

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. 31108-24-25

Child's Name:

A.P.

Date of Birth:

[redacted]

Parent/Guardian:

[redacted]

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Hearing Officer:

Brian Jason Ford, JD, CHO

Date of Decision:

July 11, 2025

Introduction

This special education due process hearing concerns the educational rights of a child with disabilities (the Student). The Student's parent (the Parent) filed a due process complaint against the Student's public school district (the District). The Parent alleges that the District violated the Student's right to a free, appropriate public education (FAPE) in violation of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* by failing to provide appropriate Individualized Education Plans (IEPs) for the Student and by failing to appropriately implement the IEPs that it offered. The Parent demands compensatory education to remedy those violations. Additionally, the District has proposed changing the Student's placement to a more restrictive setting, and the Parent opposes that change. The Parent seeks an order requiring the District to offer appropriate special education within the school that the Student has been attending.

Discussed below, I find in part for the Parent and in part for the District.

Issues Presented

There are some non-substantive differences in how the parties parse and phrase the issues, but there is no dispute about what issues are presented for adjudication. Those issues are:

1. Did the District violate the Student's right to a FAPE from the start of the 2023-24 school year through the present by failing to provide appropriate IEPs, failing to implement the IEPs that it offered, or both?
2. Does the District's proposed placement violate the Student's right to be educated in the least restrictive environment (LRE)?

Regarding the first question, for a period of the time in question, the Student did not receive special education or disability accommodations. Then, the Student received accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 701 *et seq.* Then, the District identified the Student as a child with a disability pursuant to the IDEA and offered an IEP.

If the first question is answered in the affirmative, the Parent demands compensatory education as a remedy. If the second question is answered in the affirmative, the Parent demands an order requiring the District to provide appropriate services while maintaining the Student's school building placement.

Stipulations

The parties filed joint stipulations of fact with the understanding that I would adopt those stipulations as my own findings, provided the record did not contradict the stipulations. The record is consistent with the stipulations, and so they are tantamount to my own findings of fact. The parties stipulate as follows:¹

1. [Student] is currently enrolled within the [District]. [Student] resides with [Parent], a resident of District.
2. [The parties stipulate the Student's birthday and grade].
3. Student has been enrolled within District since the 2022-2023 school year, [Student's] [redacted] year.
4. Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Unspecified Trauma and Stressor-Related Disorder, and Autism Spectrum Disorder (Autism), Unspecified Anxiety Disorder, and Grief and Loss.
5. On October 6, 2023, Student began receiving accommodations via a Section 504 Plan to address problem behaviors within the school setting.
6. On October 6, 2023, District issued a Section 504 Parent Notice of Proposed Assessment/Parent Consent to complete a Functional Behavior Assessment and a School Based Psychiatric Evaluation.
7. On December 1, 2023, a Psychiatric Evaluation was completed for Student by [a psychiatrist]. [The psychiatrist] diagnosed Student with ADHD, Autism, Unspecified Anxiety Disorder, Grief and Loss.
8. On December 1, 2023, District issued a Prior Written Notice for Initial Evaluation and Request for Consent Form to complete Ability and Achievement tests, Autism and Behavior Rating Scales, and to review records.
9. District completed the initial Functional Behavior Assessment on December 7, 2023. It was recommended that Student receive a Positive Behavior Support Plan (PBSP).

¹ The parties' stipulations are pasted here verbatim but redacted as indicated to protect the Student's privacy.

10. The Evaluation Report was completed on January 9, 2024. Student was found eligible for special education under the disability categories of Other Health Impairment (OHI) by virtue of [Student's] diagnosis of ADHD, and Autism.
11. An initial IEP was developed for Student on January 23, 2024. [Student] received Itinerant Emotional Support and received support from a PBSP dated January 16, 2024.
12. On January 21, 2025, an annual IEP meeting was held. District recommended a change in placement from Itinerant Emotional Support to Full Time Emotional Support in an IU 20 operated Therapeutic Emotional Support (TES) classroom. A NOREP was issued on January 24, 2025.
13. Parent requested additional time to tour the recommended classroom, and to discuss the placement further. District agreed and rescinded the January 24, 2025, NOREP via counsel on January 31, 2025.
14. Parent toured an IU 20 operated TES classroom at [an elementary school building] within the [another school district], and an informal meeting was convened on March 14, 2025, to discuss the placement.
15. On March 25, 2025, District reissued the NOREP recommending Full-Time Emotional Support in an IU 20 operated TES classroom.
16. Parent rejected the NOREP which was signed on April 3, 2025, and returned on April 4, 2025, and filed a Due Process Complaint, initiating this instant action.

Findings of Fact

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

Background

1. Starting in the fall of 2020, before reaching the age of beginners, the Student began to receive Intensive Behavioral Health Services (IBHS) and Mobile Therapy from Mentor (also known as PA Mentor or Sevita). NT 33, 58-59, 101.

2. Student reached the age of beginners and enrolled in the District for [redacted] for the 2022-23 school year. *Passim*.
3. The Student did not display significant behaviors at home or in school during the 2022-23 school year. During that school year, the Student's teacher provided consistent positive reinforcement within an program that included frequent movement and breaks. NT 33, 103-104, 227, 301.

