

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. 30265-24-25

Child's Name:

M.W.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

July 11, 2025

INTRODUCTION

The Student¹ The individual is currently [redacted] years old and attended the [redacted] grade in the District during the 2024-2025 school year. They were subsequently enrolled in a Charter School by their Parents. The Student is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² as a child with an emotional disturbance and other health impairment (OHI) (ADHD). This Student is also entitled to protections under Section 504 of the Rehabilitation Act of 1973.³

The Parents' initial due process complaint contended that the District denied the Student a free, appropriate public education (FAPE) through the provision of insufficient supports and programming. The complaint also requested a finding that the District violated Title IX of the Education Amendments Act for its failure to investigate and address alleged incidents of [redacted] of the Student by a peer.⁴

In a Motion to Dismiss, the District raised various affirmative defenses and argued that the Parents' Title IX claims exceeded the jurisdiction of a special education hearing officer.

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).

⁴ Title IX of the Education Amendments Act of 1972 (2018).

The Parents requested and received leave to file an amended due process complaint. The amended complaint requested relief under the IDEA, Section 504, and Title II of the Americans with Disabilities Act (ADA) on grounds that the District denied a FAPE through the provision of insufficient programming and deliberately discriminated against the Student.⁵ The amended complaint also appeared to raise claims related to Title IX. During a conference call, to address the amended complaint and responses, the Hearing Officer, partially granted the District's Motion to Dismiss, and indicated she would make no findings under Title IX or the Americans with Disabilities Act (ADA); however, Parents could bring forth evidence to support their claim that the District violated the Student's rights under the IDEA and Section 504.

For the following reasons, the claims of the Parents are partially granted and partially denied.

ISSUES⁶

1. Did the District deny the Student a FAPE in violation of the IDEA and Section 504 from September 2022 to November 14, 2024;
2. Did the District violate Section 504 or Title II of the Americans with Disabilities Act, by discriminating against the Student with deliberate indifference based on disability from September 2022 to November 14, 2024;

⁵ Title II of the Americans with Disabilities Act. 42 U.S.C. §§ 12101-12213.

⁶ On the hearing record, counsel agreed to the statement of issues. (N.T. 8-9)

3. If the District denied a FAPE or deliberately discriminated against the Student is compensatory education commensurate with the period of deprivation, from September 2022 until November 14, 2024 appropriate; and
4. If the District engaged in deliberate indifference from September 2022 to November 14, 2024, in violation of Section 504 or the ADA, is the family entitled to equitable relief?

FINDINGS OF FACT

1. The Student attended kindergarten through third grade in the District. (J-11)

2021-2022 School Year- [redacted] Grade

2. During the 2021-2022 school year, the Student was enrolled in the [redacted] grade in the District. Throughout the [redacted] grade, the Student struggled with testing performance, social and separation anxiety. (J-2; N.T. 168)
3. On June 6, 2022, a pediatrician diagnosed the Student with attention deficit disorder with anxiety. (J-2, J-10)
4. On June 7, 2022, the District issued a Section 504 evaluation report. On the Multidimensional Anxiety Scale for Children – Second Edition (MASC-2), the Student received a score in the elevated range for attributes related to anxiety. The (ER) recommended that the Student receive individualized

accommodations due to the significant impact of Attention Deficit Disorder (ADD) and anxiety on educational performance. (J-3, J-4, J-6: N.T. 138-139)

5. On June 9, 2022, the Parents agreed to the implementation of a Section 504 service agreement for the Student. The 504 offered accommodations that included breaks, preferential seating, nonverbal redirection, testing accommodations, headphones, organizational reminders, chunking, and parental access to study guides. (J-5, J-7; N.T. 140)
6. On June 21, 2022, the Parent consented to an initial evaluation of the Student to determine eligibility for special education. (J-8, J-9)

2022-2023 School Year –[redacted] Grade

7. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District with a 504 plan in place. (J-11; N.T. 243)
8. On October 13, 2022, the District issued its ER regarding the Student. On the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) administered to assess cognitive ability, the Student received a full scale IQ score of 98 (average). On assessments of academic achievement, the Student scores indicated average basic reading, math and listening comprehension skills and low average written expression skills. (J-11)

9. On BASC-3 rating scales to assess social-emotional functioning, Parents' and teachers' ratings reported elevated levels of internalizing problems and anxiety. The Student's self-reported ratings indicated clinically significant scores related to school problems (attitude) and internalizing problems (locus of control, social stress, depression). Rating scales to assess attention/executive functioning, completed by a Parent, teacher, and the Student, suggested elevated levels related to attention problems across settings. (J-11; N.T. 141-142)
10. The ER concluded that although assessment results corroborated the Student's disability (ADHD-inattentive presentation with anxiety), the Student did not demonstrate the need for specially designed instruction and did not qualify for special education services. (J-11; N.T. 142)
11. The ER determined the Student would benefit from general education supports through a 504 service agreement with accommodations to address ADHD, anxiety and co-occurring deficits related to attention and executive dysfunction. (J-11, p. 17; N.T. 144)
12. In October 2022, during math class, a peer, a special education student, reportedly grabbed the Student's [redacted] in order to get attention.⁷ The Student reported the incident to the math teacher and the Parents after returning home. (J-17, J-39, J-47, p. 15, J-51)

⁷ Hereinafter, the peer student will be referred to as the "Respondent."

