., *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 2014 WL 47340 *4, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts despite some gaps in recollection; she did not discern any intention to mislead. Contradictions among witness accounts may be attributed to lapses in memory or differences in perspective. The weight accorded the evidence, however, was not equally placed. The persuasive value of the testimony and documentary evidence must be assessed in light of the record as a whole. See *J.P., supra*, 516 F.3d at 261; *T.E., supra*. In

other words, merely because all witnesses appeared to believe that to which they swore under oath does not make all of the testimony reliable or convincing with respect to the issues presented. The documentary evidence, by contrast, was considered to be extremely reliable.

The testimony of the Parents in particular was understandably emotional at times; their concerns with the District's programming were palpable. The testimony of the District principal and staff relating to the Section 302 incident was persuasive and accorded great weight, including the reasons that action was undertaken.

The findings of fact were made as necessary to resolve the issues; thus, not all of the testimony and exhibits were explicitly cited. Nonetheless, in reviewing the record, the testimony of all witnesses and the content of each admitted exhibit were thoroughly considered, as were the parties' closing statements.

General IDEA Principles: Substantive FAPE

The IDEA broadly mandates that each of the states provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. Special education is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding that the FAPE mandates are met by providing personalized instruction and support services that are designed to permit the child to benefit educationally from the program and also comply with the procedural obligations in the Act.

Through LEAs, states meet the obligation of providing FAPE to an eligible student through development and implementation of an IEP which is "reasonably calculated" to enable the child to receive 'meaningful

educational benefits' in light of the student's 'intellectual potential.' " *P.P. v. West Chester Area School District*, 585 F.3d 727, 729-30 (3d Cir. 2009)(citations omitted). As the U.S. Supreme Court has confirmed, "an educational program must be appropriately ambitious in light of [the child's] circumstances... [and] every child should have the chance to meet challenging objectives." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 402 (2017). This standard is "markedly different" than *de minimis* growth. *Id.* However, not every child should be aiming for grade-level achievement if that is not a reasonable expectation for him or her. *Id.* Rather, an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.*

An LEA is not obligated, however, to "provide 'the optimal level of services,' or incorporate every program requested by the child's parents." *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3d Cir. 2012); *see also El Paso Independent School District v. Robert W.*, 898 F. Supp. 442, 449 (W.D. Tex. 1995) (quoting *Rowley*, *supra*, 458 U.S. at 186) (holding that an LEA "is not required to maximize a handicapped child's potential 'commensurate with the opportunity provided to other children.'"). Additionally, a proper assessment of whether a proposed IEP meets the above standard must be based on information "as of the time it was made." *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 564-65 (3d Cir. 2010); *see also Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993) (same). "The IEP *must aim* to enable the child to make progress." *Dunn v. Downingtown Area School District*, 904 F.3d 248, 255 (3d Cir. 2018) (emphasis in original).

Behavior

In Pennsylvania, behavioral supports are required for students with such needs:

Positive, rather than negative, measures must form the basis of behavior support programs to ensure that all students and eligible young children shall be free from demeaning treatment, the use of aversive techniques and the unreasonable use of restraints. Behavior support programs must include research based practices and techniques to develop and maintain skills that will enhance an individual student's or eligible young child's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student or eligible young child shall be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques, in accord with subsection (c)(2).

22 Pa. Code § 14.133.

Evaluation Requirements

Substantively, the IDEA sets forth two purposes of a special education evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C. §1414(a)(1)(C)(i). The IDEA explicitly identifies the following qualifying disabilities: “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance[], orthopedic impairments, autism, traumatic brain injury, other health impairments, [and] specific learning disabilities.” 20 U.S.C. § 1401(3); see also 34 C.F.R. § 300.8(a).

The evaluation must assess the child “in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]” 34 C.F.R. § 304(c)(4); see also 20 U.S.C. § 1414(b)(3)(B). Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); see *also* 20 U.S.C. § 1414(b)(3). Any evaluation or reevaluation must also involve a review of existing data including that provided by the parents in addition to available assessments and observations. 34 C.F.R. § 300.305(a). In Pennsylvania, LEAs are required to provide a report of an evaluation within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b).

General IDEA Principles: Procedural FAPE

From an IDEA procedural standpoint, the child’s family including his or her parents must have “a significant role in the IEP process.” *Schaffer, supra*, 546 U.S. at 53. This fundamental concept extends to placement decisions for the child. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne, supra*, 602 F.3d at 565. The procedural requirements must, however, be viewed within the context of the above substantive standards.