The 2023-24 School Year

4. The 2023-24 school year was the Student's [redacted] grade year.
5. The Student's behaviors in school changed at the start of the 2023-24 school year. New behaviors included work avoidance, whining and complain, having tantrums, and go under the desk. These behaviors persisted and the Student began eloping from the classroom and engaging in physical aggression and self-injurious behaviors when escalated. NT 34, 40, 105, 110.²
6. In September of 2023, Parent requested additional supports and services for Student. At this time, the Student had a treatment plan from PA Mentor. The Parent gave a copy of the treatment plan to the District. The District reviewed the treatment plan and convened a Section 504 Meeting. NT 36, 106; P-2.
7. On October 6, 2023, the District completed a Section 504 Evaluation Report. Throughout the report, the District relied upon the PA Mentor treatment plan. The District used the PA Mentor treatment plan to conclude that the Student had a disability within the meaning of Section 504. Functionally, the District adopted the PA Mentor treatment plan to formulate accommodations for a Section 504/Chapter 15 Service Plan. P-1.
8. The same day (October 6, 2023) the District issued a Section 504/Chapter 15 Service Plan (the 504 Plan). P-1. Accommodations in

² Credibility determinations are discussed below, but I note here that I accept some of the Parent's descriptions of the Student's behaviors in school even though the Parent was not frequently in school to witness those behaviors. The Parent did observe the Student in school on some occasions, and the Parent's testimony was supported by contemporaneous documentation and other fact witnesses – and was not challenged or contradicted by the District. The District, of course, has an interest in not contradicting this portion of the Parent's testimony because it takes the position that the Student's behaviors in school necessitate a more restrictive placement.

the 504 Plan flowed from the PA Mentor treatment plan. NT 106-108. The 504 Plan was put into place the same day. *Stipulations, supra*.

9. The 504 Plan accommodations included access to sensory tools upon the Student's verbal request when presented with a non-preferred task; access to a walk break at the Student's request "when necessary" or access to the same at staff prompting if the Student showed signs of being upset or angry; at least two daily scheduled movement breaks; alternative writing modalities to encourage completion of non-preferred tasks; providing an equivalent work choice when presenting a non-preferred task; setting clear expectations; providing a visible classroom schedule; providing transition warnings to the whole class so Student is aware but does not feel singled out; utilization of positive reinforcement chart; and providing positive praise for maintaining behavioral expectations. P-1 at 7-9.
10. Also on October 6, 2023, the District sought parental consent for a Functional Behavior Assessment (FBA) and a School Based Psychiatric Evaluation. *Stipulations, supra*.
11. The record does not reveal when the Student began to receive supports from a Behavioral Health Technician (BHT) from PA Mentor. There is no dispute, however, that the Student received support from a BHT in school while the 504 Plan was in place.
12. The BHT from Mentor was not authorized to take the Student out of class unaccompanied by District personnel.³ As a result, the District would require the Student to wait for staff availability when the Student requested walks (a 504 Plan accommodation). The Student also did not consistently receive alternative writing modalities or access to sensory tools. NT 37, 50.⁴
13. On December 1, 2023, the District completed the Psychiatric Evaluation through which the Student was diagnosed with ADHD, Autism Spectrum Disorder, Unspecified Anxiety Disorder, and Grief and

³ The District 2024-25 External Agency Guidelines were entered as P-9. Those guidelines do not explicitly prohibit external agency personnel from removing the Student from class unaccompanied by school personnel. However, testimony concerning the District's policies or practices in the 2023-24 school year was credible and was not contradicted.

⁴ Again, despite the limited nature of the Parent's direct access to the Student in school, the Parent's candid testimony is supported by the record and is not contradicted by the District. As such, the Parent's testimony constitutes the best evidence of the District's inconsistent provision of Section 504 accommodations.

Loss. *Stipulations, supra*. That evaluation was memorialized in a Psychiatric Report. P-2.

14. The Psychiatric Report found that the Student engaged in yelling, screaming, crying, running around the classroom, destruction of classroom items, and physical aggression. These behaviors could occur daily and could last longer than 30 minutes (but not more than 60 minutes). P-2.
15. Also on December 1, 2023, the District sought the Parent's consent for additional evaluations to determine IDEA eligibility. *See Stipulations. See also* P-3.
16. On December 7, 2023, an FBA was completed by a Board Certified Behavior Analyst (BCBA). *See Stipulations. See also* P-4. As part of the FBA, the BCBA observed the Student four times. The BCBA did not see the sort of major behaviors that prompted the evaluation and the Student's attention was measured as similar to peers. However, the Student frequently mouthed objects, sought movement, and engaged in refusal behaviors. The refusal behaviors were successfully redirected by the classroom teacher. P-4.
17. While the BCBA did not directly observe major behaviors, the FBA notes that 34 major behavior events occurred between September 5 to November 30, 2023. Similar (but not identical) to the Psychiatric Evaluation, behaviors of concern included: yelling, crying, whining, making vocal noises; verbal refusals; crawling on the floor and under furniture; climbing on furniture and windowsills; running around the room; biting; stomping on feet; pulling hair; throwing objects (both generally and directed at staff – sometimes items belonging to peers); throwing/pushing furniture; dumping containers; destroying peers' classwork; and drawing on the floor with markers. The FBA noted that the Student's behaviors were usually directed at adults and usually lasted from 15 to 150 minutes. P-4.
18. The FBA offered one sole recommendation, which read, "[a] positive behavior support plan will be developed from this FBA." P-4 at 8.
19. On January 9, 2024, the District completed an Evaluation Report (ER). *See Stipulations. See also* P-5.
20. The ER included teacher input. Teachers reported that the Student was capable of grade level academic work with help from a classroom aide, provided the Student was emotionally and behaviorally regulated.

Teachers also reported, however, that the Student was not able to control impulsive behaviors, and those behaviors interfered with attention and work completion. P-5.