13. In late December 2022, the Parent reported that the Student expressed [redacted] and was taken to the hospital but released hours later, deemed safe enough to return home. The Parent indicated the anxiety attack was related to the Student hearing a child had brought a knife on the school bus. The Parents obtained the services of a licensed professional counselor but declined involvement in the student assistance program (SAP). (J-47, p. 1, J-53)
14. On January 4, 2023, the Parent reported finding a school assignment in which the Student referenced [redacted]. School staff spoke with the Student who reported it was a joke. (J-47, p.5)
15. On January 25, 2023, the Parent reported that the Student experienced high anxiety, refused to get out of the car for school, and threatened [redacted], but later retracted it. The Parent returned the Student to school after planning for a school counselor meeting. (J-47, p. 6-7)
16. On January 31, 2023, the Parent reported the Student was sad, did not understand the reason, experienced migraines, and appeared to grieve the loss of a friendship. (J-47, p. 9)
17. On February 6, 2023, the school counselor reported that the Student expressed feeling stressed, cried and did not want to ride the bus home. The Parent reported the Student's morning anxiety to be very high. (J-47, p. 10-11)

18. On February 28, 2023, the Parents contacted the District after learning of allegations that a peer [redacted] the Student in November and December of the previous year. The Parents learned of the allegations from a family of another purported victim. In response, the District advised the Parents that an investigation was underway and support for the Student would be put into place to avoid future incidents with the Respondent. (J-47, p. 15-16, 48; N.T. 170)
19. On March 2, 2023, the Parents completed a District-provided Title IX complaint form. (J-47, p. 16-19, 51)
20. To address the safety concerns, the District assigned an adult to accompany the Respondent to prevent interactions with the Student. The District also changed the Respondent's classroom within the "biome," assigned a separate restroom, and allowed the transition to classes a few minutes earlier.⁸ (J-47, p. 20; N.T. 203-205)
21. On March 9, 2023, after receiving an email from the Parent that the Student was unnerved after seeing the Respondent, the District clarified that the Respondent would not use the same bathroom as the Student and had an adult assigned throughout the school day who was advised that no engagement should occur between the two students. (J-47, p. 53)

⁸ The fifth grade was divided into "biomes." Each biome consisted of four classrooms, with two classrooms on each side of the hall, and lockers dividing the area. Students in each biome were assigned to one set of two classrooms on either side of the hallway within that biome. (N.T. 202)

22. On March 28, 2023, the Parent contacted the District about increased anxiety of the Student and dissatisfaction with proposed interventions during unstructured times (hallways, recess, and neighborhood meetings). The Parent reiterated that it was a "fight" to get the Student to school. That day, the Parents learned of an additional incident from November involving the Student and the Respondent. (J-47, p. 23-24)
23. On April 4, 2023, the Parent reported that during recess, the Respondent was without adult supervision. The Parent indicated the Student's anxiety increased and interfered with sleep, behavior, and desire to go to school. (J-47, p. 26-27)
24. After the Parent expressed concerns, the District adjusted the structure of neighborhood meetings and the upcoming field trip to avoid the Student and Respondent having contact. The Parent reported at home, the Student experienced frustration with school and homework and expressed [redacted]. (J-47, p. 30-31)
25. On June 1, 2023, following a team meeting, the Student's 504 service plan was modified with two additional accommodations (reminders, textbooks for the home). (J-15; N.T. 169, 356)
26. During the [redacted] grade, the Student's teacher observed a struggle with anxiety, had no concerns regarding school avoidance, but was unaware of the [redacted] or the sightings of the Respondent. (N.T. 249, 253, 257)

27. On June 5, 2023, the District released its Title IX investigative summary with support measures that included an earlier classroom transition time, 1;1 escort for the Respondent, separate cafeteria tables, bathrooms, recess playground access, transportation adjustments, temperature checks with the school counselor to assess emotionality, and team meetings. (J-51; N.T. 209-210)
28. At the end of the 2022-2023 school year, the Student earned grades of As and Bs and had ten excused absences. (J-12, p. 6, 8)
29. On July 10, 2023, the District issued its Title IX Determination that addressed conduct alleged in the formal complaints against the Respondent, made by the Parents and other families. The determination concluded that the Respondent violated the discipline code and engaged in a level III violation classified as physical aggression. The District noted it would make every effort to keep the Respondent separated from the Student, but could not guarantee it (J-17)
30. On July 17, 2023, the Parent consented to a special education evaluation of the Student. (J-18; N.T. 172)
31. On August 9, 2023, the Student was diagnosed with post-traumatic stress disorder (PTSD). (J-19)

32. On August 16, 2023, the Parents, Student, and teachers met to develop a plan to support the transition to the [redacted] grade. (J-52; N.T. 209)
33. The Title IX transition/support/safety plan contained revisions to the master schedule (creation of two -[redacted] grade lunches and recess times, opposite schedules for the Student and Respondent, assignment to different biomes on opposite sides of the building). The plan also offered counseling (on demand with escort to the office, weekly check-ins), classroom support (school day monitoring of the Respondent), breaks (preventative individual breaks), and transportation (separate dismissal doors and buses). (J-52)

2023-2024 School Year- [redacted] Grade

34. During the 2023-2024 school year, the Student was enrolled in the [redacted] grade in the District. (J-52; N.T. 201-202)
35. On August 30, 2023, the team developed a modified 504 service agreement that listed Student diagnoses of ADHD, anxiety disorder and PTSD. The plan offered accommodations that included on-demand safe space breaks, preferential seating, nonverbal redirection, small group testing and chunking, organizational help, reminders to recheck answers, parental access to study guides, textbooks for home, counselor check-ins, and fidgets. (J-20; N.T. 172-173, 177)

36. During the [redacted] grade, the windows of staff were covered to avoid an inadvertent sighting of the Respondent by the Student. (N.T. 211)
37. On October 10, 2023, the Parent reported that while on the school bus, the Student saw the Respondent walking. The Parent indicated it was the second time the Student saw the Respondent. The District replied that it would reach out to discuss preventative measures. (J-21, J-47, p. 86; N.T. 175-176, 212)
38. On October 16, 2023, the District issued its evaluation report (ER) concerning the Student. Referral concerns indicated attention, anxiety, and an increase in stressors over the past school year. Listed diagnoses included ADHD, anxiety disorder, and PTSD. The ER noted that outside therapy occurred. (J-22)
39. The ER included Parent and teacher input, a classroom observation, a summary of academic achievement, and previous District conducted evaluations. The District administered new assessments of academic achievement, social-emotional, and attention-executive functioning. The District also conducted a functional behavior assessment (FBA). (J-22, J-23)
40. On assessments of academic achievement, the Student performed in the superior to average range. (J-22)
41. On the Behavior Assessment System for Children, Third Edition (BASC-3), teacher and the Parent ratings were clinically

significant in the area of anxiety and the at-risk range for internalizing problems and attention problems. (J-22, p. 11-12)

