

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. 30849-24-25

Child's Name:

T.H.

Date of Birth:

[redacted]

Parent/Guardian:

[redacted]

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Hearing Officer:

Cathy A. Skidmore, Esquire

Date of Decision:

09/19/2025

INTRODUCTION AND PROCEDURAL HISTORY

The student, T.H. (Student),¹ is a teenaged student residing with the Parent and enrolled in the Pleasant Valley School District (District), the local education agency (LEA) for the relevant period of time. Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² based on the categories of Other Health Impairment and Autism. Accordingly, Student also has a disability entitling Student to protections under Section 504 of the Rehabilitation Act of 1973.³ By the time the record closed, Student was no longer enrolled in the District.

In February 2025, the Parents filed a Due Process Complaint under the IDEA, Section 504, and the Americans with Disabilities Act (ADA),⁴ contending that the LEA has denied Student a free, appropriate public education with respect to programming and placement from the start of the 2017-18 school year through the end of the 2024-25 school year. As remedies, the Parents sought compensatory education in addition to preserving other relief in an appropriate forum. By contrast, the District denied the Parents' contentions and the relief demanded, asserting that Student was not denied a free, appropriate public education in any respect. The matter proceeded to a hearing with the presentation of witnesses and

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).

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). The Parents also asserted related claims under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 – 12213.

⁴ 42 U.S.C. §§ 12101 – 12213.

documentary evidence.⁵ Following review of the record and for all of the reasons set forth below, the claims must be granted in part and denied in part.

ISSUES

1. Whether the District deprived Student of a free, appropriate public education procedurally or substantively beginning with the start of the 2017-18 school year through the end of the 2024-25 school year, including its failure to timely identify all of Student's disabilities;
2. Whether any of the Parents' claims are barred by the two-year limitations period set forth in the IDEA; and
3. If the District did deny Student a free, appropriate public education at any time, whether Student should be awarded compensatory education?

FINDINGS OF FACT

1. Student is [redacted] teenaged and has been a resident of the District over the time period in question and attending its schools. (N.T. 27-28; HO-1 ¶¶ 1-2.)

⁵ References to the record throughout this decision will be to the Notes of Testimony (N.T.), Parent Exhibits (P-) followed by the exhibit number, School District Exhibits (S-) followed by the exhibit number, and Hearing Officer Exhibit (HO-) 1. S-18 contains a considerable number of illegible pages that are not cited. The parties did, commendably, reach stipulations that are set forth in HO-1. The term Parents is used when it appears that one was acting on behalf of both, and in the singular to apply to the parent who testified and was more actively involved.

2. Student has been identified as eligible for special education by the District, most recently under the Autism and Other Health Impairment classifications in the fall of 2024. (N.T. 29; HO-1 ¶ 6.)
3. Student is intelligent and especially enjoys learning about topics that interest Student. Weaknesses include difficulty with transitions and change, handwriting, as well as written expression, and Student can be inattentive. Student does generally prefer to speak with adults rather than peers, and is frequently shy. (N.T. 659-63, 665, 675-76, 680.)

Early Academic History

4. Student was first identified as eligible for special education during the 2016-27 school year based on a Speech/Language Impairment because of articulation needs. At that time, the teacher reported "slight concerns" with social skills and handling problems with others that were addressed in the classroom (S-1 at 7-8). (N.T. 307; S-1; HO-1 ¶ 6.)
5. An Individualized Education Program (IEP) developed in the spring of 2017 noted Student's articulation difficulties. Parent input into this IEP reflected articulation needs but not with other areas of communication, although Student was reportedly shy particularly in expressing self. An annual goal addressed better-developed sound production of several identified phonemes when naming targeted words and using them in sentences. Items of specially designed instruction were also provided for speech/language support and cues for correct sound production. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (small group or individual) in a program of itinerant speech/language support. (S-2.)

6. The District sought to conduct an occupational therapy evaluation in March 2018.⁶ (S-3.)

General Relevant Findings

7. The District utilizes a Student Assistance Program (SAP) that reviews referrals to the team for reasons such as poor attendance or behavioral concerns. (N.T. 149-50.)
8. The District utilizes a Child Study Team (CST) process that reviews referrals for academic reasons. (N.T. 152.)
9. The District is a member of a group of school districts that offer an after school, online course of study that is self-paced. No instruction is live but tutoring sessions are available to all students. (N.T. 275-76, 277.)
10. Throughout the time period at issue, the Parents acknowledged receipt of the standard Procedural Safeguards Notice (PSN). (S-1; S-2; S-4; S-5; S-6; S-8; S-9; S-12. S-23; S-24.)
11. Student participated in online instruction from March 2020 during the COVID-19 school closures through the end of the 2021-22 school year because of concern for family health. (N.T. 678-79.)
12. Student never attended a tutoring session at the online academy, nor has any other student, during the relevant time period as of the time of the due process hearing. (N.T. 290-91.)