21. The ER reported that the Student was below grade level in reading. P5.
22. The ER reported that the Student was receiving services that were not specified in the Student's 504 Plan. The Student attended a [redacted] group once per week and would take breaks in the [redacted]. P-5.
23. The ER included an administration of the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), which is a standardized, normative assessment of intellectual ability. On the whole, the Student's cognitive functioning was found to be in the average range. P-5.
24. The ER included an administration of the Woodcock-Johnson Tests of Achievement, Fourth Edition (WIAT-4), which is a standardized, normative assessment of academic achievement. The WIAT-4 is designed not only to measure a child's academic achievement, but also to compare a child's achievement to cognitive scores on the WISC-V. The Student's standard scores were reported for WIAT-4 composite scores and sub-tests, along with 95% confidence interval bands. The ER included no analysis to say what those scores mean, or how the Student's scores relate to the Student's WISC-V scores.⁵ P-5.
25. The ER included an administration of the ADHD Rating Scale, Fifth Edition. This scale calls for parents and teachers to rate children in domains associated with ADHD. When the ER was drafted, the Parent had not yet returned the ADHD Rating Scales. The Teacher's ratings were consistent with ADHD. P-5.
26. The ER included an administration of the Gilliam Autism Rating Scale, Third Edition (GARS-3). This scale calls for parents and teachers to rate children in domains associated with Autism. When the ER was drafted, the Parent had not yet returned the GARS-3. The Teacher's ratings were "consistent with [Student's] diagnosis of autism ... [and] were elevated and noted considerable need in the area of emotional responses." P-5.

⁵ This Hearing Officer is aware that all of the Student's WIAT-4 scores fell within the average range or nearly so, landing less than one standard deviation from the norm in almost every measure, which is consistent with expectations that could be drawn from the WISC-5. Absolutely nothing in the ER says this, and a reasonable parent would not have that information.

27. Through the ER, the District determined that the Student was a child with disabilities (ADHD and Autism) and in need of special education. *See Stipulations.*
28. The ER included the following recommendation to the IEP team (P-5 at 10):

Per the school-based psychiatric evaluation, it has been recommended for [Student] to be considered for a therapeutic emotional support program which will include the development of a positive behavior support plan. Accommodations from the current Chapter 15 plan summarized within this report should be considered for inclusion within the IEP as needed. Refer to FBA and psychiatric evaluation on file to facilitate IEP goals and specially designed instruction.
29. On January 16, 2024, the Student's IEP team convened to develop a Positive Behavior Support Plan (PBSP) for the Student. The PBSP included proactive strategies intended to help the Student maintain positive behaviors in school, and reactive strategies informing school personnel about how to respond when the Student exhibited negative behaviors. The proactive strategies in the PBSP were substantively identical to those in the 504 Plan. *See P-6 at 25-26.*
30. On January 23, 2024, the Student's IEP team met and developed an IEP for the Student. *See Stipulations.*
31. The IEP included two goals. The first goal was, "[Student] will increase completing work calmly while decreasing elopement and aggressive and destructive behaviors to 50% of assignments per day for 4 consecutive weeks." The baseline for this goal was "TBD." Fifteen days after the IEP was implemented, the District established a baseline of 74.8%. P-6 at 18, P-8 at 1.
32. The IEP's second goal was, "[Student] will increase appropriate, calm behavior to gain attention or items and accept waiting or denied access for items/attention during 90% of subjects weekly for 4 consecutive weeks." The baseline for this goal was also "TBD." Fifteen days after the IEP was implemented, the District established a baseline of 55.5%. P-6 at 18, P-8 at 1.

33. The IEP included specially designed instruction (SDI) and program modifications. In substance, those were identical to the 504 Plan accommodations. P-6 at 19-20.⁶
34. The PBSP called for a token economy system. A token economy system was not implemented until the start of the 2024-25 school year. See P-10.
35. The IEP placed the Student in itinerant Emotional Support. The IEP called for the Student to receive instruction in the regular education classroom for 95% of the school day. P-6.
36. On February 29, 2024, the District issued a Trimester 2 Progress Report. As measured by daily behavior charts, the Student improved in the first goal from 74.8% to 89%. Both the baseline and the progress report present levels well above mastery for the goal. P-8.
37. The Trimester 2 Progress Report also showed that the Student made progress towards the second goal, moving from a baseline of 55.5% to 72%. P-8
38. In March 2024, the Student's negative behaviors increased. New negative behaviors including biting, scratching, self-harm and aggression toward peers arose around this time as well (previously, aggression was typically directed towards adults). See P-6.
39. On March 18, 19, and 25, 2024, the Student was restrained. See P-7; S-4, S-5.
40. On March 25, 2024, an IEP meeting convened in response to the new behaviors and use of restraints. The team revised the Student's PBSP to include Tact-II de-escalation techniques to the "reactive" strategies. No other changes to the IEP or PBSP were made. P-6, P-7.
41. After the March 25, 2024, IEP Meeting, the District began to implement a plan where the Student would start the school day in a Social Skills classroom. Initially, this was intended to be a check-in, with the intention of the Student quickly moving to the general education classroom. This changed at some point to a system where the Student would transition to the general education classroom only

⁶ The SDI included reference to the PBSP. The PBSP, in turn, was substantively identical to the 504 Plan. The SDI also provided "3-5 (20 minute) sessions per week" of social skills instruction, a service that the Student was already receiving. P-6 at 19-20.

after demonstrating appropriate behaviors. Consequently, the Student would sometimes spend the entire school day in the Social Skills classroom except for lunch, recess, and specials (if earned). NT 55, 216-17, 240-42, 320.