42. On BASC-3, the Student self-rated as clinically significant in the areas of personal adjustment, interpersonal relations, and self-reliance. The Student self-scored in the at-risk range in the areas of internalizing problems, atypicality, social stress, anxiety, depression, emotional symptom index, and relations with parents. (J-22, p. 13)
43. On the Children's Depression Inventory, Second Edition ("CDI-2"), the Student self-scored in the very elevated range in the areas of emotional problems, negative self-esteem, and interpersonal problems. (J-22, p. 14)
44. The FBA identified the behavior of concern as leaving the assigned area. The Student was more apt to engage in this behavior when around certain peers and experiencing an increase in stressors (noise level, proximity to certain peers, transitions, negative peer interactions). After three twenty-minute observations, no patterns of behavior were observed. (J-23)
45. The evaluation concluded that the current level of support was appropriate and noted a decrease in the self-report of anxious symptoms compared to previous assessments, but an increase in depressive symptoms, which impacted attention to instruction and tasks, along with peer relationships. (J-22; N.T. 146)

46. The ER determined that identified performance deficits could be addressed through accommodations. The ER concluded the Student did have a disability but did not need specially designed instruction, and did not qualify for special education services. (J-22, J-23)
47. On October 30, 2023, the Student's 504 service agreement was modified to include prediction for task completion, verbal mediation to talk through a task, extended time, a visual coping "toolbox" or checklist when faced with emotional distress, and biweekly individual psychological counseling to address anxiety and executive functioning. (J-24)
48. In November 2023, the Student began receiving bi-weekly, individual counseling from a school psychologist. During sessions, the psychologist used a research-based, middle school curriculum to address executive functioning (test taking, organization, time management) and anxiety (coping strategies). (N.T. 432-434, 448)
49. In addition to the implemented executive functioning curriculum, the school psychologist employed other proactive strategies, including temperature checks to gauge anxiety, team meetings, changes in meeting locations, and window coverings to prevent inadvertent sightings of the Respondent, and communicated with outside mental health providers. (N.T. 437-442)

50. On November 16, 2023, the Parent reported the Student saw the Respondent from inside a school office. The Parent requested that the office shades be drawn or the Student be repositioned to avoid future sightings. The Assistant Principal forwarded the Parent's concerns to the school team reinforcing the need to prevent the Student from seeing the Respondent. (J-25)
51. From December 5, 2023, through February 15, 2024, the Student participated in an outpatient OCD clinic. While participating in the program, the District medically excused the Student from the final thirty minutes of the school day, for three days a week. (J-26; N.T. 213)
52. On January 8, 2024, the school team communicated with the Parent about plans for a 504 update meeting to include the OCD diagnosis. (J-28)
53. On January 22, 2024, the 504 team met to discuss revisions to the Student's plan and the need for additional evaluative data. (J-29, J-30)
54. On January 25, 2024, the Parent reported the Student experienced high anxiety with expressed fear of death and dying related to a school conversation about carbon monoxide. The District responded and requested a release so that the Student's therapist could provide specifics about mental health for incorporation into the support plan. (J-31)

55. On February 5, 2024, the Parent consented to a special education evaluation of the Student. (J-32)
56. On February 14, 2024, the team and the Parent discussed changes to the Student's therapy schedule, grading adjustments and 504 plan updates. (J-34)
57. On March 4, 2024, the school team met with the Parents to discuss the supports in place for the Student and prepare for the transition to middle school. The Parent expressed the Student's concern about seeing the Respondent and the distraction of this obsessive thought. (J-52, p. 5; N.T. 268)
58. On April 6, 2024, the District issued its evaluation report concerning the Student. For inclusion in the ER, the Parent reported the Student had diagnoses of attention deficit/hyperactivity disorder (ADHD), an anxiety disorder, PTSD, and OCD. The Parent also advised that the Student received outside services that included therapy, medication management, and psychiatric care. (J-35; N.T. 178)
59. The April ER included Parent and teacher input, a classroom observation, previous evaluation findings, benchmark testing results, past and current grades, assessments of social/emotional and executive functioning, and an FBA. (J-35)
60. The ER concluded that the Student endorsed anxious and depressive symptoms and demonstrated significant difficulty modulating emotions, which impacted educational performance,

related to test-taking, work completion, and engagement in instruction. The ER determined the Student needed specially designed instruction under the primary disability category of emotional disturbance. ⁹(J-35)

61. Because the Student's inattention and executive dysfunction impeded performance in activities that required sustained mental effort, the Student also met criteria for special education services under the secondary disability category of Other Health Impairment due to the diagnosis of ADHD. (J-35; N.T. 155)

62. For inclusion in the ER, the District conducted a functional behavior assessment (FBA), which indicated behaviors of concern as passive off-task behavior and verbal off-task behavior. The FBA determined that the Student exhibited skill deficits related to organization and self-regulation. Listed antecedents included behavior during instruction, more often in proximity to certain peers, and when presented with an academic task demand. (J-35, J-36; N.T. 155-156)

63. The ER determined the Student could benefit from a Positive Behavior Support Plan (PBSP) with a focus on increasing expected behaviors (self-monitoring and self-regulation skills) in the educational environment. (J-35, J-36; N.T. 155-156)

⁹ The District school psychologist administered the BASC-3, MASC-2, CDI-2, and the BRIEF-2. (J-35)