2017-18 School Year

13. A new IEP was developed in the spring of 2018. Student's articulation difficulties were described, and Parent input into this IEP noted that Student sometimes struggled with new academic concepts, but had success upon understanding them. An annual goal addressed better-

⁶ It is unclear whether the Parents consented or if one was completed.

developed sound production of several identified phonemes in sentences and when describing pictures. Items of specially designed instruction were also provided for speech/language support and cues for correct sound production. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (individual or small group) in a program of itinerant speech/language support. The Parents approved the accompanying Notice of Recommended Educational Placement (NOREP). (S-4.)

2018-19 School Year

14. Another new IEP was developed in early 2019. Student's current articulation difficulties were described, with teachers indicating understandable speech with active class participation, but a tendency to sometimes speak too quickly as well as have difficulty with written expression including handwriting. Parent input into this IEP noted again that Student sometimes struggled with new academic concepts, and exhibited social awkwardness. An annual goal addressed better-developed sound production of several identified phonemes for targeted words in an original sentence, reading text, and describing a picture; the items of specially designed instruction remained the same for speech/language support with the addition of models for correct sound production. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (individual or small group) in a program of itinerant speech/language support. The Parents approved the accompanying NOREP. (S-5.)

2020-21 School Year

15. Student was provided speech/language support services beginning in the spring of the 2020-21 school year primarily for articulation.

Student attended online for small group sessions, participating and interacting with peers comparable to their doing so. (N.T. 345-47, 351, 633-34.)

16. Another IEP was developed in early 2020. Student's current articulation difficulties were again described, with teachers indicating understandable speech with active class participation, with a tendency to sometimes speak too quickly and have difficulty with written expression including handwriting. Parent input into this IEP also reflected that Student sometimes would speak too quickly and fail to use learned speech skills. Annual goals addressed better-developed sound production of several identified phonemes for targeted words when describing a picture; the items of specially designed instruction remained the same. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (small group or individual) in a program of itinerant speech/language support. The Parents approved the accompanying NOREP. (S-6.)
17. The District also conducted a reevaluation and issued a report (RR) in April 2020. Parent input into this RR noted improved speech but also distractibility and a lack of self-confidence. Information from the teachers indicated that Student's speech/language difficulties did not impact classroom performance but that Student sometimes needed to repeat what Student said, and tended to rush when completing mathematics problems. Written expression including handwriting remained a concern. Student remained eligible for speech/language support and services. (S-7.)
18. A new IEP was developed after the 2020 RR. Student's current articulation difficulties remained, with teachers indicating age-appropriate communication skills other than articulation. Parent input

into this IEP again was that Student sometimes would speak too quickly and fail to use learned speech skills. Annual goals addressed better-developed sound production of several identified phonemes for targeted words when describing a picture; the items of specially designed instruction remained the same as in the most recent IEP. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (individual or small group) in a program of speech/language support at an itinerant level. The Parents approved the accompanying NOREP. (S-8.)

19. In the IEP developed in April 2021, Student's then-minimal articulation difficulties were described, with teachers still indicating overall age-appropriate communication skills. Parent input noted that they had no concerns with articulation, but did about Student's difficulty with assignment completion and ability to focus on tasks after Student returned to a school building. Annual goals addressed better-developed sound production of several identified phonemes in structured conversations; the items of specially designed instruction were essentially the same. Student would participate fully in the general education curriculum with the exception of monthly speech/language therapy and support sessions (individual or small group) for practice, and the program was itinerant speech/language support. The Parents approved the accompanying NOREP. (S-9.)
20. Progress monitoring in the area of speech/language reflected mastery of all goals for sound production of identified speech sounds that was maintained over the remainder of the 2020-21 school year through the COVID-19 school closures. Weekly reports on grades for all classes were generally over 90% with the exception of writing and grammar

which were in the 80% range for part of the school year and markedly improved consistent with other classes in the spring of 2021. (S-10.)