42. While in the Social Skills classroom, the only other people in the room were the Social Skills teacher, the Student's BHT, one other student, and the other student's BHT. The Social Skills teacher provided instruction in coping skills during this time. The District provided no direct academic instruction while the Student attended the Social Skills classroom. Instead, the general education teacher provided worksheets which the Student frequently refused to complete. NT 53-54, 125-127, 242, 318.
43. The Student's aggressive behaviors and sensory needs increased while placed in the Social Skills classroom. The Student also began to mimic the other student's negative behaviors. NT 54, 126-127.
44. Placement in the Social Skills classroom daily until the Student earned access to the general education classroom is contrary to the Student's IEP, which called for placement in general education for 95% of the school day. The District implemented this change in placement outside of the IEP process, and without the Parent's knowledge or consent. When the Parent discovered this change, the Parent objected and requested a meeting. There is no evidence in the record that a meeting convened in response to this request. NT 54-55, 242; P-6.
45. In May of 2024, the Student was engaged in a major behavioral episode. During the incident, the District called the Parent and an ambulance (for crisis intervention, not for physical harm). The Parent arrived before the ambulance and saw the Student rolling on the floor in the hallway, surrounded by school personnel. The Parent was able to deescalate the Student. Paramedics arrived after the Student was deescalated. Despite the Parent's desire to take the Student home, the Parent complied with request for the Student to go to the hospital for evaluation. At that point, the Student complied with the paramedics' instructions. The hospital discharged the Student shortly thereafter with no further instructions. NT 59-61.
46. On May 28, 2024, the District issued a Trimester 3 Progress Report. On the first goal, the Student regressed from 89% to 70%. This placed the Student below the initial baseline for the goal, but still above what the goal required for mastery. P-8.

47. The Trimester 3 Progress Report also showed regression on the second goal. The Student regressed from 72% to 60%. P-8.
48. Sometime in May 2024, District personnel informally recommended placement in a full-time Therapeutic Emotional Support (TES) program run by the IU and located outside of the District. While the District did not formally propose the TES placement, the Parent toured the TES classroom. After the tour, the Parent informed the District of concerns about the restrictiveness of the setting and the age range of students in the TES classroom. NT 61-62, 318-19, 343. *See also, Stipulations.*

2024-2025 School Year

49. On September 6, 2024, the Student's IEP team reconvened. The team revised the Student's IEP to include a classroom job, specify that the Student's daily behavior charts would be shared with the Parent, and to implement the token economy system (which had always been called for but not used to this point). P-10.
50. Following the IEP meeting, the Student's case manager and classroom paraprofessional (not the BHT – a paraprofessional assigned to the Student's classroom but not specifically to the Student) took lead responsibility for completing behavior charts and implementing the token economy system. All other aspects of the IEP remained in place, including the PBSP, social skills instruction, and placement in the general education for 95% of the school day. *See* NT 270-274; P-10.
51. From the Parent's perspective, the Student's behaviors improved at the start of the 2024-25. The Student was less destructive in the classroom and was more amenable to sharing attention with peers. The Parent attributed this improvement to implementation of the token economy system, a positive relationship between the Student and the Teacher, the Teacher's good work in setting clear expectations, warnings of schedule changes and transitions, and consistent positive reinforcement. The Parent received daily behavior charts. The District called and/or emailed the Parent when the Student engaged in more serious behaviors. NT 64, 68, 113-114, 207.
52. On January 21, 2025, the Student's IEP team reconvened. P-11. The District gave the Parent a document outlining over 30 serious behavioral incidents between September 4, 2024, and January 8, 2025. Many of those incidents involved work refusal, elopement, and aggression towards adults and peers. S-7. The incidents described in

that document were not consistent with the Student's daily behavior charts. See NT 74-75.⁷

53. During the IEP team meeting, the District proposed a new, annual IEP for the Student (the 2025 IEP). P-10.
54. The 2025 IEP includes updated present education levels. The Student was receiving Tier 3 reading support, but the Student's grades indicated academic progress. Some assessments remained incomplete because of the Student's behaviors. The Student's general education teacher summarized the Student's academic progress, behaviors, and the connection between the two as follows (P-11 at 5):⁸

[Student's] desk and materials are well-organized. When called on to provide an answer or explanation, [Student] will provide a response. [Student] raises [] hand to participate in class discussion; however, [Student] often needs encouragement from the teacher. Homework is completed and returned in a timely manner. [Student] seems to grasp math concepts quickly, and completes work independently. When writing, graphic organizers are helpful to be sure [Student's] ideas are included in students writing. [Student's] behavior changes multiple times throughout the day. [Student] enjoys interacting with teachers and peers at the start of the school day. Once whole group instruction begins, [Student] will often request breaks and/or sensory tools. When academic expectations are given, there are times when [Student] will complete work; however, there are times when [Student] will not complete work. Refusal to complete an assignment is followed by one or more of the following reactions: head down, will not respond to questions/prompts, throwing materials on the floor, crawling on the floor, sitting under [Student's own] desk/chair, and eloping from the classroom. All interventions listed in students IEP

⁷ The Student's daily behavior charts are not part of the record of this case. I accept the Parent's credible, uncontradicted testimony concerning the discrepancies. It is not possible on the record before me, however, to determine if the document at S-7 is inaccurate, or if the daily behavior charts were inaccurate.

⁸ I copy the Teacher's comments here because I find it to be the most straightforward, laymen-accessible, accurate, contemporaneous account of the Student's presentation in school. I commend the Teacher for painting a clear and accurate picture.