64. On April 11, 2024, the Parents requested an opt-out from the Math PSSA exams because of the Student's anxiety. That day, the District provided a short-term plan for math to the Parent, addressed a reported sighting by the Student of the Respondent, and confirmed receipt of the medical excuse for exemption from PSSA testing. (J-47, p. 92-95)
65. On April 15, 2024, the Parent reported that the Student saw the Respondent in school, which triggered more anxiety and [redacted]talk. The District confirmed that the Respondent was with the assigned adult, saw the Student, but no words were exchanged. (J-47, p. 98)
66. On April 16 and April 17, the Parent reported the Student was unable to attend school because of anxiety. (J-47, p. 99-100)
67. On April 18, 2024, the District reiterated the plan to the Parent to keep the Respondent away from the Student during lunch, recess, hallways, neighborhood meetings, special interdisciplinary events, and field trips. (J-47, p. 29-30; N.T. 166-167)
68. From April 22, 2024, through May 24, 2024, the Student attended a half-day, three-day-a-week intensive outpatient program to address depression, anxiety, and [redacted]. (J-38, J-47, p. 102; N.T. 213)

69. On April 23, 2024, the Student reported to the Parent crying and waiting for a trusted adult escort to return to class after sighting the Respondent. (J-64, p. 106, 118)
70. On April 24, 2024, the District medically excused the Student from social studies and science, adjusted the class attendance schedule, and assigned an escort for all transition times. (J-47, p. 107-108)
71. On May 2, 2024, the IEP team met to develop special education programming for the Student. The IEP offered measurable PBSP goals, with baseline data designed to address executive functioning and coping skills. (J-40)
72. Intended SDI and program modifications included on-demand safe space breaks, coping skills toolbox, private and nonverbal redirection, testing adjustments, visual reminders, chunking, and a medical exemption from participation in Social Studies and Science classes.¹⁰, extra textbooks, extended time, writing utensil of choice, preferential seating, daily check-ins to review emotional outlook, and implementation of the PBSP and Title IX safety plan. (J-40, p. 24-25)
73. Offered related services in the May IEP included 55 minutes a month of individual psychological services and 150 minutes a year of individual counseling per IEP year. (J-40, p. 25).

¹⁰ The exemption was in effect from May 3, 2024, to June 5, 2024.

74. The May IEP offered the Student itinerant, emotional support. On May 2, 2024, the Parent, through a NOREP, approved the recommendation for the initiation of special education programming for the Student. (J-40, J-41)
75. On May 8, the Student attended a half-day of school after expressing fear of seeing the Respondent. (J-47, p. 112-113)
76. On May 30, 2024, a Title IX transition meeting occurred with the Student, Parents, and school team members to plan for [redacted] grade. The proposed safety plan placed the Student and Respondent on different teams, separated lunches, and offered supervision during transition times. Additional support included daily check-ins with the school counselor, paraprofessional support, separate restrooms and bus transportation, coordination of separate break areas, and the continuation of quarterly meetings to review these supports. (J-30, J-39, p. 2, J-47; N.T. 120-123, 183)
77. On June 4, 2024, the District provided the Parents with a revised transition plan. Revisions included a [redacted] to avoid sighting, an escort for the Student for the beginning of the school year, and advance notification to the family of lockdown and fire drill dates. (J-39, p. 6-8).
78. During the [redacted] grade, the Student saw the guidance counselor in the morning for temperature checks, usually midday, and anytime additional support was needed. (N.T. 435-436)

79. During the [redacted] grade, the Student would occasionally visit the classroom of the former [redacted]-grade teacher to take a break or complete classwork. The Student appeared happy, smiling, not anxious and chatted with the teacher and other students. (N.T. 259)
80. During the 2023-2024 school year, the Parent administered "rescue medication" to the Student when increased anxiety occurred. (N.T. 189)
81. During the 2023-2024 school year, the Student had 47 medical early dismissals, 10 medical absences, and three medical tardies. The Student earned fourth quarter grades of A in reading and B in math. The Student passed computer applications, art education, music, health education and world language. The District medically excused the Student from attending writing, science, and social studies classes. (J-26, J-27)
82. On June 17, 2024, the Student began therapy to address PTSD. (J-44)
83. On August 6, 2024, the District provided the Parent with a class schedule and [redacted]. The Student met with some - [redacted] grade staff and practiced the walking route around the middle school. (J-39, p. 11; N.T. 315)

2024-2025 (November) School Year- [redacted] Grade

84. During the 2024-2025 school year, the Student attended the [redacted] grade in a District middle school and received special education programming through an IEP developed the preceding May. (J-40, J-45)
85. On September 13, 2024, the District advised the Parents that the Respondent would no longer be required to miss instructional time by leaving class early or remaining after dismissal, and restrictions on hallway and restrooms were removed. The Parents were dissatisfied with the plan revision. (J-39)
86. During a September 18, 2024, IEP meeting, the school psychologist agreed to contact the Student's outside mental health team. SDI was updated to add a backup trusted adult for the Student to contact. To avoid sighting the Respondent, the team changed the Student's scheduled break between the eighth and ninth period. (J-55, p. 9)
87. During the meeting, the Student presented a statement that indicated nightmares and sleeping difficulties were experienced, no trusted adult was at school, and if the situation was not fixed, a [redacted] would occur. A risk assessment determined that the Student did not identify a plan and did not have additional ideation. The Parent picked up the Student from the school nurse's office for a psychiatric appointment. (J-55)