2021-22 School Year

21. Student continued with online speech/language services over the 2021-22 school year in a small group. (N.T. 347-48.)
22. Student's IEP was revised in March of the 2021-22 school year with a meeting convening online. The speech/language pathologist recommended that Student return to the building because she would be in a better position to understand and assess Student's skills. (N.T. 348-50.)
23. Student mastered the speech/language goals by the end of the 2021-22 school year. Weekly reports on grades for all classes were generally over 90% with the exception of writing and grammar which were in the 80% range for part of the school year and markedly improved consistent with other classes in the spring of 2022. (S-10; S-14.)

2022-23 School Year

24. Student returned to the District school building at the start of the 2022-23 school year. [redacted]. (N.T. 684.)
25. The Parent reported that Student experienced a medically-related physical incident occurring in mid-August. A safety plan for addressing Student's new medical concern was created in August 2022 for the school building, grounds, field trips, and on the bus. (S-16.)

26. Student had few friends and experienced bullying by peers over the 2022-23 school year, with name-calling, minor physical aggression, and a specific incident that was upsetting to Student in a specific location at school. None of those, however, constituted District-defined bullying, and daily check-ins with different District personnel revealed no further incidents that upset Student. (N.T. 685-88, 770-71, 775-84, 804-07, 811-15, 818-19, 822-23; S-15; S-16.)
27. Following a minor altercation with a peer in February 2023, Student served a one-day in-school suspension. (S-17 at 3-9, 11-12.)
28. Student exhibited difficulty with written expression over the 2022-23 school year, particularly organizing thoughts and ideas. Graphic organizers were helpful in English/Language Arts Class (ELA). (N.T. 247., 249-51.)
29. Student was attentive in ELA and actively participated in class. (N.T. 251-52, 257-58.)
30. Student had speech/language therapy at school in a small group over the 2022-23 school year until later exit from those services. (N.T. 621-24.)
31. An IEP from April 2022 noted that Student was participating appropriately in online instruction. Student's current articulation difficulties were described, and teachers indicated age-appropriate communication skills other than articulation. Annual goals were for better-developed sound production of several identified phonemes for targeted words in structured conversations; the same items of specially designed instruction were maintained. Student would participate fully in the general education curriculum with the exception of speech/language therapy and support sessions (individual or small

group) still in a program of itinerant speech/language support. The Parents approved the accompanying NOREP. (S-12.)

32. A reevaluation was conducted in March 2023 with a report issued (RR). Parent input reflected improved speech/language skills and their belief that exit from those services was appropriate. Their concerns were with focus and attention, difficulty with mathematics, and needing to sit still for long periods of time. Teacher input into the March 2023 RR noted active class participation and positive written expression skills; however, they also noted a failure to complete assignments in some classes and excessive absences (after Student's fall 2022 illness). (S-18 at 7-8.)
33. The March 2023 RR determined that Student was no longer was eligible for special education and the Parents agreed consenting to the accompanying NOREP proposing exit from services. (S-18
34. Progress on the IEP goals reflected mastery of all by January 2023 with possible exit in the fall. Student attained grades that were overall positive in academic classes over the 2022-23 school year with the equivalent of a C grade or better. (S-17 at 1-2; S-25 at 4.)

2023-24 School Year

35. Student again experienced some perceived bullying by peers over the 2023-24 school year, but less frequently. (N.T. 691.)
36. Student exhibited poor handwriting compared to peers over the 2023-24 school year, at least in part because of not taking Student's time. Writing assignments were segmented or chunked for a majority of students in at least some classes. (N.T. 218-19.)
37. An incident occurred at school involving comments Student made that a peer believed could be threatening, for which Student served one day of out of school suspension in September 2023. A threat

assessment was conducted by a team including the District school psychologist. This type of team assessment involves the student, who is asked open-ended questions. The team then makes a determination on whether the threat is substantial and shares that decision with administrators. A behavior contract for Student followed that threat assessment for approximately two months. (N.T. 38-39, 74-75, 101, 689-91;)

38. The District school counselor met with Student weekly after the September 2023 incident for a short period of time. Those sessions ended in early November 2023 on recommendation by the SAP team. (N.T. 154, 177-78, 189-90, 704-05.)
39. At some point early in the 2023-24 school year, a few peers complained about Student making inappropriate comments. The teacher to whom those were reported did not believe the comments were unusual for Student's age, but separated the peers from, and spoke with, Student, about the comments. A few other peers also reported difficulty working with Student during group activities and the teacher tried to have Student work with a peer Student knew. (N.T. 206-08, 232.)
40. At times during the school year, the same teacher reminded Student about late assignments, and Student usually complied. All teachers monitored Student's assignment completion as they did all students of that age. Student reportedly participated well in classes. (N.T. 209-13.)
41. A second threat assessment was conducted in February 2024 after a peer reported to the school counselor certain comments Student had made and thought those were threatening in nature. (N.T. 190-91, 694-96.)