... Have been implemented. [Student's] behaviors continue to impede students learning as well as the learning of others at times.

55. The 2025 IEP noted that Student received staff support from the paraprofessional assigned to the Student's classroom but did not recommend or include assignment of a paraprofessional to the Student. P-11.
56. The 2025 IEP reported the Student's progress on IEP goals for the first trimester of the 2024-25 school year. For the first goal – completing work calmly – the Student was scored at 84% (up from 70% at the end of the 2023-24 school year).
57. Regarding the second goal – increasing appropriate behavior to gain attention or items and accept waiting or denied access – the Student was scored at 82% (up from 60% at the end of the 2023-24 school year). For this goal, the District wrote, "This means about 1 to 2 subjects daily on average have behavior of concern." P-11 at 7.
58. The 2025 IEP discontinued the goals in the prior IEP and included four new goals. To enable proper analysis, I must reprint the goals here (P-11 at 15-18):
 - a. [Student] will increase work completion in the classroom when assigned while decreasing work refusals, elopement and physical aggression for 90% of subjects for 8 consecutive weeks. Baseline: 58% of subjects.
 - b. [Student] Will increase using coping skills with prompts when upset by not having what [Student] wants or given a non preferred direction or interaction and decrease minor behavior events (refuses, yelling, throwing, banging etc) to 2 per week. Baseline: average of 2.5 minor events per week.
 - c. [Student] will increase using coping skills with prompts when upset by not having what [Student] wants or given a non-preferred direction or interaction and decrease major behavior events (elopement, aggression) to 0 per week. Baseline: average of 2.6 major events per week.
 - d. When given a second grade Oral Reading Fluency probe, [Student] will read 72 words correct per minute with 96% accuracy on 3 out of 5 probes per trimester. Baseline: when

given a second grade oral reading fluency probe, [Student] reads 33 words correct per minute with 87% accuracy.

59. The SDI and program modifications in the 2025 IEP were substantively identical to those in the prior IEP and BPSP. *C/f* P-10 at 19-20, 29; P-11 at 19-20.⁹
60. Through the 2025 IEP, the District offered a Full Time Emotional Support placement in the IU's TES program. The Student would be educated in a general education classroom for 22% of the school day. The District indicated on the IEP that the special education services and supports required in the Student's IEP could not be implemented in the Student's neighborhood school. P-11 at 26-28.
61. The TES classroom offered through the IEP was not the same TES classroom that the Parent toured at the end of the 2023-24 school year. The parties agreed to delay the District's formal offer of the 2025 IEP so that the parent could tour the TES classroom. *See Stipulations.*
62. In February 2025, the Parent toured the TES classroom. The parties then scheduled a meeting in late February 2025 to discuss the Student's placement. The meeting was delayed again because, on the scheduled day, the Student engaged in a major behavioral incident resulting in physical restraint. NT 70-71, 352.
63. The District called the Parent and paramedics. The paramedics were able to quickly deescalate the Student. The Student was taken to the hospital because the District was concerned that the Student suffered a head injury. At the hospital, there was no indication of a head injury, and the Student was released. NT 70-72, 90.
64. In March 2025, the parties met to discuss the Student's placement. The Parent expressed concerns about the TES program that are substantively similar to those in the prior school year. *Passim.*
65. On March 25, 2025, the District formally proposed the TES placement by issuing a NOREP. The Parent rejected the NOREP. P-12; see *Stipulations.*

⁹ The 2025 IEP included two new SDI concerning the rate at which the Student should be offered praise and breaks. This does not represent a substantive change either from the prior IEP or a change in what the Teacher was already doing. *Passim.*

66. On April 4, 2025, the Parent filed a due process complaint initiating these proceedings.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses, and must make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses.”¹⁰ One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review.¹¹

I find that all witnesses testified credibly, sharing their opinions and recollections to the best of their abilities. This does not mean that I assigned equal weight to all testimony. Weight determinations are reflected in the findings above.

Applicable Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to its demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this case, the Parents are the party seeking relief and must bear the burden of persuasion.

Free Appropriate Public Education (FAPE)

¹⁰ *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003).

¹¹ See, *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) (“[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.”). See also, generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017).

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

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

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

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

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

In *Endrew F.*, the Supreme Court effectively agreed with the Third Circuit by rejecting a “merely more than de minimis” standard, holding instead that the “IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. 988, 1001 (2017). Appropriate progress, in turn, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* at 1000. In terms of academic progress, grade-to-grade advancement may be “appropriately ambitious” for students capable of grade-level work. *Id.* Education, however, encompasses much more than academics. Grade-to-grade progression, therefore, is not an absolute indication of progress even for an academically strong child, depending on the child’s circumstances.

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

Least Restrictive Environment (LRE)

The IDEA requires LEAs to “ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.” 34 C.F.R. § 300.115(a). That continuum must include “instruction in regular classes, special schools, home instruction, and instruction in hospitals and institutions.” 34 C.F.R. § 300.115(b)(1); see also 34 C.F.R. § 300.99(a)(1)(i). LEAs must place students with disabilities in the least restrictive environment in which each student can receive FAPE. See 34 C.F.R. § 300.114. Generally, restrictiveness is measured by the extent to which a student with a disability is educated with children who do not have disabilities. See *id.*

In *Oberti v. Board of Education of Clementon School District*, 995 F.2d 1204 (3d Cir. 1993), the Third Circuit held that LEAs must determine whether a student can receive a FAPE by adding supplementary aids and services to less restrictive placements. If a student cannot receive a FAPE in a less restrictive placement, the LEA may offer a more restrictive placement. Even then, the LEA must ensure that the student has as much access to non-disabled peers as possible. *Id.* at 1215-1218.