88. On September 25, 2024, the Student ,[redacted] and called the Parent. The Student decided to stay at school, changed mind, and the Parent brought the Student home and administered anxiety/rescue medication. (J-39, p. 22)
89. In October, after the Student expressed no longer wanting to take breaks during the transition from [redacted] period and feeling that seeing the Respondent was okay, the school psychologist contacted the Student's private therapist.¹¹ The therapist discussed the progress made, that the PTSD criterion was unmet, and that the Student could handle seeing the Respondent depending on mood and time of day. (J-39; N.T. 439-440, 451, 455, 460)
90. On October 16, 2024, the Parent contacted the District about the removal of supportive measures and provided three instances in one week of the Student seeing or interacting with the Respondent. Following the interactions, the District did not observe an impact on the Student during the school day. (J-47, p. 132-133; N.T. 281-282)
91. On October 21, 2024, after meeting with the Parents, the District updated the Student's support plan. Changes included the removal of a break after [redacted] period, a teacher in the hallway observing the transition, District contact with outside therapists, individual breaks only as needed, and prompt

¹¹ None of the Student's private therapists testified at the due process hearing. However, vague testimony occurred that PTSD therapy was discontinued, because the Student was seeing the Respondent, the therapy was not helpful, and it was too difficult. (N.T. 454-454)

reporting of unexpected sightings by the Student of the Respondent. (J-47, p. 137-138, 284-285)

92. Between mid-October and mid-November, the Student asked the learning support to see the guidance counselor more frequently. The guidance counselor observed a higher level of anxiety in the Student. If the Student missed class, time was provided during the first period to make up the missed work. (N.T. 329, 427-428)
93. On October 23, 2024, the District recommended the use of an alternate hallway after the Student reported seeing the Respondent. (J-47, p. 140)
94. On October 29, 2024, the school staff reported that the Student saw the Respondent, requested to go to the guidance office, and asked to contact the Parent. Staff stayed with the Student to assist with escalation and anxiety. The Parent brought rescue medication to the Student. The Student did not attend school on October 30. (J-47, p. 144-145; N.T. 191-192, 196)
95. On November 1, 2024, the Parent reported that the Student saw the unescorted Respondent who attempted conversation. (J-39, p. 29, J-47, p. 149-150)
96. On November 8, 2024, the Parent expressed severe dissatisfaction with the District and reported that the Student

saw the Respondent during a transition and twelve interactions/sightings had occurred. (J-47, p. 151-153)

97. On November 11, 2024, the guidance counselor facilitated a [redacted] assessment after the Student saw the Respondent. The assessment determined the Student was not at risk. The Parent picked up the Student from school. (J-39, p. 30; N.T. 337-339)

98. During [redacted] grade, the Student participated in a daily, first period academic support class taught by a learning support teacher where executive function skills (locker/binder organization, planning) skills were supported. The learning support teacher also co-taught the Student's reading and math class and would provide re-teaching and small group testing. (N.T. 404-405)

99. The learning support teacher observed the Student to be a very typical middle schooler, a bit disorganized, agreeable, pleasant, with friends. The teacher noted anxiety when the Student discussed the [redacted] for November. (N.T. 415-416)

100. The learning support teacher utilized proactive strategies for the Student that included a classroom break area, fidget availability, and the opportunity to see the guidance counselor. Additional measures included team meetings participation, daily communication with the Parent, and checking the hallways before the Student's exit from the classroom. (N.T. 418-420)

101. Through the support plan and IEP, the Student had daily check-ins with the guidance counselor and a weekly meeting with the school psychologist. While eating breakfast or lunch, a filter was placed on the lunchroom window so the Student could not see the Respondent in the hallway. (J-39; N.T. 224, 312)
102. During daily check-ins, the guidance counselor conducted daily emotional temperature checks, observed that the Student was fine 75% of the time with no to very low reported anxiety. When the Student reported higher levels of anxiety, it was related to a sighting of the Respondent or a non-preferred task. (N.T. 312-313)
103. The guidance received input from the Student's outside treatment team and employed calming strategies that included distracting topics, fidgets, and breathing techniques. (N.T. 313, 316, 318, 324, 328)
104. Because of the established rapport, the Student's, bi-weekly, individual counseling provided by the school psychologist continued into the [redacted] grade. (N.T. 434-435)
105. In addition to the implemented executive functioning curriculum, the school psychologist used proactive strategies that included team meetings, moving meeting locations, and covering windows to prevent a sighting of the Respondent. (N.T. 437)

106. In mid-November, in response to increased anxiety, the school psychologist and guidance counselor contacted the Student's private therapist to obtain additional recommendations. The therapist advised the Parent would need contacted. (N.T. 444)
107. On November 14, 2024, the Parent withdrew the Student from the District. (J-47, p. 156-157; N.T. 197-198)
108. From September 16, 2024, until withdrawn from school on November 14, 2024, the Student had three medical absences, three early medical dismissals, and three excused early dismissals. (J-48; N.T. 306)
109. On January 21, 2025, the Parents filed an amended due process Complaint.

DISCUSSION AND APPLICATION OF LAW

General Legal Principles

The Burden of Proof

The burden of proof consists of two elements: the burden of production and 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 their 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 Parent is the party seeking relief and bears the burden of proof.

Witness Credibility

During a due process hearing, the hearing officer is charged with the responsibility of judging the credibility of witnesses and must make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses." *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003). One purpose of an explicit credibility determination is to give courts the information that they need in the event of judicial review. *See, D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014) ("[Courts] must accept the state agency's credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion."). *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 elementary school psychologist, the Student's fifth grade teacher, a District psychologist/ Director of Human Services, the middle school Principal, the sixth-grade guidance counselor, the Parent, a seventh grade learning support teacher, and a school psychologist providing clinical services testified at the due process hearing.

I find that all witnesses testified credibly in that all witnesses candidly shared their recollection of facts and their opinions, making no effort to withhold information or deceive me. To the extent that witnesses recall events differently or draw different conclusions from the same information, genuine differences in recollection or opinion explain the differences in testimony.

General IDEA Principles: Substantive FAPE

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

This long-standing Third Circuit standard was confirmed by the United States Supreme Court in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). The *Endrew* 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. The Third Circuit consistently interpreted *Rowley* to mean that the "benefits" to the child must

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

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

General IDEA Principles: Procedural FAPE

From a procedural standpoint, the family including parents have "a significant role in the IEP process." *Schaffer, supra*, 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).