General Section 504 Principles

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

Section 504 requires “meaningful access” to federally funded programs such as schools through provision of reasonable accommodations. *Berardelli v. Allied Services Institute of Rehabilitation Medicine*, 900 F.3d 104, 110 (3d Cir. 2018) (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985)). Nonetheless, the obligation to provide FAPE has been considered to be substantively the same under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). By contrast, intentional discrimination under Section 504 requires a showing of deliberate indifference, which may be met only by establishing “both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge.” *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). However, “deliberate choice, rather than negligence or bureaucratic inaction” is necessary to support such a claim. *Id.* at 263.

The two statutes do intersect, but as the Third Circuit recently observed, they are not the same. *LePape v. Lower Merion School District*, 103 F.4th 966, 978 (3d Cir. 2024). The IDEA itself notes that claims under Section 504 are not limited by the IDEA. 20 U.S.C. § 1415(l); *see also id.* The IDEA, thus, places no restrictions Section 504 claims. *Le Pape, supra*, 103 F.4th at 979. “The statute's administrative exhaustion requirement applies *only* to suits that ‘see[k] relief ... also available under’ IDEA.” *Luna*

Perez v. Sturgis Public Schools, 598 U.S. 142, 147, 143 S. Ct. 859, 864, 215 L. Ed. 2d 95 (2023).

Where a party raising claims under these statutes based on the same facts does not assert any legal distinction among them as applied to the case, the differences need not be separately addressed in all cases. *B.S.M. v. Upper Darby School District*, 103 F.4th 956, 965 (3d Cir. 2024). However, as the Parents contend, and unlike FAPE under the IDEA, FAPE under Section 504 “is defined to require a comparison between the manner in which the needs of disabled and non-disabled children are met, and focuses on the ‘design’ of a child's educational program.” *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008). Additionally, 34 C.F.R. § 104.33 “requires a comparison between the treatment of disabled and nondisabled children, rather than simply requiring a certain set level of services for each disabled child. ... [S]chool districts need only design education programs for disabled persons that are intended to meet their educational needs to the *same degree* that the needs of nondisabled students are met, not more.” *Id.* at 936–37 (emphasis added).

As the Fourth Circuit cogently summarized consistent with other circuit courts,

Congress intended the states to balance the competing interests of economic necessity, on the one hand, and the special needs of a handicapped child, on the other, when making education placement decisions. 20 U.S.C. § 1412(3); *Doe v. Anrig*, 692 F.2d 800, 806 (1st Cir.1982) (in determining appropriate placement of an individual handicapped child, the child's needs must be weighed against the realities of limited public monies); *Pinkerton v. Moye*, 509 F. Supp. at 112 (“competing interests must be balanced to reach a reasonable accommodation”).

Barnett by Barnett v. Fairfax County School Board, 927 F.2d 146, 154 (4th Cir. 1991). Not insignificantly, the *Barnett* Court also rejected the argument made under Section 504. *Id.*

The Parents' Claims

The first issue is whether there was a delay in initiating a functional behavior assessment for Student by the District. The December 2023 IEP reflected that Student engaged in behavior impacting learning of Student and peers; Student thus required behavior supports through a PBSP. Importantly, Student's behavior deteriorated significantly beginning in February 2024 with the first restraint and need for a Crisis Management Plan. Although the District described this event as an "isolated" one, Student had exhibited various behaviors for some time and, moreover, that in February 2024 was significant in terms of danger to Student. The ongoing outside services in the school simply cannot serve as a substitute for the District's obligations to take reasonable steps to address the behavior. And, despite all of the interventions, Student required restraint again in May 2024. An FBA, required in Pennsylvania, should have been conducted at least within a reasonable period of time following the February restraint and Crisis Management Plan and, had the District done so, Student's behaviors should have been properly addressed for the start of the 2024-25 school year. They were not, with resumption of very concerning behavior that fall. Moreover, the seriousness of the behaviors in the spring of 2024 were strong indicators that a full reevaluation was necessary rather than a delay well into the fall for the 2024 RR. All of these factors constitute a denial of FAPE to Student.

The FBA in the fall of 2024 was conducted amid a series of additional behavioral incidents. However, it was not until February 2025 following the independent FBA that the IEP team members had a solid understanding of Student's behavioral needs and what supports were necessary. The decision

to change Student's placement to emotional support was deferred at best. These two related aspects of Student's programming amount to a clear denial of FAPE.