More specifically, the court articulated three factors to consider when judging the appropriateness of a restorative placement offer:

“First, the court should look at the steps that the school has taken to try to include the child in a regular classroom.” Here, the court or hearing officer

should consider what supplementary aids and services were already tried. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216 (3d Cir. 1993)

"A second factor courts should consider in determining whether a child with disabilities can be included in a regular classroom is the comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom. The court will have to rely heavily in this regard on the testimony of educational experts." The court cautioned, however, that the expectation of a child making greater progress in a segregated classroom is not determinative. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1216-1217 (3d Cir. 1993).

"A third factor the court should consider in determining whether a child with disabilities can be educated satisfactorily in a regular classroom is the possible negative effect the child's inclusion may have on the education of the other children in the regular classroom." The court explained that a child's disruptive behavior may have such a negative impact upon the learning of others that removal is warranted. Moreover, the court reasoned that disruptive behaviors also impact upon the child's own learning. Even so, the court again cautioned that this factor is directly related to the provision of supplementary aids and services. In essence, the court instructs that hearing officers must consider what the LEA did or did not do (or could or could not do) to curb the child's behavior in less restrictive environments. *Oberti v. Bd. of Educ.*, 995 F.2d 1204, 1217 (3d Cir. 1993)

There is no tension between the FAPE and LRE mandates. There may be a multitude of potentially appropriate placements for any student. The IDEA requires LEAs to place students in the least restrictive of all potentially appropriate placements. There is no requirement for an LEA to place a student into an inappropriate placement simply because it is less restrictive. In fact, if an LEA puts a child into a placement that it knows is inappropriate simply because that placement is less restrictive than an appropriate placement, the LEA has violated the child's right to a FAPE *per se*. However, LEAs must consider whether a less restrictive but inappropriate placement can be rendered appropriate through the provision of supplementary aids and services.

Child Find

The IDEA's Child Find provision requires states to ensure that "all children residing in the state who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located and evaluated." 20 U.S.C. § 1412(a)(3). For LEAs, the

Child Find duty creates a “continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability under the statutes.” *P.P. ex rel. Michael P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); see also 20 U.S.C. § 1412(a)(3). LEAs must evaluate children who are suspected to be children with disabilities within a reasonable period of time after the school is on notice of academics or behavior that is likely to reflect a disability. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 250 (3d Cir. 1999). An LEA’s failure to evaluate a child suspect of having a learning disability constitutes a substantive FAPE violation.

Compensatory Education

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

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

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

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

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

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

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

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

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

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

Discussion and Conclusions of Law

The Parent's claims break cleanly into discrete periods. From the start of the 2023-24 school year through October 5, 2023, the Student did not have an IEP or 504 Plan. From October 6, 2023, through January 22, 2024, the Student had a 504 Plan. From January 23, 2024, onward, the Student received services pursuant to the IEP. That time also breaks between January 23, 2024, and the end of the 2023-24 school year, the start of the 2024-25 school year through May 25, 2025, and May 25, 2025 onward.

Start of 2023-24 School Year through October 5, 2023

Before the start of the 2023-24 school year, nothing in the record suggests that Student required special education or disability accommodations in school. The Student did not exhibit significant behaviors during the 2022-23 school year. Nothing in the record signals that the District knew or should have known of the Student's disability needs before the 2023-24 school year started.

There is no dispute that the Student's behavioral problems became apparent at the start of the 2023-24 school year. The parties communicated with each other, the Parent shared the PA Mentor treatment plan, the District evaluated the treatment plan, and by October 6, 2023, had the 504 Plan in place. This timeline is entirely reasonable. There is no basis in the record to find that the District should have acted faster than it did. I find no violation and award no compensatory education for this period of time.

October 6, 2023, through January 22, 2024

At the outset, I must note that the Parent's complaint does not clearly state a claim under Section 504. The question before me does not concern the

appropriateness of the Student's 504 Plan. Rather, this period of time represents a potential Child Find violation. At this point, the District had actual knowledge that the Student was a child with a disability, and so the question turns on whether the District should have acted faster to determine if the Student required special education.

I find that the District's actions, and the timing of those actions, were consistent with its Child Find obligations. On the same day that the District offered the 504 Plan, it also sought the Parent's consent for an FBA and School Based Psychiatric Evaluation. Those evaluations were complete by December 1 and 7, 2023. Arguably, those evaluations did little more than confirm what the parties already knew or suspected, but they represent a thoughtful first step. Moreover, as soon as the FBA and Psychiatric evaluations were completed, the District recognized that a comprehensive IDEA evaluation was necessary and sought the Parent's consent for the same. This resulted in the ER, which was complete on January 9, 2024 – well within the IDEA's timeline. See 20 U.S.C. § 1414. Simultaneously, the District developed a PBSP for the Student, which was complete in advance of the IEP on January 16, 2024. By January 23, 2024, the District was in a position to offer an IEP.

I find that the District's actions, and the speed with which those actions occurred, between October 6, 2023, and January 22, 2024, were consistent with its Child Find obligations. I find no IDEA violation during this time and award no compensatory education for this period.

January 23, 2024, Through the End of the 2023-24 School Year

Beginning with the issuance of the IEP, the District violated the Student's right to a FAPE in many different ways: The IEP was not reasonably calculated to offer a FAPE at the time it was drafted; the District did not implement the IEP with fidelity; and the District changed the Student's placement outside of the IEP process without the Parent's knowledge or consent.