Child Find and Evaluation

The IDEA and state and federal regulations 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. The statute itself sets forth two purposes of the required evaluation: to determine whether or not a child is a child with a disability as defined in the law, and to “determine the educational needs of such child[.]” 20 U.S.C.

§1414(a)(1)(C)(i). The obligation to identify students suspected as having a disability is referred to as “Child Find.” LEAs are required to fulfill their child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995).

The process of identifying children with disabilities is through an evaluation. Certain procedural requirements are set forth in the IDEA and its implementing regulations that are designed to ensure that all of the child’s individual needs are examined. 20 U.S.C. § 1414(b)(2); see also 34 C.F.R. §§ 300.303(a), 304(b) Additionally, the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and utilize “[a]ssessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child[.]” 34 C.F.R. §§ 304(c)(6) and (c)(7); see also 20 U.S.C. § 1414(b)(3).

Section 504 Principles

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities by recipients of federal financial assistance. Specifically, no qualified individual with a disability shall, "solely by reason of her or his disability," be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal funds. 34 C.F.R. § 104.4. In the public education context, this anti-discrimination mandate includes an affirmative obligation to provide a Free Appropriate Public Education (FAPE) to every qualified student with a disability. 34 C.F.R. § 104.33; 29 U.S.C. § 794. The federal regulations define FAPE under Section 504 as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met. *Centennial Sch. Dist. v. Phil L. ex rel. Matthew L.*, 799 F. Supp. 2d 473, 490 (E.D. Pa. 2011). In essence, Section 504 requires that schools offer auxiliary aids/services, accommodations, or modifications that allow a student with a disability to access and benefit from education on an equal footing with their non-disabled peers. A failure to do so is not simply a lapse in educational services—it constitutes disability-based discrimination under federal law. *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 271–72 (3d Cir. 2012) (holding that failure to provide a disabled student with a FAPE may violate Section 504's non-discrimination provision).

It is important to distinguish Section 504 from the Individuals with Disabilities Education Act (IDEA). While both laws require schools to meet the educational needs of students with disabilities, the legal obligations differ. The IDEA requires the creation of an Individualized Education Program (IEP) and focuses on the provision of specially designed instruction. Section 504, in contrast, applies more broadly and is centered on equal access. A violation of Section 504 occurs when a district fails to provide the services or

accommodations necessary to afford a disabled student meaningful educational access—even if the student is not eligible for IDEA services.

As the Third Circuit emphasized, Section 504's FAPE requirement functions as a "negative prohibition"—that is, a ban on denying access to education based on disability—complementing the IDEA's affirmative duty to provide specially designed instruction. *Ridley*, 680 F.3d at 271–72. Thus, a school's failure to offer appropriate and equally effective accommodations under Section 504 may result in liability for discriminatory conduct, even in the absence of an IDEA violation.

The obligation to provide FAPE is substantively similar under Section 504 and the IDEA. *Ridgewood v. Board of Education*, 172 F.3d 238, 253 (3d Cir. 1995). Further, the substantive standards for evaluating claims under Section 504 and the ADA are essentially identical. See, e.g., *Ridley School District v. M.R.*, 680 F.3d 260, 282–283 (3d Cir. 2012). Courts have long recognized the similarity between claims made under those two statutes, particularly when considered together with claims under the IDEA. See, e.g., *Swope v. Central York School District*, 796 F. Supp. 2d 592 (M.D. Pa. 2011); *Taylor v. Altoona Area School District*, 737 F. Supp. 2d 474 (W.D. Pa. 2010); Thus, in this case, the coextensive Section 504 and ADA claims that challenge the obligation to provide FAPE on the same grounds as the issues under the IDEA will be addressed together.

DISCUSSION

Parents' Claims

In their amended Complaint, the Parents asserted that for nearly two school years, the District failed to provide the Student with a FAPE in violation of the IDEA and Section 504, and discriminated against the

Student, resulting in additional violations. They also appeared to allege the District violated Title IX of the Education Amendments Act by failing to investigate and address reported peer [redacted] assaults. For the following reasons, the Parent has met the necessary burden of proof with respect to some of the claims at issue.

Title IX Issue

The first issue that needs addressed is whether this hearing officer has jurisdiction over the Parents' claim under Title IX. A special education hearing officer's authority arises under Section 504, the IDEA and the companion regulations that implement those statutes. Special education due process hearing officers have authority to decide only issues that concern the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) to a child with a disability. 20 U.S.C. §1415(f); 34 C.F.R. §§ 300.503, 300.507, 300.511; 22 Pa. Code §§ 14.101 –14.163, 15.8, 16.63. Special education hearing officers are limited to deciding claims within these parameters. Therefore, these important claims are dismissed.

2022-2023 School Year- [redacted] Grade

The Parents contend that the District denied the Student a FAPE, in [redacted] grade, by failing to provide adequate academic and emotional supports through the 504 plan then in effect. Based on this hearing record, the Parents have met their burden of proof concerning this claim.

During the 2022-2023 school year, the Student received programming through a 504 plan developed at the end of the previous school year. The June 2022 plan was properly based on the evaluation that preceded it and offered reasonable, appropriate, and responsive accommodations (breaks, preferential seating, testing supports) to address

the Student's undisputed ADD and anxiety needs. However, the Student's needs changed, but the 504 plan did not.

In October 2022, the Student reported to the District and the Parents that a peer [redacted] the Student's [redacted]. Although the Student disclosed the first incident immediately, subsequent, similar incidents in November and December were not brought to the Parents' attention by the District until February 2023. After the initial incident, the Student exhibited escalating emotional distress characterized by, [redacted] bus refusal, pronounced school anxiety, migraines, resulting in private therapy referrals—all of which the Parents reported to District staff.