42. The District notified the Parents of an out-of-school suspension after the February 2024 incident. It thereafter expelled Student without a hearing with agreement of the Parents in May 2024. (S-18 at 38-39; S-19.)

Dismissal from School Spring 2024

43. [redacted]. Student earned grades at or above 89 in all subjects while in that facility. (N.T. 698-699; P-34; S- 25 at 1.)
44. Student final grades at the District for the 2023-24 school year were at the A or B level with the exception of computer technology (high C grade). (S-25 at 6.)
45. A forensic mental health examination was conducted in March 2024 that included interviews with each of the Parents. Student provided significant input, reporting among other things difficulty sleeping as well as increased anxiety in the detention setting. Assessment of Student's risk of future violence suggested a low risk compared to others in the [facility], but that Student's impulsivity and risk-taking in the view of the evaluating psychologist may lead to increased risk, and reflected a need for treatment. The behavior was also considered to be transient. (P-30.)
46. A psychiatric evaluation was also completed in March 2024. The psychiatrist detailed the process of obtaining information from Student and the Parents, concluding that Student was not a high risk for committing a criminal offense including violence. Outpatient counseling recommended. (P-31.)

47. Even at the time of the due process hearing, Student would become upset if the [redacted] and surrounding events are mentioned. (N.T. 745-46.)
48. Student attended the online learning academy after the February 2024 incident but did not attend any of the tutoring sessions that school year. (N.T. 277.)

Independent Educational Evaluations Spring 2024

49. The Parents obtained two independent evaluations in the spring of 2024. (S-20; S-21.)
50. In an Independent Educational Evaluation (IEE) in March 2024, the Parents asked for consideration that Student should be diagnosed with Autism or Attention Deficit Hyperactivity Disorder (ADHD). Parent input into this IEE reflected Student's enjoyment of reading, chemistry, and animals. By contrast, they also expressed concerns with social awkwardness, minimal friendships, and inadequate social skills, as well as tendencies to lose focus, become fixated on a word, engage of self-talk, fail to complete assignments, and focus on adults over peers. Student described feeling anxiety and boredom along with having racing thoughts, but denied experiencing bullying or playing an active role in or related to the February 2024 incident. (S-20 at 6-7.)
51. The IEE evaluator, a certified school psychologist, described Student as cooperative but with observable anxiety, distractibility, task refusal, and frustration during assessments. He concluded that the results were reasonably reflective of classroom performance. (S-20 at 7 -8.)
52. Cognitive assessment for the April 2024 IEE reflected overall average range ability but with variability among Indices. Fluid Reasoning was in the below average range, and Processing Speed was in the very low range. A separate measure of working memory, learning efficiency,

and retrieval fluency yielded results in the low average range for auditory attention span and learning efficiency. (S-10 at 8-11.)

53. The April 2024 IEE also assessed academic achievement. Student's scores were in the average range on all Composites with the exceptions of Oral Language (high average range), and the Mathematics Composites (low average range) with average range Total Achievement. (S-20 at 11-13.)
54. Social/emotional/behavioral functioning for the April 2024 IEE was conducted through various rating scales completed by the Parents and/or Student. Scores on the Externalizing Problems, Inattention, Hyperactivity; Internalizing Problems; School Problems; and Behavioral Adjustment Composites were all above average with some scores in the high average to extremely high ranges; Adaptive Skills were low based on the Parent ratings. Similar results were obtained by the same raters with respect to executive functioning, ADHD, and social skills. Autism rating scales completed by the Parent were overall supportive of that diagnosis. (S-20 at 13-16.)
55. The independent psychologist concluded that Student met criteria for ADHD, Autism, and Other Health Impairment, but not Specific Learning Disability. A number of school-based recommendations included small class sizes with individual attention, a structured environment, academic support (mathematics and written expression), and support for counseling, social skills, and emotional regulation. Various accommodations were also suggested. (S-20 at 21-23.)
56. An independent neuropsychological evaluation (INE) was also completed in the summer of 2024 following the juvenile detention. The Parents reported more difficulty with peers since the incident in February 2024 and lingering challenges from the time in the facility.