The District took the PA Mentor treatment plan and used that to create the 504 Plan. The District then conducted an IDEA evaluation, determined that the Student required special education, and drafted an IEP. The IEP, functionally, was nothing more than a continuation of the 504 Plan (both directly and through incorporation of the PBSP), which was a continuation the PA Mentor treatment plan in substance. The District had actual knowledge that the services in place were insufficient because the insufficiency of the PA Mentor plan by itself prompted the evaluation yielding

an IDEA eligibility determination. Unfortunately, the District only offered more of the same.

The goals in the IEP are so convoluted that they are practically meaningless. “[Student] will increase completing work calmly while decreasing elopement and aggressive and destructive behaviors to 50% of assignments per day for 4 consecutive weeks.” Should the Student receive credit for decreasing elopement even if the Student is not calm? What if the Student is not calm, but also is not aggressive? According to the District’s ER, there are many examples of elevated but non-aggressive behaviors. Under the goal as written, it is impossible to know what was being tracked. The same is true for the second goal. Perhaps the difficulty in knowing what to track explains the discrepancy between the Student’s daily behavior charts and the District’s summary of major behaviors.

The IEP called for an inappropriate program tracked through indecipherable goals, but some aspects of the IEP placed an affirmative obligation on the District to implement certain types of programming. The District did not fulfill that obligation either, at least from January 23, 2024, through the end of the 2023-24 school year. Implementation of a token economy system for the Student was not optional, but the District did not provide a token economy for the Student. This IEP implementation failure would constitute a substantive FAPE violation in and of itself.

Finally, the IEP called for the Student to be educated in the general education classroom for 95% of the school day. Instead, the Student spent the majority of many school days in a social skills classroom with no meaningful access to nondisabled peers. On the record before me, I am persuaded that the District implemented a system in which the Student was segregated from, and had to earn access to, typical classrooms and nondisabled peers. This action constitutes a change in placement that was not part of any IEP team discussion, not documented in any IEP, not proposed through any NOREP, and not implemented with Parent’s knowledge or consent. This is antithetical to the fundamental purposes of the IDEA and a violation of the Student’s most basic special education rights.

Nothing herein should be read as a limitation on a school’s rights or obligations to maintain a safe school environment. Sadly, schools must sometimes temporarily isolate a child to protect the physical safety of the child, other children, and staff. However, when such isolation (or, as seen in this case, segregation) happens with such frequency the isolated location and programs delivered therein becomes the child’s *de facto* placement, the child’s placement has changed. The IDEA itself creates multiple processes for

such changes, some of which enable swift, unilateral action without running afoul of the IDEA's mandates. The District used none of those processes.

The 2024-25 School Year Through May 25, 2025

Things improved for the Student at the start of the 2024-25 school year. The Student's behaviors improved relative to the prior year as the District began to implement the token economy system. The District reversed its impermissible change in the Student's placement. These improvements are attributable to the care and diligence of District personnel – particularly the classroom teacher and paraprofessional – who worked with the Student this year. Those individuals took considerable time and effort to track the Student's behaviors, fully implement the Student's IEP, and communicate effectively with the Parent. The FAPE violations that continued into the 2024-25 school year are in no way a function of their excellent work. Those violations, however, persisted.

Every inappropriate aspect of the Student's IEP discussed above carried into the 2024-25 school year. By this time, the District had been implementing some version of the PA Mentor program in various forms and under various names since October 2023. It is not surprising that the Student's behaviors, which are a function of the Student's disabilities, did not improve in any meaningful way. As noted above, the record of this case is insufficient for me to determine if the Parent's perspective or the District's perspective of the Student's behaviors during the 2024-25 school year is more accurate. Yet, assuming the Parent's perspective is correct, the Student's behaviors improved only relative to the 2023-24 school year. Even with this rosier picture, the Student continued to have significant, unaddressed, disability-based behavioral needs. Those behaviors had a direct and substantial negative impact on the Student's education (both academic and otherwise). The District continued to offer the same program through March 25, 2025.¹²

May 25, 2025, and Onward

The 2025 IEP, offered on May 25, 2025, represents a flagrant violation of the Student's right to be educated in the least restrictive environment. The District proposed moving the Student from a program in the Student's neighborhood school, in which the Student spent (or should have spent)

¹² The parties agree that the District withdrew a NOREP offering the TES placement in January 2025 so that the Parent could tour the program. Under the IDEA, however, the District has a unilateral, affirmative obligation to offer appropriate programming. My analysis is confined. Under the facts as stipulated and found, the District did not offer a new IEP until it issued a NOREP on March 25, 2025.

95% of the school day in the general education classroom to a full time, out-of-district, emotional support placement.

Oberti is not new law, and yet the District violated every part of that process. The process begins with consideration of what supplementary aides and services were already tried as part of the District's effort to include the Student in the regular classroom. There is no evidence in the record that the District even considered what supplementary aides and services could help the Student remain in a less restrictive environment. Instead, the District evaluated the Student and, through its own evaluations, determined that the Student needed special education behavioral interventions. At that point, the District was obligated to determine what special education the Student needed and implement that special education through an IEP. The District ran afoul of those obligations when it took the Student's 504 Plan – which was derived from the PA Mentor Treatment Plan – and converted that into an IEP. It may have been appropriate to continue the 504 Plan accommodations as part of the Student's IEP but, by that point, the District had already determined that the Student needed special education in addition to Section 504 accommodations. Section 504 accommodations are not special education. Even if the Student's behavioral goals were cogent, the District did not offer appropriate special education, let alone supplementary aides and services, to address the Student's behavioral needs.