Despite these efforts, the 504 plan implemented during the 2022-2023 school year failed to provide the Student with FAPE. Despite unmistakable signs that the Student's needs had changed, the District did not revise the 504 plan during the 2022-2023 school year. Although the District initiated a Title IX investigation and concurrently attempted safety measures acknowledging a need to support all students allegedly affected by the Respondent, none of those modifications were incorporated into this Student's 504 plan.¹² The Student's 504 plan continued to list only the original classroom-based accommodations; it did not reconvene the team to address whether counseling, safety-related provisions, or other supports were necessary to address the Student's worsening mental health condition.

¹² § 15.7. Service agreement.

(a) If the parents and the school district agree as to what related aids, services, or accommodations should or should no longer be provided to the protected handicapped student, the district and parents shall enter into or modify a service agreement. **The service agreement shall be written and executed by a representative of the school district and one or both parents. Oral agreements may not be relied upon.** The agreement shall set forth the specific related aids, services, or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive. 22 Pa. Code § 15.7 (emphasis added)

Although the District urged dismissal of the Parents' Title IX claims, it simultaneously relies on the plan in place during and after its investigation as evidence that its actions toward the Student were legally sufficient. Title IX and 504 plans are not interchangeable and serve different purposes. While both plans sought to support the Student in the school environment, they serve different legal purposes and are governed by separate regulatory framework. Although the District's Title IX support plan and Section 504 both addressed the Student's educational access, their purposes and legal underpinnings are different. The law does not permit substitution of one for the other. Despite this distinction, the District made efforts (physical separation of the Student and Respondent, escorts, staggered transitions, separate restrooms) to support the Student during the Title IX investigation. Despite these steps, it could not guarantee that the Student and Respondent would not "see" each other. Although it fell short of revising the Student's 504 plan in the face of new disability related needs, the District's efforts are recognized.

The record demonstrated that during the [redacted] grade, the Student's increased anxiety and fear of seeing the Respondent led to school avoidance behaviors and [redacted] threats. Although the Student ultimately received passing—indeed above-average—grades, that does not insulate the District from its responsibilities under Section 504 when a student cannot access or benefit from education on an equal footing with non-disabled peers.

Section 504 guarantees students with disabilities the right to accommodations that are reasonable, responsive to their disability-related needs, and effectively implemented. See 34 C.F.R. § 104.33. When a district knows or should know that bullying or harassment may be denying a student

FAPE, it must promptly convene the 504 team to determine whether additional or different services are necessary, not place the burden on the student to avoid the harassment. The District's failure to update the Student's 504 plan in light of negative peer interactions and documented emotional deterioration constituted a denial of FAPE. The Parents have therefore met their burden of proof for the 2022-2023 school year.

2023-2024 School Year- [redacted] Grade

In July, following the completion of the Title IX investigation the District proposed a support and transition plan for the Student's 2023-2024 school year. That plan, referenced as a support/transition/safety plan, was similar to the plan in place the previous school year. These supportive measures were preventative in nature, designed to address District responsibilities under Title IX, but were not disability-based accommodations. They were distinct from the Section 504 Service Agreement, which addressed the Student's disabilities—ADHD, anxiety, PTSD (later OCD)—and their impact on access to education.

The Student entered the [redacted] grade with a 504 plan updated the preceding August. Notably, this revised 504 offered responsive accommodations that included guidance counselor check-ins, access to fidget/sensory items when anxious, and access to a break or safe space with a trusted adult.

Early in the school year, the District conducted its second evaluation of the Student in less than twelve months. Based on this hearing record, the October 2023 Evaluation Report (ER) was not legally sufficient. Although the ER contained significant information about the Student's performance in the current setting, its conclusion that the Student did not need specially designed instruction was flawed. Under the IDEA, an ER must provide a

comprehensive understanding of the child's educational needs and determine whether the child is eligible as a "child with a disability" who requires special education and related services. See 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304. An evaluation is inappropriate when it fails to adequately consider the impact of emotional and behavioral disabilities on the student's educational performance.

The October 2023 ER also failed to give proper weight to the escalating concerns, including reports of suicidal ideation, school avoidance, and the inability to focus due to anxiety. The accompanying (FBA) identified behavior related to avoidance and distress in proximity to certain peers, findings that directly implicated the need for specially designed instruction and a more robust trauma-informed educational program. By relying on superficial indicators of academic progress and underestimating the intensity and pervasiveness of the Student's mental health-related impairments, the District overlooked clear evidence that the Student's disabilities impeded access to education.

Although the District made efforts to separate the Student from the Respondent while simultaneously providing accommodations through a 504 plan, those measures were not consistently successful. However, special education programming, nor precise implementation of an appropriate 504 plan, could prevent the Student from seeing the Respondent. Throughout the [redacted] grade, the Student experienced ongoing emotional distress, use of "rescue medication," outpatient mental health programming, school absences, early dismissals, and episodes of dysregulation—often in connection with reported or feared sightings of the Respondent. These were not transient issues; they were sustained, well-documented and disrupted meaningful educational access.

In April 2024, the District determined the Student was eligible for special education. The District convened the IEP team on May 2, 2024, with parental participation, and developed programming. The IEP contained individualized, measurable goals and a comprehensive array of SDIs and related services targeting the Student's identified needs. The Parent agreed to implementation, and the District undertook good-faith efforts to integrate trauma-informed supports through both the IEP and the Title IX transition plan. However, by that time, nearly the entire school year had passed, and the Student had been without IDEA protections and individualized programming. The Parents have established by a preponderance of the evidence that the District denied the Student a FAPE from October 2023 to May 2024.

2024-2025 School Year- [redacted] Grade

The Student began the [redacted] grade with a team developed IEP that was calculated to enable meaningful educational benefit. After reviewing the full hearing record, the hearing officer determines that the Parents have not met their burden of proof regarding a FAPE denial during the 2024-2025 school year.