The INE included a clinical interview and significant input from the Parents. (S-21.)

57. The INE incorporated results of earlier evaluations including the IEE. Student was described as presenting with some anxiety at the start of assessment administration that improved. Student was cooperative and the results were deemed a valid estimate of abilities. (S-21.)
58. Cognitive assessment yielded results of overall average-range ability in the INE but with caution that the lack of sustained visual attention likely impacted the scores. A separate measure of learning and memory suggested weaknesses with both, particularly visual memory. (S-21 at 18-19.)
59. Assessment of attention and executive functioning skills for the INE led to similar conclusions as those in the IEE, as were social/emotional/behavioral functioning. The ultimate diagnoses in the INE were Post Traumatic Stress Disorder (PTSD) and ADHD, but not Autism. Suggestions for school-based programming were similar to those in the IEE as well. (S-21 at 26-27.)
60. A developmental pediatric evaluation in April 2024 disagreed with Student's prior diagnosis of Autism and attributed those characteristics to ADHD. A number of recommendations were included for mental health, education, and family needs. (P-33.)

2024-25 School Year

61. A District school counselor was assigned to Student at the start of the 2024-25 school year to address social skills, using social stories and practicing relaxation skills. Most of her sessions with Student were also attended by an administrator with whom Student had good rapport. Student tended to have a negative view of self when asked certain questions during those sessions, and appeared to remain

concerned about the spring 2024 incident as well as having few peer relationships since that time. In essence, in the view of the District, Student presented much differently than Student had in prior school years. The sessions ended after approximately six were held, when the Parent decided to discontinue those in the spring after Student began to intentionally exit the online platform prematurely. (N.T. 504-07, 516-19, 523-26, 534-76, 776-77, 838-40.)

62. Student attended the online learning academy from the start of the 2024-25 school year. A new special education teacher was assigned in February 2025, and provided learning support to Student with a small group addressing reading and written expression skills. However, Student only attended four sessions of learning support, with the Parent reporting ongoing scheduling conflicts. (N.T. 278, 459-62, 492-94.)
63. The District completed and issued a new ER on November 8, 2024 following receipt of the various private evaluations. Parental input into this ER noted the new diagnoses as well as Student's ongoing difficulty with maintaining focus and attention to tasks in addition to task completion of schoolwork. They expressed a belief that Student would perform better in a school building and cited Student's agreement with doing so. (S-22 at 5.)
64. The November 2024 ER summarized and incorporated the private evaluation reports, and determined that Student was eligible for special education based on Other Health Impairment (due to ADHD) and Autism. Numerous recommendations were set forth in this ER for the IEP team to consider, with a majority taken from previous reports including the private evaluations, to address academic, social, emotional, and behavioral needs as well as social skills. (S-22.)

65. A new IEP was developed at a meeting on December 19, 2024. At the time, Student continued to participate in online instruction but grades were overall not within a passing range. Information from the IEE and INE were summarized along with Parent input that the online academy was not meeting Student's needs. Two placement options in a physical building were discussed and rejected by the Parents because of the behavioral components of those programs and placements, and the team agreed to consider other available settings outside of the District. (N.T. 428, 459, 817; S-23 at 13-17.)
66. Needs identified in the December 2024 IEP reflected executive functioning, written expression, mathematics problem solving skills; self-regulation; maintaining attention to ask; and following directions. The Parents did not agree that Student needed therapeutic services beyond those already privately provided. (S-23 at 16-17.)
67. Annual goals addressed each of the areas of need identified in the December 2024 IEP, with numerous program modifications and items of specially designed instruction supporting each, essentially incorporating all of the IEE recommendations. The program was one of learning support at an itinerant level at the online academy. Student would participate fully in the general education curriculum with the exceptions of attending live learning support sessions. The Parents indicated that they agreed with the services but that some revisions to the IEP were needed. (S-23.)
68. Student's learning support teachers conducted progress monitoring of IEP goals during that class during the 2024-25 school year. Student's lack of attendance led to less progress monitoring than was typically done. (N.T. 469-75.)