The second issue is whether the District has denied Student FAPE since enrollment in late 2022. The record is silent on any basis for extending the two-year time-bar on IDEA and Section 504 claims; indeed, the Parents' closing requests relief only for the two-year period prior to the filing of the Complaint. This issue will be dismissed as moot.

Next, despite their contentions, the Parents have not established any procedural flaws in the District's programming that significantly impacted their participation in programming for Student. Both were actively involved with Student's education, communicating regularly with Student's teachers and others. The District convened IEP meetings regularly when necessary, and the Parents had adequate opportunity to provide input and engage in full participation in planning decisions. Beyond the above denial of FAPE related to Student's behavioral and emotional needs, this hearing officer concludes that the District did not deny Student FAPE.

Finally, on this record there are no grounds to support the claims of disability-based discrimination or retaliation under Section 504. The Parents' assumptions cannot serve to establish their burden of persuasion for either of these issues. For example, neither Parent was "banned" from school property but, rather, a requirement was imposed following an incident that involved law enforcement direction. Furthermore, this hearing officer lacks any authority to make a determination on the validity of a Section 302 application. There is no merit to these claims on this record, and they must be denied.

The Parents' Section 504 FAPE claims are intertwined with the IDEA similar issues and have been fully addressed above without need for further discussion pursuant to *B.S.M.*

Remedies

The final issue is whether remedies are due. First, compensatory education may be an appropriate form of relief where an LEA knows, or should know, that a child's special education program is not appropriate or that he or she is receiving only trivial educational benefit, and the LEA fails to take steps to remedy deficiencies in the program. *M.C. v. Central Regional School District*, 81 F.3d 389, 397 (3d Cir. 1996). This type of award is designed to compensate the child for the period of time of the deprivation of appropriate educational services, while excluding the time reasonably required for an LEA to correct the deficiency. *Id.* The Third Circuit has also endorsed an alternate approach, sometimes described as a "make whole" remedy, where the award of compensatory education is crafted "to restore the child to the educational path he or she would have traveled" absent the denial of FAPE. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *see also Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005); *J.K. v. Annville-Cleona School District*, 39 F.Supp.3d 584 (M.D. Pa. 2014). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

After careful consideration, this hearing officer concludes that compensatory education is appropriate using the hour-for-hour approach because no substantive evidence of a "make whole" remedy was presented. Based on a complete review of the record with a balancing of the equities, Student shall be awarded one hour of compensatory education per day for the inadequate behavioral support from February 2024 through February 2025 as an equitable balance of days without behaviors and days with

significant behaviors. The District is entitled to a period of reasonable rectification period for beginning the FBA process within 30 days of the February 2024 incident and a 60 calendar day period for completion of that assessment, effectively through the end of the 2023-24 school year.

The award of compensatory education is subject to the following conditions and limitations. Student's Parents may decide how the compensatory education is provided. 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 services needs in the areas of identified disability. The compensatory education may not be used for 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 fifteen (15). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents; and the cost to the District of providing the awarded hours of compensatory services may be limited to the average market rate for private providers of those services in the county where the District is located.

CONCLUSIONS OF LAW

The District denied Student FAPE in its failure to provide a behavior plan consistent with its legal obligations including declining to conduct an FBA in the spring of 2024.

The District did not otherwise deprive Student of FAPE.

The District did not engage in disability-based discrimination or retaliation.

Student is entitled to compensatory education.

ORDER

AND NOW, this 21st day of May, 2026, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The District did not comply with its FAPE obligations to Student from the spring of 2024 through the date that Student's placement was changed in February 2025.
2. The District otherwise provided Student a free, appropriate education.
3. Student is awarded one hour of compensatory education for each day that the District was in session from the first day of the 2024-25 school year through the date Student's placement changed in February 2025. If the parties are unable to agree on that date, the award shall end on February 28, 2025. The terms and conditions in the attached decision apply as though

set forth herein at length.

4. The District did not discriminate or retaliate against the Parents in violation of Section 504.
5. The District's Motion to Limit the scope of the claims is DENIED as moot.

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

/s/ Cathy A. Skidmore

Cathy A. Skidmore, Esquire
Hearing Officer
ODR File No. 31719-2526

Sent to counsel for both parties this date as required by 34 C.F.R. § 300.515 by electronic mail message as requested⁶ consistent with 22 Pa. Code § 14.162(n).

⁶ N.T. 1076.