Although the District unilaterally modified the Title IX safety plan in September 2024 by relaxing restrictions on the Respondent, the IEP developed by the team remained intact. This action further highlights the distinction between the purpose, application, and obligations of Title IX and the IDEA. The safety plan changes, implemented without apparent concurrent discussion with the IEP team, had a significant emotional impact on the Student. However, substantively, the May 2024 IEP was reasonably calculated to enable the Student to make appropriate progress in light of their unique circumstances. The IEP included a comprehensive set of supports and modifications designed to address both academic and

emotional needs (daily check-ins with the guidance counselor, weekly meetings with the school psychologist, safe space breaks).

When new concerns arose in fall 2024, including reported increases in anxiety and renewed trauma-related symptoms, the IEP team reconvened and adjusted supports accordingly. Revisions included further schedule changes, identification of trusted adults, and environmental accommodations. These ongoing adjustments demonstrated that the District monitored the IEP's effectiveness and responded to the Student's evolving needs in good faith and in accordance with the IDEA.

The record reflects that, from mid-September until withdrawal in mid-November, the Student attended school regularly and maintained access to the curriculum. The Student participated in general education classes with support and access to SDI and related services. Staff described the Student as socially engaged and typically regulated, noting that episodes of heightened anxiety were either brief or appropriately managed with staff intervention. Although the Student ultimately withdrew from the District, such an outcome does not in itself establish a denial of FAPE. The IDEA does not require schools to eliminate all trauma or guarantee educational success. Rather, the law requires a program reasonably calculated to provide meaningful educational benefit. The IEP and its implementation met that standard. Based on the totality of the evidence, the hearing officer concludes that the IEP developed and implemented by the District during the 2024–2025 school year was reasonably calculated to confer educational benefit and was responsive to the Student's trauma-related needs.

This case illustrates the challenges schools face in navigating overlapping legal duties under Title IX, Section 504, and IDEA when supporting a student with emotional and trauma-related disabilities. While

the District demonstrated a clear willingness to support the Student and made substantial efforts in doing so, the record supports the conclusion that the District denied the Student a FAPE for most of the 2022-2023 and 2023-2024 school years.

Intentional Discrimination

Finally, the Parents contend that the District violated Section 504 and Title II of the ADA by demonstrating deliberate indifference to the Student's needs. Intentional discrimination requires a showing of deliberate indifference, which may be met only by establishing "both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge." *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013). However, "deliberate choice, rather than negligence or bureaucratic inaction," is necessary to support such a claim. *Id.* at 263.

Here, the District did not act with deliberate indifference toward the Student. This record is replete with examples of their attempts to ascertain and meet the Student's needs and set a tone of emotional safety. Compensatory education will be awarded to remedy clear denials of FAPE. However, the District did not act with deliberate indifference in educating this Student. Accordingly, there will be no finding that the District discriminated against the Student on the basis of disability.

Compensatory Education

It is well settled that compensatory education may be an appropriate remedy 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, as a quantitative award, after 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” or qualitative 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).

The record supports a finding that the District denied the Student a FAPE under Section 504 during the 2022–2023 school year by failing to revise the Student’s Section 504 Service Agreement in response to escalating mental health concerns. Although the District implemented supports that offered some benefit, they were not legally sufficient substitutes for disability-based accommodations under Section 504. In this case, the denial commenced in December 2022, when the record indicates the District had sufficient notice of the Student's worsening condition and failed to respond appropriately. Using a standard 180-day calendar and excluding non-instructional days, the period from December 1, 2022, through the end of the school year includes approximately 132 school days. Accordingly, the Student is entitled to $132 \text{ days} \times 1.00 = 132$ hours of compensatory education. Because the District provided partial support through the support plan, an equitable reduction is warranted. Applying a 10% reduction in recognition of those partial supports. The Student is

therefore awarded 119 hours of compensatory education for the 2022–2023 school year.

The evidence also supports a finding that the District denied the Student a FAPE from October 16, 2023, through May 2, 2024, for its failure to identify the Student as eligible for special education in a timely manner. Although the District failed to meet its IDEA obligations during this period, it made substantial efforts under Title IX and Section 504. These efforts, though insufficient to meet the legal threshold for FAPE, are recognized as meaningful and reduce the severity of deprivation. Accordingly, the Student is entitled to 98 hours of compensatory education ($130 \text{ days} \times 1.5 \text{ hours/day} = 195 \text{ hours}$). A 50% equitable reduction to reflect the supports provided through the Title IX plan and Section 504 accommodations. The Student is awarded 98 hours of compensatory education for the District's denial of FAPE from October 16, 2023, through May 2, 2024.

ORDER

AND NOW, this 11th day of July, 2025, in accordance with the foregoing Findings of Fact and Discussion, it is hereby ORDERED as follows:

1. The Parents Title IX claims are dismissed.
2. The District denied the Student a Free Appropriate Public Education (FAPE) under Section 504 of the Rehabilitation Act of 1973 during the 2022–2023 school year.
3. The District further denied the Student FAPE under Section 504 of the Rehabilitation Act and the IDEA during the 2023-2024 school year.
4. As a remedy for the above denials of FAPE, the Student is awarded two hundred and seventeen (217) hours of compensatory education.

5. Compensatory education may be used for any combination of academic instruction, executive functioning support, emotional/behavioral counseling, trauma-informed services, or other appropriate developmental supports reasonably calculated to address the Student's identified areas of need during the periods of denial.
6. The compensatory education shall be delivered by appropriately certified or licensed professionals, at the direction of the Parents, and may be used before school, after school, on weekends, during school breaks, or over summer months.
7. The compensatory education hours awarded herein shall be available for use by the Student until the earlier of (a) the Student's 21st birthday or (b) graduation with a regular high school diploma.
8. The compensatory education hours are not subject to forfeiture due to future eligibility changes and shall not be offset or reduced by services provided under a current or future IEP unless expressly agreed to in writing by the Parent.

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

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 30265-24-25

July 11, 2025