69. Student did not attend any learning support sessions addressing mathematics over the 2024-25 school year. (N.T. 480-81.)
70. Student at times failed to complete assignments but always caught up by the end of the quarter during the 2024-25 school year. A teacher provided reminders and Student completed those. (N.T. 285-86.)
71. Another IEP was developed in April 2025 at a meeting to consider additional placement options. The Parents asked the District to consider several other private school placements that were residential, as well as make additional revisions to the IEP. Although the Parents agreed to consider the newly proposed placements, they remained concerned with behavioral components as part of a program and placement. Two new items of specially designed instruction provided for instruction in self-regulation and monitoring of emotional status during live online sessions. In most other respects, this IEP mirrors the one from December 2024. (N.T. 439; S-24.)
72. The District proposed two out-of-District placements for Student in June 2025. Both proposed settings with academic instruction and behavioral/therapeutic support. (N.T. 440-46, 905-08, 921-22.)
73. The first proposed out-of-District placement is a private school with seven different programs that offer different levels of service based on need to children of all ages. Needs addressed include mental health, social skills, emotional regulation, and similar deficits. (N.T. 569-603.)
74. The Parent asked to tour the first proposed placement but could not because the program does not permit tours due to privacy concerns and interference with the therapeutic aspects. (N.T. 583-84.)
75. The first proposed placement was prepared to accept Student for its waiting list, but the Parent's communications with its intake director

were deemed by her to be troubling and led to Student's rejection.
(N.T. 585-87, 591-92; P-38.)

76. The Parents did not agree to the second proposed placement and relocated out of the District after the end of the 2024-25 school year.
(N.T. 739-42; HO-1 ¶¶ 2, 3.)

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

As a general premise, the burden of proof is viewed as comprising two elements: the burden of production and the burden of persuasion. The latter 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). As such, the burden of persuasion in this case must rest with the Parents who filed the Complaint leading to this administrative hearing. 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 have the role of fact-finder, are responsible for assessing the credibility of testifying witnesses who. *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *T.E. v. Cumberland Valley School District*, 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 based on the perspective and understanding of each, without intention to mislead. The weight accorded the evidence was not equally placed for a variety of reasons, including persuasive value as well as the specific perspectives of the witnesses along with their individual knowledge of Student. The documentary evidence was accorded significant weight.

The heartfelt testimony of the Parent was clearly genuine and involved firmly held beliefs as a very caring and dedicated advocate for Student. She candidly admitted her serious disappointment in the District. However, she like most witnesses, generally had a lack of clear if any recall of many of the distant events about which they testified, something that is quite understandable given the lapse in time. In addition, witnesses who responded to many of the very leading questions clearly were uncertain how to answer for the most part, which significantly diminished any persuasive value of that testimony. Credibility and persuasive value is discussed further below as necessary.

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

General IDEA Principles: Child Find and Eligibility

The IDEA requires all states to provide a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. The IDEA applies to a "child with a disability." 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(a). The definition of a "child with a disability" is two-pronged: having one of certain enumerated conditions and, by reason thereof, needing special education and related services. 20 U.S.C. § 1401(3).

The IDEA and state and federal regulations further obligate local education agencies (LEAs) to locate, identify, and evaluate children with disabilities who need special education and related services. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); *see also* 22 Pa. Code §§ 14.121-14.125. This mandate is commonly referred to as "Child Find." LEAs are

required to fulfill the Child Find obligation within a reasonable period of time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995). In other words, an LEA must consider an evaluation for special education services within an appropriate amount of time after notice of behavior or other functioning and performance that suggests a disability. *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012). They need not, however, identify a disability “at the earliest possible moment” or to evaluate “every struggling student.” *Id.*

Substantively, the IDEA describes the primary purposes of a special education evaluation as twofold: 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).

In Pennsylvania, LEAs are required to provide a report of an evaluation to parents within sixty calendar days of receipt of consent, excluding summers. 22 Pa Code §§ 14.123(b), 14.124(b). Development of an IEP for an eligible child must follow within thirty calendar days thereafter, with implementation to begin as soon as possible. 34 C.F.R. § 300.323(c).

General IDEA Principles: Substantive FAPE

In light of the mandate to provide FAPE, special education is comprised of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. More than two 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.*

Individualization is unmistakably the central consideration for purposes of the IDEA. Nevertheless, an LEA is not obligated 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). 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).

Scope of Claims Issues

The IDEA ensures that parties have the opportunity to “present a complaint [] with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to [a] child.” 20 U.S.C. § 1415(b)(6)(A). Additionally, a party “must request an impartial due process hearing on their due process complaint within two years of the date the parent or public agency knew or should have known about the alleged action which forms the basis of the complaint.” 20 U.S.C. § 1415(f)(3)(c); *see also* 34 C.F.R. § 300.511(e). In this context, the precise language of the IDEA (quoted above at 20 U.S.C. § 1415(f)(3)(C)) references the time period following the “action” on which a due process complaint is based. As is also set forth in the IDEA, the “action” that may form the basis of a complaint is the proposal or refusal to initiate or change the identification, evaluation, educational placement, or provision of FAPE to, a child. 20 U.S.C. § 1415(b)(6).