The second *Oberti* factor calls for a comparison between the benefits of the regular classroom and the segregated classroom. The benefits of the regular education classroom are recognized by the IDEA itself and embedded into *Oberti*. The regular education classroom is the IDEA's default placement for a reason: access to a school's entire education program, including its standard curriculum, and an educational experience involving the peers that the Student would go to school with but for a disability. The record establishes that the Student is capable of grade-level academic work in most domains, and benefits from Tier 3 reading interventions (which is a regular education program, not special education). There is no academic reason to remove the Student from the Student's neighborhood school and nondisabled peers. This is not to say that the TES program could not be beneficial. There are greater resources within the TES program to proactively manage the Student's behaviors. But it is impossible to know if the same benefits could be achieved without such a sudden, drastic change in placement. The District has not attempted anything less restrictive.

The third *Oberti* factor calls for consideration of whether the Student can be "educated satisfactorily" in the regular education classroom and the impact of the Student's behaviors on other children. The Student's behaviors do impact upon and interfere with the learning of other children. At least once,

the District had to clear the classroom in response to the Student's behaviors. The Student also has destroyed other student's class work. These facts weigh in favor of changing the Student's placement. However, as discussed above, the District has yet to fulfil its IDEA obligation to try to curb these behaviors through appropriate special education and supplementary aides and services. On the record before me, there is no reason to believe that the Student's cannot be "educated satisfactorily" in the regular education classroom once an appropriate program is implemented. The *Oberti* court cautioned that consideration of the impact of the Student's behaviors on other children must account for the provision of appropriate supplementary aides and services, or lack thereof. The absence of a systematic effort, compliant with IDEA mandates, to put such aides and services in place compel me to hold that the third *Oberti* factor cannot be viewed in isolation and is not controlling in this case.

Application of the *Oberti* test is straightforward in this case. On the record before me, the District may not move the Student to the TES placement. The TES placement is highly restrictive in comparison to the Student's current placement, and the District has not complied with multiple mandates to address the Student's behaviors through less restrictive means.

Remedies

The Student is owed compensatory education as a remedy for the ongoing FAPE violation. Above, I find that violation started on January 23, 2024, and has continued since then. The Parent demands "full days" of compensatory education for this time. I agree that is an appropriate, equitable remedy.

The PA Mentor plan was not special education. That plan morphed into the 504 Plan. Any 504 plan, by definition, is not special education. The 504 Plan in this case was an adoption of the PA Mentor plan and so, definitions notwithstanding, the 504 Plan was not special education as applied. The 504 Plan then morphed into the IEP, resulting no real change to the Student's substantive programming. On the record before me, there is a serious question as to whether the Student received special education at all, let alone appropriate special education. That the Student was successful in any way during the time in question is a testament to the contributions of individual teachers and paraprofessionals. As a whole, the District failed the Student by violating its obligation to determine what special education the Student requires and then offering to provide that special education in the least restrictive environment. Then, when Student did not improve, the District's response was *de facto* segregation followed by a formalized proposal for even greater segregation.

I award one hour of compensatory education for each hour that the District was in session, beginning on January 23, 2024, and ending when the District fulfills the terms and conditions of this decision and order as set forth below.

The Parent may decide how the compensatory education is used. The compensatory education may take the form of any appropriate developmental, remedial, or enriching educational service, product, or device that furthers any of Student's identified educational and related services needs. The compensatory education may not be used for services, products, or devices that are primarily for leisure or recreation. The compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided by the District through Student's IEPs to assure meaningful educational progress. Compensatory services may occur after school hours, on weekends, and/or during the summer months when convenient for Student and the Parents. The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21). The compensatory services shall be provided by appropriately qualified professionals selected by the Parents. The cost of providing the awarded hours of compensatory services shall be limited to the average market rate for private providers of those services in the county where the District is located.

Additionally, neither party has robust information about what special education the Student currently needs to receive a FAPE. Both the ER and FBA defer to the IEP team instead of making actionable recommendations for the team to consider.¹³ Pursuant to my authority under 34 C.F.R. § 300.502(d), I order an independent educational evaluation (IEE) at public expense to determine what special education, related services, and supplementary aides and services the Student requires to receive a FAPE. Compensatory education shall continue to accrue at the rate described above until such time as the parties identify and mutually agree to an evaluator or evaluators in writing, or until other conditions in the order below are satisfied.

ORDER

Now, July 11, 2025, it is hereby **ORDERED** as follows:

¹³ If the ER's appropriateness was in question, I would readily hold that the ER was not appropriate for its failure to provide actionable information to the IEP team. *See, e.g.* 20 U.S.C. § 1414(b)(4)(A).

1. Consistent with the Decision above, the Student is awarded one hour of compensatory education for each hour that the District was in session starting on January 23, 2024, and ending when any of the terms below are satisfied.
2. The Parent may direct the use of such compensatory education in any way consistent with the Decision above.
3. Consistent with the Decision above, the District is ordered to provide an Independent Educational Evaluation (IEE) at public expense for the purpose of determining what special education, related services, and supplementary aides and services the Student currently requires in order to receive a FAPE.
4. Compensatory education shall stop accruing when any of the following terms are satisfied:
 - a. The parties agree in writing as to which evaluator or evaluators shall conduct the IEE required by this Order; or
 - b. 15 calendar days after the District proposes no less than five (5) qualified evaluators to conduct the IEE and the Parent takes no action; or
 - c. The Parent refuses to consent to other otherwise refuses to make the Student available for the IEE.

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

/s/ Brian Jason Ford
HEARING OFFICER