The statute further specifies what it is that initiates the time period within which the filing party must act.⁷ “The IDEA statute of limitations is triggered when the parent knew or should have known about the action that forms the basis of the complaint.” *J.L. v. Ambridge Area School District*, 2008 U.S. Dist. LEXIS 54904, * 28-29, 2008 WL 2798306 (W.D. Pa. July 18, 2008). The language in *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 614 (3d Cir. 2015), focuses on the accrual of a cause of action “once...a reasonably diligent plaintiff would have discovered the facts constituting the violation.” 802 F.3d at 614. The key, thus, is determining the “action(s)” that form the basis of the Parents’ Complaint. *See E.G. v. Great Valley School District*, 2017 U.S. Dist. LEXIS 77920, *21, 2017 WL

⁷ The IDEA also expressly provides for two specific exceptions to the two-year limitation period, permitting claims beyond that timeframe to a parent who was prevented from requesting the hearing sooner. 20 U.S.C. § 1415(f)(3)(D); *see also* 34 C.F.R. § 300.511(f). Neither exception was asserted in this case.

2260707 at ____ (E.D. Pa. 2017) (agreeing with the hearing officer that the term “action” means the LEA’s initiation of or change to the identification, evaluation, educational placement, or provision of FAPE).

When a parent does approve special education programming, the LEA is obligated to provide those services even if the child’s placement has been changed due to discipline. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(d)(4). This mandate does not mean that “exactly the same services” are required, 71 Fed. Reg. No. 156, 46716 (August 14, 2006), but that the child must be provided educational services that, “enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP,” including behavioral supports. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(d)(4).

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have “a significant role in the IEP process.” *Schaffer, supra*, 546 U.S. at 53. This critical concept extends to placement decisions. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.116(b), 300.501(b). Consistent with these principles, a denial of FAPE may be found to exist if there has been a significant impediment to meaningful decision-making by parents. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); *D.S. v. Bayonne Board of Education*, 602 F.3d 553, 565 (3d Cir. 2010).

General Section 504 and ADA 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). The two statutes as well as the ADA 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 (and the ADA) 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).

The *LePape* case did stress that, “[t]he ADA ‘does not require a public entity to take any action that it can demonstrate would result [1] in a fundamental alteration in the nature of a service, program, or activity or [2] in undue financial and administrative burdens[,]’ though it must still ‘ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.’” *LePape, supra*, 103 F4th 966, 974 n. 2 (citing to 28 C.F.R. § 35.164). Further, and 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 Scope of the Claims

It is prudent to first address whether any portion of the Parents’ claims are barred by the applicable statute of limitations. The Parent has contended that there was no basis of knowledge and that she first understood certain unaddressed educational needs of Student at those

times. The District, on the other hand, points to legal authority that fails to support such lack of knowledge.

A major challenge to the Parents in this case was the length of time that has elapsed since the events herein challenged, with memories no longer vivid and details long forgotten. “[S]tatutes of limitations serve compelling policy interests, including ‘... protect[ing] defendants from having to confront controversies in which the search for truth may be thwarted by the loss of evidence, the fading of memories, or the disappearance of witnesses.’” *Higgs v. Lanigan*, 2024 WL 575104, at *2 (3d Cir. 2024) (quoting *National Iranian Oil Company v. Mapco International*, 983 F.2d 485, 493 (3d Cir. 1992)); see also, e.g., *United States ex rel. Charte v. American Tutor, Inc.*, 934 F.3d 346, 356 (3d Cir. 2019). Accordingly, such limitations seek to avoid stale claims. *Higgs, supra*.

The primary emphasis in the Parents’ statute of limitations argument is that they did not, and had no reason to, suspect that the District failed to identify certain needs of Student while enrolled in its schools until the IEE reached different, and more extensive conclusions, on Student’s disabilities. The IEE, however, does not necessarily establish that the District should have considered needs while Student was enrolled, or that the deficits identified by the first private psychologist were ignored or overlooked by the District at any point. Moreover, the District school psychologist persuasively explained that the IDEA disabilities including ADHD and anxiety can worsen over time or become more apparent (N.T. 77-78), and many other District witnesses supported that premise. This possibility is one reason that special education evaluations are required to be conducted fairly frequently.

The Parent testified to observing Student’s difficulties with, among other things, attention and completing assignments throughout Student’s

tenure in the District. The District evidence is rather disparate, with minimal evidence that these behaviors were exhibited at school. As noted, an LEA is not required to evaluate at the first moment a disability could be suspected, particularly in the early primary years when many other students sometimes present similarly. All children have individual strengths and needs and an evaluation is not necessary merely because a child exhibits weaknesses whether or not shared by peers.

The scant evidence on a knew or should have known date that would permit claims beyond the two-year IDEA limitation period is nearly non-existent and far from prevalent in this case. To the extent that their concerns raised flags for the District under both the IDEA and/or Section 504, the persuasive testimony of its witnesses makes clear that Student's non-identified needs were easily addressed without special education interventions. Furthermore, even if one were to conclude that the Parents established a reasonable lack of the requisite knowledge within the two year period prior to the Complaint, the record simply does not support any denial of FAPE on substantive grounds prior to the spring of the 2022-23 school year under the IDEA, Section 504, or to the extent this hearing officer has jurisdiction, the ADA.

Denial of FAPE

The next issue to be addressed is whether the District denied FAPE to Student over from the spring of 2023 through the end of the 2024-25 school year. In the spring 2023, Student's IEP team agreed that Student no longer had a need for speech/language services. Few challenges exist in the record for this portion of the 2022-23 school year. It was not until September 2023 that Student first made a comment that was concerning enough to warrant a threat assessment, and the District's response was wholly appropriate in this hearing officer's view. Other minor incidents that fall were addressed promptly without further concerns. By the time of the incident in February

2024, however, there were more than sufficient signs that further investigation was necessary through a new special education evaluation to be completed by the District by the fall of 2024, when it was feasible under the circumstances and Student was available for observations and assessments. The District also was aware that Student was presenting as a much different child than in prior school years, a clear sign of a need for evaluation.

The District did conduct a new evaluation in November 2024, consistent with this timeline, identifying new needs and disabilities. It is quite unfortunate that no IEP meeting convened within 30 days as required by the federal and state regulations. However, it did occur before the winter break eleven calendar days late, and the IEP could not be reasonably be implemented before the return to school in early January 2025. Thus, this procedural violation did not cause substantive harm. Nonetheless, the IEP should have been implemented on the first day of school that month. Instead, Student declined to attend learning support sessions, and the services were indisputably not provided. Although the District contends that the Parents essentially prevented implementation, a reasonable response would have been to identify other ways of implementing Student's IEP. The District did not. It is clear that a denial of FAPE on substantive grounds began with the first day of school in January 2025. Student is accordingly owed a remedy for that deprivation.

Remedy

Compensatory Education

Having concluded that the District did deny Student FAPE, compensatory education may be an appropriate remedy. This relief is available 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 a school district 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).

There is little if any evidence in this record of a make-whole remedy that would enable Student to have the missed services restored. Although compensatory education is equitable in nature, it must have some foundation and rationale. Accordingly, the hour-for-hour approach is the only option available for this determination.

Full time emotional support was required for Student beginning with the first school day in January. This support was not provided even remotely through the online academy. For these reasons, full days of compensatory education is an appropriate remedy from that date through the end of the 2024-25 school year. There shall be no deduction for equitable reasons under the unique circumstances presented by this case.

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 should Student return to the District. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents; and the cost to the LEA 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

1. The District denied Student FAPE from the first day of the second semester of the 2024-25 school year, and Student is entitled to compensatory education under the IDEA and other applicable law.
2. The District did not deny Student FAPE during any other time period at issue.
3. The District did not intentionally discriminate against Student based on Student's disability under Section 504 or the ADA.

ORDER

AND NOW, this 19th day of September, 2025 in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's special education program for the second semester of the 2024-25 school year was not implemented, and Student was deprived of the right to FAPE.
2. Student is awarded 5.5 hours of compensatory education for each school day that the District was in session to remedy the deprivation. The terms and conditions in the attached decision apply as though set forth herein at length.
3. The District did not otherwise discriminate against Student in violation of the provisions of Section 504 or the ADA during the time period in question.

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. 30849-24-25

Sent to counsel for both parties on the date of the above order as required by 34 C.F.R. § 300.515 via electronic mail message as requested by counsel for communicating transmissions consistent with 22 Pa. Code § 14.162(n).